



IMMIGRATION INSIDER

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Headlines:

Ban on Refugees Expires; Trump Administration Calls for Additional Vetting for 11 Nationalities During 90-Day Review Period – The Trump administration's 120-day ban on refugee admissions expired on October 24, 2017. On the same day, the Department of State announced that additional in-depth review is needed for refugees of 11 nationalities identified as potentially posing a higher risk to the United States.

USCIS Increases Scrutiny of Certain Nonimmigrant Extension Requests – The agency noted that previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. The updated policy guidance rescinds the previous policy.

State Dept. Restarts DV Lottery Due to Technical Glitch, Excludes Oct. 3-10 Entries – The Department of State had a recent technical problem on the Diversity Visa lottery site and has reopened a new full entry period, which will end November 22, 2017, at 12 noon ET. The Department also is excluding October 3-10 entries and said that those who applied during that period can apply again.

USCIS Changes Direct Filing Addresses for Certain Nonimmigrant Worker Petitions – USCIS recently changed the direct filing addresses for certain petitioners using Form I-129, Petition for a Nonimmigrant Worker.

Sen. Grassley Urges Reconsideration of Trade NAFTA Nonimmigrant Classification – Sen. Grassley's letter, to Ambassador Robert E. Lighthizer, the U.S. Trade Representative, noted that "[g]iven President Trump's willingness to reevaluate—or reject—any and all of the NAFTA agreement, in the interest of protecting American workers, I recommend that you specifically include temporary workers in the ongoing NAFTA review."

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Ban on Refugees Expires; Trump Administration Calls for Additional Vetting for 11 Nationalities During 90-Day Review Period

The Trump administration's 120-day ban on refugee admissions expired on October 24, 2017. On the same day, the Department of State announced that "additional in-depth review is needed with respect to refugees of 11 nationalities previously identified as potentially posing a higher risk to the United States. Admissions for applicants of those 11 potentially higher-risk nationalities will resume on a case-by-case basis during a new 90-day review period."

Rex Tillerson, Secretary of State; Elaine Duke, Acting Secretary of Homeland Security; and Daniel Coats, Director of the Office of the Director of National Intelligence, sent a related memorandum on October 23, 2017, to President Trump. The State Department announcement and memo do not list the 11 countries, but according to reports, the countries appear to be Egypt, Iran, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen; and Palestinians living in those countries. The memo notes that the 11 countries were those designated on the Security Advisory Opinion (SAO) list, which was established following the 9/11 terrorist attacks on the United States and has evolved over the years through interagency consultations.

The memo states that during the 90-day review period, while a "detailed threat analysis" is being conducted of those 11 countries, the Secretaries of State and Homeland Security "will temporarily prioritize refugee applications from other non-SAO countries," and that resources that may have been dedicated to processing nationals or stateless persons of SAO countries will be reallocated during that period "to process applicants from non-SAO countries for whom the processing may not be as resource intensive."

The Department also announced on October 24 that "[f]or family members who are 'following-to-join' refugees that have already been resettled in the United States, additional security measures must also be implemented for all nationalities. Admissions of following-to-join refugees will resume once those enhancements have been implemented." The October 23 memo states that Mr. Tillerson, Ms. Duke, and Mr. Coats "have jointly determined that additional security measures must be implemented before admission of following-to-join refugees can resume." Those measures are to include "adequate screening mechanisms" that are "similar to the processes employed for principal refugees."

An Executive Order issued by President Trump on October 24, 2017, states, among other things, that within 180 days, the Attorney General will "provide a report to the President on the effect of refugee resettlement in the United States on the national security, public safety, and general welfare of the United States. The report shall include any recommendations the Attorney General deems necessary to advance those interests."

The Executive Order also states that within 90 days of October 24, 2017, and annually thereafter, the Secretary of Homeland Security will determine "whether any actions taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country should be modified or terminated, and, if so, what those modifications or terminations should be."

Meanwhile, President Trump announced that the maximum number of refugee admissions to the United States in fiscal year 2018 will be lowered to 45,000, which is the lowest number since the Refugee Act was passed in 1980.

The U.S. Supreme Court said on October 24, 2017, that it would not consider the merits or legality of the Trump administration's travel ban, issued in March, due to its expiration. Other challenges to new Presidential orders are working their way through lower courts.

The Department of State's October 24 announcement is at <https://www.state.gov/r/pa/prs/ps/2017/10/275074.htm>. The October 23 memo is at <https://www.state.gov/documents/organization/275306.pdf>. President Trump's related Executive Order is at <https://www.whitehouse.gov/the-press-office/2017/10/24/presidential-executive-order-resuming-united-states-refugee-admissions>. The White House announcement of the 45,000 refugee cap for FY 2018 is at <https://www.whitehouse.gov/the-press-office/2017/09/29/president-donald-j-trump-taking-responsible-and-humanitarian-approach>.

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USCIS Increases Scrutiny of Certain Nonimmigrant Extension Requests

Under updated policy guidance, U.S. Citizenship and Immigration Services (USCIS) is instructing its officers to apply the same level of scrutiny to both initial petitions and extension requests for certain nonimmigrant visa categories. The guidance applies to nearly all nonimmigrant classifications filed using Form I-129, Petition for a Nonimmigrant Worker.

The agency noted that previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. The updated policy guidance rescinds the previous policy, USCIS said.

USCIS explained that as before, adjudicators must thoroughly review the petition and supporting evidence to determine eligibility for the benefit sought. The updated guidance instructs officers to apply the same level of scrutiny when reviewing nonimmigrant visa extension requests, even where the petitioner, beneficiary, and underlying facts are unchanged from a previously approved petition. "While adjudicators may ultimately reach the same conclusion as in a prior decision, they are not compelled to do so as a default starting point as the burden of proof to establish eligibility for an immigration benefit always lies with the petitioner," USCIS said, adding that the adjudicator's determination "is based on the merits of each case, and officers may request additional evidence if the petitioner has not submitted sufficient evidence to establish eligibility."

The Alliance of Business Immigration Lawyers (ABIL) advises employers and employees to treat nonimmigrant extension applications as no longer routine, and to include the same documentation as required in an initial petition. ABIL also advises allowing more time to file such applications; 180 days before the current petition expires is recommended. Nonimmigrants may want to consider accelerating permanent residence processing. Litigation of extension petitions may be possible in some cases. Contact your ABIL attorney for advice and help in specific situations.

The USCIS announcement is at <https://www.uscis.gov/news/news-releases/uscis-updates-policy-ensure-petitioners-meet-burden-proof-nonimmigrant-worker-extension-petitions>. The updated policy guidance is at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf>.

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State Dept. Restarts DV Lottery Due to Technical Glitch, Excludes Oct. 3-10 Entries

The U.S. Department of State had a recent technical problem on its Diversity Visa (DV) green card lottery site and has reopened a new full entry period, which started October 18, 2017, at 12 noon ET and will end November 22, 2017, at 12 noon ET. The Department also is excluding October 3-10 entries and said that those who applied during that period can apply again:

Due to a technical issue, the DV-2019 entry period that began on October 3 has been closed. Entries submitted during October 3-10 are not valid and have been excluded from the system; they will not count as a duplicate entry. The technical issue has been resolved and a new full entry period will begin at noon, U.S. Eastern Daylight Time on Wednesday October 18, 2017 and will run until noon Eastern Standard Time on Wednesday November 22, 2017. Only entries submitted during this period will be accepted and considered for selection in the lottery. Please throw away any confirmation number or other documentation that you have if you submitted an entry during Oct. 3-10. Entries will NOT be accepted through the U.S. Postal Service.

The statement and a link to the DV-2019 instructions, registration, and status check are at [https://www.dvlottery.state.gov/\(S\(dcwxi52os10uan4v5iqjeall\)\)/default.aspx](https://www.dvlottery.state.gov/(S(dcwxi52os10uan4v5iqjeall))/default.aspx). General information about the diversity lottery green card program is at <https://travel.state.gov/content/visas/en/immigrate/diversity-visa/entry.html>.

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USCIS Changes Direct Filing Addresses for Certain Nonimmigrant Worker Petitions

U.S. Citizenship and Immigration Services (USCIS) recently changed the direct filing addresses for certain petitioners using Form I-129, Petition for a Nonimmigrant Worker. The changes include:

- Petitioners should now file Form I-129 according to the state where the company or organization's primary office is located. Previously, petitioners filed their I-129s based on the beneficiary's temporary employment or training location.
- Petitioners located in Florida, Georgia, North Carolina, and Texas should now file Form I-129 at the California Service Center.

Starting November 11, 2017, USCIS may reject Form I-129s that are filed at the wrong service center. Instructions on where to file are at <https://www.uscis.gov/i-129-addresses>. The related announcement is at <https://www.uscis.gov/news/alerts/changes-direct-filing-addresses-form-i-129-petitions>.

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Sen. Grassley Urges Reconsideration of Trade NAFTA Nonimmigrant Classification

Sen. Charles Grassley (R-Iowa), chairman of the Senate Committee on the Judiciary, sent a letter on October 23, 2017, to Ambassador Robert E. Lighthizer, the U.S. Trade Representative, to express "ongoing concerns regarding the uncapped TN [Trade NAFTA] nonimmigrant classification," which is a component of the North American Free Trade Agreement (NAFTA). Sen. Grassley asked Mr. Lighthizer to "consider renegotiating the guest worker provisions of NAFTA as part of any broader examination of the treaty."

Sen. Grassley's letter notes, among other things, that given the Trump administration's "focus on protections for the American worker, including efforts to rein in the H-1B program, businesses will be looking for alternative sources of cheap foreign labor to exploit." He suggests that employers are likely to turn to the TN visa category. The letter notes that the TN visa, "if left unchanged in its current form, could well undermine the administration's broader efforts." He notes that the number of TN visa workers employed in the United States has been growing in recent years and that available statistics suggest that "the number could be approaching 100,000."

Sen. Grassley's letter noted, "Given President Trump's willingness to reevaluate—or reject—any and all of the NAFTA agreement, in the interest of protecting American workers, I recommend that you specifically include temporary workers in the ongoing NAFTA review."

A statement from Sen. Grassley and the full text of the letter are at <https://www.grassley.senate.gov/news/news-releases/grassley-encourages-review-high-skilled-worker-program-nafta-negotiations>.

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New Publications and Items of Interest

USCIS has posted [additional data related to employment-based visa programs, including L-1, H-1B, H-2B, and EADs](#), in support of President Trump's "Buy American and Hire American" Executive Order. For more information, see <https://www.uscis.gov/news/uscis-makes-additional-data-employment-based-visa-programs-available-support-hire-american-executive-order>.

The National Immigration Project has published a [legal memorandum, "Understanding the Federal Offenses of Harboring, Transporting, Smuggling, and Encouraging Under 8 USC § 1324\(a\)." The memo, which could be useful in defending worksite enforcement actions by U.S. Immigration and Customs Enforcement, notes growing concern that federal law enforcement could expansively interpret the criminal statutes penalizing "harboring, transporting, smuggling, and encouraging codified at 8 USC § 1324\(a\) and use the federal investigation and prosecution process to chill and retaliate against immigrant organizing, know-your-rights initiatives, and political dissent." The memo analyzes related legal authority, with particular attention to the harboring provision. The memo's goal is "to provide lawyers, legal workers, organizers, and community-based organizations with general legal knowledge about these federal criminal offenses, their consequences, and the federal investigation and prosecution process." The memo is at \[http://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/pr/2017_28Sep_memo-1324a.pdf\]\(http://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/pr/2017_28Sep_memo-1324a.pdf\).](#)

Advisories and tips:

- [Community Advisory: Social Media, Criminalization, and Immigration](#) has been published by the National Lawyers Guild's National Immigration Project. This advisory summarizes ways in which immigration agents may use social media against those in removal proceedings or involved in criminal cases. The advisory is at https://www.nationalimmigrationproject.org/PDFs/community/2017_03Apr_comm-adv-social.pdf.
- [How to safeguard your data from searches at the border](#) is the topic of several recent articles and blogs. See, for example, <https://www.nytimes.com/2017/03/21/technology/personaltech/crossing-the-border-heres-how-to-safeguard-your-data-from-searches.html> and <https://www.aclu.org/blog/free-future/can-border-agents-search-your-electronic-devices-its-complicated>.
- [Listings and links to cases challenging executive orders](#), and related available pleadings, are available at <https://lawfareblog.com/litigation-documents-resources-related-trump-executive-order-immigration>.
- [DACA Revocation Advisor](#), to help people determine how their Deferred Action for Childhood Arrivals (DACA) eligibility is affected by the recent Trump administration action to terminate the program in 6 months. See <https://visalaw.neotalogic.com/a/dacamobile>.

The [latest E-Verify webinar schedule](#) from USCIS is available at <http://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar>.

The latest edition of the *Global Business Immigration Practice Guide* has been released by LexisNexis. Dozens of members of the Alliance of Business Immigration Lawyers (ABIL) co-authored and edited the guide, which is a one-stop resource for dealing with questions related to business immigration issues in 30 immigration hotspots around the world.

The latest edition adds chapters on Malta and Romania. Other chapters cover Australia, Belgium, Brazil, Canada, China, Costa Rica, the European Union, France, Germany, Ghana, Hong Kong, India, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Nigeria, Peru, Russia, Singapore, South Africa, Spain, Switzerland, Turkey, the United Kingdom, and the United States.

Latchi Delchev, a global mobility and immigration specialist for Boeing, called the guide "first-rate" and said the key strong point of the book is its "outstanding usability." She said she highly recommends the book and notes that it "is helpful even to seasoned professionals, as it provides a level of detail which is not easily gained from daily case management."

Mireya Serra-Janer, head of European immigration for a multinational IT company, says she particularly likes "the fact that the [guide] focuses not just on each country's immigration law itself but also addresses related matters such as tax and social security issues." She noted that the India chapter "is particularly good. The immigration regulations in India have always been hard to understand. Having a clear explanation of the rules there helps us sort out many mobility challenges."

Charles Gould, Director-General of the International Co-operative Alliance, said the guide is "an invaluable resource for both legal practitioners and business professionals. The country-specific chapters are comprehensive and answer the vast majority of questions that arise in immigration practice. Its clear and easy-to-follow structure and format make it the one volume to keep close at hand."

This comprehensive guide is for:

- Human resources professionals and in-house attorneys who need to instruct, understand, and liaise with immigration lawyers licensed in other countries;
- Business immigration attorneys who regularly work with multinational corporations and their employees and HR professionals; and
- Attorneys interested in expanding their practice to include global business immigration services.

This publication provides:

- An overview of the immigration law requirements and procedures for over 20 countries;
- Practical information and tips for obtaining visas, work permits, resident status, naturalization, and other nonimmigrant and immigrant pathways to conducting business, investing, and working in those countries;
- A general overview of the appropriate options for a particular employee; and
- Information on how an employee can obtain and maintain authorization to work in a target country.

Each chapter follows a similar format, making it easy to compare practices and procedures from country to country. Useful links to additional resources and forms are included. Collected in this Practice Guide, the expertise of ABIL's attorney members across the globe will serve as an ideal starting point in your research into global business immigration issues.

An excerpt of the book is on the ABIL website at http://www.abil.com/global_practice_guide.cfm.

Contact your Lexis/Nexis sales representative; call 1-800-833-9844 (United States), 1-518-487-3385 (international); fax 1-518-487-3584.

ABIL on Twitter. The Alliance of Business Immigration Lawyers is on Twitter: @ABILImmigration. Recent ABIL member blogs are at <http://www.abilblog.com/>.

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ABIL Member/Firm News

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) and **Matthew Myers** provided "Immigration Update Presentation Under the Current U.S. Administration" at the monthly San Antonio Bar Association's International Law Section luncheon. For more information on Foster activities, see <https://www.fosterglobal.com/about-us/attorney-activities/>.

Mr. Loughran presented on October 25, 2017, at the Global Citizenship Seminar in Dubai, United Arab Emirates, on the current U.S. administration's impact on immigration strategies available to Middle Eastern investors interested in relocating to the United States.

Mr. Loughran was interviewed on October 24, 2017, on the abuses of "notarios" in submitting U.S. immigration applications and petitions and how notarios take advantage of immigrant communities in *Super Lawyers Magazine*, "Lost in Translation."

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has authored several new blog entries. The Empire Strikes Back—USCIS Rescinds Deference to Prior Approvals in Extension Requests" is at <http://blog.cyrusmehta.com/2017/10/the-empire-strikes-back-uscis-rescinds-deference-to-prior-approvals-in-extension-requests.html>. "Stopping H-1B Carnage" is at <http://blog.cyrusmehta.com/2017/10/stopping-h-1b-carnage.html>. "Musings On Our Asylum System—After AG Sessions' Remarks on 'Dirty Immigration Lawyers' is at <http://blog.cyrusmehta.com/2017/10/musings-on-our-asylum-system-after-attorney-general-sessions-calls-us-dirty-immigration-lawyers.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) was quoted in "Big Takeaways From the New L-1 Visa Petition Data," published by Law360. Highlighting the issue of approved petitions and their potential link to job creation, he noted, "It might be important to know if a user of the L-1 program, whether large or small, was able to create jobs for American workers. Then we would know what's really happening. But as usual, this is the fodder for development of the meme around displacement of U.S. workers." The article is available via registration at <https://www.law360.com/articles/976552/big-takeaways-from-the-new-l-1-visa-petition-data>.

Mr. Paparelli was featured in a Q&A published by Reuters on October 30, 2017, on California's new immigration law to restrict employer cooperation with federal authorities when they visit workplaces. The article is at <https://www.reuters.com/article/usa-employment-immigration/qa-seyfarth-shaws-angelo-paparelli-on-californias-new-immigration-law-idUSL2N1N50G3>.

Mr. Paparelli's latest blog post, "AB 450: California's Law of Unintended Immigration Consequences," is at <https://www.nationofimmigrants.com/california-immigration-law/ab-450-californias-law-of-unintended-immigration-consequences/>.

Wolfsdorf Rosenthal LLP has published two new blog entries. "5 Things I Learned From Charlie Oppenheim at the IIUSA 7th Annual EB-5 Industry Forum" is at <http://bit.ly/2yWkIA1>. "Update on DV Lottery: Make Sure You Don't Miss Your Opportunity" is at <http://bit.ly/2gTfkkL>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) will speak on a panel following a keynote address on "How Nation-States Enforce Boundaries" on November 9, 2017, at the Annual Rhodes Symposium Conference, "Criminalizing Immigrants: Border Controls, Enforcement, and Resistance," sponsored by the Center for the Study of Inequality and the Cornell Population Center. The conference will be held at Cornell University on November 9-10. For more information or to RSVP, email inequality@cornell.edu.

Mr. Yale-Loehr was quoted in a *Reason* magazine article about President Trump's assault on legal high-skilled immigration. The article is at <http://reason.com/archives/2017/10/30/trumps-assault-on-legal-high-skilled-imm>.

Mr. Yale-Loehr was quoted by Politico.com in "Federal Appeals Court Clears Way for Undocumented Teen To Get Abortion." He noted, "This person was caught at the border and never formally made an entry. People who just made it into the country and don't have any ties here, do they have any constitutional rights? Do they have the full panoply? This is really the gray area. Nobody has a clear answer." The article is at <https://www.politico.com/story/2017/10/24/federal-appeals-court-clears-way-for-undocumented-teen-to-get-abortion-244115>.

Mr. Yale-Loehr was quoted in two publications regarding a recent report (<http://bit.ly/2zZ9fYw>) from the National Foundation for America Policy on STEM OPT (optional practical training for students in science, technology, engineering, and mathematics):

- Forbes: <https://www.forbes.com/sites/stuartanderson/2017/10/15/are-international-students-next-on-the-menu/#6fa65b35e9f2>
- University World News: <http://www.universityworldnews.com/article.php?story=20171014060817300>

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Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS Service Center processing times online:
<https://egov.uscis.gov/cris/processTimesDisplay.do>

Department of Labor processing times and information on backlogs:
<http://www.foreignlaborcert.doleta.gov/times.cfm>

Department of State Visa Bulletin: http://travel.state.gov/visa/bulletin/bulletin_1360.html

Visa application wait times for any post: http://travel.state.gov/visa/temp/wait/wait_4638.html

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About ABIL

The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 400 member lawyers and their 1,000 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.

The Alliance of Business Immigration Lawyers' website is at <http://www.abil.com/>. ABIL is also on Twitter: @ABILImmigration.

Disclaimer/Reminder

This email does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.

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