

Congress of the United States
Washington, DC 20515

April 17, 2020

RECEIVED

By ESEC at 8:34 am, Apr 20, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Secretary Scalia and Acting Secretary Wolf,

As we all consider efforts to offer temporary relief to struggling businesses, I request that you evaluate your existing authorities that could be used to support business owners and their employees during the COVID-19 pandemic until our nation's economy gets back on track. Specifically, I would like you to look into your ability to provide flexibility to employers hosting H-1B nonimmigrant workers.

Currently, I have heard concerns that employers are unable to furlough H-1B workers at the same pay rate as their other employees because they are required to pay H-1B visa holders their full wage regardless of furlough status. H-1B workers are crucial to our economy and provide an invaluable contribution to our nation, and I am concerned that this pay requirement will result in H-1B workers losing long-term employment if this regulation causes increased U.S. citizen layoffs and pay cuts. I fear this could result in animosity towards H-1B employees, through no fault of their own, and ultimately hesitation to hire H-1B workers in the future.

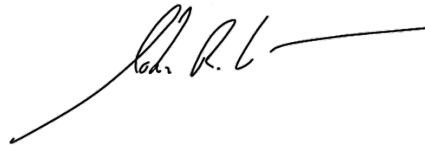
With the above paragraph as context, I ask that both your departments promptly respond to the following questions:

1. Does the department have the authority to temporarily allow employers to furlough their H-1B workers at the same pay rate as their employees that are U.S. citizens?
2. Does furlough due to the COVID-19 pandemic qualify as "nonproductive time due to non-work-related factors" under 8 U.S.C. § 1182(n)(2)(C)(vii)(IV)?
3. If not, does the department have the authority to amend the definition of "non-work-related factors" to include furlough due to the pandemic?

4. Does the department have the authority to allow amendments to Labor Condition Applications to temporarily adjust pay rates for H-1B workers during the pandemic?
5. If the department does have any, or all, of the above authorities, will you please consider using these authorities to appropriately help companies provide parity for their H-1B and U.S. citizen employees if this would ensure more employees can be kept on the payroll through the COVID-19 pandemic?

If you have any clarifying questions, please have a member of your staff contact Rebekah Rodriguez (Rebekah.Rodriguez@mail.house.gov) in my office. Thank you for your consideration of my request.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Curtis", followed by a long horizontal line extending to the right.

John Curtis
Member of Congress



**U.S. Citizenship
and Immigration
Services**

May 13, 2020

The Honorable John Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your April 17, 2020 letter requesting additional flexibilities for H-1B employers. The Acting Secretary has asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

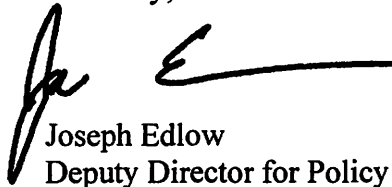
Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As we announced in our public-facing website, we have amended certain requirements to lessen the impact of the coronavirus public health emergency. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus. The Department of Labor has also provided guidance for H-1B employers on its website and through its Frequently Asked Questions.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed

legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability" For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ja' followed by a long horizontal stroke with a small upward hook at the end.

Joseph Edlow
Deputy Director for Policy