July 20, 2017

July 2017 Special Immigration Alert:

USCIS Releases Revised Version of Form I-9 and Accompanying Form I-9 Handbook for Employers

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1. USCIS Releases Revised Version of Form I-9 and Accompanying Form I-9 Handbook for Employers

On July 17, 2017, the U.S. Citizenship and Immigration Services ("USCIS") released a new version of Form I-9. Form I-9 is used to authenticate and record the identity and employment authorization of every new employee hired to work in the United States. All U.S. employers are required to complete and retain Form I-9 for each new U.S. hire and for all employees hired after November 7, 1986.

Employers are encouraged to use the newly revised form going forward because it is effective immediately, but they may continue to use the previous edition of Form I-9, with a revision date of 11/14/16 N, through September 17, 2017. Starting September 18, 2017, employers *must* use the latest version of Form I-9, which has a revision date of 07/17/17 N.

The changes to the latest version of the Form I-9 instructions and list of acceptable documents are minor. Most involve subtle changes in wording and a few new prompts for preparer and

translator information. The I-9 handbook for employers has also been revised and should serve as a handy reference guide for employers on how to properly complete Form I-9.

Employers are urged to review the revised I-9 handbook and to use the newly revised Form I-9 in advance of the September 18, 2017, deadline. Noncompliance after the deadline may result in a paperwork violation that can lead to significant fines. The Immigration and Customs Enforcement recently increased fines for Form I-9 violations to retroactively cover any violations that took place as early as November 3, 2015. Currently, a civil penalty of up to $2,156 may be imposed for *each* new paperwork violation, and every Form I-9 prepared on an expired version of the form constitutes a separate violation!

2. Trump Administration Suspends Rollout of Entrepreneurial Visa Program

On July 11, 2017, the Department of Homeland Security ("DHS") announced that it will delay the rollout of the entrepreneurial visa program until at least March 14, 2018. DHS indicates that the reason for the delay is to obtain comments from the public regarding a proposal to rescind the instant rule pursuant to the "Border Security and Immigration Enforcement Improvements" executive order. Written comments from the public must be received on or before August 10, 2017.

The International Entrepreneur Rule, proposed by the Obama administration, was scheduled to go into effect on July 17, 2017. The rule would have provided the DHS with the authority to grant visas on a case-by-case basis to foreign entrepreneurs who would invest at least $250,000 in "new" companies (those less than five years old) and who could demonstrate that their stay in the United States would provide a significant public benefit by way of business growth and job creation.

3. Hawaii Court Ruling Expands Protection from Travel Ban

On July 13, 2017, the U.S. District Court for the District of Hawaii found that the interpretation by the Department of State ("DOS") of the U.S. Supreme Court's travel ban decision was too narrow.

This ruling was in response to the June 26, 2017, decision in which the Supreme Court allowed President Trump's March 6, 2017, travel ban to take limited effect. In pertinent part, the travel ban bars foreign nationals ("FNs") from six countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen—from entering the United States for 90 days (and 120 days for refugees), unless they are exempt or then qualify for an exemption, by being in a "close familial relationship" with a U.S. citizen or having a formal, documented relationship with a U.S. entity.

Following the Supreme Court's June 26 decision, the DOS issued FAQs that limited the term "close familial relationship" to parents, mothers-in-law, fathers-in-law, spouses, fiancés, children, adult sons, adult daughters, siblings, and half-siblings. This meant, of course, that any FN who has a different relationship with an American citizen, such as an in-law, grandparent, or cousin, was not eligible for the exemption and had to apply for a waiver.

On July 13, 2017, the District Court in Hawaii rejected the DOS's definition of a "close familial relationship" and ruled that grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts and uncles, nephews and nieces, and cousins also had to be included in the definition. As a result of this ruling, the DOS updated its FAQs on July 17, 2017, to reflect the District Court in Hawaii's broader definition, and grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts and uncles, nephews and nieces, and cousins are now considered to be in a close familial relationship with the FN.

The Trump administration appealed this ruling to the U.S. Court of Appeals for the Ninth Circuit and also asked the Supreme Court to further explain whether this expanded definition of the term "close familial relationship" is consistent with the Supreme Court's decision. On July 19, 2017, the Supreme Court refused to modify the District Court in Hawaii's expanded interpretation of the family relationships exempt from the travel ban.

4. The U.S. Trade Representative Issues Its Summary of Objectives for the NAFTA Renegotiation

On July 17, 2017, the Office of the U.S. Trade Representative, Executive Office of the President, issued its "Summary of Objectives for the NAFTA Renegotiation." As you know, the North American Free Trade Act ("NAFTA") contains immigration benefits for Canadian and Mexican citizens that supplement the normal visa classifications. During the campaign, candidate Trump spoke often about his desire to renegotiate NAFTA. Coupled with his professed opposition to immigration, many felt that his renegotiation posture on NAFTA would include the reduction or elimination of its immigration benefits. Nothing in this recent summary addresses NAFTA's immigration provisions. We will need to await the actual negotiations to see what, if anything, results.

5. Visa Waiver Program Publishes New FAQs That Exclude Certain FNs

The Visa Waiver Program ("VWP") permits FNs of 38 countries to travel to the United States for up to 90 days for purposes of business or tourism without obtaining a visa. Reciprocally, these 38 countries allow citizens of the United States to travel to their countries for up to 90 days without obtaining a visa. In order to qualify for VWP, travelers to the United States must obtain pre-travel approval from the U.S. Customs & Border Patrol ("CBP") ESTA system.

Under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 ("VWPITTPA"), FNs who were born in, or are citizens of, Iran, Iraq, Sudan, and Syria are no longer eligible to travel under the VWP. On June 19, 2017, CBP issued FAQs interpreting the VWPITTPA. Under these FAQs, FNs who are citizens of visa waiver countries still cannot use the VWP if they have traveled to Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen since March 1, 2001. Under these FAQs, however, FNs who have traveled to Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen to perform military service or to carry out official duties as a full-time employee of the government of one of the 38 countries are not impacted by the new regulations.

6. DHS Expands H-2B Program for Temporary Seasonal Workers

On July 19, 2017, DHS published a final rule increasing the numerical limit (quota) on the H-2B temporary seasonal workers by up to 15,000 additional visas through the end of fiscal year 2017, which expires on September 30, 2017. The H-2B program permits seasonal businesses to secure temporary foreign employees during peak seasons when these businesses can demonstrate that there are no U.S. workers available. DHS indicated that this would be a "one time" increase designed to help the hospitality industry, among others, which can document that it cannot find qualified U.S. workers.

Employers seeking to take advantage of this increase in the H-2B quota first must secure certification from the Department of Labor that there are no U.S. workers available for the offered positions, and then they must file a petition with USCIS for approval of the application. USCIS indicates that it will stop accepting new petitions under this one-time quota increase on September 15, 2017, or when the quota is reached, whichever occurs earlier. Thus, employers seeking to take advantage of this increase in visas under the H-2B program must act promptly.

7. DOS Issues August 2017 Visa Bulletin

The DOS has issued its Visa Bulletin for August 2017. This bulletin determines who can apply for U.S. permanent residence and when. The cutoff dates for family-based immigration continues to show backlogs due to the heavy demand for these visas.

On the employment-based side, the August 2017 Visa Bulletin shows that the employment-based first preference ("EB-1") category remains current for all countries, except China and India, which remain regressed to January 1, 2012. However, there are some surprising movements with respect to the employment-based second preference ("EB-2") and employment-based third preference ("EB-3") categories. The EB-2 category will be retrogressing for all countries. For all countries, except China and India, the EB-2 category cutoff date will be April 1, 2015. For China, the EB-2 category cutoff date will be April 22, 2013; for India, the cutoff date will be July 22, 2008. The EB-3 category will become current for all countries, except China, India, and the Philippines. The EB-3 cutoff date for China will be January 1, 2012; for India, it will be July 15, 2016; and for the Philippines, it will be June 1, 2015.

The DOS's monthly Visa Bulletin is available at travel.state.gov/content/visas/en/law-and-policy/bulletin.html.

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