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IMMIGRATION AND NATIONALITY LAW CONFERENCE

Understanding United States Immigration and Nationality Laws

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UNDERSTANDING UNITED STATES IMMIGRATION AND NATIONALITY LAWS

I. IMPORTANT DEVELOPMENTS

The Biden administration has reversed or rolled back many of the overly restrictive immigration policies of the Trump administration. Deference to prior immigration decisions has been restored so that applicants for extensions of nonimmigrant status may again have confidence that their status will be extended if the location, job titles, duties and wages have not changed. Prosecutorial discretion has been restored so that more people with strong equities will have a chance to not be processed for deportation. Young children are no longer being detained and separated from their parents. Many employer-sponsored applicants are no longer subjected to personal interviews when their adjustment of status applications are clearly approvable. Annual refugee admissions have been significantly increased to nearly traditional levels. The current administration has made it clear that they support young people raised in our country who are DACA recipients, and that this administration will continue to seek a legislative solution for these “DREAMERS.” The Biden administration is not seeking to build a physical wall along the entire southern border. Equally important, the current administration is working to remove the “invisible wall” the prior administration erected to slow or reject asylees, refugees, nonimmigrants, aspiring immigrants, and applicants for citizenship.

Immigration laws and policies are constantly changing. Security and enforcement concerns have taken priority over timely adjudications of applications for immigration status submitted by employers for foreign national

employees as well as by U.S. citizens for their relatives. This is a heavily regulated field with laws intended both to protect the United States workforce and to unify families. Congress must juggle competing interests in determining immigration policy: employers want to be able to hire skilled foreign labor, while labor unions and professional societies want to improve wages and working conditions for employees; immigrant families want to bring their relatives to the U.S., while the quota system lags ever farther behind; a global economy demands decreasing barriers, while an influx of unlawful immigration and the threat of terrorism results in tightening controls.

The U.S. Citizenship & Immigration Services (USCIS) concentrates on the intent of the individual: Is he/she an intending immigrant or nonimmigrant? The wrong answer might result in a return trip to the home country. Nonimmigrant status is temporary: one may only remain in the U.S. for a limited period of time. Immigrant status, commonly called “green card” status, signifies that a person has been granted permanent resident status and may reside in the U.S. indefinitely.

These government websites provide useful information about immigration laws:

www.uscis.gov (U.S. Citizenship & Immigration Services)
www.dol.gov (U.S. Department of Labor)
www.travel.state.gov (U.S. Department of State)

USCIS Expanded Provisional Waiver Program

In 2013, President Obama announced the creation of the Provisional Waiver program, whereby certain immediate relatives of U.S. citizens could apply for a provisional waiver of the unlawful presence ground of inadmissibility within the United States prior

to leaving for their immigrant visa interview in their home country. The applicant must prove extreme hardship to a U.S. citizen spouse and/or parent. On July 29, 2016 the USCIS announced a final rule which expanded the provisional waiver program to include lawful permanent resident spouses or parents as potential qualifying relatives.

Parole in Place (PIP)

On November 15, 2013, the USCIS released a new Policy Memorandum which spelled out the process for applying for Parole in Place (PIP). PIP may be sought for spouses, children, and parents of persons serving on active duty in the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve, or who previously served in either of the two mentioned above (i.e. veterans). An I-131 application is submitted without fee to the USCIS Field Office with jurisdiction over the applicant's residence, and if granted, the applicant receives an I-94 card indicating parole in the U.S. for one year. Those applicants who would not normally be eligible to apply for adjustment of status within the United States because of their manner of entry may then solicit permanent resident status from within the United States despite an unauthorized entry. It is important to note that the applicant should not actually leave the United States and use the PIP I-94 card to seek to return from travel abroad. The intent of PIP is to keep families together, especially the loved ones of those who fight to keep our country safe. PIP does not provide a waiver of any 212(a)(9)(C) ten year "permanent" bar. The Trump administration attempted to eliminate PIP but met with such strong enough opposition that the program remains in place.

DOMA: Defense of Marriage Act Declared Unconstitutional

On June 26, 2013, Section Three of the Defense of Marriage Act (DOMA) was declared unconstitutional by the U.S. Supreme Court. This meant that the federal government began to recognize the legal marriages of same-sex couples. Same-sex couples in committed relationships who were married in a country that recognizes such marriages could receive a variety of federal protections, including the right to seek

permanent resident status for foreign-born spouses of U.S. citizens.

Even more significant was the Supreme Court ruling on June 26, 2015 legalizing same-sex marriages across the United States. Thirty-six states and the District of Columbia already recognized gay marriage, but this Supreme Court ruling required the remaining fourteen states to lift any bans against same-sex marriages that were in place and eliminated all related immigration restrictions.

Deferred Action for Childhood Arrivals

On June 15, 2012, President Obama announced that many children whose parents brought them into our country prior to age sixteen would be eligible for some immigration benefits. Deferred Action for Childhood Arrivals (DACA) has provided eligible applicants a two-year Employment Authorization Document (EAD) and many of the earlier DACA recipients have been renewing their EADs for a fifth time. Qualified applicants must have entered the U.S. prior to age 16; have been younger than 31 on June 15, 2012; and have been continuously present in the U.S. for at least 5 years. They must have either served in the military or be enrolled in school or have graduated from high school or obtained a GED. In addition, they must not have been convicted of a felony, three misdemeanors, or any "significant misdemeanor." Driving under the influence is considered to be a significant misdemeanor. There are presently over 700,000 recipients of DACA.

The Trump Administration on September 5, 2017 rescinded the DACA program. Initial DACA applications were no longer accepted. In 2020, the U.S. Supreme Court determined that the Trump administration had unlawfully ended DACA for new applicants by only providing arbitrary and capricious reasons and by not addressing the substantial reliance on that status by DACA recipients as well as by their families and employers. In defiance

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