KERR RUSSELL
Attorneys and Counselors

IMMIGRATION INSIDER

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Kate McCarroll, *Member*

Kate has extensive experience in employment-related immigration law, including inbound/outbound immigration, Department of Labor/ Department of Homeland Security audits and I-9 compliance training. Kate has also handled matters involving asylum proceedings, family-based immigration, and criminal and inadmissibility issues. *Email Kate*.

Increase in Premium Processing Fee

U.S Citizenship and Immigration Service (USCIS) announced that beginning October 1, 2018, the fee for premium processing will be raised to $1,410 (from $1,225). USCIS explained that the purpose of the fee increase is "to more effectively adjudicate petitions and maintain effective service to petitioners." Premium processing is currently available for some I-129 and I-140 petitions, and allows petitioners to request 15 day processing of certain filings with payment of the additional fee.

Suspension and Expansion of Premium Processing for Some H-1B Petitions

Earlier this year, USCIS suspended the availability of premium processing for cap-subject H-1B petitions filed pursuant to this year's lottery until September 10, 2018. USCIS has announced that this suspension has been extended until at least February 19, 2019.

In addition, as of September 11, the suspension of premium processing has been expanded to ALL H-1B petitions, other than those that are cap-exempt and those filed to extend an employee's H-1B where there is no change in the position, employer or work location.

USCIS has enacted the suspension with the goal of processing petitions in a more timely manner.

Miroslava Orduño Rincón, *Member*

Miroslava has extensive employment-related experience concerning U.S. non-immigrant and immigrant petitions for large international clients. She also processes outbound visitor and work visas, family-based petitions, and naturalization. *Email Miroslava.*

Robert Anderson, *Member*

Robert counsels and represents clients in the full spectrum of immigration legal issues as applied to their workforces and staff, including all aspects of the international movement of personnel for local, national, and international companies. *Email Robert.*

USCIS Permitted to Deny Petitions without Request for Evidence

As of September 11, USCIS adjudicators have discretion to deny petitions without first issuing a Request for Evidence or Notice of Intent to Deny to allow the applicant to provide missing information. Previously, adjudicators could deny an application without first asking for more evidence only when the evidence presented showed that there was "no possibility" of approval. With this change, officers may now issue a denial if the petitioner/applicant did not submit all of the required evidence initially, which has been done in the past for strategic reasons or timing concerns.

Immigration Forecast: USCIS to Issue Notices to Appear for Denied Petitions

In July, USCIS issued a policy memorandum notifying that it was expanding the agency's authority to issue Notices to Appear (NTA), which serve to place foreign nationals into immigration proceedings for removal. We note that while this memo has been put on hold temporarily so that USCIS can develop operational guidance, we expect that it will become effective in the short term.

Historically, USCIS has been the adjudicative arm of the Department of Homeland Security, responsible for reviewing and making determinations of U.S. immigration benefits. Immigration and Customs Enforcement (ICE) is the "police" branch, responsible for locating and prosecuting those who violate immigration law. As such, USCIS has only issued Notices to Appear in the most egregious of circumstances (e.g. fraud or criminal activity). The new policy significantly expands the grounds that require USCIS to issue an NTA. Most notably, an NTA must be issued when, upon the denial of an application, the foreign national is unlawfully present in the United States.

Under the regulations, individuals who timely file an extension of non-immigrant status may continue

working for 240 days while their application remains pending. Under the anticipated policy, if the extension were later denied, and the individual's I-94 card expired, he/she would be unlawfully present and issued a Notice to Appear. Therefore, in anticipation of the policy implementation, we caution employers and foreign nationals not to rely on the 240 day automatic extension. When possible, petitions to extend status should be filed as early as permitted, and use premium processing if available.

We will continue to provide updates regarding the implementation of this policy.

For up-to-date immigration updates, be sure to follow us on LinkedIn!

- **Kate McCarroll**
- **Miroslava Orduño Rincón**
- **Kerr Russell**

Updated Privacy Policy

As part of our continued commitment to your privacy, we have updated our website Privacy Policy to clearly set forth what information we collect from you, how we use that information, and your rights related to that information. Notably, the information we collect from you includes the email address at which you have received this newsletter. If you would like more information related to the information we collect, please review our Privacy Policy, which is located here. If you would like to unsubscribe from this newsletter, please click here, and, if you have any additional questions, please email us dataprivacy@kerr-russell.com.