



IMMIGRATION UPDATE - MARCH 30, 2020

Posted on March 30, 2020 by Cyrus Mehta

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COVID-19 Update: Latest Developments

As many know by now, the novel coronavirus (SARS-CoV-2), which causes the disease COVID-19, is a pandemic threatening populations worldwide. The following are a few highlights of new immigration-related developments in the short term, as of press time:

- The **REAL ID deadline has been extended 12 months, to October 1, 2021**. The REAL ID Act establishes minimum security standards for license

issuance and production and prohibits federal agencies from accepting driver's licenses and identification cards from states not meeting the Act's minimum standards for the purposes of accessing federal facilities, entering nuclear power plants, and boarding federally regulated commercial aircraft. See

<https://www.dhs.gov/news/2020/03/26/acting-secretary-chad-wolf-statement-real-id-enforcement-deadline>; <https://www.dhs.gov/real-id>

- U.S. Citizenship and Immigration Services (USCIS) has **extended its suspension of routine in-person services until at least April 7, 2020**. USCIS staff will continue to perform duties that do not involve contact with the public. The agency said it will provide emergency services in limited situations. To schedule an emergency appointment, contact the USCIS Contact Center (<https://www.uscis.gov/contactcenter>). USCIS said:

USCIS field offices will send notices to applicants and petitioners with scheduled appointments and naturalization ceremonies impacted by the extended closure. USCIS asylum offices will send interview cancellation notices and automatically reschedule asylum interviews. When the interview is rescheduled, asylum applicants will receive a new interview notice with the new time, date and location of the interview. When USCIS again resumes normal operations, USCIS will automatically reschedule ASC appointments due to the office closure. You will receive a new appointment letter in the mail. Individuals who had InfoPass or other appointments must reschedule through the [USCIS Contact Center](#) once field offices are open to the public again. Please check to see if your [field office](#) has been reopened before reaching out to the USCIS Contact Center.

See

<https://www.uscis.gov/news/alerts/uscis-temporary-office-closure-extended-until-least-april-7>

- USCIS has announced **flexibility for Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)**. For applicants and petitioners who receive an RFE or NOID dated between March 1 and May 1, 2020, any responses submitted within 60 calendar days after the response deadline set forth in the RFE or NOID will be considered by USCIS before any action is taken. See <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-requests-ev>

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- The Department of Homeland Security and U.S. Immigration and Customs Enforcement announced **flexibility in complying with I-9 requirements by employers and workplaces operating remotely**. Specifically, DHS said it "will exercise discretion to defer the physical presence requirements." Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee's identity and employment authorization documents in the employee's physical presence. Employers must inspect the Section 2 documents remotely (e.g., over video link, fax, or email) and obtain, inspect, and retain copies of the documents within three business days of hire for purposes of completing Section 2. Employers should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 "Additional Information" field once physical inspection takes place after normal operations resume. Once the documents have been physically inspected, the employer should add "documents physically examined" with the date of inspection to the Section 2 additional information field on the Form I-9, or to Section 3 as appropriate. These provisions may be implemented by employers either for a period of 60 days from the date of this notice or within 3 business days after the termination of the National Emergency, whichever comes first. Employers who avail themselves of this option must provide written documentation of their remote onboarding and telework policy for each employee, DHS said. USCIS said employers should monitor the DHS and ICE websites for additional updates on when the extensions will be terminated and normal operations will resume. See <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>
- **Premium processing is temporarily suspended for all I-129 and I-140 petitions** until further notice. USCIS will process any petition with a previously accepted Form I-907, Request for Premium Processing Service, in accordance with the premium processing service criteria. However, the agency said it will not be able to send notices using pre-paid envelopes and will only send batch-printed notices. Petitioners who have already filed Form I-129 (Petition for a Nonimmigrant Worker) or Form I-140 (Immigrant Petition for Alien Workers) using the premium processing service and who receive no agency action on their case within the 15-calendar-day period will receive a refund, USCIS said. The agency will

notify the public with a confirmed date for resuming premium processing. USCIS will reject the I-907 and return the \$1,440 filing fee for all petitions requesting premium processing that were mailed before March 20 but not yet accepted.

The suspension includes new premium processing requests for all H-1B petitions, including H-1B cap-subject petitions for fiscal year 2021, petitions from previous fiscal years, and all H-1B petitions that are exempt from the cap. See <https://bit.ly/2JIDYVt>

- **USCIS has temporarily closed its offices in Rome, Italy, and Nairobi, Kenya**, to the public. In February, USCIS announced the temporary suspension of services in Beijing and Guangzhou, China. USCIS said it will reschedule appointments and will continue to respond to email inquiries, which should be submitted in English to the Rome Field Office (<https://www.uscis.gov/about-us/find-a-uscis-office/international-offices/contact-us-uscis-rome-field-office>) or the Nairobi Field Office (<https://www.uscis.gov/about-us/find-a-uscis-office/international-offices/contact-us-uscis-nairobi-field-office>). See <https://www.uscis.gov/news/alerts/uscis-temporarily-closes-rome-and-nairobi-offices-public>
- The Department of Labor's Office of Foreign Labor Certification (OFLC) has alerted employers and other stakeholders that **through June 30, 2020, the Atlanta National Processing Center will issue PERM labor certification documents electronically** to employers and their authorized attorneys or agents. Through June 30, 2020, employers or their authorized attorneys/agents who file the application and are granted a permanent labor certification by OFLC will receive the certified Form ETA-9089 and Final Determination letter by email. In circumstances where employers or, if applicable, their authorized attorneys or agents, are not able to receive the certified Form ETA-9089 documents by email, OFLC said it will send the original security paper Form ETA-9089 and Final Determination letter using UPS regular delivery (i.e., approximately 2 to 8 days depending on delivery location).

Upon email receipt of an electronic copy of the certified Form ETA-9089, the form must be printed, and then signed and dated by each of the following before filing the Form

I-140 with USCIS: the foreign worker, preparer (if applicable), and employer. USCIS said it "may consider this printed Form ETA-9089, containing all signatures, as satisfying the requirement that petitioners provide evidence of an original labor certification issued by DOL." See <https://www.foreignlaborcert.doleta.gov/> (scroll to announcement for March 24, 2020).

- **OFLC has released frequently asked questions** regarding COVID-19 issues. OFLC said it remains fully operational (as of March 20, 2020) under the federal government's maximum telework flexibilities operating status. This includes the National Processing Centers, PERM System, and Foreign Labor Application Gateway (FLAG) System. OFLC said it continues to process and issue prevailing wage determinations and labor certifications that meet all statutory and regulatory requirements. See https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf

The situation is rapidly evolving, and changes to the information above are possible.

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E-Verify Self-Check Has New TNC Features

E-Verify has announced that myE-Verify users now can begin using new features, guidance, and updated screens in Self Check to:

- Confirm their employment eligibility in a single case;
- Resolve a Tentative Nonconfirmation (TNC) (formerly known as a mismatch);
- Resolve a Dual TNC from the Department of Homeland Security (DHS) and the Social Security Administration (SSA); and
- Track their case to completion and view the results once resolved.

Users who receive a TNC and choose to resolve now have eight federal working days to take action. A system-generated Further Action Notice (FAN) and a Referral Date Confirmation letter will be issued to the user as proof their case has been referred to either DHS, SSA, or both.

U.S. Citizenship and Immigration Services (USCIS) said users should contact the appropriate agency in the notice for additional support and resolution. Those

who do not take action within the eight federal working days will receive a Final Nonconfirmation (FNC). If the user resolves the TNC after an FNC is issued, they may create a new Self Check case. If the user made a data entry error, they can now close the TNC case and create a new case. Users may only have one Self Check case open at a time.

USCIS said that although myE-Verify remains voluntary and does not replace the E-Verify process, the new features allow applicants, job-seekers, and employees to address their potential TNC status before their next E-Verify employer does.

USCIS announced the following temporary policies in response to the pandemic:

- Employers are still required to create cases for their new hires within three business days from the date of hire.
- Employers must use the hire date from the employee's Form I-9 when creating the E-Verify case. If case creation is delayed due to COVID-19 precautions, select "Other" from the drop-down list and enter "COVID-19" as the specific reason.
- Employers may not take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee's case is in an extended interim case status.

Details:

- myE-Verify: <https://www.e-verify.gov/mye-verify>
- Self Check: <https://www.e-verify.gov/mye-verify/self-check>
- Case Tracker: <https://www.e-verify.gov/mye-verify/case-tracker>
- Due to current circumstances related to COVID-19, E-Verify has updated some policies that temporarily affect myE-Verify Self Check updates. See <https://www.e-verify.gov/about-e-verify/whats-new/e-verify-extends-timeframe-for-taking-action-to-resolve-tentative>

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H-1B Initial Electronic Registration Selection Process Is Completed

U.S. Citizenship and Immigration Services (USCIS) announced on March 27, 2020, that it has received enough electronic registrations during the initial period to reach the fiscal year (FY) 2021 H-1B numerical allocation (H-1B cap).

USCIS plans to notify petitioners with selected registrations by March 31, 2020, that they are eligible to file an H-1B cap-subject petition for the beneficiary.

USCIS said registrants' online accounts will now show one of the following statuses for each registration (that is, for each beneficiary registered):

- Submitted: A registration status may continue to show "Submitted" after the initial selection process has been completed. "Submitted" registrations will remain in consideration for selection until the end of the fiscal year, at which point all registration statuses will be Selected, Not Selected, or Denied.
- Selected: Selected to file an FY 2021 H-1B cap-subject petition.
- Denied: A duplicate registration was submitted by the same registrant for the same beneficiary, or a payment method was declined and not reconciled. If denied as a duplicate registration, all registrations submitted for the beneficiary for the fiscal year are invalid.

Only petitioners with selected registrations may file H-1B cap-subject petitions for FY 2021, and only for the beneficiary in the applicable selected registration notice.

Details:

- USCIS release, <https://www.uscis.gov/news/alerts/h-1b-initial-electronic-registration-selection-process-completed>
- H-1B electronic registration process page, <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process>

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Visa Bulletin Says Diversity Visa Volume Remains Low

The Department of State's Visa Bulletin for the month of April 2020 notes that the May rank cut-off movements for all DV regions continue to be greater than might ordinarily have been expected, to generate applicant demand under the annual limits. This is because "fewer DV applicants are actively pursuing final action on their cases at consular posts abroad, and the volume of USCIS adjustment cases remains low," the bulletin notes. If large numbers of

applicants eventually begin to have their cases brought to final action, rank cut-off date movements will slow or stop and retrogression would become a possibility. "At this time, it is not possible to say when such action might be required, but late summer would be the most likely time," the bulletin states.

Details:

- Visa Bulletin for April 2020,
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2020/visa-bulletin-for-april-2020.html>

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Firm in the News

Cyrus Mehta was quoted by *India West* in "COVID-19: H-1B Workers Ineligible for Unemployment, But H-4 EAD Spouses May Claim Benefits." Mr. Mehta noted that an H-4 visa holder with work authorization may be eligible to claim unemployment benefits: "Unemployment benefits may work for an H-4 spouse with an EAD if the H-1B spouse is in status. The H-4 spouse's ability to work in the future is linked to the H-1B status of the spouse, and if the H-4 spouse is terminated, she or he can work in the future if the H-1B spouse continues to maintain that H-1B status." The article is at

https://www.indiawest.com/news/global_indian/covid--h--b-workers-ineligible-f-or-unemployment-but/article_e57d8d2-6e18-11ea-b3fd-bf666022f417.html

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