

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

March 24, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

**Re: Mitigating the Impact of the COVID-19 Pandemic on Essential Workers,
Students, and Other Individuals Seeking Immigration Benefits**

Dear Acting Secretary Wolf:

As you are aware, on March 13, 2020, the White House issued a proclamation declaring a national emergency as a result of the COVID-19 outbreak.¹ Since then, the Department of Homeland Security (DHS) has issued a number of policies related to the outbreak, including the recent guidance issued by U.S. Citizenship and Immigration Services (USCIS) explaining that the public charge rule will not restrict any testing, treatment, or preventative care for a communicable disease, including COVID-19.² USCIS also provided guidance explaining how the agency will evaluate cases involving immigrants who may necessarily require supplemental assistance in the form of certain public benefits during any period of unemployment related to COVID-19.³ This guidance is critical, as it is essential to our nation's health and safety that immigrants not be deterred from engaging in measures to stop the spread of the virus, such as social distancing, and from seeking appropriate testing and care.

Effective March 18, 2020, USCIS has suspended routine in-person services at Asylum Offices, Field Offices, and Application Support Centers, while providing for emergency services in limited situations.⁴ We understand the agency's need to protect its staff, as well as the public

¹ The White House, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² U.S. Citizenship and Immigration Services, *Public Charge* (Mar. 13, 2020), <https://www.uscis.gov/greencard/public-charge>.

³ *Id.*

⁴ U.S. Citizenship and Immigration Services, *USCIS Response to the Coronavirus Disease 2019 (COVID-19)*, <https://www.uscis.gov/about-us/uscis-response-coronavirus-disease-2019-covid-19>.

they serve, during this critical time. USCIS, however, must take additional steps to mitigate the effects of the suspension on certain functions. We ask that you consider taking the following actions to reduce hardships on U.S. employers, universities, and other entities and individuals, including students and essential workers, during the COVID-19 pandemic:

1. **Minimizing Additional Backlogs Through Interview Waivers:** With the suspension of in-person services at USCIS Field Offices, USCIS should return to its prior policy of waiving interviews in cases involving applicants that have already been screened (such as employment-based applicants for adjustment of status and certain family-based applicants). Consistent with this prior policy, USCIS should maintain discretion to require an in-person interview on a case-by-case basis, after the outbreak subsides, if an application presents fraud, national security, or other concerns. At a minimum, DHS should waive interviews for individuals working in critical infrastructure industries, including healthcare, pharmaceuticals, and food supply.
2. **Relaxing Filing and Other Requirements:** In the past, when natural disasters and other catastrophic events devastated the nation, USCIS provided flexibility to affected individuals and entities by excusing late filings and easing regulatory and policy requirements. USCIS should clarify that it will apply the policies articulated on its “Special Situations” page to individuals who are affected by COVID-19 and, consistent with 8 CFR 214.1(c)(4) and 248.1(b)(1), excuse delays in filing applications for extension of stay or change of status, if such delay is associated with the outbreak.⁵
3. **Measures to Preserve Lawful Status and Employment Authorization:** To prevent significant hardship to applicants and petitioners resulting from outbreak-related lapses in status or work authorization, USCIS should automatically extend any employment authorization document, DACA grant, or nonimmigrant status that will expire in the next 90 days. Moreover, during any time period in which USCIS suspends biometric appointments at Application Support Centers, USCIS should use its discretionary authority to also suspend the requirement to appear for biometrics capture for children and other low-risk individuals, including those who have had biometrics taken in connection with prior applications or petitions.
4. **Protecting Children from Aging Out:** DHS should use its authority under the Homeland Security Act to make any necessary policy changes to ensure that children are adequately protected from “aging-out” of visa eligibility as an accompanying or following-to-join child of an immigrant, immediate relative child, or child of an asylum seeker or U visa applicant.
5. **Mitigating Negative Impact on U.S. Businesses and Shoring Up Healthcare Resources:** USCIS should take the following steps to ease the burdens on U.S. businesses that have implemented mandatory telework policies in response to the COVID-19 emergency, to

⁵ U.S. Citizenship and Immigration Services, *Special Situations*, <https://www.uscis.gov/humanitarian/special-situations>.

facilitate the speedy deployment of physicians and other healthcare workers to assist in the COVID-19 response, and to ensure workers are protected.

- a. **Facilitating Remote Telework and the Transfer of Healthcare Workers to Crisis Locations:** DHS and the Department of Labor (DOL) should coordinate and announce a policy: (1) confirming that employers of H-1B workers are not required to file a new Labor Condition Application (LCA) or an amended H-1B petition if such workers are continuing in the same occupational classification but are shifting to telework; and (2) extending the short-term placement option from 30 days to 180 days. Similar policies should be applied to hospitals and healthcare facilities to make it easier to quickly move healthcare workers to temporary treatment facilities and testing locations.
- b. **Extending Nonimmigrant Employment-Authorized Grace Period:** To prevent unnecessary travel of certain nonimmigrants who are between jobs, DHS should temporarily extend the 60-day grace period provided to such individuals to 180 days.
- c. **Extending F-1 “Cap Gap” Employment Authorization:** Under current regulations, F-1 students working on Optional Practical Training (OPT) and changing status to H-1B receive an automatic extension of employment authorization through October 1, the start of the new fiscal year, at which point they transition to H-1B status. For new H-1Bs in Fiscal Year 2021, USCIS should extend this “cap gap” work authorization until the date on which the H-1B petition is adjudicated. This will ensure that the agency has the flexibility it needs to determine its processing priorities and focus its resources accordingly, without depriving U.S. businesses of essential workers, if H-1B processing is delayed beyond October 1.
- d. **Waiving Certain Nonimmigrant Visa Interviews:** DHS and the Department of State should coordinate and announce a policy, consistent with their joint authority under section 222(h) of the Immigration and Nationality Act (INA), to waive the interview requirement, due to “unusual or emergent circumstances” for certain nonimmigrants who have been previously issued visas in the same classification, and present no fraud or national security concerns.
- e. **Extending Period to Re-Enter on Certain Nonimmigrant Visas:** Many temporary or seasonal workers were admitted to the United States to work in industries that have been forced to suspend work due to the COVID-19 outbreak, and now have expired visas. Under current regulations, such individuals can travel to Canada, Mexico, or certain adjacent islands, and reenter the United States within 30 days to resume work, if they have an unexpired admission stamp or I-94 Arrival/Departure Record. Given the likelihood that work in some industries or geographic areas will be suspended for longer periods of time, DHS should extend the 30-day limitation on re-entry and allow such workers to immediately re-enter the United States when their employers resume normal business operations.
- f. **Providing Certainty to Critical Infrastructure Employees.** As noted by the President, workers in several DHS-designated critical infrastructure industries—such as healthcare, pharmaceuticals, and food supply—have a special responsibility to maintain normal work

schedules.⁶ As states and localities continue to implement lockdowns prohibiting all but those in essential occupations from moving freely, undocumented agricultural workers must be able to travel to and from farms without fear of negative repercussions. DHS should grant deferred action, parole in place, or other temporary recognition that allows these essential workers to continue working and prevent further disruption of our national food supply during this national emergency. In addition, DHS should expedite the approval of new employment authorization documents, without requiring the payment of additional fees, for individuals with job offers to work in critical infrastructure industries.

6. **Easing Burdens on Universities and Students:** In addition to restricting the ability of foreign students to travel, the COVID-19 pandemic has resulted in extensive campus closures, prompting the transition to remote course work for millions of students. The pandemic is precisely the type of extraordinary situation that warrants the issuance of emergency measures to relax current regulatory requirements applicable to students, through the publication of a Special Student Relief notice in the Federal Register. Such measures should include:
 - a. **Protecting Students Who Leave the United States during COVID-19 Pandemic:** DHS should ensure that students who return to their home countries but are otherwise in compliance with SEVP requirements remain eligible for future immigration benefits requiring maintenance of status, including school and program transfers.
 - b. **Relaxing OPT Requirements:** As many foreign students are completing coursework remotely this semester, DHS should waive the requirement that such students file Form I-765, Application for Employment Authorization, for purposes of OPT, while physically present in the United States. In addition, DHS should ease the current filing deadlines for OPT—currently students must file Form I-765 within 30 days of the Designated School Official’s OPT recommendation, or within 60 days of such recommendation if applying for STEM-based OPT.
 - c. **Exempting Periods of Unemployment from OPT Limits:** The economic and social disruptions resulting from the COVID-19 outbreak have made it difficult, if not impossible, for students to secure and retain post-completion training in their fields of study. As such, DHS should not consider time spent unemployed during the COVID-19 emergency towards OPT unemployment limits.

Thank you for your continuing efforts to respond to this national emergency. Given the urgent nature of these matters, I ask that you respond to this letter by April 3, 2020, articulating your position on these proposals.

⁶ The President’s Coronavirus Guidelines for America, https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

Sincerely,



Zoe Lofgren
Chair

Subcommittee on Immigration and Citizenship
House Committee on the Judiciary

cc: The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and
Citizenship, House Committee on the Judiciary
The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary
The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary
The Honorable Michael Pompeo, Secretary of State
The Honorable Eugene Scalia, Secretary of Labor
Mr. Ken Cuccinelli, Senior Official Performing the Duties of the Director, U.S.
Citizenship and Immigration Services
Mr. Edward Ramotowski, Deputy Assistant Secretary, Bureau of Consular Affairs,
Department of State
Mr. John Pallasch, Assistant Secretary, Employment and Training Administration,
Department of Labor



U.S. Citizenship
and Immigration
Services

May 13, 2020

The Honorable Zoe Lofgren
Chair, Subcommittee on Immigration and Citizenship
U.S. House of Representatives
Washington, DC 20515

Dear Chair Lofgren:

Thank you for your March 24, 2020 letter. The Acting Secretary has 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.

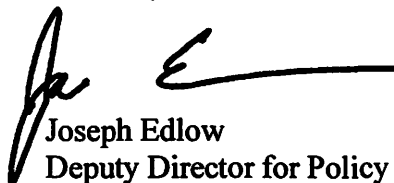
Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As we announced in our public-facing website, we have amended certain requirements to lessen the impact of the coronavirus public health emergency. 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. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Sincerely,



Joseph Edlow
Deputy Director for Policy