

**Congress of the United States**  
**Washington, DC 20515**

June 23, 2020

The Honorable Ken Cuccinelli  
Senior Official Performing the Duties of the Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave. NW  
Washington, D.C. 20001

Dear Mr. Cuccinelli:

In the current climate of uncertainty caused by the novel coronavirus (COVID-19) outbreak, hundreds of thousands of American residents are anxious about another looming threat: immigration visa deadlines and expirations. For example, four years ago, Dr. S. came to the U.S. on an H1B visa to work at a hospital in Rhode Island. In addition to helping patients, he teaches medical students and helps direct the hospital's internship program. Now, the COVID-19 pandemic jeopardizes the life he has built in our state. As a frontline worker during this crisis, he is stressed not only by his sick patients, but by his visa situation. If he falls sick, he could be laid off and sent back to his country of birth. He also cannot change jobs – either to another Rhode Island hospital or to a hospital in another state – because of his visa restrictions.

Across the country, workers, students, and families on non-immigrant visas are similarly living without clarity as to their status in the U.S. going forward. Many work in the health care sector, support our essential industries, or strengthen our higher education institutions with their skills and knowledge. However, even if they do everything within their power to comply with immigration laws, immigrants can fall out of status due to the realities of the public health emergency (PHE).

Visa holders currently face a number of additional obstacles that prevent them from extending their stay in the U.S. These obstacles include strict stay-at-home orders that prevent them from obtaining necessary documents, USCIS field office and embassy closures and service reductions, reduced or nonexistent access to notary and fingerprinting services, and global travel restrictions. Forcing visa holders to comply with deadlines set prior to the PHE is not fair or safe.

Stay-at-home orders have also forced temporary business closures, suspending the immigration status of necessary workers here on employment-based visas. Employers are concerned that, when they can reopen, they will lose these valued employees and be unable to fill jobs that require specialized skills or degrees. At the same time, workers are concerned that they could be laid off if they fall ill. Following Hurricanes Katrina and Rita, when events outside the control of visa holders also put many out of work for an indefinite period, USCIS issued guidance requiring adjudicators to forgive lapses due to these disasters. While the agency has issued this kind of guidance for agricultural workers, it has not done so for other employment-based visa holders, notably those working in health care and scholarly scientific research.

In recognition of the delays and obstacles that the COVID-19 outbreak continues to present, we urge you to take the following steps to implement increased flexibility in visa processing and adjudication both during and after the COVID-19 PHE.

1. Explicitly identify the COVID-19 PHE as an “extraordinary circumstance beyond the control of the applicant or petitioner.”
2. Issue clear and explicit guidance clarifying that USCIS adjudicators should:
  - a. Exercise their discretion, to the extent authorized by applicable law, to forgive a lapse in status in connection with an extension of status or change of status application if an alien is otherwise eligible for such extension or change of status;
  - b. Exercise their discretion, to the extent authorized by applicable law, to allow aliens who are no longer in status as the direct result of the PHE to extend or change their status, regardless of when such application is filed; and
  - c. Excuse any untimely filings under the authority contained in 8 CFR 214.1(c)(4) (extension of status applications) and 8 CFR 248.1(b)(1) (change of status applications) if “extraordinary circumstances beyond the control of the applicant or petitioner” exist;
3. Permit full e-filing for all non-immigrant visas; and
4. Extend from March 1, 2020 and through 90 days following the end of the PHE any and all deadlines to file and respond to requests for evidence for non-immigrant visa holders.

We believe these steps will not only ease the burden of anxiety on the many non-immigrant visa holders in the U.S., but also help meet our public health needs and ease our economic recovery. These measures are well within USCIS’s authority, and would follow the precedent set by the agency after other emergency declarations, including the devastation wrought by Hurricanes Katrina and Rita. By offering flexibility to visa holders, USCIS will provide a much needed reprieve to workers, families, and students. Losing these valued workers will only impede our economic recovery.

Thank you for your attention to, and consideration of this urgent matter.

Sincerely,

/s/ Jack Reed

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Jack Reed  
United States Senator

/s/ Sheldon Whitehouse

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Sheldon Whitehouse  
United States Senator

/s/ James R. Langevin

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James R. Langevin  
United States Senator

/s/ David N. Cicilline

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David N. Cicilline  
United States Senator



U.S. Citizenship  
and Immigration  
Services

June 30, 2020

The Honorable Jack Reed  
United States Senate  
Washington, DC 20515

Dear Senator Reed:

Thank you for your June 23, 2020 letter. Mr. Cuccinelli 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. Our primary goal is to ensure the safety of the public and our employees as the situation evolves.

We recognize that there are immigration-related challenges that individuals, families, employers, and others face as a direct result of the national emergency and as the first phases of reopening begin. 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.

In your letter, you described the concerns of a doctor in Rhode Island. Although we cannot comment on individual cases, we note that during the public health emergency, DHS has eliminated certain immigration consequences for former J-1 exchange visitors participating in the Conrad 30 or Interested Government Agency waiver programs, and currently in H-1B classification, if they engage in telehealth services or are unable to work full-time due to quarantine, illness, travel restrictions, or other consequences of the pandemic.<sup>1</sup> U.S. Citizenship and Immigration Services (USCIS) will not consider these physicians to have violated their contracts with their employers if they are temporarily unable to work full-time due to illness, reduced hours at healthcare facilities, or other impacts related to the COVID-19 pandemic.

Under current law, an H-1B healthcare worker generally can immediately begin to work at a new place of employment (including in an area of critical need) after a petitioner properly files an amended or new H-1B petition. In many instances, a petitioner does not have to wait for a final decision on the amended or new petition for the H-1B employee to start work at the new

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<sup>1</sup> USCIS Policy Memorandum, PM-602-0178, *Temporary Policy Changes for Certain Foreign Medical Graduates During the COVID-19 National Emergency*, (May 11, 2020).

place of employment. Also, USCIS has resumed premium processing services for certain employment-based (Form I-140 and Form I-129) petitions.

You also inquired about options for nonimmigrants who may unexpectedly remain in the United States beyond their authorized period of stay due to COVID-19 or face other special situations. Generally, nonimmigrants must depart the United States before their authorized period of admission expires. However, as we announced in our public-facing website, several options are available to nonimmigrants to extend their stay or change their status to mitigate the immigration consequences.

Under current regulations, if a petitioner or applicant files an extension of stay or change of status request (on Forms I-129 or I-539) after the authorized period of admission expires, we may, in our discretion, excuse the failure to file on time if it was due to extraordinary circumstances beyond their control, such as those that may be caused by COVID-19. USCIS considers special circumstances and expedite requests for individual applications on a case-by-case basis.<sup>2</sup>

Further, in response to the pandemic, USCIS has extended flexibilities for petitioners and applicants to respond to agency requests and notices. We appreciate your recommendations with regard to these issues. We will continue to explore available options within our statutory and regulatory authority and, as we do so, your concerns will be taken into consideration.

You mentioned your support for e-filing all nonimmigrant visas.<sup>3</sup> For individuals in the United States, our website lists the specific forms that are currently available to file online and it includes the Form I-539, Application to Extend/Change Nonimmigrant Status, which pertains to certain nonimmigrant visa classifications. We are working to expand the availability of electronic filing for other forms. We continue to encourage applicants to submit their requests electronically, when possible, as it is the most secure, efficient, cost-effective and convenient way to submit a request with USCIS.

As we begin moving toward reopening the country, DHS remains steadfast in our commitment to protect the safety of the American people. We will continue to communicate publicly regarding any changes we make to ensure that the public is fully informed of the steps we are taking to address the challenges resulting from this national emergency.

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<sup>2</sup> Our website and outreach efforts provide additional guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. Please see [www.uscis.gov/coronavirus](http://www.uscis.gov/coronavirus).

<sup>3</sup> With regard to the visa process for individuals outside of the United States, we defer to our colleagues at the Department of State (DOS). However, you will be pleased to know that nonimmigrant visa applications are submitted electronically to DOS via the internet.

The Honorable Jack Reed  
Page 3

Thank you again for your letter and your interest in this matter. Should you wish to discuss this matter further, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ja' followed by a long horizontal stroke.

Joseph Edlow  
Deputy Director for Policy

cc:

The Honorable Sheldon Whitehouse  
United States Senator

The Honorable James R. Langevin  
Member of Congress

The Honorable David N. Cicilline  
Member of Congress