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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - SEPTEMBER 13, 2021

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Headlines:

DHS Continues TPS Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal – DHS announced the automatic extension of temporary protected status designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. The automatic extension of TPS-related documentation includes EADs through December 31, 2022.

USCIS Is Expediting Afghan Petitions, Observers Say – According to anecdotal reports, USCIS has issued instructions to pull all files for Afghan nationals and expedite them, including backlogged petitions.

USCIS Extends Evidence of Status for Conditional Permanent Residents to 24 Months With Pending Form I-751 or I-829 – USCIS is extending the time during which receipt notices can be used to show evidence of status from 18 months to 24 months for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status.

DHS Increases Investment and Revenue Amount Requirements for International Entrepreneur Program – Effective October 1, 2021, DHS is increasing investment and revenue amount requirements for the international entrepreneur program.

House Budget Reconciliation Bill Includes Immigration Provisions – The proposed House of Representatives' budget reconciliation bill includes language that would allow eligible persons to pay a fee to be exempted from numerical limits, among other provisions.

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DHS Continues TPS Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal

The Department of Homeland Security (DHS) announced the automatic extension of temporary protected status (TPS) designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. The automatic extension of TPS-related documentation includes employment authorization documents (EADs) through December 31, 2022.

DHS also announced that under several court orders, beneficiaries under the TPS designations for those countries will retain their TPS while the court orders remain in effect, provided that their TPS is not withdrawn because of individual ineligibility. For Haiti, pursuant to the new TPS designation issued on August 3, 2021, eligible individuals must apply before the close of the registration period on February 3, 2023.

DHS strongly encourages eligible individuals under the Haiti TPS designation "to apply at the earliest practicable date, to ensure that their TPS continues beyond the court-ordered extensions and without any gaps in status."

Beneficiaries who want a new EAD with the expiration date of December 31, 2022, displayed on the EAD must file Form I-765, Application for Employment Authorization. A Federal Register notice explaining how TPS beneficiaries, their employers, and benefit-granting agencies may determine which EADs are automatically extended for those beneficiaries will be published soon, DHS said.

The September 10, 2021, Federal Register notice provides further information on the automatic extension of the validity of TPS-related EADs, Notices of Action, and Arrival/Departure Records.

Details:

- DHS announcement, Sept. 9, 2021, https://www.uscis.gov/news/news-releases/dhs-continues-temporary-protected-status-designations-for-el-salvador-haiti-honduras-nepal-nicaragua
- DHS notice, 86 Fed. Reg. 50725 (Sept. 10, 2021), https://www.govinfo.gov/content/pkg/FR-2021-09-10/pdf/2021-19617.pdf

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USCIS Is Expediting Afghan Petitions, Observers Say

According to anecdotal reports, U.S. Citizenship and Immigration Services (USCIS) has issued instructions to pull all files for Afghan nationals and expedite them, including backlogged petitions. Moreover, the agency has provided special instructions on issuing requests for evidence (RFEs) for documents from Afghanistan (considering that getting documents from within Afghanistan may not be available). Observers note that perhaps this means the agency may allow secondary evidence when adjudicating benefits.

Details:

- More information, "Operation Allies Welcome," DHS, https://www.dhs.gov/allieswelcome
- Special Immigrant Visas for Afghans, Dept. of State, https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immg-visa-afghans-employed-us-gov.html

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USCIS Extends Evidence of Status for Conditional Permanent Residents to 24 Months With Pending Form I-751 or I-829

As of September 4, 2021, U.S. Citizenship and Immigration Services (USCIS) is extending the time during which receipt notices can be used to show evidence of status from 18 months to 24 months for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status. USCIS said it made the change to accommodate current processing times for the two forms, "which have increased over the past year."

A conditional permanent resident who properly files either of the two forms will receive a receipt notice that can be presented with the Form I-551, Permanent Resident Card (green card), as evidence of continued status for up to 24 months past the expiration date on the green card, while the case remains pending with USCIS.

Additionally, USCIS said it will issue new receipt notices to eligible conditional permanent residents who properly filed their forms before September 4, 2021,

and whose cases are still pending. Those receipt notices will also serve as evidence of continued status for 24 months past the expiration date on their green card, the agency said.

Details:

- USCIS alert, Sept. 3, 2021, https://www.uscis.gov/news/alerts/uscis-extends-evidence-of-status-for-conditional-permanent-residents-to-24-months-with-pending-form

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DHS Increases Investment and Revenue Amount Requirements for International Entrepreneur Program

Effective October 1, 2021, the Department of Homeland Security (DHS) is increasing investment and revenue amount requirements for the international entrepreneur program.

DHS explained that on January 17, 2017, the agency published a final rule guiding the use of parole on a case-by-case basis with respect to "entrepreneurs of start-up entities who can demonstrate through evidence of substantial and demonstrated potential for rapid business growth and job creation that they would provide a significant public benefit to the United States." The 2017 regulation provided that the investment and revenue amount requirements would automatically adjust every three years by the Consumer Price Index for All Urban Consumers (CPI–U). DHS issued the new final rule to inform the public of the increased amounts that will take effect at the start of fiscal year 2022 and to revise the regulations to accurately reflect the updated investment amounts.

The final rule states:

- An applicant may be considered for initial parole if he or she demonstrates that his or her entity has received, within 18 months immediately preceding the filing of an application for initial parole, either a qualified investment amount of at least $264,147 from one or more qualified investors or an amount of at least $105,659 through one or more qualified government awards or grants.
- In the alternative, an applicant who partially meets one or both of those criteria may still qualify for further consideration by providing other

reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.

- Similarly, an applicant may be considered for re-parole if he or she establishes that during the initial parole period, his or her entity:
- Received at least $528,293 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;
- Created at least 5 qualified jobs with the start-up entity during the initial parole period; or
- Reached at least $528,293 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period.
- An applicant who partially meets one or more of the criteria may still qualify for consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.
- A qualified investor is defined as "an individual or investor who, among other requirements, has made investments in start-up entities comprising a total of no less than $633,952 in a 5-year period and at least two of those entities created at least 5 jobs or generated at least $528,293 in revenue with an average annualized revenue growth of at least 20 percent," the rule states.

Details:

- DHS final rule; technical amendment, 86 Fed. Reg. 50839 (Sept. 13, 2021), https://bit.ly/3C5oZbw

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House Budget Reconciliation Bill Includes Immigration Provisions

The proposed House of Representatives' budget reconciliation bill includes language that would allow eligible persons to pay a fee to be exempted from numerical limits, among other provisions. Selected highlights include:

- Those in four categories who are eligible would be able to adjust status to permanent residence by paying a supplemental fee of $1,500 and passing security checks and a medical exam, including certain DREAMers, essential

workers, temporary protected status beneficiaries, and deferred enforced departure beneficiaries.

- Unused immigrant visa numbers from certain date ranges would be recaptured, including family and employment visas that went unused and diversity visas if a person was refused a visa solely due to a Trump visa ban or slowdowns related to the COVID-19 pandemic.
- Adjustment applications may be submitted without regard to visa availability with a fee of $1,500 plus $250 for each derivative beneficiary.
- Adjustment applicants would be exempted from family numerical limits if they have a priority date more than two years old and are:
- Applying for FA-1, FA-3, or FA-4 immigrant visa categories and pay a fee of $2,500
- Applying for EB-1, EB-2, or EB-3 categories and pay $5,000
- Applying for EB-5 and pay $50,000

Details:

- House bill, https://judiciary.house.gov/uploadedfiles/judiciary_committee_print.pdf
- Siskind Summary, House Reconciliation Bill Immigration Language (as of 9/11/2021), https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:62f5de78-38e0-42b8-8d70-18ccb238e006#pageNum=1

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Firm in the News

Cyrus Mehta was extensively quoted in the new Forbes article analyzing the immigration measures being marked up in the House Judiciary Committee, "Dreamers And Legal Immigration Changes Highlight New House Bill", https://www.forbes.com/sites/stuartanderson/2021/09/13/dreamers-and-legal-immigration-changes-highlight-new-house-bill/?sh=41be2a6169a9

Mr. Mehta was also prominently quoted in a Times of India article on the same immigration bill, "Bill: Payment of a super-fee will enable Indians caught in decade long backlogs to get Green Cards", https://timesofindia.indiatimes.com/world/us/bill-payment-of-a-super-fee-will-enable-indians-caught-in-decades-long-backlog-to-get-a-green-card/articleshow/86139144.cms

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