

Immigration Newsletter

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U.S. Post Office Failed to Deliver Applications to USCIS from August until October 2017, Causing Rejection of 4,000 DACA Renewals and Delays for Other Applications

According to a New York Times article, the U.S. Post Office admits that they failed to deliver applications to USCIS in the weeks before the October 5 deadline. The reason given was “unintentional temporary mail processing delay [occurred] in the Chicago area.” USCIS rejected over 4,000 DACA applications and gave out an unspecified number of late receipt notices for other types of applications including work permit renewals and petitions. USCIS initially said the rejections were final and that the agency “is not responsible for the mail service an individual chooses, or for delays on the part of mail service providers” even if the service provider is the U.S. government itself. USCIS has since agreed to reconsider. For rejection of DACA applications, USCIS will contact the applicant or the applicant can re-submit the application with proof the request was received by the Chicago Lockbox before the deadline. We believe applications were delayed delivery as far back as August 2017.

Court Allows Trump's Third Travel Ban that includes an Exception for Individuals with “Bona Fide Relationship” in the United States

The Ninth Circuit is allowing Trump's modified travel ban on nationals of six Muslim-majority countries: Iran, Libya, Somalia, Sudan, Syria and Yemen. In order for a foreign citizen from any of those six countries to receive a visa or enter the United States, the applicant for travel from any of the six countries must show a relationship with a person or entity in the United States. A qualifying family relationship includes: grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins.

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“At Barten Law, we understand that your immigration needs are important to you and your family. You deserve the highest quality representation and legal advice in all areas of immigration law.”



Cancellation of Temporary Protected Status (TPS) Work Permits for Over 300,000 from El Salvador, Nicaragua, Honduras and Haiti under Review

The Trump Administration is targeting the Temporary Protected Status (TPS) program that has more than 300,000 TPS holders from countries of El Salvador, Nicaragua, Honduras, and Haiti specifically under review. TPS holders may no longer have the ability to possess work permits to work lawfully or to remain in the U.S. with enforced deportation looming. According to www.americanprogress.org, average TPS holders from El Salvador, Nicaragua and Honduras have been lawfully in the United States for more than two decades. The average Haitian TPS holder has held that status for more than 13 years. In addition, nearly 275,000 U.S. born children have a parent with TPS and lawful work authorization. U.S. employers are expected to lose \$967 million in employee turnover costs and a third around 100,000 have U.S. mortgages. The Honduran program is under review and set to terminate July 5, 2018. The program for Nicaraguans will terminate as of January 5, 2019. TPS does not provide a path to residency or U.S. citizenship. Typically, in order to qualify for residency, the applicant needs to review eligibility for family based, victim based, or asylum-based programs. It is advisable for TPS holders to immediately take action to switch to another immigration option that cannot be cancelled by the Trump Administration.

Planning for Changes at the I-485 Stage for Employment-Based Residency

When an employee changes positions after filing for residency, USCIS will require that the information be provided showing the position is same, similar, or a realistic progression of job duties over time. USCIS Form I-485 Supplement J now requires the same employer or new employer and foreign national to sign, and attest to, the intent to fill the position forming the basis of the I-140 petition. In addition, the supplement requests the job title and Occupational Employment Statistics code used for the PERM application and I-140. USCIS will require information related to realistic progression of job duties over time and the impact of those changing responsibilities.

USCIS Surge in Requests for Additional Evidence for H-1Bs with Level 1 & 2 Wage

According to the American Immigration Lawyers Association (“AILA”) a large number of H-1B applications have been issued Requests for Additional Evidence causing delays in adjudication. A review by AILA of more than 400 case examples shows that the single most common assertion by USCIS was the job duties were beyond entry level. The second most common assertion was a job with a Level 1 was not a specialty occupation. And third most common assertion was both the job duties were beyond entry level and also was not a specialty occupation. More recently, reports of Requests for Additional Evidence for Level 2 Wages have been issued. President Trump’s April 18, 2017 Executive Order “Buy American and Hire American” appears to be the source of the increased scrutiny.

The 2017 Report on Immigration Judge Rulings Published – Outcomes Depend upon Which Immigration Judge is Assigned to the Case

Syracuse University has published its most recent report on asylum decisions by each individual immigration judge in the United States. The report continues to show that immigrants in court are deeply affected by which Immigration Judge hears the case. Currently, San Francisco and Newark Immigration Courts have the widest disparity. In each of these courts, different individual immigration judges approve as little as 3% or as much as 90% of asylum cases heard. The Omaha Immigration Court has two new Immigration Judges who are not listed in the report at this time. However, the remaining Immigration Judge is ranked as one of the least likely to approve with a ranking 85 out of 293 Judges, denying 81.2% of asylum cases heard. Nationally, during the same period, immigration judges denied 52.8% of asylum cases heard. The report may be found at <http://trac.syr.edu/immigration/reports/judgereports/>



In-Person Interview Requirement for All Employment-Based Residency (Green Card) Applicants, Asylum Spouse and Children I-730 Petitions and All Removal of Conditional Residency I-751 Applications Causing Significant Delays

Abandoning the historical practice of processing applications through the USCIS Service Centers, all applications for employment based residency, asylum spouse and children I-730 Petitions and U.S. citizen spouse and children's Removal of Conditions on Residency I-751 Applications will require processing through an interview at the local USCIS Field Office. Typically, employment based and U.S. citizen spouse and children applicants were considered a lower priority because they were previously vetted by interview with either the U.S. Department of State or the U.S. Citizenship and Immigration Services. Our immigration lawyers are ready to provide assistance preparing and accompanying applicants to in-person interviews.

In-person Interview Requirement for Employment Based

Employment residency applications filed after March 6, 2017 will automatically include an interview by the USCIS Local Field Office. Interviews began October 2, 2017. The interview requirement will be for all employees, their spouse, and children. Employees will be expected to relay to the USCIS interviewer details of their work including the location, proposed job duties, their educational background and experience. USCIS will also confirm the employer still intends to employ the applicant and the employee intends to take the job. In addition, interviewers will scrutinize any tickets or arrests, prior visa applications, U.S. tax returns as well as unauthorized work. Further, the employee and their immigrating spouse can expect to be questioned on the authenticity of their marriage. USCIS states that these interviews will take priority in order to meet the yearly quota and will cause delays in family-based residency and citizenship applications which do not have yearly statutory quotas.

In-person Interview Requirement for Spouses and Children of Applicants Approved for Asylum

All beneficiaries of I-730 refugee/asylee relatives (spouse and children) in the United States should expect significant delays (at least a year or more) in order to be interviewed. Documenting a bona fide relationship as well as showing no unauthorized behavior will be critical to winning these interviews. No interviews are being held at this time for these cases. Significant delays in these cases are expected due to USCIS implementing employment based interview system beginning interviews in this category.

In-person Interview Requirements for Spouses and Children of U.S. Citizens

Spouses and children of U.S. citizens should prepare to attend an In-Person interview on their Removal of Conditions I-751 Applications. Usually, a one-year extension of Residency with the Receipt Notice is automatically provided which in the past when processing was taking 9 months was adequate. Now all applicants will need to make sure their passports are valid and unexpired and a request for a Temporary I-551 stamp from the USCIS Local Field Office is needed. Expect multiple extension requests for these passport stamps requiring return to the Local Field Office every six months waiting for the interview. We are finding that most applicants are becoming eligible for U.S. citizenship having been a resident for 3 years. For those who want the opportunity to apply for U.S. citizenship as soon as possible, we recommend not waiting for the results of the Removal of Conditions Applications. The USCIS Local Field Office will process both applications at the U.S. citizenship interview if the Removal of Conditions Application still remains pending. For marriages that do not survive the 5-7 year process for residency, the foreign citizen spouse and child will need to re-file a new application requesting a waiver of the Joint requirement, likely starting over the processing time for an in-person interview. We advise maintaining careful monthly records for years along with a back-up copy in the event the USCIS Local Field Office requests long ago records that are difficult to retrieve.



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Visa and Immigration Services

- » Family-sponsored Immigration
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- » Asylum
- » Waivers
- » Fiancé Visa (Including LGBTQ)
- » H-1B Specialty Occupations
- » Consular Processing



JoAnn L. Barten, J.D.

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Preference Categories: January 2018 Bulletin -- The first priority date listed are cases which beneficiaries may file for adjustment of status or immigrant visa for residency January 01, 2018.

Final Action: Family Sponsored

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland	INDIA	MEXICO	PHILIPPINES
F1	15MAR11	15MAR11	15MAR11	01MAY96	01JAN05
F2A	01FEB16	01FEB16	01FEB16	01JAN16	01FEB16
F2B	01DEC10	01DEC10	01DEC10	15AUG96	01JUL06
F3	08OCT05	08OCT05	08OCT05	15JUN95	15MAR95
F4	22JUN04	15DEC03	15DEC03	01NOV97	01SEP94

Dates for Filing: Family-Sponsored

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland	INDIA	MEXICO	PHILIPPINES
F1	01JAN12	01JAN12	01JAN12	01NOV96	01OCT07
F2A	01NOV16	01NOV16	01NOV16	01NOV16	01NOV16
F2B	01SEP11	01SEP11	01SEP11	01JAN97	01SEP07
F3	01DEC05	01DEC05	01DEC05	01OCT95	15JUN95
F4	15NOV04	15NOV04	22JUN04	08FEB98	0

Final Action: Employment-Based

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	08AUG13	C	22NOV08	C	C
3rd	C	15APR14	C	01NOV06	C	15FEB16
Other Workers	C	22DEC06	C	01NOV06	C	15FEB16
4th	C	C	01DEC15	C	01JUN16	C
Certain Religious Workers	U	U	U	U	U	U
5th Non-Regional Center (c5 and T5)	C	22JUL14	C	C	C	C
5th Regional Center (I5 and R5)	U	U	U	U	U	U

Dates for Filing: Employment-Based

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	C	08FEB09	C	C
3rd	C	C	01JAN08	C	01AUG16
Other Workers	C	C	01JAN08	C	01AUG16
4th	C	15APR16	C	C	C
Certain Religious Workers	C	15APR16	C	C	C
5th Non-Regional Center (C5 and T5)	C	C	C	C	C
5th Regional Center (I5 and R5)	C	C	C	C	C