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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - OCTOBER 04, 2021

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Headlines:

Continuing Resolution to Fund Government Until December 3 Includes Provisions to Aid Afghans at Risk – The continuing resolution to keep the federal government open until December 3, 2021, was passed by Congress and signed into law by President Biden.

USCIS Releases Information for Afghans at Risk, Including Parolees Departing Military Installations and Others – U.S. Citizenship and Immigration Services released information sheets for Afghans at risk, including Afghan parolees departing military installations, in English, Dari, and Pashto.

Federal Judge Orders Biden Administration to Hold Thousands of Diversity Visas Past Expiration – A U.S. district judge ordered the Biden administration to hold 7,395 diversity visas for lottery winners who were still awaiting processing when fiscal year 2021 ended and the visas were set to expire. Days earlier, another U.S. district judge had ordered the Department of State to hold 966 diversity visas.

DHS Publishes Proposed DACA Rule – The new rule includes the same eligibility requirements as in the past. Changes include modifications to the application process and filing fees, establishment of a specific category for DACA employment authorization documents, and clarification that DACA beneficiaries are "lawfully present" in the United States for purposes of Social Security.

EADs for Syria TPS Automatically Extended Through March 28, 2022 – DHS has automatically extended the validity of certain employment authorization documents with a Category Code of A12 or C19 issued under temporary protected status for Syria through March 28, 2022.

Most CW-1 Employers Must File Semiannual Report, USCIS Says – USCIS

reminded employers of transitional workers (CW-1) in the Northern Mariana Islands that those with currently approved CW-1 petitions with a validity period of six months or more must file Form I-129CWR, Semiannual Report for CW-1 Employers, with USCIS every six months after the petition validity start date.

Croatia Designated for Visa Waiver Program – There are now 40 countries on the VWP list.

ABIL Global: United Kingdom – The video call COVID-19 temporary adjusted right-to-work process was due to end. However, the UK Home Office announced that the process is extended again to April 5, 2022.

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Continuing Resolution to Fund Government Until December 3 Includes Provisions to Aid Afghans at Risk

The continuing resolution to keep the federal government open until December 3, 2021, was passed by Congress and signed into law by President Biden on September 30, 2021. Among other things, the legislation provides about $6.3 billion to aid Afghans at risk. Selected highlights include:

- $2.2 billion for overseas humanitarian, disaster, and civic aid until September 30, 2023, for the support of Operation Allies Welcome (evacuation/resettlement of Afghans) by the Department of Defense.
- $21.5 million for CDC-wide activities and program support until September 30, 2022, for medical support, screening, and other related public health activities related to Afghan arrivals and refugees.
- Afghans arriving with humanitarian parole are to receive the same services as refugees, including reception, placement, and other entitlement programs like food assistance. Services include healthcare, emergency housing, English language classes, job training, and case management. Eligible Afghans are those paroled into the United States between July 31, 2021, and September 30, 2022; those paroled into the United States after September 30, 2022; and either the spouse or child of such a parolee or the parent or legal guardian of an unaccompanied child paroled during that period.
- $1.68 billion for refugee and entrant assistance until September 30, 2023,

under Operation Allies Welcome for carrying out refugee and entrant assistance activities in support of citizens or nationals of Afghanistan paroled into the United States; for example, grants or contracts with qualified nonprofit organizations to provide culturally and linguistically appropriate services during temporary housing and after resettlement, housing assistance, medical assistance, legal assistance, and case management. An additional $7.77 million for child and family service programs is available until September 30, 2022.
- $415 million for migration and refugee assistance to address humanitarian needs in, and to assist refugees from, Afghanistan.
- Within 45 days of enactment, the law directs the Secretaries of Health and Human Services, State, and Homeland Security to jointly submit a strategy on Afghan evacuee resettlement to Congress describing agency roles and responsibilities, vetting, the immigration status of each Afghan, and anticipated costs. "Afghan evacuee" is defined as a person whose evacuation from Afghanistan to the United States, or a location overseas controlled by the United States, was facilitated by the United States as part of Operation Allies Refuge.

Details:

- "Extending Government Funding and Delivering Emergency Assistance Act," U.S. Congress, https://www.congress.gov/bill/117th-congress/house-bill/5305/actions
- "Biden Signs Bill to Avert Partial Government Shutdown," Federal News Network, Sept. 30, 2021, https://federalnewsnetwork.com/government-shutdown/2021/09/congress-moves-to-avert-partial-government-shutdown/
- "Factsheet: FY 2022 Continuing Resolution," Sept. 23, 2021, https://docs.google.com/document/d/1H8wcZE_g8zsgcCrj_rt4miA05nUmrjHo5axPIz7C4gg/edit

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USCIS Releases Information for Afghans at Risk, Including Parolees Departing Military Installations and Others

U.S. Citizenship and Immigration Services (USCIS) released information sheets for Afghans at risk, including Afghan parolees departing military installations, in

English, Dari, and Pashto. The information also includes the Afghan parolee vaccination status attestation, information for Afghan nationals on requests to USCIS for humanitarian parole, green cards for Afghans who were employed by or on behalf of the U.S. government, refugee information, and Operation Allies Welcome.

Details:

- Afghan-Related Information, USCIS, https://www.uscis.gov/humanitarian/afghan-related-information

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Federal Judge Orders Biden Administration to Hold Thousands of Diversity Visas Past Expiration

U.S. District Judge Amit Mehta ordered the Biden administration to hold 7,395 diversity visas for lottery winners who were still awaiting processing when fiscal year 2021 ended and the visas were set to expire. He issued the order in response to a lawsuit filed by 24,000 lottery winners and their families, and the order applies only to the litigants in the consolidated case, not to others who did not participate in the case. Days earlier, U.S. District Judge Tanya Chutkan had ordered the Department of State to hold 966 diversity visas.

Judge Mehta said that the COVID-19 pandemic was "not the primary culprit. That would be the State Department's complete cessation of adjudicating diversity visa applications for five months and its unlawful deprioritizing of those applications when adjudications resumed."

The cases are *Goodluck v. Biden*, *Jacob v. Biden*, *Filazapovich v. Department of State*, and *Goh v. Department of State*, in the U.S. District Court for the District of Columbia. In the latter case, Kuck Baxter Immigration LLC represented more than 2,000 clients and obtained a final judgment in their favor.

Details:

- "DC Judge Rescues 7,395 Diversity Visas From Expiration," Law360, Oct. 1, 2021, https://www.law360.com/articles/1427217/dc-judge-rescues-7-395-diversity-visas-from-expiration (subscription required)

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DHS Publishes Proposed DACA Rule

Following a U.S. district court ruling in Texas, the Department of Homeland Security (DHS) proposed a new rule on Deferred Action for Childhood Arrivals (DACA) on September 28, 2021. The new rule includes the same eligibility requirements as in the past. Changes include modifications to the application process and filing fees, establishment of a specific category for DACA employment authorization documents, and clarification that DACA beneficiaries are "lawfully present" in the United States for purposes of Social Security.

Comments on the proposed rule are due in 60 days. While the Biden administration's appeal of the judge's ruling is pending, DACA recipients may continue to renew their status.

Details:

- Proposed rule, DHS, 86 Fed. Reg. 53736 (Sept. 28, 2021), https://www.govinfo.gov/content/pkg/FR-2021-09-28/pdf/2021-20898.pdf

· "Biden Administration Moves to Protect Undocumented Young Adults," New York Times, https://www.nytimes.com/2021/09/27/us/politics/daca-biden.html

- "Codifying and Fortifying DACA," Inside Higher Ed, https://www.insidehighered.com/news/2021/09/28/biden-administration-proposes-rule-daca

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EADs for Syria TPS Automatically Extended Through March 28, 2022

The Department of Homeland Security (DHS) has automatically extended the validity of certain employment authorization documents (EADs) with a Category Code of A12 or C19 issued under Temporary Protected Status (TPS) for Syria through March 28, 2022.

For Form I-9, Employment Eligibility Verification, TPS Syria beneficiaries may present an EAD with a Category Code of A12 or C19 along with an individual notice issued by USCIS that they received in the mail, which automatically extends their EAD through March 28, 2022. If so, the employer should enter March 28, 2022, as the new expiration date of the automatically extended EAD in Section 2 under List A. Employers must reverify these employees on Form I-9

before they start work on March 29, 2022, U.S. Citizenship and Immigration Services (USCIS) said.

Details:

- USCIS notice, Sept. 28, 2021, https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/tps-for-syria-eads-automatically-extended-through-march-28-2022

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Most CW-1 Employers Must File Semiannual Report, USCIS Says

U.S. Citizenship and Immigration Services (USCIS) reminded employers of transitional workers (CW-1) in the Commonwealth of the Northern Mariana Islands (CNMI) that those with currently approved CW-1 petitions with a validity period of six months or more must file Form I-129CWR, Semiannual Report for CW-1 Employers, with USCIS every six months after the petition validity start date. Employers use this report to certify the continued employment and payment of each worker. Petitions may be revoked or denied for failure to comply with the reporting requirement.

An employer is still subject to the reporting requirement even when the worker was never admitted to the CNMI, is no longer working for the employer, or subsequently changed status; or when the CW-1 employer of a long-term worker previously submitted a Form I-129CWR.

An employer is not required to file the report if the petition has been withdrawn for all beneficiaries.

Details:

- USCIS alert, Sept. 29, 2021, https://www.uscis.gov/newsroom/alerts/most-cw-1-employers-must-file-required-semiannual-report-form-i-129cwr
- Form I-129CWR, Semiannual Report for CW-1 Employers, https://www.uscis.gov/i-129cwr

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Croatia Designated for Visa Waiver Program

The Department of Homeland Security, in consultation with the Department of State, added Croatia to the list of countries eligible for participation in the Visa Waiver Program (VWP) on September 30, 2021.

Eligible citizens, nationals, and passport holders from designated VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant noncitizens for a period of 90 days or fewer for business or pleasure without first obtaining a nonimmigrant visa. There are now 40 countries on the VWP list, which appears at the end of the Federal Register notice.

Details:

- Designation of Croatia for the Visa Waiver Program, 86 Fed. Reg. 54029 (Sept. 30, 2021), https://www.govinfo.gov/content/pkg/FR-2021-09-30/pdf/2021-21136.pdf

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ABIL Global: United Kingdom

The video call COVID-19 temporary adjusted right-to-work process was due to end. However, the United Kingdom (UK) Home Office announced that the process is extended again to April 5, 2022.

The adjusted process has been well-received by employers. The extra time will allow the UK Home Office to expand standard online right-to-work checks to all employees, meaning physical document checks will no longer be necessary. Currently, standard online right-to-work checks can be used for anyone with a Biometric Residence Permit or digital immigration status but not, for example, British or Irish citizens who do not need permission to work in the UK.

Late Applicants to the EU Settlement Scheme

The Home Office updated its employers' guide to right-to-work checks. The main change concerns where an employer is recruiting someone who has applied late to the European Union (EU) Settlement Scheme after June 30, 2021. Two things need to be checked for right-to-work purposes before the employment can begin. First, employers must receive digital or non-digital confirmation from the Home Office that the application has been submitted

(Certificate of Application). Second, employers must use the Employer Checking Service and receive a Positive Verification Notice confirming the person has the right to work.

Details:

- FAQ on Right-to-Work Checks: What Employers Need to Know, Kingsley Napley, https://www.kingsleynapley.co.uk/services/department/immigration/slp/right-to-work-checks
- COVID-19 right-to-work checks: advice for employers (UK), https://www.gov.uk/guidance/coronavirus-covid-19-right-to-work-checks
- Employers' Guide, UK Home Office, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1014298/2021.08.31_Employers_Guide.pdf
- Employer Checking Service, https://www.gov.uk/employee-immigration-employment-status

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