



IMMIGRATION UPDATE - SEPTEMBER 08, 2020

Posted on September 8, 2020 by Cyrus Mehta

Headlines:

[DHS Sends H-1B, Work Authorization Rules to OMB for Review Before Publication](#) – DHS has sent several rules to OMB for final review, including an interim final rule to redefine what constitutes an H-1B specialty occupation and an employer-employee relationship, and a proposed rule to eliminate eligibility for work authorization for certain people who have final orders of removal but are temporarily released from custody on an order of supervision, with limited exceptions.

[DHS To Propose Major Expansion of Biometrics Collection and Use](#) – Among other things, DHS proposes that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with an immigration benefit or request, including U.S. citizens, must appear for biometrics collection without regard to age unless DHS waives or exempts the biometrics requirement.

[USCIS Adopts AAO Decision on TPS and Authorized Travel](#) – The decision holds that temporary protected status beneficiaries who travel abroad using a DHS-issued travel document generally will retain the same immigration status on their return that they had at the time of departure. Such travel will not satisfy the "inspected and admitted or paroled" eligibility requirement for obtaining adjustment of status to lawful permanent residence.

[USCIS Issues New Policy Guidance on Final Fee Rule](#) – The new policy guidance describes the final rule's adjustments in fees for specific forms. It also provides guidance on fee exemption and waiver policies, new premium processing time limits, and other changes made by the fee rule.

[Asylum Applicants No Longer Exempt From USCIS Discretion on Work Authorization](#) – Asylum applicants now are subject to the agency's discretion

when seeking authorization to work. The new rule does not apply to employment authorization applications filed or pending before August 25, 2020.

[ABIL Global: Peru](#) – Peru has extended its Sanitary Emergency decree on the COVID-19 public health emergency by 90 days from September 8, 2020, and has extended its State of National Emergency decree until September 30, 2020.

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DHS Sends H-1B, Work Authorization Rules to OMB for Review Before Publication

The Department of Homeland Security (DHS) has sent two rules to the Office of Management and Budget (OMB) for final review before publication:

- *An interim final rule on the H-1B nonimmigrant visa program.* The rule is expected to redefine what constitutes an H-1B specialty occupation and an employer-employee relationship. In addition, DHS will propose additional requirements "to ensure employers pay appropriate wages to H-1B visa holders." The rule has been listed in DHS's regulatory agenda since 2017.

Some observers see this rule as yet another pre-election move by the Trump administration to restrict immigration. Lawsuits are likely to follow the interim rule's publication, as there will be no notice-and-comment phase before the rule takes effect.

- *A proposed rule to eliminate eligibility for employment authorization for certain people who have final orders of removal but are temporarily released from custody on an order of supervision, with limited exceptions.* DHS said it will also make other proposals related to eligibility and factors DHS will consider when adjudicating discretionary employment authorization applications filed by those who have been convicted of aggravated felonies or who have committed "violent or dangerous" crimes.

It is unclear when the rules will be published in the Federal Register.

Details:

- DHS description of H-1B rule,

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=1615-AC13>

- DHS description of work authorization rule, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=1615-AC40>
- "Proposal to Overhaul H-1B Visa Program Under White House Review," Bloomberg Law, <https://news.bloomberglaw.com/daily-labor-report/proposal-to-overhaul-h-1b-visa-program-under-white-house-review>
- "H-1B Visa Denials Continue to Mount for Companies," Forbes, <https://www.forbes.com/sites/stuartanderson/2020/08/31/h-1b-visa-denials-continue-to-mount-for-companies/#3d11079d1262>

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DHS To Propose Major Expansion of Biometrics Collection and Use

The Department of Homeland Security (DHS) is expected to publish a proposed rule on September 11, 2020, to expand the collection and use of biometrics by U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE).

Based on an advance copy of the notice of proposed rulemaking, DHS is expected to propose:

- That any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with an immigration benefit or request, including U.S. citizens, must appear for biometrics collection without regard to age unless DHS waives or exempts the biometrics requirement.
- To authorize biometrics collection, without regard to age, upon arrest, for purposes of processing, care, custody, and initiation of removal proceedings.
- To define the term "biometrics."
- To increase the biometric modalities that DHS collects, to include iris images, palm prints, and voice prints.
- That DHS may require, request, or accept DNA test results, including a partial DNA profile, to prove the existence of a claimed genetic relationship, and that DHS may use and store DNA test results for the relevant adjudications or to perform any other functions necessary for

- administering and enforcing immigration and naturalization laws.
- To modify how Violence Against Women Act and T nonimmigrant petitioners demonstrate good moral character, and remove the presumption of good moral character for those under the age of 14.
 - To further clarify the purposes for which biometrics are collected from individuals filing immigration applications or petitions to include criminal history and national security background checks; identity enrollment, verification, and management; secure document production; and administering and enforcing immigration and naturalization laws.

Details:

- Advance copy of proposed rule, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19145.pdf>
- "Homeland Security Proposes Expanded Biometric Collection, Including DNA for Family Relationships," CNN, <https://www.cnn.com/2020/09/02/politics/dhs-expanded-biometric-collection-dna/index.html>

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USCIS Adopts AAO Decision on TPS and Authorized Travel

U.S. Citizenship and Immigration Services (USCIS) recently issued a policy memorandum adopting an Administrative Appeals Office (AAO) decision, *Matter of Z-R-Z-C-*. The decision holds that temporary protected status (TPS) beneficiaries who travel abroad using a Department of Homeland Security (DHS)-issued travel document generally will retain the same immigration status on their return that they had at the time of departure. Exceptions apply to those inadmissible under certain criminal or national security grounds or with immigrant or nonimmigrant visas they present for admission to the United States.

USCIS noted that such travel does not satisfy the "inspected and admitted or paroled" eligibility requirement for obtaining adjustment of status to lawful permanent residence, although USCIS said this decision does not affect TPS beneficiaries who adjusted status to lawful permanent residence under past practice and/or prior guidance or who have pending applications for

adjustment of status. USCIS will only apply *Matter of Z-R-Z-C-* prospectively to TPS beneficiaries who departed and returned to the United States on or after August 20, 2020, the date of the AAO's adopted decision.

A class action lawsuit has been filed against USCIS in the Southern District of Florida challenging the legality of *Matter of Z-R-Z-C-*.

Details:

- USCIS news release, <https://www.uscis.gov/news/news-releases/uscis-adopts-ao-decision-on-tps-and-authorized-travel>
- USCIS policy memorandum, which includes *Matter of Z-R-Z-C-*, <https://www.uscis.gov/sites/default/files/document/ao-decisions/Matter-of-Z-R-Z-C-Adopted-AO-Decision.pdf>

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USCIS Issues New Policy Guidance on Final Fee Rule

U.S. Citizenship and Immigration Services (USCIS) has issued guidance on the final fee rule that was published on August 3, 2020. The new policy guidance describes the final rule's adjustments in fees for specific forms. It also provides guidance on fee exemption and waiver policies, new premium processing time limits, and other changes made by the fee rule.

Details:

- USCIS announcement, <https://www.uscis.gov/news/alerts/uscis-issues-new-policy-guidance-on-final-fee-rule>
- USCIS policy alert, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200902-FeeRule.pdf>
- USCIS final rule, <https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16389.pdf>
- USCIS Policy Manual, <https://www.uscis.gov/policy-manual>

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Asylum Applicants No Longer Exempt From USCIS Discretion on Work Authorization

Asylum applicants are no longer exempt from U.S. Citizenship and Immigration Services (USCIS) discretion with respect to employment authorization. Under a final rule published in June and effective August 25, 2020, they are subject to the agency's discretion when seeking authorization to work. The new rule does not apply to employment authorization applications filed or pending before August 25, 2020.

Details:

- USCIS Policy Manual, Chapter 5, Discretion, <https://www.uscis.gov/policy-manual/volume-10-part-a-chapter-5>
- USCIS recent update (scroll down to Recent Updates, Technical Update – Removing Exemption from Discretion for Asylum Applicants Seeking Employment Authorization under 8 CFR 274a.12(c)(8)), <https://www.uscis.gov/policy-manual>
- USCIS Policy Alert, "Applying Discretion in USCIS Adjudications" (July 15, 2020), <http://web.archive.org/web/20200812140006/https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200715-Discretion.pdf>
- Related final rule, <https://www.federalregister.gov/documents/2020/06/26/2020-13544/asylum-application-interview-and-employment-authorization-for-applicants>

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ABIL Global: Peru

Peru has extended its Sanitary Emergency decree on the COVID-19 public health emergency by 90 days from September 8, 2020, and has extended its State of National Emergency decree until September 30, 2020.

On August 28, 2020, due to the ongoing COVID-19 public health emergency, Peru extended its Sanitary Emergency decree once again from September 8, 2020, for 90 days. Peru also extended its State of National Emergency decree until September 30, 2020, for the same reason.

As part of the imposed "focused quarantine," some or all provinces are undergoing restrictions such as limits on the movement of people only for the

provision of and access to essential services, goods, and economic activities. Exempted activities include the provision of food supply services, health, medicine, financial services, restaurant service for home delivery, continuity of water services, sanitation, electricity, gas, fuels, telecommunications and related activities, cleaning and collection of solid waste, funeral services, freight and merchandise transport and related activities, and activities related to the resumption of economic activities.

Staff of the print, radio, or television press may transit during this period of mandatory social immobilization as long as they carry their personal work passes, journalistic credentials, and National ID for identification purposes. The authorization also applies to the mobile units that transport them for the fulfillment of their functions. Curfews are imposed in some areas.

During the State of National Emergency, the total closure of the Peruvian borders continues in force. International transport of passengers by land, air, sea, and river continues to be suspended except for humanitarian reasons.

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