



Happy Labor Day 2018 to all American workers! Since 1894 the U.S. has celebrated the contributions workers make to the strength, prosperity and well-being of our country.

NEWS YOU CAN USE – Some of these topics are very complicated and require more explanation than a newsletter can provide. If you need more information please contact our office.

1. DACA RENEWALS ALIVE FOR NOW - On Friday, August 31, 2018, Judge Andrew Hanen (**U.S. District Court for the Southern District of Texas**) declined to grant preliminary injunction in Texas v. Nielsen, a suit brought by Texas and a number of other states to end the DACA program. This is the same judge who ended the DAPA program for parents of US citizen and Permanent Resident children in 2016. Judge Hanen summarized the decision by stating that the "Court did not grant the preliminary injunction as it found that the States had delayed seeking this relief for years, that the balance of private interests fell in favor of the denial of the requested relief, and that implementing the relief at this point in time was contrary to the best interests of the public." However, Judge Hanen also stated that the plaintiffs "have clearly shown" that DACA is likely unlawful.

For the present the USCIS is accepting renewals of DACA but no new applications. With appeals challenging the end of DACA pending in the Courts of Appeals for the Second, Fourth, and Ninth Circuits, the issue is ripe for the U.S. Supreme Court to hear. Look for news of whether the Court will take up this case.

2. New USCIS Policy Guidance on Requests for Evidence and Notices of Intent to Deny (RFE and NOID) - Effective September 11, the USCIS will reject as all immigration filings, except for DACA, that are defective without first issuing an RFE or a NOID. While USCIS claims the move is motivated by too many frivolous or meritless claims bogging down the system the concern is now that we may file no applications or petitions with missing documents. For example, you want to file a last-minute application for residency but have not filed your 2017 taxes yet. USCIS can reject such a filing under the philosophy that "your emergency is not our emergency." **Warning to our clients – do not delay immigration filings until the last minute in the hope that you can supplement later.**

3. No EAD's (Work Cards) for H-4 Spouses Ongoing – DHS is continuing to actively pursue rulemaking to remove this group from issuance of EAD's. Once cleared, the rule will be sent to OMB for clearance. Stay tuned.

4. U.S. Passports Denied to Some Babies Delivered by Midwives in Southern Border States - First this is not a new phenomenon. Over the past 10 to 20 years there have been many instances of the Passport Agency declining to issue a passport to babies delivered by a midwife on "the bad midwife list" or possessing a delayed birth certificate. With the fluid nature of our southern border and the number of travelers who cross the border bridges daily, there continue to be both legitimate and fraudulent U.S. births recorded by midwives. In the absence of no allowance for "home births" those babies born outside a hospital setting may continue from time to time to be asked to produce more proof than a state birth certificate when applying for a U.S. passport.

5. **Illegal Receipt of Public Benefits could affect your Eligibility for Immigration Benefits** – The USCIS and the Consulates have ramped up their efforts against applicants as possible violators of the “public charge” ground of inadmissibility. If one has ever illegally received a public benefit or owed and not paid back debts resulting from an overpayment of public benefits, this could result in a request for a waiver for permanent residence or denial of an application for naturalization. And a proposed rule at the OBM even would apply to dependent US citizen children. While the Public Charge has long been a ground of inadmissibility, the proposed new rule seeks to deny residence, a visa, or naturalization, if it appears the applicant will become dependent on cash assistance from the government. Again, there are too many federal and state programs and timelines to provide any definitive answers at this point.
6. **Accrual of Unlawful Presence for F, J, and M Nonimmigrants** - On August 9, 2018 USCIS reversed a 20-year old policy that nonimmigrants admitted an “D/S” (duration of status) do not begin accruing unlawful presence unless and until an Immigration Judge or a USCIS officer determines that they violated their status. Under the new policy certain rules apply to status violations that occurred prior to August 9 and after August 9 and when an NTA (notice to appear in immigration court) would be issued.
7. **Temporary Protected Status (TPS) Closures** – Since 2017 the DHS has ended TPS for people fleeing from violence or natural disasters for Haitians, Nicaraguans, El Salvador and Honduras for a total of 305,000 people so far.
8. **Travel Ban** - The Supreme Court’s ruling in June backed the Administration’s travel ban on issuing visas from 5 Muslim-majority countries (Iran, Libya, Somalia, Syria, Yemen) as well as North Korea and Venezuela splitting up extended families and interrupting the lives of students and professionals.
9. **Refugees** – From 85,000 in 2016 to 54,000 in 2017 to 45,000 admissions for 2018. The admission of refugees is at a lower point than in 2002 following the terrorist attacks of 9/11.
10. **Asylum Seekers** – The Zero Tolerance policy has resulted in hundreds of immigrant children being separated from their parents. And the DOJ has issued new guidance that domestic abuse and gang violence should not be considered a valid reason to request asylum.

THE CASCADING EFFECT OF USCIS MEMOS AND REGULATIONS IS REDUCING LAWFUL U.S. IMMIGRATION

The new mantra of the USCIS can be summarized as “hire American”, “buy American”, “no foreigners need apply.” Memo by memo and regulation by regulation the ability of the USCIS to serve its clients has been seriously impeded over the past 18 months.

Delays - Applications for permanent residence are delayed for up to 2 years and for naturalization applications for 16 months.

No RFE’s or NOID’s – After Sept. 11 defective filings will be rejected.

No Premium Processing for H-1B’s - The elimination of the 2-week turnaround program for new H-1B petitions has again been extended until Feb. 2018 and the fee increased when it reopens to \$1410.

I-751 Petition Approvals Taking At Least 18 months – USCIS cannot issue approvals on removal of conditions for permanent resident spouses in a timely manner so have changed the receipt notices to continue their status for up to 18 months.

Pending Permanent Resident Applicants Forced to Apply for Extensions of Work and Travel Cards - Since interviews are so delayed the one-year work and travel cards must be renewed and at least 6 months in advance since the USCIS eliminated the rule that it must issue these cards in 3 months.

Long-Pending Naturalization Applications – Mean that applicants must renew 10 year green cards and apply for emergency work and travel permission.

Infopass Appointments Unavailable – The USCIS cannot hire officers fast enough to keep up with residency and naturalization interviews and information booths. If an emergency arises, an appointment is unavailable.

If you are interested in learning more about these new developments, please contact our firm at (713) 980-9939 or admin1@barnett-lawgroup.com.

