



IMMIGRATION UPDATE - AUGUST 17, 2020

Posted on August 17, 2020 by Cyrus Mehta

Headlines:

[GAO Says Appointments of Wolf and Cuccinelli to Acting DHS Leadership Roles Were Invalid](#) – GAO concluded that the appointments of Chad Wolf (as DHS Acting Secretary) and Kenneth Cuccinelli (as Senior Official Performing the Duties of Deputy Secretary) were invalid.

[USCIS Suddenly Begins Selecting New H-1B Lottery Winners](#) – According to reports, USCIS experienced an unexpected decline in H-1B filings and therefore is selecting additional H-1B lottery winners from previous H-1B submissions.

[Reminder: New I-765 Form Must Be Used If Postmarked On or After August 25, 2020](#) – USCIS will accept the current edition of Forms I-765, Application for Employment Authorization, and I-765WS, dated 12/26/19, if they are postmarked before August 25, 2020. If they are postmarked on or after August 25, 2020, USCIS will not accept the 12/26/19 edition. The updated editions are dated 08/25/20.

[USCIS Extends Transitional Parole for CNMI Long-Term Resident Status Applicants](#) – USCIS will automatically extend parole, and employment authorization if applicable, for parolees who timely applied for Commonwealth of the Northern Mariana Islands long-term resident status.

Firm in the News

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GAO Says Appointments of Wolf and Cuccinelli to Acting DHS Leadership Roles

Were Invalid

The U.S. Government Accountability Office (GAO) released a decision concluding that after Department of Homeland Security (DHS) Secretary Kirstjen Nielsen resigned in April 2019, the official who assumed the title of Acting Secretary, Kevin McAleenan, had not been designated in the order of succession to serve upon the Secretary's resignation. "Because the incorrect official assumed the title of Acting Secretary at that time, subsequent amendments to the order of succession made by that official were invalid and officials who assumed their positions under such amendments, including Chad Wolf and Kenneth Cuccinelli, were named by reference to an invalid order of succession," the GAO said.

The GAO said it had not reviewed the legality of other actions taken by these officials and was referring the matter to the DHS Inspector General for review, but that it was "aware that certain actions taken by Acting Secretary Wolf and his authority to take them are currently the subject of litigation."

The GAO also noted that in March 2020, the U.S. District Court for the District of Columbia ruled in *L.M.-M v. Cuccinelli*, 442 F. Supp. 3d 1, 29 (D.D.C. 2020) that Mr. Cuccinelli's separate appointment as Acting Director of USCIS was illegal. On August 14, 2020, the Trump administration dismissed its appeal of the ruling.

Details:

- "Decision, Matter of Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security," File B-331650, Aug. 14, 2020 (GAO), <https://www.gao.gov/assets/710/708830.pdf>
- "Trump Admin Drops Appeal of Court Ruling That Ken Cuccinelli Was Illegally Appointed," Catholic Legal Immigration Network, Inc., <https://bit.ly/321JplD>

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USCIS Suddenly Begins Selecting New H-1B Lottery Winners

According to reports, U.S. Citizenship and Immigration Services (USCIS) experienced an unexpected decline in H-1B filings and therefore is selecting

additional H-1B lottery winners. Some immigration attorneys say they are suddenly receiving email notifications from USCIS. The reports say that the selections are being made from previous H-1B submissions.

Those who applied for the H-1B lottery in the spring are being advised by practitioners to log in to their USCIS online accounts now to check status for new H-1B selections. Reportedly, the new notices say "August 2020 Selection of Reserve Registration" with a filing period of August 17, 2020, to November 16, 2020. Petitions must include a start date of October 1, 2020.

Contact your Alliance of Business Immigration Lawyers attorney for advice in specific situations.

Details:

- "FY 2021 Cap-Subject H-1B Filing Season," In the Spotlight, American Immigration Lawyers Association, <https://www.aila.org/advo-media/issues/all/h1b-registration-tool>
- "Second Round H-1B Lottery Expected to Occur This Week?," Wolfsdorf Rosenthal, <https://bit.ly/2Cww4sL>
- "Second Round H-1B Lottery Results FY 2021 Season," RedBus2US, <https://www.youtube.com/watch?v=OCd2qSyYQeA>

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Reminder: New I-765 Form Must Be Used If Postmarked On or After August 25, 2020

U.S. Citizenship and Immigration Services (USCIS) will accept the current edition of Forms I-765, Application for Employment Authorization, and I-765WS, dated 12/26/19, if they are postmarked before August 25, 2020. If they are postmarked on or after August 25, 2020, USCIS will not accept the 12/26/19 edition. The updated editions are dated 08/25/20.

The base I-765 fee is \$410 for either edition before October 2, 2020. On or after October 2, 2020, the fee is \$550.

Contact your Alliance of Business Immigration Lawyers attorney for advice in specific situations.

Details:

- "Status of Form I-765," NAFSA: Association of International Educators," <https://www.nafsa.org/regulatory-information/status-form-i-765>
- New Form I-765 (to be used if postmarked on or after August 25, 2020), <https://www.uscis.gov/sites/default/files/document/forms/i-765-aead.pdf>

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USCIS Extends Transitional Parole for CNMI Long-Term Resident Status Applicants

USCIS announced on August 11, 2020, that it will automatically extend parole, and employment authorization if applicable, for parolees who timely applied for Commonwealth of the Northern Mariana Islands (CNMI) long-term resident status.

This specific extension of parole applies only to current parolees who timely filed Form I-955, Application for CNMI Long-Term Resident Status, and Form I-765, Application for Employment Authorization, and whose applications remain pending on August 17, 2020. USCIS will automatically extend their parole (and employment authorization, if applicable) without interruption through December 31, 2020, or the date on which USCIS makes a final decision on the parolee's Form I-955 and Form I-765, whichever is earlier.

Details:

- USCIS alert, <https://www.uscis.gov/news/alerts/uscis-extends-transitional-parole-for-cnmi-long-term-resident-status-applicants>

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Firm in the News

Cyrus Mehta was quoted in several media outlets regarding exceptions to the Trump administration's work visa ban:

- "New State Dept. H-1B Visa Guidance Won't Stop Immigration Lawsuits," Forbes, <https://bit.ly/3ijPERz>. Mr. Mehta said, "The State Department issued these broad exceptions to the proclamation to stave off the lawsuits, but they must continue with equal vigor as the exceptions are tantamount to a rewrite of the INA in violation of the APA ."
- "The Trump Administration Has Made Exceptions to Work Visa Bans—But

Conditions Apply," Yahoo,

<https://finance.yahoo.com/news/trump-administration-made-exceptions-visa-105750618.html> (same quote as above).

- "U.S. Eases Ban on Foreigners Returning to Same Job Role," Times of India, <https://bit.ly/31Z0ht9>. Mr. Mehta said, "The beneficiary of an approved H-1B or L-1 petition must now meet a new super standard under the national interest exception, which not part of the , and be subject to the whim and caprice of the consular official, who would have the final say in approving or denying the request. There will also be no right to appeal if the national interest exception is denied." He added that the ban "is unlawful and the subject of several meritorious lawsuits. The Trump administration carved out these exceptions to stave off the lawsuits, but they must continue with equal vigor and the administration should not be allowed to get away with the ban."
- "Access Denied: COVID-19 the Perfect Opportunity for Trump to Push His Anti-Immigration Agenda," The Week, <https://www.theweek.in/theweek/more/2020/08/13/access-denied.html>. Among other things, Mr. Mehta commented that federal courts "have reversed arbitrary H-1B denials. One court also held that the policy of requiring extensive documentation with third-party clients was unlawful. This should improve the prospects of H-1B requests filed on behalf of IT professionals from India who are assigned to their party client sites."

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