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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE- JULY 24, 2019

Posted on July 24, 2019 by Cyrus Mehta

HEADLINES

DOL Unveils New H-2A Proposed Rule – Among other things, the Notice of Proposed Rulemaking would mandate electronic filing of job orders and applications, promote the use of digital signatures, and provide employers with the option of staggering the entry of H-2A workers on a single application.

House Holds Hearing on USCIS Policy Changes, Processing Delays – Witnesses included representatives from USCIS, the American Immigration Lawyers Association, Catholic Legal Immigration Network, the Immigrant Legal Resource Center, and the Center for Immigration Studies. Statements were also submitted by various organizations.

OFLC Announces List of H-2B Applications Selected for Assignment – OFLC announced the group of 493 H-2B applications covering 12,098 worker positions with the start date of work of October 1, 2019, randomly selected for assignment.

State Dept. Announces Temporary Establishment and Retrogression of August Employment-Based Final Action Dates – There has been a steadily increasing level of employment-based applicant demand for adjustment of status cases, and there is no indication that this trending increase will end. Therefore, the agency has established or retrogressed many of the August Final Action Dates.

DHS, DOJ Issue Joint Third-Country Asylum Rule – The Departments of Homeland Security and Justice issued a joint interim final rule barring eligibility for asylum, with some exceptions, for those entering or attempting to enter the United States via the southern border after transiting through a third country. The ACLU and others quickly filed suit to stop the ban.

USCIS Announces Changes to Naturalization Test – A USCIS working group is revising the naturalization test, and the agency is formalizing a decennial revision process to allow for updates every 10 years. Critics believe this is part of efforts by the Trump administration to reduce naturalizations.

State Dept. Announces Diversity Lottery 2020 Results – Approximately 83,884 applicants have been registered and notified and may now apply for an immigrant visa.

DOL Unveils New H-2A Proposed Rule

The Department of Labor (DOL) posted online an unofficial version of a Notice of Proposed Rulemaking (NPRM) on July 15, 2019, in advance of publication in the Federal Register, on proposed changes to the H-2A temporary agricultural labor certification program. DOL said the proposed changes would modernize the agency's H-2A regulations "in a way that is responsive to stakeholder concerns and enhances employer access to a legal source of agricultural labor, while maintaining the program's protections for the U.S. workforce and enhancing enforcement against fraud and abuse."

Among other things, the NPRM would mandate electronic filing of job orders and applications, promote the use of digital signatures, and provide employers with the option of staggering the entry of H-2A workers on a single application. The NPRM also proposes to enhance standards applicable to rental housing and public accommodations, strengthen surety bond requirements, expand DOL's authority to use enforcement tools like program debarment for substantial violations of program rules, and update the methodologies used to determine the Adverse Effect Wage Rates and prevailing wages.

Details: Unofficial NPRM, https://www.foreignlaborcert.doleta.gov/pdf/2019-07-15-ETA-1205-AB89-Temporary-Agricultural-Employment-of-H-2A-Nonimmigrants.pdf; DOL announcement, https://www.foreignlaborcert.doleta.gov/

House Holds Hearing on USCIS Policy Changes, Processing Delays

On July 16, 2019, the House of Representatives held a hearing on policy changes and processing delays at U.S. Citizenship and Immigration Services (USCIS). Witnesses included representatives from USCIS, the American Immigration Lawyers Association (AILA), Catholic Legal Immigration Network (CLINIC), the Immigrant Legal Resource Center, and the Center for Immigration

Studies. Statements were also submitted by various organizations.

Regarding policy changes, Jill Marie Bussey, CLINIC's Director of Advocacy, cited the expansion of in-person interview requirements and related "extreme vetting," new rules on requests for evidence and notices of intent to deny, elimination of the 90-day processing requirement for employment authorization documents, information services "modernization" that includes narrowing of the options and points of access for stakeholders to request information and services regarding their pending cases, the ending of self-scheduling of in-person InfoPass appointments at field offices, and diverting resources to enforcement-focused activities. All of these policy changes, she said, are contrary to USCIS's mission, contribute to backlogs and inefficiencies, and create unnecessary barriers for applicants and their legal representatives, are not justified by data, and thus have contributed to significant consequences and cascading effects for employers, legal service providers, individuals and families, and USCIS and other agencies.

With respect to processing delays, Marketa Lindt, AILA President, testified that USCIS's average case processing time surged by 46 percent from FY 2016 to FY 2018 and by 91 percent from FY 2014 to FY 2018. "n FY 2018 the agency processed 94 percent of its benefit form types more slowly than in FY 2014. For many of these form types, processing times more than doubled in recent years, and some tripled. This past fiscal year, the agency's overall backlog of delayed cases exceeded 5.69 million, a 69 percent increase over FY 2014."

Details: Hearing testimony and statements, https://bit.ly/2LWUAp8

Back to Top

OFLC Announces List of H-2B Applications Selected for Assignment

The Department of Labor's Office of Foreign Labor Certification (OFLC) announced the group of 493 H-2B applications covering 12,098 worker positions with the start date of work of October 1, 2019, randomly selected for assignment.

OFLC said it successfully completed the randomization process on July 8, 2019, and assigned to analysts all of the H-2B applications placed in Assignment Group A for issuance of notices of deficiency or acceptance. Because the total number of H-2B applications contained an insufficient number of worker positions to reach the first semiannual visa allotment (33,000), no other

assignment groups were created. OFLC provided written notice to each employer and, where applicable, the employer's authorized attorney or agent.

Details: List of H-2B applications in Assignment Group A, https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Applications_Randomly-Selected-for-Assignment_July3-5_07.15.19_508.pdf; DOL announcement of H-2B temporary labor certification program changes and how applications are assigned to staff for review, https://www.foreignlaborcert.doleta.gov/pdf/OFLC_Procedural-Change_H-2B_Application-Assignment_02.26.19.pdf

Back to Top

State Dept. Announces Temporary Establishment and Retrogression of August Employment-Based Final Action Dates

The Department of State's (DOS) Visa Bulletin for August 2019 notes that there has been a steadily increasing level of employment-based applicant demand since late May for adjustment of status cases filed with U.S. Citizenship and Immigration Services, and there is no indication that this trending increase will end. Therefore, the agency has established or retrogressed many of the August Final Action Dates in an effort to hold worldwide number use within the maximum allowed under the FY 2019 annual limits.

The implementation of these dates is expected to be only a temporary issue, DOS said. For October, the first month of fiscal year 2020, "every effort will be made to return these final action dates to those which applied for July."

Details: DOS Visa Bulletin for August 2019 (scroll down to "D"), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-august-2019.html

Back to Top

DHS, DOJ Issue Joint Third-Country Asylum Rule

On July 16, 2019, effective immediately, the Departments of Homeland Security and Justice issued a joint interim final rule barring eligibility for asylum, with some exceptions, for those entering or attempting to enter the United States via the southern border who did not apply for protection in at least one third country outside the person's country of citizenship, nationality, or last lawful habitual residence through which they transited en route to the United States.

The rule would also require asylum officers and immigration judges to apply this new bar on asylum eligibility when administering the credible-fear screening process applicable to stowaways and aliens subject to expedited removal under section 235(b)(1) of the Immigration and Nationality Act. The new bar established by this regulation does not modify withholding or deferral of removal proceedings.

The American Civil Liberties Union (ACLU) Foundation's Immigrants' Rights Project and others immediately filed suit in the U.S. District Court in San Francisco, California, to stop the asylum ban. They argued that under U.S. law, the government cannot disqualify asylum applicants solely on the basis of transiting through a third country. The complaint states that the rule "is a part of an unlawful effort to significantly undermine, if not virtually repeal, the U.S. asylum system at the southern border."

Comments on the interim final rule are due by August 15, 2019, to be submitted by one of the methods listed in the rule.

Details: DHS announcement, https://www.dhs.gov/news/2019/07/15/dhs-and-doj-issue-third-country-asylum-rule; interim final rule, https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications; ACLU complaint, https://www.dropbox.com/s/4wckd0ol9hhusb8/1-main.pdf?dl=0

Back to Top

USCIS Announces Changes to Naturalization Test

On July 19, 2019, U.S. Citizenship and Immigration Services (USCIS) announced that it is revising the current naturalization test in English and civics.

In December 2018, USCIS formed a naturalization test revision working group with members from across the agency. The working group is reviewing and updating the naturalization test questions. The group will also assess potential changes to the speaking portion of the test. USCIS said it "is soliciting the input of experts in the field of adult education to ensure that this process is fair and transparent." Details of the changes being considered were not released. USCIS plans to pilot the test revision this fall, and to set an implementation date in December 2020 or early 2021. USCIS is also formalizing a decennial revision process to allow for updates every 10 years. Critics have expressed concerns

that the announcement is a continuation of efforts by USCIS to make naturalization more difficult, including dramatically slowing down the processing of naturalization applications.

Details: USCIS announcement, https://www.uscis.gov/news/news-releases/uscis-announces-plan-improve-naturalization-test; USCIS memorandum on the revisions, https://bit.ly/2xY4XAM

Back to Top

State Dept. Announces Diversity Lottery 2020 Results

The Kentucky Consular Center has registered and notified the winners of the DV-2020 diversity lottery. Approximately 83,884 applicants have been registered and notified and may now apply for an immigrant visa, the Department of State (DOS) announced. Since it is likely that some of the persons registered will not pursue their cases to visa issuance, the agency said this larger figure should ensure that all DV-2020 numbers will be used during fiscal year 2020 (October 1, 2019, to September 30, 2020).

Applicants registered for the DV-2020 program were selected at random from 14,722,798 qualified entries (23,182,554 with derivatives) received during the 34-day application period in late 2018. The visas have been apportioned among six geographic regions with a maximum of seven percent available to persons born in any single country.

During the visa interview, principal applicants must provide proof of a high school education or its equivalent, or show two years of work experience in an occupation that requires at least two years of training or experience within the past five years. DOS said that those selected will need to act on their immigrant visa applications quickly. Applicants should follow the instructions in their notification letters and must fully complete the information requested.

Details: DOS Visa Bulletin for August 2019 (scroll down to "E"), which includes a country-by-country list of the numbers, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-august-2019.html

Back to Top