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Reference: A) [20 STATE 108936](#)
B) [20 STATE 100236](#)
C) [20 STATE 110220](#)
Subject: Revised Guidance for the Court Order in National Association of Manufacturers V. DHS (Regarding Presidential Proclamation 10052)

1. (U) SUMMARY: This ALDAC provides revised guidance to implement the Court’s November 18 order in *National Association of Manufacturers v. Department of Homeland Security et al* (NAM), which clarified its October 1 order enjoining the government from enforcing section 2 of Presidential Proclamation (PP) 10052. In particular, this ALDAC replaces guidance in Ref A paragraphs 2-4; and in Ref B paragraph 2. Applicants are now considered covered by the NAM Court’s order so long as the petitioner or sponsoring entity is a member of one of the named plaintiff associations at the time of adjudication. Further, the Court ordered that the Department “treat visa applicants covered by the injunction no less favorably than any other nonimmigrant visa applicant.” The Department understands this to relate to appointment scheduling and adjudication at posts where regional COVID proclamations are in effect, and posts should extend the national interest exceptions under PP 10052 to applicants covered by the injunction. End summary.

Appointment Scheduling

2. (U) This guidance supersedes that in paragraphs 2-3 of Ref A and paragraph 2 in Ref B regarding appointment scheduling. Posts should continue to follow the guidance in Ref C, paragraphs 4-6, the Department’s prioritization guidance, which states petition-based work visas (including H’s and L’s) are considered Tier 2 (second only to cases involving humanitarian emergencies, applicants contributing to COVID-19 eradication, diplomatic visas which do not require in person appointments, etc.). To comply with the NAM Court’s order, J-1 intern, trainee, teacher, camp counselor, au pair, or summer work travel program applicants should be considered Tier 2, as well. Posts should, at all times, continue to prioritize services for applicants not subject to or excepted from PP 10052, including applicants covered by the NAM order, making allowances, as appropriate, for emergency and mission critical visa interviews for applicants who may also qualify for national interest exceptions (NIEs). These priorities are designed to protect the health and safety of consular staff during COVID-19 and to conserve

limited consular resources on categories of applicants who are eligible for visas. In essence, any applicant in the H, L, or above-noted J categories, whether a principal or derivative, who would meet criteria for a NIE under PP 10052, even if they are not subject to PP 10052 by virtue of the NAM order, should be treated in the same manner and scheduled for an interview.

Regional COVID Proclamations

3. (U) This guidance supersedes guidance in paragraph 2 of Ref A, regarding consideration of NIEs. Any applicant who is found to be covered by the NAM Court’s order, and who a consular officer determines meets the NIE criteria under PP 10052, may now also be deemed excepted under a regional COVID proclamation, should one apply. However, if an applicant is covered by the NAM Court’s order but would not have met the PP 10052 NIE criteria, any applicable regional COVID proclamation will apply. In essence, applicants covered by the NAM Court’s order should be treated in the same manner as those subject to PP 10052 only for the purposes of considering NIE eligibility when a regional COVID proclamation also applies.

Confirming Membership

4. (U) This guidance supersedes guidance in paragraph 4 and 6 of Ref A, regarding independently verifying membership. Prior guidance instructed posts to consider whether an applicant’s petitioner, sponsor or host organization was a member of one of the plaintiff associations as of October 1, 2020. An applicant is now considered covered by the NAM Court’s Order if the applicant’s petitioner, sponsor, or host organization (for J-1 visas) is either one of the named plaintiffs or a member of one of the named plaintiff associations as of the time of interview. Post should continue to verify membership as instructed in Ref A, with the only exception being post no longer must inquire about the date of membership. A list of companies confirmed as plaintiff association members can be found on a spreadsheet available through the proclamation portal of CAWeb

(<https://intranet.ca.state.sbu/content/caweb/visas/portals/presidential-proclamations-adjudication-guide.html>). The spreadsheet has been updated to include those entities that became members of the plaintiff associations after October 1. If posts denied an applicant based on the petitioning entity not being a member as of October 1, the consular officer may overcome that refusal and, if the applicant is otherwise eligible, approve the visa.

5. (U) Posts should contact their VO/F policy analyst with any questions related to this guidance.

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Signature: Pompeo

Drafted By: CA/VO/F [REDACTED]
Cleared By: CA:Brownlee, Ian G
CA [REDACTED]
CA [REDACTED]
CA/VO:Ramotowski, Edward J
CA/VO [REDACTED]
CA/VO/F [REDACTED]
CA/VO/F/ET [REDACTED]

CA/VO/FOI
CA/P
CA/P
CA/EX
L/CA
CA/VO/L/A
ECA/FO
L/PD
M
M
D
P
S/P
GPA
R
R/PPR
AF/EX
EAP/EX
EUR-IO/EX/PMO
EUR/PGI
NEA-SCA/EX
WHA/EX
SES

Approved By:
Released By:
XMT:

CA:Risch, Carl C
CA_FO
BASRAH, AMCONSUL; CARACAS, AMEMBASSY; CHENGDU,
AMCONSUL; SANAA, AMEMBASSY; ST PETERSBURG, AMCONSUL;
VLADIVOSTOK, AMCONSUL

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