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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - JULY 20, 2021

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Headlines:

New DACA Applications Blocked by Federal Judge – New Deferred Action for Childhood Arrivals applications will not be allowed under a ruling by a U.S. district judge. The judge temporarily stayed his ruling for nearly 650,000 current DACA recipients.

No Surprise: Ombudsman's Annual Report Says USCIS Faces 'Unprecedented Challenges' Due to Pandemic, Backlogs, Financial Issues – The Covid-19 pandemic "created unique challenges for USCIS," the report notes, including temporary office closures and a lack of the ability for "end-to-end electronic processing."

USCIS Reminds Employers to Take Action Within 10 Federal Government Working Days on Tentative Nonconfirmation Cases – Although most Social Security Administration offices are currently closed, this does not affect the 10-day requirement.

USCIS Updates Guidance on Acceptable I-9 Documents for Refugees and Asylees – Refugees and asylees are eligible for employment due to their status "and are authorized to work indefinitely because their immigration status does not expire."

OFLC Releases FAQ on Implementation of Revised ETA-9141 –OFLC released Round 3 of frequently asked questions from the National Prevailing Wage Center on implementing the revised Application for Prevailing Wage Determination.

OFLC's Atlanta Processing Center to Move in August – The mailing address for the Atlanta National Processing Center will change on August 25, 2021, with the exception of mail associated with the processing of applications requesting

permanent labor certification subject to supervised recruitment.

Justice Dept. Settles Retaliation Claim – The settlement resolves DOJ's finding that the company violated the law by retaliating against a worker because he asked for the agency's help in addressing his concerns about an immigration-related employment practice.

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New DACA Applications Blocked by Federal Judge

New Deferred Action for Childhood Arrivals (DACA) applications will not be allowed under a ruling by a U.S. district judge in Texas on July 16, 2021. The judge ruled that DACA violated the Administrative Procedure Act but temporarily stayed his ruling for the nearly 650,000 current DACA recipients, referred to as "Dreamers." Current DACA recipients may seek renewal of their authorization to remain and work in the United States.

Tech companies, including Twitter, Google, Microsoft, and Adobe, expressed their disappointment with the ruling and urged Congress to protect the program. President Biden echoed those comments and said the U.S. will appeal the ruling, noting that it "relegates hundreds of thousands of young immigrants to an uncertain future." He said it was his "fervent hope" that Congress would pass legislation to provide a permanent status for DACA recipients.

Details:

- Texas v. United States, July 16, 2021, https://s3.documentcloud.org/documents/21010983/7-16-21-texas-v-us-opinion.pdf
- S. Tech Companies Disappointed With DACA Ruling, Urge Congress to Act," July 17, 2021, https://www.reuters.com/world/us/us-tech-companies-disappointed-with-daca-ruling-urge-congress-act-2021-07-17/
- "Biden Pledges Appeal of 'Deeply Disappointing' DACA Ruling," NBC News, July 17, 2021, https://www.nbcnews.com/politics/politics-news/biden-pledges-appeal-deeply-disappointing-daca-ruling-n1274280

- "U.S. Judge Blocks New Applicants to Program That Protects Undocumented 'Dreamers' Who Arrived as Children," Washington Post, July 17, 2021, https://www.washingtonpost.com/immigration/daca-court-decision/2021/07/16/6c9a35be-e677-11eb-a41e-c8442c213fa8_story.html
- "Federal Judge Declares DACA Program Illegal, But Halts Only New Applications," NBC News, July 16, 2021, https://www.nbcnews.com/politics/immigration/federal-judge-declares-daca-program-illegal-halts-only-new-applications-n1274247
- Statement by DHS Secretary Mayorkas on DACA Ruling, July 17, 2021, https://www.dhs.gov/news/2021/07/17/statement-secretary-mayorkas-daca-ruling

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No Surprise: Ombudsman's Annual Report Says USCIS Faces 'Unprecedented Challenges' Due to Pandemic, Backlogs, Financial Issues

The Citizenship and Immigration Services (CIS) Ombudsman's Annual Report for 2021 states that U.S. Citizenship and Immigration Services (USCIS) "faces unprecedented challenges this year on virtually every front—from financial pressures to substantial backlogs across applications and petitions of all types." The Covid-19 pandemic "created unique challenges for USCIS," the report notes, including temporary office closures and a lack of the ability for "end-to-end electronic processing." Once USCIS returned to operations at a reduced capacity, the agency had substantial backlogs of in-person appointments that needed rescheduling. The pandemic also exacerbated the agency's preexisting financial issues and "decimated carryover funding needed to maintain its operations." The problems began in 2020 and persisted into 2021: "The lingering effects of temporary office closures, insufficient revenue, and budget cuts continue to impact processing time and customer service functions."

The report also identified other key areas of focus, including persistent problems with the issuance of Notices to Appear; challenges in the medical disability test waiver process; continuing complications in USCIS's digital strategy; and issues in international student programs, among others.

The report identifies several key objectives, including expanded electronic filing and processing capabilities, increased outreach with stakeholders, and

improved coordination between USCIS and other government agencies.

Details:

- Annual Report 2021, Citizenship and Immigration Services Ombudsman, June 30, 2021, Dept. of Homeland Security, https://www.dhs.gov/sites/default/files/publications/dhs_2021_ombudsman_report_med_verified.pdf

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USCIS Reminds Employers to Take Action Within 10 Federal Government Working Days on Tentative Nonconfirmation Cases

U.S. Citizenship and Immigration Services (USCIS) reminded employers that they must take action on Tentative Nonconfirmation (TNC) cases for their employees within 10 federal government working days. USCIS noted that although most Social Security Administration offices are currently closed, this does not affect the 10-day requirement.

The reminder sets forth specific steps employers should take in E-Verify within the timeframe after issuance of a TNC result.

Details:

- USCIS reminder, https://bit.ly/3ktSOgt

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USCIS Updates Guidance on Acceptable I-9 Documents for Refugees and Asylees

U.S. Citizenship and Immigration (USCIS) updated its *Handbook for Employers* (M-274) to remind employers that refugees and asylees may present any acceptable documents in their possession to fulfill I-9 employment authorization verification requirements.

USCIS noted that refugees and asylees are eligible for employment due to their status "and are authorized to work indefinitely because their immigration status does not expire." They may present any List A document or combination of List B and List C documents from the Form I-9 lists. They may also present an "acceptable receipt" instead of the List A, B, or C document. The handbook includes additional details.

Details:

- USCIS Handbook for Employers (M-274), Section 6.3, Refugees and Asylees, updated July 13, 2021, https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/60-evidence-of-status-for-certain-categories/63-refugees-and-asylees

OFLC Releases FAQ on Implementation of Revised ETA-9141

On July 16, 2021, the Department of Labor's Office of Foreign Labor Certification (OFLC) released Round 3 of frequently asked questions (FAQs) from the National Prevailing Wage Center (NPWC) to respond to inquiries from a webinar on implementing the revised Form ETA-9141, Application for Prevailing Wage Determination. The revised form provides a separate section to be completed by employers who accept alternative job requirements in addition to the minimum job requirements.

OFLC said the new alternative job requirements section (1) improves NPWC's ability to ensure that prevailing wages provided to employers and listed on the Form ETA-9089 do not adversely affect U.S. workers and support a valid labor market test in instances where the alternative requirements would result in a higher wage; and (2) reduces employers" burden of completing a separate Form ETA-9141 for each set of requirements.

Details:

- OFLC notice, https://www.dol.gov/agencies/eta/foreign-labor

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OFLC's Atlanta Processing Center to Move in August

The Department of Labor's Office of Foreign Labor Certification (OFLC) mailing address for its Atlanta National Processing Center (ANPC) will change on August 25, 2021, with the exception of mail associated with the processing of applications requesting permanent labor certification subject to supervised recruitment.

Effective August 25, 2021, any mail, including U.S. Postal Service and other courier mail or parcel delivery packages, sent to ANPC must be submitted to

the following new mailing address, according to an OFLC notice: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Avenue, NW, Room N-5311, Washington, DC 20210. One exception is mail associated with Supervised Recruitment under 20 CFR 656.21, which must continue to be submitted to: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Atlanta National Processing Center, Attn: Supervised Recruitment, P.O. Box 56625, Atlanta, GA 30343.

OFLC said employers must provide ANPC's correct new mailing address on the Notice of Filing (NOF) posted when employers file a Form ETA-9089, Application for Permanent Employment Certification. "If the required 10-day posting period for a NOF commences after September 5, 2021, employers must include the new mailing address contained in the notice," OFLC said.

Details:

- OFLC notice, https://www.dol.gov/agencies/eta/foreign-labor
- Federal Register notice, Employment and Training Administration, July 16, 2021, https://www.govinfo.gov/content/pkg/FR-2021-07-16/pdf/2021-15112.pdf

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Justice Dept. Settles Retaliation Claim

The Department of Justice (DOJ) announced on July 15, 2021, that it reached a settlement agreement with Around the Clock Dispatch Inc., a freight and delivery services company in Queens Village, New York. The settlement resolves DOJ's finding that the company violated the law by retaliating against a worker because he asked for the agency's help in addressing his concerns about an immigration-related employment practice.

The worker filed a charge and the company suspended the worker for three days without pay. Under the settlement, the company will pay $3,600 in civil penalties to the United States and nearly $900 in back pay to the worker. The settlement also requires the company to train employees on the Immigration and Nationality Act's anti-discrimination provision and be subject to DOJ monitoring and reporting requirements.

Details:

- Press Release, Dept. of Justice, July 15, 2021, https://bit.ly/2UlbOmJ

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Firm in the News

Cyrus Mehta was quoted by the Times of India in "U.S. Court Quashes Plea to Exclude Family Members From EB-5 Annual Visa Quota." He said that a provision in the Immigration and Nationality Act "could be interpreted to not count family members. Although the case involved plaintiffs who limited their argument to the EB-5 cap for investor green cards, this case will cast a pall on additional lawsuits by plaintiffs making the same argument under other employment or family visa categories." https://bit.ly/3kvAi7C

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