



October 3, 2018

## Special Immigration Alert

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### USCIS Begins Implementing Notices to Appear for Denied Petitions and Applications

As of October 1, 2018, U.S. Citizenship and Immigration Services (“USCIS”) has begun issuing Notices to Appear (“NTA”) in accordance with its original June 28, 2018, policy memorandum (which had been put on hold on July 30, 2018). An NTA instructs a foreign national (“FN”) to appear in front of an immigration judge to start removal proceedings (i.e., deportation) from the United States. Accordingly, any FN physically present in the United States who applied for, and is denied, an immigration benefit rendering the person no longer in legal immigration status is subject to an NTA for removal. Affected FNs include, but are not limited to, those whose Form I-485 applications for Adjustment of Status are denied and have no underlying current, valid nonimmigrant status to fall back on and those who applied for changes or extensions of status under the Form I-539 nonimmigrant application that also were denied.

Please note this USCIS policy, for now, does not affect employment-based petitions. Therefore, any FN who is sponsored for a work-authorized nonimmigrant petition, such as H-1Bs, that is subsequently denied will not be issued an NTA by USCIS. We will keep you updated on this issue as we hear more.

### F-1 OPT Cap-Gap Employment Terminated October 1, 2018

USCIS regulations allow F-1 students whose Optional Practical Training (“OPT”) or STEM (science, technology, engineering, and mathematics) OPT work-authorized status expires between April 1, 2018, and September 30, 2018, and whose H-1B petitions for change of status were accepted by USCIS for this year’s H-1B cap, to continue employment with their H-1B sponsoring company until September 30, 2018. This is known as “cap-gap,” meaning that the regulations provide a way of filling the “gap” between the end of F-1 status and the beginning of H-1B status that might otherwise occur. However, if the H-1B petition is still pending adjudication after September 30, 2018, and the F-1 student’s OPT work authorization cannot be extended beyond that date, then the F-1 student must cease his or her employment on October 1, 2018. If the F-1 student who cannot extend his or her work authorization beyond September 30, 2018, does not

stop working after that date, then the employer risks illegally employing that individual, and the F-1 graduate will be found in violation of his or her legal status. Please note that H-1B premium processing of cap cases has been temporarily halted until February 19, 2019. Therefore, if a cap-gap H-1B petition remains pending on or after October 1, the F-1 student is no longer authorized to work under the cap-gap regulations. However, the F-1 student generally may remain in the United States while the change of status petition is pending without accruing unlawful presence, provided that he or she does not work without authorization.

### **USCIS Transfers Unadjudicated H-1B Petitions to Nebraska Service Center**

Due to the extremely high backlog of unadjudicated H-1B petitions, including H-1B cap cases, at the California Service Center, USCIS has announced that it will be transferring a number of these cases to the Nebraska Service Center to improve their timely adjudication.

### **Premium Processing Fee Increases to \$1,410**

As of October 1, 2018, USCIS has increased its premium processing fee from \$1,225 to \$1,410. Any petition filed with the \$1,225 fee will be rejected and returned if received by USCIS on or after October 1, 2018.

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If you have any questions regarding this Alert or any other U.S. immigration issues, please contact Epstein Becker Green's Immigration Law Group:



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