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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 05, 2020

Posted on April 13, 2020 by Cyrus Mehta

Headlines:

FY 2021 H-1B Cap Petitions May Be Filed as of April 1; Glitch in Registration System Reportedly Results in Erroneous Denials – The new USCIS system allegedly erroneously denied many registrations as duplicates that were not.

USCIS Temporary Office Closure Extended Until At Least May 3 – USCIS said it will begin to reopen its offices on May 4 "unless the public closures are extended further." Employees "are continuing to perform mission-essential services that do not require face-to-face contact with the public," including limited emergency services.

AILA Sues USCIS Seeking Maintenance of Status for Nonimmigrants, Extended Immigration Benefit Deadlines – AILA filed a complaint against USCIS to seek necessary measures amid the COVID-19 pandemic.

ABIL Global: Canada – This article provides recent COVID-19-related updates. Also, the Québec immigration department is closing a month-long consultation period with stakeholders on four questions intended to revamp a fast immigration track leading to permanent residence in Canada for francophone foreigners living in Québec.

Firm in the News

Details:

Back to Top

FY 2021 H-1B Cap Petitions May Be Filed as of April 1; Glitch in Registration System Reportedly Results in Erroneous Denials

U.S. Citizenship and Immigration Services (USCIS) announced that H-1B cap-

subject petitions for fiscal year (FY) 2021, including petitions eligible for the advanced degree exemption, may now be filed with USCIS if based on a valid selected registration. A petitioner is eligible to file an FY 2021 H-1B cap-subject petition only if they electronically registered the beneficiary during the H-1B registration process and USCIS selected the registration submitted for the beneficiary through the random selection process.

An H-1B cap-subject petition must be properly filed within the period indicated on the relevant registration selection notice. The period for filing the H-1B cap-subject petition will be at least 90 days. Online filing is not available for H-1B petitions, so petitioners seeking to file H-1B petitions must do so by paper. Petitioners must include a printed copy of the applicable registration selection notice with the FY 2021 H-1B cap-subject petition.

Nearly 275,000 unique registrations were submitted during the initial registration period, USCIS said. Roughly 46% of all registrations were for prospective beneficiaries with U.S. advanced degrees. More than 40,000 registration accounts were created, and nearly 81% of submitted registrations were for potential beneficiaries from India (67.7%) and China (13.2%).

Meanwhile, *Forbes* reported that USCIS mistakenly denied more than 100 (possibly hundreds of) H-1B visa registrations filed for new H-1B petitions. The new USCIS system allegedly erroneously denied many registrations as duplicates that were not. As of press time, attorneys reporting the problem had not yet heard back from USCIS.

Details:

- USCIS announcement, https://www.uscis.gov/news/news-releases/fy-2021-h-1b-cap-petitions-may-be-filed-april-1
- USCIS H-1B registration process page, https://bit.ly/2x6qlHl
- Registration for USCIS account, https://myaccount.uscis.gov/users/sign_up
- Forbes article, https://bit.ly/2X8QH6b

Back to Top

USCIS Temporary Office Closure Extended Until At Least May 3

On March 18, 2020, U.S. Citizenship and Immigration Services (USCIS) temporarily suspended in-person services at its field offices, asylum offices, and

application support centers (ASCs) to help slow the spread of the novel coronavirus, which causes the disease COVID-19. USCIS said it will begin to reopen its offices on May 4 "unless the public closures are extended further." Employees "are continuing to perform mission-essential services that do not require face-to-face contact with the public," including limited emergency services, USCIS said.

USCIS said field offices will send notices to applicants and petitioners with scheduled appointments and naturalization ceremonies affected by the extended temporary closure. USCIS asylum offices will send interview cancellation notices and automatically reschedule asylum interviews.

Details:

- USCIS notice, https://www.uscis.gov/news/alerts/uscis-temporary-office-closure-extended-until-least-may-3
- USCIS COVID-19 page, https://www.uscis.gov/about-us/uscis-response-coronavirus-2019-covid-19

Back to Top

AILA Sues USCIS Seeking Maintenance of Status for Nonimmigrants, Extended Immigration Benefit Deadlines

In a follow-up to a letter sent on March 23, 2020, to U.S. Citizenship and Immigration Services (USCIS) calling for the immediate suspension of immigration benefit deadlines and the maintenance of status for nonimmigrants in the United States, on April 3, 2020, the American Immigration Lawyers Association (AILA) filed a complaint against USCIS in the U.S. District Court for the District of Columbia on behalf of its members to seek these necessary measures amid the COVID-19 pandemic.

Jesse Bless, AILA Director of Federal Litigation, said, "USCIS has every power to immediately and temporarily toll any and all immigration-related deadlines and expiration of status to the benefit of U.S. employers, lawfully admitted foreign nationals, and the public. Many of those fighting on the front lines—our nurses and healthcare workers—are foreign nationals on nonimmigrant visas. At present, immigration attorneys seeking to effectively represent U.S. employers

and foreign nationals face a dangerous catch-22: risk exposure and try to protect their clients' immigration status or protect themselves and risk putting their clients' cases or rights in jeopardy."

Details:

- AILA announcement, https://www.aila.org/advo-media/press-releases/2020/aila-files-lawsuit-against-uscis-seeking
- Complaint, https://www.aila.org/infonet/aila-files-complaint-seeking-maintenance-of-status
- AILA letter sent March 23, 2020, to USCIS, https://www.aila.org/advo-media/aila-correspondence/2020/aila-sends-letter-to-uscis-demanding-immediate

Back to Top

ABIL Global: Canada

This article provides recent COVID-19-related updates. Also, the Québec immigration department is closing a month-long consultation period with stakeholders on four questions intended to revamp a fast immigration track leading to permanent residence in Canada for francophone foreigners living in Québec.

COVID-19 Update

The Canadian government, in line with its "speed over perfection" approach, adjusts and revises travel policies on a daily basis. The situation remains fluid. Note that all individuals returning to Canada must self-isolate for 14 days, regardless of citizenship.

The following was effective as of Friday, March 27, 2020:

It is still unclear at the moment how and if visa-exempt workers, who would normally apply for their work permits directly upon arrival, will be allowed to travel to Canada. The situation for pre-approved individuals and those holding valid documents has been clarified:

- Students who have valid study permits or an Immigration, Refugees and Citizenship Canada (IRCC) pre-approval letter ("letter of introduction") dated March 18, 2020, or before, may travel to Canada by land or air.

- Workers with valid work permits or pre-approval letters from IRCC ("letter of introduction") may travel to Canada, regardless of industry.
- New workers who will be employed in critical industries such as agriculture, food processing, health, transportation, and emergency services, may also travel to Canada.
- Individuals whose permanent residence has been approved and who hold a Confirmation of Permanent Residence (COPR) issued on or before March 18, 2020, may also travel to Canada to activate their permanent residence. They must show the COPR upon boarding the plane.
- Transit through Canadian airports is still allowed, provided the individual is not seeking to be admitted to Canada.
- Canadian citizens with dual or multiple citizenship may exceptionally travel back to Canada on their foreign passports, provided they obtained an email from IRCC granting them special authorization.
- Anyone, regardless of citizenship, returning from abroad must self-isolate for 14 days. Canadians being repatriated and landing at one of the four airports receiving international flights (Montreal, Toronto, Calgary, and Vancouver) and who need to take a domestic connecting flight will be quarantined at one of the airport hotels for 14 days, before being allowed to embark on a plane to their final Canadian destinations. Accommodation and food will be provided by the government.
- Severe penalties such as fines and prison sentences have been established under the *Quarantine Act* for anyone violating it. Foreign workers, students, and permanent residents could become criminally inadmissible if convicted of one of the more severe offenses under the *Quarantine Act*.

Immigration-related services in Canada are provided by various provincial and federal administrations, such as Service Canada; IRCC; and provincial governments such as the Québec Ministry of Immigration. As companies recently transitioned to remote work and only "essential" services were allowed to stay open, all government offices had to adjust quickly to allow their personnel to work remotely. Depending on the administration, some immigration processes still rely heavily on paper-based submissions.

Québec

The Québec immigration department is closing a month-long consultation

period with stakeholders on four questions intended to revamp a fast immigration track leading to permanent residence in Canada for francophone foreigners living in Québec.

The topics the Québec government is consulting on are:

1. Which eligibility criteria should the immigration department apply in their selection of workers and students intending to fast-track their permanent residence?
2. How can immigrants be encouraged to settle outside the urban centers?
3. Should the selection criteria prioritize experience gained in Québec, or immigrants whose profile match the labor market needs, or both?
4. How can "overqualification" be avoided? Should graduates become eligible for fast-track permanent immigration only after 1 year of work experience, and should the work experience have been obtained in their field of study, or at a level that matches their qualification?

The Québec immigration department had been heavily criticized for having attempted to overhaul the fast-track immigration process without public consultations in the fall of 2019, and had been forced to withdraw their bill.

Details:

- Consultation sur le Programme de l'expérience québécoise (PEQ), http://www.mifi.gouv.qc.ca/fr/dossiers/consultation-peq.html
- Québec government's Consultation Guide, http://www.mifi.gouv.qc.ca/publications/fr/dossiers/DOC_consultation.pdf

Back to Top

Firm in the News

Mr. Cyrus Mehta was quoted by Bloomberg Law's *Daily Labor Report* in "H-1B Worker Pay Options During Pandemic Limited by Visa Rules." He noted that one of the only options available to employers with H-1B workers who want to retain those workers but also need to reduce their pay is to re-file an amended labor certification application and visa petition to change the guest worker's status from full-time to part-time. "This would be the safest way to reduce wages," Mr. Mehta said. He noted that USCIS's measures to allow some flexibility in response to the pandemic "are small measures that are welcome, but they don't go far enough." The article is at https://bit.ly/39Jmv3W.

Back to Top