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March 2019 Immigration Update: What You Need to Know

Application to Extend/Change Nonimmigrant Status Form Update

United States Citizenship and Immigration Services (USCIS) has revised [Form I-539, Application to Extend/Change Nonimmigrant Status](#) and created a Form I-539A, *Supplemental Information for Application to Extend/Change Nonimmigrant Status*. The updated I-539 form was released on March 8, 2019. There will be a grace period to submit the previous version until March 21, 2019 – this means that the previous version must be received by the lockbox on or before March 21, 2019. Previous versions of Form I-539 postmarked on March 21, 2019, or after will not be accepted.

The new version of Form I-539 is basically the same as the previous Form I-539, except that it does not have space to add additional dependents. Instead, each additional dependent will need to complete and sign a Form I-539A for applications with more than one dependent. Parents or guardians may sign on behalf of children under 14 or any co-applicant who is not mentally competent to sign.

USCIS will now also require every applicant and co-applicant filing a Form I-539 and Form I-539A to pay an \$85 biometric services fee, except certain A, G, and NATO nonimmigrants as noted in the new Form I-539. Every applicant and co-applicant will receive a biometric services appointment notice, regardless of age, containing their individual receipt number. The biometric services appointments will be scheduled at the Application Support Center (ASC) closest to the primary applicant's address. Co-applicants who wish to be scheduled at a different ASC location should file a separate Form I-539. According to USCIS, fingerprints will not be used for background check purposes for individuals under 14.

During a recent teleconference regarding the form, USCIS mentioned that they have prepared for the form and how it would affect processing times, and that they have made every effort to

make sure processing times are minimally affected. Initial biometric appointments can take up to an additional 17 days according to an estimate from USCIS. However, delays should be expected if a dependent reschedules his/her biometrics appointment. Additionally, Form I-539s filed concurrently with I-129s under premium processing will no longer be processed together due to the new biometrics requirements.

USCIS begins Accepting Negative P Visa Consultations from Labor Unions

Earlier this year, USCIS began accepting negative consultation letters directly from labor unions pertaining to P visa petitions. This is an expansion of a similar policy that encompassed O visa petitions.

P visa petitions are related to sponsorships of athletes, artists, entertainers, and their essential support personnel. Typically, consultation letters are a required element for any P nonimmigrant petition and are submitted to USCIS by the petitioner. Consultation letters are issued by U.S. labor organizations in an advisory capacity. USCIS considers the full range of evidence presented when adjudicating a petition. Recently, labor organizations expressed concern that some negative consultations letters may have been falsified by petitioners to show as no-objection or favorable consultations. This policy was already in effect for O nonimmigrant petitions, which covers beneficiaries who possess extraordinary ability in the sciences, arts, education, business or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry.

Labor organizations can submit negative consultation letters directly to USCIS via a specially designated email (UnionConsultationMailbox@uscis.dhs.gov) for O and P petitions. Labor unions should include the beneficiary's name and the last five digits of the beneficiary's passport number on the consultation letters when sending copies to USCIS.

Temporary Protected Status Update

On March 1, 2019, USCIS published a [Federal Register Notice \(FRN\)](#) that beneficiaries under the Temporary Protected Status (TPS) designation for the following countries: El Salvador, Haiti, Nicaragua, and Sudan will retain their TPS designation while the temporary injunction in [Ramos v. Nielsen](#) is in effect so long as the TPS is not withdrawn due to ineligibility. As [noted](#) previously, TPS may be designated for specific countries because there are conditions which make it difficult for that country's citizens or nationals to return to it, such as civil war, natural disasters, etc.

In addition, the notice automatically extended TPS-related Employment Authorization Documents (EAD), I-797 approval notices, and I-94 (Arrival/Departure Record) for TPS beneficiaries through January 2, 2020 provided that an individual's TPS is not withdrawn due to ineligibility. Finally, it was announced that an additional notice will be published to address the extension of the same TPS-documentation if the injunction remains in effect after April 2, 2019.

Human Resources personnel are reminded of the following when handling I-9s:

- An unexpired EAD or an EAD with a validity period that is auto-extended by the FRN or individual notice that auto-extends the EAD is acceptable to prove both identity and eligibility to work.
- When re-verifying I-9s, the employer should enter the date the automatic extension period expires in the expiration date field, not the expiration date on the face of the EAD.
- An employee cannot be required to prove they are a national of a country that has been designated for TPS.

H-2B Cap Reached for Government Fiscal Year 2019

The H-2B visa program is the non-agricultural temporary work program. These visas are typically used by employers to fill unskilled labor positions or positions requiring skills or education below a university degree level. Because H-2B visas are generally only permitted for seasonal, intermittent, or peak load needs, employers

in seasonal industries such as landscaping and resorts frequently apply for H-2B visas to fill employment gaps. H-2B visa applications require the employer to actively recruit U.S. workers for the position and include prevailing wage obligations.

H-2B visas are currently limited to a “cap” of 66,000 annually, of which 33,000 are allocated for the first half of the federal government fiscal year (October 1 – March 31) and 33,000 are allocated for the second half of the fiscal year (April 1 – September 30). Congress can adjust these numbers and has temporarily done so from time to time, most recently in May 2018 when an additional 15,000 H-2B visas were allocated by Congress.

U.S. Citizenship and Immigration Services recently announced that a sufficient number of H-2B petitions to cover the second half of fiscal year 2019 have been received. New H-2B visa applications will be accepted starting June 1, 2019, for positions with a start date of October 1, 2019, or later, covering the first half of fiscal year 2020.

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