FBT Immigration Update: April/May 2017

Jun 06, 2017

Categories:

Publications

Authors:

Mary (Peggy) G. Shukairy

Electronic I-9 Glitch

USCIS has announced that employers who downloaded the new Form I-9 between November 14, 2016 and November 17, 2016 should review them for errors. Specifically, numbers entered in the Social Security field may have been transposed when the form was completed and printed. If an employer finds that there is an error in Section 1, they should have the employee draw a line through the incorrect social security number, enter the correct number, and initial and date the change. The employer should also prepare a note with the I-9 which explains why the correction was made. USCIS has confirmed that the form has been repaired and the glitch should not occur on any forms downloaded after November 17, 2016.

EAD Automatic Extensions

Previously, if an employee was presenting an employment authorization document (EAD) as a List A, I-9 document to verify their employment authorization, it had to be unexpired. A receipt notice for a replacement EAD was not sufficient. As of January 17, 2017, USCIS is automatically extending EADs for a maximum of 180 days for applicants in certain categories. USCIS is reissuing receipt notices to individuals who applied for EAD renewals in the eligible categories since July 21, 2016. The new receipt notices will contain the EAD category, the receipt date, the notice date, and new information about the 180-day EAD extension. The employee may now present the reissued receipt notice with their expiring or expired EAD as a List A document. The employer should check that the receipt shows the renewal was timely filed (i.e., receipt date is before expiration of the existing EAD), the renewal is in the same category as the existing EAD, and is in a category eligible for the automatic extension.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

Trump Administration Notifies Congress of Intent to Renegotiate NAFTA

On May 18, 2017, the Trump Administration, through U.S. Trade Representative Robert Lighthizer, notified Congress that it intends to renegotiate the North American Free Trade Agreement (NAFTA) with Canada and Mexico. While short on specifics, the announcement made it clear that, through renegotiation, the U.S. "seeks to support higher-paying jobs in the U.S. and grow the U.S. economy by improving U.S. opportunities under NAFTA" and modernize the terms of the 25-year old agreement. The exact negotiating positions that may be taken by the U.S. in the negotiations, which are to commence no earlier than 90 days from May 18, would be developed through consultations with Congress.

While the announcement did not specifically mention the movement of people between the U.S., Canada and Mexico, FBT will closely watch whether the renegotiation process will impact the current TN nonimmigrant visa classification that allows citizens of Mexico and Canada to temporarily enter the U.S. to engage in professional-level business activities. This classification is appropriate for such occupations as accountants, engineers, lawyers, medical professionals, and scientists. The TN classification is a popular option for employers since it is not subject to an annual quota, can be renewed indefinitely, and, compared to other classifications, is not overly burdensome on sponsoring employers.

A notice of public hearing and request for comments was recently issued from the Office of the United State Trade Representative. Commenters may make online submissions under docket number USTR-2017-0006 by visiting www.regulations.gov. Comments are due 6/12/2017 and the public hearing will be held in Washington, D.C. on 6/27/2017.

USCIS Alters its Approach to H-1B Worksite Visits

On April 3, 2017, USCIS announced that it was taking actions to further deter and detect H-1B visa fraud and abuse. Since 2009,

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

employers that serve as H-1B petitioners have been subject to typically random worksite visits by USCIS to ensure H-1B employees are properly employed and that employers are abiding by their obligations. Where USCIS suspects fraud or abuse, it refers the matter to Immigration and Customs Enforcement (ICE).

Now, USCIS will take a "more targeted approach" and, per the April announcement, focus on:

- Cases where USCIS cannot validate the employer's basic business information through commercially available data.
- H-1B-dependent employers (those who have a high ratio of H-1B workers as compared to U.S. workers, as defined by statute).
- Employers petitioning for H-1B workers who work off-site at another company or organization's location.

USCIS states that the shift will allow it to focus its resources on situations where fraud and abuse are more likely to occur. Special attention will be given to H-1B-dependent employers to make sure they are complying with their obligation to make a good faith effort to recruit U.S. workers prior to sponsoring employees for H-1B classification.

In addition, USCIS has created an email address that anyone can use to inform USCIS of suspected abuse or fraud.

USCIS Completes Data Entry for FY2018 H-1B Cap Subject Petitions

On May 3, 2017, USCIS announced that it had completed data entry of all petitions selected in the FY2018 H-1B lottery and began the process of returning all petitions that were not selected. For the fifth straight year, the annual H-1B cap was met within the first five business days of April 1. In total, 199,000 petitions were received, which is 37,000 less than were received last year.

It may be a few weeks before employers receive rejected petitions. During this time, employers should begin to consider the alternatives that may be available to them should their petitions be rejected. Below is a list of alternatives that may be available to

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

employers along with questions that cover some of the fundamental eligibility requirements:

- B-1 in lieu of H-1B: If the employee is overseas, can his/her foreign employer send the employee to the U.S. for short periods of time to work with the employer?
- E-2: Has the employer received substantial investments from its foreign parent company and does the employee share the same nationality as the foreign parent?
- E-3/H-1B1: Is the employee in a specialty occupation position and a citizen of Australia, Chile or Singapore?
- F-1: Can the employer support the employee's request for a STEM OPT extension?
- L-1: Can the employee be placed overseas with a related entity in a specialized knowledge, managerial or executive capacity for at least one year?
- O-1: Is the employee an extraordinary ability alien?
- TN: Is the employee in a TN-eligible occupation and a citizen of Canada or Mexico?

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons