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Authors:

[Mary \(Peggy\) G.](#)

[Shukairy](#)

[Alicia M. Visse-Kroger](#)

[Katie M. Collier](#)

May/ June Immigration Updates

Employers Need to Know

International Entrepreneur Parole Program Continued by USCIS

The USCIS recently [announced](#) that the Department of Homeland Security (DHS) is withdrawing a rule proposed in 2018 that would have terminated the International Entrepreneur Parole Program. This program was enacted by President Obama's administration, but was [paused](#) by President Trump's administration in 2017. The Biden has restarted this program to close the gap that currently exists for entrepreneurs in the United States immigration system.

Under this program, DHS may grant a period of authorized stay to foreign entrepreneurs who demonstrate that their entry into the U.S. would provide a significant public benefit through their business venture. To qualify, a foreign entrepreneur must prove the following:

- The entrepreneur has a substantial ownership interest in a U.S. start-up entity created within the past five years;
- The entrepreneur has a central and active role in the start-up;
- The entrepreneur will provide a significant public benefit to the U.S. by showing that:
 - The start-up has received a significant investment of capital from certain qualified U.S. investors;
 - The start-up has received significant awards or grants for economic development, research and development, or job creation.

If an entrepreneur is approved, they will be paroled into the U.S. for up to 30 months, and an additional 30 months may be available under certain circumstances.

Biometrics Update

Beginning in March 2019, USCIS required certain Form I-539 applicants to appear in person at an Application Support Center ("ASC") to submit their biometrics. In 2020, USCIS temporarily suspended in-person services at its field offices, asylum offices,

and ASCs due to COVID-19. USCIS's offices are still not operating at full capacity, and this, in combination with other processing delays, created a substantial volume of cases waiting for biometric appointments. The substantial number of cases awaiting biometric appointments has significantly impacted USCIS's ability to adjudicate the related applications, creating significantly delayed processing times for these applications. As such, USCIS announced that, effective May 17, 2021, it is temporarily suspending the biometrics requirement for certain nonimmigrants.

USCIS will temporarily suspend the biometrics requirement for applicants who are seeking an extension of stay in or change of status to H-4, L-2, E-1, E-2, or E-3 nonimmigrant status. USCIS will adjudicate these applications based on biographic information and related background checks, without capturing fingerprints and a photograph. This suspension applies through May 17, 2023, subject to affirmative extension or revocation of the suspension period by the USCIS director.

This suspension applies only to applications that are: (1) pending as of May 17, 2021 and have not yet received a biometric services appointment notice; or (2) new applications postmarked or submitted electronically on or after May 17, 2021. USCIS, however, retains discretion to require biometrics for applicants on a case-by-case basis. If an applicant has already received a biometric services appointment notice, he or she should still attend the scheduled appointment.

Additionally, eligible applicants are not required to submit the \$85 biometric services fee for the Form I-539 during the suspension period. USCIS will return the biometric services fee if it is submitted separately from the Form I-539 filing fee. USCIS will begin rejecting Form I-539 applications postmarked May 27, 2021 or later if eligible applicants submit a single payment covering both the Form I-539 filing fee and the \$85 biometrics services fee (while the suspension of the biometrics requirement is in effect). If USCIS rejects the application, the applicant must re-file the Form I-539 without the biometric services fee.

I-9 Requirement Flexibility Extension

As [reported](#) previously, employers with **no** employees at a worksite will not be required to review the employee's identity and employment authorization documents in the employee's physical presence. Instead, employers may inspect the Section 2 documents remotely (e.g., over video link, fax, email, etc.). **I-9 compliance flexibility has been extended until August 31, 2021.**

The employer still must obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2. Employers using remote verification must retain written documentation of their remote onboarding and telework policy for each employee.

Once an employer resumes normal operations, all employees who were onboarded using remote verification, must report within **three business days** for in-person verification of identity and employment eligibility documentation. Once the documents have been physically inspected, the employer should add "documents physically examined" and "COVID-19" with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.

TPS Designation for Burma and Haiti

The Temporary Protected Status ("TPS") designation for [Burma](#) is effective as of May 25, 2021, through November 25, 2022. In addition, the Secretary of Homeland Security recently designated [Haiti](#) for TPS for 18 months. These new designations permit Haitian and Burmese nationals to file initial applications for TPS so long as they meet the eligibility requirements. These individuals must file their applications within the registration period. The Haitian registration period will be published in an upcoming Federal Register notice. Existing TPS Haiti beneficiaries will need to file a new application to register for TPS to ensure they do not lose TPS or experience a gap in coverage. TPS applicants may also apply for Employment Authorization Documents and for travel authorization.

U.S. Citizens Can Return with Expired Passports

U.S. citizens who have been abroad will now be able to return to the U.S. using their expired U.S. passports until December 31, 2021, if they meet the following criteria:

- Flying directly to the U.S. or to a U.S. territory or only have a connecting flight in a foreign country on their return to the U.S. or to a U.S. territory;
- The expired passport had been valid for 10 years unless they were 15 years or under when the passport was issued, which means their expired passport had been valid for 5 years; and
- The expired passport is undamaged and in their possession.

The expired U.S. passport cannot be used to travel to a foreign country for longer than a short connecting flight.

If you have questions relating to these topics, please contact [Peggy Shukairy](#), [Alicia Visse-Kroger](#), or [Katie Collier](#) in Frost Brown Todd's [Labor and Employment Practice Group](#)

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