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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE – JULY 7, 2019

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Headlines:

Sen. Paul Blocks Bill to Eliminate Per-Country Cap on Employment-Based Green Cards – The "Fairness for High-Skilled Immigrants Act of 2019" (S. 386), a bill that would eliminate the 7 percent per-country cap (numerical limitation) on employment-based immigrants, among other things, was blocked in the Senate by Rand Paul (R-Ky.).

OMB Concludes Review of EB-5 Immigrant Investor Program 'Modernization' Regulation – It is unclear when the regulation will be published or what, if any, changes have been made since the proposed rule was released in January 2017.

U.S. Recognizes Extension of Venezuelan Passport Validity – The Department of State released a statement recognizing an extension of Venezuelan passport validity for an additional five years past the printed date of expiration, for visa issuance and other consular purposes.

Trump Administration Imposes Hefty Fines on Immigrant Overstays – ICE has begun sending out notices of fines of up to hundreds of thousands of dollars to immigrants in the United States without authorization for violations including "failing to depart the U.S. as previously agreed."

ABIL Global: Australia – Australia has implemented the Temporary Skill Shortage (TSS) and employer nomination sponsored visas. While certain transitional arrangements remain, the old Subclass 457 Visa has been replaced by the TSS Visa (Subclass 482).

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Sen. Paul Blocks Bill to Eliminate Per-Country Cap on Employment-Based Green Cards

The "Fairness for High-Skilled Immigrants Act of 2019" (S. 386), a bill that would eliminate the 7 percent per-country cap (numerical limitation) on employment-based immigrants, among other things, was blocked in the Senate by Rand Paul (R-Ky.), who wants to amend the bill with an accommodation for EB-3 nurses. The legislation is expected to benefit primarily Indian and Chinese workers, who constitute the largest proportion of foreign H-1B skilled workers waiting for years in the green card backlog.

Other recent developments included the addition of provisions strengthening H-1B specialty occupation enforcement by Sens. Mike Lee (R-Utah) and Charles Grassley (R-Iowa). As of press time, S. 386 had 34 bipartisan co-sponsors; the House version, H.R. 1044, which does not include the H-1B provisions, had 311.

Details: Senate version of the bill, http://src.bna.com/JDP; Text and history of the House version, https://www.govtrack.us/congress/bills/116/hr1044; news reports, https://news.bloomberglaw.com/daily-labor-report/green-card-cap-legislation-remains-blocked-despite-h-1b-deal, https://www.deseretnews.com/article/900077471/mike-lee-kamala-harris-rand-paul-immigration-reform-bill-blocked.html

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OMB Concludes Review of EB-5 Immigrant Investor Program 'Modernization' Regulation

The Office of Management and Budget (OMB) announced on June 27, 2019, that it has completed its review of the "EB-5 Immigrant Investor Program Modernization" regulation. It is unclear when the regulation will be published or what, if any, changes have been made since the proposed rule was released in January 2017.

The January 2017 version proposed several major revisions to the EB-5 program regulations, such as priority date retention for certain EB-5 petitioners for use in connection with any subsequent EB-5 immigrant petition; increasing the standard minimum investment amount for all new EB-5 petitioners from $1 million to $1.8 million, and increasing the minimum investment amount for

investors in targeted employment areas (TEAs) from $500,000 to $1.35 million; making changes to the TEA designation process; and revising the process for removing conditions on permanent residence.

Details: 2017 proposed rule, https://www.federalregister.gov/documents/2017/01/13/2017-00447/eb-5-immigrant-investor-program-modernization; 2017 comments from IIUSA: Invest in the USA, https://iiusa.org/blog/wp-content/uploads/2017/04/IIUSA-Comment-to-NPRM-final2-1.pdf

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U.S. Recognizes Extension of Venezuelan Passport Validity

The Department of State (DOS) released a statement recognizing an extension of Venezuelan passport validity for an additional five years past the printed date of expiration, for visa issuance and other consular purposes.

DOS noted that U.S. Customs and the Border Patrol will likewise recognize the passports covered by a decree signed by Venezuelan Interim President Juan Guaido on May 21, 2019, and published by the National Assembly.

Details: DOS statement, https://www.state.gov/the-united-states-supports-extension-of-validity-for-venezuelan-passports/

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Trump Administration Imposes Hefty Fines on Immigrant Overstays

According to reports, U.S. Immigration and Customs Enforcement (ICE) has begun sending out notices of fines of up to hundreds of thousands of dollars to immigrants in the United States without authorization for violations including "failing to depart the U.S. as previously agreed."

The notices follow an executive order issued on January 25, 2017, "Enhancing Public Safety in the Interior of the United States," which calls for, among other things, "the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States."

Details: Executive Order, https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/; news reports, https://www.npr.org/2019/07/02/738059913/trump-administration-sends-out-notices-of-500-000-fines-for-those-in-u-s-illegal, https://www.usnews.com/news/national-news/articles/2019-07-02/report-trump-administration-notifies-immigrants-of-500-000-fines, https://wapo.st/2XNIntm

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ABIL Global: Australia

Australia has implemented the Temporary Skill Shortage (TSS) and employer nomination sponsored visas. While certain transitional arrangements remain, the old Subclass 457 Visa has been replaced by the TSS Visa (Subclass 482).

As with the previous 457 process, the TSS Visa consists of three separate applications: (1) the application by the employer to be approved as a sponsor; (2) the nomination; and (3) the visa application. To sponsor an employee, the employer must be approved as a Standard Business Sponsor. Sponsorship approvals may be valid for five years. In certain circumstances, a sponsor may seek accreditation, which may enable future nominations and visas for that accredited sponsor to be expedited.

Central to the nomination application is the establishment of two separate lists of approved occupations: the Short-Term Skills Occupation List (STSOL) and the Medium and Long-Term Strategic Skills List (MLTSSL). Visas granted relating to nominations of occupations on the STSOL are granted for a two-year period. After that period, a further and final period of two years may be sought. Where international trade obligations apply, a four-year visa may be granted. Visa applications granted relating to nominations for occupations on the MLTSSL may be approved for a four-year period.

Only the holders of TSS visas relating to MLTSSL occupations are entitled to be nominated for an Employer Nomination Subclass 186 Permanent Visa. As one would expect, this provision has caused substantial angst. Certain revisions of the lists have already taken place and occupations previously on the STSOL have been removed and inserted into the MLTSSL following criticism.

Details: Australian Department of Home Affairs, Temporary Skill Shortage Visa (under development): https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482

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