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DEPARTMENT OF HOMELAND SECURITY

Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

RIN 1601-ZA11

Docket No. DHS-2011-0108

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may generally only approve petitions for H-2A and H-2B nonimmigrant status for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 83 countries whose nationals are eligible to participate in the H-2A program and 82 countries whose nationals are eligible to participate in the H-2B program for the coming year.

DATES: *Effective Date:* This notice is effective January 18, 2018, and shall be without effect after January 18, 2019.

FOR FURTHER INFORMATION CONTACT: Eric B. Johnson, Office of Policy, Department of Homeland Security, Washington, DC 20528, (202) 282-8652.

SUPPLEMENTARY INFORMATION:

Background

Generally, USCIS may approve H-2A and H-2B petitions for nationals of only those

countries¹ that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as participating countries. Such designation must be published as a notice in the **Federal Register** and expires after one year. USCIS, however, may allow a national from a country not on the list to be named as a beneficiary of an H-2A or H-2B petition based on a determination that such participation is in the U.S. interest. See 8 CFR 214.2(h)(5)(i)(F) and 8 CFR 214.2(h)(6)(i)(E).

In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. See 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Examples of factors serving the U.S. interest that could result in the non-inclusion of a country or the removal of a country from the list include, but are not limited to, fraud, abuse, overstay rates, and non-compliance with the terms and conditions of the H-2 visa programs by nationals of that country.

In December 2008, DHS published in the **Federal Register** two notices, "Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A Visa Program,"

¹ With respect to all references to "country" or "countries" in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. 3303(b)(1). Accordingly, all references to "country" or "countries" in the regulations governing whether nationals of a country are eligible for H-2 program participation, 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1), are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

and “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2B Visa Program,” which designated 28 countries whose nationals are eligible to participate in the H-2A and H-2B programs. See 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010 and January 18, 2010, respectively. See 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. See 75 FR 2879 (Jan. 19, 2010) (adding 11 countries); 76 FR 2915 (Jan. 18, 2011) (removing Indonesia and adding 15 countries); 77 FR 2558 (Jan. 18, 2012) (adding 5 countries); 78 FR 4154 (Jan. 18, 2013) (adding 1 country); 79 FR 3214 (Jan.17, 2014) (adding 4 countries); 79 FR 74735 (Dec. 16, 2014) (adding 5 countries); 80 FR 72079 (Nov. 18, 2015) (removing Moldova from the H-2B program and adding 16 countries); 81 FR 74468 (Oct. 26, 2016) (adding 1 country).

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 82 countries previously designated in the October 26, 2016 notice continue to meet the standards identified in that notice for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2A program. Additionally, the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 81 countries previously designated in the October 26, 2016 notice continue to meet the standards identified in that notice for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2B program.

Further, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has determined that it is now appropriate to add one country whose nationals are eligible to participate in the H-2A and H-2B programs, and to add one country whose nationals are eligible

to participate in the H-2B program. This determination is made taking into account the four regulatory factors identified above. The Secretary of Homeland Security's consideration of factors that may serve the U.S. interest included, but were not limited to, evidence of past usage of the H-2A and H-2B programs by nationals of the country to be added, as well as evidence relating to the economic impact on particular U.S. industries or regions resulting from the addition or continued non-inclusion of specific countries.

The Secretary of Homeland Security has determined, however, with the concurrence of the Secretary of State, that the following countries should no longer be designated as eligible countries because they are not meeting the standards set out in the regulation: Belize, Haiti, and Samoa.

Belize is listed on the U.S. Department of State's 2017 Trafficking in Persons Report as a "Tier 3" country. "Tier 3" means the country does not fully meet the Trafficking Victims Protection Act's minimum standards and is not making significant efforts to do so.

Haitian nationals applying for H-2A and H-2B visas present extremely high rates of refusal, and those issued H-2A or H-2B visas have historically demonstrated high levels of fraud and abuse and a high rate of overstaying the terms of their H-2 admission. Haiti has shown no improvement in these areas, and the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that Haiti's inclusion on the 2018 H-2A and H-2B lists is no longer in the U.S. interest.

Samoa is currently listed as "At Risk of Non-Compliance" according to ICE's year-end assessment of foreign countries' cooperation in accepting back their nationals that have been ordered removed from the United States. Despite attempts to improve cooperation on removals to Samoa, there has been not been sufficient progress on removals to Samoa.

Accordingly, DHS has removed these countries from the H-2A and H-2B eligibility lists for 2018, though their nationals may still be beneficiaries of approved H-2A and H-2B petitions upon the request of the petitioner if DHS determines, as a matter of discretion, that it is in the U.S. interest for the individual to be a beneficiary of such petition. See 8 CFR 214.2(h)(5)(i)(F)(1)(D)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2).

The Secretary of Homeland Security has also determined, with the concurrence of the Secretary of State, that Mongolia should be designated as an eligible H-2A and H-2B country because it is now meeting the standards set out in the regulation. Mongolia is no longer listed as “At Risk of Non-Compliance” according to ICE’s year-end assessment of foreign countries that cooperate in accepting back their nationals that have been ordered deported from the United States, and has demonstrated increased cooperation with the United States regarding the return of their nationals with final orders of removal.

Designation of Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2A nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria

5. Barbados
6. Belgium
7. Brazil
8. Brunei
9. Bulgaria
10. Canada
11. Chile
12. Colombia
13. Costa Rica
14. Croatia
15. Czech Republic
16. Denmark
17. Dominican Republic
18. Ecuador
19. El Salvador
20. Ethiopia
21. Estonia
22. Fiji
23. Finland
24. France
25. Germany
26. Greece
27. Grenada

28. Guatemala
29. Honduras
30. Hungary
31. Iceland
32. Ireland
33. Israel
34. Italy
35. Jamaica
36. Japan
37. Kiribati
38. Latvia
39. Liechtenstein
40. Lithuania
41. Luxembourg
42. Macedonia
43. Madagascar
44. Malta
45. Mexico
46. Moldova
47. Monaco
48. Mongolia
49. Montenegro
50. Nauru

51. The Netherlands
52. Nicaragua
53. New Zealand
54. Norway
55. Panama
56. Papua New Guinea
57. Peru
58. The Philippines
59. Poland
60. Portugal
61. Romania
62. San Marino
63. Serbia
64. Singapore
65. Slovakia
66. Slovenia
67. Solomon Islands
68. South Africa
69. South Korea
70. Spain
71. St. Vincent and the Grenadines
72. Sweden
73. Switzerland

74. Taiwan
75. Thailand
76. Timor-Leste
77. Tonga
78. Turkey
79. Tuvalu
80. Ukraine
81. United Kingdom
82. Uruguay
83. Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2B nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Brazil
8. Brunei

9. Bulgaria
10. Canada
11. Chile
12. Colombia
13. Costa Rica
14. Croatia
15. Czech Republic
16. Denmark
17. Dominican Republic
18. Ecuador
19. El Salvador
20. Estonia
21. Ethiopia
22. Fiji
23. Finland
24. France
25. Germany
26. Greece
27. Grenada
28. Guatemala
29. Honduras
30. Hungary
31. Iceland

32. Ireland
33. Israel
34. Italy
35. Jamaica
36. Japan
37. Kiribati
38. Latvia
39. Lichtenstein
40. Lithuania
41. Luxembourg
42. Macedonia
43. Madagascar
44. Malta
45. Mexico
46. Monaco
47. Mongolia
48. Montenegro
49. Nauru
50. The Netherlands
51. Nicaragua
52. New Zealand
53. Norway
54. Panama

55. Papua New Guinea
56. Peru
57. The Philippines
58. Poland
59. Portugal
60. Romania
61. San Marino
62. Serbia
63. Singapore
64. Slovakia
65. Slovenia
66. Solomon Islands
67. South Africa
68. South Korea
69. Spain
70. St. Vincent and the Grenadines
71. Sweden
72. Switzerland
73. Taiwan
74. Thailand
75. Timor-Leste
76. Tonga
77. Turkey

- 78. Tuvalu
- 79. Ukraine
- 80. United Kingdom
- 81. Uruguay
- 82. Vanuatu

This notice does not affect the status of aliens who currently hold valid H-2A or H-2B nonimmigrant status. Persons currently holding such status, however, will be affected by this notice should they seek an extension of stay in H-2 classification, or a change of status from one H-2 status to another. Similarly, persons holding nonimmigrant status other than H-2 status are not affected by this notice unless they seek a change of status to H-2 status.

Nothing in this notice limits the authority of the Secretary of Homeland Security or her designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Elaine C. Duke,
Deputy Secretary.

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