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

IMMIGRATION UPDATE - MARCH 13, 2023

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Headlines:

USCIS Releases New Guidance, Resources for International Entrepreneurs – U.S. Citizenship and Immigration Services has issued comprehensive guidance on parole for international entrepreneurs, and new entrepreneur resources.

DHS Extends and Redesignates Somalia for TPS, Announces Student Relief – The Department of Homeland Security (DHS) plans to publish a Federal Register notice extending and redesignating Somalia for temporary protected status. DHS also announced special student relief for certain F-1 nonimmigrant Somali students.

USCIS Announces Premium Processing, New Online Filing Procedures for Certain F-1 Students Seeking OPT or STEM OPT Extensions – U.S. Citizenship and Immigration Services announced the expansion of premium processing for certain F-1 students seeking Optional Practical Training (OPT) and F-1 students seeking science, technology, engineering, and mathematics (STEM) OPT extensions who have a pending Form I-765, Application for Employment Authorization, and wish to request a premium processing upgrade.

DOL Releases FAQs on Final Rule Revising AEWR Methodology for H-2A Non-Range Occupations – The Department of Labor released frequently asked questions on a final rule published February 28, 2023, and effective March 30, 2023, revising the methodology by which it determines the hourly Adverse Effect Wage Rates for non-range agricultural occupations (i.e., all occupations other than herding and production of livestock on the range).

DHS Extends Enforcement Date for REAL ID – A new final rule extends the date for card-based enforcement of the REAL ID regulations to May 7, 2025. Beginning on that date, federal agencies are prohibited from accepting a state-

issued driver's license or identification card for official purposes unless it is REAL ID compliant and issued by a state that DHS has determined is in full compliance.

USCIS Issues Guidance on Mobile and Remote Biometrics Collection – U.S. Citizenship and Immigration Services issued policy guidance to address mobile biometrics collection and the biometrics collection of benefit requestors in remote locations.

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USCIS Releases New Guidance, Resources for International Entrepreneurs

U.S. Citizenship and Immigration Services (USCIS) has issued comprehensive guidance on parole for international entrepreneurs, and new entrepreneur resources.

Guidance

USCIS explained that the International Entrepreneur Rule, published in January 2017, provided a framework for the Department of Homeland Security to use its parole authority to grant a period of authorized stay, on a case-by-case basis, to noncitizen entrepreneurs who possess a substantial ownership interest in a start-up entity and who can demonstrate that their stay in the United States would provide a significant public benefit through that start-up entity's potential for rapid business growth and job creation.

USCIS said that after fully implementing the rule in 2021, it has received a growing number of applications and "continues to adjudicate them as expeditiously as possible." The agency has now published guidance in the *Policy Manual* that includes information about:

- The criteria for consideration for the applicant, the start-up entity, and the qualified investment or government award or grant;
- Evidence and documentation;
- The discretionary nature of the entrepreneur parole adjudication;
- Conditions on parole and bases for termination;
- The criteria for consideration for an additional parole period; and

- Options available to the entrepreneur's family to join the entrepreneur as parolees and, if eligible, to obtain employment authorization.

USCIS noted that although an individual who is paroled into the United States has not been admitted into the United States for purposes of immigration law, parolees may enter and remain in the United States and may be authorized to work.

New Resources

USCIS announced on March 9, 2023, that it has published additional online resources to provide an overview of some of the temporary and permanent pathways for noncitizen entrepreneurs to work in the United States. Included are "some of the most important immigration-related considerations for entrepreneurs contemplating starting or managing a business in the United States," USCIS said.

The new pages include:

- Options for Noncitizen Entrepreneurs to Work in the United States
- Nonimmigrant or Parole Pathways for Entrepreneur Employment in the United States
- Immigrant Pathways for Entrepreneur Employment in the United States

Details:

- "USCIS Provides Guidance on Program for International Entrepreneurs," USCIS alert (Mar. 10, 2023). https://www.uscis.gov/newsroom/alerts/uscis-provides-guidance-on-program-for-international-entrepreneurs
- International Entrepreneur Rule, 82 Fed. Reg. 5238 (Jan. 17, 2017). https://www.govinfo.gov/content/pkg/FR-2017-01-17/pdf/2017-00481.pdf
- "DHS Announces Continuation of International Entrepreneur Parole Program," USCIS news release (May 10, 2021). https://www.uscis.gov/news/news-releases/dhs-announces-continuation-of-international-entrepreneur-parole-program
- USCIS International Entrepreneur Parole page. https://www.uscis.gov/working-in-the-united-states/international-entrepreneur-parole
- USCIS Policy Manual, Part G—International Entrepreneur Parole.

https://www.uscis.gov/policy-manual/volume-3-part-g

- "New Entrepreneur Resources Available on USCIS Website," USCIS alert (March 9, 2023). https://www.uscis.gov/newsroom/alerts/new-entrepreneur-resources-available-on-uscis-website

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DHS Extends and Redesignates Somalia for TPS, Announces Student Relief

The Department of Homeland Security (DHS) plans to publish a Federal Register notice on March 13, 2023, extending and redesignating Somalia for temporary protected status (TPS). DHS also announced special student relief for certain F-1 nonimmigrant Somali students.

TPS Extension

The extension of Somalia TPS is for 18 months, from March 18, 2023, through September 17, 2024. Current beneficiaries under TPS for Somalia must re-register in a timely manner during the 60-day re-registration period from March 13, 2023, through May 9, 2023, to ensure they keep their TPS and work authorization.

All individuals who want to request TPS under Somalia's designation must apply, DHS said. Re-registration is limited to individuals who previously registered for and were granted TPS under Somalia's prior designation. DHS said it recognizes that not all re-registrants may receive a new employment authorization document (EAD) before their current EAD expires and is automatically extending through March 17, 2024, the validity of certain EADs previously issued under Somalia's TPS designation. U.S. Citizenship and Immigration Services will continue to process pending applications filed under Somalia's previous TPS designation.

TPS Redesignation

Under the redesignation of Somalia, eligible individuals who do not have TPS may submit an initial Form I-821, Application for Temporary Protected Status, during the initial registration period that runs from March 13, 2023, through September 17, 2024. Applicants may also apply for TPS-related EADs and for travel authorization. Applicants can request an EAD by submitting a completed Form I-765, Application for Employment Authorization, with their

Form I-821, or separately later, DHS said.

Special Student Relief

Effective March 18, 2023, through September 17, 2024, DHS is also suspending certain regulatory requirements for F-1 nonimmigrant students whose country of citizenship is Somalia, regardless of country of birth (or individuals having no nationality who last habitually resided in Somalia), and who are experiencing severe economic hardship as a direct result of the current crisis in Somalia. DHS said it is taking action to provide relief to these Somali students who are lawful F-1 nonimmigrant students "so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F-1 nonimmigrant student status."

DHS will deem an F-1 nonimmigrant student granted employment authorization by means of the notice to be engaged in a "full course of study" for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in the notice.

Details:

- DHS news release (Mar. 10, 2023). https://www.uscis.gov/newsroom/news-releases/dhs-publishes-federal-register-notice-extending-and-redesignating-somalia-for-temporary-protected
- DHS notice of TPS extension and redesignation (advance copy), 88 Fed. Reg. 15434 (Mar. 13, 2023). https://www.govinfo.gov/content/pkg/FR-2023-03-13/pdf/2023-04735.pdf
- DHS notice of employment authorization for Somali students (advance copy), 88 Fed. Reg. 15427 (Mar. 13, 2023). https://www.govinfo.gov/content/pkg/FR-2023-03-13/pdf/2023-04737.pdf

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USCIS Announces Premium Processing, New Online Filing Procedures for Certain F-1 Students Seeking OPT or STEM OPT Extensions

On March 6, 2023, U.S. Citizenship and Immigration Services (USCIS) announced the expansion of premium processing for certain F-1 students seeking Optional Practical Training (OPT) and F-1 students seeking science, technology,

engineering, and mathematics (STEM) OPT extensions who have a pending Form I-765, Application for Employment Authorization, and wish to request a premium processing upgrade.

Online filing of Form I-907, Request for Premium Processing Service, is now also available to
F-1 students in these categories. USCIS continues to accept the latest paper version of this form by mail. Premium processing expansion for certain F-1 students will occur in phases, and students requesting premium processing should not file before these dates:

- **Beginning March 6**, USCIS now accepts Form I-907 requests, filed either via paper form or online, for certain F-1 students who already have a **pending** Form I-765, Application for Employment Authorization, if they are filing under one of the following categories:
  - (c)(3)(A)—Pre-Completion OPT
  - (c)(3)(B)—Post-Completion OPT
  - (c)(3)(C)—24-Month Extension of OPT for STEM students
- **Beginning April 3**, USCIS will accept Form I-907 requests, filed either via paper form or online, for F-1 students in the above categories **when filed together with Form I-765**.

Details:

- USCIS news release (Mar. 6, 2023). https://www.uscis.gov/newsroom/news-releases/uscis-announces-premium-processing-new-online-filing-procedures-for-certain-f-1-students-seeking-opt

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DOL Releases FAQs on Final Rule Revising AEWR Methodology for H-2A Non-Range Occupations

The Department of Labor (DOL) released frequently asked questions (FAQs) on a final rule published February 28, 2023, and effective March 30, 2023, revising the methodology by which it determines the hourly Adverse Effect Wage Rates (AEWRs) for non-range agricultural occupations (i.e., all occupations other than herding and production of livestock on the range).

The FAQs note, among other things, that:

- OFLC encourages employers to monitor each of the wage sources that affect their H-2A wage obligation from the time of job order submission (or signing a work contract) until the last date an H-2A agricultural worker or worker in corresponding employment is employed under the H-2A job order "to ensure that they are in compliance with the obligation to offer, advertise, and pay workers a wage rate that is at least equal to the highest rate among the sources at all times."
- Any adjustment to an AEWR applicable to an employer's job opportunity, based on the Standard Occupational Classification (SOC) code(s) assigned to the job opportunity before certification, may affect the employer's wage obligations during the work contract period. "Whether an employer's H-2A program certification was adjudicated using the 2010 AEWR methodology or the 2023 AEWR methodology, the employer's wage obligation during the work contract period, including any extension granted, is subject to increase if the OFLC Administrator publishes an adjusted AEWR during the work contract period and the new AEWR is higher than the approved wage rate listed on the employer's job order and/or work contract," OFLC said.
- An employer must pay H-2A workers and workers in corresponding employment at least the certified wage rate throughout the work contract period. The FAQ notes that DOL's H-2A regulations "prohibit contract terms that would decrease the wage paid in the event an adjusted AEWR or prevailing wage rate is lower than the offered rate."

Details:

- DOL Final Rule, 88 Fed. Reg. 12760 (Feb. 28, 2023). https://www.govinfo.gov/content/pkg/FR-2023-02-28/pdf/2023-03756.pdf
- OFLC FAQs (Mar. 9, 2023). https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2023-AEWR-Final-Rule-FAQs_implementation_FINAL.pdf

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DHS Extends Enforcement Date for REAL ID

On May 3, 2021, the Department of Homeland Security (DHS) published an interim final rule extending the REAL ID card-based enforcement deadline to May 3, 2023. A new final rule published March 9, 2023, further extends the date

for card-based enforcement of the REAL ID regulations to May 7, 2025. Beginning on that date, federal agencies cannot accept a state-issued driver's license or identification card for official purposes unless it is REAL ID compliant and issued by a state that DHS has determined is in full compliance.

Current regulations also permit federal agencies to accept noncompliant driver's licenses and identification cards for official purposes until May 2, 2023. The final rule also extends that date, authorizing federal agencies to continue to accept noncompliant driver's licenses and identification cards for official purposes until May 6, 2025.

Details:

- DHS final rule, 88 Fed. Reg. 14473 (Mar. 9, 2023). https://www.govinfo.gov/content/pkg/FR-2023-03-09/pdf/2023-04496.pdf

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USCIS Issues Guidance on Mobile and Remote Biometrics Collection

U.S. Citizenship and Immigration Services (USCIS) issued policy guidance on March 7, 2023, to address mobile biometrics collection and the biometrics collection of benefit requestors in remote locations.

USCIS said the guidance is intended for benefit requestors who may be unable to attend appointments at USCIS Application Support Centers (ASC) due to health or other issues, or because their physical location requires multiple modes of transportation or substantial travel times to reach an ASC, where USCIS generally collects biometrics. The policy provides for circumstances under which USCIS may conduct mobile biometrics collection for benefit requestors who reside in remote locations in relation to ASCs, and provides an alternative method to fingerprint collection, to include fingerprint cards and coordination with other agencies, for certain benefit requestors who live in locations so remote that USCIS mobile biometric services would not be practical, the agency said.

Details:

- USCIS policy alert (PA-2023-06) (Mar. 7, 2023). https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230307-MobileBiometrics.pdf

- "USCIS Updates Policy Guidance on Mobile Biometrics Services" (Mar. 7, 2023). https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-guidance-on-mobile-biometrics-services
- USCIS Policy Manual, Chapter 2—Biometrics Collection. https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2

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