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

IMMIGRATION UPDATE - NOVEMBER 17, 2020

Posted on November 17, 2020 by Cyrus Mehta

Headlines:

Federal Judge Rules New Policy Limiting DACA Is Invalid Because 'Acting Secretary' Wolf Was Appointed Unlawfully – A federal judge ruled that a new policy limiting Deferred Action for Childhood Arrivals applications and renewals is invalid because Chad Wolf was not legally serving as Acting Secretary of Homeland Security when he signed it.

State Dept. Continues Phased Resumption of Routine Visa Services – DOS announced a continuing phased resumption of routine immigrant and nonimmigrant visa services on a post-by-post basis, subject to local conditions, after closings that began in March 2020 due to the COVID-19 pandemic.

Litigation Challenges Trump Proclamation Banning Many Immigrants – In *Anunciato v. Trump*, more than 245 family, employment, and diversity-based visa applicants and their U.S. sponsors sued the U.S. government in federal court. Plaintiffs argue that the proclamation unlawfully bars them from immigrating to the United States.

American Immigration Lawyers Association Issues Recommendations for Biden Administration – The AILA report notes that "although Congress must pass legislation to ensure lasting structural reforms, the incoming Biden-Harris administration has broad powers it can immediately exercise."

Several Employment-Based Visa Categories Extended Until December 11 – The employment fourth preference Certain Religious Workers (SR) and employment fifth preference Pilot (I5 and R5) visa categories are extended until December 11, 2020.

USCIS Revises Civics Portion of Naturalization Test – Applicants who apply for naturalization before December 1, 2020, will take the current version of the

test; those who apply on or after that date will take the revised version.

Firm in the News

Details:

Back to Top

Federal Judge Rules New Policy Limiting DACA Is Invalid Because 'Acting Secretary' Wolf Was Appointed Unlawfully

On November 14, 2020, a federal judge ruled that a new policy limiting Deferred Action for Childhood Arrivals (DACA) applications and renewals is invalid because Chad Wolf was not legally serving as Acting Secretary of Homeland Security when he signed it on July 28, 2020.

The Wolf memorandum outlining the new policy, issued after the Supreme Court blocked the Trump administration's attempt to end DACA, rescinded earlier DACA-related memoranda and directed Department of Homeland Security personnel "to reject all pending and future initial requests for DACA, to reject all pending and future applications for advance parole absent exceptional circumstances, and to shorten DACA renewals consistent with the parameters established in this memorandum."

The U.S. government could appeal the ruling. Meanwhile, according to reports, the Trump administration is attempting to get Wolf confirmed as Secretary of Homeland Security before President-elect Biden is inaugurated on January 20, 2021. The U.S. Government Accountability Office and others also found Wolf's appointment to be invalid as it failed to keep with the required order of succession.

Details:

- Court order, https://www.justsecurity.org/wp-content/uploads/2020/11/Garaufis.DACA_.decision.pdf
- "Federal Judge Says New DACA Rules Are Invalid," CNN, https://www.cnn.com/2020/11/14/politics/federal-judge-daca-rules-chad-wolf/index.html
- Wolf memorandum, https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf

- GAO report on the invalidity of Wolf's appointment, https://www.gao.gov/assets/710/708830.pdf
- GAO reaffirmation of decision on Wolf's appointment, https://www.gao.gov/assets/710/708944.pdf
- "Trump Administration to Review DACA and Reject New Applications," CNN, https://www.cnn.com/2020/07/28/politics/daca-trump-administration/index.html
- "Trump Administration Renews Push to Confirm Wolf Amid Concerns Over Legitimacy and Agency Purge," https://www.cnn.com/2020/11/13/politics/donald-trump-chad-wolf-dhs/index.html

Back to Top

State Dept. Continues Phased Resumption of Routine Visa Services

The Department of State (DOS) announced a continuing phased resumption of routine immigrant and nonimmigrant visa services on a post-by-post basis, subject to local conditions, after closings that began in March 2020 due to the COVID-19 pandemic. The agency made the following points:

- S. embassies and consulates have continued to provide emergency and "mission-critical" visa services since March and will continue to do so. The agency said it cannot provide specific dates for when each mission will resume visa services or return to pre-pandemic processing levels. Each U.S. embassy or consulate's website provides more detailed information about operating status and current services.
- Posts that process immigrant visa applications will prioritize immediate relative family members of U.S. citizens and certain Special Immigrant Visa applications, among others. Posts processing nonimmigrant visa applications will continue to prioritize travelers with urgent travel needs, foreign diplomats, and certain mission-critical categories of travelers such as those coming to assist with the U.S. response to the pandemic, followed by students (F-1, M-1, and certain J-1) and certain temporary workers.
- Machine-readable visa fee validity has been extended to December 31, 2021, to allow applicants who were unable to schedule a visa appointment

an opportunity to schedule or attend a visa appointment with the fees they already paid.

Details:

- DOS notice, https://travel.state.gov/content/travel/en/News/visas-news/phased-resumption-routine-visa-services.html

Back to Top

Litigation Challenges Trump Proclamation Banning Many Immigrants

In *Anunciato v. Trump*, more than 245 family, employment, and diversity-based immigrant visa applicants and their U.S. sponsors sued President Donald Trump, Secretary of State Mike Pompeo, and the Department of State in federal court in San Francisco, California on November 9, 2020. The plaintiffs seek immediate relief from a Presidential Proclamation that expires on December 30 and is expected to be extended. They want the administration "to follow the law and process the visas for which they have qualified." Plaintiffs argue that the proclamation unlawfully bars them from immigrating to the United States, has caused extraordinary hardship, and is arbitrary and capricious.

Attorneys representing the plaintiffs include Jeff Joseph, Aaron Hall and Jennifer Howard of Joseph & Hall, PC; Charles Kuck, Danielle Claffey, and Phillip Kuck of Kuck Baxter Immigration LLC; and Greg Siskind of Siskind Susser PC. Charles Kuck said that the plaintiffs "cannot wait two more months to enter the United States on their diversity visas, reunite with their loved ones on family visas, and start their employment with employers who have already shown that there are no qualified workers for their jobs on their employment visas."

Details:

- Press release, https://bit.ly/2IxpHbb
- Siskind Susser PC statement, https://www.visalaw.com/iv-ban-litigation/
- Case FAQ, https://www.dropbox.com/s/mdwoj3nnf1gwj5d/IV%20Ban%20case%20FAQ.pdf?dl=0
- Facebook page for case, https://www.facebook.com/Trump-IV-Ban-Litigation-Group-Hosted-by-Joseph-Siskind-Kuck-100488721836503

Back to Top

American Immigration Lawyers Association Issues Recommendations for Biden Administration

The American Immigration Lawyers Association (AILA) issued immigration-related recommendations on immigration for President-elect Joe Biden. The 20-page report, "A Vision for America as a Welcoming Nation: AILA Recommendations for the Future of Immigration," notes that "although Congress must pass legislation to ensure lasting structural reforms, the incoming Biden-Harris administration has broad powers it can immediately exercise."

Among other things, AILA recommends that the incoming Biden-Harris administration reform the legal immigration system to review all employment- and family-based applications fairly and efficiently, overhaul the detention system, and guarantee legal assistance and counsel for those facing deportation.

Details:

- AILA report, https://www.aila.org/infonet/a-vision-for-america-as-a-welcoming-nation
- Press release, https://www.aila.org/advo-media/press-releases/2020/immigration-road-map

Back to Top

Several Employment-Based Visa Categories Extended Until December 11

The Department of State's Visa Bulletin for November 2020 notes that the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116–159) extended the employment fourth preference Certain Religious Workers (SR) and employment fifth preference Pilot (I5 and R5) visa categories until December 11, 2020.

Details:

- Visa Bulletin for November 2020, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/202

1/visa-bulletin-for-november-2020.html

Back to Top

USCIS Revises Civics Portion of Naturalization Test

U.S. Citizenship and Immigration Services (USCIS) announced plans to implement a revised version of the civics portion of the naturalization test, following a pilot of the test with community-based organizations and volunteers conducted over the summer. Applicants who apply for naturalization before December 1, 2020, will take the current version; those who apply on or after that date will take the revised version. The English portion of the naturalization test has not changed.

USCIS said it revised the civics test as part of a decennial update "to ensure that it remains an instrument that comprehensively assesses applicants' knowledge of American history, government and civic values." The agency said the revised test includes "more questions that test the applicant's understanding of U.S. history and civics" and includes a variety of topics "that provide the applicant with more opportunities to learn about the United States as part of the test preparation process."

The revised test will not change the passing score, which will remain at 60 percent. To pass, most candidates must correctly answer 12 questions out of 20. USCIS said it will maintain current guidelines for statutorily established special considerations for applicants who are 65 years old or older and have at least 20 years of lawful permanent resident status. To pass, such applicants will be asked 10 questions and must answer at least six questions correctly.

Details:

- USCIS news release, https://www.uscis.gov/news/news-releases/uscis-announces-a-revised-naturalization-civics-test
- USCIS Citizenship Resource Center, https://www.uscis.gov/citizenship
- 2020 (revised) version of the civics test, https://www.uscis.gov/citizenship/2020test
- 2008 (current) version of the civics test, https://www.uscis.gov/citizenship/find-study-materials-and-resources/study-for-the-test

- USCIS test updates page, https://www.uscis.gov/citizenship/find-study-materials-and-resources/check-for-test-updates
- 128 civics questions and answers (2020 version), https://bit.ly/3eYzjI0

Back to Top

Firm in the News

Cyrus Mehta was a speaker in a program called Pandemic Backlight: Conversations on Justice, Equality and Immigration Reform in the Disinformation Age on November 14, 2020. This program was part of The FEZANA Talks, and further details are available here at https://fezana.org/pandemic-blacklight-the-fezana-talks-12/

Back to Top