



IMMIGRATION UPDATE - MAY 18, 2020

Posted on May 18, 2020 by Cyrus Mehta

Headlines:

[ICE Extends E-Verify I-9 Requirements Flexibility for 30 Days](#) – ICE has extended temporary guidance that had been set to expire on May 19, 2020, for an additional 30 days. The guidance relates to agency discretion to defer the physical presence requirements associated with the I-9 employment eligibility verification process.

[USCIS Introduces Temporary Policy Changes for Certain Foreign Medical Graduates During COVID-19 Pandemic](#) – A new USCIS policy memorandum provides guidance to USCIS officers for H-1B foreign medical graduates who have received waivers of the two-year foreign residence requirement through the practice of medicine with or based on the recommendation of an interested government agency or through the Conrad State 30 program in response to the public health emergency prompted by the COVID-19 pandemic.

[USCIS Designates Matter of F-M- Co. as Adopted AAO Decision](#) – The decision clarifies, among other things, that for employment-based first preference category multinational executives or managers, a petitioner must have a qualifying relationship with the beneficiary's foreign employer at the time the petition is filed and must maintain that relationship until the petition is adjudicated.

[USCIS Publishes Interim Final Rule Implementing the Northern Mariana Islands U.S. Workforce Act of 2018](#) – A key provision of the new rule requires CW-1 employers to enroll in E-Verify for all of their hiring sites in the CNMI and elsewhere in the United States. The rule also requires CW-1 employers to file a semiannual report.

[House Passes COVID-19 Aid Bill With Immigration Provisions; Bill Expected](#)

to Die in Senate – The chances for passage of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act in the Senate appear dim, although some provisions may be considered separately.

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ICE Extends E-Verify I-9 Requirements Flexibility for 30 Days

U.S. Immigration and Customs Enforcement (ICE) has extended temporary guidance that had been set to expire on May 19, 2020, for an additional 30 days.

Due to COVID-19-related precautions implemented by employers and employees, the Department of Homeland Security announced on March 19, 2020, that it would exercise prosecutorial discretion to defer the physical presence requirements associated with the I-9 employment eligibility verification process.

Employers who were served notices of inspection by ICE during March and had not already responded were granted an automatic extension for 60 days from the effective date. ICE will grant an additional 30 days to these employers.

The notice states that employers are required to monitor the Department of Homeland Security and ICE websites for additional updates regarding when the extensions will be terminated and normal operations will resume.

Details:

- ICE release, <https://www.ice.gov/news/releases/ice-announces-extension-flexibility-rules-related-form-i-9-compliance>
- Original ICE guidance, <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>

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USCIS Introduces Temporary Policy Changes for Certain Foreign Medical Graduates During COVID-19 Pandemic

On May 11, 2020, U.S. Citizenship and Immigration Services (USCIS) introduced temporary policy changes concerning the full-time work requirement for certain foreign medical graduates and the provision of telehealth services by them in light of the evolving COVID-19 pandemic. A new USCIS policy memorandum provides related guidance to USCIS officers for H-1B foreign medical graduates who have received waivers of the two-year foreign residence requirement through the practice of medicine with or based on the recommendation of an interested government agency (IGA) or through the Conrad State 30 program in response to the public health emergency prompted by the pandemic.

If an H-1B foreign medical graduate is temporarily unable to work full-time due to quarantine, illness, travel restrictions, or other consequences of the pandemic during the declared public health emergency period, USCIS officers will not consider such a failure to work full-time to be a failure to fulfill the terms of the contract under INA § 214(l)(2)(B). This is a limited flexibility and only relates to the foreign medical graduate's eligibility for future immigration benefits that would be affected by the re-imposition of the 2-year home residence requirement as the result of a contract violation. It does not affect a petitioning employer's responsibilities under the statutes and regulations relating to H-1B nonimmigrants.

Also, USCIS noted that the Immigration and Nationality Act, as well as regulations of the Departments of Homeland Security (DHS) and State (DOS), are silent as to whether Conrad State 30 or IGA foreign medical graduates may provide telehealth services to meet their service requirement. Given this silence, USCIS and DOS have decided to interpret the authorities as providing flexibility to these foreign medical graduates during the public health emergency.

Details:

- USCIS policy memorandum, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2020/P/M-602-0178_-COVID19MedicalGraduatesMemo_Final_CLEAN.pdf

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USCIS Designates *Matter of F-M- Co.* as Adopted AAO Decision

U.S. Citizenship and Immigration Services (USCIS) has issued a final policy memorandum designating *Matter of F-M- Co.* as an Adopted Administrative Appeals Office Decision. The decision clarifies that for employment-based first preference category multinational executives or managers, a petitioner must have a qualifying relationship with the beneficiary's foreign employer at the time the petition is filed and must maintain that relationship until the petition is adjudicated. It also clarifies that if a corporate restructuring affecting the foreign entity occurs before the immigrant visa petition is filed, a petitioner may establish that the beneficiary's qualifying foreign employer continues to exist and do business through a valid successor entity.

Details:

- USCIS policy memorandum, which includes *Matter of F-M- Co.*, https://www.uscis.gov/sites/default/files/USCIS/files/Matter_of_F-M- Co. Adopted_AAO_Decision_2020-01.pdf

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USCIS Publishes Interim Final Rule Implementing the Northern Mariana Islands U.S. Workforce Act of 2018

On May 14, 2020, U.S. Citizenship and Immigration Services (USCIS) published an interim final rule implementing the Northern Mariana Islands U.S. Workforce Act of 2018, which is intended to protect U.S. workers in the Commonwealth of the Northern Mariana Islands (CNMI) and to ensure that U.S. workers will not be displaced or encounter a competitive disadvantage in employment compared to non-U.S. workers.

A key provision of the new rule requires CW-1 employers to enroll in E-Verify for all of their hiring sites in the CNMI and elsewhere in the United States. The rule also requires CW-1 employers to file a semiannual report to verify the continuing employment and payment of CW-1 workers under the terms and conditions set forth in their CW-1 petitions. USCIS is implementing this new statutory requirement through a new standalone Form I-129CWR, Semiannual Report for CW-1 Employers.

Written comments are due by July 13, 2020.

Details:

- USCIS announcement, <https://www.uscis.gov/news/news-releases/uscis-publishes-interim-final-rule-implementing-northern-mariana-islands-us-workforce-act-2018>
- Interim final rule with request for comments, <https://www.govinfo.gov/content/pkg/FR-2020-05-14/pdf/2020-08524.pdf>
- Northern Mariana Islands U.S. Workforce Act of 2018, <https://www.congress.gov/bill/115th-congress/house-bill/5956/text>

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House Passes COVID-19 Aid Bill With Immigration Provisions; Bill Expected to Die in Senate

On May 15, 2020, the U.S. House of Representatives passed a COVID-19 relief bill (H.R. 6800) that includes immigration provisions. Among them is a provision to allow immigrant physicians battling COVID-19 in the United States reduced waits for permanent residence, and to expedite visas for health care workers applying for U.S. jobs from abroad.

The chances for passage of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act in the Senate appear dim, although some provisions may be considered separately. Some of the House provisions are similar to legislation introduced in the Senate, such as S. 3599, introduced May 5, 2020, which would reallocate previously authorized, unused immigrant visas for 25,000 nurses and 15,000 doctors, and family members, to alleviate ab

Details:

- HEROES Act, <https://www.govtrack.us/congress/bills/116/hr6800>
- Summary of immigration measures, <https://www.rollcall.com/2020/05/12/house-aid-package-contains-key-immigration-measures/>

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Cyrus Mehta was invited as a guest speaker to address a meeting of the AILA Philadelphia Chapter on Covid-19 and immigration issues on May 14, 2020 via Zoom Video.

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