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

IMMIGRATION UPDATE - MAY 17, 2021

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Headlines:

DHS Announces Continuation of International Entrepreneur Program – USCIS said the program, first introduced in 2017, "will remain a viable program for foreign entrepreneurs to create and develop start-up entities with high growth potential in the United States."

USCIS Temporarily Suspends Biometrics Requirement for Certain Nonimmigrants Changing or Extending Status – Previously, applicants had to submit requests in writing to reschedule their biometrics appointments.

USCIS Allows Rescheduling of Biometric Appointments by Phone – The Department of Homeland Security plans to withdraw a proposed rule concerning the use and collection of biometrics in the enforcement and administration of immigration laws by U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

DOL Further Delays Effective Date of Prevailing Wage Computation Final Rule – The Department of Labor has delayed a final rule on prevailing wage computations until November 14, 2022.

CBP Announces Policy Change on National Interest Exceptions at Port of Atlanta – Due to a "recent necessary policy change," U.S. Customs and Border Protection (CBP) at the Port of Atlanta will only consider processing § 212(f) national interest exception waiver requests for "urgent humanitarian reasons or those involving national security and/or law enforcement matters."

Afghan Translators/Interpreters Who Helped United States Seek Visas Promised to Them – An estimated 18,000 Afghan translators/interpreters and their families who have aided the U.S. military and government with translation

services await pending Special Immigrant Visas. With the September 2021 deadline looming for the United States to withdraw American troops, pleas for visas to be issued quickly have been renewed.

USCIS Provides Guidance on Exemption to Temporary Need Requirement for Certain H-2B Workers in Guam and Marianas – USCIS issued guidance effective immediately regarding the filing and adjudication of temporary nonagricultural worker (H-2B) nonimmigrant visa petitions for certain H-2B workers on Guam and in the Commonwealth of the Northern Mariana Islands.

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DHS Announces Continuation of International Entrepreneur Program

U.S. Citizenship and Immigration Services (USCIS) announced on May 10, 2021, that the Department of Homeland Security (DHS) is withdrawing a 2018 proposed rule that would have removed the International Entrepreneur parole program from DHS regulations. USCIS said the program, first introduced in 2017, "will remain a viable program for foreign entrepreneurs to create and develop start-up entities with high growth potential in the United States."

Under the program, parole may be granted for up to three entrepreneurs per start-up entity, as well as their spouses and children. Entrepreneurs granted parole are eligible to work only for their start-up business. Their spouses may apply for employment authorization in the United States, but their children are not eligible for such authorization based on the program. An applicant must file Form I-941, Application for Entrepreneur Parole, with the required fees (including biometric) and supporting documentary evidence. The fees are $1,200 for filing the
I-941 and $85 for biometrics. Additional forms and fees are required for spouses and children.

Details:

- USCIS/DHS announcement, May 10, 2021, https://www.uscis.gov/news/news-releases/dhs-announces-continuation-of-international-entrepreneur-parole-program
- USCIS International Entrepreneur Parole page, which includes details on

eligibility requirements, filing procedures, and links to forms, is at https://www.uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole

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USCIS Temporarily Suspends Biometrics Requirement for Certain Nonimmigrants Changing or Extending Status

Effective May 17, 2021, U.S. Citizenship and Immigration Services (USCIS) will temporarily suspend the biometrics submission requirement for certain applicants filing Form I-539, Application to Extend/Change Nonimmigrant Status, requesting an extension of stay in or change of status to H-4, L-2, and E nonimmigrant status. USCIS will allow adjudications for those specific categories to proceed based on biographic information and related background checks, without capturing fingerprints and a photograph. This suspension will apply through May 17, 2023, subject to affirmative extension or revocation of the suspension period by the USCIS director, the agency said.

This temporary suspension will apply to applicants filing Form I-539 requesting:

- Extension of stay in or change of status to H-4, L-2, or E-1 nonimmigrant status;
- Extension of stay in or change of status to E-2 nonimmigrant status (including E-2C (E-2 CNMI Investor)); or
- Extension of stay in or change of status to E-3 nonimmigrant status (including those selecting E-3D).

This suspension will apply only to the above categories of Form I-539 applications that are either:

- Pending as of May 17, 2021, and have not yet received a biometric services appointment notice; or
- New applications postmarked or submitted electronically on or after May 17, 2021.

USCIS noted that it retains discretion on a case-by-case basis to require biometrics for applicants who meet the criteria above, and any applicant may be scheduled for an Application Support Center (ASC) appointment to submit biometrics.

Form I-539 applicants who have already received a biometric services appointment notice should still attend their scheduled appointment, USCIS said.

Effective May 17, 2021, Form I-539 applicants meeting the criteria above are not required to submit the $85 biometric services fee for Form I-539 during the suspension period. USCIS will return a biometric services fee if submitted separately from the base fee. USCIS will allow a short grace period during which USCIS will not reject Form I-539 filed with the biometric services fee. USCIS will begin rejecting paper Form I-539 applications postmarked May 27, 2021, or later (while this suspension of the biometrics requirement is in effect), if applicants meeting the above criteria submit a single payment covering both the filing fee and the $85 biometrics services fee. If USCIS rejects the paper application because the applicant included the $85 biometrics service fee after the grace period, the applicant will need to re-file Form I-539 without the biometric services fee.

Details:

- Proposed rule, withdrawal (prepublication copy), https://bit.ly/3vVsD4D
- "USCIS Will Suspend Trump-Era Biometric Screening Rule for Work-Permit Applicants," Reuters, May 4, 2021, https://www.reuters.com/business/legal/uscis-will-suspend-trump-era-biometric-screening-rule-work-permit-applicants-2021-05-04/

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USCIS Allows Rescheduling of Biometric Appointments by Phone

U.S. Citizenship and Immigration Services (USCIS) announced on May 11, 2021, that applicants, petitioners, requestors, and beneficiaries may now call the USCIS Contact Center (800-375-5283) to reschedule their biometric services appointments scheduled at a USCIS Application Support Center. Previously, applicants had to submit requests in writing to reschedule their biometrics appointments.

USCIS said that applicants must establish "good cause" for rescheduling and must call before the date and time of their original appointment to reschedule. If an applicant fails to call before the scheduled appointment or to establish good cause, "USCIS may consider the application, petition, or request

abandoned and, as a result, it may be denied."

Details:

- "Rescheduling Biometric Services Appointments by Phone," USCIS, May 11, 2021, https://www.uscis.gov/news/alerts/rescheduling-biometric-services-appointments-by-phone

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DOL Further Delays Effective Date of Prevailing Wage Computation Final Rule

The Department of Labor has delayed a final rule on prevailing wage computations from May 14, 2021, until November 14, 2022.

The latest action includes corresponding delays in the rule's transition dates until January 1, 2023, January 1, 2024, January 1, 2025, and January 1, 2026, respectively. For most job opportunities, the transition would occur in two steps. For job opportunities that will be filled by workers who are the beneficiary of an approved Immigrant Petition for Alien Worker, or successor form, or are eligible for an extension of their H–1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000, as amended by the 21st Century Department of Justice Appropriations Authorization Act, (2002), the transition would occur in four steps.

Details:

- Final rule; delay of effective and transition dates, Dept. of Labor, 86 Fed. Reg. 26164 (May 13, 2021), https://www.govinfo.gov/content/pkg/FR-2021-05-13/pdf/2021-10084.pdf

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CBP Announces Policy Change on National Interest Exceptions at Port of Atlanta

Due to a "recent necessary policy change," effective May 14, 2021, U.S. Customs and Border Protection (CBP) at the Port of Atlanta will only consider processing § 212(f) national interest exception (NIE) waiver requests for "urgent humanitarian reasons or those involving national security and/or law enforcement matters." All other requests, including any requests currently pending with CBP Atlanta, "will need to be processed by the U.S. Embassy or

Consulate," CBP said.

On April 26, 2021, the Secretary of State made a national interest determination regarding categories of travelers to be excepted from Presidential Proclamations (PPs) 9984, 9992, and 10143 related to the spread of COVID-19. As a result of this determination, together with national interest determinations already in place, travelers subject to these proclamations, due to their presence in China, Iran, Brazil, South Africa, the Schengen area, the United Kingdom, and Ireland, who are seeking to provide vital support for critical infrastructure; journalists; and students and certain academics covered by exchange visitor programs, among others, may now qualify for a National Interest Exception (NIE).

Details:

- "National Interest Exceptions for Certain Travelers from China, Iran, Brazil, South Africa, Schengen Area, United Kingdom, and Ireland," Dept. of State, May13, 2021, https://bit.ly/3bsOWqW

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Afghan Translators/Interpreters Who Helped United States Seek Visas Promised to Them

An estimated 18,000 Afghan translators/interpreters and their families who have aided the U.S. military and government with translation services await pending Special Immigrant Visas. With the September 2021 deadline looming for the United States to withdraw American troops, pleas for visas to be issued quickly have been renewed.

Many such Afghans fear for their lives. The Lutheran Immigration and Refugee Service (LIRS) wrote to President Biden to urge him to "evacuate Afghan wartime allies who have already applied for the Special Immigrant Visa program and their families to American territory." According to LIRS, "ince 2002, the U.S. government has employed Afghan allies to serve alongside U.S. troops, diplomats, and other government employees as translators, interpreters, cultural advisors, or support staff." In recognition of the peril they face, LIRS noted, Congress enacted the Afghan SIV program in 2009 and "mandated that visa applications be processed within nine months." The American Legion has also pleaded their case to the Biden administration and Congress.

Details:

- "Family of Slain Afghan U.S. Military Interpreter Headed to Houston After 10-Year Visa Delay," Houston Public Media, May 14, 2021, https://www.houstonpublicmedia.org/articles/news/politics/immigration/2021/05/14/398056/family-of-slain-afghan-u-s-military-interpreter-headed-to-houston-after-10-year-visa-delay/
- "Thousands of Afghans and Iraqis Are Under Threat for Helping Americans. Now They Hope Biden Will Help Them Resettle in the United States," Washington Post, Dec. 30, 2020, https://www.washingtonpost.com/politics/biden-refugees-visas/2020/12/30/572c00fc-3e4f-11eb-9453-fc36ba051781_story.html
- S. Veterans Scramble to Help Interpreters Left Behind," American Legion, Apr. 29, 2021, https://www.legion.org/security/252361/us-veterans-scramble-help-interpreters-left-behind
- "Review of the Afghan Special Immigrant Visa Program," Office of Inspector General, Dept. of State, June 2020, https://www.oversight.gov/sites/default/files/oig-reports/AUD-MERO-20-35.pdf
- "Recommendations to Provide Humanitarian Protections for Certain Afghan Civilians," LIRS, May 12, 2021, https://www.lirs.org/wp-content/uploads/2021/05/LIRS-Letter-Requesting-Humanitarian-Protections-for-Certain-Afghan-Civilians_12-MAY-2021.pdf

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USCIS Provides Guidance on Exemption to Temporary Need Requirement for Certain H-2B Workers in Guam and Marianas

U.S. Citizenship and Immigration Services (USCIS) issued guidance on May 13, 2021, effective immediately, regarding the filing and adjudication of temporary nonagricultural worker (H-2B) nonimmigrant visa petitions for certain H-2B workers on Guam and in the Commonwealth of the Northern Mariana Islands. Specifically, the guidance notes that the National Defense Authorization Act for fiscal year 2021 (FY 2021 NDAA) provides that an H-2B employer who qualifies under certain parameters is not required to demonstrate that the service or

labor is temporary in nature if the employment start date is before December 31, 2023. Included are employers with contracts or subcontracts that are "supporting" or "adversely affected by" the military realignment, in addition to those that are "associated with" or "directly connected to" it. The FY 2021 NDAA states that priority will be given to federally funded military projects. "Adversely affected by" includes but is not limited to projects for which the military realignment "has caused a loss of business income or a negative impact on the availability of necessary labor or resources that is not purely speculative (that is, based on assertions with no documentation to support the claim."

The exemption may be granted for certain contracts or subcontracts for labor or services required for performance of a contract or subcontract for construction, repairs, renovations, or facility services, "provided they have a non-speculative supporting relationship to, association with, are adversely affected by, or have a direct connection to the military realignment."

Details:

- USCIS Policy Alert PA-2021-06, May 13, 2021, https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210513-H2BNDAA.pdf

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Firm in the News

Cyrus Mehta spoke on "Australian Gold Rush or Cave In? Navigating the Minefield of Dual Representation in Family-Based Immigration" at the 2021 Annual Conference of the American Immigration Lawyers Association's Asia-Pacific Chapter (APAC) on May 10, 2021.

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