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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - JUNE 17, 2020

Posted on June 17, 2020 by Cyrus Mehta

Headlines:

Anticipated Presidential Proclamation May Further Suspend Entry of Nonimmigrants, With Exceptions – A Presidential Proclamation is expected soon that may extend the suspension of entry of many nonimmigrants.

USCIS Rescinds Restrictive H-1B Policy Memo Following Litigation – USCIS recently entered into an agreement with ITServe Alliance, Inc., an information technology trade group, to overturn more than 200 H-1B denials.

New Joint Proposed Rule Would 'Streamline' Asylum Adjudications – Among other things, the proposed rule would raise the standard of proof in "credible fear" screenings.

State Dept. Opens DV-2021 Entrant Status Check – The Department's Entrant Status Check for diversity visa (DV) 2021 applicants is open.

State Dept. Announces 'Phase One' Reopening of U.S. Passport Operations – In Phase One, some employees have returned but processing is still limited.

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Anticipated Presidential Proclamation May Further Suspend Entry of Nonimmigrants, With Exceptions

A Presidential Proclamation is expected soon that may extend the suspension of entry of many nonimmigrants. It is unclear which nonimmigrants will be included, but speculation is focusing on some H-1B, H-2B, J-1, and L-1 visa holders. As far as is known, the proclamation would only affect nonimmigrants

outside the United States, not those already in the United States. Reportedly, exceptions may include medical workers and those necessary for securing the U.S. food supply chain.

A Presidential Proclamation that took effect April 23, 2020, suspended the entry of immigrants outside the United States for 60 days, with some exceptions, and noted that it could be modified or extended in the future. At that time, excluded from the ban were lawful permanent residents; those seeking to enter the United States as physicians, nurses, or other healthcare professionals, to perform medical or other research intended to combat the spread of COVID-19; or to perform work essential to combating, recovering from, or otherwise alleviating the effects of, the COVID-19 pandemic; those applying for visas to enter the United States as EB-5 immigrant investors; spouses and children of U.S. citizens; members of the U.S. armed forces; and some others.

Details:

- April 2020 Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak, https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/
- CNN, "Acting Homeland Security Chief Suggests Additional Immigration Measures Could Be Coming," https://www.cnn.com/2020/04/23/politics/chad-wolf-immigration-coronavirus/index.html

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USCIS Rescinds Restrictive H-1B Policy Memo Following Litigation

U.S. Citizenship & Immigration Services (USCIS) recently entered into an agreement with ITServe Alliance, Inc., an information technology trade group, to overturn more than 200 H-1B denials. The move comes after a federal court ruled in March that USCIS policies narrowly defining employer-employee relationships, as well as other regulatory requirements for H-1B classification, were implemented outside of proper notice-and-comment rulemaking.

In recent years, USCIS has increasingly challenged employers seeking H-1B classification for highly skilled workers in specialty occupation positions, e.g., technology, pharmaceutical, healthcare, and university professionals.

Under the resulting May 20, 2020, agreement, USCIS will rescind a February 2018 policy memorandum and reopen H-1B denials that were the subject of the ITServe Alliance lawsuit.

Details:

- Settlement agreement, https://bit.ly/30Efdhh
- *ITServe Alliance, Inc., v. Cissna*, https://nfap.com/wp-content/uploads/2020/03/ITServe-Order-DDC.pdf
- USCIS February 2018 memo to be rescinded, "Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites," https://bit.ly/3cY3fl1
- Klasko Client Alert, https://bit.ly/3hjsOAm
- National Law Review, "Recent USCIS Settlement Offers Substantial Relief to H-1B Employers," https://www.natlawreview.com/article/recent-uscis-settlement-offers-substantial-relief-to-h-1b-employers

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New Joint Proposed Rule Would 'Streamline' Asylum Adjudications

A new joint proposed rule would alter asylum adjudications by having the claims for asylum, withholding of removal, or protection under the Convention Against Torture (CAT) of those found to have a credible fear adjudicated by an immigration judge in "streamlined proceedings" rather than in regular removal proceedings under section 240 of the Immigration and Nationality Act. The Departments further propose changes to the regulations regarding asylum, statutory withholding of removal, and withholding and deferral of removal under the CAT regulations. The Departments also propose amendments related to the standards for adjudication of applications for asylum and statutory withholding.

Among other things, the Departments propose raising the standard of proof in "credible fear" screenings for those in expedited removal proceedings and for stowaways from a "significant possibility" that the person can establish

eligibility for statutory withholding of removal to a reasonable possibility that the person would be persecuted because of his or her race, religion, nationality, membership in a particular social group, or political opinion. Similarly, for those expressing a fear of torture, the Departments propose raising the standard of proof from a significant possibility that the person is eligible for withholding or deferral of removal under the CAT regulations to a reasonable possibility that the person would be tortured in the country of removal.

The proposed rule would also specify certain types of claims that, in general, will not be expected to be favorably adjudicated, such as asylum or statutory withholding of removal claims based on persecution due to gender.

The proposed rule will be published in the Federal Register on June 15, 2020, by the Executive Office for Immigration Review of the Department of Justice and U.S. Citizenship and Immigration Services of the Department of Homeland Security. Comments are due within 30 days after the date of publication.

Details:

- Draft rule, https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-12575.pdf
- CNN, "Trump Administration Proposes Sweeping Changes to U.S. Asylum System in New Rule," https://www.cnn.com/2020/06/10/politics/us-asylum-draft-rule/index.html

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State Dept. Opens DV-2021 Entrant Status Check

As of June 6, 2020, the Department of State's (DOS) Entrant Status Check for diversity visa (DV) 2021 applicants is open, postponed from May 5. DOS said the delayed opening "will not negatively impact our ability to pre-process and schedule DV-2021 interviews, which are scheduled to begin on October 1, 2020."

The DV-2021 season's registration period opened on October 2, 2019, and closed on November 5, 2019. The Alliance of Business Immigration Lawyers advises these DV-lottery entrants to keep their confirmation numbers until at least September 30, 2021. Not everyone notified that they have been selected will receive a visa.

Details:

- DOS announcement on DV-2021 Entrant Status Check, https://travel.state.gov/content/travel/en/News/visas-news/dv2021-entrant-status-check-announcement.html

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State Dept. Announces 'Phase One' Reopening of U.S. Passport Operations

The Department of State (DOS) announced that as of June 10, 2020, various passport agencies and centers have entered Phase One of the agency's reopening plan. In Phase One, some employees have returned but processing is still limited. Applications will be processed on a first-in, first-out basis, beginning with the oldest applications received. The agency will prioritize services for customers with "life-or-death emergencies" by appointment only.

Details:

- DOS announcement on reopening of passport operations, https://travel.state.gov/content/travel/en/traveladvisories/ea/passport-covid-19.html

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Cyrus Mehta received the 2020 American Immigration Lawyers Association (AILA) President's Commendation.

Mr. Mehta was also a panelist at an ABA International Section Webinar entitled "Legal Perspectives on the Impact of Immigration on the Family Unit" on June 11, 2020.

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