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USCIS Stops Giving Deference to Extensions

United States Citizenship and Immigration Services (USCIS) announced on October 23, 2017, that it rescinded a memorandum which called for giving deference to extension petitions. Previously, deference to a prior decision of eligibility was generally given where the parties and underlying facts remained the same. USCIS will now review extensions to the same degree as an initial petition. The justification provided by USCIS for the rescission is that the previous memorandum "shifted the burden of proof to the CIS" and "unduly limited adjudicators' inherent fact-finding authority." USCIS takes a further step in broadening adjudicators' fact-finding authority by indicating that the regulations, which do not require initial evidence to be provided for an extension in certain circumstances, do not limit USCIS' authority to issue a request for evidence for such evidence. According to USCIS Director L. Francis Cissna, "[t]his updated guidance provides clear direction to help advance policies that protect the interests of U.S. workers."

New Filing Window for Diversity Visa Lottery

Due to technical difficulties with the Department of State's website for the Diversity Visa lottery, the initial filing window of October 3, 2017, to November 7, 2017, was closed and filings submitted during that time voided. A new window has been created. The filing window for the Department of State's 2019 Diversity Immigrant Visa program will now be between noon (EDT) on Wednesday October 18, 2017, and noon (EST) on Wednesday November 22, 2017. Only entries submitted during the new window will be eligible. Instructions on how to apply are now available on its website.

Interviews for Employment-Based Adjustment Applicants

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Effective October 1, 2017, applicants for an employment-based adjustment of status application, which was filed after March 6, 2017, must be interviewed. USCIS notes that it may waive the requirement for an applicant under the age of 14. Applicants can anticipate that the interview will cover questions that appear on the Form I-485, questions relating the applicant's eligibility and admissibility; and the primary beneficiary's experience and education qualifications. USCIS also indicated that inquiries may be made regarding the immigrant petition, which supports the adjustment of status application. While USCIS states it will not re-adjudicate the immigrant petition at the interview, it will determine whether the evidence provided was credible. Derivative family members should be prepared to provide documentation confirming the bona fides of the relationship to the primary beneficiary. Because no increase in staffing at local offices has been made with this change, USCIS predicts that the following offices may be the hardest hit: San Jose, San Francisco, Newark, Houston, Seattle, Chicago, Dallas, Atlanta, Los Angeles, and New York.

$95 Million Fine for Company and Criminal Charges for Hiring Managers

Employers must take I-9 completion and compliance seriously. The civil and criminal liability for violations can be significant. The largest settlement for immigration practice violations recently required the payment of $80 million for a criminal forfeiture money judgment and $15 million in civil penalties as a result of a six-year investigation. In addition, criminal charges may be brought where managers direct personnel to accept false identification documents knowing that the documents are fake. Tom Homan, Acting Director of ICE recently stated that the investigative unit will quintuple worksite enforcement actions next year. "We've already increased the number of inspections in work site operations, you will see that significantly increase this next fiscal year," Homan promised, saying the goal is to remove the "magnet" drawing people to enter the US illegally."

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Full Return of Premium Processing for H-1B Petitions

On October 3, 2017, USCIS resumed premium processing on all H-1B petitions. USCIS first suspended premium processing on April 3, 2017, and, starting in June, began to incrementally lift the suspension. Now, it has finally brought premium processing back online for the last category affected by the suspension, H-1B extensions. This is of significant benefit to H-1B employers that have H-1B employees in need of immediate approval to facilitate international travel plans and, depending on the state, to extend driver's licenses.

Travel Ban Update

One part of the Executive Order President Trump signed on March 6, 2017, that was not impacted by the spring and summer litigation surrounding the "travel ban," instructed various federal agencies to review the information-sharing practices of other nations and make recommendations to improve national security. Following the completion of this review, the Trump Administration issued a proclamation on September 24, 2017, that, in effect, serves as the administration's third attempt at implementing its travel ban. This time the list of countries has been broadened and places new travel limitations and restrictions on nationals from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.

As a result of the proclamation, the U.S. Supreme Court cancelled oral arguments on the prior travel ban affecting foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen. However, a new round of litigation has started as the September 24 proclamation was mostly blocked by the U.S. District Court for the District of Hawaii and the U.S. District Court for the District of Maryland on October 17, 2017.

New Form Allows Applicants to Simultaneously Apply for Work Cards and Social Security Numbers

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On October 2, 2017, USCIS published a new version of Form I-765, which is used by foreign nationals applying for an employment authorization document (EAD). The most significant change is that the new form contains a new question that gives applicants the option of applying for a Social Security Number (SSN). If a SSN is requested, USCIS will relay the information to the Social Security Administration (SSA) and, upon approval of the Form I-765, the applicant will be issued both an EAD and SSN card. The cards will be mailed separately, but the SSN should be received no later than seven business days after an applicant receives their EAD.

If an applicant does not wish to request an SSN through the Form I-765, they will then follow prior practice and need to visit a Social Security office to apply for a SSN.

Applicants currently have the option of using the new form (dated 07/17/17) or the older version (dated 01/17/17). Only the new version will be accepted starting December 4, 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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