

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
 _____ _____ _____ _____

Bender's Immigration Regulations Service

Publication 695 Release 242 September 2019

HIGHLIGHTS

REGULATORY DEVELOPMENTS

- Release 242 of Bender's Immigration Regulations Service includes regulatory changes published in the Federal Register from April 24, 2019 through July 16, 2019.
- Amendments to regulations from DHS, DOL, DOJ, and DOS are detailed below.

Department of Homeland Security

- *Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program.* The Secretary of Homeland Security, in consultation with the Secretary of Labor, in-

creased the numerical limitation on H-2B nonimmigrant visas to authorize the issuance of up to an additional 30,000 visas through the end of FY 2019. Employers who attest that they are likely to suffer irreparable harm may request these supplemental visas only for workers who were issued an H-2B visa or otherwise granted H-2B status in FY 2016, 2017, or 2018.

- *Adjusting Program Fees for the Student and Exchange Visitor Program.* SEVP school certification petition fees and the application fees for nonimmigrants seeking to F, M or J visas have been adjusted. The new fees are: \$3,000 for a school certification petition; \$655 for each school site visit; \$1,250 to submit a school

recertification petition; and \$675 to submit an appeal or motion following a denial or withdrawal of a school petition. New fees have also been set for filing the Form I-901 at \$350 for each F or M visa applicant and a \$220 for most J visas; however, the \$35 fee for each J visa applicant seeking admission as an au pair, camp counselor, or summer work/travel program participant has not been changed.

- *U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card Program Regulations.* The APEC Business Travel Card Program regulations have been amended to conform to the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2017 (APEC Act of 2017). Among other conforming changes are the removal of the sunset provision and the addition of a definition of trusted traveler program.
- *Flights To and From Cuba.* The interim amendments to the CBP regulations published in the Federal Register on March 21, 2016, were adopted as final, without change. The amendments removed certain provisions regarding flights to and from Cuba that were either obsolete or duplicative.
- *Asylum Eligibility and Procedural Modifications.* DOJ and DHS adopted an interim final rule governing the asy-

lum claims of aliens who enter or attempt to enter the United States across the southern land border after failing to apply for protection from persecution or torture while transiting a third country en route to the United States. With limited exceptions, an alien who enters or attempts to enter the United States across the southern border after failing to apply for protection while transiting a third country outside the alien's country of citizenship, nationality, or last lawful habitual residence is ineligible for asylum. This ineligibility applies only to aliens entering or arriving in the United States on or after the effective date of this rule. This rule also requires asylum officers and immigration judges to apply this new bar on asylum eligibility when administering the credible-fear screening process applicable to stowaways and aliens who are subject to expedited removal under section 235(b)(1) of the Immigration and Nationality Act. This eligibility bar does not modify withholding or deferral of removal proceedings. Aliens who fail to apply for protection while transiting a third country may continue to apply for withholding of removal and deferral of removal under regulations issued pursuant to Article 3 of the Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment.

Department of Labor

- *Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program.* The Secretary of Homeland Security, in consultation with the Secretary of Labor, increased the numerical limitation on H-2B nonimmigrant visas to authorize the issuance of an additional 30,000 visas through the end of FY 2019. Employers who attest that they are likely to suffer irreparable harm may request these supplemental visas for workers who were issued an H-2B visa or otherwise granted H-2B status in FY 2016, 2017, or 2018.

Department of Justice

- *Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents.* DOJ amended the regulations regarding the administrative review procedures of the BIA. The final rule sets forth the Department's position that the regulations providing for an affirmance without opinion, a single-member opinion, or a three-member panel opinion are not intended to create any substantive right to a particular manner of review or

decision. It also clarifies that the BIA is presumed to have considered all of the parties' relevant issues and claims of error on appeal regardless of the type of decision, and that the parties are obligated to raise issues and exhaust claims of error before the BIA. In addition, it codifies standards for the BIA's consideration in evaluating whether to designate particular decisions as precedents. Finally, it provides clarity surrounding precedent decisions in the context of decisions from the EOIR regarding the recognition of organizations and the designation of accredited representatives.

Department of State

- *Visa Information Update Requirements Under the Electronic Visa Update System (EVUS).* DOS confirmed the effective date of November 29, 2016, for the final rule that it published in the Federal Register of October 26, 2016, instituting a requirement for nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to provide required information to DHS after the receipt of his or her visa of a designated category.

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VOLUME 1

Revision

Title page. Title page

8 CFR

- 23 23
- 41 thru 44.1 41 thru 44.1
- 147 thru 148.1 147 thru 148.1
- 159 thru 160.1 159 thru 160.1
- 169 thru 174.1 169 thru 174.1
- 249 thru 250.5 249 thru 250.5
- 291 thru 293 291 thru 294.1
- 371 thru 376.7 371 thru 376.7
- 396.1 thru 399 397 thru 400.1
- 428.1 thru 432.1 429 thru 432.1
- 448.1 thru 448.3 448.1 thru 448.3
- 825 thru 834.1 825 thru 834.1
- 853 thru 854.1 853 thru 854.1
- 891 thru 892.1 891 thru 892.1
- 903. 903 thru 904.1
- 915 thru 917 915 thru 917
- 1148.1 thru 1179 1149 thru 1159

VOLUME 2

Revision

Title page. Title page

DOS Regulations

- 7 thru 13 7 thru 11
- 23 23 thru 24.1
- 71 thru 72.1 71 thru 72.1
- 83 thru 86.1 83 thru 86.1

DOL Regulations

- 1. 1 thru 2.1
- 34.9 thru 34.10(1). 34.9 thru 34.10(1)

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