

Memo Targeting Green Card Applicants To Go Into Effect

By Nicole Narea

Law360 (September 27, 2018, 4:57 PM EDT) -- U.S. Citizenship and Immigration Services on Wednesday announced that it will implement a policy memo that could send green card applicants and individuals petitioning to adjust their immigration status to deportation proceedings starting next month.

The rollout will begin on Oct. 1 on an "incremental" basis, according to the agency's announcement. The agency said the memo will not apply to employment-based petitions, such as those for H-1B skilled worker visas or H-2B temporary labor visas, or humanitarian petitions such as asylum applications.

USCIS issued a policy memo in July that strengthened its enforcement capabilities — capabilities that have traditionally been housed under U.S. Immigration and Customs Enforcement — and threatened to leave rejected visa applicants to face removal proceedings in immigration court immediately upon denial. The agency had temporarily delayed the memo's implementation while it worked out how exactly it would go into effect.

The memo allows USCIS to issue a notice to appear, or NTA, to applicants who presented "insufficient evidence" on a discretionary basis. An NTA places a noncitizen before an immigration judge and officially commences removal proceedings, which could span years.

"USCIS will send denial letters for status-impacting applications that ensures benefit seekers are provided adequate notice when an application for a benefit is denied," the Thursday notice says. "If applicants are no longer in a period of authorized stay, and do not depart the United States, USCIS may issue an NTA."

The agency on Wednesday said it will provide more information about how petitioners can check how long they are allowed to stay in the U.S., their travel compliance and how to confirm their departure from the U.S. It also said it will maintain its focus on petitioners who have criminal records or whose cases involve fraud or issues of national security.

"There has been no change to the current processes for issuing NTAs on these case types, and USCIS will continue to use its discretion in issuing NTAs for these cases," USCIS said.

Attorneys immediately rebuked the policy memo when it was released. Paul Virtue, a partner at Mayer Brown LLP, said that although the new guidelines continue to provide for the exercise of prosecutorial discretion in certain cases, the memo is "clearly designed to ensure that a decision not to issue an NTA should rarely be taken."

The updated guidelines were issued to comply with President Donald Trump's January 2017 executive order calling for tougher enforcement of immigration laws, including by targeting sanctuary policies and reinstating the controversial "Secure Communities" information-sharing program.

That order called on the executive branch to "make use of all available systems and resources to ensure the efficient and faithful execution" of federal immigration laws and laid out the administration's enforcement priorities, including in regard to immigrants living in the country without legal permission who have committed crimes.

--Additional reporting by Suzanne Monyak. Editing by Stephen Berg.