

Mimosas, Bloody Marys, and NIV Fundamentals

2016 AILA Texas and Midsouth Joint
Conference

Non-Immigrant Intent vs. Dual Intent

Maintenance of Status

Maintenance of Status -Part 2

Maintenance of Status Part-3

AC-21 Updates

- Proposed Rule implementing AC 21 “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Workers” 80 FR 81900 (12/31/2015)
 - Retention of priority dates
 - Retention of I-140 – Petition withdrawn 180 days after approval remains approved, unless its approval is revoked on other grounds.
 - Alien needs another petition approval to pursue permanent residence, unless INA 204(j) applies
 - Priority date retained
 - Protects eligibility under AC 21 104(c) and 106, exemptions from six-year H-1B limit
 - Protects 204(j) portability

AC 21 Updates- 2

- Proposed rule for AC 21 (continued)
 - Nonimmigrant grace periods
 - 10 day grace period before and after petition validity date for E-1, E-2, E-3, H-1B, L-1 or TN
 - Grace period for cessation of employment
 - One time per alien
 - For E-1, E-2, E-3, H-1B, H-1B1, L-1 or TN
 - For up to 60 days or until the end of the authorized validity period, whichever is shorter

AC 21 Updates - 3

- Proposed rule for AC 21 (continued)

Exemptions to six-year H-1B limit

- AC 21 §106 exemption where 365 days have elapsed from the filing of an ETA-9089 or I-140
 - New rule adds: a petition cannot support an AC 21 §106 exemption if the alien fails to file an I-485 or an immigrant visa application within one year of an immigrant visa becoming available.

AC 21 Updates - 4

Proposed rule for AC 21 (continued)

- EAD renewal applications – employment authorization automatically extended for 180 days
- Interim EADs for applications pending for 90 days – eliminated
- EAD in “compelling circumstances” for I-140 principal beneficiary, spouse and children

AC 21 Updates - 5

- Proposed rule for AC 21 (continued)
 - H-1B cap exemptions
 - H-1B licensure

AC 21 Updates- 3

- Beneficiary Standing in Visa Petitions
 - Rejected by 8 CFR 103.3(a)(1)(iii)(B)
 - Not addressed by proposed AC21 rules
 - Recognized by several federal courts. *Patel v. USCIS*, 732 F.3d 633, 636 (6th Cir. 2013); *Mantena v. Johnson*, 809 F.3d 721 (2d Cir. 2015); *Kurapati v. USCIS*, 775 F.3d 1255, 1260 (11th Cir. 2014)

EAD Considerations H4

- H-4 eligibility for an EAD, 80 FR 10284 (02/25/2015)
- What if spouse's I-140 is revoked?
- Timing
- Other considers

EAD Considerations E-2, L-1A

EAD Considerations DACA-delays

Last Time in Rule

Contiguous Territory Rule-TNs

Questions?



Resources

Presenters

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