



IMMIGRATION UPDATE - MARCH 09, 2020

Posted on March 9, 2020 by Cyrus Mehta

Headlines:

[Supreme Court Rules on I-9 False SSN in Kansas Prosecution Case](#) – The Supreme Court held that an undocumented immigrant who used a false SSN for I-9 purposes can be prosecuted by the state for using the false SSN on state employment tax forms.

[USCIS Alert: H-2A, H-2B Petitions Must Include Printed Copy of Electronic Final Determination Form](#) – Petitioners must submit a printed copy of the electronic final determination form granting temporary labor certification under the H-2A or H-2B programs through the DOL's FLAG system with the corresponding H-2A or H-2B petition.

[Re-Registration Period Opens for Yemenis With TPS](#) – Current beneficiaries of temporary protected status under Yemen's designation who want to maintain their status through September 3, 2021, must re-register by May 1, 2020.

[Ninth Circuit Rules](#) on Three Asylum Controversies – A panel of the U.S. Court of Appeals for the Ninth Circuit ruled that the Trump administration's "third-country" asylum rule cannot apply to a provisionally certified class of approximately 26,000 asylum-seekers who were turned away from the U.S. border with Mexico before July 16, 2019.

[Court Says Cuccinelli Appointment to USCIS Directorship Was Unlawful](#) – The ruling, which states that two asylum-related policies he enacted must therefore be set aside, could also affect other immigration policies he enacted.

[Houston Bus Company Pays U.S. Workers More Than \\$90K Under DOJ Settlement](#) – The settlement resolved DOJ's claims that the company discriminated against U.S. workers due to a hiring preference for temporary

visa workers.

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Supreme Court Rules on I-9 False SSN in Kansas Prosecution Case

The Supreme Court held on March 3, 2020, that an undocumented immigrant who used a false Social Security Number (SSN) for I-9 employment verification purposes can be prosecuted by the state for using the false SSN on state employment tax forms. A majority of the Supreme Court justices decided that the Kansas law was not preempted by federal immigration law and rejected the argument that information placed on an I-9 form could never be used as evidence to support a state prosecution.

Details:

- Supreme Court decision in *Kansas v. Garcia*,
https://www.supremecourt.gov/opinions/19pdf/17-834_k53l.pdf
- News article,
<https://www.cnn.com/2020/03/03/politics/supreme-court-immigration-garcia-kansas-decision/index.html>
- Commentary on *Kansas v. Garcia*,
<https://www.forbes.com/sites/stuartanderson/2020/03/04/supreme-court-immigration-decision-may-unleash-prosecutors/#7dc83b566a88>

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USCIS Alert: H-2A, H-2B Petitions Must Include Printed Copy of Electronic Final Determination Form

On March 5, 2020, U.S. Citizenship and Immigration Services (USCIS) published two Federal Register notices regarding the submission of final determination forms with H-2A and H-2B petitions. The notices announce that petitioners must submit a printed copy of the electronic final determination form granting temporary labor certification (TLC) under the H-2A or H-2B programs through the Department of Labor's (DOL) Foreign Labor Application Gateway (FLAG) system with the corresponding H-2A or H-2B petition as evidence of an original valid or original approved TLC.

DOL no longer provides the employer or authorized attorney with a paper copy of a certified Form ETA-9142A or Form ETA-9142B.

Details:

- USCIS announcement, <https://bit.ly/32TBB5o>
- Federal Register notices: H-2A, <https://bit.ly/2uVTNyy>; H-2B, <https://bit.ly/2TsBn1M>
- FLAG system, <https://flag.dol.gov/>

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Re-Registration Period Opens for Yemenis With TPS

U.S. Citizenship and Immigration Services announced on March 2, 2020, that current beneficiaries of temporary protected status (TPS) under Yemen's designation who want to maintain their status through September 3, 2021, must re-register by May 1, 2020.

All of these applicants must submit Form I-821, Application for Temporary Protected Status. Applicants may also request an employment authorization document (EAD) by submitting Form I-765, Application for Employment Authorization, when they file Form I-821 or separately at a later date.

USCIS said it will issue new EADs with a September 3, 2021, expiration date to eligible beneficiaries under Yemen's TPS designation who timely re-register and apply for an EAD. Given the time frame for processing TPS re-registration applications, USCIS said it recognizes that not all re-registrants will receive a new EAD before their current EAD expires on March 3, 2020. Accordingly, the validity of those EADs is automatically extended for 180 days, through August 30, 2020, USCIS said. This automatic extension also covers TPS beneficiaries who have an EAD with an expiration date of September 3, 2018, and who applied for a new EAD during the last re-registration period but have not yet received their new EAD.

Details:

- USCIS announcement, <https://bit.ly/2TJ3Waj>
- Federal Register notice, <https://www.govinfo.gov/content/pkg/FR-2020-03-02/pdf/2020-04355.pdf>

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Ninth Circuit Rules on Three Asylum Controversies

A panel of the U.S. Court of Appeals for the Ninth Circuit ruled on March 5, 2020, that the Trump administration's "third-country" asylum rule cannot apply to a provisionally certified class of approximately 26,000 asylum-seekers who were turned away from the U.S. border with Mexico before July 16, 2019. On that date, the Departments of Homeland Security and Justice published a joint interim final rule prohibiting many people who attempt to enter the United States after transiting through another country from applying for asylum in the United States unless they had first applied for and were denied protection in that third country.

Among other things, the court noted that it is the law, not the rule, that makes a person's first arrival legally significant. Under the district court's statutory interpretation, the court noted, a class member's first arrival triggered a statutory right to apply for asylum and have that application considered. Nothing in the law or regulations suggests that a class member loses his or her statutory right to apply for asylum upon arrival because there is a government-imposed delay between when the person arrives and when the application is accepted and processed. "As the Rule was not in place at the time each class member's right to apply for asylum attached, it makes sense that it would not apply," the court said, denying the government's motion for a stay of a lower court ruling pending appeal.

Meanwhile, under a separate ruling on March 4, 2020, a Ninth Circuit panel held that a policy that has forced 60,000 asylum seekers to wait in Mexico violates U.S. and international law, but granted the Trump administration's request to keep its "Remain in Mexico" restrictions in effect until March 11 for review by the Supreme Court.

In a third decision, a Ninth Circuit panel ruled on February 28, 2020, that a rule and presidential proclamation denying asylum to persons who arrived at the U.S. southern border at points not designated by the government for admission and inspection of arrivals conflict with the plain language of the immigration statute.

Details:

- Court decision on the third-country asylum rule, including dissent, <https://www.courthousenews.com/wp-content/uploads/2020/03/AsylumS>

[seekers-9CA.pdf](#)

- Court decision on the "remain in Mexico" policy, https://cdn.ca9.uscourts.gov/datastore/opinions/2020/03/04/19-15716_order
- Court decision on the rule striking ban on asylum seekers who do not enter the United States at a legal checkpoint, http://cdn.ca9.uscourts.gov/datastore/general/2020/02/28/18-17436_opinion.pdf
- Commentary on two of the decisions, <https://www.lawfareblog.com/asylum-update-ninth-circuit-deals-two-defeats-trump-administration>

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Court Says Cuccinelli Appointment to USCIS Directorship Was Unlawful

A federal judge ruled on March 1, 2020, that the appointment of Ken Cuccinelli as acting director of U.S. Citizenship and Immigration Services (USCIS) was unlawful. The ruling states that two asylum-related policies he enacted must therefore be set aside. The ruling could affect other immigration policies Mr. Cuccinelli enacted while in office.

According to reports, the Trump administration wanted Mr. Cuccinelli to replace the Senate-confirmed director, L. Francis Cissna, but Mr. Cuccinelli was unlikely to be confirmed, so the then-acting Secretary of Homeland Security, Kevin McAleenan, changed the order of succession at USCIS to allow Mr. Cuccinelli to step into the role in an acting capacity, which Judge Randolph Moss, of the U.S. District Court for the District of Columbia, found violated a federal law.

The Trump administration is expected to appeal the decision.

Details:

- Judge Moss's decision, <https://assets.documentcloud.org/documents/6792152/Cuccinelli-Decision.pdf>
- News article, <https://www.forbes.com/sites/stuartanderson/2020/03/02/trump-immigration-official-entered-illegally/#57aa725a5128>

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Houston Bus Company Pays U.S. Workers More Than \$90K Under DOJ Settlement

The Department of Justice (DOJ) announced on March 4, 2020, that El Expreso Bus Company, based in Houston, Texas, paid more than \$90,000 to eight U.S. workers pursuant to a May 29, 2019, settlement agreement.

The settlement resolved DOJ's claims that El Expreso discriminated against U.S. workers due to a hiring preference for temporary visa workers. DOJ said the settlement is part of the agency's Protecting U.S. Workers Initiative, "which targets, investigates, and brings enforcement actions against companies that discriminate against U.S. workers because they prefer to hire foreign visa workers." Since the Initiative's inception, employers have agreed to pay or have distributed a combined total of more than \$1.1 million to U.S. workers and civil penalties to the United States, DOJ said.

Details: DOJ news release,

<https://www.justice.gov/opa/pr/houston-bus-company-distributes-more-90000-us-workers-under-department-justice-settlement>

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Firm in the News

Cyrus Mehta was quoted by *Forbes* in "Trump Immigration Official Entered Illegally." He identified four additional USCIS policy changes that can potentially be challenged in light of Judge Moss's ruling: (1) changes in residence requirements for transmitting U.S. citizenship to children living overseas, especially children of U.S. government employees overseas; (2) removing means-tested criteria to the fee waiver grounds, especially as they relate to naturalization applicants; (3) closing USCIS international offices; and (4) filing I-407s for abandonment at a designated USCIS office in Vermont rather than at a U.S. consulate. Mr. Mehta said he believes there may be additional policies that can be challenged. The article is at

<https://www.forbes.com/sites/stuartanderson/2020/03/02/trump-immigration-official-entered-illegally/#c6669951287b>.

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