CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE- FEBRUARY 3, 2020

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Headlines:

USCIS Announces Public Charge Rule Implementation Following Supreme Court Stay of Nationwide Injunctions – USCIS will implement the public charge final rule on February 24, 2020, except in Illinois, where the rule remains enjoined by a federal court.

Trump Administration Restricts U.S. Entry of Travelers From and Through China Due to Coronavirus Risk – The proclamation lists exceptions, such as lawful permanent residents (LPRs) of the United States, spouses and children of U.S. citizens or LPRs, air and sea crews, and others.

Trump Administration Suspends U.S. Entry, With Exceptions, of Nationals From Six New Countries – The six new countries are Burma (Myanmar), Eritrea, Kyrgyzstan, Nigeria, Sudan, and Tanzania. The proclamation states country-by-country exceptions to the ban. For example, diversity immigrants, but no others, from Sudan and Tanzania are suspended.

USCIS Changes Adjudication Process for EB-5 Visa Petitions to 'Visa Availability Approach' – USCIS announced a process change for Form I-526 "from a first-in, first-out basis to a visa availability approach."

USCIS Announces I-9 Form Changes – As of January 31, 2020, employers should begin using a new version of the Form I-9 (version 10/21/2019, expires 10/31/2022). Employers may continue to use the old form until April 30, 2020.

Biometrics Collection Guidance Updated – USCIS announced updates to its policy guidance concerning mobile biometrics services and fingerprint waivers.

USCIS Updates Process for Accepting Petitions for Relatives Abroad – The Department of State will assume responsibility for certain services previously provided at USCIS international offices.

Supreme Court Amicus Brief Opposes Provision That Criminalizes Certain Legal Advice Immigration Lawyers Often Offer to Clients – Advocates, including the National Immigration Project of the National Lawyers Guild and the American Immigration Lawyers Association, submitted an amicus brief in *United States v. Sineneng-Smith.*

ABIL Global: United Kingdom – It's happened: The UK officially left the EU on January 31, 2020. Now what?

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USCIS Announces Public Charge Rule Implementation Following Supreme Court Stay of Nationwide Injunctions

U.S. Citizenship and Immigration Services (USCIS) announced that it will implement the Inadmissibility on Public Charge Grounds final rule on February 24, 2020, except in Illinois, where the rule remains enjoined by a federal court as of January 30, 2020. Earlier, on January 27, 2020, the Supreme Court stayed the order of a New York federal court granting a nationwide injunction against the implementation of the public charge rule.

Among other things, the final rule includes a requirement that those seeking to adjust status to permanent residence or seeking an extension of stay or change of status demonstrate that they have not received public benefits over a designated threshold. The final rule considers a noncitizen a public charge if he or she receives certain public benefits for more than 12 months in the aggregate in any 36-month period, such that the receipt of two benefits in one month counts as two months. USCIS will also consider whether a noncitizen seeking an extension of stay or change of status has received certain public benefits since obtaining the nonimmigrant status he or she seeks to extend or from which he or she seeks to change.

Except for the state of Illinois, USCIS said it will apply the final rule to applications and petitions postmarked (or submitted electronically) on or after February 24, 2020. USCIS said it will post updated forms, submission instructions, and *Policy Manual* guidance on the USCIS website during the week of February 3, 2020, "to give applicants, petitioners, and others ample time to review updated procedures and adjust filing methods." In the coming weeks, the agency said, it plans to hold a public engagement for "immigration attorneys, industry representatives, and other relevant groups to discuss the

final rule."

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Trump Administration Restricts U.S. Entry of Travelers From and Through China Due to Coronavirus Risk

On January 31, 2020, President Trump issued a proclamation effective February 2, 2020, restricting and limiting entry into the United States of "all aliens who were physically present within the People's Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, during the 14-day period preceding their entry or attempted entry into the United States." The proclamation states that this action is necessary because "he potential for widespread transmission of the by infected individuals seeking to enter the United States threatens the security of our transportation system and infrastructure and the national security." Other countries announcing similar travel restrictions include Australia, Italy, Japan, Pakistan, and Russia.

The proclamation lists exceptions, such as lawful permanent residents (LPRs) of the United States, spouses and children of U.S. citizens or LPRs, air and sea crews, and others. It includes details about medical screening and quarantining, and the responsibilities of air carriers.

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Trump Administration Suspends U.S. Entry, With Exceptions, of Nationals From Six New Countries

On January 31, 2020, the Trump administration announced suspension of entry into the United States for nationals of six new countries, with some exceptions: Burma (Myanmar), Eritrea, Kyrgyzstan, Nigeria, Sudan, and Tanzania, "until those countries address their identified deficiencies" related to security and information-sharing issues. The proclamation specifies that the restrictions generally are on immigrant visa travel by those outside the United States and not on nonimmigrant visa travel. The proclamation exempts special immigrant visas for those who have helped the United States.

The proclamation states country-by-country exceptions to the ban. For example, diversity immigrants, but no others, from Sudan and Tanzania are suspended. The proclamation takes effect on February 21, 2020.

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USCIS Changes Adjudication Process for EB-5 Visa Petitions to 'Visa Availability Approach'

U.S. Citizenship and Immigration Services (USCIS) announced a process change for Form
I-526, Immigrant Petition by Alien Investor, "from a first-in, first-out basis to a visa availability approach."

"Changing our approach from a first-in, first-out adjudication process to one that prioritizes petitions connected to individuals from countries where visas are currently available better aligns the EB-5 program with congressional intent and makes it more consistent with other USCIS operations," said USCIS Deputy Director Mark Koumans. The new visa availability approach prioritizes petitions "where visas are immediately available, or soon available, and will not create legally binding rights or change substantive requirements," the agency noted. Applicants from countries where visas are immediately available "will now be better able to use their annual per-country allocation of EB-5 visas." USCIS said this new approach, which takes effect March 31, 2020, will apply to petitions pending as of the effective date of the change.

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USCIS Announces I-9 Form Changes

As of January 31, 2020, employers should begin using a new version of the Form I-9 (version 10/21/2019, expires 10/31/2022). U.S. Citizenship and Immigration Services (USCIS) says the old form will become obsolete on April 30, 2020. Employers may use the old form until that date.

Changes to the Form I-9 include:

- Addition of Eswatini and North Macedonia to the Country of Issuance field in Section 1 and the foreign passport issuing authority field in Section 2 per those countries' recent name changes. These changes are only visible when completing the fillable Form I-9 on a computer.
- Clarification of who can act as an authorized representative on behalf of an employer
- Updating of USCIS website addresses
- Clarification of acceptable documents
- Updating the process for requesting the paper Form I-9
- Updating the DHS Privacy Notice

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Biometrics Collection Guidance Updated

U.S. Citizenship and Immigration Services (USCIS) announced updates to its policy guidance concerning mobile biometrics services and fingerprint waivers:

- USCIS will not provide mobile biometrics services in prisons or jails for individuals who cannot attend their Applicant Support Center (ASC) appointments due to incarceration or detention. This policy applies only to individuals held in non-Department of Homeland Security (DHS) custody. For those in DHS custody, U.S. Immigration and Customs Enforcement will continue to collect biometrics.
- An approved fingerprint waiver is tied to the specific petition, request, or application listed on notice of the appointment for submission of biometrics at the ASC. In other words, someone cannot use an approved waiver for any other biometrics requirement for any future filings. Individuals may qualify for a waiver of the fingerprint requirement if they cannot provide fingerprints because of a medical condition.

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USCIS Updates Process for Accepting Petitions for Relatives Abroad

U.S. Citizenship and Immigration Services (USCIS) announced that Form I-130, Petition for Alien Relative, will only be processed domestically by USCIS or internationally by the Department of State (DOS) in certain circumstances beginning February 1, 2020.

DOS will assume responsibility for certain services previously provided at USCIS international offices, services that DOS already provides in countries where USCIS does not have a presence. Eligible active-duty service members assigned overseas will file their Forms I-130 locally with DOS, as will certain non-military petitioners who meet specific criteria for consular processing.

Generally, DOS will process a Form I-130 locally if the petition falls under blanket authorization criteria, as defined by USCIS

- Temporary blanket authorizations for instances of prolonged or severe civil strife or a natural disaster; or
- Blanket authorization for U.S. service members assigned to military bases abroad.

In addition to these blanket authorizations, DOS maintains discretion to accept Form I-130 if a U.S. citizen petitioner meets the "exceptional circumstance" criteria outlined in the USCIS Policy Manual.

All other petitioners residing overseas must file Form I-130 online or by mail through the USCIS Dallas Lockbox facility for domestic processing.

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Supreme Court Amicus Brief Opposes Provision That Criminalizes Certain Legal Advice Immigration Lawyers Often Offer to Clients

Advocates, including the National Immigration Project of the National Lawyers Guild and the American Immigration Lawyers Association (AILA), submitted an amicus brief in *United States v. Sineneng-Smith.* The brief argues that "he statute chills staggering amounts of immigration advice that is not only constitutionally protected but also critical to the proper functioning of our immigration system." The Supreme Court has agreed to consider the First Amendment case, which challenges a 1986 federal law that criminalizes "encourag" unauthorized persons to come to or remain in the United States.

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ABIL Global: United Kingdom

It's happened: The United Kingdom (UK) officially left the European Union (EU) on January 31, 2020. Now what?

What does this mean for people moving to and from the UK?

Nothing for now. We are in a transition period until at least December 31, 2020.

During the transition period, EU law continues to apply to the UK, which means that EU citizens can live and work in the UK in exactly the same way as before. The same applies to other European Economic Area (EEA) nationals (nationals of Norway, Iceland, and Liechtenstein) and Swiss nationals. British citizens also keep their free movement rights in EEA states and Switzerland during the transition period.

The British government insists that the transition period will not be extended. If there is to be an extension, this must be agreed upon before July 1, 2020.

What will happen to EU citizens already living in the UK?

EU citizens who move to the UK before the end of the transition period will be able to stay as long as they apply for the EU Settlement Scheme. The deadline for applying is June 30, 2021.

Irish citizens do not have to apply for the EU Settlement Scheme. They will still be free to live and work in the UK after the transition period. The same goes for British citizens in Ireland.

What will happen to British citizens already living in the EU?

British citizens who start exercising a right of residence in another EU Member State before the end of the transition period will be able to stay, but they need to register with the authorities. The process varies from country to country.

What will the UK's immigration system look like after the transition period?

The British government says that after the transition period, the same rules for work visas will apply to EU citizens as to everyone else. We do not yet know what those rules will be.

The British government's Migration Advisory Committee (MAC) published a report on January 28, 2020, that warned against replacing the current system of sponsored visas for highly skilled workers (Tier 2) with an Australian-style points-based system. The MAC recommended keeping the Tier 2 model but with significant changes, including lowering the skills threshold to include medium-skilled jobs and lowering the main salary threshold from £30,000 to £25,600.

If the British government follows these recommendations, it will be far easier for employers to sponsor people for work visas, but it will be expensive. Fees for Tier 2 visas are already high and there are no plans to lower them. If anything, they will increase. Employers who rely on EU citizens to fill medium- and high-skilled roles will be spending a lot of money on visas.

There will need to be new immigration routes for low-skilled workers, at least in the short term. We do not yet know what those will be.

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