



November 16, 2018

Special Immigration Alert

New Version of the Labor Condition Application Must Be Used Starting November 19

On November 19, 2018, a new ETA Form 9035, Labor Condition Application for Nonimmigrant Workers (“LCA”), will be fully implemented and “go live.” The LCA must be completed before any H-1B petition can be filed or approved by the U.S. Citizenship and Immigration Services (“USCIS”). A key change to the LCA will require an employer to indicate whether a foreign worker will be placed at a client or third-party worksite and then enter that client’s or third party’s legal business name and address. This new version of the LCA will also require additional information from H-1B dependent employers that rely on the master’s degree exemption.

H-1B dependent employers are those that hire H-1B employees who make up 15 percent or more of their total U.S. workforce. Such employers face additional restrictive requirements in hiring H-1B employees unless these H-1B employees possess at least a master’s degree or are paid an annual wage of no less than \$60,000. This is known as the master’s degree exemption.

Epstein Becker Green will monitor the new LCA’s implementation and, in future alerts, advise of its impact.

DOS Releases December 2018 Visa Bulletin

Priority-date cutoffs for most employment-based categories will advance modestly next month according to the December 2018 Visa Bulletin issued by the U.S. Department of State (“DOS”).

Please note that USCIS, as it has done for October and November 2018, will continue to use the DOS Visa Bulletin’s *Date for Filing* and not the Final Action Date when accepting adjustment of status applications on Form I-485 for the month of December 2018. Therefore, those employees with approved I-140 petitions sponsored by their employers may apply for their I-485 adjustment of status application if their priority dates are on or before the following dates for December:

Preference	All Other Countries	China	El Salvador Guatemala Honduras	India	Mexico	Philippines
EB-1	June 1, 2018	Oct. 1, 2017	June 1, 2018	Oct. 1, 2017	June 1, 2018	June 1, 2018
EB-2	Current	Sept. 8, 2015	Current	May 22, 2009	Current	Current
EB-3	Current	Dec. 1, 2015	Current	Jan. 1, 2010	Current	Aug. 17, 2017

USCIS Implements Second Phase of “Notices to Appear” Policy

Beginning November 19, 2018, USCIS will issue Notices to Appear (“NTAs”) to individuals whose applications are denied in the following categories: (i) refugee/asylum petitions within the United States; (ii) T visas for victims of human trafficking; (iii) U visas for victims of crimes and their family members; (iv) Amerasian, Widow(er) petitions; (v) self-petitions under the Violence Against Women Act and Special Immigrant Juvenile petitions; and (vi) adjustment of status applications related to the above petitions. At this time, the new NTA policy does not expand to employment-based petitions.

This new NTA policy was effectuated by a policy memo issued by USCIS in June 2018 that expanded the agency’s discretion to issue an NTA to individuals whose petition or application with USCIS is denied. By way of background, the NTA is an official charging document from USCIS that initiates removal proceedings (commonly known as “deportation”) and requires an appearance in front of an immigration judge.

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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 team:



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