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# HOW USCIS CAN REMAIN TRUE TO ITS MISSION BY EXERCISING COMPASSION DURING THE COVID-19 PERIOD

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Although the United States Citizenship and Immigration Services is mandated by Congress to grant benefits, it has become an enforcement oriented agency under the Trump administration that has displayed remarkable hostility towards immigrants. During the period when people are mandated to stay confined and practice social distancing in order to prevent the spread of the coronavirus, and many will unfortunately also fall sick, the USCIS ought to become compassionate and true to its mission of being a benefits granting agency.

The USCIS has admittedly made some changes in a niggardly fashion. Although the public charge rule got rolled out last month, which is intended to deny immigration benefits under a more expansive interpretation of who is likely to become a public charge, it made one small exception on March 13, 2020 by encouraging noncitizens with symptoms resembling COVID-19 to seek medical treatment or preventive services. "Such treatment or preventive services will not negatively affect any alien as part of a future public charge analysis," the agency said in a statement. The exception goes beyond treatment and preventive services, and the USCIS goes onto state: "f the alien is prevented from working or attending school, and must rely on public benefits for the duration of the COVID-19 outbreak and recovery phase, the alien can provide an explanation and relevant supporting documentation." The USCIS has also allowed applicants to reschedule appointments if they have travelled internationally to any country within the past 14 days of their appointment, believe they have been exposed to the COVID 19 virus or are experiencing flu like symptoms. Separately, DHS has notified that foreign students should be

able to maintain status even if the program goes online so long as the school makes the notification within 10 days.

While these fixes are steps in the right direction, USCIS ought to make more bold changes to provide ameliorative relief to noncitizens that would be in the best interests of the nation. Below are some suggestions:

1. As employers and law firms have allowed their staff to work remotely, USICS should immediately allow all filings with USCIS to be made online, and also allow scanned or electronic signatures. The electronic H-1B Registration is a good example of how this can be implemented for all USCIS filings.
2. While an H-1B workers who works from home in the same area of intended employment or within commuting distance does not need a new LCA, eliminate the need to file a new LCA and H-1B amendment even if the home is located outside the MSA or beyond the area of commuting distance. The DOL rules governing LCAs never contemplated telecommuting, and it makes no sense for affected workers to post the LCA on their refrigerator. The telecommuting is tied to the location where the work is actually performed and for which the LCA was originally obtained and where the posting already occurred.
3. While the USCIS should give a blanket 90 day extension for filing extension and change of status requests (and this is beyond the 60 day grace period that is given to certain nonimmigrants upon cessation of employment); any delay beyond the 90 days can still be deemed an extraordinary circumstance, and thus excused, under 8 CFR 214.1(c)(4) or 248.1(c) if it is based on a corona virus circumstance.
4. Coronavirus issues should be deemed technical reasons for INA 245(c)(2) purposes to allow delayed adjustment filings when necessary.
5. Similar extensions ought to be given with respect to filing responses to RFEs and I-290B appeals or motions as well as filing an I-140 beyond 180 days of the grant of labor certification.
6. Auto-extend EADs, Advance Paroles and I-551s to eliminate the need to file I-765, I-131 and I-90 extensions.
7. Automatically reschedule all missed USCIS appointments (biometrics, adjustment and naturalization interviews and oath ceremonies) rather than deem that the application has been deemed abandoned. Also, if possible, develop technology for noncitizens to securely process their

biometrics through their own phone devices.

8. The filing of a meritorious and nonfrivolous I-290B should no longer trigger unlawful presence for purposes of the 3 and 10 year bars.
9. Have a policy of granting parole in place to one otherwise eligible to adjust status if it can be demonstrated that it would be impossible or harmful for a person to return to the home country.
10. Advance the Chart B filing dates to Current or close to Current as the notion of an "immigrant visa is immediately available" under INA 245(a)(3) has always been viewed with elasticity, especially in the case of the July 2007 visa bulletin and more recently in the implementation of Chart B filing dates. In the same vein, rescind the USCIS policy that requires the CSPA age to be triggered only if the final action date becomes current rather than the filing date becoming current.
11. Allow for video interviews for adjustment of status and naturalization applications, as well as with respect to an oath swearing ceremony. If that is not feasible in the short run, at least minimize the interviews. For example, employment-based adjustment cases do not need interviews, which was the case before.
12. Relax the standard for competent representation at 8 CFR 1003.102(o) and diligent representation at 8 CFR 1003.102(q), as well as the duty to communicate at 8 CFR 1003.102(r), if an attorney is affected by the coronavirus and is forced to be quarantined for several weeks and has no other attorneys who can act on his or her behalf.

These are a few suggestions for USCIS to revert to its historic role of viewing its mission as providing benefits rather than being a junior partner to Immigration and Customs Enforcement. Other agencies also need to step up to also take appropriate actions, and this blog only focuses on USCIS fixes. If God forbid the situation goes out of hand,  bolder action would need to be taken. There is statutory authority to grant mass Temporary Protected Status under INA 244(b). There is also authority to grant deferred action to large groups of noncitizens who may be at grave risk to themselves and others if they are asked to leave the US. The President has broad powers in times of a national emergency. Now is not the time for restrictionists to oppose such measures that benefit noncitizens, and it would also be perverse for them to advocate that the President use these powers to hurt noncitizens. The health and safety of everyone is paramount, and all people living in this nation, whether citizen or

non-citizen, are intractably connected and the administration must take all measures to protect everyone.