H | T | F | L

HUNTER TAUBMAN FISCHER & LI LLC

NEW YORK WASHINGTON, D.C. MIAMI

DISCLAIMER
This guide is not intended to provide, nor does it provide, any legal advice. By viewing this guide you understand and expressly agree that there is no attorney-client relationship between you and the attorney who authored the guide.

Luciana Zamith Fischer
Practice Area: Immigration Law

Education

- *University of Minnesota Law School*, J.D., 2005
- *University of Florida*, Political Science and Economics, 2001

Languages

- Portuguese and Spanish

Ms. Fischer is based in our Miami office, where she manages the firm's immigration law practice. Her clients include large and small companies, and she advises them in all aspects of employment-based immigrant and nonimmigrant visas. Ms. Fischer represents internationally recognized individuals pursuing lawful permanent residence through Extraordinary Ability (EB-1) Petitions, National Interest Waivers (NIWs), and Investment/Job Creation (EB-5). Born and raised in Brazil, Ms. Fischer's background affords her practice the great benefit of her Latin culture and language skills. She has a singular ability to relate to clients' concerns and expectations immigrating to the United States. Ms. Fischer is a member of the Florida Bar and the American Immigration Lawyers Association. She is a graduate of the University of Minnesota Law School, where she was an editor for the Minnesota Journal of International Law.

"Our attitude towards immigration reflects our faith in the American ideal. We have always believed it possible for men and women who start at the bottom to rise as far as the talent and energy allow. Neither race nor place of birth should affect their chances."
Robert F. Kennedy

"Nearly all Americans have ancestors who braved the oceans – liberty-loving risk takers in search of an ideal – the largest voluntary migrations in recorded history… Immigration is not just a link to America's past; it's also a bridge to America's future."
George W. Bush

"We are a nation of immigrants. We are the children and grandchildren and great-grandchildren of the ones who wanted a better life, the driven ones, the ones who woke up at night hearing that voice telling them that life in that place called America could be better."
Mitt Romney

"More than any other nation on Earth, America has constantly drawn strength and spirit from wave after wave of immigrants. In each generation, they have proved to be the most restless, the most adventurous, the most innovative, the most industrious of people. Bearing different memories, honoring different heritages, they have strengthened our economy, enriched our culture, renewed our promise of freedom and opportunity for all…."
Bill Clinton

Changes in Immigration Policy and Procedures under the Trump Administration "Make America Great Again"

Areas of Focus:

- "Secure U.S. Borders",
- "Protect American Jobs",
- "Attract the Best and Brightest Talent",
- "Protect the National Interest", and
- "Create Jobs for U.S. workers"

POLITICS

Trump Administration Tightens Scrutiny of Skilled Worker Visa Applicants

Some see effort to slow immigration process as long overdue, while businesses say H-1B visas are needed to fill jobs

Immigration attorneys and companies have resisted the Trump administration's broad shifts in immigration policy, but new obstacles for the skilled-worker visa program known as H-1B are making it harder to import foreign staff. PHOTO: JESSICA KOURKOUNIS/GETTY IMAGES

By Laura Meckler
Nov. 19, 2017 1:24 p.m. ET

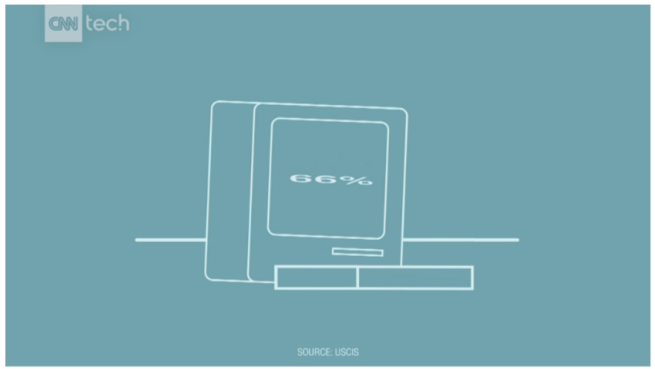
WASHINGTON—The Trump administration is adding hurdles and increasing scrutiny in the employment-visa application process, making it harder for businesses to hire foreign workers, and companies and immigration attorneys are bracing for more changes soon.

President Donald Trump has long campaigned against illegal immigration, but he also backs reductions to legal immigration, arguing that foreigners provide unneeded competition for Americans. So far, the administration hasn't enacted wholesale policy changes to the employment-visa programs. Congress hasn't enacted any new limits or changes either. But the administration has tightened the system in ways that together are making it tougher to import foreign workers.

Your Money

Trump is making it harder for immigrants t start businesses

by Sara Ashley O'Brien @saraashleyo
October 4, 2017: 11:09 AM ET



H-1B visas by the numbers

Foreign entrepreneurs who come to America to start businesses and create jobs face plenty of hurdles. The Trump administration is making things harder. Just ask Kathy Tuan.

The 22-year-old senior from the University of Washington is running a company called NASTEA & Co., which sells dirty chai beverages. When she graduates next year, she may no longer be able to stay in the country to run her business.

Originally from Taiwan, Tuan moved to the United States for high school when she was 15.

And while other countries, including France and Canada, have special visas intended to encourage entrepreneurs, the United States does not. People who come to the country and start companies have to navigate a complicated web of existing visas, like the H-1B. The H-1B requires individuals to work under the control of an employer, making it difficult to launch a company.

In 2017, the Obama administration instituted the International Entrepreneurs Rule as a solution. Foreigners building "fast-growing businesses" could apply for "parole status" to work in the United States. Typically, parole status is otherwise granted only to people who do humanitarian or medical relief.

Graham, Durbin suggest tacking immigration policy onto government spending bill

By Maegan Vazquez, CNN

Updated 4:42 PM ET, Sun November 26, 2017

Source: CNN

Graham: 'There's a deal to be done' on DACA 02:29

Washington (CNN) — Sens. Dick Durbin and Lindsey Graham said they believe the Senate can reach a consensus on immigration policy, possibly as part of a year-end government funding bill.

Durbin, D-Illinois, said Sunday on CNN's "State of the Union" that he believes Graham could be a part of a bipartisan coalition to pass legislation that would increase border security and legalize the immigration status of individuals who came into the United States illegally as children.

"I can tell you, when it comes to border security, we have signed up for that," Durbin said. "Sen. (Chuck) Schumer said that months ago. We believe that there are aspects of border security that Democrats and Republicans can agree on."

And Graham, R-South Carolina, suggested an agreement on border security and so-called "DREAMers" could be tacked onto a government spending bill.

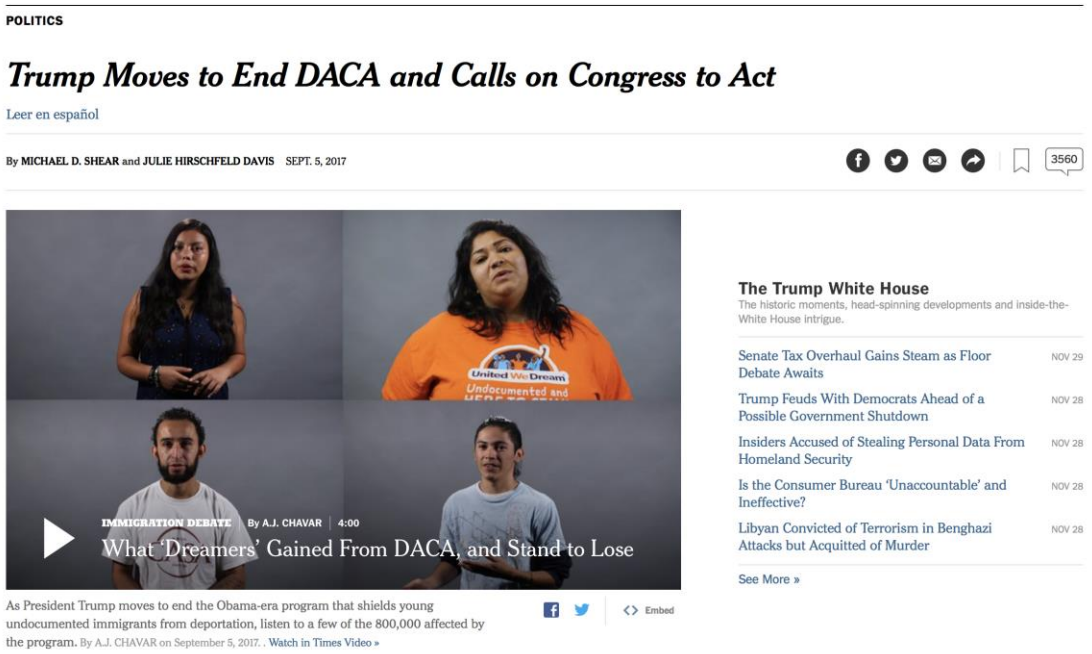
"We need border security, so there's a deal to be done," Graham said. "Dick's right about this. For the DREAM Act, I think you could get strong border security and a break in

DACA (Deferred Action for Childhood Arrivals)

- DACA (Deferred Action for Childhood Arrivals) - On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several guidelines may request consideration of deferred action for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action is a use of prosecutorial discretion to defer removal action against an individual for a certain period of time. Deferred action does not provide lawful status.

- On January 25, 2017, President Trump issued Executive Order No. 13,768, "Enhancing Public Safety in the Interior of the United States." In that Order, the President directed federal agencies to "[e]nsure the faithful execution of the immigration laws . . . against all removable aliens," and established new immigration enforcement priorities.

- On September 5, 2017, the Trump Administration issued the "Memorandum on Rescission of Deferred Action for Childhood Arrivals"



POLITICS

Trump Moves to End DACA and Calls on Congress to Act

Leer en español

By MICHAEL D. SHEAR and JULIE HIRSCHFELD DAVIS SEPT. 5, 2017

3560

IMMIGRATION DEBATE | By A.J. CHAVAR | 4:00

What 'Dreamers' Gained From DACA, and Stand to Lose

As President Trump moves to end the Obama-era program that shields young undocumented immigrants from deportation, listen to a few of the 800,000 affected by the program. By A.J. CHAVAR on September 5, 2017. . Watch in Times Video »

Embed

The Trump White House

The historic moments, head-spinning developments and inside-the-White House intrigue.

Senate Tax Overhaul Gains Steam as Floor Debate Awaits NOV 29

Trump Feuds With Democrats Ahead of a Possible Government Shutdown NOV 28

Insiders Accused of Stealing Personal Data From Homeland Security NOV 28

Is the Consumer Bureau 'Unaccountable' and Ineffective? NOV 28

Libyan Convicted of Terrorism in Benghazi Attacks but Acquitted of Murder NOV 28

See More »

TPS (Temporary Protected Status)

- The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. This includes countries experiencing:
  - Ongoing armed conflict (such as civil war)
  - An environmental disaster (such as earthquake or hurricane), or an epidemic
  - Other extraordinary and temporary conditions
- Countries designated for TPS:
  - El Salvador
  - Haiti
  - Honduras
  - Nepal
  - Nicaragua
  - Somalia
  - Sudan
  - South Sudan
  - Syria
  - Yemen

Kids of TPS parents gather while speakers address the media at the FANM office in Little Haiti, Nov. 6, 2017. **Charles Trainor, Jr.** - ctrainor@miamiherald.com

HAITI

A new bill would allow all TPS recipients to apply for permanent residency

BY ALEX DAUGHERTY
adaugherty@mcclatchydc.com
NOVEMBER 13, 2017 06:00 AM
UPDATED NOVEMBER 14, 2017 11:32 AM

WASHINGTON — As the Trump administration weighs whether to end Temporary Protected Status for thousands of Haitians and Salvadorans, three members of Congress are preparing legislation that would allow every TPS recipient to apply for permanent residency.

The bill, dubbed the ASPIRE Act, would let every person covered by TPS on Jan. 1, 2017, apply for permanent residency by proving before a judge that they would face extreme hardship if forced to return home.

- On November 20, 2017 - decision to terminate the Temporary Protected Status (TPS) designation for Haiti with a delayed effective date of 18 months to allow for an orderly transition before the designation terminates on July 22, 2019.
- Acting Secretary of Homeland Security Elaine Duke announced that there would be changes to Temporary Protected Status (TPS) designations for Nicaragua and Honduras.

Business Immigration

- On January 23, 2017, the White House issued a memorandum called "Executive Order on Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs. This was not intended to be leaked to the public. *See* *https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOworkprograms.pdf*
- Its contents reveal much of what we are seeing today in immigration policies and procedures:
  - **Greater Number of RFEs (Requests for Evidence) on H-1B petitions** – This year, USCIS exponentially increased the number of requests for evidence (RFEs), particularly raising issues where a Level 1 wage was indicated on the labor condition application (LCA).

(i) in consultation with the Secretary of State, the Attorney General, and the Secretary of Homeland Security,

(A) initiate an investigation of the extent of any injury to U.S. workers caused by the employment in the United States of foreign workers admitted under nonimmigrant visa programs or by the receipt of services from such foreign workers by American employers, and

(B) within 18 months of the date of this order, provide the President a report based on such investigation; and

(ii) provide the President an initial report within nine months of the date of this order on the actual or potential injury to U.S. workers caused, directly or indirectly, by work performed by nonimmigrant workers in the H-1B, L-1, and B-1 visa categories.

Business Immigration

- **<u>Greater numbers of RFEs on L-1A Petitions</u>**:
  - startups
  - operational business enterprises
  - majority ownership of transferee
  - functional managers – USCIS issued a memorandum of law in November 2017 adopting *Matter of G-Inc.* *Matter of G- Inc* holds that a beneficiary is employed in a managerial capacity as a "function manager" if the petitioner demonstrates that the function is a clearly defined activity; the function is "essential" and core to the organization; the beneficiary will primarily manage, as opposed to perform, the function; the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function; and the beneficiary will exercise discretion over the function's day-to-day operations.

Denials in Advance Parole (AP) Applications Based on Overseas Travel

August 2017 – Without a formal announcement, USCIS began to deny advance parole (AP) applications (form I-131) for applicants who have traveled abroad before their applications are approved.

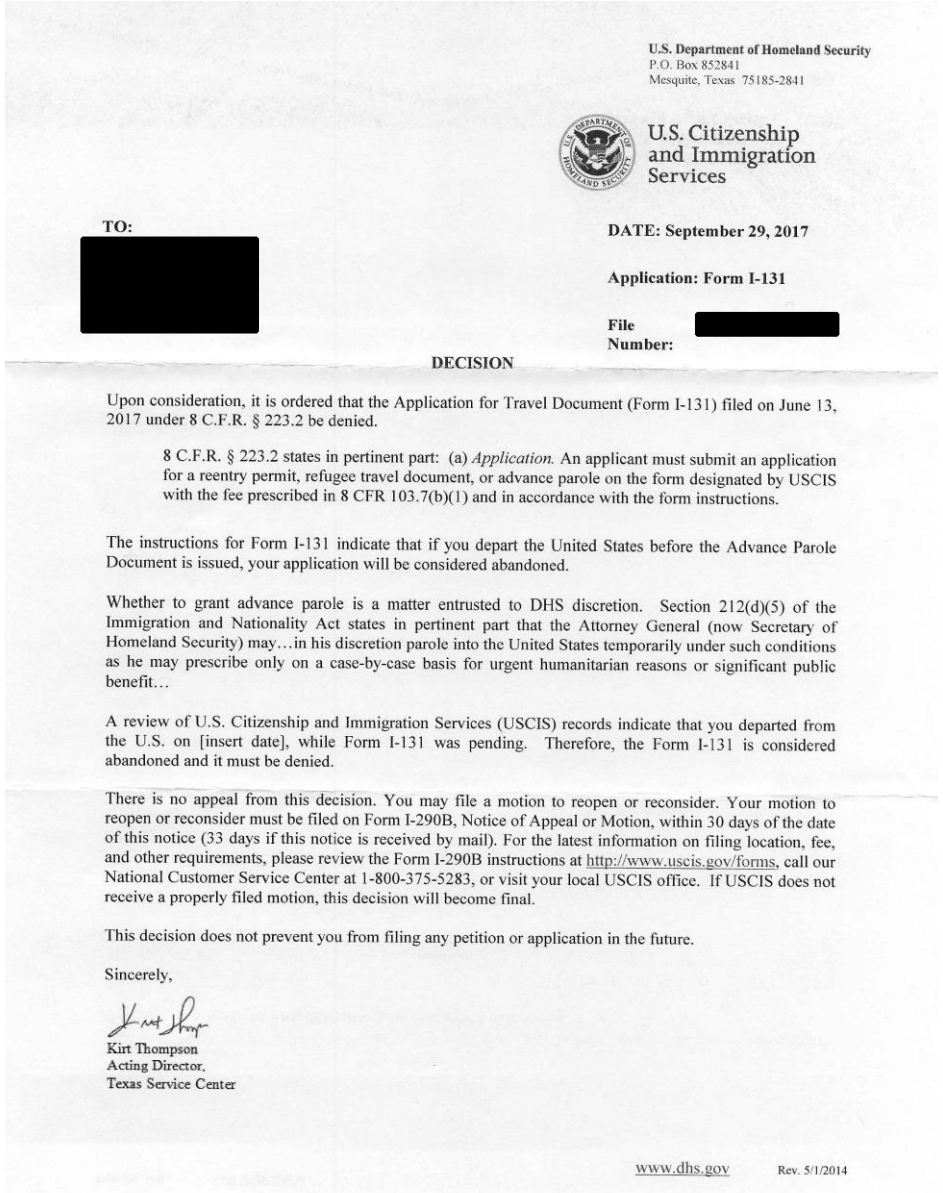
Generally, if an applicant for adjustment of status (form I-485) departs the United States while the application is still pending, the I-485 is considered abandoned and is denied. However, previous, longstanding policy was to allow AP applicants to travel abroad while case was pending, if adjustment applicant was in lawful L-1, L-2, H1B, H-4, K-3, K-4, or V status. - visas that fell under the "dual intent doctrine."

The recent trend in AP denials has greatly impacted foreign nationals in L and H visas, whose jobs depend on their ability to travel. With the elimination of the 90-day limitation for the issuance of EADs, APs are now taking 120-175 days to be issued.

The new policy of AP denials is consistent with President Trump's mandate to reduce parole applications and approvals.
https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOworkprograms.pdf

(ii) (A) propose for notice and comment a regulation that would conform the use of the Secretary's parole authority to the requirements of the immigration laws and would clarify that parole may never be used to circumvent statutory immigration policy or admit into the United States entire classes of foreign nationals who do not qualify for admission under existing immigration categories; and

(B) immediately terminate all existing parole policies, guidance, and programs that do not comport with the principles described in subparagraph (A) of this paragraph or that otherwise do not comport with the requirements of the INA;



U.S. Department of Homeland Security
P.O. Box 852841
Mesquite, Texas 75185-2841

U.S. Citizenship and Immigration Services

TO: [redacted]

DATE: September 29, 2017

Application: Form I-131

File Number: [redacted]

DECISION

Upon consideration, it is ordered that the Application for Travel Document (Form I-131) filed on June 13, 2017 under 8 C.F.R. § 223.2 be denied.

8 C.F.R. § 223.2 states in pertinent part: (a) *Application.* An applicant must submit an application for a reentry permit, refugee travel document, or advance parole on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

The instructions for Form I-131 indicate that if you depart the United States before the Advance Parole Document is issued, your application will be considered abandoned.

Whether to grant advance parole is a matter entrusted to DHS discretion. Section 212(d)(5) of the Immigration and Nationality Act states in pertinent part that the Attorney General (now Secretary of Homeland Security) may…in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit…

A review of U.S. Citizenship and Immigration Services (USCIS) records indicate that you departed from the U.S. on [insert date], while Form I-131 was pending. Therefore, the Form I-131 is considered abandoned and it must be denied.

There is no appeal from this decision. You may file a motion to reopen or reconsider. Your motion to reopen or reconsider must be filed on Form I-290B, Notice of Appeal or Motion, within 30 days of the date of this notice (33 days if this notice is received by mail). For the latest information on filing location, fee, and other requirements, please review the Form I-290B instructions at http://www.uscis.gov/forms, call our National Customer Service Center at 1-800-375-5283, or visit your local USCIS office. If USCIS does not receive a properly filed motion, this decision will become final.

This decision does not prevent you from filing any petition or application in the future.

Sincerely,

Kirt Thompson
Acting Director,
Texas Service Center

www.dhs.gov Rev. 5/1/2014

FAM Change Scraps 30/60-Day Rule
The New "90-Day Rule"

September 1, 2017: ***9 FAM 302.9-4(B)(3) (U) Interpretation of the Term Misrepresentation*** - ***https://fam.state.gov/fam/09FAM/09FAM030209.html***

The 90-day rule deals with inadmissibility under INA 212(a)(6)(C):

> *"Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible."*

The new "90-day" rule establishes a *presumption* of willful misrepresentation, for actions which include:

- (i) Engaging in unauthorized employment;
- (ii) Enrolling in a course of academic study, if such study is not authorized for that nonimmigrant classification (e.g. B status);
- (iii) A nonimmigrant in B or F status, or any other status prohibiting immigrant intent, marrying a United States citizen or lawful permanent resident and taking up residence in the United States; or
- (iv) Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment.

The New "90-Day Rule"

Devastating consequences of the 90-Day rule:

*If a person if found inadmissible under INA 212(a)(6)(C) he/she **may be barred for life from entering the U.S.***

Timing of Conduct – if within 90 days of entry, presumption of willful misrepresentation:

- burden of proof falls on the foreign "to establish that his or her true intent at the time of the presumptive willful misrepresentation was permissible in his or her nonimmigrant status."

– if outside 90 days of entry:

- no presumption of willful misrepresentation; U.S. consulate may seek to revoke visa if there is "reasonable belief that the alien misrepresented his or her purpose of travel at the time of the visa application or application for admission."
- *Be careful with premeditation*

USCIS's Policy Manual has not yet been modified with the 90-day rule. It still follows the 30/60-day rule

"Extreme Vetting"

August: Trump ordered his administration to "improve the screening and vetting protocols and procedures associated with the visa-issuance process" in his controversial travel ban executive order in March.

– machine learning technology and social media monitoring

Trump issued his first travel ban targeting several Muslim-majority countries in January, just a week after he took office, and then issued a revised one after the first was blocked by the courts. The second one expired in September after a long court fight and was replaced with another revised version. Appeals Courts are scheduled to hear oral arguments in December 2017. New travel ban includes Venezuela and North Korea.

Employment-Based AOS Interviews

U.S. Citizenship and Immigration Services

USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants

Release Date: Aug. 28, 2017

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) will begin expanding in-person interviews for certain immigration benefit applicants whose benefit, if granted, would allow them to permanently reside in the United States. This change complies with Executive Order 13780, "Protecting the Nation From Foreign Terrorist Entry Into the United States," and is part of the agency's comprehensive strategy to further improve the detection and prevention of fraud and further enhance the integrity of the immigration system.

Effective Oct. 1, USCIS will begin to phase-in interviews for the following:

• Adjustment of status applications based on employment (Form I-485, Application to Register Permanent Residence or Adjust Status).

• Refugee/asylee relative petitions (Form I-730, Refugee/Asylee Relative Petition) for beneficiaries who are in the United States and are petitioning to join a principal asylee/refugee applicant.

Previously, applicants in these categories did not require an in-person interview with USCIS officers in order for their application for permanent residency to be adjudicated. Beyond these categories, USCIS is planning an incremental expansion of interviews to other benefit types.

"This change reflects the Administration's commitment to upholding and strengthening the integrity of our nation's immigration system," said Acting USCIS Director James W. McCament. "USCIS and our federal partners are working collaboratively to develop more robust screening and vetting procedures for individuals seeking immigration benefits to reside in the United States."

Conducting in-person interviews will provide USCIS officers with the opportunity to verify the information provided in an individual's application, to discover new information that may be relevant to the adjudication process, and to determine the credibility of the individual seeking permanent residence in the United States. USCIS will meet the additional interview requirement through enhancements in training and technology as well as transitions in some aspects of case management.

Additionally, individuals can report allegations of immigration fraud or abuse by completing ICE's HSI Tip Form.

For more information on USCIS and its programs, please visit uscis.gov or follow us on Twitter (@uscis), YouTube (/uscis), Facebook(/uscis) and Instagram (@USCIS).

- USCIS -

Last Reviewed/Updated: 08/28/2017

Social Media, Search & Seizures at Airports

- **<u>BE CAREFUL WITH SOCIAL MEDIA</u>**
  - Facebook, Twitter, Instagram, LinkedIn
  - Courts have not ruled on right to privacy with WhatsApp, Skype, Facebook Messenger – avoid sharing confidential information through these means
- **Can Customs and Border Officials Search My Phone and/or Laptop?**
  - Yes, border officials have broad powers. Unlike police officers, CBP officers have the authority to inspect, without a warrant, any person trying to gain entry into the country and their belongings. CBP can also question individuals about their citizenship or immigration status and ask for documents that prove admissibility into the country. CBP says it can conduct searches "with or without" specific suspicion that the person who possesses the items is involved in a crime.
  - While CBP cannot compel you to disclose passwords or unlock your phone/laptop, they can "temporarily" seize the device – for days/weeks – and copy the data (data must be destroyed "as expeditiously as possible" if it is not valuable). Furthermore, for nonimmigrants, denying access to your devices can result in the denial of your admission into the country. There is no right to admission as a nonimmigrant.
- **Am I entitled to a lawyer if I'm detained for further questioning by CBP?**
  - No. According to CBP, travelers bear the burden of proof to establish that they are clearly eligible to enter the United States. Travelers are not entitled to representation during CBP administrative processing, such as primary and secondary inspection.

Attracting the Best and the Brightest

Extraordinary Ability Petitions – applies to the sciences, arts, education, business, or athletics.

- a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor – as measured by sustained national or international acclaim and recognition in the respective field of endeavor.
- Minimum showing - 3 of the following criteria (*but see* Kazarian):
    1. Receipt of nationally or internationally recognized prizes or awards for excellence in field of endeavor
    2. Membership in association that requires outstanding achievements of its members, as judged by national or international experts
    3. Published material in major media or trade publications about foreign national and his/her work
    4. Participation, either individually or as part of a panel, as a judge of the work of others in field of endeavor
    5. Original contribution of major significance in field of endeavor
    6. Authorship of scholarly articles, published in professional or major trade publications or other major media
    7. Work displayed in artistic exhibitions or showcases
    8. Leading or critical role for an organization or establishment of distinguished reputation
    9. Command a high salary or other significantly high remuneration, in comparison to others in the field
    10. Commercial success in the performing arts

Attracting the Best and the Brightest

National Interest Waivers

- Applies to advanced degree professionals or individuals with exceptional ability
- Goal: to waive the labor certificate requirement for individuals who substantially rise above others in their fields of endeavor and whose expertise would serve the national interest of the United States

- ***Matter of Dhanasar***, 26 I&N Dec. 884 (AAO 2016):
  - Most recent decision – December 2016
  - Replaced NYSDOT (1998) and revised the framework for evaluating National Interest Waivers (NIWs)
  - Normal process: labor certification process (testing the U.S. labor market and proving to the U.S. Department of Labor that there are no U.S. workers, able, willing, qualified and available for the job in question)
  - Waiver: self-petition under INA §203(b)(2)(B)(i) - if the petitioner can demonstrate that he/she will substantially contribute to the U.S. economy, culture, educational interests or welfare.
  - Three-part test:
    1. foreign national's proposed endeavor has both substantial merit and national importance;
    2. foreign national is well positioned to advance the proposed endeavor; and
    3. on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

Create Jobs for U.S. Workers

- **EB-5 Program:**
  - Minimum investment of $500,000 (TEA) - $1,000,000 (non-TEA)
  - At-risk requirement – requires investment due diligence
  - Must establish the lawful source of the capital invested.
  - Job Creation - the investment must result in the creation of at least 10 permanent full-time jobs.
  - Illiquid investment; and slow adjudication period (currently 20 months plus 7 months for NVC scheduling)
  - **2 types of investments:**
    - **Direct investments** (not subject to government reauthorization) – require creation of 10 direct jobs
    - **Indirect investments**: known as "regional center" investments – may use econometric multipliers – must result in the creation of 10 direct, indirect, and/or induced jobs – (subject to government reauthorization – current sunset date: December 8, 2017)
  - Green card – carte blanche to reside permanently in the U.S. – work anywhere, study, start new businesses, retire
- **E-2 Visa:**
  - Relies on treaty between nations - http://travel.state.gov/content/visas/en/fees/treaty.html
  - No minimum investment – investment must be sufficient to capitalize the business, which cannot be marginal - present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. No minimum job creation, but should not be self-employment. Need not create jobs (i.e. purchase existing business)
  - Requires an active participation in the investment – direct and develop requirement
  - Not a green card – stay in the U.S. contingent on the business activity
  - Fast adjudication – 1-2 month average adjudication at most consular offices

Conclusion

- **Immigration is a complex and dynamic legal field which can impact all aspects of a client's business, as well as the life changing decisions of the families involved.**

Today's immigration laws, policies, and regulations require complex, strategic approaches that are unique to each client. At our firm, clients demand our undivided attention and creativity. We draw upon our depth of experience and strategic approach to find unique solutions to the most complex immigration matters. We bring strong case management skills to manage client expectations and build client relationships. Our commitment to excellence is what sets us apart to other immigration law firms.

For more information, please contact our office:

H | T | F | L

HUNTER TAUBMAN FISCHER & LI LLC

NEW YORK WASHINGTON, D.C. MIAMI

777 Brickell Avenue, 5th Floor Miami, FL 33131
(786) 391-3849
LFISCHER@HTFLAWYERS.COM
www.htflawyers.com