FBT Immigration Update August/September 2017

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Premium Processing Update

After the United States Citizenship and Immigration Services (USCIS) suspended premium processing on all H-1B petitions on April 3, 2017, it continues to incrementally lift the suspension. Most recently, it announced that petitioners who filed H-1B petitions subject to the 2018 cap are now permitted to request premium processing. These petitions were filed in the April 2017 filing window, selected in the lottery, and have an October 1, 2017, start date.

At this time, the following H-1B petitions may be upgraded to premium processing: FY2018 Cap cases, physicians under Conrad 30 waiver program as well as interested government agency waivers, and cap-exempt petitions, which includes institution of higher education petitioners and nonprofit research or governmental research organization petitioners. While USCIS has plans to resume premium processing for the remainder of H-1B petitions (i.e., extension of status or change of status petitions), the timeframe has not been announced.

New E-Verify Poster Must be Used

E-Verify has issued a new participation poster, which combines the English and Spanish information onto one poster. Employers should log in to E-Verify to download the new poster. Employers are required to replace and display new posters when updates are made. In addition, employers may display the participation poster in other foreign languages which are available at https://www.uscis.gov/e-verify/publications/foreign-language-resources. Finally, employers should remember that the Immigrant and Employee Right to Work posters must still be displayed in English and Spanish.

DACA Wind-Down

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The Department of Homeland Security (DHS) issued a memorandum on September 5 to rescind the Deferred Action on Childhood Arrivals (DACA) program.

Specifically, as stated in the memorandum, DHS:

- **Will not** terminate the grants of previously issued deferred action or **revoke Employment Authorization Documents (EADs) solely based on the directives in this memorandum for the remaining duration of their validity periods**. (emphasis added)
- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA initial requests and associated applications for EADs that have been accepted by DHS as of September 5, 2017.
- Will adjudicate—on an individual, case by case basis—properly filed pending DACA renewal requests and associated applications for EADs:
    - from current beneficiaries that have been accepted by DHS as of the date of this memorandum, and
    - from current beneficiaries whose benefits will expire between the date of September 5, 2017, and March 5, 2018, that have been accepted by DHS as of October 5, 2017.
- Will reject all DACA renewal requests and associated applications for EADs filed outside of the parameters specified above.

To provide further clarification, DHS also issued FAQs which, among other things, address whether there is a grace period for DACA recipients with EADs that will soon expire.

Employers are reminded that, as with all I-9s, it is important to have a tickler system of reminders regarding upcoming List A or C document expirations. The I-9 must be re-verified on or before the date an employee's current employment authorization expires. Employers may wish to set up multiple reminders/ticklers for updating the I-9.

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Interviews for Employment-Based Adjustment of Status Applicants

USCIS has announced that effective October 1, 2017, interviews will be phased-in for employment-based adjustment of status applicants. Previously, interviews had been waived for most of these applicants. USCIS has advised that this change in policy is to further implement Executive Order 13780, "Protecting the Nation From Foreign Terrorist Entry Into the United States." While adjustment of status applicants must be fingerprinted and a background check conducted, USCIS has indicated that the "interviews will provide USCIS officers with the opportunity to verify the information provided in an individual's application, to discover new information that may be relevant to the adjudication process, and to determine the credibility of the individual seeking permanent residence in the United States." The timing for the phase-in is unknown as USCIS has indicated that there will be enhancements in training and technology and "transitions in some aspects of case management." Therefore, it is uncertain what impact this change will have on the timing of employment-based adjustment of status applications.

Diversity Visa Lottery Announcement

Instructions on how to apply for the Department of State's 2019 Diversity Immigrant Visa program are now available on its website. 50,000 Diversity Visas are available. Qualified individuals selected in the lottery will be able to adjust status to lawful permanent resident status if eligible and present in the U.S. or consular process, and enter as lawful permanent residents. The filing window will be between noon (ET) October 3, 2017, and noon (ET) November 7, 2017.

If you have questions relating to these topics, please contact David Janklow, Peggy Shukairy, or Matt Wagner in Frost Brown Todd's Labor and Employment Practice Group.

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