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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - NOVEMBER 30, 2020

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Headlines:

Alliance of Business Immigration Lawyers Offers 12 Recommendations for Biden Administration – ABIL released a non-exhaustive list of 12 recommendations to reform business immigration in the early days of the Biden-Harris administration.

Alejandro Mayorkas Nominated To Direct Department of Homeland Security – On November 23, 2020, President-elect Joe Biden nominated Alejandro Mayorkas to lead DHS.

State Dept. Launches Visa Bond Pilot Program – During the six months of the pilot program, starting on December 24, 2020, consular officers may require nonimmigrant visa applicants falling within the program's scope to post a bond of $5,000, $10,000, or $15,000 as a condition of B-1/B-2 visa issuance.

USCIS Issues Alert for Asylum Applicants on Preliminary Injunction – USCIS issued an alert noting that a U.S. district court's preliminary injunction in *Casa de Maryland Inc. v. Wolf* provides limited injunctive relief to members of two organizations, CASA de Maryland and the Asylum Seeker Advocacy Project, who file Forms I-589 or I-765 as asylum applicants.

Details:

Back to Top

Alliance of Business Immigration Lawyers Offers 12 Recommendations for Biden Administration

The Alliance of Business Immigration Lawyers, Inc. (ABIL) released a non-exhaustive list of 12 recommendations to reform business immigration in the early days of the Biden-Harris administration. The recommendations align with

the consensus recognition by the incoming administration and the Joint Economic Committee of Congress regarding the economic value that immigrants and immigration bring to the United States.

- Restore the customer-service ethos and recognition of our heritage as a nation of immigrants in the USCIS mission statement
- Eliminate racial and national-origin profiling in immigration cases
- Rescind the three H-1B regulations (DOL wages, specialty occupation, and lottery registration selection) published this fall
- Direct USCIS and the State Department to reinstate and exercise freely their respective authority to waive the requirement that employment-based applicants for adjustment of status or nonimmigrant visa reissuance be interviewed
- Rescind recently revised policies on the use of discretion in adjudications
- Return to the prior 90-day adjudicatory timeframe and automatic 180-day extensions for timely filed work authorization applications
- Stop counting derivatives separately under the family and employment-based immigrant visas preferences
- Take USCIS out of investigations and limit its role to adjudicating requests for immigration benefits
- Promote entrepreneurial immigration.
- Rapidly advance “Dates for Filing” (DFF) cutoffs in the Visa Bulletin to maximize the number of I-485 adjustment applications
- Use the DFF to freeze the age of children under the Child Status Protection Act
- Parole into the United States beneficiaries of approved I-130 and I-140 petitions who are waiting overseas

Details:

- ABIL Offers 12 Business Immigration Recommendations for the Incoming Biden Administration, press release, https://bit.ly/3fOqMb5
- "Immigrants, the Economy and the COVID-19 Outbreak," U.S. Congress Joint Economic Committee (June 30, 2020), https://bit.ly/2V9qsua
- "Proposal for the Biden Administration to Reduce Backlogs: Count the Family Together So That They May Stay Together," Insightful Immigration Blog, https://bit.ly/3lejf6x
- Amicus brief, ABIL, *Immigrant Legal Resource Center v. Wolf*,

https://www.nationofimmigrators.com/wp-content/uploads/sites/250/2020/11/ABIL-Amicus-Brief-in-ILRC-v.-Wolf.pdf

Back to Top

Alejandro Mayorkas Nominated To Direct Department of Homeland Security

President-elect Joe Biden announced on November 23, 2020, his nomination of Alejandro Mayorkas to lead the Department of Homeland Security (DHS). During the Obama administration, Mr. Mayorkas directed U.S. Citizenship and Immigration Services and then became deputy secretary of DHS. During his more than 30-year career, Mr. Mayorkas also served as a U.S. attorney in California. He is a partner at WilmerHale, leading its COVID-19 Coronavirus Task Force.

Mr. Mayorkas' accomplishments in the Obama administration included developing and implementing the Deferred Action for Childhood Arrivals (DACA) program, which benefited more than 700,000 youth. President-elect Biden said that Mr. Mayorkas "will play a critical role in fixing our broken immigration system and understands that living up to our values and protecting our nation's security aren't mutually exclusive—and under his leadership, they'll go hand-in-hand."

Mr. Mayorkas, who was born in Havana and is the son of Jewish refugees who fled Cuba during the Castro revolution, would make history as the first Latino and first immigrant in that position, if confirmed by the Senate. His Romanian mother escaped the Holocaust and met his father, of Sephardic heritage, in Cuba.

On the day of the nomination announcement, Mr. Mayorkas tweeted, "When I was very young, the United States provided my family and me a place of refuge. Now, I have been nominated to be the DHS Secretary and oversee the protection of all Americans and those who flee persecution in search of a better life for themselves and their loved ones."

Details:

- Biography, Alejandro Mayorkas, Biden-Harris Nominees and Appointees, https://buildbackbetter.gov/the-administration/nominees-and-appointees/alejandro-mayorkas/
- Mayorkas' Twitter page,

https://twitter.com/AliMayorkas/status/1330937834908250115

- "Alejandro Mayorkas, Biden's Pick for DHS Head, Would Be 1st Latino in Post," NPR, https://n.pr/2VqjRvD
- Biography, Alejandro Mayorkas, WilmerHale, https://www.wilmerhale.com/en/people/alejandro-mayorkas
- "Biden Picks Alejandro Mayorkas, a Son of Sephardic Jewish Cuban Refugees, to Lead the Department of Homeland Security," eSefarad, https://esefarad.com/?p=100825

Back to Top

State Dept. Launches Visa Bond Pilot Program

On November 24, 2020, the Department of State (DOS) published a temporary final rule providing for a visa bond pilot program from December 24, 2020, through June 24, 2021.

The six-month pilot program aims to assess the operational feasibility of issuing visa bonds to inform future decisions regarding the use of such bonds to address temporary business visitor/tourist (B-1/B-2) overstays. Those potentially subject to the pilot program include B-1/B-2 visa applicants who are from countries with high visa overstay rates and have been approved by the Department of Homeland Security (DHS) for an inadmissibility waiver. DOS said the program is intended to serve as a "diplomatic tool" to encourage foreign governments to ensure that their nationals timely depart the United States after temporary visits.

During the six-month pilot program, consular officers may require nonimmigrant visa applicants falling within the program's scope to post a bond of $5,000, $10,000, or $15,000 as a condition of visa issuance. The amount will be determined by the consular officer "based on the circumstances of the visa applicant." The consular officer can also recommend a waiver of the visa bond if he or she believes a waiver would advance a humanitarian or national interest.

The pilot program will focus on nationals of Afghanistan, Angola, Bhutan, Burkina Faso, Burma, Burundi, Cabo Verde, Chad, Democratic Republic of the Congo (Kinshasa), Djibouti, Eritrea, the Gambia, Guinea-Bissau, Iran, Laos, Liberia, Libya, Mauritania, Papua New Guinea, Sao Tome and Principe, Sudan,

Syria, and Yemen. The program does not apply to those traveling under the Visa Waiver Program.

Details:

- DOS temporary final rule, https://www.federalregister.gov/documents/2020/11/24/2020-24223/visas-visa-bond-pilot-program

Back to Top

USCIS Issues Alert for Asylum Applicants on Preliminary Injunction

U.S. Citizenship and Immigration Services (USCIS) issued an alert noting that a U.S. district court's September 11, 2020, preliminary injunction in *Casa de Maryland Inc. v. Wolf* provides limited injunctive relief to members of two organizations, CASA de Maryland (CASA) and the Asylum Seeker Advocacy Project (ASAP), who file Forms I-589 or I-765 as asylum applicants. Specifically, the court preliminarily enjoined enforcement of the following regulatory changes for CASA and ASAP members:

- Removal of the 30-day adjudicatory period for Form I-765 based on an underlying asylum application;
- The requirement to submit biometric information as part of the filing of a Form I-765 based on an asylum application;
- The 365-day waiting period for employment authorization document (EAD) eligibility based on an underlying asylum application;
- The bar on EAD eligibility for asylum applicants subject to the one-year filing bar for asylum, applicable to a Form I-765 based on an asylum application filed on or after August 25, 2020;
- The discretionary review rule providing that the agency has discretion as to whether to grant a Form I-765 based on an asylum application; and
- Removal of the rule deeming a Form I-589, Application for Asylum and for Withholding of Removal, complete if USCIS does not reject it within 30 days of receipt.

Details:

- USCIS alert, https://www.uscis.gov/i-765

Back to Top