IMMIGRATION UPDATES

Presented by Rose Mary Valencia
Executive Director
Office of International Affairs
Visa Sponsorship Options remain possible as long as all involved:

- Departments and internationals provide all required and appropriate documentation in a timely manner to OIA so that sponsorship packets may be processed timely.
- Departments and internationals provide sufficient evidence to prove position and international meet sponsorship obligations
- All comply with all regulations associated to the sponsorship throughout the sponsorship
- All understand U.S. Government has final decision to grant the benefit sought.
Presidential Executive Order on Buy American and Hire American

U.S. Government Agencies have begun to act on the Executive Order:

- **USCIS** is reviewing all OIA applications submitted as if it is the first review and issuing Request for Evidence (RFE)s to ensure applications are approvable before approving.
  - Effective 9/18/18 USCIS Officers have the discretion to deny application without issuing an RFE or Notice of Intention to Deny

- **U.S. Department of State** is authorized to re-adjudicate application at the time applicant applies for OIA stamp at U.S. Embassy or Consulate abroad.

- **U.S. Customs and Border Protection** is authorized to re-adjudicate application at the time applicant applies for admission to the U.S. at U.S. Port of Entry
Requests for Evidence (RFEs)

- USCIS announced in May, 2018 that RFE(s) issued by agency increased by 50%
- Denial rates as of May, 2018 were between 20-25%
- Reasons for RFEs and/or Denials
  - Prevailing Wages do not match job offered (these have been issued to employers who use on-line wages instead of seeking prevailing wage determination from DOL).
    - Do to this increase, DOL reported a 41% increase in prevailing wage determinations issued by DOL and anticipates this number of requests to increase
  - Prevailing Wage issued by DOL at Level I are being challenged USCIS. USCIS is defining Level I wages as “entry level or trainee level” which raises the question of “Specialized Knowledge”
  - All requirements for position not substantiated
  - Tighter review of all applications
H-1B Petitions Filed

- Job must meet sponsorship requirements
- International must meet job requirements
- Employer must demonstrate position and visitor meet minimum requirements for the job and job must meet Specialized Knowledge definition
- If petition is denied and visitor is in the U.S., “Unlawful Presence” may impact international which in turn may create a 3 year, 10 year, or Permanent Bar from entering the U.S.
- OIA is now recommending Departments to consider paying premium processing fee for all H-1Bs to ensure approval before employee begins position regardless if transfer, amendment, or, initial
- Departments & Administration are reviewing which positions will be supported for H-1B sponsorship.
- Departments must begin H-1B sponsorship (initial, modification, transfer) at least 8 months in advance.
Unlawful Presence

Unlawful presence (ULP) is defined as presence after the expiration of the period of stay authorized by the Department of Homeland Security, or any presence without being admitted or paroled.

- The Three and Ten Year Bars → Section 212(a)(9)(B)(i)(I) makes inadmissible any alien who “was unlawfully present in the United States for a period of more than 180 days but less than 1 year . . . [who] again seeks admission within 3 years of the date of such alien’s departure or removal.” Likewise, section 212(a)(9)(B)(i)(II) makes inadmissible any alien who “has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien’s removal or departure.”
Unlawful Presence Memorandum Impacting F, J, and M Visas
Effective August 9, 2018

- U.S. Citizenship and Immigration Services (USCIS) posted an announcement changing how the agency will calculate unlawful presence for students and exchange visitors in F, J, and M nonimmigrant status, including F-2, J-2, or M-2 dependents, who fail to maintain their status in the United States.

- Individuals in F, J, and M status who failed to maintain their status before Aug. 9, 2018, will start accruing unlawful presence on that date based on that failure, unless they had already started accruing unlawful presence, on the earliest of any of the following:
  - The day after DHS denied the request for an immigration benefit, if DHS made a formal finding that the individual violated his or her nonimmigrant status while adjudicating a request for another immigration benefit;
  - The day after their I-94 expired; or
  - The day after an immigration judge or in certain cases, the Board of Immigration Appeals (BIA), ordered them excluded, deported, or removed (whether or not the decision is appealed).
Unlawful Presence Memorandum Impacting F, J, and M OIAs
Effective August 9, 2018
(continued)

■ Individuals in F, J, or M status who fail to maintain their status on or after Aug. 9, 2018, will start accruing unlawful presence on the earliest of any of the following:
  – The day after they no longer pursue the course of study or the authorized activity, or the day after they engage in an unauthorized activity;
  – The day after completing the course of study or program, including any authorized practical training plus any authorized grace period;
  – The day after the I-94 expires; or
  – The day after an immigration judge, or in certain cases, the BIA, orders them excluded, deported, or removed (whether or not the decision is appealed).

■ Individuals who have accrued more than 180 days of unlawful presence during a single stay, and then depart, may be subject to three-year or 10-year bars to admission, depending on how much unlawful presence they accrued before they departed the United States. Individuals who have accrued a total period of more than one year of unlawful presence, whether in a single stay or during multiple stays in the United States, and who then reenter or attempt to reenter the United States without being admitted or paroled are permanently inadmissible.

■ Those subject to the three-year, 10-year, or permanent unlawful presence bars to admission are generally not eligible to apply for a OIA, admission, or adjustment of status to permanent residence unless they are eligible for a waiver of inadmissibility or another form of relief.
Notice to Appear (NTA)

- USCIS issued a policy memorandum for all U.S. Citizenship and Immigration Services (CIS) Officers providing guidance regarding when the CIS perceives a person’s case should be referred for the issuance of charging documents commencing removal (i.e. deportation) proceedings.

- An NTA is the document that the government issues to commence removal (i.e. deportation) proceedings.
The policy memorandum indicates that the government “will” issue an NTA commencing removal proceedings against an individual if there has been a denial issued on an application, petition, or benefit request pending for the person and the denial of the application, petition, or other benefit request results in the person no longer being lawfully present in the United States. This may be relevant to applications filed by UTHealth.

- A provision of the memo appears to provide that if an employee’s nonimmigrant (H-1B, L-1, O-1, etc.) extension petition is denied and the employee is no longer maintaining lawful status in the U.S. as a result, the U.S. government “will” commence removal (i.e. deportation) proceedings.

- It is unclear from the memorandum how quickly after the denial of the application, petition, or other benefit request the NTA would be issued. Appeal of the petition denial decision is expressly still permitted. However, the memo also indicates submission of a denial appeal will not prevent the issuance of an NTA (commencement of removal proceedings).

- Further, the memo may impact an employment-based case if a person’s pending residence (I-485) application were denied and the person were not maintaining unexpired nonimmigrant status (H-1B, L-1, etc.) simultaneously (resulting in the person not having lawful status when the residence application were denied).

- According to this recent policy memorandum, in this circumstance the government “will” commence removal (i.e. deportation) proceedings as a result. Again, there is no indication of how long after the denial the government would issue the NTA.
The policy memorandum additionally details that NTAs commencing removal proceedings may be issued for lawful permanent residents applying for naturalization (i.e. U.S. citizenship) if the naturalization applicant has been convicted of certain crimes and in certain circumstances when the CIS determines that the naturalization applicant was for various reasons not eligible for residence at the time the person obtained his or her residence. For this reason, it is important where possible:

- **For the international to maintain valid nonimmigrant (i.e. H, L, O, etc.) status until immigrant status is granted.**
- **Consult with private legal counsel if non-immigrant (H, L, O, etc.) petition is denied.**
- **Encourage lawful permanent residents to consult with private legal counsel before applying for naturalization (i.e. to become a U.S. citizen).**
- **File bona fide nonimmigrant petitions as early as possible and using premium processing where possible to ensure timely approval.**
- **Sponsor permanent OIA for qualified candidates while sufficient time is left on non-immigrant OIA status.**
# Temporary Protective Status

<table>
<thead>
<tr>
<th>Country</th>
<th>Expiration Date</th>
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<tbody>
<tr>
<td>El Salvador</td>
<td>9/9/2019</td>
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<tr>
<td>Haiti</td>
<td>7/22/2019</td>
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<tr>
<td>Honduras</td>
<td>1/5/2020</td>
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<tr>
<td>Nepal</td>
<td>6/24/2019</td>
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<tr>
<td>Nicaragua</td>
<td>1/5/2019</td>
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<tr>
<td>Somalia</td>
<td>9/17/2018</td>
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<tr>
<td>Sudan</td>
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<td>South Sudan</td>
<td>5/2/2019</td>
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<td>Syria</td>
<td>9/30/2019</td>
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<tr>
<td>Yemen</td>
<td>9/3/2019</td>
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# Travel Bans – Supreme Court Upheld Executive Order

<table>
<thead>
<tr>
<th>Country</th>
<th>Nationals</th>
<th>Immigrants</th>
<th>Nonimmigrants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chad</td>
<td>Nationals of Chad</td>
<td>• Immigrants</td>
<td>• B-1, B-2 nonimmigrants</td>
</tr>
<tr>
<td>Iran</td>
<td>Nationals of Iran</td>
<td>• Immigrants</td>
<td>• All nonimmigrants except F, M, &amp; J, who will be subject to “enhanced screening and vetting requirements”</td>
</tr>
<tr>
<td>Libya</td>
<td>Nationals of Libya</td>
<td>• Immigrants</td>
<td>• B-1, B-2 nonimmigrants</td>
</tr>
<tr>
<td>North Korea</td>
<td>Nationals of North Korea</td>
<td>• All immigrants</td>
<td>• All nonimmigrants</td>
</tr>
<tr>
<td>Syria</td>
<td>Nationals of Syria</td>
<td>• All immigrants</td>
<td>• All nonimmigrants</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Venezuela Government officials (and their families) who serve in agencies involved in screening and vetting procedures</td>
<td>• B-1, B-2 nonimmigrants</td>
<td>• Other applicants “should be subject to appropriate additional measures to ensure traveler information remains current.”</td>
</tr>
<tr>
<td>Yemen</td>
<td>Nationals of Yemen</td>
<td>• Immigrants</td>
<td>• B-1, B-2 nonimmigrants</td>
</tr>
<tr>
<td>Somalia</td>
<td>Nationals of Somalia</td>
<td>• Immigrants</td>
<td>• Admission of nonimmigrants subject to “additional scrutiny,”</td>
</tr>
</tbody>
</table>

- Any U.S. Lawful Permanent Resident
- Anyone admitted to or paroled into the U.S. on or after the effective date
- Holders of certain other valid travel documents that are valid on the effective date
- Dual nationals traveling on passport issued by a non-designated country
- Diplomatic, NATO, C-2, or G OIA holders
- Foreign nationals granted asylum or already admitted as refugees, or those granted withholding of removal, advance parole, or protection under the Convention Against Torture (CAT)
Additional Updates

■ F-1 Practical Training –
  - Under review by DHS – possible termination of OPT and STEM OPT
  - STEM OPT back in the courts

■ SEVIS Fees Expected to Increase –
  - Both F and J SEVIS fee have been proposed to increase
    ■ F = from $200 to $350.
    ■ J = from $180 to $220.
  - Institutions fees will also increase
    ■ School certification petition from $1,700 to $3,000.
    ■ Initial school site visit will continue at the current level of $655
      - DHS would exercise its current regulatory authority to charge the site visit fee not only when a certified school changes its physical location, but also when it adds a new physical location or campus.
    ■ DHS proposes to establish and clarify two new fees: a $1,250 fee to submit a school recertification petition and a $675 fee to submit an appeal or motion following a denial or withdrawal of a school petition.
Additional Updates

- No immediate changes to the TN (North American Trade Visa) proposed at this time
- No immediate changes to the E-3 proposed at this time
- No immediate changes to the O-1 proposed at this time

Although no immediate changes to the above visa classifications are proposed at this time, it is important to remember that each application will be reviewed as if it is a first time request.
TRAVEL ABROAD

- Non-immigrant visa holders must submit travel request form to OIA as soon as travel abroad is confirmed.
- Non-immigrant visa holders must review travel guidance on OIA Website to understand travel matters.
- All non-immigrant visa holders must carry all original immigration documents and evidence of appointment and ability to finance stay in the U.S. during each travel abroad.
- All non-immigrant visa holders upon return to the U.S. must provide OIA with legible copy of new I-94; passport with USCIS stamp acknowledging re-entry in the U.S; legible copy of new OIA stamp (if applicable); and, legible copy of new passport (if applicable) for principal and any non-immigrant dependent.
OIA Staff

- OIA Staff are not Attorneys
- OIA Staff are only authorized to provide guidance on OIAs sponsored by UTHealth or THI
- OIA Staff must recommend visitors to consult with private legal counsel when issues arise that are not affiliated to UTHealth or THI sponsorship or if only an Attorney is authorized to provide guidance
- OIA Staff is small but works diligently to serve all timely, professionally, and respectfully
We Are Partners

- *Visa Sponsorship Options remain possible*
- *We need to work together as partners to ensure sponsorship for positions and internationals meet sponsorship requirements*
- *We must work together as partners to ensure we have all required documentation to prove to the U.S. Government that position and international qualifies for the sponsorship*
- *We need to work together to timely process applications*
QUESTIONS