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March 16, 2020

Kenneth Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Re: USCIS Response to the Coronavirus Disease 2019 (COVID-19)

Dear Mr. Cuccinelli:

On behalf of the American Immigration Lawyers Association (AILA), we are writing to express our deep concerns regarding the impact of the Coronavirus Disease 2019 (COVID-19) on U.S. Citizenship and Immigration Services (USCIS) operations and to respectfully request that the agency take immediate steps to mitigate its spread. Given the declaration of a national emergency and the requirement by many states, municipalities and companies to practice social distancing, we request USCIS to immediately adopt measures that enable the agency to meet its mission while practicing social distancing, and provide flexibilities where it cannot limit in-person contact. The measures that USCIS adopts and implements in response to COVID-19 will have a significant impact on the health and safety of its stakeholders, staff, and contracted workers, as well as the health of our nation at large.

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. Subsequently, on March 13, 2020, President Trump declared a national state of emergency over the coronavirus outbreak. As of March 16, more than 3,400 people have tested positive for COVID-19 in the United States and at least 65 have died. These numbers are only expected to increase in the coming days unless immediate measures are taken to limit the transmission of the virus. In response to the global pandemic, many U.S. colleges and universities have shifted to online coursework and many U.S. businesses and agencies are closing their facilities and taking immediate steps to allow their staff to work remotely in order to minimize the further spread of the virus. This has significantly impacted the public's ability to continue "business as usual" as it relates to applying for immigration benefits and requires significant accommodations from the government.

We appreciate that USCIS has published a webpage entitled, *USCIS Response to the Coronavirus Disease 2019 (COVID-19)*, which serves as a one-stop resource for stakeholders on the measures that USCIS is taking and accommodations that USCIS is providing in response to COVID-19. While AILA acknowledges the initial steps that USCIS has taken in response to COVID-19, such as encouraging sick people to stay at home and permitting the rescheduling of appointments without penalty, given the urgency of this public health crisis, AILA urges USCIS to consider and establish the following proactive measures immediately to limit in-person contact to the greatest extent possible:

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1. **Postpone all Non-Essential Interviews, Appointments and Naturalization Oath Ceremonies for 30 days:** USCIS should postpone all non-essential in-person interviews, InfoMod appointments and naturalization oath ceremonies for the next 30 days. However, it should also put procedures in place to handle cases presenting an emergency or humanitarian circumstances, or that warrant specialized considerations. USCIS should automatically reschedule cancelled or missed interviews, appointments and oath ceremonies.
2. **Postpone all Asylum Interviews at USCIS Asylum Offices:** USCIS Asylum Offices should postpone all asylum interviews that are scheduled for the next 30 days or will be scheduled within the next 30 days, without stopping the 180-day asylum employment authorization document (EAD) clock.
3. **Take Steps to Mitigate the Spread of COVID-19 and Ensure Social Distancing:** In the event USCIS decides to keep USCIS offices open during this period, AILA recommends that the agency take the following steps to mitigate the spread of COVID-19 and ensure social distancing:
 - a. Increase the cleanliness of USCIS facilities and provide hand sanitizer and masks to stakeholders upon request.
 - b. Waive interviews for all routine cases, including adjustment of status applications (Form I-485) based on employment and parents of U.S. citizens, refugee/asylee relative petitions (Form I-730), and beneficiaries seeking to remove conditions of residence (Form I-751). Where interviews are required, USCIS should conduct these via video-conference or by telephone.
 - c. Offer same-day naturalization oath ceremonies to all eligible individuals, but in particular to high-risk individuals who are at 60 years or older, expectant mothers, or to any individual with a compromised immune system or an underlying chronic medical condition, per applicant's request.
 - d. Ensure that USCIS officials do not deny applications or petitions because an individual does not attend an interview, appointment, or naturalization oath ceremony during this national emergency.
 - e. Make it easier for stakeholders to reschedule appointments, as the current process of scheduling through the Contact Center places significant burden on stakeholders. USCIS should adopt measures that would permit stakeholders to electronically reschedule interviews and appointments, as well as request emergency appointments, such as reopening email boxes for USCIS Field Offices that would allow stakeholders to communicate directly with local field office staff during this national emergency.
4. **Limit or Waive Biometrics Requirement:** USCIS should exercise its discretion pursuant to 8 CFR 103.2(b)(9) to limit when biometrics are required. AILA recommends that USCIS reuse biometrics that have previously been captured, waive the biometrics requirement for children, individuals who are at high-risk for COVID-19, as well as for applicants who have been previously vetted, such as Form I-539 and naturalization applicants.



5. **Mail Asylum Decisions:** To the extent possible, USCIS Asylum Offices should limit or suspend the existing in-person ‘pick up’ decision delivery process and instead mail out decisions via the U.S. postal service.
6. **Allow for Flexibility in Form I-9 Compliance Process:** USCIS should allow for flexibility in the 3-day in-person Form I-9 compliance process and allow for initial virtual verification. Both of these steps would help to ensure that U.S. businesses are able to verify that their workforce is authorized to work, while also ensuring that they do not endanger the health and safety of their employees and the public at large.

To the extent possible, USCIS should adopt telework policies and implement technological tools during this period to minimize the disruption to USCIS operations and to ensure priority matters, including emergency, humanitarian and other specialized circumstances, are handled timely and effectively.

Additionally, given the scope of the COVID-19 pandemic that has impacted the ability of individuals to travel internationally, AILA recommends that USCIS implement the following temporary measures to ensure that individuals are able to maintain their status during this national emergency:

1. **Protect Individuals from Accruing Unlawful Presence:** AILA recommends that USCIS adopt the following temporary measures:
 - a. Deem the national emergency over the COVID-19 outbreak to be an “extraordinary circumstance beyond the control of the applicant or petitioner” pursuant to 8 CFR 214.1(c)(4) and 8 CFR 248.1(b)(1) and excuse any late filings of extension of stay or change of status requests on this basis for up to 90 days after the end of the national emergency.
 - b. Grant an automatic extension of stay for a period of up to 90 days to individuals whose nonimmigrant status is expiring.
 - c. Provide an automatic grant of deferred action for the duration of the national emergency for individuals whose status has expired and cannot be extended or changed.
2. **Ensure that Applicants are Able to Request Satisfactory Departure Requests at USCIS Field Offices:** USCIS should provide clear guidance regarding how individuals admitted under the Electronic System for Travel Authorization (ESTA) and the Visa Waiver Program (VWP) and are not able to depart prior to their expiration of stay, due to severely restricted travel, may make a satisfactory departure request with a local USCIS field office pursuant to 8 CFR 217.3. AILA recommends that USCIS allow individuals to make these requests directly with local USCIS field offices via email or phone. AILA has received reports that currently the USCIS Contact Center is not issuing local field office appointments for such requests and it is essential that these individuals are afforded relief.
3. **Adopt Temporary Measures to Permit Greater Flexibility to U.S. Businesses and Universities:** In recognition that the COVID-19 outbreak has substantially impacted the ability of U.S. businesses and universities to continue operating “business as usual”, AILA recommends that USCIS:



- a. Suspend or waive the requirement that employers must file an amended or new H-1B petition when a new Labor Condition Application (LCA) is required due to a change in the H-1B worker's place of employment pursuant to *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015) if the change in workplace is in response to the COVID-19 outbreak.
- b. Extend the H-1B electronic registration process from March 20 at noon (EST) to March 27 at noon (EST) in consideration of the substantial disruption to registrants and attorneys caused by the COVID-19 outbreak and in recognition that there are technical glitches that are preventing some registrants and attorneys from submitting H-1B registrations.
- c. Extend the filing window for FY 2021 H-1B cap-subject petitions from 90 days to 120 days.
- d. Excuse the failure to file a timely FY 2021 H-1B cap subject change of status petition prior to the expiration of the employment authorization document pursuant to 8 CFR 248.1(b) for F-1 students seeking cap-gap extension of status and employment authorization.

Finally, AILA recommends that USCIS afford the following policy flexibilities so that petitioners, applicants and beneficiaries may continue "business as normal" to the greatest extent possible:

1. **Accept Reproduced and Digital Signatures for All Form Types** - Chapter 2 of the USCIS Policy Manual states that "the regulations do not require that the person signing submit an 'original' or 'wet ink' signature on a petition, application, or other request to USCIS"; however, certain form instructions, such as the Form I-129, state that "a photocopy of a signed petition or a typewritten name in place of a signature is not acceptable." Given the need for remote work and social distancing to limit the spread of COVID-19, acquiring original or wet signatures during this national emergency unnecessarily endangers health and safety. As the regulations do not require original signature, AILA recommends that USCIS accept photocopied, scanned, faxed, or similarly reproduced signatures for all form types. Further, AILA recommends that the agency accept digitally signed documents, which comply with strict legal and identity security requirements.
2. **Adopt Flexible Filing Deadlines**: USCIS should permit flexible deadlines for all applications and petitions. In particular, AILA recommends that USCIS should:
 - a. Automatically extend all deadlines for Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) by a minimum of 90 days.
 - b. Automatically extend the deadline for Form I-751, Petitions to Remove Conditions on Residence, by 90 days.
 - c. Extend the one-year filing deadline for asylum applications, if individuals file for asylum within a reasonable period of time after the national emergency ends. 8 C.F.R. § 208.4(a)(5) provides that "extraordinary circumstances" allow for an exemption of the "one-year filing deadline" rule. As this is a public health crisis impacting the United States at an unprecedented scale, USCIS should instruct asylum officers to consider circumstances that prevent compliance with the one-year filing deadline due to the



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COVID-19 pandemic to be per se “extraordinary circumstances.” Many legal and social services offices are closed. Asylum seekers often need evaluations by medical and mental health professionals, and these professionals should be focusing on issues related to the pandemic at this time.

3. **Exercise Discretion to Allow Initial Evidence to be Submitted After Filing:** USCIS must exercise its discretion under 8 CFR 103.2(b)(8)(ii) to allow initial evidence that was not available at the time of filing due to the national emergency to be submitted in response to a request for additional evidence.

We thank you for your consideration and look forward to hearing from you at your earliest convenience. If you require any additional information and should you have any questions, please do not hesitate to contact Sharvari (Shev) Dalal-Dheini, Director of Government Relations at (202) 507-7621 or by email at sdalal-dheini@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

cc: Joseph Edlow, Deputy Director for Policy, USCIS
Kathy Nuebel Kovarick, Chief of Staff, USCIS
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