IMMIGRATION UPDATES: TPS Extended for Haitians and Court of Appeals Upholds the Block of Second Travel Ban

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On May 24th, DHS Secretary John F. Kelly extended Temporary Protected Status (TPS) through January 22, 2018 for eligible nationals of Haiti and individuals without nationality who last habitually resided in Haiti. The Secretary concluded that although Haiti has made significant progress in recovering from the January 2010 earthquake that prompted the initial TPS designation, conditions in Haiti supporting its designation continue to be met at this time. Haiti’s poor conditions have been further exacerbated by a cholera epidemic in October 2010 and Hurricane Matthew in October 2016. While the six-month extension is much needed, it is unlikely that the crises in Haiti that justified the continued designations will be resolved by January 2018. At least 60 days before January 22, 2018, Secretary Kelly will reevaluate the designation for Haiti and determine whether another extension of the current designation, a redesignation, or a termination is warranted. Typically, TPS is extended for 18 months at a time.

Current beneficiaries of Haiti’s TPS designation seeking to extend their TPS must re-register by July 24, 2017. TPS beneficiaries who re-register may request a new Employment Authorization Document (EAD). Those who re-register and request a new EAD during the 60-day re-registration period will receive an automatic extension of their expiring EAD for up to 180 days from the date their current EAD expires. Current EADs will not be automatically extended without a new EAD request. TPS beneficiaries are strongly encouraged to re-register and file their EAD applications as early as possible to avoid lapses in documentation of employment authorization.

Also of recent note, on May 25th, the United States Federal Appeals Court for the Fourth Circuit in Richmond, VA upheld the nationwide injunction barring enforcement of Section 2(c) of the Executive Order titled “Protecting the Nation from Foreign Terrorist Entry into the United States” issued on March 6, 2017. On March 16, 2017, 10 days after the Order was issued, the District Court for the District of Maryland enjoined Section 2(c) in its entirety based solely on plaintiff’s claim that the Order violated the Constitution’s First Amendment protections against religious discrimination by the government. The preliminary injunction by the District Court stopped the enforcement of only Section 2(c) of the Executive Order, which suspended entry into the United States for 90 days of nationals of Syria, Yemen, Iran, Sudan, Somalia, and Libya who did not possess a valid visa as of 5pm on January 27, 2017 and did not possess a valid visa on March 16, 2017. The District Court concluded that the Order violates the Establishment Clause of the First Amendment because the stated national security interest was provided in bad faith, as a pretext for the Order’s religious purpose to ban citizens of Muslim-majority countries. Both the District Court and the Appeals Court found that the primary purpose of the Order is religion based on the rhetoric and previous statements made by the President and his advisors to target Muslims for exclusion from the United States. The Appeals Court found that the President’s own statements suggest that the changes to the original executive order issued on January 27, 2017 reflect an effort to help the second Order survive judicial scrutiny rather than to avoid targeting Muslims for exclusion from the United States.

Importantly, the preliminary injunction does not mention any other section of the Executive Order, including suspension of the Refugee Admissions Program for 120 days, reduction of the annual number of refugees to 50,000 from 120,000, and restrictions to the visa interview waiver program to require most nonimmigrant visa applicants to undergo an in-person interview. While the preliminary injunction upheld by the Fourth Circuit does not specifically enjoin the enforcement of this section related to the visa interview waiver program, there are reports that this program is in effect. Anyone attempting its use should be prepared to be called for a visa interview.

The President and Department of Justice previously indicated that they will appeal any unfavorable decision regarding the Order to the Supreme Court.

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