



U.S. CHAMBER OF COMMERCE

Employment Policy

Key Immigration Regulatory Initiatives

The following is a summary of key regulatory actions, completed, underway, or anticipated, in which the Chamber has been, or plans on being, actively engaged.

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Executive Actions

Buy American, Hire American

On April 18, 2017, President Trump signed Executive Order 13788, entitled “Buy American, Hire American.” Section 2(b) of this Order made a general policy statement that the executive branch will enforce the laws governing the entry of foreign-born workers into the U.S. to boost the wages and employment rates of American workers.

Section 5 is where the “Hire American” provisions are located in the order. Section 5(a) calls upon the Secretary of State, the Attorney General, the Labor Secretary, and the DHS Secretary to propose new rules and issue new guidance to protect the interests of the U.S. workers in administration of the U.S. immigration system, specifically mentioning fraud/abuse prevention. Section 5(b) calls upon the four aforementioned cabinet members to suggest reforms to the H-1B program such that visas are awarded to the most-skilled or highest-paid petition beneficiaries.

In sum, the immigration provisions in this Executive Order do not create new obligations or institute any new legal requirements for our members; what this order did was set the tone for what the administration wants to accomplish and telegraphs where the administration is heading from a policy standpoint in the near future.

Ending “Catch and Release” at the Border of the United States and Directing Other Enhancements to Immigration Enforcement and Affording Congress an Opportunity to Address Family Separation

On April 6, 2018, President Trump signed a memorandum titled, “Ending ‘Catch and Release’ at the Border of the United States and Directing Other Enhancements to Immigration Enforcement.” This Presidential memorandum directs several agencies to issue reports regarding issues pertaining to “catch and release” policies, which are those policies that allow unlawfully present aliens in the U.S. to be released from government custody shortly after their apprehension for violations to our nation’s immigration laws.

The memo calls upon the Department of Homeland Security, in consultation with the Departments of Defense, Justice, and Health and Human Services, to submit a report outlining past and ongoing efforts to end “catch and release” policies within 45 days of the memorandum’s publication. This report must include, among other things, the following: all measures taken to allocate available resources to construct, operate, or modify immigration detention facilities; all measures taken to ensure that parole/asylum laws are not exploited to prevent removal of aliens; a list of all existing facilities (including military facilities) that could be used to detain aliens for immigration law violations.

Within 75 days of the memorandum’s publication, the Attorney General and the DHS Secretary, in consultation with the State and HHS Secretaries, must submit a report to the President identifying any additional resources or authorities that may be needed to expeditiously end “catch and release” practices.

Lastly, President Trump directed the State Department and DHS to submit a report laying out all measures currently being pursued to ensure removable aliens are repatriated to their home countries. This report will include diplomatic measures being pursued against countries that refuse to take back nationals who are being removed from the United States.

In the wake of this executive order, on April 6, 2018, Attorney General Sessions announced a “zero-tolerance policy” for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. This new policy was applied to all adults who were being prosecuted for border-crossing offenses, regardless of whether they crossed alone or with children. Prior to the implementation of this zero-tolerance policy, unauthorized families were typically released and went into the civil court system, oftentimes seeking asylum as a family.

After this zero-tolerance policy was implemented, the U.S. Attorney’s offices abutting the land border with Mexico were ordered to adopt a policy to prosecute all Department of Homeland Security referrals of Section 1325(a) violations. The effect of this policy was such that when families crossed the border without authorization, the parents that were detained by DHS for border crossing offenses were referred to DOJ for prosecution, and if convicted, were deported. The children in these situations were held by DHS for 20 days, as per the “Flores Settlement” agreement, and then transferred to the Office of Refugee Resettlement in the Department of Health and Human Services so that they may be placed with a sponsor in the U.S.

This policy change led to many families being placed in heart-wrenching scenarios. Some parents were deported back to their home countries without their children; others spent weeks without the ability to locate their children.

As situations like this proliferated, the president and CEO of the U.S. Chamber, Thomas J. Donohue, spoke out on the issue and the need for these family separations to stop. Mr. Donohue’s statement can be accessed [here](#).

Presidential Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States

On February 15, 2019, President Trump signed a proclamation titled, “Declaring a National Emergency Concerning the Southern Border of the United States.” The proclamation permits the Secretary of Defense to “assist and support the activities of the Homeland Security at the Southern Border.” Part 2 of the declaration allows the “Secretary of Defense, Interior, and Homeland Security” to “take all appropriate actions, consistent with applicable law, to use or support the use of authorities, herein invoked, including, if necessary, the transfer and acceptance of jurisdiction over border lands.” Various lawsuits have been filed throughout the country in order to stop the national emergency from going into effect.

Presidential Memorandum on Combating High Nonimmigrant Overstay Rates

On April 22, 2019, President Trump issued a presidential memorandum on combating high nonimmigrant overstay rates. The memorandum instructs the Secretary of State to “engage with the government of countries with a total overstay rate greater than 10 percent in the combined B-1 and B-2 nonimmigrant visa category based on the U.S. Department of Homeland Security Fiscal Year 2018 Entry/Exit Overstay Report.” The memo directs that within 120 days, the Secretary of State, in consultation, with the Attorney General and the Secretary of Homeland Security, to “provide to the President recommendations to reduce B-1 and B-2 nonimmigrant visa overstay rates from the identified countries” and within 180 days, a “summary of the Department of Homeland Security’s ongoing efforts to reduce overstays from countries participating in the Visa Waiver Program.”

Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System

On April 29, 2019, President Trump issued a presidential memorandum on additional measures to enhance border security and restore integrity to our immigration systems. The memo directs the Attorney General and the Secretary of Homeland Security, within 90 days, to develop regulations ordering them to develop policies to settle asylum applications within 180 days of filing. In addition, this memorandum contemplates the imposition of filing fees for asylum applications, and in certain circumstances, limiting access to work permits for certain asylees.

Completed Rulemakings

Supplemental Questions for Visa Applicants (USCIS)

On May 4, 2017, the U.S. State Department proposed a notice of request for emergency OMB approval on supplemental questions for visa applicants, which would permit the Department of State to perform enhanced screening procedures on a subset of visa applicants. This would include additional information regarding the individual’s travel history, employment history, and social media history, among other information. This was accomplished on an emergency basis, so the initial authority exercised by the State Department was only going to be in effect for a six-month period.

On May 18, 2017, the Chamber, in conjunction with the U.S. Travel Association, and the American Hotel and Lodging Association, submitted comments on the May 4th notice, which may be accessed here: https://www.uschamber.com/sites/default/files/usta-ahla-uschamber_cmt_on_dos-2017-0019_-_supplemental_questions_for_vi.pdf

On August 3, 2017, the State Department issued another notice that sought to make these types of changes to this information collection process permanent.

On October 2, 2017, the Chamber, in conjunction with the U.S. Travel Association and American Hotel & Lodging Association, resubmitted our comments, along with a cover letter, expressing our collective concern with the State Department's statement in the notice that it might alter the scope of these information collection changes without providing notice to the public, which may be accessed here:

https://www.uschamber.com/sites/default/files/coalition_comment_-_supplemental_questions_for_visa_applicants_-_state_dept_10-2-2017_final.pdf

On November 27, 2017, the Department of State submitted the information collection request to the Office of Management and Budget to make the information collection request permanent. Comments were due by December 27, 2017.

The Chamber submitted comments with the U.S. Travel Association and the American Hotel & Lodging Association on this notice, which can be found here:

https://www.uschamber.com/sites/default/files/coalition_letter_final_12-21-2017.pdf.

Reinstate and Expand the STEM Optional Practical Training Extension

On August 12, 2015, the U.S. District Court for the District of Columbia held that the 2008 Interim Final Rule that provided for a 17-month OPT extension suffered from serious procedural deficiencies and ordered that the rule be vacated. However, the Court indicated that it felt such a policy was within DHS's authority and the Court stayed its order to provide the agency with the ability to properly promulgate a new rule so as to avoid the disruption that would have been caused if the Court's order was immediately enforced.

On October 19, 2015, the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) issued a Notice of Proposed Rulemaking allowing individuals with STEM degrees from U.S. institutions of higher education to receive a 24-month extension of their Optional Practical Training status, which is a 7 month increase from the 2008 rule, thus allowing these graduates the ability to work longer in the U.S. without having to obtain a different legal status. The rule also allows for students who have a prior degree in a STEM field to obtain this 24 month extension of OPT status and also clarifies which fields of study would serve as the basis for an extension of status.

On November 18, 2015, the Chamber submitted comments, which may be accessed here:

<https://www.uschamber.com/comment/comments-us-immigration-and-customs-enforcement-stem-opt-f-1-nonimmigrant-students> and here:

<https://www.uschamber.com/comment/comments-office-information-and-regulatory-affairs-stem-opt-f-1-nonimmigrant-students>

On March 11, 2016, the final rule was published in the *Federal Register*. The Administration addressed some of our more important concerns with their initial proposal. In particular, the administration changed the language involving the attestations that employers will have to make in order to utilize the STEM OPT Extension.

The language in the final rule requires employers to attest that they are not using the STEM OPT extension to hire individuals who will “replace” American workers; the language in the NPRM was not as specific and potentially could have made companies liable for violating the terms of the STEM OPT Extension when there was no connection between the hiring of an individual or individuals on a STEM OPT Extension and the termination of employment for an American worker.

Other important changes include the increased process protections with regard to an employer’s requirement to report the termination of employment for a STEM OPT Extension recipient. The NPRM required employers to notify the federal government within 48 hours of the termination; the final rule gives employers 5 business days from the date of termination to inform the government of the individual’s employment termination.

Lastly, the final rule provides much needed process protections with regard to site visits. The NPRM provided no protections to employers and would have allowed for unannounced site visits; the final rule establishes that unless DHS has evidence of program noncompliance or a complaint has been filed against the employer, the employer will be apprised of the site visit 48 hours before the site visit.

On May 13, 2016, the D.C. Circuit vacated the district court’s decision on the 2008 STEM OPT Rule as moot.

In June 2016, the Washington Alliance of Technological Workers (“WashTech”) filed a new lawsuit challenging both the 1992 OPT Rule and the 2016 STEM OPT Rule. The D.C. Circuit court had dismissed this case in 2017 and WashTech appealed the dismissal. In June 2018, the Federal Court of Appeals for D.C. upheld the dismissal of this case on every ground except one and remanded the case back to the D.C. District Court and puts the fate of the entirety of OPT, not just the STEM Extension, in jeopardy.

On October 18, 2018, the U.S. Chamber, the National Association of Manufacturers, and the Information Technology Industry Council filed a motion to intervene in the ongoing litigation between WashTech and the U.S. Department of Homeland Security.

H-2B Visa Cap Relief

On May 8, 2019, the U.S. Department of Homeland Security and U.S. Department of Labor promulgated a temporary regulation, authorizing an increase of an additional 30,000 H-2B visas through the end of fiscal year 2019.

These regulations are different from the rules issued in the last two years that provided cap relief to H-2B employers, as these new visas are only available for “returning workers,” which is defined as someone who was granted H-2B status during one of the last fiscal years (FY16, FY17, or FY18). In addition to this new precondition for eligibility for this cap relief, businesses seeking these additional visas for workers are subject to the same “irreparable harm” attestations that were required in the last two fiscal years.

Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to Cap Subject Limitations (USCIS)

On December 3, 2018, USCIS proposed to amend its regulations and establish an electronic registration program for petitions subject to annual the H-1B cap limitations. This proposal would create a new electronic registration process whereby employers who are seeking cap-subject H-1B workers must file a registration under this new electronic program or they will not be allowed to seek cap-subject H-1B workers in that fiscal year's H-1B allocation. Furthermore, the proposal seeks to change the selection process for cap-subject H-1B petitions in a manner that would likely yield slightly more visas to beneficiaries who have earned a master's degree or higher from a U.S university.

Currently, in years when the H-1B cap and the advanced degree exemption are both reached within the first five days in which H-1B cap petitions may be filed, the advanced degree exemption beneficiaries are selected before the H-1B cap beneficiaries. The proposed rule would reverse the selection order and count all registrations or petitions toward the number projected as needed to reach the 65k H-1B cap first and when that quota is determined by USCIS to be exhausted, the agency would then select registrations or petitions toward the advanced degree exemption.

On December 7, 2018, the Chamber wrote a letter to DHS, requesting an extension of the comment period, which was declined.

On January 2, 2019, the Chamber submitted comments, which may be accessed here: <https://www.uschamber.com/comment/comments-uscis-registration-requirement-those-seeking-file-h-1b-petitions-cap-subject-aliens>

On January 31, 2019, DHS promulgated final regulations. The regulations suspended the electronic registration requirement for the FY20 cap season, which is a welcome development. In the event a registration is selected and a company knows that it can move forward with filing the full H-1B petition, the company will now have a 90-day period of time in which to file the petition, which is clearly better than the 60-day filing period suggested in the initial proposal.

There is still a great deal of questions that need to be answered before this new registration system goes into effect. The Chamber will continue to work with DHS to ascertain new information with regard to this rule's implementation as the process moves forward.

Rulemakings Underway

EB-5 Immigrant Investor Program Modernization (USCIS)

On January 13, 2017, USCIS promulgated a proposed rule to update EB-5 regulations that attempt to provide more clarity to the program's requirements. The proposed regulations addressed the issues of Targeted Employment Area designations, indirect job creation, required investment amounts, the effects of material changes on conditional residency, the regional center designation process, and monitoring for regional center compliance.

On April 11, 2017, the Chamber submitted comments, objecting to the proposed rule on various grounds, which may be accessed here:

https://www.uschamber.com/sites/default/files/final_uscc_eb5_nprm_comment_4-11-2017.pdf

The Fall 2018 regulatory agenda published on October 17, 2018, indicates that the final regulations are anticipated to be published in November, 2018. This rule was transferred to OMB in February, which has the Chamber very concerned about the potential for USCIS to finalize this rule sometime this year.

The Chamber has met with OIRA to voice its concerns with this rule being finalized and it is our understanding that our concerns have helped slow down OIRA's review of this proposal.

International Entrepreneur Rule (USCIS)

On August 31, 2016, USCIS promulgated a proposed rule to establish a program that allows consideration for parole into the U.S. on a case-by-case basis for certain entrepreneurs. Under the proposed guidelines, program eligibility will be based upon the individual's role in creating a start-up enterprise wherein the person's entry into the U.S. would provide a substantial public benefit through substantial and demonstrated potential for rapid business growth and job creation. This potential could be evidenced by, among other things, the fact that the business has received substantial capital investment from qualified U.S. investors or has obtained significant awards/grants from certain Federal, State, or local governmental entities. Entrepreneurs that qualify for this benefit would be able to stay in the U.S. for a total of 5 years as a parolee in the U.S.

While this rule is well-intentioned, the Department's focus on the parole process does not provide putative entrepreneurs with the certainty needed for most start-ups to truly flourish in the U.S.

On October 17, 2016, the Chamber submitted comments with several suggestions on how to improve the initial proposal, which may be accessed here:

https://www.uschamber.com/sites/default/files/documents/files/uscc_entrepreneur_comments_final_10-17-16.pdf

On January 17, 2017, USCIS promulgated a final rule that established the rule's effective date as July 17, 2017.

On July 11, 2017, USCIS announced the agency would delay the final rule's effective date until March 14, 2018, and would issue a Notice of Proposed Rulemaking soliciting public comments on rescinding the International Entrepreneur rule.

The delay of these regulations was challenged in court. On December 1, 2017, the judge in the case ruled that the regulation could take effect, reversing the rescission. From a technical standpoint, DHS is complying with the court order and implementing the International Entrepreneur Rule that was published in January 2017.

On May 29, 2018, DHS published a notice of proposed rulemaking to rescind the regulations. On June 29, 2018, the Chamber submitted comments, which may be accessed here: https://www.uschamber.com/sites/default/files/180628_comments_ier_recission_final.pdf

The Fall 2018 regulatory agenda published October 17, 2018, indicates that the final regulation was anticipated, December, 2018.

Social Media Questions for Visa Applicants (USCIS)

On March 30, 2018, the Department of State submitted an information collection request to the Office of Management and Budget that would require visa applicants to submit five years of social media handles for specific platforms identified by the government --- and with an option to list handles for other platforms not explicitly required. In addition to requiring the five years of social media history, the application will also ask for previous telephone numbers, email addresses, prior immigration violations and any family history of involvement in terrorist activities.

On May 29, 2018, the Chamber, U.S. Travel Association and the American Hotel and Lodging Association submitted comments, which may be accessed here: https://www.uschamber.com/sites/default/files/business_community_comments_on_dos-2018-0002_application_for_nonimmigrant_visa_5_29_18.pdf

Revisions to Form ETA-9035

On August 3, 2017, the Employment and Training Administration promulgated revisions to ETA Form 9035, otherwise known as the Labor Condition Application, using the Paperwork Reduction Act.

On October 2, 2017, the Chamber submitted comments, expressing concerns with the proposed revisions, which may be accessed here: https://www.uschamber.com/sites/default/files/uscc_comments_laborconditionapplicationform_eta9035_dol_10-2-2017_final.pdf

Other information regarding the changes to the Form ETA-9035 can be found [here](#).

Inadmissibility on Public Charge Grounds (USCIS)

On October 10, 2018, USCIS promulgated a proposed regulation that would define the criteria which constitutes a “public charge” under section 212(a) (4) of the Immigration and Nationality Act. The regulation proposes to require all aliens seeking an extension of stay or change of status to demonstrate that they, “have not received, are not currently receiving, nor are likely to receive, public benefits.” This proposal would impact employment-based green-card holders as they and their families would have to be “self-sufficient” in order to live in the U.S.

Comments were due December 10, 2018.

The Chamber declined to comment on this proposal, but it is the Chamber's understanding that the final promulgation of this rule is one of DHS's top priorities for the remainder of Calendar Year 2019.

Modernizing Recruitment Requirements Under the H-2A Program (ETA)

In November, 2018, the U.S. Department of Labor's (DOL) Employment and Training Administration proposed amending regulations regarding the H-2A non-immigrant visa program at 20 CFR part 655, subpart B. This proposed rule will eliminate print newspaper advertisements and modernize the requirements employers must meet for advertising job opportunities to U.S. workers. Comments were due December 10, 2018.

Modernizing Recruitment Requirements Under the H-2B Program (ETA and USCIS)

In November, 2018, the U.S. Department of Labor's (DOL) Employment and Training Administration and the U.S. Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services proposed to amend regulations governing temporary employment of H-2B nonimmigrants in the United States at 20 CFR part 655, subpart A. This proposed rule will modernize regulatory requirements for employer recruitment of U.S. workers, including proposing to eliminate print newspaper advertisements. Comments were due December 10, 2018.

Selection Procedures for Reviewing Applications Filed by Employers Seeking Temporary Employment of H-2B Foreign Workers in the United States (U.S. Department of Labor – Employment & Training Administration)

On March 4, 2019, the Office of Foreign Labor Certification published a notice that all H-2B applications filed on or after July 3, 2019, will be randomly ordered for processing based on the date of filing and the start date of work requested. OFLC plans to randomly order and assign for processing all of the H-2B applications requesting the earliest start date of work permitted under the semi-annual visa allocation (i.e., October 1 or April 1) and filed during the first three calendar days of the regulatory time period for filing H-2B applications. Once first actions are issued, OFLC will then randomly assign for processing all other H-2B applications filed on a single calendar day. Comments were due by April 3, 2019. The Chamber refrained from commenting on this proposal.

Visa Waiver for Ineligible Nonimmigrants under Section 212(d)(3)(A)(i) of the Immigration and Nationality Act (U.S. Department of State)

On May 6, 2019, the U.S. Department of State promulgated a final rule that limits review of cases in which consular officers recommend a denial of "waivers" to applicants refused admission to the United States.

Anticipated Rulemakings

Updating Adjustment of Status Procedures for More Efficient Processing and Immigrant Visas Usage (USCIS)

The U.S. Department of Homeland Security (DHS) is planning to propose regulatory provisions designed to: improve the efficiency in the processing of Application to Register Permanent Residence or Adjust Status (Form I-485), reduce processing times, improve the quality of inventory data provided to partner agencies, reduce the potential for visa retrogression, promote efficient usage of available immigrant visas, and discourage fraudulent or frivolous filings. DHS proposes to eliminate the concurrent filing of visa petitions and Form I-485 for all applicants seeking an immigrant visa in a preference category, and proposes to make further changes to the appropriate dates when applicants can file Form I-485 and for ancillary benefits. The elimination of concurrent filing could be problematic for companies because the bifurcation of this process could add to the overall time it takes to process an Adjustment of Status petition.

This NPRM is anticipated September, 2019.

Adjustments to the Fee Schedule (USCIS)

The U.S. Department of Homeland Security plans to issue a proposal to adjust the USCIS fee schedule for various petitions. A proposed rule was projected February, 2019. If the past is prologue, the costs for processing petitions that are important to employers will increase substantially.

Rescission of H-4 Spousal Work Authorization (USCIS)

On May 12, 2014, the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) published a Notice of Proposed Rulemaking to extend the availability of employment authorization to certain H-4 dependent spouses. H-4 spouses will be eligible for work authorization if the principal H-1B visa holder is the beneficiary of an approved I-140 or has had his/her H-1B status extended under the provisions of the American Competitiveness in the 21st Century Act of 2000.

USCIS believes that allowing the eligible class of H-4 dependent spouses to work encourages professionals with high demand skills to remain in the country and help spur the innovation and growth of U.S. companies, and thus allow the U.S. to remain a world leader in high technology.

While at one point USCIS only wanted to propose H-4 work authorization where the H-1B principal worker had been waiting at least six years, the Chamber was pleased to see that the published NPRM allows any H-4 spouse request work authorization where the principal H-1B worker's employer has completed all steps in sponsorship and the H-1B worker is merely waiting for visa availability.

The Chamber has advocated for the creation of employment authorization for H-4 dependent spouses of principal H-1B nonimmigrants being sponsored for permanent resident status.

On July 11, 2014, the Chamber submitted comments, which may be accessed here:
<https://www.uschamber.com/sites/default/files/documents/files/USCC%20H4%20comment%207-11-2014.pdf>

On February 25, 2015, the Department of Homeland promulgated the final rule and the rule went into effect on May 26, 2015.

The Trump administration is proposing to rescind this regulation. The Fall 2018 regulatory agenda published on October 17, 2018, indicates that the final regulations were anticipated to be published in November, 2018.

The Chamber conducted a survey of its members to study the impact of this rescission on our members. The Chamber also contributed to a broader multi-association study that sought to study the broader economic impact the rescission of this rule would have on businesses.

Strengthening the H-1B Program (USCIS)

A proposed rule is being promulgated to make various reforms to the H-1B program, including revising the definitions of “specialty occupation”; “employment” and “employer-employee” relationship. The issuance of a proposed rule is anticipated for August, 2019.

EB-5 Immigrant Investor Regional Center (USCIS)

On January 11, 2017, USCIS promulgated an Advanced Notice of Proposed Rulemaking considering making changes to the EB-5 Immigrant Investor Regional Center Program. Many of the issues discussed in the ANPRM concern the types of integrity measures that the Chamber sought to achieve through legislation.

The Fall 2018 regulatory agenda published on October 17, 2018, indicated a proposed rulemaking to be expected in March, 2019; this NPRM has not materialized as of yet, and given the various other immigration priorities of DHS, it seems unlikely that this rule will be issued before the summer.

EB-5 Immigrant Investor Program Realignment (USCIS)

USCIS plans to publish an advanced notice of proposed rulemaking to solicit public input on proposals that would increase monitoring and oversight of the EB-5 program as well as encourage investment in rural areas. The agency plans to solicit feedback on proposals associated with redefining components of the job creation requirement, and defining conditions for regional center designations and operations. The Fall 2018 regulatory agenda published October 17, 2018, indicates an advanced notice of proposed rulemaking is expected, September, 2019.

Electronic Processing of Immigration Benefit Requests (USCIS)

USCIS is proposing to mandate the electronic submission for all immigration benefit requests and amend regulations to allow end-to-end digital processing. The potential for efficiencies to be gained by moving from a paper-based processing system to an electronic based system cannot be understated. The expected date of action for the issuance of this proposed rulemaking was April, 2019.

Requirements for Filing Motions and Administrative Appeals (USCIS)

USCIS plans to streamline existing processes for filing motions and appeals, as well as a tool to reduce delays in the appeal process. This rule also suggests changing the jurisdiction of the Administrative Appeals Office (AAO), which would be problematic for members. Given that denials have increased substantially in recent months, any proposal that would limit the ability of members to seek relief for a particular worker through the AAO would be extremely troubling because it will make it harder for companies across various industries to retain their valued employees. USCIS was expected to publish this notice of proposed rulemaking in April, 2019.

Updating Adjustment of Status Procedures for More Efficient Processing and Immigrant Visa Usage (USCIS)

USCIS' proposal is described as a means to improve efficiency, reduce processing times for individuals seeking to adjust their status, improve data quality, reduce the possibility of visa retrogression, and combat fraud. However, the agency also suggests that USCIS would seek to eliminate the ability for all applicants seeking an immigrant visa in a preference category from being able to concurrently file their visa petition and their Form I-485. Taking a one-step process and breaking it down into two distinct steps, particularly when the one-step process saves time and hassle for the applicant and his/her employer, has the potential to accomplish the exact opposite of what USCIS' stated goals are with regard to this proposal. The expected date of action for this notice of proposed rulemaking is September, 2019.

Temporary Employment of H-2B Foreign Workers in Certain Itinerant Occupations in the United States (ETA and USCIS)

The U.S. Department of Labor's (DOL), Employment and Training Administration and Wage and Hour Division, and the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services, is planning to jointly amend regulations regarding the H-2B non-immigrant visa program at 20 CFR part 655, subpart A. The proposed rule will establish standards and procedures for employers seeking to hire foreign temporary nonagricultural workers for certain itinerant job opportunities, including entertainers and carnivals and utility vegetation management. This NPRM is anticipated September, 2019.

Practical Training Reform (ICE)

The Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) is planning to issue a Notice of Proposed Rulemaking that will institute additional protections for U.S. workers who may be negatively impacted by employment of nonimmigrant students on F and M visas under the Curricular Practical Training and Optional Practical Training programs. ICE has stated that this rule is designed to be a comprehensive reform of practical training options for international students and is aimed at reducing fraud and abuse of the programs. ICE moved this proposal onto its long-term action list and a date for the issuance of this NPRM has yet to be determined. As such, the agency is not likely to move forward with a comprehensive overhaul of the practical training programs in the near future.

Visa Security Program Fee (ICE)

ICE is planning to issue a Notice of Proposed Rulemaking to enable the expansion of the Visa Security Program by proposing the Program move to a user-fee funded model.

The Fall regulatory agenda published October 17, 2018, indicates a proposed rule was expected, February, 2019.

Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders Automation of CBP Form I-94W (USCBP)

Visa Waiver Program travelers will provide certain biographic information to CBP electronically through ESTA prior to application for admission to the United States. DHS has already implemented the ESTA requirements for aliens who intend to enter the United States under the VWP at air or sea ports of entry. An interim final rule was expected to be issued in December, 2018.

Collection of Biometric Data from Aliens Upon Entry To and Exit From the United States (USCBP)

To provide the legal framework for CBP to begin a comprehensive biometric entry-exit system, DHS is amending the regulations to remove the references to pilot programs and the port limitation. In addition, to enable CBP to make the process for verifying the identity of aliens more efficient, accurate, and secure by using facial recognition technology, DHS is amending the regulations to provide that all aliens may be required to be photographed upon entry and/or departure. This interim final rule was scheduled to be published in the *Federal Register* in December, 2018.

Collection of Biometric Data from U.S. Citizens Upon Entry To and Departure from the United States (USCBP)

DHS is proposing to amend the regulations to provide that all travelers, including U.S. citizens, may be required to be photographed upon entry and/or departure. This notice of proposed rulemaking was scheduled to be published by February, 2019.

Conforming Amendments Regarding the Asia-Pacific Economic Cooperation Business Travel Card Program (USCBP)

The Asia-Pacific Economic Cooperation Business Travel Card Program was permanently reauthorized earlier this Congress. CBP planned to remove the expiration date of the program for the Asia-Pacific Economic Cooperation Business Travel Card Program in December, 2018.

Labor Certification Process for Temporary Agricultural Employment in the United States (ETA and Wage and Hour Division)

The U.S. Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division are planning to amend regulations regarding the H-2A non-immigrant visa program at 20 CFR part 655, subpart B. The proposed rule will modernize the existing H-2A regulations to streamline the overall function of the program. The NPRM will also make necessary legal changes to modernize the regulation that have arisen since the current H-2A regulation was published in 2010. This NPRM was anticipated December, 2018.

Significant Non-Regulatory Activities

Suspension of Premium Processing (USCIS)

On March 20, 2018, USCIS announced that they were temporarily suspending premium processing for all FY 2019 cap-subject H-1B petitions, including petitions seeking an exemption for individuals with a U.S. master's degree or higher. This original suspension lasted until September 10, 2018. On August 28, 2018, USCIS announced that they are extending this suspension until February 19, 2019 and expanding it to include many other H-1B petitions. This suspension has been incredibly disruptive to various Chamber members.

On November 1, 2018, the U.S. Citizenship and Immigration Services ombudsman's office held a listening session to examine how the suspension of premium processing for H-1B visas petitions is impacting businesses and visa applicants.

On January 28, 2019, USCIS announced that they are resuming premium processing for fiscal year 2019. On February 15, 2019, USCIS announced that as of February 19, 2019, the option would be restored to all H-1B petitions filed on or before December 21, 2018.

Mandatory Interviews for Employment Based Legal Immigration (USCIS)

On August 28, 2017, USCIS announced that the agency is expanding the interview requirement to all employment-based immigrant visa beneficiaries that seek to obtain their green card through the Adjustment of Status process effective October 1, 2017.

On August 31, 2017, the U.S. Chamber wrote a letter to USCIS that expressed concerns with these changes, which may be found here: <https://www.uschamber.com/letter/letter-dhs-new-mandatory-interviews-employment-based-legal-immigration>

Memorandum on Rescission of DACA

On September 5, 2017, DHS announced that it is rescinding the June 15, 2012 memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” which established the Deferred Action for Childhood Arrivals (“DACA”) program. The Trump administration planned to wind down the DACA program over a six-month period. As this will impact approximately 800,000 individuals, the U.S. Chamber has been, and will be continue to be, active in advocating for a legislative remedy to fix this problem.

The Chamber sent a [letter](#) to Congress urging them to enact legislation that will provide relief for young immigrants known as Dreamers, and another [letter](#) to then Acting DHS Secretary Elaine Duke asking the agency to extend the October 5 filing deadline for current DACA recipients to renew their DACA status. In addition, the Chamber issued a [statement](#) supporting the introduction of the SUCCEED Act in the U.S. Senate, and issued two blog posts ([here](#) and [here](#)) urging Congress to enact a permanent legislative solution for Dreamers.

Ongoing litigation has temporarily blocked the federal government from unwinding the program and ordered that renewals under the program should continue until these cases are resolved.

Extending Temporary Protected Status Designations for El Salvador, Honduras, and Haiti (DHS)

DHS is contemplating the continued existence of certain designations of Temporary Protected Status for many countries, including those for El Salvador, Honduras, and Haiti. On October 30, 2017, the U.S. Chamber wrote a [letter](#) to then Acting Homeland Security Secretary Elaine Duke supporting such the extension of the designations for these three countries. On November 6, 2017, DHS made announcements regarding the TPS designations for Nicaragua and Honduras. While DHS decided to eliminate the designation for Nicaragua in 2019, the Department felt that more information was needed in order to make a decision regarding the designation for Honduras and the Honduran designation was extended for another six months.

In November, DHS decided that conditions in Haiti no longer justified a continuation of a designation for Temporary Protected Status; the same decision was made for El Salvador in January. In May, the same decision was made for Honduras.

On October 3, 2018, the U.S. District Court for the Northern District of California issued a preliminary injunction against the administration’s policies with respect to El Salvador, Haiti, Nicaragua, and Sudan. To comply with this ruling, DHS filed a notice extending Temporary Protected Status (TPS) for these four countries, which allows approximately 300,000 affected immigrants in the United States to extend their stays until January 2020.

On May 10, 2019, the Department of Homeland Security (DHS) published a notice in the [Federal Register](#) that temporarily preserves TPS for nationals of Nepal and Honduras. Originally, TPS was to be terminated for Nepal on June 24, 2019 and for Honduras on January 5, 2020. DHS published the notice to be compliant with another federal court order to stay the implementation of the TPS cancelations for these two countries.

Policy Memorandum Rescinding Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status (USCIS)

On October 23, 2017, USCIS issued a policy memorandum rescinding the April 23, 2004, memorandum titled “The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity” and section VII of the August 17, 2015, policy memorandum titled “L-1B Adjudications Policy.”

The rescinded 2004 memo had directed adjudicators to defer to prior determinations of eligibility, except in certain circumstances. Similarly, the 2015 memo regarding L-1B adjudications directed USCIS adjudicators, in the context of L-1B petition extensions, to give deference to the prior determinations of eligibility by USCIS, except in certain circumstances.

USCIS stated in the memo that adjudicators should not feel limited in their ability to request additional evidence on petitions for extension. As such, companies can expect to see an increase in the amount of requests for evidence they will receive when they seek to extend the legal status of their current nonimmigrant workers.

Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites (USCIS)

On February 22, 2018, USCIS issued a policy memorandum that provides that for an H-1B visa petition involving a third-party worksite to be approved, the petitioner must show “by a preponderance of evidence” that, among other things, the beneficiary will be employed in a specialty occupation and the petitioning employer will maintain an employer-employee relationship with the beneficiary for the duration of the requested validity period.

While USCIS claims this memorandum clarifies current regulatory requirements, this memo, in fact, creates several new burdensome obligations for not just for H-1B employers who place their workers at the worksites of their clients, but also the third-party end-user client companies.

The Chamber has created an ad hoc working group to address the issues raised in this memorandum. The Chamber has also engaged in an ongoing dialogue with the DHS Private Sector Office to obtain clarity on how USCIS intends to implement this memo’s requirements moving forward.

Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (USCIS)

On June 28, 2018, USCIS issued a policy memorandum that outlines how U.S. Citizenship and Immigration Services' (USCIS) Notice to Appear (NTA) and referral policies implement the Department of Homeland Security's (DHS) removal priorities, including those identified in Executive Order 13768, and it provides updates to USCIS' guidelines for referring cases and issuing NTAs.

This policy memorandum posed challenges to the business community. USCIS would have required foreign nationals who receive an NTA to remain in the U.S. to appear before an immigration judge. This would have foreclosed the option for high-skilled professionals and executives to multinational companies to leave the country and continue pursuing other legal avenues of entry into the U.S.

Furthermore, the memo would have created a "catch-22," where the highly skilled foreign national could not leave the U.S. before their appearance because if they failed to appear in court, they will be subject to a 5-year bar on re-entry into the U.S. and at the same time, the employer would be forced to terminate the worker due to rescission of work authorization.

On the other hand, if the worker stayed in the U.S. to fight their case and ultimately did not prevail, the time they would have spent in the U.S. in an immigration court backlog would have ensured that the individuals would be subject to a 10-year bar on re-entry into the U.S.

On July 30, 2018, the Chamber sent a letter to USCIS Director Cissna, expressing concerns with the change in policy, articulating the concerns listed above. That same day, USCIS announced that they are postponing implementation of the NTA policy memorandum until the operational guidance is issued.

On September 26, 2018, USCIS announced that they will start to issue NTAs on petition denials that will focus on Applications to Register Permanent Residence or Adjust Status (Form I-485), and Applications to Extend/Change Nonimmigrant Status (Form I-539). This change will potentially affect F-1 students who have an H-1B petition that remains pending on October 1, 2018. On September 28, 2018, USCIS announced that the agency "may not be able to adjudicate H-1B change of status petitions for all F-1 students by Oct.1."

The notice below specifically states that the NTA memo will **not be implemented with respect to employment-based petitions at this time** and that the existing guidance for NTA issuance on employment-based cases will remain in effect.

Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b) (USCIS)

On July 13, 2018, USCIS issued a policy memorandum that rescinds in its entirety the June 3, 2013 PM titled "Requests for Evidence and Notices of Intent to Deny" (2013 PM) regarding an adjudicator's discretion to deny an application, petition, or request without issuing an RFE and

provides guidance to U.S. Citizenship and Immigration Services (USCIS) adjudicators regarding the discretion to deny an application, petition, or request without first issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) if initial evidence is not submitted or if the evidence in the record does not establish eligibility.

Clarification of STEM OPT Extension Reporting Responsibilities and Training Organizations (USCIS)

USCIS announced on its website in April 2018 that individuals working in the U.S. pursuant to their enrollment in the STEM OPT Extension that these individuals could not be placed at a 3rd Client worksite. The Chamber conveyed its opposition to this policy change.

On August 17, 2018, USCIS clarified that STEM OPT participants may engage in a training experience that takes place at a site other than the employer's principal place of business as long as all of the training obligations are met, including that the employer has and maintains a bona fide employer-employee relationship with the student. USCIS has indicated that it will review on a case-by-case basis whether the student will be a bona fide employee of the employer signing the Training Plan, and verify that the employer that signs the Training Plan is the same entity that employs the students and provides the practical training experience.

H-2B Education and Enforcement Initiative in the Hotel Industry (U.S. Department of Labor - WHD)

On September 5, 2018, the Wage and Hour Division announced a new initiative for the hotel industry. The new initiative will provide compliance assistance tools and information to employers and stakeholders, and the agency will also investigate employers using this program. A key component of the investigations is ensuring that employers recruit U.S. workers before applying for permission to employ temporary nonimmigrant workers.

H-2B Education and Enforcement Initiative in the Landscaping Industry (U.S. Department of Labor - WHD)

On September 12, 2018, the Wage and Hour Division announced a new initiative for the landscaping industry. The new initiative will provide compliance assistance tools and information to employers and stakeholders, and the agency will also investigate employers using this program. A key component of the investigations is ensuring that employers recruit U.S. workers before applying for permission to employ temporary nonimmigrant workers.

H-1B Notice Requirement by Electronic Posting (U.S. Department of Labor - WHD)

On March 15, 2019, the Wage and Hour Division published Field Assistance Bulletin, No. 2019-03, Compliance with the H-1B Notice Requirement by Electronic Posting.” Field Assistance Bulletin No. 2019-03 spells out the procedures H-1B petitioners use to notify all “affected workers of its intent to petition for H-1B workers.” According to the Bulletin, an employer applying for an H-1B visa must provide notice to “affected workers” 30 days prior to filing the application. The notification has to take the form of a hard copy notice, an electronic

notification, or a notification to a labor union representative and needs to be posted for at least 10 days.

The hard copy has to be posted in at least two conspicuous places in the workplace.

For an electronic notification to be in compliance, an employer has to make sure all affected workers are aware of the posting and are able to access it. Posting online or with a hard copy are both optional methods and employers are still able to use one or a combination of notification means.