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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - MARCH 02, 2020

Posted on March 2, 2020 by Cyrus Mehta

March 02, 2020 Immigration Update

Headlines:

Initial H-1B Registration Period Opens at Noon ET March 1, 2020 – The initial registration period for the fiscal year (FY) 2021 H-1B cap-subject petitions opened at non ET on March 1 and runs through noon ET on March 20, 2020.

H-2B Cap Reached for Second Half of FY 2020 – USCIS has received enough petitions to meet the congressionally mandated H-2B cap on foreign workers in temporary nonagricultural jobs for the second half of FY 2020.

Federal Appeals Court Reverses Itself on Same Day on 'Remain in Mexico' Policy – The Ninth Circuit briefly ruled on February 28, 2020, against the Trump administration's policy of sending those seeking asylum in the United States who entered via Mexico, many of them Central Americans, back to Mexico to wait for their hearings. Later the same day, the court stayed its earlier order and temporarily allowed the policy to proceed.

President Adds Iran to Entry Suspensions Related to Coronavirus – President Trump issued a proclamation suspending the entry of immigrants or nonimmigrants who were present within Iran during the 14-day period preceding their entry or attempted entry into the United States. This is in addition to China restrictions.

USCIS Updates Guidance on H-2A Petitions for Sheep/Goat Herders – Effective June 1, 2020, USCIS will adjudicate all Forms I-129, Petitions for a Nonimmigrant Worker, filed by petitioners seeking H-2A sheep/goat herder positions in line with the updated guidance.

Firm in the News

Details:

Back to Top

Initial H-1B Registration Period Runs Through Noon ET March 20, 2020

U.S. Citizenship and Immigration Services (USCIS) issued a reminder that the initial registration period for the fiscal year (FY) 2021 H-1B cap-subject petitions opened at noon ET on March 1 and runs through noon ET on March 20, 2020. During this period, USCIS said, prospective petitioners and representatives can submit basic information to register.

Prospective H-1B cap-subject petitioners or their representatives must use a myUSCIS online account to: (1) register each beneficiary electronically for the selection process and (2) pay the associated $10 fee for each H-1B registration submitted on behalf of each beneficiary. Prospective petitioners or their representatives can submit registrations for multiple beneficiaries in a single online session. Through the account, they will be able to prepare, edit, and store draft registrations before final payment and submission of each registration, USCIS said.

If USCIS receives enough registrations by March 20, the agency will randomly select registrations and send notify users via their USCIS online accounts by March 31, 2020.

Details: USCIS reminder, https://www.uscis.gov/news/alerts/initial-h-1b-registration-period-opens-noon-eastern-march-1

Back to Top

H-2B Cap Reached for Second Half of FY 2020

U.S. Citizenship and Immigration Services (USCIS) announced on February 26, 2020, that it has received enough petitions to meet the congressionally mandated H-2B cap on foreign workers in temporary nonagricultural jobs for the second half of fiscal year 2020.

February 18, 2020, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before October 1, 2020. USCIS said it will reject new cap-subject H-2B petitions received after February 18 that request an employment start date before October 1.

USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap. This includes petitions for:

- Current H-2B workers in the United States who wish to extend their stay and, if applicable, change the terms of their employment or change employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.

Details: USCIS announcement, https://www.uscis.gov/news/alerts/h-2b-cap-reached-second-half-fy2020

Back to Top

Federal Appeals Court Reverses Itself on Same Day on 'Remain in Mexico' Policy

The U.S. Court of Appeals for the Ninth Circuit briefly ruled on February 28, 2020, against the Trump administration's policy of sending those seeking asylum in the United States who entered via Mexico, many of them Central Americans, back to Mexico to wait for their hearings. Later the same day, the court stayed its earlier order and temporarily allowed the policy to proceed, subject to a brief timeline while further arguments are heard, after the administration cited a potential "rush on the southern border" by those affected, who may attempt to enter the United States.

The policy is sometimes referred to as the "remain in Mexico" program (officially the Migrant Protection Protocols), in which approximately 59,000 people are enrolled. The stay is pending a government request to the Supreme Court and another ruling in the same circuit. The court said both sides had a week to submit briefs.

Details: News articles, https://www.nytimes.com/2020/02/28/us/migrants-court-remain-in-mexico-mpp-injunction.html, https://www.cnn.com/2020/02/28/politics/asylum-seekers-mexico-appeals-court/index.html, https://www.cnn.com/2019/12/20/politics/remain-in-mexico-court-attendance/i

ndex.html,
https://www.buzzfeednews.com/article/hamedaleaziz/trump-remain-in-mexico-federal-court-blocked,
https://www.nbcnews.com/news/us-news/court-reverses-own-decision-trump-s-policy-require-migrants-wait-n1145771

Back to Top

President Adds Iran to Entry Suspensions Related to Coronavirus

President Trump issued a proclamation, effective as of 5 p.m. March 2, 2020, suspending the entry of immigrants or nonimmigrants who were present within the Islamic Republic of Iran during the 14-day period preceding their entry or attempted entry into the United States. This is in addition to China restrictions ordered under a proclamation issued on January 31, 2020.

The suspensions do not apply to U.S. lawful permanent residents (LPRs), spouses of U.S. citizens or LPRs, parents or legal guardians of U.S. citizens or LPRs (provided the U.S. citizen or LPR is unmarried and under 21 years of age), or siblings of U.S. citizens or LPRs (provided both are unmarried and under 21 years of age), along with several other categories.

During recent remarks, President Trump was asked whether he had plans to expand the suspensions to other countries, such as Italy, that have reported coronavirus cases. He responded, "Well, we're looking at that right now and we're looking at a couple of countries – a few countries that have a little bit disproportionately high number. And we're going to make that decision very soon." In response to a question, Mr. Trump also said he was "very strongly" considering new travel restrictions along the southern border to contain the coronavirus. He later appeared to change his position, saying "this is not a border that seems to be much of a problem right now."

Details: Presidential Proclamation, https://bit.ly/2vqD6eQ; President's remarks, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-84/

Back to Top

USCIS Updates Guidance on H-2A Petitions for Sheep/Goat Herders

U.S. Citizenship and Immigration Services (USCIS) published an updated policy

memorandum on February 28, 2020, that requires requests for temporary foreign workers for range sheep or goat herding or production to be subject to the same requirements as those for other temporary agricultural workers. Effective June 1, 2020, USCIS will adjudicate all Forms I-129, Petitions for a Nonimmigrant Worker, filed by petitioners seeking H-2A sheep/goat herder positions in line with this updated guidance.

On November 14, 2019, USCIS issued the "Temporary or Seasonal Need for H-2A Petitions Seeking Workers for Range Sheep and/or Goat Herding or Production" policy memo and requested public comments. After receiving comments, USCIS issued the updated guidance to better ensure that those admitted into the United States as H-2A nonimmigrant sheep/goat herders fill temporary and seasonal positions.

Details: USCIS announcement, https://www.uscis.gov/news/alerts/uscis-publishes-updated-guidance-h-2a-petitions-sheepgoat-herders

Back to Top

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Cyrus Mehta was quoted by *Forbes* in an article entitled "Trump Immigration Official Entered Illegally". The article is at https://www.forbes.com/sites/stuartanderson/2020/03/02/trump-immigration-official-entered-illegally/#690892ec5128

Mr. Mehta spoke on a panel entitled "Options After Denial – Motion to Reopen/Appeal/Federal Court" at the 17th Annual AILA New England Immigration Law Conference, Boston, MA, on February 28, 2020.

Back to Top