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

IMMIGRATION UPDATE - FEBRUARY 24, 2020

Posted on February 24, 2020 by Cyrus Mehta

Headlines:

Immediate Three-Year Backlog Imposed on EB-3 and EB "Other Workers" Visa Categories in March; China-Mainland Born EB-5 Category Advances Rapidly – The Department of State's Visa Bulletin for March 2020 announced several notable developments.

Update: USCIS to Launch Electronic H-1B Registration Process Starting March 1 – USCIS released updated details on February 21, 2020.

USCIS, DOS To Implement Public Charge Rule After Supreme Court Decision Staying Preliminary Injunction – USCIS plans to implement the public charge rule nationwide on February 24, 2020, following a Supreme Court ruling staying a preliminary injunction in Illinois. DOS also plans to implement public charge requirements for overseas applications on the same date.

CNMI News: Application Period Opens for New Status for Long-Term Residents; Petitions Accepted Under Disaster Recovery Workforce Act – USCIS announced several developments for the Commonwealth of the Northern Mariana Islands.

Firm in the News ...

Details:

Immediate Three-Year Backlog Imposed on EB-3 and EB "Other Workers" Visa Categories in March; China-Mainland Born EB-5 Category Advances Rapidly

The Department of State's Visa Bulletin for March 2020 announced several notable developments:

- An immediate three-year backlog on EB-3 and EB "Other Workers"

categories worldwide as of March, with implications for those with pending labor certifications and those whose status is expiring. The final action date listed is January 1, 2017, imposed immediately as of March for all future requests for visa numbers. "No forward movement of this date is expected in the foreseeable future," the bulletin notes.
- A "very rapid" advancement of the final action date for the EB-5 category, China-mainland born. The bulletin notes that despite a large number of registered China fifth preference demand, there are not enough applicants actively pursuing final action on their cases to fully use the numbers expected to be available under the annual limit.

Details: March Visa Bulletin, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2020/visa-bulletin-for-march-2020.html

Back to Top

Update: USCIS 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. The agency recently released new details.

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.

USCIS released updated details on February 21, 2020:

Submitting an H-1B registration requires a USCIS online account. The appropriate type depends on the submitter's role:

- Representatives will use the same type of representative account that is already available and may use an existing account.
- Prospective petitioners submitting their own registrations (U.S. employers and U.S. agents, collectively known as "registrants") will use a new "registrant" account that will be available beginning Feb. 24.

Representatives may add clients to their accounts at any time, but both representatives and registrants must wait until March 1 at noon ET to enter

beneficiary information, submit registrations, and pay the $10 non-refundable registration fee for each beneficiary.

The initial registration period will run from noon Eastern March 1 through noon Eastern March 20, 2020. Account creation and registration will remain available throughout this period. Selections will take place after the initial registration period closes, so there is no requirement to register on March 1.

If USCIS receives enough registrations by March 20, the agency will randomly select registrations and send selection notifications via users' USCIS online accounts. USCIS said it intends to notify account holders by March 31, 2020.

An H-1B cap-subject petition may only be filed by a petitioner whose registration for that beneficiary was selected in the H-1B registration process.

To create an H-1B registration account, go to https://my.uscis.gov/ on or after February 24. From March 1, employers are advised to work closely with the Firm to register and submit all registrations by March 20, 2020. The filing period for submitting H-1B petitions begins on April 1, 2020, and will end no earlier than June 30, 2020. USCIS will not accept late filings.

Details:

- USCIS announcement issued February 21, 2020, https://www.uscis.gov/news/alerts/uscis-announces-h-1b-registration-account-creation
- USCIS announcement issued January 10, 2020, 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

Back to Top

USCIS, DOS To Implement Public Charge Rule After Supreme Court Decision Staying Preliminary Injunction

U.S. Citizenship and Immigration Services (USCIS) plans to implement the public charge rule nationwide on February 24, 2020, following a Supreme Court ruling issued February 21, 2020, staying a preliminary injunction in Illinois. USCIS will only apply the final rule to applications and petitions postmarked (or submitted electronically) on or after February 24, 2020. The Department of State (DOS) also will implement public charge requirements for overseas applications on the same date, including the new DS-5540, DOS Public Charge Questionnaire. DOS has indicated that it may apply the DS-5540 to applicants who have previously been found documentarily qualified for a visa before February 24.

The final rule, issued in August and originally scheduled to take effect in October, prescribes how the Department of Homeland Security will determine whether a person is inadmissible to the United States based on a "likelihood of becoming a public charge at any time in the future," USCIS noted. The final rule also addresses USCIS's "authority to issue public charge bonds in the context of applications for adjustment of status," and includes a requirement that those seeking an extension of stay or change of status "demonstrate that they have not received public benefits over the designated threshold since obtaining the nonimmigrant status they seek to extend or change."

Details:

- Supreme Court opinion issued February 21, 2020, including a dissent by Justice Sonia Sotomayor, https://www.supremecourt.gov/opinions/19pdf/19a905_7m48.pdf
- Department of State's interim final rule published in October 2019, https://www.federalregister.gov/documents/2019/10/11/2019-22399/visas-ineligibility-based-on-public-charge-grounds, and related announcement, https://travel.state.gov/content/travel/en/traveladvisories/ea/Information-on-Public-Charge.html
- DS-5540, DOS Public Charge Questionnaire, https://eforms.state.gov/Forms/ds5540.pdf
- Updated DOS Foreign Affairs Manual section on public charge, https://fam.state.gov/fam/09fam/09fam030208.html
- USCIS revised forms and updated policy guidance, https://www.uscis.gov/news/alerts/public-charge-inadmissibility-final-rule-

revised-forms-and-updated-policy-manual-guidance

- USCIS policy alert, https://www.uscis.gov/sites/default/files/policymanual/updates/20200205-PublicCharge.pdf
- USCIS announcement, https://www.uscis.gov/news/news-releases/uscis-announces-public-charge-rule-implementation-following-supreme-court-stay-nationwide-injunctions
- Immigrant Legal Resource Center, Public Charge Toolkit, including a "Totality of the Circumstances Worksheet" with ideas for positive evidence, https://www.ilrc.org/sites/default/files/resources/2019.12_public_charge_legal_toolkit-final-12.10.pdf
- National Immigration Law Center, Protecting Immigrant Families page, https://protectingimmigrantfamilies.org/; summary of developments, https://www.nilc.org/issues/economic-support/pubcharge/
- News article, https://www.cnn.com/2020/02/21/politics/supreme-court-public-charge-rule/index.html

Back to Top

CNMI News: Application Period Opens for New Status for Long-Term Residents; Petitions Accepted Under Disaster Recovery Workforce Act

U.S. Citizenship and Immigration Services (USCIS) announced several developments for the Commonwealth of the Northern Mariana Islands (CNMI):

- *USCIS opens application period for new status for long-term residents of CNMI*. The application period opened on February 19, 2020, and will run until August 17, 2020. Applicants must file Form I-955, Application for CNMI Long-Term Resident Status, together with Form I-765, Application for Employment Authorization. USCIS noted that CNMI long-term status is not the same as lawful permanent residence and does not lead to lawful permanent resident status.
- *USCIS accepts petitions under the CNMI Disaster Recovery Workforce Act*. Petitioners should file Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, along with a cover sheet with details

outlined in the announcement (see link below). Prospective employers may only petition under the Disaster Recovery Workforce Act for CW-1 construction workers who are nationals of a country designated as eligible to participate in the H-2B visa program during calendar year 2018 (for a list of designated countries, see https://www.govinfo.gov/content/pkg/FR-2018-01-18/pdf/2018-00812.pdf).

Details: · USCIS announcement on application period for long-term residents, which explains eligibility requirements, https://www.uscis.gov/news/alerts/uscis-opens-application-period-new-status-long-term-residents-cnmi · USCIS announcement on CNMI Disaster Recovery Workforce Act petitions, which includes details on eligibility requirements, https://www.uscis.gov/news/alerts/uscis-accepting-petitions-under-cnmi-disaster-recovery-workforce-act

Back to Top

Firm in the News

Cyrus Mehta was quoted extensively by *The Week* in "How Trump's Immigration Policy Is Affecting Indians." Mr. Mehta said, "If you were born in India and you are being sponsored for a green card today, the wait time can range anywhere from 50 years to 150 years. In terms of H-1B , earlier the denial rate was 6 percent, but in the third quarter of 2019 fiscal year it rose to 24 percent for initial employment and 12 percent for continuing employment." Among other things, he noted that "hat the Trump administration has done is to heighten scrutiny on the H-1B visas of qualified skilled applicants. Each time they apply for an extension, there is a risk of being denied. They have been waiting years for the green card and there is now more uncertainty." The article is at https://www.theweek.in/theweek/cover/2020/02/22/how-trump-immigration-policy-is-affecting-indians.amp.html.