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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - FEBRUARY 18, 2020

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February 18, 2020 Immigration Update

Headlines:

USCIS Poised to Launch Electronic H-1B Registration Process Starting March 1 – USCIS will open an initial registration period from noon ET March 1, 2020, through noon ET March 20, 2020, for the FY 2021 H-1B cap-subject numerical allocations.

USCIS Suspends Use of Pre-Paid Mailers for FY 2021 H-1B Cap-Subject Petitions – USCIS will not use pre-paid mailers to send out any communications or final notices for fiscal year 2021 cap-subject H-1B petitions, including those requesting consideration under the advanced-degree exemption.

Trump Administration Quietly Uses Technicalities To Delay New Visa Applications – According to a recent report, the Trump administration has begun automatically returning visa applications for certain visa categories if any fields are not filled in, whether or not the applicant has any information to put in the field.

ICE Ramps Up Efforts to Police STEM OPT Program – ICE has increased audits of employers who hire STEM OPT students.

Trump Administration Attempts Crackdown on 'Sanctuary' Policies – Among other efforts, the Trump administration plans to deploy 100 tactical CBP officers to Atlanta; Boston; Chicago; Detroit; Los Angeles; Newark, NJ; New York City; Los Angeles; and San Francisco.

USCIS Releases Statement in Response to Coronavirus Epidemic – USCIS is temporarily closing its offices in Beijing and Guangzhou.

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USCIS Poised to Launch Electronic H-1B Registration Process Starting March 1

U.S. Citizenship and Immigration Services (USCIS) is poised to implement a new electronic H-1B registration process for fiscal year 2021 H-1B cap-subject petitions. USCIS will open an initial registration period from noon ET March 1, 2020, through noon ET March 20, 2020, for the FY 2021 H-1B numerical allocations. Registrants and representatives may create accounts beginning February 24, 2020, and register throughout the initial registration period.

The agency released the following details:

- During this timeframe, H-1B cap-subject petitioners, including those eligible for the advanced degree exemption, seeking to file a FY 2021 H-1B cap petition must first register electronically with USCIS and pay the associated $10 H-1B registration fee for each submission.
- Prospective petitioners or their authorized representatives must electronically submit a separate registration naming each person for whom they seek to file an H-1B cap-subject petition. Duplicate registrations are prohibited.
- As described in the H-1B registration final rule, if more than a sufficient number of registrations are received, USCIS will randomly select the number of registrations projected as needed to reach the FY 2021 H-1B numerical allocations after the initial registration period closes and notify registrants with selected registrations no later than March 31, 2020.
- Prospective petitioners with selected registrations will be eligible to file a FY 2021 cap-subject petition only for the person named in the registration and within the filing period indicated on the eligibility notice.
- Employers will be notified by USCIS of the exact amount of time allowed for filing the
  H-1B petition, which will in all cases be at least 90 days but may be longer at the discretion of USCIS. Employers will have the ability to file their petitions as soon as eligible (i.e., by April 1) to allow the beneficiary to obtain cap-gap, if required.
- USCIS may determine it is necessary to continue accepting registrations,

or open an additional registration period, if it does not receive enough registrations and subsequent petitions projected to reach the numerical allocations.

Details:

- USCIS announcement, https://www.uscis.gov/news/alerts/uscis-formally-announces-implementation-electronic-h-1b-registration-process-and-registration-timeframe
- USCIS H-1B electronic registration process information with links, https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process
- Federal Register notice, https://www.federalregister.gov/documents/2020/01/09/2020-00182/registration-requirement-for-petitioners-seeking-to-file-h-1b-petitions-on-behalf-of-cap-subject

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USCIS Suspends Use of Pre-Paid Mailers for FY 2021 H-1B Cap-Subject Petitions

U.S. Citizenship and Immigration Services (USCIS) announced on February 14, 2020, that it will not use pre-paid mailers to send out any communications or final notices for fiscal year 2021 cap-subject H-1B petitions, including those requesting consideration under the advanced-degree exemption.

USCIS noted that the process of printing and mailing the cap-subject H-1B petition approval notices by first-class mail is fully automated. "Using pre-paid mailers requires a separate, more time-consuming manual process. The existing automated process is more time efficient for both petitioners and USCIS. Because of this, we will use first-class mail as we work to process all cap-subject petitions in a timely manner," the agency said.

Details: USCIS announcement, https://www.uscis.gov/news/alerts/fiscal-year-2021-h-1b-cap-pre-paid-mailer-suspension

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Trump Administration Quietly Uses Technicalities To Delay New Visa Applications

According to a recent report, U.S. Citizenship and Immigration Services (USCIS) has begun automatically returning asylum applications and visa applications for certain categories if any fields are not filled in, whether or not the applicant has any information to put in the field. The resulting delays in some cases can lead to documents expiring or people losing their eligibility for immigration benefits.

Applications reportedly have been returned at least in part because a person had no middle name and thus did not fill in the middle-name field; because a person did not fill in a field for "Apt. #" even though they lived in a house; because a person left a "prior spouses" field blank since they were never married; because a child left a dates of employment field blank after entering "none" for employment history; and because a person had only three siblings so left the fourth-sibling field blank.

In response to queries from a reporter, USCIS said applicants "must provide the specific information requested for all the questions asked." USCIS said that if there is no information to put in a field, the applicant should mark it "none," "not applicable," or "unknown." This note is included on page 5 of the instructions for the asylum application, for example. This requirement was first applicable to asylum applications and more recently was extended to U visa applications.

Details: · "This Latest Trick from the Trump Administration is One of the Most Despicable Yet," https://wapo.st/2OWRiTz · Asylum application, https://www.uscis.gov/i-589

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ICE Ramps Up Efforts to Police STEM OPT Program

According to reports from the field, U.S. Immigration and Customs Enforcement (ICE) has increased audits of employers who hire STEM OPT (science, technology, engineering, and math optional practical training) students. The audits are being conducted to verify that students are being employed in a manner consistent with the minimum requirements of the STEM OPT program. Audits are occurring in the form of onsite inspections, often conducted on short notice.

Eligible F-1 nonimmigrant students with STEM degrees from Student and

Exchange Visitor Program-certified and accredited U.S. colleges and universities may apply for a 24-month STEM OPT extension. Interested F-1 students must apply for and receive an employment authorization document from U.S. Citizenship and Immigration Services (USCIS). To employ a STEM OPT student, employers must agree to a training plan that describes how the employment will further the foreign national's skills in their academic discipline. The training plan must be completed on Form I-983, Training Plan for STEM OPT Students. Form I-983 includes a list of obligations to which, upon signing, an employer is bound to obey. Once completed, Form I-983 is submitted to the foreign national's university for approval. If approved, the foreign national may apply to USCIS for a work permit.

Details:

- DHS webpage on STEM OPT, https://studyinthestates.dhs.gov/stem-opt-hub
- Blog on ICE efforts and employer obligations regarding STEM OPT, https://bit.ly/31ZbYj5

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Trump Administration Attempts Crackdown on 'Sanctuary' Policies

The Trump administration has launched several efforts in an attempt to crack down on "sanctuary" policies.

For example, the Trump administration is challenging the state of New Jersey and King County, Washington (the county that includes Seattle) with lawsuits against their sanctuary policies. Among other things, the Department of Justice objects to King County's policy of preventing U.S. Immigration and Customs Enforcement (ICE) from using King County International Airport (Boeing Field) to fly out people being deported. In 2017, Seattle sued the Trump administration over its threat to withhold federal money from "sanctuary cities."

The Trump administration also plans to deploy 100 tactical U.S. Customs and Border Protection (CBP) officers from February to May in 10 U.S. cities, to work with ICE. The cities include Atlanta; Boston; Chicago; Detroit; Los Angeles; Newark, New Jersey; New York City; Los Angeles; and San Francisco. According to a CBP spokesperson, the officers will "enhance integrity of the immigration system, protect public safety, and strengthen our national security." Among

other things, CBP agents will support immigration-related arrests.

The latest efforts come on the heels of the Trump administration's suspension of New Yorkers' eligibility to enroll in "trusted traveler" programs like Global Entry, over which the New York attorney general has filed suit.

Details:

- New York lawsuit, https://ag.ny.gov/sites/default/files/ny_v_w_complaint.pdf
- DOJ statement on King County lawsuit, https://www.justice.gov/opa/pr/justice-department-sues-king-county-washington-and-king-county-executive-prohibiting-us
- News articles, https://www.nbcnews.com/politics/immigration/trump-admin-sues-new-jersey-washington-state-county-over-sanctuary-n1134351; https://www.nbcnews.com/news/us-news/seattle-files-lawsuit-over-sanctuary-cities-funding-threat-n740331; https://www.nbcnews.com/news/latino/trump-administration-deploy-border-patrol-officers-sanctuary-cities-n1137261; https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html; https://www.seattletimes.com/seattle-news/politics/trump-administration-suing-king-county-to-allow-deportation-flights-from-boeing-field/

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USCIS Releases Statement in Response to Coronavirus Epidemic

U.S. Citizenship and Immigration Services (USCIS) recently released a statement summarizing its response to the worldwide spread of COVID-19, popularly known as the "coronavirus." Concerns about the virus have led to massive efforts to contain it, including quarantines and lockdowns.

Among other things, USCIS said it is temporarily closing its offices in Beijing and Guangzhou. "We will reschedule all affected appointments and will send new appointment notices to applicants," the agency said. Interested persons can check USCIS's Beijing and Guangzhou webpages for status updates (see links below).

Details:

- USCIS statement, https://www.uscis.gov/news/alerts/uscis-response-2019-coronavirus
- USCIS Beijing Field Office, https://www.uscis.gov/about-us/find-a-uscis-office/international-offices/china-uscis-beijing-field-office
- USCIS Guangzhou Field Office, https://www.uscis.gov/about-us/find-a-uscis-office/international-offices/china-uscis-guangzhou-field-office
- News article on official name for virus, https://www.npr.org/sections/goatsandsoda/2020/02/11/802352351/new-coronavirus-gets-an-official-name-from-the-world-health-organization

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Firm in the News

Cyrus Mehta has been selected by Who's Who Legal as a Thought Leader Global Elite 2020 - Corporate Immigration. For his interview with WWL, please see https://whoswholegal.com/cyrus-d-mehta

Cora-Ann Pestaina has also been selected as a Global Leader by Who's Who Legal Corporate Immigration 2020.

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