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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 15,2024

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Headlines

Expansion of Schedule A, Group II Definition to Support STEM Talent – The U.S. Citizenship and Immigration Services has expanded the "science or art" categories within Schedule A, Group II to include any field of knowledge or skill for which colleges and universities commonly offer courses leading to a degree.

New Audit Measures for EB-5 Regional Centers – The U.S. Citizenship and Immigration Services has announced new audit measures under the EB-5 Reform and Integrity Act of 2022, affecting all designated regional centers.

Employment Authorization Granted to Eligible Palestinians Under DED – Effective immediately, Palestinians covered by Deferred Enforced Departure are eligible to apply for work permits valid through August 13, 2025.

Details:

Expansion of Schedule A, Group II Definition to Support STEM Talent

In a significant development for employers and individuals involved in the STEM fields, the U.S. Citizenship and Immigration Services (USCIS) has announced an update to the definition of "Schedule A, Group II" occupations, which is part of the agency's efforts to align more closely with the Department of Labor (DOL) definitions and streamline the permanent residency application process for high-achieving employees. This clarification, as outlined in the latest policy guidance from USCIS, expands the "science or art" categories within Schedule A, Group II, to include any field of knowledge or skill for which colleges and universities commonly offer courses leading to a degree. This change, effective immediately, is designed to enhance the utility of the Schedule A, Group II designation for employers sponsoring employees for permanent residency, particularly in sectors experiencing a shortage of

qualified U.S. workers.

The updated policy now explicitly incorporates the DOL's definition of "sciences or arts," covering a broader range of occupations than previously eligible. This means that occupations in any field that commonly lead to a degree from higher education institutions, and that demonstrate exceptional ability, are now encompassed under the Schedule A, Group II designation. Importantly, this designation waives the labor market test requirement for EB-2 or EB-3 permanent residency sponsorship applications, facilitating a more efficient pathway to permanent residency for eligible employees. This policy update reflects the current administration's commitment to retaining STEM talent within the United States and underscores the agency’s ongoing efforts to make the immigration process more accommodating for individuals with exceptional abilities in the sciences and arts.

Details:

- USCIS alert (Apr. 10, 2024).

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New Audit Measures for EB-5 Regional Centers

The U.S. Citizenship and Immigration Services (USCIS) has announced new audit measures under the EB-5 Reform and Integrity Act of 2022, affecting all designated regional centers. Under the 2022 law, USCIS must conduct audits at least once every five years for each regional center. These audits are comprehensive, including a review of necessary documentation maintained by the regional centers and the flow of immigrant investor capital into their projects. This initiative aims to reinforce the credibility and reliability of the EB-5 program by verifying the accuracy of information provided in the regional center applications, annual certifications, and related investor petitions.

In terms of procedure, USCIS will implement audits based on the Generally Accepted Government Auditing Standard, starting April 23. This will provide a standardized approach to assess the regional centers' compliance with laws and their eligibility for continued designation. It's important for regional centers to understand that non-compliance during these audits, such as refusing a site visit or attempting to impede the audit process, may lead to termination of their designation. However, adverse findings from an audit do not

automatically affect the status of EB-5 associated entities or petitioners unless they directly involve non-compliance or eligibility issues.

USCIS has created a website with additional resources for regional centers, including how to prepare for an audit, participating in an audit, and more.

Details:

- USCIS Alert (Apr. 9, 2024).
- EB-5 Regional Center Audits (Apr. 9, 2024)

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Employment Authorization Granted to Eligible Palestinians under DED

U.S. Citizenship and Immigration Services (USCIS) has issued a significant update for Palestinians in the United States, as detailed in a recent Federal Register notice. Effective immediately, Palestinians covered by Deferred Enforced Departure (DED) are eligible to apply for Employment Authorization Documents (EADs) valid through August 13, 2025. This follows a memorandum issued by President Biden on February 14, 2024, which defers the removal of certain Palestinians present in the U.S. from the time of the announcement through August 13,2025. The memorandum directs the Department of Homeland Security to implement measures facilitating work authorization for eligible Palestinians and excludes individuals who entered the U.S. after February 14, 2024 from DED eligibility. Applicants will need to provide acceptable documentation, such as a Palestinian Authority passport or identification card, to support their applications.

Additionally, the announcement includes provisions for Special Student Relief for Palestinian F-1 nonimmigrant students, allowing them to request employment authorization, work more hours during the school session, and reduce their course load while maintaining their F-1 status. These measures aim to assist Palestinians in maintaining economic stability and educational pursuits during their stay in the U.S. under DED. USCIS has committed to adjudicating each EAD application on a case-by-case basis, ensuring a fair, humane, and efficient process.

Details:

- USCIS notice (Apr. 12, 2024).

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