

ALERTS

CIS Announces New Rule Impacting Employment-based Nonimmigrants and Immigrants

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USCIS has published a final rule focused on the retention of EB-1, EB-2, and EB-3 immigrant workers and the improvement of existing temporary visa programs for high-skilled nonimmigrant workers. The new rule takes effect on January 17, 2017 and impacts and establishes the following:

For Nonimmigrant (Temporary) Visas:

- Establishes two grace periods of up to 10 days for individuals in the E-1, E-2, E-3, L-1, and TN nonimmigrant classifications, providing a reasonable amount of time for these individuals to prepare to begin employment in the country and to depart the U.S. or take other actions to extend, change, or otherwise maintain lawful status.
- Establishes a grace period of up to 60 consecutive days during each authorized validity period for certain high-skilled nonimmigrant workers when their employment ends before the end of their authorized validity period, so they may more readily pursue new employment and an extension of their nonimmigrant status.
- Automatically extends the employment authorization and validity of Employment Authorization Documents (EADs) for certain individuals who timely file for EAD renewal. Clarifies various policies and procedures related to the adjudication of H-1B petitions, including: providing H-1B status beyond the six year authorized period of admission, determining cap exemptions and counting workers under the H-1B cap, H-1B portability, licensure requirements and protections for whistleblowers.

For Immigrant (Permanent) Visas:

- Improves job portability for certain beneficiaries of approved I-140 petitions by maintaining a petition's validity under certain circumstances despite an employer's withdrawal of the approved petition or the termination of the employer's business.
- Clarifies and expands when individuals may keep their priority date when applying for adjustment of status to lawful permanent residence.
- Allows certain high-skilled individuals in the United States with E-3, H-1B, H-1B1, L-1 or O-1 nonimmigrant status, including any applicable grace period, to apply for employment authorization for a limited period if:
 - They are the principal beneficiaries of an approved Form I-140 petition,
 - An immigrant visa is not authorized for issuance for their priority date, and
 - They can demonstrate compelling circumstances exist that justify DHS issuing an employment authorization document in its discretion.

CIS ANNOUNCES NEW RULE IMPACTING EMPLOYMENT-BASED NONIMMIGRANTS AND IMMIGRANTS

- Better enables U.S. employers to retain high-skilled workers who are beneficiaries of approved I-140s, while also providing these workers more stability and job flexibility to accept promotions, change positions with current employers, and pursue other employment opportunities.

The final rule is available on the Federal Register. Please contact an MVA team member if you have any questions or concerns on the impact of this new rule.