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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE- JANUARY 6, 2020

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Headlines

Immigration Provisions Included in Newly Enacted Defense Act – On December 20, 2019, President Trump signed the National Defense Authorization Act, which includes several immigration-related provisions.

Investigation Finds Fake Companies Exploiting F-1 Student Visa Program –NBC found that 14 "suspicious" companies employed more than 5,500 foreign students through the Optional Practical Training program.

ABIL Global: Australia – The Australian government has made a concerted effort to encourage migrants to settle in regional areas rather than cities.

ABIL Global: United Kingdom – After an exhausting years-long process, Brexit is all but inevitable.

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Immigration Provisions Included in Newly Enacted Defense Act

On December 20, 2019, President Donald Trump signed the National Defense Authorization Act for Fiscal Year 2020 (S. 1790). Immigration-related provisions include:

- The ability for certain Liberians who have been in the United States since November 20, 2014, to adjust status. The new law is expected to include more than 4,000 Liberians and their spouses, children, and unmarried adult children. U.S. Citizenship and Immigration Services said it will accept such applications until December 20, 2020, under the new "Liberian Refugee Immigration Fairness (LRIF)" program.
- Parole-in-place for service members and their families on a case-by-case

basis.
- The addition of 4,000 more visas under the Special Immigrant Visa Program for Afghan interpreters who worked with the U.S. military.
- Protection for temporary protected status (TPS) and Deferred Action for Childhood Arrivals (DACA) recipients from being separated involuntarily from the U.S. Armed Forces.
- $1.38 billion toward President Trump's border wall.

Investigation Finds Fake Companies Exploiting F-1 Student Visa Program

A new investigation by NBC News/NBC Bay Area found that fake companies providing false employment verifications have been exploiting the F-1 student visa program, which allows students to stay in the United States after they graduate to obtain practical work experience. One defendant reportedly admitted to providing false employment records for nearly 2,700 students, for example.

NBC said its efforts to contact officers at 14 "suspicious" companies "were met with a series of dead-end business addresses and disconnected phone numbers. Emails, phone calls, and social media messages went unanswered by all but two companies. In those two instances, an officer reached by phone verified their identity but declined to discuss their company." NBC noted that U.S. Immigration and Customs Enforcement records showed that those 14 companies employed more than 5,500 foreign students through the Optional Practical Training (OPT) program in 2017.

The Alliance of Business Immigration Lawyers cautions that F-1 foreign students should seek employment with legitimate companies that provide employment directly related to a student's major area of study. Obtaining false employment verification will have a serious impact on the student's ability to maintain F-1 status and will also adversely impact the student's eligibility for future immigration benefits.

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ABIL Global: Australia

The Australian government has made a concerted effort to encourage migrants to settle in regional areas rather than cities.

The Australian government recently introduced two new Provisional Regional

Visas:

- Skilled Work Regional (Provisional) Visa, SC491 (subclass 491)
- Skilled Employer Sponsored Regional (Provisional) Visa, SC494 (subclass 494)

In November, a permanent visa was introduced—the Permanent Resident (Skilled Regional) Visa, SC191—to dovetail with the new Provisional Visa. At the same time, the current Regional Sponsored Migration Scheme Visa (SC187) and the Skilled Regional (Provisional) Visa (SC489) were phased out.

The Skilled Provisional Visa is intended to provide an easier pathway for skilled migrants and dependent family members who are prepared to live and work in regional Australia, to obtain a Provisional Visa and ultimately Permanent Residence.

The SC494 Skilled Employer Sponsored Regional (Provisional) Visa will provide an Australian business, located in regional Australia, to nominate employees in a substantially greater range of occupations than are currently available.

The Skilled Work Regional (Provisional) Visa will provide an opportunity for skilled applicants who are nominated by a State or Territory Government, or sponsored by an eligible family member, to live and work in regional Australia.

An essential condition of both of these visas is that the visa holders must live and work in regional Australia for at least 3 years to become eligible for the Permanent SC 191 Visa. This condition also applies to family members, which means dependent children must attend school or university in a regional area. Visa holders who leave a regional area run the risk of either visa cancellation or becoming ineligible to apply for a permanent visa.

Regional Provisional Visa holders will not be precluded from applying for certain permanent visas.

What is meant by regional Australia? The new legislation effectively defines regional Australia as being all of Australia except for the cities of Sydney, Melbourne, and Brisbane.

The list of skilled occupations available for the SC494 visa is a combination of the current Medium and Long-Term Strategic Skills List (MLTSSL) and the Regional Occupation List (ROL), which effectively makes a total of 650 occupations available for the SC494.

For more on the Skilled Migration Lists review, see https://docs.employment.gov.au/documents/skilled-migration-lists-review-traffic-light-bulletin-consultation-december-2019-february.

SC494—Skilled Employer Sponsored Regional (Provisional) Visa

The process for the Skilled Employer Sponsored Regional (Provisional) Visa is substantially similar to that for the former SC457 Visa and the current SC482 Visa.

Visa applicants must be sponsored by an employer that has been duly approved as a Sponsor and must be the subject of a valid nomination. The visa applicant must:

- Have an occupation on the relevant Skilled Occupation List;
- Be duly skilled and experienced in the occupation;
- Provide evidence of at least 3 years of full-time experience in the nominated occupation;
- Be under 45 years of age;
- Have good English language skills; and
- Meet the relevant health and character requirements.

This new visa category has been very favorably received by mining companies and others that operate in the regional areas because a far broader range of occupations than in the past is available from which staff shortages may be filled.

The introduction of the SC494 does not affect the current SC 482 Temporary Skills Shortage Visa or the SC 186 (Permanent) Employer Nomination Visa.

SC491—Skilled Work Regional (Provisional) Visa

Applicants for the Skilled Work Regional (Provisional) Visa must meet certain eligibility criteria:

- Receive an invitation to apply for the lodgment of an Expression of Interest
- Be duly nominated by a State or Territory or sponsored by a family member residing in the regional area of Australia
- Have an occupation on the relevant Skilled Occupation List
- Be under 45 years of age
- Have good English skills

- Meet the Points Test mark (65 points) and meet the health and character requirements

Family members who may sponsor a visa applicant and who live in regional Australia include:

- Parent
- Child or stepchild
- Brother, sister, adopted brother, adopted sister, stepbrother, stepsister
- Uncle, aunt, adopted aunt, adopted uncle, step aunt, or step uncle
- Nephew, niece, adopted nephew, adopted niece, step nephew, or step niece
- Grandparent
- First cousin

The sponsoring family member must be 18 years or older, an Australian citizen, permanent resident or eligible New Zealand citizen and, as previously stated, be usually resident in a regional area.

As noted above, the pass mark for the Points Test is 65 points. Some additional points have been added as an incentive to apply for this visa relating to sponsorship by a state or family member living in a regional area, advanced study at a university in a regional area, and partner skill qualifications.

Priority Processing

It has been stated that applicants for the Regional Provisional Visa will receive priority processing. What this means in practice remains to be seen.

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ABIL Global: United Kingdom

After an exhausting years-long process, Brexit is all but inevitable.

An exhausting 1,267 days have passed since the United Kingdom (UK) voted by referendum to leave the European Union. Remarkably, and contributing to an overall sense of fatigue, this relatively short period saw multiple failed attempts at passing a Brexit deal, two general elections, and three Prime Ministers. Now, however, with the Conservative Party's recent sweeping general election victory and the reinstatement of Boris Johnson as leader, Brexit is all but inevitable.

So, what's next for UK immigration?

The House of Commons passed the latest Withdrawal Agreement on December 20, 2019, but it must pass the House of Lords and receive Royal Assent to be ratified by the UK. Under the terms, European Economic Area (EEA) and Swiss nationals' rights will remain much the same through December 31, 2020. Assuming the agreement is ratified, those wishing to remain longer will need to apply for permission under the European Union Settlement Scheme (EUSS) by 30 June 2021. Successful applicants will be granted either "settled" status (for those who can demonstrate 5 years of continuous residence), or "pre-settled" status (for those with fewer than 5 years), which will allow them to remain in the UK, access benefits, and eventually apply for citizenship, should they choose.

EEA and Swiss citizens arriving after December 31, 2020, will need to seek permission under what the government is referring to as a "firmer and fairer Australian-style points-based immigration system," set to take force in January 2021.

While this new system was featured in the 2019 Conservative and Unionist Party Manifesto, no specific details have yet been released other than well-worn political slogans such as "attracting the best and the brightest" and "integration and openness." However, if indeed analogous to Australia's system, prospective migrants would be subject to a points-based evaluation that would consider attributes such as age, occupational qualifications, work experience, English language skill, and educational level.

It is imperative that the government outline details for the new system soon to allow businesses and individuals to prepare for the quickly approaching road ahead.

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Firm in the News

Cyrus Mehta was quoted by *Bloomberg Law* in an article entitled "Five Workplace Immigration Developments to Watch in 2020"on December 31, 2019. The article can be found at https://news.bloomberglaw.com/daily-labor-report/five-workplace-immigration-developments-to-watch-in-2020

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