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News & Types: Immigration Monthly Updates

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Practices: Immigration

THE "KEEPING AMERICAN FAMILIES TOGETHER" HUMANITARIAN PAROLE PROGRAM

On June 18, 2024, the Biden-Harris Administration announced its intention to have U.S. Citizenship and Immigration Services (USCIS) promulgate regulations to support the pathway to permanent resident status (a.k.a. "Green Card") for undocumented foreign nationals who are the spouse or stepchild of a U.S. citizen and who have been continuously present in the United States for at least ten years. The couple must have been married before June 17, 2024.

Under the U.S. immigration law, a spouse or stepchild of a U.S. citizen is considered an "immediate relative" and is eligible for permanent resident status; however, the application process for the "Green Card" or permanent resident status can be quite challenging and lengthy, in some instances causing possible family separation for three years, ten years or indefinitely if the applicant did not enter the United States legally.

The Biden-Harris Administration's plans to ease the possible separation of undocumented family members, who are eligible for permanent resident status, but for the quirks of the immigration process itself. Individuals who are undocumented in the United States, irrespective of their family relationship to a U.S. Citizen, cannot complete the permanent resident status processing in the United States but rather must attend an interview at a U.S. Consular Post abroad. Departing the United States to attend the interview at a U.S. Consular Post abroad triggers a ban of three years, ten years or indefinitely, on their ability to return to the United States using the Green Card. A waiver of these bans exists, but USCIS processing times for adjudication of the waivers are over four years.

This proposed parole program takes advantage of an existing provision of the Immigration and Nationality Act (INA), which grants the government authority to parole foreign nationals temporarily for "urgent humanitarian reasons or significant public benefit." The government has used this provision in many instances over the years to allow designated individuals to be in the United States for humanitarian purposes, such as the Uniting for Ukraine program for Ukrainians fleeing Russia's invasion; the Haitian Family Reunification Parole (HFRP) program established in 2014 allowing certain eligible U.S. citizens and lawful permanent residents to apply for parole for their family members in Haiti; the Cuban Family Reunification Parole (CFRP) program created in 2007 allowing certain eligible U.S. citizens and lawful permanents to apply for parole for their family members in Cuba; the Central American Minors (CAM) program for children from El Salvador, Guatemala and Honduras; the Filipino World War II Veterans Parole (FWVP) program established in 2016 permitting certain Filipino

World War II veterans and their U.S. citizen and lawful permanent resident spouses to apply for parole for certain family members; and the Immigrant Military Members and Veterans Initiative (IMMVI) program for the designated family members of non-citizen current or former military service members.

Under separate provisions of the INA, immediate relatives granted parole under this proposed program will then be eligible to complete permanent resident status processing in the United States rather than departing the United States (and triggering a ban on their ability to return) to attend an interview at a U.S. Consular Post abroad. The proposed "Keeping American Families Together" humanitarian parole program for undocumented spouses and stepchildren of U.S. Citizens will serve to unite families and streamline their permanent resident status processing. The White House estimates this program benefits 500,000 spouses and 50,000 stepchildren of U.S. citizens.

Please note that this program is not yet in effect and applications are not currently being accepted. USCIS will need to publish regulations and provide specific instructions on this program. It is anticipated that the proposed regulations will not be published at least until late summer. After the comment period ends on the proposed regulation and USCIS considers the comments, USCIS will need to publish a final regulation. After the final regulation is released, the implementation may be further delayed by anticipated legal challenges to the programs.

We will provide updates about the program in our firm's future Business Immigration Updates when available.

POSSIBLE VISA PROCESSING FOR DREAMERS WHO ARE U.S. COLLEGE GRADUATES

Commemorating twelve years of the Obama Administration's Deferred Action for Childhood Arrivals (DACA) program, on June 18, 2024, the Biden-Harris Administration announced its intention to allow DACA recipients (a.k.a. "Dreamers") who earned a degree at an accredited U.S. institution of higher education in the United States and have an offer of employment from a U.S. employer (in a field related to their degree) to receive employment-based visas.

While an employer can sponsor a DACA recipient for an employment-based visa, the issue becomes how the undocumented individual obtains the visa to use to travel to the United States for work. Similar to the undocumented spouse or stepchild of a U.S. citizen (discussed above), if the DACA recipient is required to depart the United States to apply for an employment-based visa at a U.S. Consular Post, their departure may trigger a ban on their ability to return to the United States for three years, ten years or possibly indefinitely. The Biden-Harris Administration has yet to provide full details on this plan. Still, such implementation will benefit many college graduates looking forward to working legally in the United States without the fear of deportation or inability to return to the United States after obtaining a visa abroad.

Please note that this program is not yet in effect and applications are not currently being accepted. USCIS will need to publish regulations and provide specific instructions on this program. It is anticipated that the proposed regulations will not be published at least until late summer. After the comment period ends on the proposed regulation and USCIS considers the comments, USCIS will then need to publish a final regulation. After the final regulation is released, the implementation may be further delayed by anticipated legal challenges to the programs.

We will provide updates about the program in our firm's future Business Immigration Updates when available.

CBP PROPOSES CHANGES TO 9-11 RESPONSE AND BIOMETRIC ENTRY-EXIT FEE FOR H-1B, L-1A AND L-1B PETITIONS

Presently, an employer with 50 or more employees and more than 50% of its employees working under an H-1B, L-1a or L-1B visa is required to pay a 9-11 Response and Biometric Entry-Exit Fee for a new/initial petition or change of employer petition.

Customs and Border Protection (CBP) proposes to have the 9-11 Response and Biometric Entry-Exit Fee apply for all H-1B, L-1A or L-1B petitions for a new/initial petition, change of employer petition, or extension of status filed on or before September 30, 2027. A request to amend an H-1B, L-1A or L-1B petition without extending time, would not be subject to the 9-11 Response and Biometric Entry-Exit Fee.

There is no proposed change in the amount of the fee. If the visa classification requested is an H-1B, the 9-11 Response and Biometric Entry-Exit Fee is $4,000. This fee is in addition to the USCIS Filing Fee for Form I-129, the Fraud Fee, the H-1B Supplement Fee and the new Asylum Program Fee. If the visa classification requested is an L-1A or L-1B, the 9-11 Response and Biometric Entry-Exit Fee is $4,500. This fee is in addition to the USCIS Filing Fee for Form I-129, the Fraud Fee and the new Asylum Program Fee.

Comments on this proposed change in the 9-11 Response and Biometric Entry-Exit Fee must be received by July 8, 2024. After CBP reviews the comments, it will issue a final regulation implementing the change.

JULY 2024 VISA BULLETIN UPDATE

The Department of State (DOS) recently issued the July 2024 Visa Bulletin.

For *employment-based immigration* only the following foreign nationals may either apply for permanent resident status through adjustment of status ("AOS") or have their AOS application approved if all qualifying and documentation requirements are met in July 2024. Also, the following foreign nationals who complete the Immigrant Visa processing at a U.S. Consular Post and who have submitted all the required documentation become eligible to have their interview scheduled in July 2024.

First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) whose priority date is before **November 1, 2022** – an advancement of two months from June 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or Workers recognized for their Extraordinary Ability) whose priority date is before **February 1, 2022** – a substantial advancement from March 1, 2021 noted in June 2024.

Second Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before March 15, 2023 – an advancement of two months from June 2024.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before **March 1, 2020** – an advancement of one month from June 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before June 15, 2012 – an advancement of two months from June 2024.

Third Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before December 1, 2021 - a *retrogression* from November 22, 2022 in June 2024. This is an indication that all EB3 visas have been allocated for FY-2024.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before September 1, 2020 – no change since June 2024. This is an indication that all EB3 visas for China-born persons have been allocated for FY-2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before September 22, 2012 – an advancement of one month from June 2024.

MFEM NEWS

MFEM ATTORNEYS APPOINTED TO VARIOUS AILA NATIONAL POSITIONS

Bob White, Co-Chair of the Masuda Funai Immigration Group, has been appointed Chair of the American Immigration Lawyers Association's (AILA) Department of Labor (DOL) liaison committee. As Chair, Mr. White will continue to focus on PERM, Labor Condition Application (LCA) and DOL Wage and Hour Department (WHD) policy issues and trends. Mr. White was previously Vice Chair of the AILA DOL liaison committee.

Julie Emerick, an attorney in the Masuda Funai Immigration Group, is continuing to serve on the AILA USCIS High Impact Adjudications Assistance Committee (formerly the Case Assistance Committee) which monitors and identifies problematic USCIS adjudication trends. For this committee, she will lead a taskforce focusing on trends and issues in business immigration. Ms. Emerick is also serving on AILA's Member Experience Committee which focuses on initiatives and programs to facilitate and enhance AILA-member experiences in the bar association.

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Masuda Funai To Host Complimentary TN Visa Webinar - Navigating Legal Requirements for Global Talent Acquisition

Kathleen Gaber, a partner in Masuda Funai's Immigration Group, together with AtWork Personnel, Michigan's top recruiting/staffing agency, will be conducting an educational session to provide information about how the TN visa category can be used to fill professional vacancies in an employer's workforce by opening talent pipelines in both Mexico and Canada. Presentations will include the legal immigration requirements, processing and parameters of this classification as well as recruitment resources in locating qualified talent. Additional information (including a registration link) is available on the Masuda Funai website at link.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.