



Immigration Update

USCIS updates Notice to Appear (NTA) guidance

August 7, 2018

US Citizenship and Immigration Services (USCIS) issued a new policy memorandum updating its Notice to Appear (NTA) policy. The new guidance will permit USCIS to issue NTAs for a broader range of cases, resulting in an expected increase in the number of foreign nationals being subject to removal proceedings.

What is an NTA?

An NTA is a document issued to a foreign national (an individual who is not a US citizen or green card holder, such as someone who is present in the United States on a work permit) that instructs him or her to appear

Contacts:

David Garson

Partner

Tel: 416-775-7131

Suzanne de Lint

Partner

Tel: 416-813-2435

Erin Farrell

Partner

Tel: 416-775-7344

before an immigration judge on a specific date to determine whether he or she should be removed or deported from the United States due to an immigration violation. The issuance of an NTA formally commences removal proceedings against the foreign national. Upon receipt of an NTA, a foreign national is obligated to appear before an immigration judge. Departing the United States without complying with the NTA would result in a final removal order and would impact future immigration applications.

Overview

- The memorandum was released on June 28, 2018 and directs USCIS to implement the updated policy within 30 days
- Deferred Action for Childhood Arrivals (DACA) recipients and requesters are exempted from this new memorandum when (1) processing an initial or renewal DACA request or a DACA-related benefit request, or (2) processing a DACA recipient for possible termination of DACA
- The new memorandum generally requires USCIS to issue an NTA in the following categories of cases in which the individual is removable:
 - Cases where fraud or misrepresentation is substantiated, and/or where an applicant abused any program related to the receipt of public benefits
 - Criminal cases where an applicant is convicted of or charged with a criminal offense, or has committed an act that is chargeable as a criminal offense, even if the criminal conduct was not the basis for the denial or the ground for removability
 - USCIS may refer cases involving serious criminal activity to the Immigration and Customs Enforcement Agency (ICE) before adjudication of a pending immigration benefit request without issuing an NTA
 - Cases in which USCIS denies a Form N-400, Application for Naturalization, on good moral character grounds because of a criminal offense
 - Cases in which, upon the denial of an application or petition, an applicant is unlawfully present in the United States.

Analysis of impact

Prior to the release of the new memorandum, USCIS had the ability to deny an immigration benefit without issuing an NTA or referring the foreign national to ICE. This allowed a foreign national to voluntarily depart the United States and apply for a new benefit.

In accordance with the new memorandum, if USCIS issues an NTA, the foreign national is obligated to remain in the United States to appear before an immigration judge. If a foreign national departs the United States during the course of the proceedings, a new ground of inadmissibility would be triggered.

If you have any questions regarding the information contained in this alert, please speak to your Garson LLP contact or one of the individuals listed below.

Garson LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, 9th Floor
Toronto, Ontario M5H 0A9
Canada
Tel: (416) 363-1234
Fax: (416) 363-8760

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