

This is your Release #40 (May 2015)

Immigration Fundamentals

Fourth Edition

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Release #40 of *Immigration Fundamentals* updates the treatise with the latest significant changes in immigration law and practice. Here is just a small sample of the developments covered in this update:

Waiver of In-Person Interview Requirement by Consular Officer. The Nonimmigrant Visa Interview Waiver Pilot Program, introduced in 2012 and under which consular officers can waive nonimmigrant visa interviews for certain applicants, has now been made permanent. *See* § 5:1.2[C][2] for details.

Automated I-94 Arrival-Departure Record System. Since its 2013 implementation, the now-paperless automated I-94 arrival-departure system has experienced problems in certain situations. *See* § 5:1.3[D] for a list of tips offered by the CBP on how to locate a record if problems are encountered.

Work Authorization for H-4 Spouses of H-1B Workers. Until recently, family members of H-1B workers were barred from engaging in employment in the H-4 category. In February 2015, USCIS finalized a **rule permitting H-4 spouses of H-1B workers in the green card process to apply for work authorization**. *See* § 5:10.1[H] for details on the application process.

H-2B Temporary Labor Certification; Prevailing Wage Determinations. The DHS and DOL have jointly issued new regulations governing the H-2 labor certification process designed to provide for increased worker protections for both U.S. and foreign workers and enhanced enforcement. The **new H-2B rule** took effect on April 29, 2015, although special transition rules delay the effect of some provisions. In addition, a companion regulation **revises the methodology for determining wage levels** for the H-2B program. *See* §§ 5:14.2[A] and 5:14.2[A][1].

Proposed Regulations. A long-anticipated proposed regulation would, if implemented, afford to **E-3 nonimmigrants** (certain specialty occupation professionals from Australia) the benefit of **extending employment authorization for 240 days** beyond the period specified on the nonimmigrant's I-94 arrival record. *See* § 5:7.4. Another proposed change would allow **spouses of F-1 students to enroll in additional academic classes** on a part-time basis while the F-1 spouse is pursuing full-time studies. *See new* § 5:8.3[F].

USCIS Policy Guidance on L-1B Eligibility of Employees with Specialized Knowledge. In April 2015, USCIS issued a draft of a long-awaited memorandum on eligibility for the L-1B specialized-knowledge visa category. The guidance (effective August 31, 2015) clarifies some elements of L-1B eligibility, but gives adjudicators the authority to examine new avenues of inquiry that could pose more uncertainty for employers. *See new* § 5:19.4[C].

(continued on reverse)

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Nonimmigrant Visa Caps Reached. By April 7, 2015, USCIS had already received a sufficient number of **H-1B petitions to reach the statutory cap for FY 2016**. The agency had also received more than the limit of 20,000 H-1B petitions filed under the U.S. advanced-degree exemption. *See* § 5:10.1[F]. As of March 26, 2015, the congressionally mandated **annual H-2B cap for FY 2015 has been reached**. *See* § 5:14.1[D]. In December 2014, USCIS announced that it had approved the statutory maximum of **10,000 U visas for FY 2015**, marking the sixth straight year that the cap has been met. *See* § 5:29.1[A].

Scrutiny of L-1 Transferees. There has been an increased level of scrutiny on the part of USCIS of L-1B petitions in general, and of L-1B petitions filed for workers in IT fields in particular. The scrutiny is reflected in restrictive interpretations of what constitutes specialized knowledge in a series of recent AAO decisions. *See* §§ 5:19.1[D][2], 5:19.4[B] and [C].

Immigration Accountability Executive Action. In November 2014, President Obama announced a series of initiatives to provide relief to the undocumented population and to facilitate hiring and retention of skilled workers (*see generally* § 7:1.1[B]). These enforcement initiatives address several topics, including: guidance on the meaning and application of *Arrabally*, clarifying that when an individual physically leaves the United States pursuant to a grant of advance parole, he/she has not made a “departure” (§ 7:2.9[B][2]); issuance of new regulations and policies expanding **access to the provisional waiver program** to the spouses and children of LPRs, and the adult children of both U.S. citizens and LPRs, for whom an immigrant visa is immediately available, and additional **guidance on the meaning of “extreme hardship”** that provides broader use of the waiver program (§ 7:2.9[B][3]); revised guidelines for the **exercise of prosecutorial discretion** reflecting the agency’s new enforcement priorities (§§ 7:1.3, 7:4.8); spending detention resources and enforcement priorities only on those individuals subject to mandatory detention (§ 7:5.2[A]); and special procedures addressing **2014 Southwest Border crisis** (§ 7:5.6[F]). In addition, the initiatives include expanding relief under Deferred Action for Childhood Arrivals (**DACA**) and creating Deferred Action for Parents of Americans and Lawful Permanent Residents (**DAPA**), which would support family unity by making certain undocumented parents of U.S. citizens and LPRs eligible for deferred action (§§ 7:1.3, 7:4.7).

This supplement also includes an updated **Index and Table of Cases**.

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FILING INSTRUCTIONS

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