

Immigration in the Time of COVID-19



Dilnaz Saleem

Of Counsel

Houston, Texas

713.210.7435

dsaleem@bakerdonelson.com

“Housekeeping Notes”

Q&A Box – Please submit your questions

Tell us your feedback – Please complete the survey at the end of the webinar

A PDF of the presentation is available in the resource list and will be emailed to attendees in the coming days

Connect with us – Baker Donelson Twitter link is at the bottom of your screen

Travel and Migration

- It is an unprecedented time – many countries have implemented travel restrictions, delays visa and work permit issuance, and closed borders to slow the spread of the coronavirus.
- Mandatory Quarantine - U.S. Citizens and Permanent Residents who have been in mainland China and Hubei Province will be subject to a mandatory 14-day quarantine and health screening. Foreign nationals who have travelled to mainland China or Iran within 14 days of arrival will be denied entry into the U.S.

Travel and Migration (continued)

- March 14 - entry as immigrants or nonimmigrants is suspended for travelers of any nationality who have been in the Schengen area in the previous 14 days. Extended on March 16 to U.K. and Ireland.
- March 18 - the DOS suspended routine visa services in most countries until further notice. All routine visa appointments were cancelled.
- March 18 - USCIS temporarily suspended routine in-person services and will plan on beginning reopening of offices on June 4. Emergency services in limited situations are available.
- March 20 - Premium Processing is suspended until at least the end of May.

Immigration Restrictions & Updates

- April 20 - the U.S., Mexico, and Canada have each agreed to extend restrictions on non-essential travel across their shared borders for 30 additional days.
- April 23 - for a period of 60 days (with an option to be continued “as necessary”), entry is suspended for first-time immigrant visa applicants. This does not apply to nonimmigrant entries (e.g., H-1B, L-1, O-1, E-1, E-2, E-3, TN, etc.), or foreign nationals already in the United States, including those applying for extensions of status, changes of status, or permanent residence through adjustment of status.
- USCIS interviews and biometrics will be rescheduled automatically once USCIS offices reopen.

Immigration Restrictions & Updates

(continued)

- While biometric services (or other authorized collection sites) are temporarily suspended and/or operations are at reduced capacity, USCIS will reuse biometrics that were previously captured at the initial USCIS in-person appointment under certain circumstances:
 - USCIS is ready to adjudicate the application.
 - The individual previously submitted fingerprints and a photograph to USCIS.
 - The biographic data on the application matches data provided to USCIS in a previous filing.

USCIS Deadlines

- USCIS will consider a response received within 60 calendar days after the response due date set forth in the following requests or notices before taking any action if such request or notice was issued by USCIS between March 1 and July 1, 2020, inclusive:
 - Request for Evidence;
 - Continuations to Request Evidence (N-14);
 - Notice of Intent to Deny;
 - Notice of Intent to Revoke;
 - Notice of Intent to Rescind; and
 - Notice of Intent to Terminate.
 - Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)

USCIS Deadlines (continued)

- USCIS continues to accept and process applications for extension of stay and Change of Status. File Timely!
- Where applicable, employment authorization with the same employer, subject to the same terms and conditions of the prior approval, is automatically extended for up to 240 days after I-94 expiration when an extension of stay request is filed on time.
- If a petitioner or applicant files an extension of stay or change of status request (on Forms I-129 or I-539) after the authorized period of admission expires, USCIS, in its discretion, may excuse the failure to file on time if it was due to extraordinary circumstances beyond their control, such as those that may be caused by COVID-19.

USCIS Deadlines (continued)

- Visa Waiver Program (VWP) entrants are not eligible to extend their stay or change status. However, under current regulations, if an emergency (such as COVID-19) prevents the departure of a VWP entrant, USCIS in its discretion may grant a period of satisfactory departure for up to 30 days.
- Easier to file: Effective March 21 and for the duration of the COVID-19 national emergency, USCIS will accept certain benefit forms (including Form I-129) and supporting documents with copies of original, “wet” signatures dated after March 21. USCIS normally requires an original, handwritten signature on a number of documents, including scans, photocopies, faxes, etc.

Impact to Immigration Status

- H-1B Workers – Material Changes to Employment
 - Remote Work:
 - A change to worksite in the same MSA does not require a new filing with USCIS.
 - Must post the LCA at the new worksite (even if a home office) for 10 days.
 - A change to location outside of the MSA requires a new H-1B amendment petition.
 - Pay Reductions
 - Salary may not fall below the prevailing wage. A pay reduction that is still above the prevailing wage does not require an H-1B amendment.

Impact to Immigration Status (continued)

- H-1B Workers (continued)
 - Reductions in Hours
 - H-1B worker can be moved from full-time to part-time employment. This is material change and requires an H-1B amendment petition.
 - Furloughs
 - Employers must continue to pay full-time and part-time H-1Bs the required wage if the employee "is not performing work and is in a nonproductive status due to a decision by the employer."
 - Failure to pay during a furlough may result in enforcement action by the DOL's Wage and Hour Division through a variety of sanctions.

Impact to Immigration Status (continued)

- H-1B and Layoffs:
 - Confirm the termination to the employee in writing and notify USCIS that the terms of employment have changed.
 - Withdraw the LCA from the DOL.
 - Offer to pay reasonable transportation costs for the employee to return to their country of nationality or permanent residence.
 - 60-day grace period to continue to remain in the U.S.

Impact to Immigration Status (continued)

- L-1, TN, and O-1 Foreign Nationals
 - Somewhat more flexibility as they are not subject to the Labor Condition Application filed with DOL that accompanies the H-1B.
 - Pay reductions – Permitted without filing of an amendment petition so long as they continue to perform duties in-line with their petitions.
 - Part-time employment is permitted.
 - Employment is not location specific.

I-9 Compliance

- DHS announced some flexibility in completing I-9s for new employees
 - Section 1 must still be completed by the first date of employment – no changes.
 - Section 2 must be completed by the third day of employment. There is no change for employers who have employees physically present at the work location.
 - Employers and employees that are operating remotely may utilize alternate procedures.

I-9 Compliance (continued)

- Remote Operations
 - Employers with employees taking physical proximity precautions will not be required to review the employee's identity and employment authorization documents in the employee's physical presence.
 - Employers must inspect Section 2 documents remotely and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2.
 - Employers also should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field **once physical inspection takes place after normal operations resume.**

I-9 Compliance (continued)

- Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.
- Once normal operations resume, all employees who were onboarded using remote verification, must report to their employer within **three business days** for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification.
- Employers may designate an authorized representative to complete the I-9 on behalf of the company. DHS does not require the authorized representative to have specific agreements or other documentation for Form I-9 purposes. If an authorized representative completes Form I-9 on behalf of the employer, they are still liable for any violations in connection with the form or the verification process.

ICE Inspections and Audits

- ICE has ramped up I-9 workplace inspections! Although ICE has respected “enforcement-free zones” during past emergency situations such as natural disasters or terrorist attacks, that does not seem to be the case with the COVID-19 pandemic.
- ICE I-9 audits and penalties can be crippling to an organization.
- Producing documents and correcting I-9s as part of an audit is difficult under normal circumstances. If the employer has instituted a work-from-home policy, or has put employees on layoff or furlough status, complying with an I-9 audit can be a logistical nightmare.

Questions?



Stay Tuned

Baker Donelson will keep you updated with the latest alerts and additional webinars. Make sure you are on our mailing list!

Dilnaz A. Saleem

713.210.7435

dsaleem@bakerdonelson.com

*Thank
You*