U.S. Citizenship & Immigration Services Publishes a NEW Rule Benefitting Employment-Based Immigration

01.20.2017

On January 17, 2017, a long awaited new rule (the "New Rule") published by U.S. Citizenship and Immigration Services ("USCIS") went into effect. Companies and foreign nationals that are employed in various nonimmigrant classifications, such as E-1, E-2, H-1B, L-1, or TN, as well as foreign nationals who are employed pursuant to a valid Employment Authorization Document ("EAD") will benefit from this New Rule.

There are several major changes worth noting. For example, under prior regulations, foreign workers in various nonimmigrant categories were not afforded a grace period to stay in the U.S. upon the termination of the employment relationship with the sponsoring employer. Under the New Rule, however, workers in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN status will now generally receive a 60-day grace period when their employment is terminated so long as their authorized validity period has not ended. Additionally, the New Rule creates a 10-day grace period for E-1, E-2, E-3, L-1 and TN workers to enter the United States before their authorized employment period begins and provides a 10-day grace period at the end of their authorized employment validity period.

The New Rule also provides for an automatic 180-day extension of many expiring EAD cards under certain circumstances. Under prior regulations, a foreign worker's employment authorization ceased on the date that his or her EAD expired and such individual could only return to work once a new EAD card was received by the employee. That is, the employee did not become authorized for employment again until such worker received the new EAD card after a sometimes lengthy USCIS adjudication process. The New Rule provides significant relief in many circumstances, particularly when adjudication of these renewal applications is backlogged. The New Rule will allow for uninterrupted employment authorization while the EAD extension is pending so long as the employee files an EAD extension application prior to the expiration date of his or her current EAD.

Additionally, the New Rule allows certain individuals in E-3, H-1B, H-1B1, L-1 or O-1 status who also possess an approved I-140 Immigrant Petition to apply for one-year EADs if "compelling circumstances" can be shown as to why an EAD should be issued. Examples of compelling circumstances include serious sickness or disabilities, employer retaliation, and major disruption to an employer or other substantial harm to the applicant.

Finally, the New Rule codifies various policies of USCIS that were not considered "law." Most notably, the New Rule clarifies and further implements various provisions of the American Competitiveness in the Twenty-First Century Act of 2000 ("AC21") that allows pending green card applicants to use

“portability” to move from one employer to another or to change jobs within their existing company.

For questions, please feel free to contact Earl Baggett at ebaggett@williamsmullen.com, Eliot Norman at enorman@williamsmullen.com or Hadeel Abouhasira at habouhasira@williamsmullen.com.

Related People

- Hadeel Abouhasira – 804.420.6452 – habouhasira@williamsmullen.com
- D. Earl Baggett – 804.420.6478 – ebaggett@williamsmullen.com

Related Services

- Immigration
- Labor, Employment & Immigration