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News & Types: Immigration Monthly Updates

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USCIS ANNOUNCES TEMPORARY AUTOMATIC EXTENSION OF SOME EAD RENEWALS

On April 4, 2024, U.S. Citizenship and Immigration Services (USCIS) announced a temporary final rule that increases the automatic extension period for employment authorization documents (EADs) available to certain EAD renewal applicants from up to 180 days to up to 540 days. The measure aims to prevent already work-authorized noncitizens from having their employment authorization lapse while waiting for USCIS to adjudicate pending EAD renewal applications and better ensure continuity of operations for U.S. employers.

USCIS had previously announced a similar final rule increasing automatic validity of qualifying EAD extensions from 180 to 540 days. However, this previous final rule ended on October 26, 2023. Therefore, on October 26, 2023, the automatic validity period of qualifying EAD extensions returned to 180 days.

This new temporary final rule will apply to the following EAD applicants: (1) applicants who timely and properly filed their Form I-765 applications on or after Oct. 27, 2023, if the application is still pending on April 8, 2024; and (2) applicants who timely and properly file their Form I-765 application on or after April 8, 2024 and on or before Sept. 30, 2025 (540 days after publication of this temporary final rule in the Federal Register).

Qualifying persons who file on or after April 8, 2024, should receive a Form I-797C Notice of Action receipt notice with information regarding the extension period. Persons who filed before April 8, 2024, may demonstrate continued employment eligibility by presenting their Form I-797C receipt with the expired EAD to an employer for the up to 540-day automatic extension. For these applicants, instead of issuing updated Form I-797C notices, USCIS will update the webpage that is referenced in the Form I-797C notice to reflect the change in the automatic extension period.

Categories eligible for the new automatic extension include the following:

(a)(3) Refugee

(a)(5) Asylee

(a)(7) N-8 or N-9

(a)(8) Citizen of Micronesia, Marshall Islands, or Palau

(a)(10) Withholding of Deportation or Removal Granted

(a)(12) Temporary Protected Status (TPS) Granted

(a)(17) Spouse of principal E nonimmigrant with an unexpired I-94 showing E (including E-1S, E-2S and E-3S) nonimmigrant status

(a)(18) Spouse of principal L-1 Nonimmigrant with an unexpired I-94 showing L-2 (including L-2S) nonimmigrant status

(c)(8) Asylum Application Pending

(c)(9) Pending Adjustment of Status under Section 245 of the Act

(c)(10) Suspension of Deportation Applicants (filed before April 1, 1997)

Cancellation of Removal Applicants

Special Rule Cancellation of Removal Applicants Under NACARA

(c)(16) Creation of Record (Adjustment Based on Continuous Residence Since January 1, 1972)

(c)(19) Pending initial application for TPS where USCIS determines applicant is prima facie eligible for TPS and can receive an EAD as a “temporary treatment benefit”.

(c)(20) Section 210 Legalization (pending I-700)

(c)(22) Section 245A Legalization (pending I-687)

(c)(24) LIFE Legalization

(c)(26) Spouses of certain H-1B principal nonimmigrants with an unexpired I-94 showing H-4 nonimmigrant status

(c)(31) VAWA Self-Petitioners

USCIS ANNOUNCES MEDICAL EXAMS ISSUED AFTER NOVEMBER 1, 2023 WILL NO LONGER EXPIRE

On April 4, 2024, USCIS announced that any Form I-693, Report of Immigration Medical Examination and Vaccination Report that was properly completed and signed by a civil surgeon on or after Nov. 1, 2023, does not expire and can be used indefinitely as evidence to show that the applicant is not inadmissible on health-related grounds.

Noncitizen applicants for adjustment of status must submit a Form I-693 to show they are free from any conditions that would render them inadmissible under the health-related grounds of the Immigration and Nationality Act. Since December 9, 2021, USCIS has considered a properly completed Form I-693 to retain its evidentiary value for 2 years after the date the civil surgeon signed the form to show the applicant was not inadmissible, regardless of when the underlying application was submitted.

As of Nov. 1, 2023, the Centers for Disease Control and Prevention (CDC) updated their instructions for Civil Surgeons to share certain medical data directly with the CDC. In addition, the CDC and USCIS have collaborated to improve reporting of relevant information to local U.S. health departments. Due to these

changes, USCIS has determined that completed Forms I-693 no longer expire and can be used to show an applicant is not inadmissible under the heath grounds indefinitely.

NEW CITIZENS ABLE TO REQUEST UPDATED SOCIAL SECURITY CARD THROUGH NEW NATURALIZATION APPLICATION

Beginning April 1, 2024, applicants for Naturalization to become United States Citizens may now request the issuance of a new Social Security card and may also authorize USCIS to notify the Social Security Administration (SSA) of the applicant's new U.S. citizenship. New citizens may no longer need to visit an SSA field office to apply for a Social Security Number or replacement card or to provide documentation as evidence of their new U.S. citizenship status.

The option to request a new Social Security card or to authorize the disclosure of information to the SSA when completing the Form N-400 is only included on page 2 of the new 04/01/2024 edition of the Form N-400. Previous editions of the Form N-400 do not contain this option. The edition date is found at the bottom of the page of the Form N-400 and in the form instructions.

UPDATE ON I-9 INVESTIGATIONS AND PENALTIES

Since the start of fiscal year 2024 (October 1, 2023), the Department of Justice's (DOJ) Immigrant and Employee Rights Section (IER) has been proactively investigating employers for possible violations of the Form I-9 employment eligibility verification ("EEV") process and discriminatory hiring practices.

Employers are often investigated by IER when employees are challenged on the documentation they present in the Form I-9 EEV process or are requested to provide specific documentation. As part of the Form I-9 EEV process, an employer cannot require specific documents but rather may only show the Form I-9 List of Acceptable Documents to a potential (or if required to re-verify documents, a current) employee and instruct him/her to provide either one document from List A (identity and employment documents) OR one document from each List B (identity document) and List C (employment document).

Employers are also at risk of IER investigations when recruiting employees. The Immigration Reform and Control Act of 1986 (IRCA) prohibits limiting positions to U.S. citizens only without authorization under a specific law, regulation, executive order, governmental contract, or Attorney General directive.

An employer, or its agents, may not state any specific citizenship, immigration, visa status, or any preference or requirement in any job posting it publishes or permits a third party to publish on its behalf, unless the position has a citizenship requirement meeting the legal requirements. Investigations may also commence if a job applicant is not considered for a position based upon their citizenship or immigration status.

Due to the time involved with an IER investigation, a settlement is often reached with the employer generally agreeing to pay a civil monetary penalty (CMP); to make an award of back-pay to the claimant for wages or income lost; to create and/or revise its policies, training materials and guidance on the Form I-9 process for vetting by IER; and to participate in training of employees who are responsible for the EEV process.

Recent settlements include:

Claim: A naturalized U.S. citizen denied consideration for employment when the company, a Dallas, Texas management services company serving the energy and consumer goods sectors, learned of her U.S. citizenship.

Civil Monetary Penalty: $4,610

Back Pay Award: $22,400 in lost pay and benefits plus $155 in interest

Other Condition of Interest: The company also agreed to ensure that the employees responsible for supervising other employees, or responsible for recruiting, hiring, or firing would be properly trained on citizenship status discrimination regarding International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR").

Claim: The employer, a provider of security services including on-site guarding, mobile guarding, remote guarding, electronic security, fire and safety and corporate risk management, engaged in a pattern of discriminatory practices in the EEV process when it requested non-citizen employees to present specific documents, such as requiring a lawful Permanent Resident to present their Green Card, and allowed U.S. citizen employees to present documents of their choosing under the Form I-9 List of Acceptable Documents.

Civil Monetary Penalty: $100,000

Back Pay Award: $75,000 as a fund to pay claimants. IER will have 260 days to assess and make determinations on a request for back pay.

Other Condition of Interest: The company agreed to provide IER with copy of their Form I-9 data on a quarterly basis for three years – opening a window for the identification of possible subsequent violations and subsequent penalties.

Claim: The employer, an information technology staffing company, published on-line job advertisements that limited applicants to U.S citizens and lawful Permanent Residents without legal justification.

Civil Monetary Penalty: $100,000

Back Pay Award: None

Other Condition of Interest: The company also agreed to provide semi-annual certification over a three-year period that its recruitment efforts for clients, including Linked-in postings and emails, do not include an unlawful citizenship requirement.

Claim: An on-demand printing and fulfillment company wrongfully rejected an employee's List B document (a Driver's License) and List C document (a Social Security Card) as part of the EEV process.

Civil Monetary Penalty: $27,500

Back Pay Award: $6,200

Other Condition of Interest: IER also required the employees who are/would be responsible for the EEV process to compete an IER-prepared training assessment/quiz that includes fifteen multiple choice

questions; with the individual to complete additional training for any incorrect answer until passing the assessment at 100%.

Claim: A staffing company, at the request of its client, refused to hire, recruit or accept referrals of non-citizens without having a legal basis.

Civil Monetary Penalty: $20,000

Back Pay Award: None

Other Condition of Interest: The company agreed to create or revise and implement employment policies in line with the EEV requirements and have any citizenship status restriction request by clients vetted by the company's executive management and legal counsel before implementation.

Claim: A hospital violated the Form I-9 employment eligibility verification process when it failed to recognize that an employee's employment authorization had been automatically extended under a Temporary Protected Status (TPS) program and failed to recognize the validity of the employment authorization when the individual's country of birth was not a designated TPS-country. To qualify for TPS, an individual may either be a national of a country designated for TPS, or a person without nationality who last habitually resided in a TPS-designated country. Current countries eligible for TPS include Afghanistan, Burma (Myanmar), Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Syria, Ukraine, Venezuela and Yemen.

Civil Monetary Penalty: $2,232

Back Pay Award: $2,164

Claim: A staffing agency posted employment opportunity advertisements over a three-year period that contained unlawful hiring restrictions.

Civil Monetary Penalty: $690,000

Back Pay Award: $230,000 back pay fund established to compensate individuals who were screened out due to their citizenship status or deterred from applying for positions based upon restrictive wording in job advertisements.

While most often an employer will agree to settle a claim without admitting to any wrongdoing to avoid the expense of litigation and a hearing before an Administrative Law Judge ("ALJ") of the DOJ's Office of Chief Administrative Hearing Office ("OCAHO"), Walmart and SpaceX have taken a different approach and have successfully challenged the authority of OCHAO ALJs.

The Appointments Clause in Article II, Section 2 of the Constitution permits a "principal officer," a position appointed by the President and confirmed by the Senate (such as the Attorney General, to appoint and also direct and supervise the work of "inferior officers", such as OCHAO ALJs. Section 1324b of the immigration law enacted by Congress requires OCAHO ALJ decisions to be reviewed exclusively by the U.S. Court of Appeals, not the Attorney General. On October 12, 2023, the Department of Justice published an Interim Final Rule that the Attorney General, in their discretion, may review decisions by OCHAO ALJs.

Walmart recently prevailed on a summary judgment motion in the U.S. District Court for the Southern District of Georgia, Statesboro Division, requesting the end of proceedings and the government's imposition of civil penalties stemming from an investigation of Walmart's compliance with EEV record keeping requirements. Walmart argued the position of OCAHO ALJ violates the Appointments Clause in Article II of the Constitution and the Court agreed, noting OCAHO ALJs, who are appointed by the U.S. Attorney General, are unconstitutionally shielded from removal by the President and the supervision required by Article II of the Constitution is missing.

In November 2023, the U.S District Court for the Southern District of Texas, Brownsville Division, granted a stay in the proceedings against Space Exploration Technologies Corp. a/k/a SpaceX. IER filed an administrative complaint alleging SpaceX unlawfully discriminated individuals in the hiring and firing process based upon national origin or citizenship and sought civil penalties, backpay and the employment reinstatement of aggrieved individuals. SpaceX contended actions by OCHAO ALJs violate the Appointment Clause in Article II of the Constitution. When granting the injunction, the Court noted the October 12, 2023 Interim Final Rule was also unlawful as it circumvents the law passed by Congress which authorizes judicial review of OCAHO ALJ decisions by the U.S. Court of Appeals and not administrative review by the Attorney General.

If you have questions about I-9 compliance and how to avoid IER violations/penalties, please contact a Masuda Funai Immigration attorney.

UPDATE ON CBP TRUSTED TRAVELER PROGRAMS

On April 2, 2024, U.S. Customs and Border Protection ("CBP") finalized a rule to increase the processing fees for its Global Entry, SENTRI and NEXUS Trusted Traveler Programs. The fee increase goes into effect October 1, 2024. Participation in each program requires completion of an on-line application and CBP will evaluate the applicant for eligibility. Once the applicant is conditionally approved, they either schedule an appointment for an interview with a CBP Inspector or complete the "Enrollment on Arrival" processing at a designated airport when arriving in the United States. Thereafter, CBP will make a decision on the application; and if approved, issue the appropriate Trusted Traveler documentation.

The Global Entry program allows registered and vetted travelers arriving at participating airports to go through a streamlined inspection process by either checking-in at a Global Entry Kiosk or using the Global Entry mobile applications. U.S. citizens, U.S. nationals, and U.S. lawful permanent residents, and designated nonimmigrants who are citizens of Argentina, Australia, Bahrain, Brazil, Canada, Colombia, Dominican Republic, Croatia, Germany, India, Japan, Mexico, the Netherlands, New Zealand, Panama, Qatar, the Republic of Korea, Singapore, Switzerland, Taiwan, and the United Kingdom are eligible to apply for Global Entry. Global Entry authorization is valid for five years and may be renewed. Global Entry approval also allows for TSA Precheck qualification. Global Entry users must abide by the terms of the program including the required customs and agriculture declarations upon arrival. The Global Entry application fee will increase from $100 to $120.

Persons of any nationality are eligible to apply for the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which is valid for pedestrian entrances or registered vehicles entering the United States by land from Mexico. The SENTRI application fee will decrease from $122.25 to $120 and cover the full

application process including the application fee, a DCL systems cost fee (DCL fee), and the Federal Bureau of Investigation (FBI) fingerprinting fee. The current $42 fee to register an additional vehicle continues. Starting October 1, 2024 all SENTRI applications, including the registration of a different vehicle, must be submitted online.

The NEXUS program is a joint U.S. program with Canada and allows for dedicated immigration processing for both countries. Approval in the NEXUS program requires an applicant to have an interview with both U.S. and Canadian authorities. The NEXUS application fee will increase from $50.00 to $120.00. The government of Canada receives one-third of the revenues from the NEXUS fee.

Minor children who are under the age of 18 and are either applying concurrently with a parent or legal guardian or who wish to be added as a participating family member will be exempt from the application fee. However, each minor child must complete the online application and be vetted and approved by CBP for participation in a Trusted Traveler Programs.

All current NEXUS members, U.S. citizens, and U.S. lawful permanent residents who are SENTRI members, are eligible to use Global Entry once they provide fingerprints and document information to CBP. Such individuals who have completed the CBP fingerprinting may use Global Entry without any additional cost. Mexican nationals in the SENTRI program must apply for Global Entry participation. Global Entry, SENTRI and NEXUS authorization is valid for five years and may be renewed. CBP does have authority to remove individuals from the Trusted Traveler programs.

COORDINATING TRAVEL WHEN USING AN ADVANCE PAROLE DOCUMENT

When considering international travel, foreign nationals who plan to apply to enter the United States using an Advance Parole (Form I-512L/I-512T) should allocate sufficient time for the U.S. immigration processing, particularly if connecting to a domestic flight upon arrival.

Travelers with an Advance Parole will be sent to secondary inspection by U.S. Customs and Border Protection (“CBP”) after meeting with a CBP officer in the primary passenger arrival area. During secondary inspection, a CBP Inspector will review the validity of the Advance Parole and the traveler’s eligibility to be admitted to the United States. Depending on the number of arriving flights and volume of travelers, the secondary inspection processing could take a few hours.

The Advance Parole document will indicate whether the document is valid for a single or multiple applications for entry before a specified date. If the Advance Parole document is valid for multiple applications, when initially entering the United States using the Advance Parole, the CBP Inspector will retain one page, and return the other page to the traveler. This page will have a “Department of Homeland Security Paroled” stamp that will include the date and location of admission, the purpose of the paroled admission, such as continuing the adjustment of status (“DA/AOS”) to Permanent Resident processing, and the validity of paroled admission. The traveler must bring their CBP-endorsed multiple entry Advance Parole document with them for each subsequent entry to the United States before the Advance Parole expires.

After arrival, the traveler should visit the CBP Form I-94 website to obtain a copy of their admission record. If the traveler has lost their CBP-endorsed multiple entry Advance Parole document and is not eligible to apply

for entry to the United States on another basis, they would need to apply for and be issued a new Advance Parole document.

MFEM NEWS

Three Masuda Funai Immigration Attorneys Named As 2024 “Super Lawyers”

Three attorneys in Masuda Funai’s Immigration Group were recently named to the 2024 “Super Lawyers” list by *Super Lawyers*, a Thompson Reuters business. Every year, *Super Lawyers* identifies outstanding lawyers who have attained a high degree of peer recognition and professional achievement based upon its patented selection process. This year, Fazila Vaid and Bob White who are co-chairs of the Masuda Funai Immigration Group, and Bryan Funai were identified for their outstanding achievement in the immigration law area.

Bob White To Present at the Federal Bar Association’s (FBA) Annual Immigration Conference

Bob White, co-chair of the Masuda Funai Immigration Group, will be presenting at this year’s Federal Bar Association’s (FBA) annual immigration conference on May 10th and 11th in Salt Lake City, Utah. Mr. White will be presenting with leadership from the U.S. Department of Labor’s (DOL) Office of Foreign Labor Certification (OFLC). Some of the topics which will be covered during the session are the current state of the OFLC’s prevailing wage and PERM programs, the roll-out of the new PERM program, and other upcoming changes within the OFLC immigration programs.