Proskauer

Compliance with Immigration Related Requirements: Closing, Cancellations and Reductions in Service

April 3, 2020

Advice to U.S. Employers: Immigration Insights Series during COVID-19 Crisis

The 3rd in our Series of Advisories

Proskauer's Immigration Practice Group is advising clients on an array of challenges as companies find it difficult to comply with their Department of Labor and Immigration and Reform Control Act (IRCA) obligations and maintain the legal status of the non-immigrant population.

We are publishing a series of alerts addressing the many issues that have been identified during the course of our representation to facilitate guidance to our clients and companies in general, given this ever-changing and challenging situation.

Our first alert related to the challenge of completing an I-9 form remotely, and was updated the next day as USCIS announced "flexibility" during the Coronavirus pandemic.

The 2nd alert reviewed compliance for telecommuting during the pandemic for H-1B and E-3 employees.

This alert advises of changes at U.S. consulates and USCIS in response to the pandemic, and the impact on our clients.

Our team is available to you to provide guidance and assistance in adapting to the challenges.

Advisory 3: Closing, Cancellations and Reductions in Service

As the U.S. government continues its active response to COVID-19, cancelations, closures and reductions in service can all be expected. U.S. consulates worldwide continue to cancel nonimmigrant and immigrant visa appointments, the U.S. Citizenship and Immigration Service (USCIS) suspends in-person services and travel restrictions continue to be enhanced. Yet, there is still some good news.

USCIS suspended in-person services effective March 18 thru May 3

On March 18, USCIS temporarily suspended all routine face-to-face services with applicants at all their offices, including all interviews and naturalization ceremonies. The temporary suspension has now been extended through May 3, and as of now USCIS offices will begin to re-open on May 4 unless the public closures are extended further. This includes interviews, naturalization ceremonies and biometric collection appointments.

Applicants have expressed concern about the closures and knowing when their appointment times might be rescheduled. USCIS field offices will send notices to applicants and petitioners with scheduled appointments impacted by the temporary public closure and will reschedule all applicants when USCIS resumes normal operations.

How this will affect our clients

Individuals with a scheduled in-person appointment can expect that USCIS field offices will send notices to both applicants and their attorneys who will be impacted by the suspension. When the interview is rescheduled under normal operations, applicants should receive a new interview notice with the new time, date and location of the interview.

This means that all application types that require in-person interviews or the capturing of biometrics, such as I-485 applications for adjustment of status, initial form I-765 applications for employment authorization requiring biometrics, and Form I-539 nonimmigrant extensions and changes of status on Form I-539, will be delayed. In many cases, the delay in processing Form I-539 might also delay employment authorization applications for H-4, L-2, and E nonimmigrant spouses. It remains important to be vigilant about all underlying visa status since the ultimate adjudication of cases will be postponed. Your Proskauer representative will continue to monitor the status of all individual cases impacted by these closures.

Department of Homeland Security (DHS) Closes the Borders

New border travel restrictions have been issued for Canada and Mexico whereby only essential travel is permitted across the U.S.-Mexico and U.S.-Canada borders, at least until April 20. "Non-essential travel", such as tourism or recreational crossing at land borders is not currently permitted. We are warning business travelers, who may be deemed essential, that they will likely face additional scrutiny at the Northern and Southern border.

So far, those individuals with a valid U.S. travel document appear to be exempt from the restrictions, which should include those with any type of valid U.S. visa or advance parole document. U.S. citizens and green card holders are also not currently subject. However, please be advised that U.S. Customs and Border Patrol officers have wide discretion to inspect entrants, and any foreign nationals needing to cross border travel should expect delays and additional questioning about their activities in the United States.

Level 4 Travel Alert

The U.S. Department of State (DOS) advises U.S. citizens to avoid all international travel due to the global impact of COVID-19. In countries where commercial departure options remain available, U.S. citizens who live in the United States should arrange for immediate return to the United States, unless they are prepared to remain abroad for an indefinite period. In recent weeks, commercial airlines have significantly reduced flight schedules and countries have closed airports and borders with little advance notice. If you are an American abroad and you wish to return to the United States, you should contact the nearest U.S. Embassy or Consulate for assistance as needed.

Suspension of all routine consular appointments

DOS has temporarily suspended all routine visa services at all U.S. Embassies and Consulates as of March 20, 2020. As resources allow, embassies and consulates will continue to provide emergency and mission critical visa services. This of course affects clients awaiting visa appointments abroad as well as employee transfer planning. We are closely monitoring the situation at US embassies and consulates abroad and will keep our clients updated. Once consulates resume normal operations, applicants will be able to reschedule appointments although future appointment dates are not currently available.

There is some good news when it comes to ….

1. **Your previously captured biometrics**

USCIS announced that it will reuse previously submitted biometrics in order to process Form I-765, Application for Employment Authorization, extension requests due to the temporary closure of Application Support Centers (ASC). Any applicant who had an appointment scheduled with an ASC on or after the March 18 closure or who filed an I-765 extension will have their application processed using previously submitted biometrics. This will remain in effect until ASCs resume normal operations.

2. **Deadline Extensions**

USCIS will be extending the 60-day response deadlines for certain requests for evidence (RFEs) and notices of intent to deny (NOIDs). If the notice was issued dated between March 1 and May 1, 2020, USCIS will accept responses submitted within 60 calendar days after the original response deadline in the RFE or NOID.

So far, USCIS has not committed to providing the same courtesies for extension of stay applications or employment authorization. For now, we must continue to timely file any request for extension of stay, such as H1B or L1.

With many employers engaged in remote working conditions, the 60-day extension should relieve some of the filing pressure on employers and their foreign national employees.

3. **Real ID extended**

The Department of Homeland Security has extended the deadline to obtain state driver's licenses that comply with the requirements of the REAL ID Act. The REAL ID Act requires U.S. states to issue state driver's licenses and non-driver identification cards that meet enhanced security standards. The deadline for REAL ID Act compliance has been postponed to October 1, 2021, from October 1, 2020. Now, as of October 1, 2021, travelers will be required to present a REAL ID-compliant identification to board domestic flights and to enter federal facilities.

Your Proskauer representatives are carefully monitoring the status for each and every member of the nonimmigrant visa population. We are bearing in mind timelines and the need to follow on any necessary rescheduling, maintenance of visa status and newly implemented accommodations and benefits announced by DHS.