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By ESEC at 8:22 am, Apr 13, 2020

The Honorable Chad Wolf
Acting Secretary
Department of Homeland Security
Washington, DC 20528

Ken Cuccinelli, Senior Official Performing the Duties of the Deputy Secretary for the Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Matthew T. Albence, Deputy Director and Senior Official Performing the Duties of the Director
ICE
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

March 18, 2020

Dear Secretary Wolf, Director Cuccinelli, and Director Albence:

As the Head of Government Affairs for the largest association for human resource (HR) professionals, the Society for Human Resource Management (SHRM), I write you regarding the difficulties and disruptions that SHRM's over 300,000 members are having during the COVID-19 pandemic and the need for flexibility from federal agencies to address these difficulties.

First and foremost, we believe it critical that government entities partner with the business community to address business continuity, public safety, and the economic impact of COVID-19 on employees and employers. Because of the myriad of measures being taken by employers and local governments to ensure the health and safety of their residents, workers and customers we ask that you consider several common-sense, short-term, emergency steps to ease the immigration regulatory requirements on U.S. employers. These include:

Employment Eligibility Requirements

- Temporarily suspend the Form I-9, and related E-Verify, completion timeframe requirements during this national health emergency (applicable to new hires and also the reverification of employment of existing employees);
- Allow for virtual verification (online video) to capture identity and work eligibility documentation for a temporary period of time and then physically examine the acceptable I-9 documents at a later time, when reasonable to do so;

- Issue guidance indicating a reasonable approach will be taken when considering compliance for new hires as well as for the reverification of employment of existing employees during this time (equating to a pardon for timeliness violations incurred during this time period and assuming good faith completion in all other regards).


Immigration and Visa Requests

- Issue immediate notice that copies of originally signed immigration forms may be submitted on all immigration petitions in lieu of original wet signed forms.
- Provide automatic extensions of all Employment Authorization Documents (EAD) and other work authorizations, most urgently for individuals whose hearings and interviews are cancelled.
- Issue waiver of departure deadlines for Visa Waiver Program participants and others to discourage unnecessary international travel.
- Provide a waiver of in-person interviews for employment-based adjustments of status if no fraud or admissibility concern is indicated, especially where field offices are closing.
- As many companies will be asking sponsored foreign nationals to work remotely, either suspend FDNS site visits or instruct officers to conduct further inquiry in the event that a listed worksite is closed, as often this will mean that employees have been directed to work remotely.

SHRM fully respects the Department of Homeland Security's goals of ensuring the efficiency and integrity of the immigration benefit system and seeks in no way to deter the agency from those objectives. That said, we believe the Department of Homeland Security can ensure those objectives while also providing reasonable leeway to employers working to navigate the difficult environment resulting from the COVID-19 pandemic.

We thank you for your consideration of these requests.

Sincerely,



Emily M. Dickens, J.D.
Corporate Secretary, Chief of Staff &
Head, Government Affairs
Society for Human Resource Management



U.S. Citizenship
and Immigration
Services

May 26, 2020

Ms. Emily M. Dickens, JD
Society for Human Resource Management
1800 Duke Street
Alexandria, Virginia 22314

Dear Ms. Dickens:

Thank you for your March 18, 2020 letter. The Acting Secretary asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

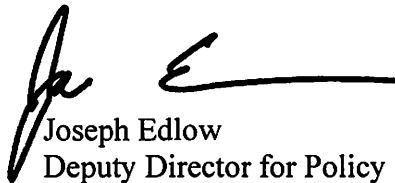
Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As noted in our public-facing website, we have announced: flexibilities in submitting required signatures; several options that are available to nonimmigrants to extend or change their status; DHS and U.S. Immigration and Customs Enforcement flexibilities in complying with requirements related to Form I-9, Employment Eligibility Verification; as well as other measures. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens.

Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability" For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,



Joseph Edlow
Deputy Director for Policy