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

IMMIGRATION UPDATE - JULY 06, 2020

Posted on July 6, 2020 by Cyrus Mehta

Headlines:

Trump Amends Proclamation to Suspend Entry of Nonimmigrant Workers, With Exceptions; USCIS Issues Statement – On June 29, 2020, President Trump issued an amendment to his Presidential Proclamation issued June 22, 2020.

USCIS Updates Fee Payment System Used in Field Offices – Effective immediately, a long list of field offices will only accept payments in the form of a personal, attorney, or business check; debit or credit card; or reloadable prepaid credit or debit card. Money orders will not be accepted.

USCIS Extends Flexibility for Responding to Agency Requests – USCIS has extended the flexibilities it announced on March 30, 2020, to assist applicants and petitioners responding to certain agency requests.

U.S. District Court Overturns Third-Country Asylum Rule – A U.S. District Judge vacated the Trump administration's third-country asylum interim final rule as unlawful. That rule denied asylum to U.S. asylum claimants who had traveled through another country first without applying for asylum there.

USCIS Expected to Furlough Many Workers on August 3 – USCIS is expected to furlough more than two-thirds of its employees as of August 3, 2020, for at least a month and up to three months or more.

Immigration Judges Sue Trump Administration – Plaintiffs seek to overturn a policy of the Executive Office for Immigration Review that prevents immigration judges from speaking publicly on law and policy.

ABIL Global: Schengen Area – Schengen Area countries are restoring freedom of movement across their borders following COVID-19-related restrictions. The EU has agreed to reopen for international travel also, but only to countries on a

safe list.

Firm in the News..

Details:

Back to Top

Trump Amends Proclamation to Suspend Entry of Nonimmigrant Workers, With Exceptions; USCIS Issues Statement

On June 29, 2020, President Trump issued an amendment to his Presidential Proclamation issued June 22, 2020. The initial Proclamation restricted foreign workers who did not hold a valid U.S. visa stamp in their passports but appeared to exempt individuals who held any type of valid U.S. visa (i.e., individuals who held a B-1/B-2 visa would still be able to get one of the specified work visas to enter the United States).

The June 29, 2020, Amendment clarifies that a foreign worker must have possessed a valid visa in the same visa category as the one in which they are seeking to enter the United States in order to be exempt from the bar. In other words, an H-1B visa applicant who was outside the United States as of June 24, 2020, who did not hold a valid H-1B visa stamp as of that date is prevented from securing an H-1B visa (whether he or she held any other type of U.S. visa on June 24).

The provision in the in the June 22, 2020, Proclamation regarding limited exceptions is not affected by the amended proclamation.

The new Proclamation expires on December 31, 2020, but "may be continued as necessary." It also calls for additional restrictions to be considered through rulemaking. U.S. Citizenship and Immigration Services (USCIS) released a related statement.

Details:

- Presidential Proclamation (June 29, 2020), amending the June 22 proclamation, https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/
- USCIS statement (June 23, 2020),

https://www.uscis.gov/news/alerts/uscis-statement-presidential-proclamation

- Presidential Proclamation (June 22, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/
- Presidential Proclamation (April 22, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/

Back to Top

USCIS Updates Fee Payment System Used in Field Offices

U.S. Citizenship and Immigration Services (USCIS) has made updates to its fee payment system used in field offices to "increase transaction security and reduce processing errors." Effective immediately, a long list of field offices will only accept payments in the form of a personal, attorney, or business check; debit or credit card; or reloadable prepaid credit or debit card. Money orders will not be accepted.

Details:

- USCIS notice, which includes the expanded list of field offices, https://www.uscis.gov/forms/uscis-updates-fee-payment-system-used-field-offices

Back to Top

USCIS Extends Flexibility for Responding to Agency Requests

U.S. Citizenship and Immigration Services (USCIS) has extended the flexibilities it announced on March 30, 2020, to assist applicants and petitioners responding to certain agency requests. The flexibility applies to the requests/notices listed below if the issuance date listed on the request, notice, or decision is between March 1 and September 11, 2020, inclusive:

- Requests for Evidence
- Continuations to Request Evidence (N-14)
- Notices of Intent to Deny

- Notices of Intent to Revoke
- Notices of Intent to Rescind and Notices of Intent to Terminate regional investment centers
- Filing date requirements for Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)
- Filing date requirements for Form I-290B, Notice of Appeal or Motion

USCIS said it will consider a response to the listed requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action.

Details:

- USCIS notice, https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests-0

Back to Top

U.S. District Court Overturns Third-Country Asylum Rule

On June 30, 2020, a U.S. District Judge in Washington, DC, vacated the Trump administration's third-country asylum interim final rule as unlawful. That rule denied asylum to U.S. asylum claimants who had traveled through another country first without applying for asylum there.

"There are many circumstances in which courts appropriately defer to the national security judgments of the Executive. But determining the scope of an APA exception is not one of them," wrote U.S. District Judge Timothy J. Kelly, holding that the defendants unlawfully promulgated the rule without complying with the APA's notice-and-comment requirements.

Details:

- Court's opinion, https://drive.google.com/file/d/18-XDGIBF4sKTdlU02Sxr1l5Wh9bMbnoo/view
- NBC News, "Judge Overturns Trump Border Rule Requiring Immigrants to First Claim Asylum in Another Country," https://www.nbcnews.com/news/us-news/judge-overturns-trump-border-rule-requiring-immigrants-first-claim-asylum-n1232629

- "CAIR Coalition v. Trump: A Case Summary," https://www.humanrightsfirst.org/resource/cair-coalition-v-trump-case-summary
- New York Times, "Federal Judge Strikes Down Trump Administration's Asylum Rule," https://www.nytimes.com/2020/07/01/us/politics/trump-asylum-ruling-immigration.html
- "DHS and DOJ Issue Third-Country Asylum Rule," https://www.dhs.gov/news/2019/07/15/dhs-and-doj-issue-third-country-asylum-rule

Back to Top

USCIS Expected to Furlough Many Workers on August 3

According to reports, U.S. Citizenship and Immigration Services (USCIS) is expected to furlough more than two-thirds of its employees as of August 3, 2020, for at least a month and up to three months or more.

Agency revenues have dropped precipitously due to a combination of factors, including availability of its fee-based services during the COVID-19 pandemic and Trump administration decisions to severely curtail immigration. USCIS is expected to exhaust its funding in early August unless Congress passes a $1.2 billion emergency supplemental funding request USCIS submitted in mid-May, the agency said.

The furlough of approximately 13,400 USCIS employees is likely to have an enormous negative impact on the U.S. immigration system, effectively halting most adjudications.

Details:

- Federal News Network, "Furlough Notices Arrive for Some 13,400 USCIS Employees," https://federalnewsnetwork.com/workforce/2020/06/furlough-notices-arrive-for-some-13400-uscis-employees/
- Commonwealth, "U.S. Immigration Agency to Furlough Workers," https://commonwealthmagazine.org/immigration/us-immigration-agency-to-furlough-workers/

Back to Top

Immigration Judges Sue Trump Administration

On July 1, 2020, the Knight First Amendment Institute at Columbia University filed a lawsuit on behalf of the National Association of Immigration Judges (NAIJ) on freedom-of-speech constitutional grounds. They seek to overturn a policy of the Executive Office for Immigration Review (EOIR) that prevents immigration judges (IJs) from speaking publicly on law and policy. There are 460 IJs in 69 immigration courts across the United States.

The Institute explained that for years, EOIR allowed IJs to speak in their personal capacities on issues relating to immigration, so long as they made clear that they were not speaking on behalf of the agency. EOIR changed this policy in 2017 to require IJs who wished to speak publicly in their personal capacities to get prior approval. In January of this year, the Institute noted, EOIR issued an even more restrictive policy that categorically prohibits IJs from speaking in their personal capacities about immigration law or policy or about EOIR programs or policies. On all other topics, the policy requires IJs to obtain EOIR's prior approval. EOIR's 2020 policy follows a petition filed by the Department of Justice to decertify NAIJ for which a decision is pending, the Institute noted.

"We are in the midst of an urgent public debate about immigration reform in this country and some of the most crucial voices in that debate are being silenced," said Ramya Krishnan, staff attorney at the Institute.

Details:

- Statement by Knight First Amendment Institute, https://knightcolumbia.org/content/immigration-judges-challenge-justice-department-speech-policy
- Complaint filed July 1, 2020, https://knightcolumbia.org/documents/3c53028907/2020.07.01_ECF-1_Complaint.pdf

Back to Top

ABIL Global: Schengen Area

Schengen Area countries are restoring freedom of movement across their borders following COVID-19-related restrictions. The EU has agreed to reopen for international travel also, but only to countries on a safe list.

The Schengen Area consists of 26 countries that have agreed to remove regular checks at their internal borders to facilitate the free and unrestricted movement of people. According to the Schengen Code, which lays down the common rules governing the management of internal and external European Union (EU) borders, it is possible to reintroduce border controls between the associated countries in specific circumstances and for strictly limited periods of time if there is a serious threat to public policy or internal security. Each country must notify the European Commission and the other Member States of the reintroduction of border controls before taking action, specifying the reasons, scope, and duration of the measures.

As of March 2020, the COVID-19 pandemic had pushed many EU Member States to reintroduce border controls at their internal borders on grounds of an immediate threat to public health. As of April 27, 2020, 17 Schengen countries had notified the European Commission on the reintroduction of controls at internal borders due to threats related to the spread of COVID-19.

Unfortunately, the border controls disrupted the free flow of people, goods, and services across the EU. They mainly affected commuters, tourists and transport companies. In addition there were administrative and infrastructure costs for the public sector.

As the epidemiological situation improves, countries are gradually restoring freedom of movement. The EU agreed to reopen for international travel also, but only to countries on a safe list. The United States is among those countries from which travel to the EU remains banned.

Details:

- Overview of national COVID-19 restriction measures by country, https://www.mazzeschi.it/news/eu-links-to-member-states-travel-advice/
- "EU Agrees to Reopen Borders to 14 Countries, Extends Travel Ban for U.S. Tourists," https://www.dw.com/en/eu-agrees-to-reopen-borders-to-14-countries-extends-travel-ban-for-us-tourists/a-53986435
- "Border Controls in Schengen Due to Coronavirus: What Can the EU Do?," https://www.europarl.europa.eu/news/en/headlines/security/20200506STO78514/reopening-schengen-borders-after-covid-19-what-can-eu-do

Back to Top

Firm in the News

Cyrus Mehta and the blog that he authored with Kaitlyn Box have been cited in the Forbes article, July 6, 2020, entitled "Trump's Immigration Order Targeted Women and Children", https://www.forbes.com/sites/stuartanderson/2020/07/06/trumps-immigration-order-targeted-women-and-children/#11edb3f85c1b

Back to Top