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

IMMIGRATION UPDATE – MAY 22, 2023

Posted on May 22, 2023 by Cyrus Mehta

Headlines:

Biden Administration Publishes Final Rule on Asylum Ineligibility, Seeks Comments – The Departments of Homeland Security and Justice published a final rule, "Circumvention of Lawful Pathways," effective May 11, 2023.

USCIS Updates Review Process for Cubans, Haitians, Nicaraguans, and Venezuelans – U.S. Citizenship and Immigration Services (USCIS) announced an updated process for granting advance travel authorization for up to 30,000 noncitizen Cubans, Haitians, Nicaraguans, and Venezuelans each month to come to the United States to seek parole on a case-by-case basis. USCIS said that due to high interest, it updated the review process effective May 17, 2023.

OFLC Releases Program Statistics, Data, H-2B Labor Recruiter List – The Department of Labor's Office of Foreign Labor Certification has released public disclosure data and selected program statistics, and updated its H-2B labor recruiter list.

EOIR Announces 19 New Immigration Judges – The Department of Justice's Executive Office for Immigration Review announced the appointment of 19 immigration judges, including one assistant chief immigration judge, to immigration courts in Arizona, California, Illinois, Louisiana, Massachusetts, New York, and Texas.

Firm in the News

Details:

Biden Administration Publishes Final Rule on Asylum Ineligibility, Seeks Comments

On May 16, 2023, the Departments of Homeland Security (DHS) and Justice

(DOJ) published a final rule released on May 10, 2023, "Circumvention of Lawful Pathways," which was effective May 11, 2023. The rule introduces a rebuttable presumption of asylum ineligibility for "certain noncitizens who neither avail themselves of a lawful, safe, and orderly pathway to the United States nor seek asylum or other protection in a country through which they travel." The rule applies "only to those who enter during a limited, specified date range at the southwest land border or adjacent coastal borders."

The Departments request comments by June 15, 2023, on whether the rebuttable presumption should extend to noncitizens who enter the United States at a maritime border without documents during the same temporary time period.

Details:

- "Circumvention of Lawful Pathways," joint DHS-DOJ final rule, 88 Fed. Reg. 31314 (May 16, 2023). https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10146.pdf

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USCIS Updates Review Process for Cubans, Haitians, Nicaraguans, and Venezuelans

On May 18, 2023, U.S. Citizenship and Immigration Services (USCIS) announced an updated process for granting advance travel authorization for up to 30,000 noncitizen Cubans, Haitians, Nicaraguans, and Venezuelans each month to come to the United States to seek parole on a case-by-case basis. USCIS said that due to high interest, it updated the review process effective May 17, 2023.

USCIS noted that the number of supporters who have submitted Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, is "significantly higher than the 30,000 monthly travel authorizations available." Under the new review process, USCIS will randomly select about half of the monthly total, regardless of filing date, from the entire pending workload of Forms I-134A to determine whether the case can be confirmed. USCIS will review the other half of the monthly total of Forms I-134A "based on when the case was submitted under the first-in, first-out method, which prioritizes the oldest Forms I-134A for review."

Details:

- USCIS alert (May 18, 2023). https://www.uscis.gov/newsroom/alerts/uscis-updates-review-process-for-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans

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OFLC Releases Program Statistics, Data, H-2B Labor Recruiter List

The Department of Labor's Office of Foreign Labor Certification (OFLC) has released public disclosure data and selected program statistics, and updated its H-2B labor recruiter list:

Statistics/Data

The public disclosure data and program statistics were drawn from employer applications requesting prevailing wage determinations and labor certifications for the PERM, LCA (H-1B, H-1B1, E-3), H-2A, H-2B, CW-1, and Prevailing Wage programs. The public disclosure files include all final determinations OFLC issued for these programs during the October 1, 2022, through March 31, 2023, reporting period of fiscal year 2023. OFLC has also released selected program statistics for the first quarter of fiscal year 2023 for the PERM, LCA (H-1B, H-1B1, E-3), H-2A, H-2B, CW-1, and Prevailing Wage programs.

H-2B Labor Recruiter List

The updated list of foreign labor recruiters for the H-2B program includes the name and location of persons or entities identified on Appendix C of the Form ETA-9142B that were hired by, or working for, the recruiter that employers have indicated they engaged, or planned to engage, in the recruitment of prospective H-2B workers to perform the work described on their H-2B applications. The H-2B Foreign Labor Recruiter List includes only those names and locations associated with H-2B applications that were processed or issued a final decision during October 1, 2022, through March 31, 2023.

Details:

- OFLC announcement. https://www.dol.gov/agencies/eta/foreign-labor (scroll to May 15, 2023).

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EOIR Announces 19 New Immigration Judges

On May 12, 2023, the Department of Justice's Executive Office for Immigration Review (EOIR) announced the appointment of 19 immigration judges, including one assistant chief immigration judge, to immigration courts in Arizona, California, Illinois, Louisiana, Massachusetts, New York, and Texas.

Attorney General Merrick B. Garland appointed Rhana Ishimoto as an assistant chief immigration judge and the following individuals as immigration judges: Maria T. Baldini-Potermin, Vicenta I. Banuelos-Rodriguez, Patrick D. Barrett, Elisa C. Brasil, Yul-mi Cho, Roger H. Dinh, Colin P. Eichenberger, Gabrielle D. Jones, Hannah B. Kubica, Kalenna Lee, Katie G. Mullins, Angela Munro, Nicolas Orechwa, Adrian N. Roe, Lucero M. Saldana Mistry, Jacob J. Stender, Abdias E. Tida, and Jami L. Vigil.

Individuals interested in these positions are invited to sign up for job alerts that are sent when new immigration judge job opportunities become available.

Details:

- EOIR notice (includes biographical information on each appointee) (May 12, 2023). https://tinyurl.com/yskxjs7j

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Firm in the News

Cyrus Mehta was an invited speaker at the 2023 Upper Midwest Immigration Law Conference via Zoom where he spoke on a panel entitled “Tough EB Issues for Even the Most Seasoned Practitioners” on May 19, 2023.