

Three Important Immigration Updates

There are three important regulatory updates to visa and immigration issues that include changes to wage threshold rules, visas, and the DACA program.

The first is a change in the Department of Labor (DOL) wage rule. The DOL has announced it is complying with two federal district court orders setting aside a previous DOL wage rule which had increased wage thresholds for all levels of H-1B workers and green card applicants. The original order from October had increased prevailing wage levels for temporary foreign workers (H1B, H-1B1, E-3) and green card applicants.

- DOL is updating the Occupational Employment Survey (OES) online wage data on the publically accessible website. The DOL Flag System, where Labor Condition Applications (LCA) and PERM Labor Certifications are submitted, is also being updated.
- H-1B/E-3 LCAs: LCAs relying on OES wages cannot be filed until December 9. LCAs relying on alternative surveys may continue to be filed.
- PERM: DOL has temporarily paused Prevailing Wage Determination (PWD) processing until December 15, but new PWD requests may be submitted at any time.
- PERM: Employers may request reviews of PWDs issued under the higher calculation until January 4, 2021.

Impact: This is positive news for foreign nationals on H-1B, H1B1, and E-3 visas, as well as those filing PERM Labor Certification green cards applications. There should not be any significant interruption to visa or green card case processing.

The second is a Department of Homeland Security (DHS) rule that alters the H-1B process.

The DHS published the "[H-1B Strengthening IFR](#)" in the Federal Register on October 8, 2020, with a 60-day effective date. The Interim Final Rule (IFR) was scheduled to go into effect on December 7. However, on December 10, the U.S. Citizenship and Immigration Services (USCIS) announced that a December 1 order issued by a U.S. District Court vacated the strengthening of the H-1B Nonimmigrant Visa Classification Program IFR. The order prevents the IFR from taking effect and USCIS from implementing the IFR. USCIS stated that it will fully comply with the court's decision.

Impact: With this latest change, it is expected that the concerns previously associated with the IFR will be mitigated by this reversal. The Lab expects to be able to approach H-1B petition filings (new, extensions and amendments) in the same manner as it did prior to the IFR. This includes the ability for employers to revert back to the prior definition and standards for an H-1B "specialty occupation" role. The Lab expects this reversal to also alleviate some concerns regarding difficulties associated with obtaining H-1B status if the occupation itself does not require a degree in a directly related specific specialty.

Thirdly, there has been a change in the DACA, or Deferred Action for Childhood Arrivals program. On December 4, a federal judge ordered a full restoration to the prior administration's initiative that protects undocumented immigrants brought to the U.S. as children from deportation. This order requires officials to open the program to new applicants for the first time since 2017.

Due to a recent federal court order, the U.S. Citizenship and Immigration Services (USCIS) has resumed accepting requests to renew a grant of deferred action under DACA. **As of Monday, December 7, the Department of Homeland Security (DHS) is accepting first-time requests for consideration of deferred action under DACA.**

Until further notice, the DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017. For information regarding filing for DACA benefits, please visit the [USCIS website](#).

Impact: With full restoration of the DACA program in place, as it existed prior to its revocation, this is a very positive change for all individuals who wish to file an application for DACA benefits as provided under the law, or for those who currently are DACA recipients who wish to move forward with various immigration processes, including extensions of such status and/or towards filing for U.S. permanent residency.

Should you have any questions about any of these recent changes, please feel free to contact IRSO at irso@lbl.gov.