Business Immigration and Coronavirus: Latest Announcements from USCIS and DOL

Article By
Beth E. Carlson
Catherine H. Betts
Sarah R. Kilibarda
Peter A. Yost
Faegre Drinker
Labor Sphere

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Monday, March 23, 2020

U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE) and the Department of Labor (DOL) sent a flurry of operational updates late last week. These updates include a suspension of premium processing for FY2021 H-1B cap petitions, which was quickly followed by a suspension of premium processing for Form I-129 nonimmigrant visa petitions (H-1B, L-1, TN, O-1 and more work visas) and I-140 immigrant visa petitions. USCIS also sent an announcement relaxing certain “wet” original signatures on forms and an update relaxing some I-9 requirements.

U.S. Citizenship and Immigration Services (USCIS) Updates — Announced on March 20, 2020

Suspension of premium processing for all Form I-129 nonimmigrant visa petitions and Form I-140 immigrant petitions
On March 20, 2020, USCIS announced the immediate and temporary suspension of premium processing for all Form I-129 and I-140 petitions until further notice, due to COVID-19. USCIS indicated that it would process those petitions filed before the effective date of March 20 using premium processing. However, no new requests would be processed under premium processing. The government also stated that “USCIS will reject the I-907 and return the $1,440 filing fee for all petitions requesting premium processing that were mailed before March 20 and not yet accepted.” This likely means that those cases that arrived on March 20 will be accepted for filing but will not be processed with premium processing. The temporary suspension includes the following nonimmigrant and visa categories:

- **I-129**: E-1, E-2, H-1B, H-2B, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, R-1, TN-1, TN-2
- **I-140**: EB-1, EB-2, EB-3

**Suspension of premium processing for FY2021 H-1B cap petitions**

As in past years, USCIS announced a temporary suspension of premium processing of H-1B cap petitions. This announcement was made before the general suspension of I-129 and I-140 cases outlined above. The information provided by USCIS with the temporary suspension of H-1B cap petitions indicated that premium processing would only be temporary and would restart in a two-phased approach. The first phase for implementing premium processing for master’s cap exemption cases would restart no later than May 27, 2020, and for all other cases would restart on June 29, 2020. The March 20, 2020, announcement about the suspension of all premium processing for I-129 and I-140 petitions specifically states that “this announcement expands upon and supersedes the previous announcement” which includes the announcements about the suspension of premium processing for H-1B cap petitions.

**USCIS announces flexibility for signatures during COVID-19 national emergency**

USCIS also announced on March 20 that due to the national emergency, USCIS will start to accept reproduced original signatures for all benefit forms and documents, including Form I-129, Petition for Nonimmigrant Worker, for submissions dated March 21, 2020, and beyond. Certain forms require an original “wet” signature per form instructions, such as Form I-129 which governs most nonimmigrant work visa petitions, including the H-1B, L-1, TN and O-1. USCIS will accept electronically reproduced original signatures for the duration of the National Emergency. USCIS specifically noted that this change ONLY referred to signatures and all other form instructions must continue to be followed. Additionally, USCIS also stated that the documents with the actual original “wet” signature must be retained as USCIS could request to see these documents at any time.

**USCIS closed H-1B cap electronic registration on March 20**

USCIS also sent an announcement that the new H-1B cap electronic registration process closed at noon ET on March 20 and that it would follow what the agency had previously announced about the H-1B cap selection process. USCIS is expected to
complete the random H-1B cap selection process by Tuesday, March 31. The filing period for H-1B cap subject petitions will be at least 90 days from the selection date.

Department of Labor (DOL) Updates — Announced March 20, 2020

Office of Foreign Labor Certification (OFLC) — update on operations

The Office of Foreign Labor Certification (OFLC) remains fully operational. This includes the National Processing Center, PERM and FLAG systems. OFLC will continue to communicate through email if mail service is disrupted. OFLC will contact the employer or authorized representative to arrange for alternate forms of delivery. OFLC/DOL will grant extensions when needed.

PERM labor certification applications

DOL will accept recruitment completed within 60 days after the regulatory deadlines have passed to provide employers with sufficient time to complete the mandatory recruitment and file their PERM application — provided that the employer initiated its recruitment within the 180 days preceding the President’s emergency declaration on March 13, 2020. Delayed recruitment conducted in conjunction with the filing of an application for permanent labor certification must have started on or after September 15, 2019, and the filing must occur by May 12, 2020. Any requests related to appeals should be addressed directly with the agency.

Labor Condition Application (LCA) submitted with H-1B petitions

DOL has provided the following feedback regarding changes in work location:

- If the change in work location is within the same metropolitan area, no new LCA is needed.
- Notice must be posted at the new worksite (must post at home work location).
  - Usually, notice must be completed before the employee begins work at the new location.
  - Due to COVID-19, notice will be considered proper if completed within 30 days of the change.
- Short-term placement rules remain in place.

What must employers do? Based on this March 20 announcement from DOL, the government is requiring the posting of the already certified LCA or the LCA notice of filing at the home office locations of H-1B workers who are now working from home pursuant to employer or other government “shelter in place” rules. Employees must post such notices on their refrigerators or other locations in their home in two locations for a time period of 10 days. Employers have 30 days from the date of any change in location to complete this task. Therefore, if the remote work started on
March 16, 2020, the employer would have until April 15, 2020 to post this notice. For more information, please see the FAQs released from the Department of Labor.

Conclusion

Suspension by USCIS of premium processing will have a significant negative impact on current processing of cases and will present challenges for status expiration issues. USCIS has NOT announced any specific grace periods or extensions of underlying status (such as H-1B, L-1, O-1 or others). The only status extension that has been discussed is satisfactory departure for 30 days for B-1/B-2 visitors under ESTA. USCIS should not delay in granting an extension or grace period for all underlying immigration status due to the COVID-19 national emergency. Employers and their foreign national employees need USCIS to allow for additional flexibility in this time of unprecedented uncertainty.

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