



IMMIGRATION UPDATE: SEPTEMBER 9, 2019

Posted on September 9, 2019 by Cyrus Mehta

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Headlines:

[**OFLC Announces Schedule for E-Filing of LCAs**](#) – Affected LCA programs include the H-1B, H-1B1, and E-3 visa classifications.

[**USCIS Proposes Deleting Time Limits on Work Authorization Processing for Asylum Applicants**](#) – USCIS has announced a proposed rule to remove the 30-day time limit on granting or denying an initial application for an employment authorization document. USCIS also proposes to remove the provision requiring applicants to submit their renewal requests to USCIS 90 days before the expiration of their work authorization.

[**Reciprocity Schedule for France Revised for E Treaty Trader/Investor Visas**](#) – Effective September 26, 2019, the reciprocity schedule for France will be revised for E visas (treaty traders and investors).

[**USCIS Reopens Previously Pending Deferred Action Requests**](#) – USCIS announced that it will reopen all non-military deferred action cases that were pending on August 7, 2019.

[**State Dept. Issues Reminder About Uses of Passport Books/Cards Under 'Real ID'**](#) – The Department of State recently issued a reminder about upcoming changes to domestic air travel documentation requirements under the Real ID Act, which requires all state-issued identification documents to meet a set of minimum security standards.

OFLC Announces Schedule for E-Filing of LCAs

The Department of Labor's Office of Foreign Labor Certification (OFLC) has announced its schedule for electronic filing of labor condition applications

(LCAs) in the Foreign Labor Application Gateway (FLAG) System. Affected LCA programs include the H-1B, H-1B1, and E-3 visa classifications. OFLC noted:

- Beginning September 16, 2019, the FLAG System's LCA Program Module will be enabled and stakeholders will be able to begin preparing H-1B, H-1B1, and E-3 applications using the Form ETA-9035E. However, the FLAG System will not permit the submission of LCA applications until 12 noon ET on October 1, 2019.
- OFLC will continue to accept online submissions of the Form ETA-9035E through the iCERT System until 11:59 a.m. ET on October 1, 2019. The ability to submit LCA applications using the iCERT System will be deactivated at 12 noon ET on that date.
- OFLC will process all LCA applications submitted through the iCERT System, and stakeholders will be able to access their iCERT System accounts to check the status of applications submitted through the iCERT System.

OFLC has created instructional videos on how to create and manage a FLAG System account and prepare the Form ETA-9035E, to be posted by September 13, 2019, at the OFLC notice link below. Additionally, OFLC will host an instructional webinar on Wednesday, September 18, 2019, to provide technical assistance to employers and authorized attorneys or agents. More information is available at the links below.

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USCIS Proposes Deleting Time Limits on Work Authorization Processing for Asylum Applicants

U.S. Citizenship and Immigration Services (USCIS) has announced a proposed rule to remove the 30-day time limit on granting or denying an initial application for an employment authorization document (EAD) in affirmative asylum applications. USCIS also proposes to remove the provision requiring applicants to submit their renewal requests to USCIS 90 days before the expiration of their work authorization. The notice of proposed rulemaking is expected to be published in the Federal Register on September 9, 2019.

USCIS said that elimination of the 30-day processing timeframe for such EADs is intended to ensure that the agency has sufficient time to receive, screen, and process these applications, and to reduce opportunities for fraud and protect

the security-related processes undertaken for each EAD application. USCIS said that timeframes achieved in FY 2017 (prior to a court order mandating adherence to the 30-day timeframe set by regulation) "are sustainable and USCIS intends to meet these timeframes if the proposed rule is adopted." USCIS said that during that period in FY 2017, it adjudicated approximately 78 percent of such applications within 60 days.

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Reciprocity Schedule for France Revised for E Treaty Trader/Investor Visas

Effective September 26, 2019, the reciprocity schedule for France will be revised for E visas (treaty traders and investors). The reciprocity tables will be updated to reflect this change. Reportedly, the maximum validity for E-1 and E-2 visas will be decreased from 60 months to 15 months.

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USCIS Reopens Previously Pending Deferred Action Requests

U.S. Citizenship and Immigration Service (USCIS) announced that it will reopen all non-military deferred action cases that were pending on August 7, 2019. Deferred action is a discretionary decision to temporarily postpone the removal from the United States of a person who is unauthorized to stay.

On August 7, USCIS stopped considering deferred action for non-military requestors and sent denial letters to applicants, which led to controversy as many cases were based on medical need. A lawsuit was filed subsequently on behalf of the Irish International Immigrant Center by the American Civil Liberties Union and Lawyers for Civil Rights. A hearing on this issue, to be held before the House Subcommittee on Civil Rights and Civil Liberties, is scheduled for September 11, 2019.

Deferred action related to military members and Deferred Action for Childhood Arrivals cases were not affected by the August 7 action. USCIS said "consideration of such cases is ongoing."

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State Dept. Issues Reminder About Uses of Passport Books/Cards Under 'Real ID'

The Department of State recently issued a reminder about upcoming changes

to domestic air travel documentation requirements under the Real ID Act, which requires all state-issued identification documents to meet a set of minimum security standards. IDs that do not meet these standards will not be accepted for federal purposes, including as ID for boarding domestic flights. State IDs, such as driver's licenses, may need updating.

The reminder notes that the U.S. passport book and U.S. passport card are both accepted by the Transportation Security Administration as ID for domestic flights. The passport card cannot be used for international air travel. In addition to its acceptance as ID for domestic flights, the passport card can be used for entering the United States at land border crossings and sea ports of entry from Canada, Mexico, the Caribbean, and Bermuda. The passport card costs \$30 for adults who have a passport book, and \$65 for first-time adult applicants. The card has the same validity period as the book (valid for 10 years for those over 16).

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The Firm in the News:

Cora-Ann Pestaina has authored a new blog entry. "Recent H-1B Case Brings Hope that Reliance of the Umbrella 'All Other' Occupational Classification Need Not Be Fatal" is at <https://bit.ly/32fenF2>.