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

IMMIGRATION UPDATE - FEBRUARY 21, 2024

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Headlines:

Mayorkas Impeached; Conviction in Senate Seems Unlikely – After a previous failed attempt to impeach Secretary of Homeland Security Alejandro Mayorkas, Republicans in the House of Representatives succeeded in impeaching Mr. Mayorkas on February 13. Conviction in the Senate seems highly unlikely.

President Orders Deferred Enforced Departure for Palestinians in the United States – On February 14, 2024, President Biden directed the Secretary of Homeland Security to grant Deferred Enforced Departure to Palestinians in the United States for 18 months, with some exceptions.

ETA Extends Comment Period for Responses to PERM Schedule A Request for Information – ETA said it has received "a very limited number of comments, only a few of which have responded to the questions posed in the RFI." The public comment period has been extended to May 13, 2024.

CIS Ombudsman Releases Tips on How to Avoid Getting Locked Out of Your USCIS Account – The tips include how to create a strong password, the importance of logging in regularly to maintain access, what to do when locked out, how to reset a password, security considerations, and how USCIS's Technical Help Desk works to assist with account access.

ETA Updates Allowable Charges for Agricultural Workers' Meals and for Travel Reimbursement, Including Lodging – The Employment and Training Administration announced updates to the allowable monetary charges that employers of H-2A workers, in occupations other than herding or production of livestock on the range, may charge workers when the employer provides three meals per day. The annual notice also announced the maximum travel

subsistence meal reimbursement a worker with receipts may claim under the H-2A and H-2B programs, and reminded employers of their obligations concerning overnight lodging costs as part of required subsistence.

Details:

Mayorkas Impeached; Conviction in Senate Seems Unlikely

After a previous failed attempt to impeach Secretary of Homeland Security Alejandro Mayorkas on February 6, 2024, Republicans in the House of Representatives succeeded in impeaching Mr. Mayorkas on February 13 with a vote of 214-213. Republicans accused Mr. Mayorkas of failing to maintain operational control of the border, among other things.

The Senate will next consider the articles of impeachment after February 26, 2024, when they return. The Senate has a variety of options, including voting to dismiss, acquit, or convict Mr. Mayorkas, among other things. Conviction, which would require a two-thirds majority vote, is considered highly unlikely. A vote to dismiss, by contrast, would need just a simple majority. Sen. James Lankford (R-OK) said the impeachment effort would be "dead on arrival" in the Senate.

Reaction from immigration advocates was sharp. American Immigration Lawyers Association (AILA) Executive Director Ben Johnson called the impeachment effort "politically motivated." He said, "The accusations that Secretary Mayorkas breached 'public trust' continue to ring hollow given he was implementing policy as Cabinet Secretaries have done throughout American history," and "eaponizing the impeachment process is both unconstitutional and dangerous for the future of a functioning government." Jeremy Robbins, executive director of the American Immigration Council, said, "All this political grandstanding around Mayorkas does absolutely nothing to address our challenges at the border."

Details:

- Senate Looks to Quickly Reject Mayorkas Impeachment Charges in Speedy Trial, New York Times (Feb. 14, 2024).
- Articles of impeachment and related press releases.
- Constitutional Law Experts on the Impeachment Proceedings Against Secretary of Homeland Security Alejandro Mayorkas (Jan. 10, 2024).
- House Republicans Vote to Impeach Department of Homeland Security

Secretary, American Immigration Lawyers Association and American Immigration Council (joint press release) (Feb. 14, 2024.

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President Orders Deferred Enforced Departure for Palestinians in the United States

On February 14, 2024, President Biden directed the Secretary of Homeland Security to grant Deferred Enforced Departure (DED) to Palestinians in the United States for 18 months, with some exceptions. He further directed the Secretary to authorize employment for Palestinian noncitizens whose removal has been deferred for the duration of such deferral, and "to consider suspending regulatory requirements with respect to F-1 nonimmigrant students who are Palestinians." The Biden administration said it is taking these actions to give Palestinians in the United States a "temporary safe haven" due to deteriorating humanitarian conditions in Gaza.

The memorandum lists exceptions to DED for Palestinians, including those who have not continuously resided in the United States since February 14, 2024, who have voluntarily returned to the Palestinian territories after that date, who are inadmissible under certain provisions of U.S. immigration law or subject to extradition, who have been convicted of any felony or two or more misdemeanors committed in the United States, or who the Secretary deems a danger to public safety.

According to reports, about 6,000 Palestinians are eligible for DED under the memorandum.

Details:

- Memorandum on the Deferred Enforced Departure for Certain Palestinians, White House (Feb. 14, 2024).
- Statement From National Security Advisor Jake Sullivan on Deferred Enforced Departure for Palestinians, White House (Feb. 14, 2024).
- Biden Shields Palestinians in the U.S. From Deportation, New York Times (Feb. 14, 2024).

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ETA Extends Comment Period for Responses to PERM Schedule A Request for Information

The Department of Labor's Employment and Training Administration (ETA) has extended the comment period for responses to its PERM Schedule A Request for Information (RFI). ETA said it has received "a very limited number of comments, only a few of which have responded to the questions posed in the RFI." The public comment period was set to conclude on February 20, 2024, but has been extended to May 13, 2024.

As background, on December 21, 2023, ETA published the RFI, soliciting public input on potential revisions to Schedule A of the permanent labor certification process to include occupations in science, technology, engineering, and mathematics (STEM), including artificial intelligence-related occupations and non-STEM occupations, for which there may be an insufficient number of ready, willing, able, and qualified U.S. workers.

Details:

- Employment and Training Administration Extends Comment Period for Stakeholders to Respond to PERM Schedule A Request for Information (Feb. 15, 2024).

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CIS Ombudsman Releases Tips on How to Avoid Getting Locked Out of Your USCIS Account

On February 14, 2024, the Office of the Citizenship and Immigration Services (CIS) Ombudsman released a tip sheet on how people with individual U.S. Citizenship and Immigration Services (USCIS) online accounts can maintain access and avoid getting locked out of their accounts.

The tips include how to create a strong password, the importance of logging in regularly to maintain access (the tip sheet suggests "once a month or once every few months"), what to do when locked out, how to reset a password, security considerations, and how USCIS's Technical Help Desk works to assist with account access.

Details:

- New Tip Sheet on How to Avoid Getting Locked Out of Your USCIS

Account, Department of Homeland Security (Feb. 14, 2024).
- Tip sheet (PDF) (DHS) (Feb. 14, 2024).

ETA Updates Allowable Charges for Agricultural Workers' Meals and for Travel Reimbursement, Including Lodging

On February 13, 2024, the Department of Labor's Employment and Training Administration (ETA) announced updates to the allowable monetary charges that employers of H-2A temporary agricultural workers, in occupations other than herding or production of livestock on the range, may charge workers when the employer provides three meals per day. The annual notice also announced the maximum travel subsistence meal reimbursement a worker with receipts may claim under the H-2A and H-2B temporary nonagricultural programs, and reminded employers of their obligations with respect to overnight lodging costs as part of required subsistence.

The notice provides that:

- The updated maximum allowable charge has increased from $15.46 to $15.88 per day, unless the Office of Foreign Labor Certification's Certifying Officer approves a higher charge.
- The standard meals-and-incidental-expenses (M&IE) rate is $59 per day for 2024. Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the standard M&IE rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may limit the meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals, or $44.25, based on the General Services Administration's per diem schedule.

Details:

- ETA notice, 89 Fed. Reg. 10101 (Feb. 13, 2024).