



## IMMIGRATION UPDATE - AUGUST 31, 2020

*Posted on August 31, 2020 by Cyrus Mehta*

### Headlines:

[USCIS Cancels Planned Furloughs But Predicts Further Backlogs and Slowdowns; House Passes Related Bill](#) – Just five days before furloughs were set to begin for more than 13,000 USCIS employees, the agency announced that it was canceling those plans. However, USCIS said backlogs and wait times would increase across the board. Meanwhile, the House of Representatives passed a related emergency funding bill, but its fate in the Senate is uncertain.

[State Dept. Expands Interview Waiver Eligibility for Certain Nonimmigrants](#) – The Department of State has temporarily expanded the ability of consular officers to waive the in-person interview requirement for individuals applying for nonimmigrant visas in the same classification.

[EOIR Proposes Changes to BIA's Appeals Processing Authority](#) – A new proposed rule would make multiple changes to processing of appeals by the BIA.

[USCIS Implements Guidance on DACA](#) – USCIS released an alert summarizing how it will implement its recent DACA policy memorandum.

[USCIS Modifies Policy on CW-1 Departure Requirement](#) – USCIS said it was making the change in response to stakeholder feedback and disruptions caused by the COVID-19 pandemic.

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## **USCIS Cancels Planned Furloughs But Predicts Further Backlogs and Slowdowns; House Passes Related Bill**

Just five days before furloughs were set to begin for more than 13,000 employees of U.S. Citizenship and Immigration Services (USCIS), the agency announced that it was canceling those plans. USCIS said it now expects to be able to maintain operations through the end of fiscal year 2020 due to a combination of "unprecedented" spending cuts and a "steady increase in daily incoming revenue and receipts."

USCIS said, however, that averting the furlough will come at a "severe operational cost" that will "increase backlogs and wait times across the board, with no guarantee we can avoid future furloughs." The agency pled for congressional intervention "to sustain the agency through fiscal year 2021" and return it to normal operating procedures.

Specifically, USCIS said it will achieve additional cost savings through "descope" federal contracts that assist USCIS adjudicators in processing and preparing case files as well as myriad other support activities. USCIS did not detail what it meant by "descope," but often that means reducing the deliverables due without terminating a contract, so the contractor is performing less work and getting paid less. USCIS anticipates that these cost-cutting actions will lead to "increased wait times for pending case inquiries with the USCIS Contact Center, longer case processing times, and increased adjudication time for aliens adjusting status or naturalizing. Naturalization ceremonies will continue."

Meanwhile, the U.S. House of Representatives passed a related bill, H.R. 8089 (the Emergency Stopgap USCIS Stabilization Act). Among other things, the bill would increase premium processing fees for certain visa applications from \$1,440 to \$2,550 and extend premium processing service to other visa categories. Consideration or passage of this bill in the Senate is uncertain.

### Details:

- USCIS news release, <https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce>
- Text of H.R. 8089, <https://www.congress.gov/bills/116th-congress/house-bill/8089/text>

- Summary of H.R. 8089, <https://bit.ly/3gFNEZh>

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### **State Dept. Expands Interview Waiver Eligibility for Certain Nonimmigrants**

The Department of State (DOS) has temporarily expanded the ability of consular officers to waive the in-person interview requirement for individuals applying for nonimmigrant visas in the same classification.

Previously, only those applicants whose nonimmigrant visas expired within 12 months were eligible for interview waivers. DOS has temporarily extended the expiration period to 24 months. This policy is in effect until December 31, 2020. DOS said this change "will allow consular officers to continue processing certain nonimmigrant visa applications while limiting the number of applicants who must appear at a consular section, thereby reducing the risk of COVID-19 transmission to other applicants and consular staff."

Details:

- DOS news release, <https://bit.ly/34Jczc0>

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### **EOIR Proposes Changes to BIA's Appeals Processing Authority**

The Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) issued a proposed rule on August 26, 2020, that would make multiple changes to processing of appeals by the Board of Immigration Appeals (BIA).

Among other things, the proposed rule would "make clear that there is no freestanding authority of line immigration judges or BIA members to administratively close cases." It would shorten the time allowed for the BIA to grant an extension for a party to file an initial or reply brief from 90 to 14 days; decrease the scope of motions to remand that the BIA may consider, including "mak clear that the BIA cannot remand a case under a 'totality of the circumstances' standard"; and delegate authority to the BIA "to issue orders of removal, termination or dismissal, and voluntary departure, and orders granting relief or protection as part of the process to adjudicate appeals."

The proposed rule also seeks to limit the authority of immigration judges and BIA members to take action "appropriate and necessary for the disposition" of

the cases they adjudicate. "The broad sweep of this language has caused confusion," DOJ said, especially regarding administrative closure. The proposed rule seeks to address that confusion by making it clear that neither the Board nor immigration judges have authority under the regulations to administratively close a case—"either unilaterally or with the consent of the parties—unless authorized by regulation or a judicial settlement." DOJ also proposes to withdraw, with limited exceptions, the BIA's authority to *sua sponte* reopen or reconsider decisions and to certify cases to itself on its own motion.

DOJ said it believes that these and other proposed changes will enable EOIR "to better address the growing number of cases and related challenges, as well as to ensure that all cases are treated in an expeditious manner consistent with due process."

Comments should be submitted by September 25, 2020, using one of the methods listed in the proposed rule's summary.

#### Details:

- EOIR proposed rule, <https://bit.ly/2QCnhZG>

### **USCIS Implements Guidance on DACA**

U.S. Citizenship and Immigration Services (USCIS) released an alert on August 24, 2020, summarizing how it will implement its July 28, 2020, Deferred Action for Childhood Arrivals (DACA) policy memorandum.

Among other things, the alert states that USCIS will reject all initial DACA requests from those who have never previously received DACA, and will return all fees. These applicants will be able to reapply if USCIS begins accepting such new requests in the future. USCIS will continue to accept requests from those who were granted DACA "at any time in the past" and will also accept requests for advance parole. The agency also stated:

For approvable DACA renewal requests, USCIS will limit grants of deferred action and employment authorization to no more than one year but will not rescind any currently valid two-year DACA grants or associated employment authorization documents (EADs). USCIS said it will replace two-year EADs that are lost, stolen, or damaged with the same "facial two-year validity period." DACA recipients should file their renewal requests between 150 and 120 days before their current grant of DACA expires.

For new advance parole requests to travel outside of the United States, USCIS will grant them only for situations it deems as sufficiently constituting "urgent humanitarian reasons or significant public benefit," in its discretion under the totality of the circumstances. USCIS said it would not rescind any previously granted advance parole documents absent another legal reason to do so, but noted that "parole into the United States is not guaranteed."

#### Details:

- USCIS alert,  
<https://www.uscis.gov/news/alerts/uscis-implements-dhs-guidance-on-daca>
- Policy memorandum issued July 28, 2020,  
[https://www.dhs.gov/sites/default/files/publications/20\\_0728\\_s1\\_daca-rec-consideration-memo.pdf](https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-rec-consideration-memo.pdf)
- Related memorandum issued August 21, 2020,  
<https://www.uscis.gov/sites/default/files/document/policy-alerts/dacame-memo.pdf>

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### **USCIS Modifies Policy on CW-1 Departure Requirement**

U.S. Citizenship and Immigration Services (USCIS) has modified its policy on implementing the requirement that foreign workers in the Commonwealth of the Northern Mariana Islands (CNMI) leave the United States for at least 30 days after two renewals of their CNMI-Only Transitional Worker (CW-1) visa classification. USCIS said it was making the change in response to stakeholder feedback and disruptions caused by the COVID-19 pandemic, and in an effort to protect "the interests of CW-1 employers and workers who may be affected by potential travel disruptions and delays beyond their control." The agency said this change "also minimizes the likely negative impact on other U.S. businesses and prevents further damage to the CNMI economy."

Effective August 25, 2020, USCIS will only consider CW-1 petitions approved on or after June 18, 2020, when it applies the requirement that certain CW-1 nonimmigrant workers depart CNMI for a period of at least 30 continuous days. For example, any worker approved on or after June 18, 2020, for a one-year CW-1 validity period beginning October 1, 2020, would be eligible for two more consecutive petition validity periods after the first period of validity expires on

September 30, 2021. Previously, USCIS counted all consecutive petition validity periods, even those approved before June 18, 2020, when determining which CW-1 nonimmigrant workers were subject to the temporary departure requirement.

Details:

- USCIS policy update, <https://bit.ly/3gFoEBr>

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### **Firm in the News**

**Cyrus Mehta's** tweet was cited by *Outlook India* in "Watching Trump Preside Over Naturalisation Ceremony Was Like Watching Fox Bless Henhouse: Hillary," on the naturalization ceremony held during the Republican National Convention. He tweeted, "Trump and illegally appointed Wolf conduct a naturalisation ceremony during a political convention to hypocritically pander to immigrants they have otherwise banned, abused and caged." The article is at <https://bit.ly/2YNRPvS>.

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