



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

March 23, 2020

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

Re: Demand for immediate suspension of all deadlines

Dear Mr. Cuccinelli,

The world remains in the midst of a global pandemic due to COVID-19 (coronavirus). The extent and the ramifications of the current crisis are without precedent. On March 13, 2020, the President declared a national emergency. Notwithstanding the universal steps taken across federal, state and local governments in response to the COVID-19 pandemic, including the extension of deadlines, holding cases or statuses in abeyance, and otherwise tolling any time that may impair individuals, USCIS has so far decided against taking the same measures.¹ If the agency fails to take such actions by this Friday, March 27, 2020, AILA will have no choice but to explore alternative means to compel such action, including litigation.

The need to suspend and extend deadlines is urgent. Each day that USCIS fails to take these measures sows further confusion, as it has become impossible for individuals sheltering in place to meet time-sensitive deadlines or timely depart the United States due to worldwide travel restrictions. The agency must immediately adopt the kind of common-sense emergency measures that other agencies have already adopted.

In an effort to assist USCIS respond to the urgent needs of foreign nationals struggling to manage the COVID-19 pandemic, AILA sent a letter on March 16, 2020, that urged USCIS to “consider and establish” a detailed list of “proactive measures immediately to limit in-person contact to the greatest extent possible.”² AILA is grateful that USCIS responded and adopted measures to limit

¹ See, e.g., <https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order/>; <https://www.nytimes.com/2020/03/21/world/coronavirus-updates-usa-world.html>; Standing Order No. 20-9 BAH, (D.D.C. Mar. 16, 2020).

² <https://www.aila.org/advo-media/aila-correspondence/2020/aila-requests-additional-accommodations-from-uscis>; <https://www.aila.org/advo-media/aila-correspondence/2020/aila-letter-to-uscis-regarding-californias-order>

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in-person contact by suspending routine in-person services until at least April 1 and providing guidance on scheduling of emergency services and rescheduling of routine appointments. On March 20, 2020, USCIS also took important steps to excuse the requirement that filings for immigration benefits contain “wet signatures.” At the same time DHS provided much needed flexibility in the 3-day in-person Form I-9 compliance process.³

These are important first steps, but additional measures require immediate attention. In its March 16, 2020 letter, AILA urged USCIS to extend all deadlines and extend the status for all nonimmigrants lawfully present for an additional ninety days. The agency’s silence on these matters has added unnecessary stress to what is easily the most life-altering event in the last twenty-years. Very few immigration filings can be made electronically. The vast majority of immigration filings are made by mail and overnight courier, and typically contain copies of relevant documentation and pages of evidentiary material necessary for adjudication. Immigration attorneys, business representatives, and individuals must have access to equipment and services available in their offices or at public facilities to produce and timely file petitions or applications. However, because of shelter in place orders or to prevent infecting others, immigration attorneys, their clients, staff, families, and almost all U.S. workers must now work remotely. The inability to timely file a petition can result in the loss of nonimmigrant status and under normal conditions would require an individual to depart the United States. However, during this pandemic emergency, travel is so significantly restricted that individuals cannot depart the United States and are stuck in a dire Catch-22 situation – break the edicts of the federal, state, and local governments to stay home and keep others safe or violate immigration laws.

USCIS’ inaction on the suspension and extension of statutory and regulatory deadlines poses a serious and immediate threat to foreign nationals, U.S. employers and the attorneys attempting to adequately represent them. It is already interfering with the ability of immigration attorneys to assist and support clients who must comply with various deadlines provided in the Immigration and Nationality Act, the governing regulations, and USCIS’ Policy Manual for immigration benefits. USCIS’ inaction has placed immigration attorneys, foreign nationals, and U.S. companies in a no-win situation: (1) they either must endure the catastrophic health-related risks, as well as the state and local penalties that will result from ignoring orders to shelter in place so that they meet time-sensitive deadlines; or (2) abide by orders to shelter in place and fail to comply with deadlines that will likely result in severe immigration-related penalties to their clients. Ultimately, it will be our collective public health that will suffer the most.

Every day without the adoption of responsible measures to suspend the deadlines begets further confusion and harm to AILA’s members attempting to competently and safely serve clients

³ <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>

seeking to comply with immigration laws and regulations. By its daily refusal to act responsibly in this situation, USCIS is actively harming the immigration bar and hurting the clients we serve, including individuals and families seeking to abide by law and regulation to remain in lawful status, and U.S. and multinational businesses that employ immigrants and are currently trying desperately to minimize business disruption.

On behalf of its membership, AILA respectfully requests USCIS to implement the recommendations in its [March 16](#) and [March 23](#) letters. Most importantly, AILA demands USCIS to take the following three actions on or before March 27:

- extend statutory or regulatory deadlines for immigration benefits;
- suspend all deadlines during the time of the COVID-19 national emergency; and
- extend any nonimmigrant status and otherwise maintain the status quo for purposes of eligibility for protection and immigration benefits processed by USCIS from the date the President declared a national emergency on March 11, 2020, until 90 days after the emergency proclamation ends.

All businesses, federal, state, and local governments have adopted flexible measures in recognition that the COVID-19 pandemic requires a temporary suspension of all time-sensitive deadlines as individuals shelter in place and shift to working remotely from home while dealing with children and other family members adapting to new schedules as well.

As mentioned above, unless USCIS adopts the measures outlined in AILA's March 16 and March 23 letters by this Friday, March 27, 2020, AILA will have no choice but to view USCIS's inaction as a deliberate attempt to use the current crisis to paralyze the immigration bar and jeopardize the lawful status of hundreds of thousands of law-abiding foreign nationals.. Failure to implement these measures will only further aggravate a dire situation and we will have no choice but to explore alternative measures to compel such action, including, but not limited to, litigation against the agency.

Please contact Jesse Bless, Director of Federal Litigation, at jbless@aila.org or (202) 507-7692 to discuss these concerns further.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

cc: Joseph Edlow, Deputy Director for Policy, USCIS
Kathy Nuebel Kovarick, Chief of Staff, USCIS
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