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

IMMIGRATION UPDATE - OCTOBER 30, 2023

Posted on October 30, 2023 by Cyrus Mehta

Headlines:

Certain Renewal Applicants for Work Authorization Qualify for Automatic 180-Day Extension – U.S. Citizenship and Immigration Services announced that certain renewal applicants who have filed Form I-765, Application for Employment Authorization, qualify for an automatic extension of their expiring work authorization and/or employment authorization documents while their renewal applications are pending.

Texas Service Center Is New Filing Location for H-2A, H-2B, and Certain CNMI Petitions as of November 1 – Beginning November 1, 2023, all H-2A, H-2B, Commonwealth of the Northern Mariana Islands (CNMI)-related Form I-129 petitions, Form I-129CW petitions, and CNMI-related Form I-539 applications must be filed directly with the Texas Service Center.

USCIS Updates Guidance on EB-5 Regional Center Program – U.S. Citizenship and Immigration Services is updating the USCIS Policy Manual with new guidance on the EB-5 Regional Center Program and new content on regional center designation and obligations, project applications, and direct and third-party promoters.

USCIS Issues Guidance on 2-Year Foreign Residence Requirement for J Nonimmigrants – The update adds information about how U.S. Citizenship and Immigration Services determines whether the requirement has been met, the evidence a benefit requestor may submit to show compliance with the requirement, and how USCIS considers situations in which it is effectively impossible for the benefit requestor to satisfy the requirement. It also corrects an omission from existing Policy Manual content concerning one of the grounds for waiving the foreign residence requirement for certain foreign medical graduates.

USCIS Allows Additional 30 Days for Comments on E-Verify NextGen and Revisions to E-Verify – U.S. Citizenship and Immigration Services is allowing 30 additional days for public comments on several information collection notices related to E-Verify.

Reminder to Employers: Use New I-9 Form as of November 1 – The Citizenship and Immigration Services (CIS) Ombudsman emailed a reminder to employers to use the revised Form I-9, Employment Eligibility Verification, with the edition date 08/01/23, starting November 1, 2023.

Firm in the News

Details:

Certain Renewal Applicants for Work Authorization Qualify for Automatic 180-Day Extension

U.S. Citizenship and Immigration Services (USCIS) announced that certain renewal applicants who have filed Form I-765, Application for Employment Authorization, qualify for an automatic extension of their expiring work authorization and/or employment authorization documents (EADs) while their renewal applications are pending. As of October 27, 2023, those who are eligible "will receive 180-day extensions in accordance with existing regulations, including those who have applied for or have received Temporary Protected Status or asylum," USCIS said.

The agency noted that in May 2022, it announced a temporary final rule (TFR) that increased the automatic extension period for EADs available to certain EAD renewal applicants from up to 180 days to up to 540 days. This new change is not retroactive, USCIS said; "all previous up to 540-day automatic extensions will remain in place."

USCIS said it is determining whether there is a need for a new regulatory action similar to the May 2022 TFR.

As announced in the 2022 TFR, automatic extensions of employment authorization and EAD validity will be the original up to 180-day period for eligible applicants who timely file a Form I-765 renewal application on or after October 27, 2023. For those who received an increased automatic extension period under the TFR, the increased automatic extension will end when they receive a final decision on their renewal application or when the up to 540-day

period expires (counted from the expiration date of the employment authorization and/or their EAD), whichever comes earlier.

USCIS also recently published a Policy Manual update increasing the maximum EAD validity period to five years for initial and renewal applications approved on or after September 27, 2023, for the following categories:

- Certain noncitizens who are employment-authorized incident to status or circumstance, including those admitted as refugees, paroled as refugees, or granted asylum, and recipients of withholding of removal; and
- Certain noncitizens who must apply for employment authorization, including applicants for asylum and withholding of removal, adjustment of status, and suspension of deportation or cancellation of removal.

Details:

- USCIS alert (Oct. 27, 2023).
- USCIS Automatic Employment Authorization Document Extension page (updated Oct. 27, 2023).

Back to Top

Texas Service Center Is New Filing Location for H-2A, H-2B, and Certain CNMI Petitions as of November 1

U.S. Citizenship and Immigration Services (USCIS) announced that beginning November 1, 2023, all H-2A, H-2B, Commonwealth of the Northern Mariana Islands (CNMI)-related Form I-129 petitions, Form I-129CW petitions, and CNMI-related Form I-539 applications must be filed directly with the Texas Service Center.

USCIS said there will be a 60-day grace period for forms filed at the California Service Center (CSC) or Vermont Service Center (VSC) during which misdirected forms will not be rejected. After the 60-day grace period ends, USCIS will reject these petitions and applications if they are filed at the CSC or VSC. USCIS also will reject any such petitions and applications if they are received at the Texas Service Center before November 1, 2023.

The notice includes the addresses where each type of petition or application should be mailed.

Details:

- USCIS alert (Oct. 27, 2023).

Back to Top

USCIS Updates Guidance on EB-5 Regional Center Program

U.S. Citizenship and Immigration Services (USCIS) announced on October 26, 2023, that it is "updating the USCIS Policy Manual with new guidance on the EB-5 Regional Center Program and new content on regional center designation and obligations, project applications, and direct and third-party promoters."

USCIS said the update incorporates changes from the EB-5 Reform and Integrity Act of 2022 into the Policy Manual, building on an initial update that incorporated such changes on October 6, 2022.

Among other things, USCIS reorganized Part G, Volume 6, updated the chapter on adjudication of investor petitions for classification, and added new content on regional center designations and obligations, project applications, and direct and third-party promoters, including registration. USCIS said further updates to EB-5 guidance in the Policy Manual are forthcoming, and will include revisions to Chapter 5, Removal of Conditions.

USCIS said the new guidance "is effective immediately and is controlling, and supersedes any related prior guidance."

Details:

- USCIS alert (Oct. 26, 2023).

Back to Top

USCIS Issues Guidance on 2-Year Foreign Residence Requirement for J Nonimmigrants

Effective October 24, 2023, U.S. Citizenship and Immigration Services (USCIS) has issued policy guidance regarding the 2-year foreign residence requirement for the J nonimmigrant exchange visitor classification.

The update adds information about how USCIS determines whether the requirement has been met, the evidence a benefit requestor may submit to show compliance with the requirement, and how USCIS considers situations in which it is effectively impossible for the benefit requestor to satisfy the requirement. It also corrects an omission from existing Policy Manual content

concerning one of the grounds for waiving the foreign residence requirement for certain foreign medical graduates. The update includes the ground and clarifies employment requirements.

Specifically, the update:

- Clarifies that USCIS determines whether the exchange visitor has met the 2-year foreign residence requirement within the context of a subsequent application or petition under the preponderance of the evidence standard.
- Explains that a travel day, where a fraction of the day is spent in the country of nationality or last residence, counts toward satisfaction of the 2-year foreign residence requirement.
- Provides that USCIS considers situations in which it is impossible for the benefit requestor to satisfy the 2-year foreign residence requirement on a case-by-case basis, and that USCIS consults with the Department of State in this situation.
- Clarifies the three exceptions to the requirement that a foreign medical graduate obtain a contract from a health care facility in an underserved area when seeking a waiver of the 2-year foreign residence requirement.

Feedback on this update can be emailed to USCIS at policyfeedback@uscis.dhs.gov.

Details:

- USCIS alert (Oct. 24, 2023).
- USCIS Policy Alert, PA-2023-30 (Oct. 24, 2023).

Back to Top

USCIS Allows Additional 30 Days for Comments on E-Verify NextGen and Revisions to E-Verify

U.S. Citizenship and Immigration Services (USCIS) is allowing 30 additional days for public comments on several information collection notices related to E-Verify.

USCIS is allowing until November 27, 2023, for public comments on **E-Verify NextGen**. The information collection notice was previously published in June, allowing for a 60-day public comment period. USCIS received six comments in

connection with the 60-day notice.

E-Verify NextGen, I–9NG, "was developed as a demonstration project to further integrate the Form I-9, Employment Eligibility Verification, process with the E-Verify electronic employment eligibility confirmation process to create a more secure and less burdensome employment eligibility verification process overall for employees and employers," USCIS said.

USCIS is allowing until November 24, 2023, for public comments on **proposed revisions to the E-Verify program**. That notice was previously published in June also, allowing for a 60-day public comment period. USCIS received two comments.

Details:

- USCIS notice (E-Verify NextGen), 88 Fed. Reg. 73610 (Oct. 26, 2023).
- USCIS notice (E-Verify), 88 Fed. Reg. 73351 (Oct. 25, 2023).

Back to Top

Reminder to Employers: Use New I-9 Form as of November 1

The Citizenship and Immigration Services (CIS) Ombudsman reminded employers to use the revised Form I-9, Employment Eligibility Verification, with the edition date 08/01/23, starting November 1, 2023.

The updated Form I-9 reflects the option for eligible employers to verify employment eligibility remotely. The CIS Ombudsman said the revised edition is available now, and starting November 1, all previous versions will no longer be accepted. "If you do not use the 8/01/23 edition of Form I-9, you may be subject to penalties," the CIS Ombudsman warned.

Back to Top

Firm in the News

Cyrus Mehta was quoted by Law360 in DHS Rule To Thwart H-1B Visa Lottery Abuse Earns Praise Mr. Mehta said he was concerned about an element of the proposed rule that would add language to further define what constitutes a specialty occupation. He said that provision could unfairly exclude some foreign workers with MBAs from getting H-1B visas. Under the proposed rule, he said, an MBA degree-holder offered a job in marketing or finance, for example, would need to prove that the degree was specialized in those areas.

"Undoubtedly there are MBA degrees where you can show that your coursework or whatever was in finance or marketing, but I don't see why a business administration degree has been singled out as generalized as opposed to a law degree or a medical degree," he said.

Back to Top