March 16, 2022

Dear Coordinators & Directors,

Below you will find updates and information on the following topics: I. Special Immigrant Juvenile status ("SIJS“): deferred action and employment authorization; II. Department of Homeland Security’s ("DHS“) proposed new public charge rule; III. Ukraine: TPS and visa options; IV. Afghanistan: TPS and Afghan Adjustment Act; and V. ICYMI: USCIS data on DACA recipients; RELIEF Act; TPS for South Sudan and Sudan; Advocacy, Tell USCIS to Address Crisis-Level Processing Delays; and Blog: Immigration law and cannabis present traps for the unwary.

I. Special Immigrant Juvenile status ("SIJS“): deferred action and employment authorization

SIJS allows young immigrants who are abused, abandoned, or neglected by one or both of their parents to stay legally in the U.S. and apply for lawful permanent residency, i.e. a green card. One major procedural problem with SIJS has been that, like many immigrant categories, there is a substantial visa backlog—i.e., many applicants who petition for and receive SIJS must then wait for several years before applying for lawful permanent residency. To make matters worse, SIJS petitioners have not been eligible for employment authorization nor protection from deportation while waiting to apply for residency.

But last week, USCIS announced that it is updating its Policy Manual to allow deferred action (i.e., protection from deportation) and employment authorization for noncitizens who have an approved petition for special immigrant juvenile classification but who cannot apply to adjust status to become a lawful permanent resident because a visa number is not available. This comes as welcome news, particularly for folks who have not been able to receive DACA! The update will become effective on May 6, 2022, and applies to eligible noncitizens classified as SIJs before, on, or after May 6.

Note: our Center is planning to launch an SIJS Awareness Campaign on May 6, 2022—the day USCIS’ new SIJS policy and guidance go into effect. Stay tuned for more details.

II. Department of Homeland Security’s ("DHS“) proposed new public charge rule

On February 24, 2022, DHS published a new proposed public charge rule, which is open for public comment. “Public charge” is a ground of inadmissibility, i.e., a reason that a person could be denied a green card, visa, or admission into the United States.

Currently, USCIS is following its 1999 field guidance on public charge, which prescribes that a person is deemed a public charge if they are likely to become “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance
or (ii) institutionalization for long-term care at government expense.” Importantly, the test does not apply to many individuals who are applying for green cards, and student financial aid is never considered in the public charge test. The Trump public charge rule is no longer in effect.

Unlike Trump's public charge rule, the Biden Administration’s proposed changes are minor and do not increase barriers for immigrants. The main distinctions are as follows:

- Under the 1999 guidance, if someone in the applicant’s household receives cash assistance, and that is the only source of household income, the benefit would count against the person applying for admission even though the benefit is not in the applicant’s name. This has adversely impacted applicants who do not have verifiable income where the only source of household income on records is their child’s Cal Works grant. The 2022 rule would clarify that only benefits taken by the applicant can be counted toward the public charge test.
- The 2022 rule would explicitly clarify that where an Affidavit of Support of required, DHS will consider it “favorably.”
- Under the 2022 rule, any denial on public charge grounds must explicitly discuss how the five factors for consideration (age, health, family status, assets/resources/financial status, and education/skills) were examined. This is not current practice under the 1999 rule.
- Under the 2022 rule, benefits received by an applicant while eligible for refugee resettlement assistance will not be considered.

For more information on public charge, visit ILRC Latest on Public Charge.

III: Ukraine: TPS and visa options

- DHS announced designation of Ukraine for TPS for 18 months.
- AILA published an advisory that discusses visa options for Ukrainian nationals.

IV. Afghanistan: TPS and Afghan Adjustment Act

- DHS today announced the designation of Afghanistan for TPS for 18 months.
- Evacuate Our Allies Coalition created a 2-page fact sheet discussing the Afghan Adjustment Act.

V. ICYMI

- USCIS released data on DACA recipients, including a count of current DACA recipients, countries of birth, states and cities of residence, age, and other categories.
- On March 1, 2022, Democratic Senators introduced the RELIEF Act, Resolving Extended Limbo for Immigrant Employees and Families Act, which would raise visa caps and reclassify spouses and children of legal permanent residents as "immediate relatives."
- DHS announced that due to conflict in both regions, the agency will extend and redesignate South Sudan for TPS for 18 months, and designate Sudan for TPS for 18 months.
• Advocacy: Tell USCIS It’s Time to Right the Ship and Address Crisis-Level Processing Delays.
• Blog: “Wait, but isn’t pot legal?” - Immigration law and cannabis present traps for the unwary.

As always, please do not hesitate to reach out with any questions.

Thank you,
The UC Immigrant Legal Services Center team

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