

AUGUST 28, 2017

USCIS DENIES APPLICATIONS FOR ADVANCE PAROLE DUE TO INTERNATIONAL TRAVEL

On August 18, 2017, the American Immigration Lawyers Association ("AILA") issued a statement confirming numerous reports of U.S. Citizenship and Immigration Services ("USCIS") denying Form I-131 Applications for Advance Parole where applicants exited the U.S. while the applications were pending. These denials have occurred even where applicants possessed separate, valid advance parole documents or nonimmigrant visas permitting re-entry into the U.S. In the denial notices, USCIS did not distinguish between applicants who required the pending Form I-131 Applications for Advance Parole to become approved prior to re-entering the U.S. and those who possessed another means of re-entry. Instead, the denial notices referenced the Form I-131 instructions that state "[i]f you depart the United States before the Advance Parole Document is issued, your application for an Advance Parole Document will be considered abandoned."

USCIS POLICY CHANGE

Although the Form I-131 instructions provide a basis for USCIS's action, the recent denials represent a departure from USCIS's longstanding policy of permitting applicants to exit the country without abandoning pending Form I-131 Applications for Advance Parole as long as the applicant possessed another means of re-entry. To confirm USCIS's current position on the issue, AILA contacted the USCIS Service Center Operations Directorate ("SCOPS"). AILA received a response from SCOPS confirming that the denials were proper. SCOPS also confirmed that USCIS's current policy is that exiting the U.S. while the Form I-131 Application for Advance Parole is pending "will result in the denial of that application notwithstanding prior practice to the contrary."

PRACTICAL TAKEAWAYS

Employers should alert foreign workers with pending Form I-131 Applications for Advance Parole to remain in the U.S. until the application has been adjudicated, even if the foreign worker possesses another means of re-entry. If a pending Form I-131 Application for Advance Parole has been denied, employers should contact immigration counsel to discuss strategies for obtaining advance parole on behalf of the foreign worker.

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