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Categories:

Publications

Authors:

Mary (Peggy) G. Shukairy

April/May Immigration Updates Employers Need to Know

The attorneys at Frost Brown Todd are here to summarize the most relevant and impactful immigration updates of the month. Our most recent articles, cover the following topics:

- Travel Restriction Expands to India
- USCIS Returns to Deference Policy
- Continuation of Travel Restrictions: Mexico & Canada
- F-1 Students Can File Online for OPT Work Authorization

Travel Restriction Expands to India

On April 30, 2021, India was added to the list of countries subject to a COVID-19 related travel ban**.** The Presidential Proclamation suspends the admission of noncitizens of the United States who were physically present within India during the 14-day period preceding their entry or attempted entry into the U.S. The proclamation takes effect on May 4, 2021. Despite the restriction, the proclamation does contain exceptions for certain categories of immigrants and nonimmigrants.

USCIS Returns to Deference Policy

In 2017, USCIS had rescinded a memorandum which called for giving deference to extension petitions. USCIS has recently revived its initial 2004 guidance on adjudicating officers giving deference to prior determinations of eligibility when the extension involves the same parties and facts. This change is in accordance with President Biden's executive order "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans." The recent guidance also notes that while USCIS gives deference to its own prior determinations unless there was a material error, material change, or new material facts, it will only consider, but not defer to, a determination by a different U.S. government agency.

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Continuation of Travel Restrictions: Mexico & Canada

The temporary travel restriction limiting travelers between the U.S., Mexico, and Canada has been extended to May 21, 2021. Individuals using land ports and ferries will only be permitted to enter for "essential travel." Essential travel includes but is not limited to travel for medical purposes, travel to the U.S. to work in the U.S., and travel to attend educational institutions. Essential travel does not include tourism. This temporary travel restriction does not apply to travelers arriving by air or sea.

F-1 Students can file Online for OPT Work Authorization

On April 12, 2021, USCIS announced that students applying for work authorization for optional practical training (OPT) can file Form I-765, Application for Employment Authorization online. OPT is temporary employment that is directly related to the F-1 student's major. F-1 students applying for OPT include:

- (c)(3)(A) – Pre-Completion OPT;
- (c)(3)(B) – Post-Completion OPT; and
- (c)(3)(C) – 24-Month Extension of OPT for science, technology, engineering and mathematics (STEM) students.

F-1 students can apply for up to 12 months of OPT before completing their academic studies (pre-completion) and/or after completing their academic studies (post-completion). F-1 students with STEM degrees may apply for an additional 24-month extension of OPT.

By filing online, F-1 students can submit forms, check the status of their case, receive notices from USCIS, and respond to Requests for Evidence electronically. USCIS will also continue to accept the latest paper version of the I-765 Form by mail.

If you have questions relating to these topics, please contact Peggy Shukairy in Frost Brown Todd's Labor and Employment Practice

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