NASSCOM®

March 19, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Mr. 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

Dear Sirs:

I am writing on behalf of the National Association of Software and Services Companies (NASSCOM), its member companies operating in the United States, and the many hundreds of thousands of tech workers and their families on visas currently present in the United States.

NASSCOM is a global trade association with over 2,900 members, including virtually all the major U.S. IT companies. Over 500 of our members do significant business in the United States. NASSCOM's member companies are leaders in the information technology and business process management industries.

COVID-19 has created unique and dangerous circumstances that require action to provide relief and greater certainty for businesses and individuals. The CDC (the Centers for Disease Control and Prevention) and other public health authorities have asked employers to do all they can to slow the spread of the COVID-19/Coronavirus pandemic. As CDC has instructed, workplace mitigations include ceasing all non-essential work travel and Work from Home/Remote Work whenever possible. In addition, states and local governments continue to roll-out new or revised requirements, *e.g.*, those that limit the number of persons

who may gather together in person, all with little notice. For instance, on March 16th San Francisco Bay Area officials ordered nearly 7 million people to "shelter in place" to slow the spread of the coronavirus.

These mitigations highlight a disconnect between our nationwide public health focus and the applicable compliance requirements for U.S. visas. We therefore ask USCIS to issue a number of temporary policy modifications to address some of the issues arising from actions being taken to address the COVID-19 crisis.

Below we offer suggestions for guidance and temporary policy actions from DHS, DOL and their regulatory agencies.

I. Travel Issues

Globally changing travel restrictions are imposed quickly with little to no notice, causing significant and unforeseeable interruptions to the ability of people to enter the U.S. and other countries. This can have serious unintended effects, including separating families, causing foreign nationals with nonimmigrant status to overstay their admission, and causing foreign nationals to be unable to return to the U.S. after travel abroad.

For example, there are many instances where Indian nationals are working in the U.S. in H-1B or L-1 status, and have children who are born in the United States. Those children are U.S. citizens, and can normally obtain an Overseas Citizenship of India (OCI) card showing their Indian citizenship. Under guidance titled *FAQ ON NEW VISA RESTRICTIONS - COVID-19*[1], the Indian Embassy has confirmed India will deny entry to those who hold an IOC (Overseas Citizenship of India) card, and instead infants or children with OCI cards must apply for an Indian visa to be able to enter India with their Indian citizen parents. If one of those parents is suddenly required to leave the U.S. due to a denial of an extension or similar action, they will be forced to choose between complying with the law or leaving a child behind. No one should be forced to make such a decision.

Similarly, current USCIS policy allows an employer to file an extension petition for H-1B, L-1 and other nonimmigrant workers no more than 6 months before the existing petition expires. Given that processing times in many instances now exceed 6 months, it is not uncommon for the petition to still be pending when the underlying H-1B, L-1, or other admission expires. If that petition is unexpectedly denied, by the time the company learns of the denial the foreign national worker will already have begun accruing unlawful presence and needs to depart the U.S. immediately. However, with complications to international travel ranging from entry bans to unavailability of international flights, and in instances where the foreign national worker themselves are under quarantine, it may be impossible for that individual to depart the U.S. on a

[1] https://indianembassyusa.gov.in/pdf/news/faq-covid-19.pdf

timely basis. Many countries around the world have implemented concessions to automatically extend status where a person is prevented from departing due to COVID-19 travel restrictions/cancellations.

Finally, USCIS offices have closed to all in-person appointments. Further, U.S. Consulates abroad have cancelled all nonimmigrant and immigrant visa appointments, causing individuals who are abroad trying to renew their visa stamps to be unable to do so. Those individuals often have family (including small children) who may have remained in the U.S. rather than traveling to renew a visa stamp, or may have critical work obligations in the U.S. where missed deadlines can cause millions of dollars of financial loss to their employers. With the economic instability the U.S. is already experiencing from this pandemic, private companies may not be able to sustain those losses.

We therefore ask that DHS take the following actions on a temporary basis to address these issues:

1. USCIS should implement a policy temporarily providing a 90-day grace period following the end of the emergency declarations to depart the U.S. following expiration of an I-94 record, or the date of denial of an extension of stay petition, whichever is later. This would be akin to the policy implemented by 81 FR 82398 (November 18, 2016), which created a 60-day grace period in which H-1B, L-1, and other nonimmigrant workers would be viewed as maintaining status where their employment ends before the end of their authorized admission. This would also be in line with many countries around the world.

2. CBP should be instructed to liberally issue waivers under INA § 212(d)(4)(A) to allow foreign nationals with a valid, unexpired I-797 approval notice but an expired visa stamp to enter the U.S. after travel abroad.

II. WFH (Work from Home)/ Remote Work Issues Before USCIS and DOL FDNS

Social distancing and other practices to control the spread of the virus are the need of the hour currently. Accordingly, many employers are now either permitting or in some cases mandating that all employees work from home or work remotely rather than come to the office. These directives are consistent with CDC guidance, but also raise important compliance issues for employers.

Existing regulations at 20 CFR § 655.734(a)(2) state that posting the existing LCA (Labor Condition Application) notice -- *not* obtaining a new LCA -- is all that is required where there is an unanticipated new work location if the new work location is in the area of intended employment, which is defined as being within reasonable commuting distance of the address where the H-1B worker is employed. However, it can be a challenging logistical issue for companies to ensure that the LCA posting is done at the home work location immediately, and ultimately doing a posting at the H-1B worker's home makes little logical or

practical sense. Since it is the worker's home, there are *no* other workers there that would be notified of the LCA and those workers would have already seen the notice when it was posted at the place of employment.

In addition, in a time of extended work from home mandates coupled with school and childcare facility closings, some workers may choose to travel elsewhere in the U.S. to live with extended family to have more support for such things as child care. This would be a new work location that may not be within reasonable commuting distance, and so under the Policy Memorandum 602-0120, *USCIS Final Guidance on When to File an Amended or New H-1B Petition After Matter of Simeio Solutions, LLC*, the employer would normally need to file an amended H-1B petition to allow this arrangement. With shelter in place orders spreading around the country, businesses may have significant difficulties preparing such petitions and given the situation, this is an expense that employers should *not* be required to take on in these difficult times or a concern that should not worry the visa beneficiaries.

We therefore ask that DHS take the following actions on a temporary basis to address these issues:

1. In coordination with DOL, DOS/ KCC, and DHS/ FDNS, issue guidance confirming that where an H-1B employee works from home, ***no*** posting is required at the employee's home to maintain compliance with H-1B regulations; and

2. Temporarily suspend the need for an amended petition under Policy Memorandum 602-0120 where the employee is working remotely whether from their home or elsewhere outside of an area that is within reasonable commuting distance of the existing work location.

III. Petitions and Applications Filed with USCIS

The changes to day-to-day work realities under COVID-19 coronavirus affect not just foreign national employees, but also the company employees and external attorneys who prepare and file petitions on their behalf. As those individuals try to balance remote work and staffing shortages due to quarantine or illness, ensuring timely filing to meet certain deadlines is increasingly problematic.

In addition, it is increasingly difficult in some instances to ensure that "wet ink" signatures are obtained for USCIS filings. When company signatories are working from home without the benefit of large-scale printers, daily FedEx pickups, and other things that let immigration paperwork be processed, filing under the normal means can be especially challenging. In addition, there are legitimate concerns about containment and the elevated health risk of requiring filings to be passed back and forth for wet signature.

The USCIS Policy Manual provides as follows:

> A signature is valid even if the original signature on the document is photocopied, scanned, faxed, or similarly reproduced. Regardless of how it is transmitted to USCIS, the copy must be of an original document containing an original handwritten signature, unless otherwise specified. 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. When determining whether a signature is acceptable, officers should review any applicable regulations, form instructions, and policy to ensure that the signature on a particular benefit request is proper. [USCIS Policy Manual, Volume 1, Part B, Chapter 2.)

Notwithstanding this guidance, most USCIS forms require an original signature. For example, the instructions to Form I-129 provide, "Each petition must be properly signed and filed. A photocopy of a signed petition or a typewritten name in place of a signature is not acceptable." This makes the Policy Manual instructions regarding original wet-ink signatures ineffective, and mandates that employers obtain original signatures on filings.

We therefore ask that DHS take the following actions on a temporary basis to address these issues:

1. Temporarily permit a blanket 90-day extension period following the end of the emergency declarations for all USCIS deadlines, including deadlines for filing extension and change of status requests, filing responses to Requests for Evidence and Notices of Intent to Deny, filing I-140 immigrant petitions within 180 days of the certification of a PERM labor certification application, and the deadline for filing an appeal of a denied petition or application.

2. Issue guidance that a delay beyond the 90-day period following the end of the emergency declarations can still be excused under 8 CFR §§ 214.1(c)(4) or 248.1(c), if it is based on a COVID-19/ Wuhan coronavirus circumstance, consistent with what USCIS has traditionally done when there have been hurricanes, earthquakes, and other natural disasters.[2]

3. Suspend USCIS's current policy of defaulting to individual form instructions (which supersede agency policy as set out in the Policy Manual) and instead apply the general guidelines on validity of signatures- including scans and photocopies-to all USCIS forms. This should include guidance that electronic signatures will be accepted in addition to scans and photocopies

[2] See, for instance, the temporary immigration relief measures instituted by USCIS after Hurricane Sandy, accessible at https://www.uscis.gov/archive/archive-news/uscis-reminds-individuals-affected-hurricane-sandy-temporary-immigration-relief-measures. Similar guidance was issued following Hurricane Irma (https://www.uscis.gov/archive/archive-news/immigration-help-available-those-affected-hurricane-irma), Hurricane Florence (https://www.uscis.gov/archive/immigration-services-available-those-affected-hurricane-florence-or-typhoon-mangkhut), and Hurricane Isaac (https://www.uscis.gov/archive/archive-news/uscis-reminds-individuals-affected-hurricane-isaac-available-immigration-benefits).

Additionally -

New employees are required to complete & sign the Section I of Form 1-9 and the company representative must physically verify the documents & sign the Section 2 of Form I-9. As per current guidelines, Section 2 needs to be completed within 3 days of employee's first date of employment. For company's using the paper form of I-9, "wet-ink" is being used to sign the Form I-9. The Immigration Reform and Control Act of 1986 (IRCA) controls the Form I-9 process.

As such, we ask suggest:

> Suspension for 90 days of the requirement for 'wet ink signatures' and issue policy guidance and apply the general guidelines on validity of signatures – including digital signatures, scans and photocopies - to the I-9 forms without physical verification. This will ensure that apart from 'wet ink signatures' digital, scans and photocopies will be acceptable for a period of 90 days. If this is not possible, extend the timeline from 3 to 10 days to complete Form I-9, as physical verification of documents will be difficult.

IV. EAD, Advance Parole Automatic Extensions

Existing USCIS policy already allows for automatic extension of certain expiring EADs for up to 180 days for applicants who have filed a renewal before their current EAD expires.[3] However, this is not applicable to all categories of EAD, nor to advance parole documents, or I-551s (green cards). As a result, individuals who are in the midst of quarantine, serious illness, and other crisis conditions caused by the pandemic still must focus ensuring timely renewal applications for all of those applications.

USCIS could focus its resources on handling issues created by the pandemic by providing a temporary policy that would cause those documents to auto-renew consistent with the way that USCIS handles blanket automatic extension of EADs issued pursuant to TPS (Temporary Protected Status). Under that policy, DHS will sometimes issue a blanket automatic extension of the expiring EADs for TPS beneficiaries of a specific country. A similar policy can be implemented on a temporary basis in light of the COVID-19/ Wuhan coronavirus pandemic that would be applicable to EADs, advance parole documents, and I-551s.

[3] See https://www.uscis.gov/working-united-states/automatic-employment-authorization-document-ead-extension.

We therefore ask that DHS take the following actions on a temporary basis to address these issues:

1. Issue policy guidance that would temporarily create an automatic 180 day extension following the end of the emergency declarations of all currently valid EADs, advance parole documents, and I-551s, regardless of whether an extension request has been filed.

2. If this is not possible, issue temporary policy guidance similar to that applicable to timely-filed renewals of certain EADs to automatically extend all EADs, advance parole documents, and I-551s by 180 days following the end of the emergency declarations upon a timely filing of a renewal request.

Altogether, we are operating in rapidly morphing environments. We do not yet know how the coronavirus crisis will pan out. What we do know is that the human impact is tragic, and that businesses and policymakers have the collective imperative to protect employees, address business challenges and risks, and help to mitigate the outbreak in whatever ways they can. In this complex setting, travelers and those facing the expiration of lawful work visas/ permits are crushed amidst conflicting requirements. The common-sense and simple policy directives suggested above would go a long way toward ameliorating those concerns and keeping everyone focused on stopping this pandemic and preserving our economy.

Thank you for your consideration.

Sincerely,

Debjani Ghosh

Debjani Ghosh
President, NASSCOM

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 14, 2020

Debjani Ghosh
President
NASSCOM
Plot Number 7-10, Sector - 126
Noida – 201303, India

Dear Ms. Ghosh:

Thank you for your March 19, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

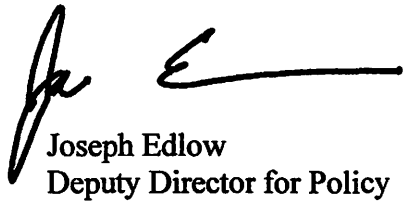
Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As we announced in our public-facing website, several options are available to nonimmigrants to extend or change their status. We have also amended certain requirement to lessen the impact from the public health emergency. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens.

Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,



Joseph Edlow
Deputy Director for Policy