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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - JUNE 01, 2020

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Headlines:

Trump Proclamation Limits Chinese Students and Researchers in the United States – President Trump has issued a proclamation limiting Chinese students wishing to study in the United States to undergraduates under certain conditions, and limiting Chinese researchers.

USCIS To Begin Resuming Public Services June 4 – USCIS is preparing some domestic offices to reopen and resume non-emergency public services "on or after" June 4, 2020.

Premium Processing to Resume for Certain Petitions – USCIS will resume premium processing for Forms I-129 (Petition for a Nonimmigrant Worker) and I-140 (Immigrant Petition for Alien Workers) soon.

DHS Extends Border Restrictions with Mexico and Canada Until June 22 – The restrictions, which temporarily limit the travel of individuals from those countries into the United States at land ports of entry along the border, limit travel to "essential travel" as defined in the notices.

DHS 'Temporary Final Rule' Eases Certain H-2B Requirements Through Sept. 11, 2020 – DHS has published a temporary final rule to ease certain H-2B requirements "to help secure the U.S. food supply chain and reduce the economic impact of the coronavirus (COVID-19) public health emergency on H-2B employers."

Secretary of Labor Issues Final Rule Authorizing His Discretionary Review of BALCA, ARB Decisions – The Office of the Secretary of Labor issued a final rule, effective June 19, 2020, to establish a system of discretionary secretarial review over cases pending before or decided by the BALCA, and to make technical changes to regulations governing the timing and finality of decisions

of the ARB and BALCA.

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Trump Proclamation Limits Chinese Students and Researchers in the United States

President Trump has issued a proclamation limiting Chinese students wishing to study in the United States to undergraduates under certain conditions, and limiting Chinese researchers. The proclamation states that the People's Republic of China (PRC) uses some Chinese students, mostly post-graduate students and post-doctoral researchers, to operate as "non-traditional collectors of intellectual property" in the United States. President Trump said that he therefore has determined that the entry of certain PRC nationals seeking to enter the United States "pursuant to an F or J visa to study or conduct research in the United States would be detrimental to the interests of the United States."

The proclamation also calls for agency review of "nonimmigrant and immigrant programs" and recommendations for "any other measures requiring Presidential action that would mitigate the risk posed by the PRC's acquisition of sensitive United States technologies and intellectual property."

Details:

- Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People's Republic of China, https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-nonimmigrants-certain-students-researchers-peoples-republic-china/
- Using a Sledgehammer to Crack a Nut: Trump Proclamation Bans Chinese Students and Researchers Lined to China's "Military-Civil Fusion" Strategy, http://blog.cyrusmehta.com/2020/06/using-a-sledgehammer-to-crack-a-nut-trump-proclamation-bans-chinese-students-and-researchers-linked-to-chinas-military-civil-fusion-strategy.html

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USCIS To Begin Resuming Public Services June 4

U.S. Citizenship and Immigration Services (USCIS) is preparing some domestic offices to reopen and resume non-emergency public services "on or after" June 4, 2020. On March 18, USCIS temporarily suspended routine in-person services at its field offices, asylum offices, and application support centers to help slow the spread of the coronavirus (COVID-19).

As services begin to resume, offices will reduce the number of appointments and interviews to ensure social distancing, allow time for cleaning, and reduce waiting room occupancy. Appointment notices will contain information on safety precautions that visitors to USCIS facilities must follow. USCIS' office closures page provides updates on the status of individual offices.

Details:

- USCIS notice, https://www.uscis.gov/news/alerts/uscis-preparing-resume-public-services-june-4
- USCIS updates on office closures, https://www.uscis.gov/about-us/uscis-office-closings

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Premium Processing to Resume for Certain Petitions

U.S. Citizenship and Immigration Services (USCIS) will resume premium processing for Forms I-129 (Petition for a Nonimmigrant Worker) and I-140 (Immigrant Petition for Alien Workers) soon. Premium processing was suspended on March 20 due to COVID-19 pandemic issues.

The agency said it continues to process any petition with a previously accepted Form I-907 in accordance with the premium processing service criteria. Petitioners who had already filed an I-129 or I-140 form using the premium processing service before the March 20 suspension, but received no action and a refund, may refile their I-907 consistent with the timeline set forth in the notice, barring any changes USCIS may announce in the future.

Details: USCIS notice, https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-certain-petitions

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DHS Extends Border Restrictions with Mexico and Canada Until June 22

On May 19, 2020, Chad Wolf, Acting Secretary of the Department of Homeland Security, announced the extension of border restrictions with Mexico and Canada until June 22, 2020. The restrictions, which temporarily limit the travel of individuals from those countries into the United States at land ports of entry along the border, limit travel to "essential travel" as defined in the notices.

Details:

- DHS announcement, https://www.dhs.gov/publication/notification-temporary-travel-restrictions-applicable-land-ports-entry-and-ferries
- Canada notice, https://www.dhs.gov/sites/default/files/publications/20_0519_as1_frn_us-canada-border.pdf
- Mexico notice, https://www.dhs.gov/sites/default/files/publications/20_0519_as1_frn_us-mexico-border.pdf
- "DHS Measures on the Border to Limit the Further Spread of Coronavirus (fact sheet), https://www.dhs.gov/news/2020/05/20/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus

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DHS 'Temporary Final Rule' Eases Certain H-2B Requirements Through Sept. 11, 2020

The Department of Homeland Security (DHS) has published a temporary final rule to ease certain H-2B requirements "to help secure the U.S. food supply chain and reduce the economic impact of the coronavirus (COVID-19) public health emergency on H-2B employers." The temporary flexibilities are available through September 11, 2020.

The temporary final rule allows employers that have properly filed H-2B extension of stay petitions and an attestation (Form ATT-H2B, Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Essential to the U.S.

Food Supply Chain) between certain dates to begin employing certain H-2B workers while USCIS adjudicates their petition. The workers must currently be in H-2B status but working for a different employer. If so, a new employer may begin employing the H-2B workers on or after the date on which U.S. Citizenship and Immigration Services (USCIS) receives the extension of stay petition (as stated on Form I-797, Notice of Action, receipt notice) or the date USCIS acknowledges in writing receipt of a properly filed attestation, but no earlier than the start date of employment listed on the H-2B petition.

The temporary rule applies if USCIS received the new employer's extension-of-stay H-2B petition on or after March 1, 2020, and it remains pending as of May 14, 2020, or USCIS receives the H-2B petition between May 14, 2020, and September 11, 2020. In both cases, USCIS must also receive the attestation.

Details:

- DHS temporary final rule, "Temporary Changes to Requirements Affecting H-2B Nonimmigrants Due to the COVID-19 National Emergency," https://bit.ly/2XGbmNw
- Attestation form (ATT-H2B), https://bit.ly/2XhpiP1
- USCIS notice, https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers

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Secretary of Labor Issues Final Rule Authorizing His Discretionary Review of BALCA, ARB Decisions

The Office of the Secretary of Labor issued a final rule, effective June 19, 2020, to establish a system of discretionary secretarial review over cases pending before or decided by the Board of Alien Labor Certification Appeals (BALCA), and to make technical changes to regulations governing the timing and finality of decisions of the Administrative Review Board (ARB) and BALCA. The rule provides that the Secretary "will not exercise his new review authority until at least 30 days after the rule goes into effect."

The rule notes that the Secretary will not exercise review over ARB cases until after a decision has been rendered, but that this regulatory modification allows the Secretary "to assume jurisdiction over most cases even before a decision

has been issued." The rule explains that this is because BALCA processes significantly more cases each year than does the ARB, and, due to the nature of the temporary visa programs and DOL's role in administering these programs, does so much more quickly than does the ARB. As a result, under the new final rule, the Secretary "will be able to initiate review of a case even before BALCA has issued a decision."

The rule states that the Department of Labor does not anticipate that the power of secretarial review will be used often and that it will "typically be reserved for matters of significant importance."

Details:

Final rule,
https://www.govinfo.gov/content/pkg/FR-2020-05-20/pdf/2020-10909.pdf

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