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Business Immigration Reporter

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USCIS Proposes New Rule to Welcome International Entrepreneurs

The USCIS is considering a new rule, which would allow certain international entrepreneurs to enter the United States temporarily to start or scale their businesses.

The Department of Homeland Security (DHL) would use existing discretionary statutory parole authority to admit entrepreneurs of startup entities whose stay would result in a significant public benefit through demonstrated potential for rapid business growth and job creation.

Eligible entrepreneurs would be paroled on a case by case basis if they:

- Have significant ownership interest in the startup and an active central role;
- The startup was formed within the last three years;
- The startup has substantial potential for rapid growth and job creation
    - Has received significant investment from qualified U.S. investors
    - Received significant government grants
    - Has partially satisfied the above criteria in addition to other reliable and compelling evidence of the startup's substantial potential for rapid growth and job creation.

Under the proposed rule, qualified entrepreneurs would receive an initial stay of up to two years to oversee and grow their business.

EB-5 Bill Postponed

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The mark up for H.R. 5992, the "American Job Creation and Investment Promotion Reform Act of 2016," was postponed. The bill has good and bad. The good is that it would renew the EB-5 program for five years and not subject it to the whims of the budget bill every year. The bad is that some items would harm the workability of the EB-5 program.

Stay tuned for updates!

Employment Authorization Extended For Certain Syrian Students

Immigration & Customs Enforcement (ICE) published a notice indicating the extension of work authorizations for certain Syrian students who have suffered severe economic hardship as a result of the ongoing conflict in their home country. ICE expanded the program to Syrian students who were stateside lawfully in F-1 status on September 9, 2016 and who were properly enrolled in an institution of higher learning approved by ICE's Student and Exchange Visitor Program.

October 2016 Visa Bulletin

The Department of State (DOS) released the first Visa Bulletin for fiscal year 2017. As always, it includes "Application Final Action Dates" and "Dates for Filing Applications" for the family and employment-based categories.

With all new visa number availability, we noticed some forward movement in the employment-based categories. EB-1 from India advanced to current; EB-2 from India advanced to January 15, 2007; EB-2 China advanced to February 15, 2012; and EB-3 China advanced to January 22, 2013.

BALCA Affirms a Denial on a Minor Discrepancy

The Board of Alien Labor Certification Appeals (BALCA) upheld a Certifying Officer's denial of a labor certification application where the employer indicated on the company's recruitment report that there were 62 applicants for the position, when in fact there were only 61. BALCA held that the Certifying Officer "properly refused" a corrected version of the report because the correction was created after the submission of the PERM application.

While the Certifying Officer was right under the letter of the regulatory language, I opine that this decision is devoid of reality, it harps on form over substance and completely defeats common sense.

Change in Submitting H-2B Applications

The Department of Labor (DOL) is making an effort to reduce the paper submission burden on H-2B applications. Effective now, employers may document the temporary need requirements on ETA Form 9142B without also submitting voluminous supporting documentation with the initial application, especially where the employer has previously met the temporary need burden.

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