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

IMMIGRATION UPDATE - APRIL 13, 2020

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Headlines:

Do Stimulus Checks and Unemployment Benefits Matter for Purposes of Inadmissibility Determinations Based on Public Charge? Attorneys Weigh In – Immigration attorneys have been getting questions from their clients about whether accepting the COVID-19 pandemic-related stimulus check, or unemployment benefits, are considered public benefits for purposes of public charge inadmissibility determinations.

USCIS Is Reusing Biometrics for I-765 Work Authorization Extension Requests – USCIS is reusing previously submitted biometrics to process Form I-765, Application for Employment Authorization, extension requests.

OFLC Releases FAQ on COVID-19 Related to H-1B Temporary Specialty Occupation and H-2A Temporary Agricultural Labor Certification Programs – Among other things, the FAQ says that an employer with an approved Form ETA-9035 may place an H-1B worker at a new worksite located outside of the area(s) of intended employment without having to file a new LCA if the employer meets the conditions for short-term placement.

USCIS Changes Affidavit of Support Form –USCIS has added the collection of bank account information from sponsors and optional submission of a credit report as evidence, along with a notarization requirement.

Lawsuit Asks Judge to Allow Nonimmigrants to Maintain Status Amid COVID-19 Pandemic – According to reports, some Chinese workers in the United States have lost their H-1B visas following layoffs and are finding it too difficult to find a new job during the pandemic and too expensive or restricted to reserve a flight home to China.

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Do Stimulus Checks and Unemployment Benefits Matter for Purposes of Inadmissibility Determinations Based on Public Charge? Attorneys Weigh In

Immigration attorneys have been getting questions from their clients about whether accepting the COVID-19 pandemic-related stimulus check, or unemployment benefits, are considered public benefits for purposes of public charge inadmissibility determinations. The following is a summary of highlights of these discussions.

Stimulus checks. The Trump administration is sending out checks to individuals below a certain income to aid them during the pandemic. Although U.S. Citizenship and Immigration Services (USCIS) has not clarified whether accepting the stimulus check is considered a public benefit for purposes of inadmissibility, some immigration attorneys believe it should not count as such. They note that the stimulus check is technically a 2020 tax credit paid in advance, and therefore does not fall under the income maintenance category per chapter 10 of the USCIS Policy Manual, which states, "USCIS considers any other federal, state, and local tribal cash assistance for income maintenance (other than tax credits)." For most people, the money will either be direct-deposited by their bank into their checking account or they will receive it electronically or in the mail. Once they receive the money, there is no option for them to return it. In addition, the stimulus check is not means-tested and thus is not a public benefit.

Unemployment benefits. Immigration attorneys note that there is a long history of unemployment being considered an earned benefit, which excludes it from public charge considerations. USCIS confirms (USCIS Policy Manual, Vol. 8, Part G, Chapter 10) that for the same reason, it does not consider unemployment benefits in the public charge inadmissibility determination.

Contact your Alliance of Business Immigration Lawyers attorney for advice in specific situations.

Details: USCIS Policy Manual, Vol. 8, Part G, Chapter 10, https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-10

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USCIS Is Reusing Biometrics for I-765 Work Authorization Extension Requests

U.S. Citizenship and Immigration Services (USCIS) recently announced that it is reusing previously submitted biometrics to process Form I-765, Application for Employment Authorization, extension requests due to the temporary closure of Application Support Centers (ASCs) in response to the COVID-19 pandemic. This will remain in effect until ASCs are open for appointments to the public again, USCIS said.

Details: USCIS announcement, https://bit.ly/39V8wZa

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OFLC Releases FAQ on COVID-19 Related to H-1B Temporary Specialty Occupation and H-2A Temporary Agricultural Labor Certification Programs

The Department of Labor's Office of Foreign Labor Certification (OFLC) released Round 3 of frequently asked questions (FAQs) regarding COVID-19. The Round 3 FAQs address potential issues regarding the H-1B temporary specialty occupations program and H-2A temporary agricultural labor certification program.

Among other things, the FAQs say that an employer with an approved Form ETA-9035, Labor Condition Application (LCA) for Nonimmigrant Workers, may place an H-1B worker at a new worksite located outside of the area(s) of intended employment without having to file a new LCA if the employer meets the conditions for short-term placement. Such an employer may place an H-1B worker at the new worksite location for up to 30 workdays in one year and, in certain circumstances, up to 60 workdays in one year. If the worker's place of residence is outside the area of intended employment, the 60-workday provision would not apply.

Details:

- OFLC FAQ, COVID-19, Round 3, https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%203.pdf
- OFLC FAQ, COVID-19, Round 2, https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%202_04.01.2020.pdf
- OFLC FAQ, COVID-19, Round 1,

https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf

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USCIS Changes Affidavit of Support Form

U.S. Citizenship and Immigration Services (USCIS) has sent changes to the Affidavit of Support form to the Office of Management and Budget for review. Among other things, USCIS has added the collection of bank account information from sponsors and optional submission of a credit report as evidence. USCIS will also require that Forms I-864, I-864EZ, and I-864A be notarized before submission.

USCIS announced a 30-day public comment period extension, until May 11, 2020. Comments should be submitted according to the instructions in the notice.

Details: USCIS notice, https://www.govinfo.gov/content/pkg/FR-2020-04-10/html/2020-07543.htm

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Lawsuit Asks Judge to Allow Nonimmigrants to Maintain Status Amid COVID-19 Pandemic

The American Immigration Lawyers Association (AILA) has sued U.S. Citizenship and Immigration Services, asking a U.S. District Court judge to allow nonimmigrants to maintain legal status amid the COVID-19 pandemic. According to reports, for example, some Chinese workers in the United States have lost their H-1B visas following layoffs and are finding it too difficult to find a new job during the pandemic and too expensive or restricted to reserve a flight home to China.

Details:

- CNN news article, https://www.cnn.com/2020/04/08/business/china-us-coronavirus-workers-intl-hnk/index.html
- AILA press release, 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

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