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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - DECEMBER 13, 2021

Posted on December 13, 2021 by Cyrus Mehta

Headlines:

Labor Dept. Implements Court Order Vacating Prevailing Wage Final Rule – The vacated rule amended regulations governing the prevailing wages for employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based visas or through H-1B, H-1B1, or E-3 nonimmigrant visas.

USCIS Temporarily Waives 60-Day Rule for Civil Surgeon Signatures – USCIS is temporarily waiving, until September 30, 2022, the requirement that the civil surgeon sign Form I-693, Report of Medical Examination and Vaccination Record, no more than 60 days before an applicant files an application for the underlying immigration benefit.

Labor Dept. Provides Guidance on Employers' H-2B Visa Program Overtime Pay Obligations – The Department of Labor's Wage and Hour Division provided guidance on employers' overtime obligations related to the H-2B visa program.

USCIS Extends Transitional Parole for Certain CNMI Long-Term Resident Status Applicants – U.S. Citizenship and Immigration Services will automatically extend parole and employment authorization, if applicable, to current parolees who timely applied for Commonwealth of the Northern Mariana Islands long-term resident status and whose applications remain pending on December 30, 2021.

E-Verify Consolidates User Profile Screen – The consolidated elements include user profile information, updating/changing a password, and updating/changing password challenge questions and answers.

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Labor Dept. Implements Court Order Vacating Prevailing Wage Final Rule

The Department of Labor's Employment and Training Administration (ETA) published a final rule, effective December 13, 2021, implementing a federal district court order vacating a controversial January 14, 2021, final rule that was initially promulgated in October 2020. The rule amended ETA regulations governing the prevailing wages for employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based visas or through H-1B, H-1B1, or E-3 nonimmigrant visas.

The new final rule removes the regulatory text that DOL initially promulgated and restores the regulatory text to appear as it did before.

Details:

- "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States, Implementation of Vacatur," 86 Fed. Reg. 70729 (Dec. 13, 2021), https://bit.ly/3yg4s3k

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USCIS Temporarily Waives 60-Day Rule for Civil Surgeon Signatures

U.S. Citizenship and Immigration Services (USCIS) is temporarily waiving, until September 30, 2022, the requirement that the civil surgeon sign Form I-693, Report of Medical Examination and Vaccination Record, no more than 60 days before an applicant files an application for the underlying immigration benefit (including Form I-485, Application to Register Permanent Residence or Adjust Status).

USCIS said this temporary waiver "will help applicants who have been affected by the COVID-19 pandemic and related processing delays, which have sometimes caused delays in completing the immigration medical examination." The temporary waiver will benefit many applicants, USCIS noted, "including Afghan nationals evacuated under Operation Allies Welcome who have completed immigration medical examinations at government-run facilities but

were not able to apply for adjustment of status within 60 days of the completed examination."

Details:

- "Temporary Waiver of '60-Day Rule' for Report of Medical Examination and Vaccination Record (Form I-693)," USCIS Policy Alert, Dec. 9, 2021, https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211209-I-693FilingReqt.pdf

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Labor Dept. Provides Guidance on Employers' H-2B Visa Program Overtime Pay Obligations

The Department of Labor's Wage and Hour Division (WHD) disseminated a field assistance bulletin on December 7, 2021, providing enforcement guidance on employers' overtime obligations related to the H-2B visa program.

Among other things, the bulletin notes that the H-2B visa program does not mandate the payment of an overtime premium for hours worked exceeding a certain number in the day, week, or pay period. However, employers participating in the H-2B visa program are required by the Fair Labor Standards Act (FLSA) to pay an overtime premium of not less than one and one-half times the worker's regular rate of pay for hours worked exceeding 40 hours in a workweek. There are exemptions from the overtime requirements, WHD noted, but these exemptions do not usually apply to industries represented in the H-2B visa program. An employer who is employing workers who are exempt from the FLSA overtime requirements must still comply with any state or local laws requiring overtime pay, WHD said.

Details:

- Field Assistance Bulletin No. 2021-3, Wage and Hour Division, U.S. Dept. of Labor, Dec. 7, 2021, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2021_3.pdf

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USCIS Extends Transitional Parole for Certain CNMI Long-Term Resident Status Applicants

U.S. Citizenship and Immigration Services (USCIS) announced on December 8,

2021, that it will automatically extend parole and employment authorization, if applicable, to current parolees who timely applied for Commonwealth of the Northern Mariana Islands (CNMI) long-term resident status and whose applications remain pending on December 30, 2021.

Parole will be extended without interruption through June 30, 2022, or the date on which USCIS makes a final decision on their Forms I-955, Application for CNMI Long-Term Resident Status, and I-765, Application for Employment Authorization, whichever is earlier.

Details:

- USCIS alert, Dec. 8, 2021, https://www.uscis.gov/newsroom/alerts/uscis-extends-transitional-parole-for-cnmi-long-term-resident-status-applicants

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E-Verify Consolidates User Profile Screen

On December 7, 2021, E-Verify notified users via email that they can now view and complete several actions from a consolidated user profile screen, which "allows users to view all of their account information quickly and easily, without having to navigate to multiple pages."

The consolidated elements include user profile information, updating/changing a password, and updating/changing password challenge questions and answers.

Details:

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