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

IMMIGRATION UPDATE - NOVEMBER 15, 2021

Posted on November 15, 2021 by Cyrus Mehta

Headlines:

Major Settlement Changes USCIS' Work Authorization Policy for Certain H-4, E, and L Nonimmigrant Dependent Spouses – Following recent litigation, U.S. Citizenship and Immigration Services announced that certain H-4, E, or L dependent spouses will qualify for an automatic work permit extension if certain conditions are met.

DHS Announces Countries Eligible for H-2A and H-2B Visa Programs – The Department of Homeland Security, in consultation with the Department of State, announced the countries whose nationals are eligible to participate in the H-2A (temporary agricultural) and H-2B (temporary nonagricultural) visa programs.

DHS Announces Fee Exemptions, Streamlined Processing for Afghan Nationals Resettling in the United States – The Department of Homeland Security will exempt filing fees and streamline application processing for Afghan nationals paroled into the United States for humanitarian reasons on or after July 30, 2021.

EOIR Directs Public to Website for Updates in Response to COVID-19 Pandemic – The Executive Office for Immigration Review announced that its website will now be "the principal method of communication with the public" regarding COVID-19 pandemic-related notices.

New USCIS Lockbox Facility in Illinois, More Filing Location Changes Planned for 2022 – In 2022, in addition to the new Illinois facility, USCIS plans more filing location changes.

Firm in the News

Details:

Back to Top

Major Settlement Changes USCIS' Work Authorization Policy for Certain H-4, E, and L Nonimmigrant Dependent Spouses

Following recent litigation, U.S. Citizenship and Immigration Services (USCIS) announced on November 12, 2021, that certain H-4, E, or L dependent spouses will qualify for an automatic extension provided under 8 CFR § 274a.13(d) if certain conditions are met. Accordingly, a document combination to include an unexpired Form I-94, Form I-797C (Notice of Action) showing a timely filed employment authorization document (EAD) renewal application, and facially expired EAD may be acceptable to evidence unexpired work authorization for employment eligibility verification (Form I-9) purposes, USCIS said.In addition, USCIS will consider E and L dependent spouses to be employment authorized incident to their valid E or L nonimmigrant status, with a few exceptions.

USCIS is also rescinding the 2002 Immigration and Naturalization Service memorandum, "Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determinations on the Requisite Employment Abroad for L Blanket Petition."

USCIS' actions followed a settlement in *Shergill v. Mayorkas*. The settlement provided structural changes for nonimmigrant H-4 and L-2 spouses suffering from long-delayed processing times for work authorization applications. Also as a result of this settlement, as noted above, USCIS will now recognize that L-2 spouses are employment authorized incident to L-2 status. This means that spouses of transferred executives and managers no longer need to apply for work permits before working or starting a business in the United States.

Details:

- "Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses," USCIS Policy Alert, Nov. 12, 2021, https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211112-EmploymentAuthorization.pdf
- Settlement agreement, Nov. 10, 2021, https://bit.ly/3qzP7Jl

Back to Top

DHS Announces Countries Eligible for H-2A and H-2B Visa Programs

The Department of Homeland Security, in consultation with the Department of State, announced the countries whose nationals are eligible to participate in the H-2A (temporary agricultural) and H-2B (temporary nonagricultural) visa programs.

The Secretary of Homeland Security, with the concurrence of the secretary of state, has decided to:

- Add Bosnia and Herzegovina, the Republic of Cyprus, the Dominican Republic (currently only eligible for the H-2A program), Haiti, Mauritius, and Saint Lucia to the list of countries eligible to participate in the H-2A and H-2B programs; and
- No longer designate Moldova as an eligible country for the H-2A visa program because it no longer meets the regulatory standards for that program. Moldova's eligibility for the H-2A program remains effective until January 18, 2022.

Except for Moldova, the designations took effect November 10, 2021, and will remain in effect for one year, until November 10, 2022.

U.S. Citizenship and Immigration Services (USCIS) may approve H-2A and H-2B petitions for nationals of countries not on the list on a case-by-case basis if doing so is determined to be in the interest of the United States.

Details:

- USCIS alert (including the full list of countries), Nov. 9, 2021, https://www.uscis.gov/newsroom/alerts/dhs-announces-countries-eligible-for-h-2a-and-h-2b-visa-programs
- "Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H-2A and H-2B Nonimmigrant Worker Programs," 86 Fed. Reg. 62559 (Nov. 10, 2021), https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24534.pdf

Back to Top

DHS Announces Fee Exemptions, Streamlined Processing for Afghan Nationals Resettling in the United States

The Department of Homeland Security (DHS) announced on November 8, 2021,

that it will exempt filing fees and streamline application processing for Afghan nationals paroled into the United States for humanitarian reasons on or after July 30, 2021. DHS said these actions "will help facilitate their resettlement in the U.S. by streamlining the processing of requests for work authorization, Green Cards, and associated services."

DHS is the lead federal agency coordinating Operation Allies Welcome, the ongoing all-of-government effort to resettle Afghans who fled their country following the Taliban takeover, including those who worked on behalf of the United States. Approximately 70,000 Afghans have arrived in the United States as part of Operation Allies Welcome, DHS said. Following the "biggest airlift in U.S. history," DHS paroled many Afghan nationals, on a case-by-case basis, into the United States for urgent humanitarian reasons. DHS said that parolees may apply for work authorization using Form I-765, Application for Employment Authorization, on the basis of their parole. Afghan nationals can also apply for immigration benefits such as Afghan special immigrant status, lawful permanent residence, and asylum, the agency noted.

Details:

- DHS news release, Nov. 8, 2021, https://www.uscis.gov/newsroom/news-releases/dhs-announces-fee-exemptions-streamlined-processing-for-afghan-nationals-as-they-resettle-in-the-us
- Information for Afghans, USCIS, https://www.uscis.gov/humanitarian/information-for-afghans

Back to Top

EOIR Directs Public to Website for Updates in Response to COVID-19 Pandemic

The Department of Justice's Executive Office for Immigration Review (EOIR) announced that it is discontinuing issuance of formal documents reporting COVID-19 pandemic-related adjustments and protocols, and that its website will now be "the principal method of communication with the public" regarding such updates.

Details:

- EOIR memorandum, Nov. 8, 2021, https://www.justice.gov/eoir/book/file/1447111/download

- EOIR website, https://www.justice.gov/eoir

Back to Top

New USCIS Lockbox Facility in Illinois, More Filing Location Changes Planned for 2022

U.S. Citizenship and Immigration Services (USCIS) plans to open a new lockbox facility in Elgin, Illinois, next year. The agency also has consolidated filing locations for certain employment-based forms to a single lockbox location. In 2022, USCIS plans more filing location changes, including moving the lockbox facility in Arizona from Phoenix to Tempe.

Details:

- USCIS alert, Nov. 12, 2021, https://www.uscis.gov/newsroom/alerts/uscis-opening-a-new-lockbox-facility

Back to Top

Firm in the News

Cyrus Mehta spoke at the annual Advanced Corporate Immigration seminar on I-140/485 under the aegis of the New Jersey Institute for Continuing Legal Education on November 10, 2021.

Back to Top