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

IMMIGRATION UPDATE - JULY 22, 2024

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Headlines:

DOS Clarifies Guidance on Easing the Nonimmigrant Visa Process for College Graduates – On June 18, 2024, the Biden administration announced actions to more efficiently process employment-based nonimmigrant visas for those who have graduated from college in the United States and have a job offer. As part of this initiative, the Department of State clarified existing guidance to consular officers related to when they should consider recommending that the Department of Homeland Security grant a waiver of ineligibility, where applicable.

USCIS Issues New Policy Guidance on Noncompliance With EB-5 Regional Center Program – U.S. Citizenship and Immigration Services has issued policy guidance, effective immediately, on new provisions in the Immigration and Nationality Act that cover consequences for noncompliance with the EB-5 immigrant investor regional center program.

USCIS Publishes FAQs on H-1B Nonimmigrant Status – U.S. Citizenship and Immigration Services released frequently asked questions that address common questions by individuals in H-1B nonimmigrant status, particularly related to applying for lawful permanent resident status, job changes or terminations, international travel, and dependent family members.

TPS Extended and Redesignated for Somalia; Work Authorization for F-1 Nonimmigrant Students From Somalia Announced – The Department of Homeland Security (DHS) announced that the designation of Somalia for Temporary Protected Status (TPS) has been extended and redesignated for 18 months, to March 17, 2026. DHS also announced work authorization relief for F-1 students from Somalia.

USCIS Updates Public Information on International Entrepreneur Rule – U.S. Citizenship and Immigration Services (USCIS) recently updated its public information under the International Entrepreneur Rule.

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DOS Clarifies Guidance on Easing the Nonimmigrant Visa Process for College Graduates

On June 18, 2024, the Biden administration announced actions to more efficiently process employment-based nonimmigrant visas for those who have graduated from college in the United States and have a job offer. As part of this initiative, on July 15, 2024, the Department of State (DOS) clarified existing guidance to consular officers related to when they should consider recommending that the Department of Homeland Security grant a waiver of ineligibility under INA § 212(d)(3), where applicable.

The DOS guidance explains that there is a clear and significant U.S. public interest in requesting a waiver on an expedited basis "if the applicant has graduated with a degree from an institution of higher education in the United States, or has earned credentials to engage in skilled labor in the United States, and is seeking to travel to the United States to commence or continue employment with a U.S. employer in a field that requires the education that the applicant attained in the United States."

Details:

- DOS notice (July 15, 2024).
- DOS Foreign Affairs Manual guidance (July 15, 2024).
- White House Fact Sheet (June 18, 2024).

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USCIS Issues New Policy Guidance on Noncompliance With EB-5 Regional Center Program

U.S. Citizenship and Immigration Services (USCIS) has issued policy guidance, effective immediately, on new provisions in the Immigration and Nationality Act

(INA) that cover consequences for noncompliance with the EB-5 regional center program.

The guidance updates Part G, Investors, in Volume 6 of the Policy Manual, to incorporate statutory reforms included in the EB-5 Reform and Integrity Act of 2022 (RIA). USCIS explained:

The guidance interprets the provisions related to sanctions, including terminations, debarments, and suspensions, for noncompliant regional centers, new commercial enterprises, job-creating entities, investors, and others. The guidance also explains what may be considered threats to the national interest, fraud, intentional material misrepresentation, deceit, and criminal misuse in the context of discretionary determinations that require us to take adverse action on certain EB-5 petitions, applications, and benefits. It also outlines special considerations for good-faith pre-RIA investors a to retain eligibility under INA sec. 203(b)(5)(M) after we terminate or debar their regional center, new commercial enterprise, or job-creating entity due to noncompliance.

Details:

- USCIS alert (July 16, 2024).

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USCIS Publishes FAQs on H-1B Nonimmigrant Status

U.S. Citizenship and Immigration Services (USCIS) released frequently asked questions (FAQs) that address common questions by individuals in H-1B nonimmigrant status, particularly related to applying for lawful permanent resident (LPR) status, job changes or terminations, international travel, and dependent family members.

For example, USCIS noted that:

- An eligible H-1B worker can change employers as soon as the new employer's nonfrivolous H-1B petition is properly filed with USCIS.
- USCIS will not revoke a Form I-140 petition approval solely due to termination of the petitioner's business or the employer's withdrawal, as long as the petition has been approved for at least 180 days or the

associated adjustment of status application has been pending for at least 180 days, and the petition approval is not revoked on other grounds. In this scenario, the H-1B worker would retain their priority date.
- When an H-1B worker's employment is terminated (either voluntarily or involuntarily), they typically may take one of several actions to remain in a period of authorized stay in the United States beyond 60 days.

A chart in the FAQs summarizes some common scenarios for H-1B workers.

Details:

- USCIS FAQs for Individuals in H-1B Nonimmigrant Status (July 17, 2024).

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TPS Extended and Redesignated for Somalia; Work Authorization for F-1 Nonimmigrant Students From Somalia Announced

The Department of Homeland Security (DHS) announced that the designation of Somalia for Temporary Protected Status (TPS) has been extended and redesignated for 18 months, from September 18, 2024, to March 17, 2026. DHS also announced work authorization relief for F-1 students from Somalia. Below are highlights of DHS's actions.

TPS Extension and Redesignation

The 60-day re-registration period for existing beneficiaries begins July 22, 2024, and runs through September 20, 2024. U.S. Citizenship and Immigration Services (USCIS) encourages those who currently have TPS to timely re-register during the re-registration period and not wait until their Employment Authorization autodesk autocad 2025 download Documents (EADs) expire because delaying re-registration could result in gaps in their employment authorization documentation. DHS said that USCIS will continue to process pending applications filed under previous TPS designations for Somalia.

The redesignation of Somalia for TPS allows an estimated 4,300 Somali nationals (and individuals having no nationality who last habitually resided in Somalia) who have been continuously residing in the United States since July 12, 2024, to file initial applications for TPS if they are otherwise eligible. The extension of TPS for Somalia allows approximately 600 current beneficiaries to

retain TPS through March 17, 2026, if they continue to meet TPS eligibility requirements.

DHS said it recognizes that not all re-registrants may receive a new EAD before their current EAD expires. For that reason, DHS is automatically extending through September 17, 2025, the validity of certain EADs previously issued under Somalia's TPS designation.

Work Authorization Relief for F-1 Nonimmigrant Students From Somalia

DHS is also suspending certain regulatory requirements for F-1 nonimmigrant students from Somalia. These students may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant status.

An F-1 nonimmigrant student must file Form I-765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current crisis in Yemen.

Details:

- DHS news release (July 19, 2024).
- USCIS TPS notice, 89 Fed. Reg. 59135 (advance copy) (July 22, 2024).
- S. Immigration and Customs Enforcement notice on employment authorization for F-1 students from Somalia, 89 Fed. Reg. 59129 (advance copy) (July 22, 2024).

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USCIS Updates Public Information on International Entrepreneur Rule

U.S. Citizenship and Immigration Services (USCIS) recently updated its public information under the International Entrepreneur Rule (IER). USCIS noted that the rule allows the Department of Homeland Security (DHS) to "grant a period of authorized stay , on a case-by-case basis, to noncitizen entrepreneurs who show that their stay in the United States would provide a significant public benefit through their business venture and that they merit a favorable exercise of discretion."

Under the rule, entrepreneurs granted parole are eligible to work only for their start-up business. The spouse and children of the noncitizen entrepreneur may also be eligible for parole, USCIS noted. The agency listed several "threshold criteria and key elements" of the rule:

- Entrepreneurs may be either living abroad or already in the United States.
- Start-up entities must have been formed in the United States within the past five years.
- Start-up entities must demonstrate substantial potential for rapid growth and job creation by showing at least $264,147 in qualified investments from qualifying investors, at least $105,659 in qualified government awards or grants, *or* alternative evidence.
- The spouse of the entrepreneur may apply for employment authorization after being paroled into the United States.
- The entrepreneur may be granted an initial parole period of up to 2½ years. If approved for re-parole, based on additional benchmarks in funding, job creation, or revenue described in the guidance, the entrepreneur may receive up to another 2½ years, for a maximum of five years. (At that point or earlier, there are other Options for Noncitizen Entrepreneurs to Work in the United States, USCIS noted.)
- Up to three entrepreneurs per start-up can be eligible for parole under the rule.

Details:

- USCIS guidance (July 12, 2024).

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