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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 20, 2020

Posted on April 20, 2020 by Cyrus Mehta

Headlines:

DHS Issues COVID-19-Related Temporary Final Rule Easing H-2A Agricultural Work Requirements – DHS, with the support of the Department of Agriculture, will publish a temporary final rule to temporarily amend the regulations regarding temporary and seasonal H-2A nonimmigrant agricultural workers, and their U.S. employers.

DHS Issues Advice on Options for Nonimmigrants During COVID-19 Emergency – DHS said it recognizes that nonimmigrants may unexpectedly remain in the United States beyond their authorized periods of stay due to COVID-19 issues. If that occurs, DHS noted several available options, including applying for an extension, flexibility for late applications, and flexibility for visa waiver entrants.

State Dept. Announces Limited U.S. Passport Processing – In-person service at agencies or centers is available only for those with a "qualified life-or-death emergency and who need a passport for immediate international travel within 72 hours." Otherwise, significant delays are expected.

State Dept. Advises on Emergency Visa Appointments, J-1 Extensions, for Medical Professionals – U.S. embassies and consulates will continue to provide emergency and mission-critical visa services "to the extent possible, given resource constraints and local government restrictions." J-1 physicians (medical residents) may consult with their program sponsor, ECFMG, to extend their programs in the United States.

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DHS Issues COVID-19-Related Temporary Final Rule Easing H-2A Agricultural Work Requirements

The Department of Homeland Security (DHS), with the support of the Department of Agriculture, announced that it will publish a temporary final rule on April 20, 2020, to temporarily amend the regulations regarding temporary and seasonal H-2A nonimmigrant agricultural workers, and their U.S. employers. The rule is effective from April 20, 2020, through August 18, 2020.

The summary to the temporary final rule says that DHS will allow H-2A employers whose extension of stay H-2A petitions are supported by valid temporary labor certifications issued by the Department of Labor to begin work immediately after U.S. Citizenship and Immigration Services (USCIS) receives the extension of stay petition. H-2A workers will be allowed to stay in the United States beyond the 3-year maximum allowable period of stay. DHS said it will apply this temporary final rule to H-2A petitions requesting an extension of stay and, if applicable, to any associated applications for an extension of stay filed by or on behalf of an H-2A worker if they were received on or after March 1, 2020, and remain pending as of the effective date of the temporary final rule, ending on the last day the rule is in effect.

DHS said the temporary final rule is in response to the COVID-19 public health emergency, and is intended to provide agricultural employers with an "orderly and timely flow of legal foreign workers, thereby protecting the integrity of the nation's food supply chain and decreasing possible reliance on unauthorized aliens" while encouraging agricultural employers' use of the H-2A program. DHS will issue a new temporary final rule to amend the termination date of these new procedures if the agency determines that circumstances demonstrate a continued need for the temporary changes to the H-2A regulations.

Meanwhile, the White House is also looking at other options to aid agricultural employers, some of which are controversial, such as lowering farmworker pay.

Details:

- Temporary final rule, https://bit.ly/2VCSiii
- USCIS announcement, https://www.uscis.gov/news/news-releases/dhs-and-usda-move-protect-american-farmers-and-ensure-continued-flow-americas-food-supply

- National Public Radio, "White House Seeks to Lower Farmworker Pay to Help Agriculture Industry," https://www.npr.org/2020/04/10/832076074/white-house-seeks-to-lower-farmworker-pay-to-help-agriculture-industry

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DHS Issues Advice on Options for Nonimmigrants During COVID-19 Emergency

The Department of Homeland Security (DHS) said it recognizes that nonimmigrants may unexpectedly need to remain in the United States beyond their authorized periods of stay due to COVID-19 issues. If that occurs, DHS noted several available options, including applying for an extension, flexibility for late applications, and flexibility for visa waiver entrants.

DHS noted, among other things, that it can consider delays caused by the COVID-19 pandemic when deciding whether to excuse delays in filing documents based on extraordinary circumstances. The petitioner or applicant must submit credible evidence to support the request, which U.S. Citizenship and Immigration Services (USCIS) will evaluate on a case-by-case basis. DHS noted that such evaluations have been used in the past, "including for natural disasters and similar crises." DHS also noted that if an emergency (such as COVID-19) prevents the departure of a Visa Waiver Program entrant, USCIS in its discretion may grant a period of "satisfactory departure" for up to 30 days. USCIS can grant an additional 30-day period of satisfactory departure if warranted.

Details:

- DHS/USCIS notice, https://www.uscis.gov/news/alerts/covid-19-delays-extensionchange-status-filings
- Related USCIS notice, https://bit.ly/2XMiM3i
- USCIS Response to COVID-19 page, https://www.uscis.gov/about-us/uscis-response-covid-19

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State Dept. Announces Limited U.S. Passport Processing

The Department of State (DOS) announced on April 15, 2020, that it is limiting

U.S. passport operations in response to the COVID-19 pandemic as of March 20, 2020. In-person service at agencies or centers is available only for those with a "qualified life-or-death emergency and who need a passport for immediate international travel within 72 hours."

People can still apply in person for a U.S. passport at some acceptance facilities and renew through the mail, but DOS said it will not be able to meet its commitment of 6 to 8 weeks door-to-door for routine service. "You should expect significant delays" for passports and citizenship evidence documents, the agency said. "Please consider waiting to apply until we resume normal operations." Expedited service is not being offered, although DOS is still working on a "small number" of expedited applications submitted on or before March 19.

Details:

- DOS announcement, which includes details on what constitutes a "life-or-death emergency" for purposes of passport processing, https://travel.state.gov/content/travel/en/traveladvisories/ea/passport-covid-19.html

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State Dept. Advises on Emergency Visa Appointments, J-1 Extensions, for Medical Professionals

The Department of State (DOS) recently announced that U.S. embassies and consulates will continue to provide emergency and mission-critical visa services "to the extent possible, given resource constraints and local government restrictions." Medical professionals with an approved U.S. nonimmigrant or immigrant visa petition (I-129 or I-140 with a current priority date, or similar), or a certificate of eligibility in an approved exchange visitor program (DS-2019), particularly those working to treat or mitigate the effects of COVID-19, should review the website of their nearest U.S. embassy or consulate for procedures to request an emergency visa appointment, DOS said. Local government restrictions may limit the ability of some embassies/consulates to process emergency visas now. Applicants' travel may also be subject to restrictions.

For those foreign medical professionals already in the United States, DOS noted that J-1 physicians (medical residents) may consult with their program sponsor,

ECFMG, to extend their programs in the United States. Generally, a J-1 program for a foreign medical resident can be extended one year at a time for up to seven years, the agency noted.

Details:

- DOS update, https://travel.state.gov/content/travel/en/News/visas-news/update-on-h-and-j-visas-for-medical-professionals.html

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Cyrus Mehta was a panelist in a Zoom Video Conference sponsored by the AILA-NY Chapter on April 16, 2020 on COVID-19 related Nonimmigrant Visa Updates and Strategies.

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