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July 13, 2021

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Welcome to the T&R Newsletter

July 2021

Extensions to National Interest Exceptions; Lapse of EB-5 Immigrant Investor Regional Center Program; Extension of USCIS response time "flexibilities," DOL rules on H-1B and PERM prevailing wages; and T&R upcoming webinar on the International Entrepreneur Rule. Read our July newsletter to stay current on all immigration related matters.

National Interest Exception Validity Extended to 12 Months

The U.S. Department of State (DOS) extended the validity of National Interest Exceptions (NIEs) from 30 days to 12 months from countries that have COVID-19 travel bans. The NIE is required to travel directly to the United States from a country with one of the travel bans. It is also required to obtain a visa at a US embassy in one of the designated countries.

The U.S. COVID-19-Related Travel Bans: The United States' numerous COVID-19-related travel bans implemented over the past 18 months remain in place, and affect travel from:

- the United Kingdom;
- Ireland;
- China (excluding Hong Kong and Macau);
- Iran;
- Brazil;
- South Africa;
- India; and
- all Schengen countries (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland).

The U.S. travel bans require that foreign nationals present in any of the above-listed nations either obtain an NIE before traveling to the United States or quarantine in a nation not subject to a ban for 14 days prior to entering the United States. Those exempt from the bans include U.S. citizens, permanent residents, and certain close relatives of U.S. citizens and permanent residents.

What are the NIE changes?

1. Multiple Entries on an NIE: Formerly, the DOS issued NIEs were for a single entry and valid for 30 days. Now, NIEs are valid for 12 months and for multiple entries.
2. Retroactivity: The new NIE policy applies retroactively to NIEs approved in the last 12 months. Individuals issued an NIE may now use that NIE for entry into the United States for 12 months following the NIE approval date.

What are the limitations to the new 12 month NIE?

1. Same travel purpose: The NIE is only valid for 12 months if the purpose of the new travel is the same as the purpose for the initial NIE. Those with an approved NIE should carry documentation showing the NIE approval and their travel's purpose.
2. Same travel ban: The NIE is only valid for 12 months if covered by the same White House Proclamation travel ban. For example, if someone gets an NIE for travel from a Schengen Country it is only valid if returning from the Schengen area in the next 12 months, and not from any of the other travel ban countries (e.g. India or Brazil).

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Congressional authorization of the EB-5 Immigrant Investor Regional Center Program expired at midnight on June 30, 2021. This lapse in authorization does not affect EB-5 petitions filed by investors who are not seeking an immigrant visa under the Regional Center Program. Negotiations to reauthorize the Regional Center Program continue although the timing and outcome of negotiations is unknown.

Due to the lapse in authorization related to the Regional Center Program, the U.S. Citizenship and Immigration Services (USCIS) will reject the following forms received on or after July 1, 2021:

- [Form I-924, Application for Regional Center Designation under the Immigrant Investor Program](#), except when the application type indicates that it is an amendment to the regional center's name, organizational structure, ownership, or administration;
- [Form I-526, Immigrant Petition by Alien Investor](#), when it indicates that the petitioner's investment is associated with an approved regional center;
- [Forms I-485, Application to Register Permanent Residence or Adjust Status](#), and any associated [Forms I-765, Application for Employment Authorization](#), and [Forms I-131, Application for Travel Document](#), based on an approved Regional Center Form I-526.

Form I-829: The USCIS will continue to accept and review Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, in the normal course, including those filed on or after July 1, 2021.

What happens to pending cases? The USCIS will not act on any pending Form I-526 petition or Form I-924 application that is dependent on the lapsed statutory authority until further notice. Investors who received written correspondence from the USCIS regarding their petition or application on or before June 30, 2021 should review the USCIS' correspondence and respond by the due date therein. Although the USCIS is unable to review investor responses while the Regional Center Program is unauthorized, it will receive and maintain the responses for review if Congress reauthorizes the program.

USCIS Extends Response Time “Flexibilities”

As the COVID-19 pandemic continues, the USCIS extended the “flexibilities” to September 30, 2021, that it announced on March 30, 2020. This action allows applicants, petitioners, and requestors an additional 60 calendar days to respond to certain USCIS requests, including:

- Requests for Evidence;
- Continuations to Request Evidence (N-14);
- Notices of Intent to Deny, Revoke, or Rescind;
- Notices of Intent to Terminate (regional centers); and
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant.

The USCIS will consider a response to the above requests and notices received within 60 calendar days after the response due date printed on the request or notice. Also, the USCIS will accept a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if (1) the form was filed up to 60 calendar days from the issuance of a USCIS decision; and (2) the USCIS made that decision from March 1, 2020, through September 30, 2021.

DOL Affirms Operative Rules Governing H-1B and PERM Prevailing Wages

The U.S. Department of Labor (DOL) withdrew the final rule that would change how prevailing wages would be calculated and affirmed that the rules governing prevailing wages for H-1B, H-1B1, E-3 and PERM processes will remain as those in place on October 7, 2020. The DOL responded to a June 23, 2021 federal court order that vacated an October 8, 2021 Final Rule promulgated by the Trump Administration that would have increased significantly the prevailing wages for these processes. The court's decision remanded the matter to the DOL, which withdrew the Trump Administration's rule and announced that the pre-Final Rule prevailing wage regulations continue to remain in effect.

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Please join Trow & Rahal's monthly webinar from 2:00 pm – 3:00 pm Eastern on the third Friday (usually) of each month. The format of these webinars will include a brief update of any changes in immigration policies, as well as an overview of one important immigration issue or visa category. Upcoming webinars include:

July 16th webinar: This webinar will be held this [Friday, July 16th](#), and will provide recent updates on recent changes and then an overview of the **International Entrepreneur Rule**. You can register for the webinar at <https://lnkd.in/d5Qk4At>.



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