

# IMMIGRATION INSIDER

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## Headlines:

**Bipartisan Bill Introduced in Senate Would Provide Up to 40,000 Unused Immigrant Visas for Doctors, Nurses** – The Healthcare Workforce Resilience Act would provide unused employment-based immigrant visas for up to 25,000 foreign nurses and 15,000 foreign physicians and their family members.

**USCIS Completes Initial FY 2022 H-1B Cap Season Selections; Petitions May Be Filed Now** – The agency notified all prospective petitioners with selected registrations that they are eligible to file H-1B cap-subject petitions for the named beneficiaries. The filing period for petitions began on April 1, 2021.

**DHS Extends I-9 Requirement Flexibility Until May 31, 2021** – DHS announced an extension until May 31, 2021, of the flexibility in complying with requirements related to Form I-9, Employment Eligibility Verification, due to ongoing COVID-19 pandemic precautions.

**"Blank Space" Criteria Eliminated for Rejection of Forms** – USCIS has eliminated "blank space" form rejection criteria introduced in 2019 and reverted to the criteria it applied before October 2019.

**ICE Announces New SEVIS Process for Cap-Gap Extensions** – The Student and Exchange Visitor Program updated the Student and Exchange Visitor Information System (SEVIS) to remove the cap-gap extension link. SEVIS will automatically add the cap-gap extension to the record of an eligible F-1 student who is a beneficiary of a pending cap-subject H-1B petition.

**State Dept. Issues Update on Suspension of Entry for Certain Nonimmigrants** – Applicants who have not yet been interviewed or scheduled for an interview will have their applications prioritized and processed in accordance with existing "phased resumption of visa services" guidance. Visa applicants who were previously refused visas due to the restrictions "may reapply by submitting a new application including a new fee."

**EOIR Implements Revised Case Flow Processing Model for Certain Non-Detained Cases** – The Executive Office for Immigration Review issued a revised case flow processing model and canceled a policy memorandum issued in November 2020 that implemented a new model generally applying to removal cases involving non-detained respondents with representation.

**Labor Dept. Asks for Info on Data Sources/Methods for Prevailing Wage Determinations** – The Department of Labor invited interested parties to provide information on the sources of data and methodologies for determining prevailing wage levels covering employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H-1B, H-1B1, and E-3 nonimmigrant visas.

**Labor Dept. Solicits Comments on O\*NET Data Collection Authority** – The database "provides the most comprehensive standardized source of occupational and skills information in the nation," the Department said.

**Maryland Governor Asks for Elimination of Lottery System and More H-2B Visas to Help Seafood Industry, Others** – Gov. Hogan said that H-2B workers are "essential" and "vital to Maryland's seafood industry and market, which has grown to include regional, national, and international reach."

**USCIS to Reopen Naturalization Application and Visa Approval for Melania Trump** – USCIS announced on April 1, 2021, that it plans to reopen Melania Trump's naturalization application and "Einstein" EB-1 visa petition approval based on new information that there was not good and sufficient cause to approve the petition.

**Class Action Filed Against DHS for L-2 and H-4 Processing Delays** – The American Immigration Lawyers Association and Wasden Baniyas, LLP, filed a class action lawsuit challenging processing delays on extensions of status and employment authorization documents for H-4 and L-2 nonimmigrant spouses.

**USCIS Extends Flexibilities for Responding to Agency Requests** – USCIS will consider a response to certain requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action.

**SEVP Reports 2020 Drop in International Student Enrollment** – SEVP reported a drop of 72 percent in international student enrollment in 2020, attributed to the COVID-19 pandemic and Trump-era immigration policies.

**EOIR Releases New Interactive Policy Manual** – The manual includes the Immigration Court and Board of Immigration Appeals Practice Manuals, the Office of the Chief Administrative Hearing Officer Practice Manual, and all current agency policy memoranda.

**State Dept. Proposes Increase in Passport Security Surcharge** – The Department of State proposes to raise the passport security surcharge from \$60 to \$80.

**USCIS Issues Guidance on P-1A Internationally Recognized Athletes** – The update in the *USCIS Policy Manual* provides more detailed guidance on the required prospective level of performance and provides USCIS's interpretation of, and examples related to, the undefined regulatory phrase, "major United States sports league or team" as it relates to internationally recognized P-1A athletes.

**House Passes 'Dreamer' and Farmworker Bills; Senate Passage Uncertain** – On March 18, 2021, two immigration-related bills passed the House of Representatives with bipartisan support.

**DHS Withdraws Affidavit of Support Proposed Rule** – The Department of Homeland Security announced the withdrawal of a proposed rule, "Affidavit of Support on Behalf of Immigrants," published on October 2, 2020.

**EB-5 Reauthorization Bill Introduced in Senate** – The "EB-5 Reform and Integrity Act of 2021" would reauthorize the EB-5 Regional Center Program, set to expire at the end of June, through 2026. The bill also includes measures to address fraud and national security concerns.

**Labor Dept. Proposes Further Delay of Effective Date of Prevailing Wage Rule** – The Employment and Training Administration proposes to further delay the effective date of the prevailing wage rule until November 14, 2022, along with corresponding proposed delays to the rule's transition dates.

**Registration Period Opens for TPS for Syrians** – DHS has extended and redesignated Syria for temporary protected status through September 30, 2022. The 60-day re-registration period runs through May 18, 2021.

**USCIS Stops Applying Public Charge Final Rule to All Pending Applications and Petitions** – USCIS stopped applying the public charge final rule to all pending applications and petitions on March 9, 2021. The agency removed content related to the vacated rule from the affected USCIS forms and posted updated versions of affected forms.

**CBP Extends Temporary Travel Restrictions Between U.S. and Canada/Mexico** – U.S. Customs and Border Protection announced that temporary travel restrictions between the United States and Canada, and between the United States and Mexico, at land ports of entry along the border (including passenger ferry services and pleasure boat travel) will remain in effect through April 21, 2021. Travel will be limited to that deemed "essential," due to continued transmission of the virus associated with the COVID-19 pandemic.

**DHS Rescinds Public Charge Rule, Withdraws Appeals of Injunctions Blocking It** – DHS rescinded regulations resulting from a final rule that was vacated by a federal district court. Under the now-rescinded rule, the government could deny applications for green cards, temporary nonimmigrant status, and naturalization if the government found they relied on—or were at risk of relying on—public benefits. The Biden administration also withdrew the federal government's appeals of injunctions blocking the DHS public charge rule.

**State Dept. Releases Guidance for Those Previously Refused Visas Under Travel Bans** – The Department issued guidance in response to President Biden's signing of two proclamations that ended travel bans on certain nationals, based on visa type, from Burma, Eritrea, Iran, Kyrgyzstan, Libya, Nigeria, North Korea, Somalia, Sudan, Syria, Tanzania, Venezuela, and Yemen.

**State Dept. Extends Expansion of Interview Waiver Eligibility** – The Department has temporarily expanded the ability of consular officers to waive the in-person interview requirement for individuals applying for a nonimmigrant visa in the same classification. The temporary expansion is effective until December 31, 2021.

**USCIS May Reopen H-1B Petitions Denied Under Three Rescinded Policy Memos** – USCIS announced that it may reopen and/or reconsider adverse H-1B decisions on Form I-129, Petition for a Nonimmigrant Worker, that were made based on three rescinded policy memoranda.

**ABIL Asks for Withdrawal of H-1B Lottery Rule Prioritizing Wages; DHS Delays Effective Date Until May 14** – ABIL formally submitted a comment asking the Department to withdraw its final rule prioritizing wages in adjudicating H-1B applications. DHS delayed the effective date of the wage rule until May 14, 2021.

**Lawsuit Challenges USCIS Rejections of H-1B Petitions Filed After October 1** – A lawsuit filed in a federal district court on behalf of seven U.S. employers whose H-1B petitions were rejected challenges USCIS's "arbitrary and capricious refusal to accept timely and properly filed H-1B petitions" subject to the annual cap.

**DHS Designates Venezuela, Burma for TPS for 18 Months** – The Department of Homeland Security has designated Venezuela and Burma for temporary protected status for 18 months.

**State Dept. Launches Monthly Live "Chats with Charlie" re Visa Bulletin** – The Visa Bulletin for April 2021 announces the launch of live "Chats with Charlie" to discuss information provided in the monthly Visa Bulletin.

**ABIL Global: Canada** – There are new pandemic-related rules for travel across the land border and by air.

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## **Bipartisan Bill Introduced in Senate Would Provide Up to 40,000 Unused Immigrant Visas for Doctors, Nurses**

New legislation introduced on March 29, 2021, by Democratic and Republican senators would provide unused employment-based immigrant visas for up to 25,000 foreign nurses and 15,000 foreign physicians and their family members. The Healthcare Workforce Resilience Act (S. 1024) is intended to beef up the U.S. response to the COVID-19 pandemic. Below are highlights:

- The visas would be made available from a pool of recaptured visas that were unused in fiscal years 1992 through 2020, and would not be counted against the total number of immigrant visas reserved for professional nurses and physicians.
- The visas would be exempt from per-country numerical limits and would be issued in order of the priority date assigned at the time the visa petition was filed.
- The petitioner would need to attest that the hiring would not displace a U.S. worker.
- Processing would be expedited.
- The filing period would be limited to 90 days following the termination of President Biden's COVID-19 pandemic emergency declaration.

The bill is supported by several dozen organizations, including the American Academy of Family Physicians, the American Academy of Pediatrics, the American Hospital Association, the American Medical Association, the National Rural Health Association, and others.

### Details:

- "Young, Durbin, Senators Introduce Bipartisan Bill Addressing Shortage of Doctors, Nurses," Press Release, Sen. Todd Young (R-Ind.), Mar. 29, 2021, <https://www.young.senate.gov/newsroom/press-releases/young-durbin-senators-introduce-bipartisan-bill-addressing-shortage-of-doctors-nurses>
- Bill text, <https://www.congress.gov/bill/117th-congress/senate-bill/1024?q=%7B%22search%22%3A%5B%22S.+1024%22%5D%7D&s=3&r=1>

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## **USCIS Completes Initial FY 2022 H-1B Cap Season Selections; Petitions May Be Filed Now**

U.S. Citizenship and Immigration Services (USCIS) announced on March 30, 2021, that it received enough electronic registrations during the initial registration period to reach the fiscal year (FY) 2022 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap).

The agency notified all prospective petitioners with selected registrations that they are eligible to file H-1B cap-subject petitions for the named beneficiaries. The filing period for petitions began on April 1, 2021. USCIS said that when completing the Form I-129, Petition for a Nonimmigrant Worker:

[P]lease ensure that the below question is included as Question 5 in Supplement H on page 13. If you have already filled out Form I-129 and this question was not included, you may replace Supplement H in your petition by printing out and completing pages 13 and 14 from the current version of Form I-129 on [uscis.gov](https://uscis.gov) and including them with your petition. Starting July 1, 2021, we will only accept the 03/10/21 edition of Form I-129. Until then, you can also use the 09/30/20 and 01/27/20 editions.

The question to be included states, "If you selected a. or d. in Item Number 4., and are filing an H-1B cap petition (including a petition under the U.S. advanced degree exemption), provide the Beneficiary Confirmation Number from the H-1B Registration Selection Notice for the beneficiary named in this petition (if applicable)."

Details:

- FY 2022 H-1B Cap Season Updates, USCIS, Mar. 30, 2021, <https://www.uscis.gov/news/alerts/fy-2022-h-1b-cap-season-updates>
- H-1B Electronic Registration Process, USCIS, Mar. 4, 2021, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process>
- H-1B Cap Season, USCIS, Mar. 31, 2021, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-cap-season>

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### **DHS Extends I-9 Requirement Flexibility Until May 31, 2021**

The Department of Homeland Security (DHS) announced an extension until May 31, 2021, of the flexibility in complying with requirements related to Form I-9, Employment Eligibility Verification, due to ongoing COVID-19 pandemic precautions. The temporary guidance had been set to expire March 31.

The flexibility applies only to employers and workplaces that are operating remotely.

Details:

- DHS announcement, Mar. 31, 2021, <https://www.uscis.gov/i-9-central/form-i-9-related-news/dhs-extends-form-i-9-requirement-flexibility-effective-mar-31-2021>

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### **"Blank Space" Criteria Eliminated for Rejection of Forms**

U.S. Citizenship and Immigration Services (USCIS) has eliminated "blank space" form rejection criteria introduced in 2019 and reverted to the criteria it applied before October 2019.

USCIS will no longer reject the following forms based solely on whether an applicant leaves a blank space anywhere on the form: Form I-589, Application for Asylum and for Withholding of Removal; Form I-612, Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended); and Form I-918, Petition for U Nonimmigrant Status.

However, USCIS said it may reject these forms, or delays might be created, if an applicant leaves required spaces blank, fails to respond to questions related to filing requirements, or omits any required initial evidence.

Details:

- USCIS announcement, April 1, 2021, <https://www.uscis.gov/news/alerts/uscis-confirms-elimination-of-blank-space-criteria>

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## **ICE Announces New SEVIS Process for Cap-Gap Extensions**

On March 26, 2021, the Student and Exchange Visitor Program (SEVP) updated the Student and Exchange Visitor Information System (SEVIS) to remove the cap-gap extension link. This link allowed designated school officials (DSOs) to temporarily apply cap-gap relief to the record of an eligible F-1 student who is the beneficiary of a filed H-1B petition but is awaiting confirmation from U.S. Citizenship and Immigration Services (USCIS) that their petition was selected for processing. USCIS implementation of the H-1B Electronic Registration Process in 2020 eliminated this need, U.S. Immigration and Customs Enforcement (ICE) said.

SEVIS will automatically add the cap-gap extension to the record of an eligible F-1 student who is a beneficiary of a pending cap-subject H-1B petition, ICE said. If the cap-gap extension notation is missing from an eligible student's record or other changes are needed, DSOs must contact the SEVP Response Center (SRC) at 703-603-3400 or 800-892-4829 (email: [SEVP@ice.dhs.gov](mailto:SEVP@ice.dhs.gov)) and request a data fix.

### Details:

- "New SEVIS Process for Cap-Gap Extensions," SEVP Broadcast Message, Mar. 29, 2021, <https://www.ice.gov/doclib/sevis/pdf/bcm2103-02.pdf>

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## **State Dept. Issues Update on Suspension of Entry for Certain Nonimmigrants**

The Department of State issued an update on Presidential Proclamation 10052, which temporarily suspended the entry of certain H-1B, H-2B, J (for certain categories within the Exchange Visitor Program), and L nonimmigrants. That proclamation expired on March 31, 2021.

The Department said that applicants who have not yet been interviewed or scheduled for an interview will have their applications prioritized and processed in accordance with existing "phased resumption of visa services" guidance. Visa applicants who were previously refused visas due to the restrictions "may reapply by submitting a new application including a new fee."

The resumption of routine visa services, prioritized after services to U.S. citizens, is occurring on a post-by-post basis, the Department's said: "Applicants should check the website of their nearest U.S. Embassy or Consulate for updates on the services that post is currently offering."

### Details:

- Update on Presidential Proclamation 10052, Dept. of State, Apr. 1, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/update-on-presidential-proclamation-10052.html>

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## **EOIR Implements Revised Case Flow Processing Model for Certain Non-Detained Cases**

In a memorandum issued on April 2, 2021, the Department of Justice's Executive Office for Immigration Review (EOIR) issued a revised case flow processing model and canceled a policy memorandum issued in November 2020 (PM 21-05) that implemented a new model generally applying to removal cases involving non-detained respondents with representation.

In general, under the new model, for non-detained cases in which a representative files a Form EOIR-28 at least 15 days before a master calendar hearing, "the hearing will be vacated and the court will send to the parties a scheduling order, setting deadlines for the filing of written



pleadings and any evidence related to the charges of removability. The deadline will be 30 days after the most recently scheduled hearing date, whether vacated or held, unless pleadings have already been taken or a deadline is otherwise specified by the immigration judge. Where necessary, parties may request a master calendar hearing or seek extensions of filing deadlines by written motion," EOIR said.

Details:

- "Revised Case Flow Processing Before the Immigration Courts," EOIR (PM 21-18), Apr. 2, 2021, <https://www.justice.gov/eoir/book/file/1382736/download>

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## **Labor Dept. Asks for Info on Data Sources/Methods for Prevailing Wage Determinations**

On April 2, 2021, the Department of Labor invited interested parties to provide information on the sources of data and methodologies for determining prevailing wage levels covering employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H-1B, H-1B1, and E-3 nonimmigrant visas.

The information received in response to this request for information "will inform and be considered by the Department as it reviews the final rule," Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, published on January 14, 2021. The Department said that its review "may result in the development of a future notice of proposed rulemaking to revise the computation of prevailing wage levels in a manner that more effectively ensures the employment of certain immigrant and nonimmigrant workers does not adversely affect the wages of U.S. workers similarly employed."

Details:

- Request for Information, Dept. of Labor, Apr. 2, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-04-02/pdf/2021-06889.pdf>

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## **Labor Dept. Solicits Comments on O\*NET Data Collection Authority**

The Department of Labor's Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "O\*NET Data Collection Program."

The O\*NET Data Collection Program is "an ongoing effort to collect and maintain current information on the detailed characteristics of occupations and skills for more than 900 occupations," the notice explains. The resulting database "provides the most comprehensive standardized source of occupational and skills information in the nation." The Department noted that O\*NET information is "used by a wide range of audiences, including individuals making career decisions, public agencies and schools providing career exploration services or education and training programs, and businesses making staffing and training decisions. The O\*NET system provides a common language, framework and database to meet the administrative needs of various federal programs, including workforce investment and training programs."

Comments are due by May 28, 2021.

Details:

- Dept. of Labor notice, Mar. 29, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-03-29/pdf/2021-06387.pdf>

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## **Maryland Governor Asks for Elimination of Lottery System and More H-2B Visas to Help Seafood Industry, Others**

On March 23, 2021, Maryland Governor Larry Hogan sent a letter to Alejandro Mayorkas, Secretary of Homeland Security, and Marty Walsh, Secretary of Labor, asking for elimination of the H-2B nonimmigrant visa lottery system and an increase in the number of H-2B visas, now capped annually at 66,000, "to the maximum allowable under federal law and under the legislative language included in the omnibus bill." Of particular concern is Maryland's blue crab harvest season, which started on April 1.

Gov. Hogan said the request was in support of "Maryland's seafood industry and other seasonal employers." He said that H-2B workers are "essential" and "vital to Maryland's seafood industry and market, which has grown to include regional, national, and international reach." He noted that Maryland "has fought" to support the seafood industry during the COVID-19 pandemic and to "find creative ways to protect our markets and workers." A loss of H-2B workers would "negate that work, disrupt an already abnormal supply chain, jeopardize the state's \$355 million seafood industry, and threaten thousands of direct and indirect jobs," he warned, citing research by the University of Maryland indicating that every H-2B temporary worker in crab processing, for example, "helps create an average 2.5 jobs for American citizens." He said that without the temporary workers and an end to the "arbitrary lottery system," iconic family and small businesses could be forced to close.

Details:

- Letter from Gov. Larry Hogan of Maryland, Mar. 23, 2021, [https://governor.maryland.gov/wp-content/uploads/2021/03/H2B-Letter\\_3.21.21.pdf](https://governor.maryland.gov/wp-content/uploads/2021/03/H2B-Letter_3.21.21.pdf)

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## **USCIS to Reopen Naturalization Application and Visa Approval for Melania Trump**

U.S. Citizenship and Immigration Services (USCIS) announced on April 1, 2021, that it plans to reopen Melania Trump's naturalization application and "Einstein" EB-1 visa petition approval based on new information that there was not good and sufficient cause to approve the petition. The visa is intended for those with extraordinary ability and sustained national and international acclaim.

After reportedly entering the United States on a B-1/B-2 visitor visa in 1996 and then obtaining an H-1B visa, Melania applied for the "extraordinary ability" EB-1 visa while dating Donald Trump in 2000. It was approved in 2001. The two married in 2005, and she acquired U.S. citizenship in 2006. She then sponsored her parents, who acquired U.S. citizenship in 2018.

Her attorney said, "There is no doubt that she is highly accomplished. She has been associated with some of the biggest ad campaigns in the world, and she was highly remunerated." When pressed, he could not recall what those campaigns were, but he noted that there were some mighty convincing documents included with the application. "I studied them. I studied them with a magnifying glass. I studied them three-dimensionally," he said emphatically.

Donald—entrepreneur, renowned reality rogue, and now erstwhile President—also vouched for Melania's qualifications. He filed an affidavit in support of her application, stating that she was the most phenomenal model in world history and should have gotten the Nobel Prize, the Pulitzer, and an Oscar by then. He noted that, among other things, she was dating a very



powerful, successful, smart, and rich man: "In fact, I'm like filthy rich. That alone should qualify her," he said, but added that she has many other attributes. "I mean, come on! She's fabulous. Just look at me—I mean her. She looks so good on my arm," he said when interviewed at the time. When asked whether modeling and dating a wealthy and powerful man were sufficient to qualify her for an extraordinary ability visa and how that jibed with his general anti-immigration stance, he said the question was "nasty" and "fake news," and called the questioner a loser.

Asked what prompted the decision to reopen Melania's naturalization case and look into her visa history, an agency spokesperson who wished to remain anonymous said USCIS now is "waking up as if from a long stupor, or a tornado perhaps, rubbing its eyes and looking around at the immigration landscape like a newborn."

Responding to a follow-up question regarding additional details on Melania's case, the spokesperson would only say, "Happy April Fool's Day!"

#### Details:

- "What is the Einstein Visa? And How Did Melania Trump Get One?", BBC News, Mar. 2018, <https://www.bbc.com/news/world-us-canada-43256318>
- "How Did Melania Trump Get U.S. Citizenship?", Jewish Standard, Dec. 22, 2016, <https://jewishstandard.timesofisrael.com/how-did-melania-trump-get-u-s-citizenship/>
- "Melania Trump's 'Einstein' Visa and 'Chain Migration' Detailed in New Book," Mercury News, June 16, 2020, <https://www.mercurynews.com/2020/06/16/melania-trumps-einstein-visa-and-chain-migration-detailed-in-new-book/>

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### **Class Action Filed Against DHS for L-2 and H-4 Processing Delays**

On March 22, 2021, the American Immigration Lawyers Association (AILA) and Wasden Banias, LLP, filed a class action lawsuit against the Department of Homeland Security (DHS), challenging processing delays on extensions of status and employment authorization documents (EADs) for H-4 and L-2 nonimmigrant spouses.

AILA President Jennifer Minear said, "DHS can and must revoke the unnecessary biometrics requirements for H-4 and L-2 nonimmigrants, provide automatic work authorization while DHS processes EAD renewal requests, and allow EAD applicants to file their renewal applications sooner than 180 days prior to EAD expiration to prevent gaps in work authorization."

#### Details:

- AILA press release, <https://www.aila.org/advo-media/press-releases/2021/lawsuit-l2-h4-processing-delays>

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### **USCIS Extends Flexibilities for Responding to Agency Requests**

U.S. Citizenship and Immigration Services (USCIS) has extended flexibilities in response to the ongoing COVID-19 pandemic. USCIS will consider a response to certain requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action. Additionally, the agency will consider a Form N-336 or Form I-290B received up to 60 calendar days from the date of the decision before taking any action. This flexibility applies to the documents if the issuance date listed on the request, notice, or decision is between March 1, 2020, and June 30, 2021, inclusive.

Affected documents include requests for evidence; continuations to request evidence (N-14); notices of intent to deny, revoke, rescind, or terminate regional centers; and motions to reopen an N-400 pursuant to 8 CFR 335.5.

Details:

- USCIS notice, <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-4>

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## **SEVP Reports 2020 Drop in International Student Enrollment**

U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program (SEVP) reported a drop of 72 percent in new international student enrollment in U.S. schools in 2020 as compared to calendar year 2019. Decreases were attributed to the COVID-19 pandemic and Trump-era immigration policies. The annual report, which presents data from the Student and Exchange Visitor Information System, also noted that international students chose business administration as a major most often in 2020, followed by second-language learning and computer science.

Also, according to the report:

- The total number of SEVIS records for active F-1 and M-1 students was 1,251,569 in calendar year 2020, a decrease of 17.86 percent from calendar year 2019.
- There were 122,699 pre- and post-completion optional practical training (OPT) students with an employment authorization document who reported working for an employer in calendar year 2020, compared to 138,898 in calendar year 2019—a nearly 12 percent decrease.
- Chinese student enrollment declined in 2020 compared with 2019 (down by 91,936). Indian student enrollment also decreased (down by 41,761 in 2020 versus 2019).

Details:

- SEVIS by the Numbers, Mar. 22, 2021, <https://www.ice.gov/doclib/sevis/pdf/sevisBTN2020.pdf>
- SEVIS report announcement, <https://studyinthestates.dhs.gov/2021/03/read-the-2020-sevis-by-the-numbers-report>

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## **EOIR Releases New Interactive Policy Manual**

The Executive Office for Immigration Review (EOIR) announced the release of its first interactive policy manual. EOIR said the manual is the "culmination of a multi-year project that represents the agency's first comprehensive review of its policies. This effort involved cross-component collaboration and the dedication of many employees to identify redundancies, clarify ambiguities, eliminate surplusage, and update policies to reflect current law and practice."

EOIR said the manual includes the Immigration Court and Board of Immigration Appeals Practice Manuals, the Office of the Chief Administrative Hearing Officer Practice Manual, and all current agency policy memoranda.

Details:

- EOIR press release, <https://www.justice.gov/eoir/pr/eoir-announces-release-comprehensive-policy-manual>
- EOIR Policy Manual, <https://www.justice.gov/eoir/eoir-policy-manual>

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## **State Dept. Proposes Increase in Passport Security Surcharge**

The Department of State issued a proposed rule on March 26, 2021, to raise the passport security surcharge from \$60 to \$80.

Comments are due by May 25, 2021.

Details:

- Schedule of Fees for Consular Services—Passport Security Surcharge, Proposed Rule, Dept. of State, <https://www.govinfo.gov/content/pkg/FR-2021-03-26/pdf/2021-06263.pdf>

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## **USCIS Issues Guidance on P-1A Internationally Recognized Athletes**

U.S. Citizenship and Immigration Services (USCIS) issued updated policy guidance on internationally recognized athletes (P-1A nonimmigrants). The update in the *USCIS Policy Manual* provides more detailed guidance on the required prospective level of performance and provides USCIS's interpretation of, and examples related to, the undefined regulatory phrase, "major United States sports league or team" as it relates to internationally recognized P-1A athletes.

The guidance clarifies that "major United States sports league" is interpreted as "one that has a distinguished reputation commensurate with an internationally recognized level of performance, and "major United States sports team" means "a team that participates in such a league."

Details:

- USCIS Policy Alert, PA-2021-04, Mar. 26, 2021, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210326-Athletes.pdf>
- USCIS Policy Manual, <https://www.uscis.gov/policy-manual>

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## **House Passes 'Dreamer' and Farmworker Bills; Senate Passage Uncertain**

On March 18, 2021, two immigration-related bills passed in the House of Representatives with bipartisan support. The bills are briefly summarized below:

- The **American Dream and Promise Act (H.R. 6)** passed the House 228-197, with 9 Republicans joining Democrats in voting in favor. The legislation includes provisions to create a pathway to legalization for an estimated 2.5 million "Dreamers" who came to the United States as children, granting conditional permanent residence for 10 years, granting full permanent resident status subject to certain requirements, and canceling removal proceedings for eligible people.

The bill imposes various qualifying requirements for conditional permanent residence, such as the person being continuously physically present in the United States since January 1, 2021, passing a background check, and being enrolled in or having completed certain educational programs. The conditions placed on permanent resident status would be removed if the person applies and meets certain requirements, such as completing certain programs at an educational institution, serving in the military, or being employed. Removal also would be canceled and a path to permanent residence would be provided for certain beneficiaries of temporary protected status or deferred enforced departure.

- The **Farm Workforce Modernization Act (H.R. 1603)** passed the House 247-174, with 30 Republicans joining all but one Democrat in voting in favor. The legislation includes provisions to streamline the H-2A agricultural worker visa process, establish a pathway for eligible farmworkers to obtain permanent residence (green cards), and create temporary status as "Certified Agricultural Workers." Roughly a million farmworkers could be affected by the legislation.

Both bills now head to the Senate, where their fates are uncertain.

#### Details:

- American Dream and Promise Act of 2021 (H.R. 6), <https://www.congress.gov/bill/117th-congress/house-bill/6>
- Farm Workforce Modernization Act of 2021 (H.R. 1603), <https://www.congress.gov/bill/117th-congress/house-bill/1603>
- "House Tackles Biden's Immigration Plans Amid Migrant Influx," New York Times, Mar. 15, 2021, <https://www.nytimes.com/2021/03/15/us/politics/biden-immigration-plan-bill.html> (subscription)
- "House Passes Pair of Immigration Bills Amid Influx of Migrants Crossing U.S.-Mexico Border," CNN Politics, Mar. 18, 2021, <https://www.cnn.com/2021/03/18/politics/house-immigration-vote-bills/index.html>
- "Immigration Bills Passed in the House Face Uncertain Fate in the Senate," CBS News, Mar. 19, 2021, <https://www.cbsnews.com/news/immigration-bills-daca-senate-obstacles/>
- "House Votes to Give Millions of Dreamers and Farmworkers a Path to Citizenship," New York Times, Mar. 18, 2021, <https://www.nytimes.com/2021/03/18/us/politics/biden-immigration.html> (subscription)
- "House Passes Immigration Bill, Creating Pathway to Citizenship for 'Dreamers'," USA Today, Mar. 18, 2021, <https://www.usatoday.com/story/news/politics/2021/03/18/house-passes-immigration-bill-creating-citizenship-pathway-dreamers/4729821001/>
- "Immigration Bill Creating Green Card Process for Farmworkers Passes House, Legislation Now Goes to Senate," USA Today, Mar. 18, 2021, <https://www.usatoday.com/story/news/politics/2021/03/18/house-passes-bill-gives-legal-status-undocumented-farmworkers/4729871001/>

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## **DHS Withdraws Affidavit of Support Proposed Rule**

On March 19, 2021, the Department of Homeland Security (DHS) announced the withdrawal of a proposed rule, "Affidavit of Support on Behalf of Immigrants," published on October 2, 2020. The agency said that by withdrawing the rule, "DHS aims to reduce barriers and alleviate burdens on American families who wish to sponsor individuals immigrating to the U.S. within the legal immigration system." The withdrawal notice will be published in the Federal Register on March 22, 2021.

The proposed rule would have revised DHS regulations governing affidavit of support requirements. The withdrawal follows an executive order President Biden issued on February 2, 2021, "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans," which revoked a related 2019 presidential memorandum.

### Details:

- DHS announcement, Mar. 19, 2021, <https://www.uscis.gov/news/alerts/dhs-withdraws-affidavit-of-support-proposed-rule>
- Unpublished version of DHS withdrawal notice, to be published on March 22, 2021, <https://public-inspection.federalregister.gov/2021-05427.pdf>
- Executive Order 14012, <https://www.federalregister.gov/documents/2021/02/05/2021-02563/restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts>
- Proposed Rule (Oct. 2, 2020), <https://www.federalregister.gov/documents/2020/10/02/2020-21504/affidavit-of-support-on-behalf-of-immigrants>

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## **EB-5 Reauthorization Bill Introduced in Senate**

On March 18, 2021, Sens. Charles Grassley (R-Iowa) and Patrick Leahy (D-Vt.) introduced the "EB-5 Reform and Integrity Act of 2021," a bill that would reauthorize the EB-5 Regional Center Program, set to expire at the end of June, through 2026. The bill also includes measures to address fraud and national security concerns.

According to statements from Sens. Grassley and Leahy, the bipartisan bill would establish new disclosure requirements for EB-5 regional centers "to protect investors and certify regional center compliance with program rules." It also would require the Department of Homeland Security to perform regular audits of and site visits to regional centers.

### Details:

- Grassley statement, <https://www.grassley.senate.gov/news/news-releases/grassley-leahy-introduce-new-eb-5-investor-visa-integrity-reforms>
- Leahy statement, <https://www.leahy.senate.gov/press/leahy-grassley-introduce-eb-5-investor-visa-integrity-reform-bill>
- Bill text, <https://www.leahy.senate.gov/imo/media/doc/EB-5%20Reform%20and%20Integrity%20Act%202021.pdf>
- Bill summary, <https://www.grassley.senate.gov/imo/media/doc/EB-5%20Reform%20and%20Integrity%20Act%202021%20-%20Summary.pdf>
- IIUSA press release, <https://iiusa.org/blog/press-release-introduction-of-eb-5-reform-and-reauthorization-bill-applauded-by-iiusa-and-cscj/>

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## **Labor Dept. Proposes Further Delay of Effective Date of Prevailing Wage Rule**

On March 12, 2021, the Department of Labor's Employment and Training Administration (ETA) published a final rule delaying until May 14, 2021, the effective date of a rule, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States," which was published January 14, 2021. ETA proposes to further delay the effective date of the rule by 18 months, until November 14, 2022, along with corresponding proposed delays to the rule's transition dates.

The proposed delay notice, which includes a request for comments, will be published in the Federal Register on March 22, 2021.

### Details:

- Advance copy of proposed delay notice, <https://public-inspection.federalregister.gov/2021-05847.pdf>

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## **Registration Period Opens for TPS for Syrians**

The Department of Homeland Security (DHS) has extended and redesignated Syria for temporary protected status (TPS) for 18 months, effective March 31, 2021, through September 30, 2022. The 60-day re-registration period began March 19, 2021, and runs through May 18, 2021.

U.S. Citizenship and Immigration Services (USCIS) is automatically extending the validity of employment authorization documents (EADs) previously issued under the TPS designation of Syria for 180 days, through September 27, 2021. USCIS will issue new EADs with a September 30, 2022, expiration date to eligible Syrian TPS beneficiaries who timely re-register and apply for EADs during the re-registration period.

The extension allows approximately 6,700 current beneficiaries to re-register and retain TPS through September 30, 2022, as long as they otherwise continue to meet the TPS eligibility requirements. The re-designation of Syria allows an estimated 1,800 additional individuals who have been continuously residing in the United States since March 19, 2021, and continuously physically present in the United States since March 31, 2021, to file initial applications to obtain TPS if they are otherwise eligible, USCIS said.

### Details:

- USCIS release, <https://www.uscis.gov/news/news-releases/registration-period-opens-for-temporary-protected-status-tps-for-syria>
- Federal Register notice, Mar. 19, 2021, <https://www.federalregister.gov/documents/2021/03/19/2021-05715/extension-and-redesignation-of-syria-for-temporary-protected-status>

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## **USCIS Stops Applying Public Charge Final Rule to All Pending Applications and Petitions**

U.S. Citizenship and Immigration Services (USCIS) stopped applying the public charge final rule to all pending applications and petitions on March 9, 2021. The agency removed content related



to the vacated rule from the affected USCIS forms and posted updated versions of affected forms.

Starting April 19, 2021, USCIS will accept only the 03/10/21 edition of these forms: I-864, I-864A, I-864EZ, I-864W; I-539, I-539A; I-129CW, I-129CWR; I-129; I-485, I-485A, I-485J; and I-912.

Details:

- USCIS alert, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>
- USCIS final rule, Mar. 15, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-03-15/pdf/2021-05357.pdf>
- Litigation summary, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/inadmissibility-on-public-charge-grounds-final-rule-litigation>
- USCIS forms, <https://www.uscis.gov/forms/all-forms>

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### **CBP Extends Temporary Travel Restrictions Between U.S. and Canada/Mexico**

U.S. Customs and Border Protection announced that temporary travel restrictions between the United States and Canada, and between the United States and Mexico, at land ports of entry along the border (including passenger ferry services and pleasure boat travel) will remain in effect through April 21, 2021. Travel will be limited to that deemed "essential," due to continued transmission of the virus associated with the COVID-19 pandemic.

Details:

- Federal Register notice re U.S.-Canada travel restrictions, <https://www.govinfo.gov/content/pkg/FR-2021-03-19/pdf/2021-05878.pdf>
- Federal Register notice re U.S.-Mexico travel restrictions, <https://www.govinfo.gov/content/pkg/FR-2021-03-19/pdf/2021-05877.pdf>

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### **DHS Rescinds Public Charge Rule, Withdraws Appeals of Injunctions Blocking It**

The Department of Homeland Security (DHS) rescinded regulations resulting from a final rule issued in August 2019 that was vacated by a federal district court. Under the now-rescinded rule, the government could deny applications for green cards, temporary nonimmigrant status, and naturalization if the government found they relied on—or were at risk of relying on—public benefits. The Biden administration also withdrew the federal government's appeals of injunctions blocking the DHS public charge rule. However, 11 Republican-led states said that they plan to ask courts to continue the litigation.

USCIS will issue updated guidance on affected forms. In the interim, USCIS said it will not reject any Form I-485 based on the inclusion or exclusion of Form I-944, and will not reject Forms I-129, I-129CW, I-539, or I-539A based on whether the public benefits questions (Forms I-129 (Part 6), I-129CW (Part 6), I-539 (Part 5), and I-539A (Part 3)) have been completed or left blank. Those issued Requests For Evidence (RFEs) and Notices of Intent to Deny (NOIDs) will not need to submit information or documents solely as required by the public charge rule. However, all other requests raised in the RFE/NOID must be answered.

#### Details:

- "DHS Secretary Statement on the 2019 Public Charge Rule," USCIS, Mar. 9, 2021, <https://www.uscis.gov/news/news-releases/dhs-secretary-statement-on-the-2019-public-charge-rule>
- Final Rule: Inadmissibility on Public Charge Grounds; Implementation of Vacatur, <https://bit.ly/3cuVnJG>
- USCIS guidance, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>
- Joint Stipulation to Dismiss, *DHS v. State of New York*, <https://bit.ly/3cspEsn>
- "States Seek to Take Over Defense of 'Public Charge' Rule," Reuters, Mar. 11, 2021, <https://www.reuters.com/article/immigration-publiccharge/states-seek-to-take-over-defense-of-public-charge-rule-idUSL1N2L93DH>

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### **State Dept. Releases Guidance for Those Previously Refused Visas Under Travel Bans**

On March 10, 2021, the Department of State issued guidance in response to President Biden's signing of two proclamations on January 20, 2021, that ended travel bans on certain nationals, based on visa type, from Burma, Eritrea, Iran, Kyrgyzstan, Libya, Nigeria, North Korea, Somalia, Sudan, Syria, Tanzania, Venezuela, and Yemen.

Following the Department's review, eligible immigrant visa applicants whose entry was refused previously under the travel bans and who did not qualify for waivers before January 20, 2020, may submit new visa applications. Those whose entry was refused under the bans and were determined not to qualify for a waiver on or after January 20, 2020, may request their local embassy or consulate to reconsider their cases within one year of the date of waiver refusal without submitting a new application or fee.

Nonimmigrant visa applicants whose entry was refused previously due to the travel bans and who did not qualify for waivers may submit new visa applications.

The Department can immediately process visa applications for eligible individuals from the affected countries. However, local U.S. embassies or consulates may not be able to schedule all affected applicants for visa interviews immediately due to COVID-19-related restrictions. Applicants should consult the website of their nearest U.S. embassy or consulate to determine if their cases qualify for expedited processing.

#### Details:

- Rescission of Presidential Proclamations 9645 and 9983, Dept. of State, Mar. 10, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/rescission-of-presidential-proclamations-9645-and-9983.html>

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### **State Dept. Extends Expansion of Interview Waiver Eligibility**

The Department of State, in consultation with the Department of Homeland Security, extended until December 31, 2021, a temporary expansion of the ability of consular officers to waive the in-person interview requirement for individuals applying for a nonimmigrant visa in the same classification to those whose nonimmigrant visas expired within 48 months. The temporary policy was due to expire March 31, 2021.

Previously, only those applicants whose nonimmigrant visas expired within 24 months were eligible for interview waivers. This change "will allow consular officers to continue processing certain nonimmigrant visa applications while limiting the number of applicants who must appear at a consular section, thereby reducing the risk of COVID-19 transmission to other applicants and consular staff," the Department of State said. Travelers should review the website of the nearest U.S. embassy or consulate for details on available services and eligibility information and instructions on applying for a visa without an interview.

Details:

- "Expansion of Interview Waiver Eligibility," Dept. of State, Mar. 11, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/expansion-of-interview-waiver-eligibility.html>

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## **USCIS May Reopen H-1B Petitions Denied Under Three Rescinded Policy Memos**

U.S. Citizenship and Immigration Services (USCIS) announced on March 12, 2021, that it may reopen and/or reconsider adverse H-1B decisions on Form I-129, Petition for a Nonimmigrant Worker, that were made based on three rescinded policy memoranda. USCIS said it "will generally use its discretion to accept a motion to reopen filed more than 30 days after the decision, if filed before the end of the validity period requested on the petition or labor condition application, whichever is earlier, and the decision was based on one or more policies in the rescinded H-1B memoranda below." The rescinded memos include:

- "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements (Reference AFM Chapter 31.3(g)(16))," HQ 70/6.2.8 [AD 10-24] (Jan. 8, 2010)
- "Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites," [PM-602-0157](#) (Feb. 22, 2018)
- "Rescission of the December 22, 2000 'Guidance memo on H1B computer related positions'," [PM-602-0142](#) (Mar. 31, 2017)

USCIS made the rescissions in memoranda issued on June 17, 2020, and on February 3, 2021.

Details:

- "USCIS May Reopen H-1B Petitions Denied Under Three Rescinded Policy Memos," USCIS, Mar. 12, 2021, <https://www.uscis.gov/news/alerts/uscis-may-reopen-h-1b-petitions-denied-under-three-rescinded-policy-memos>
- USCIS June 17, 2020, memorandum, PM-602-0114, [https://www.uscis.gov/sites/default/files/document/memos/PM-602-0114\\_ITServeMemo.pdf](https://www.uscis.gov/sites/default/files/document/memos/PM-602-0114_ITServeMemo.pdf)
- USCIS February 3, 2021, memorandum, PM-602-0142.1, [https://www.uscis.gov/sites/default/files/document/memos/PM-602-0142.1\\_RescissionOfPM-602-0142.pdf](https://www.uscis.gov/sites/default/files/document/memos/PM-602-0142.1_RescissionOfPM-602-0142.pdf)

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## **ABIL Asks for Withdrawal of H-1B Lottery Rule Prioritizing Wages; DHS Delays Effective Date Until May 14**

The Alliance of Business Immigration Lawyers (ABIL) formally submitted a comment asking the Department of Homeland Security (DHS) to withdraw its final rule prioritizing wages in adjudicating H-1B applications.

ABIL said the final rule "would unlawfully and unjustifiably give preference to workers who earn higher wages, despite the fact that these wages are drawn from limited federal data sources" that are "not designed for application to the H-1B visa program, and bear no relation to the value a highly skilled worker adds to the United States." ABIL believes that because of the wide variety of occupational categories into which H-1B beneficiaries may fall, the use of wage data as a proxy for high skills and qualifications "will not accomplish the outcomes DHS desires" and instead "will unfairly discriminate against and burden law-abiding employers," particularly small and medium-size businesses that will find the H-1B program unaffordable as a result.

ABIL also warned that the final rule is likely to "cause more work to be commissioned offshore" and thus undermine opportunities for U.S. workers along with the Biden administration's desire that more work be performed in the United States.

On March 12, 2021, DHS delayed the effective date of the wage rule until May 14, 2021. DHS said the 60-day delay would allow the agency to "review any questions of fact, law, or policy."

### Details:

- Comment Submitted by Alliance of Business Immigration Lawyers, Mar. 10, 2021, <https://www.regulations.gov/comment/USCIS-2020-0019-1279>
- Notice delaying effective date of final rule, DHS, <https://www.govinfo.gov/content/pkg/FR-2021-03-12/pdf/2021-05269.pdf>

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## **Lawsuit Challenges USCIS Rejections of H-1B Petitions Filed After October 1**

The American Immigration Council (AIC) sued on March 11, 2021, in federal court on behalf of seven U.S. employers whose H-1B petitions were rejected. The lawsuit challenges U.S. Citizenship and Immigration Services' (USCIS) "arbitrary and capricious refusal to accept timely and properly filed H-1B petitions" subject to the annual cap.

AIC said USCIS rejected the petitions filed after October 1 "simply because the H-1B worker's intended employment start date—naturally—also fell after October 1." Based on this timeline, AIC said, "USCIS created an absurd choice: foreign workers needed to start on October 1 (and not a day later), or the U.S. employer had to misrepresent the intended employment start-date by 'back-dating' the petition." In fact, AIC noted, USCIS had accepted some with an employment start date after October 1 without issue.

### Details:

- "Challenging USCIS' Arbitrary Rejections of Petitions Filed After October 1," American Immigration Council, <https://www.americanimmigrationcouncil.org/litigation/challenging-uscis%E2%80%99-arbitrary-rejections-h-1b-petitions-filed-after-october-1>
- Complaint, <https://bit.ly/30DKhfF>

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## **DHS Designates Venezuela, Burma for TPS for 18 Months**

The Department of Homeland Security (DHS) has designated Venezuela and Burma for temporary protected status (TPS) for 18 months.

### **Venezuela TPS**

Venezuela has been designated for TPS until September 2022. The 180-day registration period for eligible individuals to submit TPS applications began March 9, 2021, and is effective through September 5, 2021. DHS said the designation is due to "extraordinary and temporary conditions in Venezuela" that prevent its nationals from returning safely, "including a complex humanitarian crisis marked by widespread hunger and malnutrition, a growing influence and presence of non-state armed groups, repression, and a crumbling infrastructure."

The new TPS designation for Venezuela enables eligible Venezuelan nationals (and individuals without nationality who last resided in Venezuela) currently residing in the United States to file initial applications for TPS. Only those who can demonstrate continuous residence in the United States as of March 8, 2021, are eligible for TPS under Venezuela's designation. A Federal Register notice provides additional details on how and when to apply for TPS and related employment authorization.

The notice also provides information about Deferred Enforced Departure (DED) for eligible Venezuelan nationals (and persons without nationality who last habitually resided in Venezuela), and explains how eligible individuals may apply for DED-related employment authorization with USCIS, based on the January 19, 2021, memorandum from former President Donald Trump directing the Secretary to take appropriate measures for the implementation of DED for Venezuelan nationals for 18 months, through July 20, 2022.

### **Burma TPS**

The new designation of Burma for TPS, which DHS said was in response to a military coup and security forces' violence against civilians that is causing a "complex and deteriorating humanitarian crisis," enables eligible Burmese nationals (and individuals without nationality who last habitually resided in Burma) currently residing in the United States to file initial applications for TPS. For Burma, only those who can demonstrate continuous residence in the United States as of March 11, 2021, will be eligible for TPS under Burma's 18-month designation. An upcoming Federal Register notice will provide additional details on how and when to apply for TPS and related employment authorization.

#### Details:

- "Secretary Mayorkas Designates Venezuela for Temporary Protected Status for 18 Months," USCIS, Mar. 8, 2021, <https://www.uscis.gov/news/news-releases/secretary-mayorkas-designates-venezuela-for-temporary-protected-status-for-18-months>
- "Secretary Mayorkas Designates Burma for Temporary Protected Status," USCIS, Mar. 12, 2021, <https://www.dhs.gov/news/2021/03/12/secretary-mayorkas-designates-burma-temporary-protected-status>
- Federal Register notice on Venezuela TPS, Mar. 9, 2021, <https://www.federalregister.gov/documents/2021/03/09/2021-04951/designation-of-venezuela-for-temporary-protected-status-and-implementation-of-employment>

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## State Dept. Launches Monthly Live "Chats with Charlie" re Visa Bulletin

The Department of State's Visa Bulletin for April 2021 announced the launch of live monthly "Chats with Charlie." @TravelGov will begin hosting "Chats with Charlie" on its YouTube channel (<https://www.youtube.com/user/TravelGov>) to discuss information provided in the monthly Visa Bulletin.

Questions can be emailed to [VisaBulletin@state.gov](mailto:VisaBulletin@state.gov) ahead of the event with "Chat with Charlie Question" in the subject line. Questions will also be taken via the YouTube Live Chat feature and will be answered in real time. The Department said the event is intended to address issues of general interest related to the content of the Visa Bulletin. No policy, case, or post-specific questions will be accepted.

### Details:

- April 2021 Visa Bulletin, Dept. of State, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-april-2021.html>

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## ABIL Global: Canada

*There are new pandemic-related rules for travel across the land border and by air.*

### New COVID-19 Travel Rules

The federal government announced new COVID-19 pandemic-related travel rules in February:

#### Travel Across the Land Border

Non-essential travelers (such as returning "snowbirds") must show proof of a negative COVID-19 test taken no longer than 72 hours earlier. In addition to the pre-departure COVID test, another COVID test will be administered at the land border. The traveler can then continue to the planned place of quarantine and must self-administer another COVID test during the 14-day quarantine. The self-test kit will be provided at the border.

#### Travel by Air

In addition to the pre-departure COVID test taken 72 hours before boarding a flight to Canada, all individuals, Canadians included, must take a test upon arrival at the first Canadian airport. They must then wait for the test result at a hotel on the official list and cover the cost of up to CA \$2,000 for the hotel (prices will vary) and testing. The hotel must be booked before boarding the plane to Canada. Upon receipt of the test result, they may travel to their final quarantine destination for the remaining days (14 days total) and must self-administer another COVID test. The self-test kit will be provided at the airport. The following details also apply:

- The hotel must be booked at the first Canadian airport, meaning that a traveler who has a layover in Canada before their final destination must remain at the transit airport hotel until the test comes back negative. Only then can the final leg of the journey be completed.
- There is no exemption for vaccinated travelers.
- It is expected that the current exemptions (e.g., for medical personnel and essential workers) will remain valid, but this has not yet been confirmed.



- Flights on Canadian airlines to and from Mexico and the Caribbean remain suspended until April 30, 2021.

ArriveCAN remains mandatory for airport and land border arrivals. See

<https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19/arrivecan.html>

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## New Publications and Items of Interest

USCIS listening session on 2021 H-2B supplemental visas. U.S. Citizenship and Immigration Services (USCIS) invites stakeholders to a listening session on April 8, 2021, from 2 to 3:30 pm ET, to provide feedback on § 105 of the Consolidated Appropriations Act, 2021, which authorizes the Department of Homeland Security, in consultation with the Department of Labor, to increase the number of H-2B visas available to U.S. employers. USCIS said it hopes to solicit information on the current needs of U.S. employers in light of the COVID-19 public health emergency, possible worker protection options, and the effect that any potential increase in the number of H-2B workers may have on U.S. workers. <https://www.uscis.gov/outreach/2021-h-2b-nonimmigrant-worker-supplemental-visas>

New E-Verify feature. A new E-Verify feature, myUploads, allows employees to upload required documents in JPEG, PNG, or PDF formats to help resolve Tentative Nonconfirmations (TNCs). Employees can access their myE-Verify accounts by logging into their USCIS online accounts and uploading the requested documents. They can still use fax or mail to submit documents if they prefer. The employer should provide the Further Action Notice (FAN) to the affected employee, discuss the TNC privately with the employee, and allow the employee to decide whether he or she will contest the TNC. The FAN includes the steps for using myUploads to help resolve a DHS TNC. Once uploaded, the employee must call the number on the FAN to resolve the case. <https://myeverify.uscis.gov/>

New SAVE features. Systematic Alien Verification for Entitlements (SAVE) is enhancing its case search capabilities, including improved usability through a search bar and other features, and a more robust case search engine. SAVE will notify users by email at least three weeks before the go-live date for enhancements.

<https://save.uscis.gov/web/media/resourcesContents/SAVESearchCasesTipSheet.pdf>

COVID-19 resources. The response of the U.S. immigration agencies to the coronavirus (COVID-19) pandemic is constantly evolving, making it difficult to report relevant, up-to-date information. The list of online resources below is intended to serve as a quick reference to the most current available agency information.

### General Information

- [Coronavirus.gov](https://www.coronavirus.gov): Primary federal site for general coronavirus information
- [USA.gov/coronavirus](https://www.usa.gov/coronavirus): Catalog of U.S. government's response to coronavirus
- [CDC.gov/coronavirus](https://www.cdc.gov/coronavirus): Centers for Disease Control and Prevention information
- American Immigration Lawyers Association: <https://www.aila.org/advo-media/issues/all/covid-19> (links to practice alerts on this site are restricted to members)
- NAFSA: <https://www.nafsa.org/regulatory-information/coronavirus-critical-resources>

### Immigration Agency Information

**Department of Homeland Security:** [DHS.gov/coronavirus](https://www.dhs.gov/coronavirus)

- <https://www.dhs.gov/coronavirus-news-updates>
- <https://www.dhs.gov/news/2020/03/17/fact-sheet-dhs-notice-arrival-restrictions-china-iran-and-certain-countries-europe>
- USCIS: [USCIS.gov/coronavirus](https://www.uscis.gov/coronavirus)
- ICE:
  - Overview and FAQs: <https://www.ice.gov/coronavirus>

- Requirements for ICE Detention Facilities: <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>
- CBP:
  - Updates and Announcements: <https://www.cbp.gov/newsroom/coronavirus>
  - Accessing I-94 Information: <https://i94.cbp.dhs.gov/i94/#/home>

#### **Department of Labor:**

- Office of Foreign Labor Certification:
  - OFLC Announcements (COVID-19 announcements included here): <https://www.foreignlaborcert.doleta.gov/>
  - COVID-19 FAQs:
    - Round 1 (Mar. 20, 2020): [https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC\\_COVID-19\\_FAQs\\_Round%201\\_03.20.2020.pdf](https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf)
    - Round 2 (Apr. 1, 2020): [https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC\\_COVID-19\\_FAQs\\_Round%202\\_04.01.2020.pdf](https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%202_04.01.2020.pdf)
    - Round 3 (Apr. 9, 2020): [https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC\\_COVID-19\\_FAQs\\_Round%203.pdf](https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%203.pdf)

#### **State Department:** <https://www.state.gov/coronavirus/>

- Travel advisories: <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>
- Country-specific information: <https://travel.state.gov/content/travel/en/traveladvisories/COVID-19-Country-Specific-Information.html>
- J-1 exchange visitor information: <https://j1visa.state.gov/covid-19/>

#### **Justice Department**

- Executive Office for Immigration Review: <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>

#### **Agency Twitter Accounts**

- EOIR: @DOJ\_EOIR
- ICE: @ICEgov
- Study in the States: @StudyinStates
- USCIS: @USCIS

Immigrant and employee rights webinars. The Department of Justice's Immigrant and Employee Rights Section (IER), of the Civil Rights Division, is offering a number of free webinars for workers, employers, and advocates. For more information, see <https://www.justice.gov/crt/webinars>.

E-Verify webinar schedule. E-Verify has released its calendar of webinars at [https://www.e-verify.gov/calendar-field\\_date\\_and\\_time/month](https://www.e-verify.gov/calendar-field_date_and_time/month).

#### Alliance of Business Immigration Lawyers:

- ABIL is available on Twitter: @ABILImmigration
- Recent ABIL member blogs are at <http://www.abilblog.com/>

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## **ABIL Member/Firm News**

**Klasko Immigration Law Partners, LLP**, has released the first episode, "Strategies for Resolving EB-5 Problems Series, Part 1: Project Problems," in a three-part podcast series on the EB-5 immigrant investor program. This episode covers issues related to investment projects. <https://bit.ly/2Nx8xx8>

**Charles Kuck** (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) was quoted by Bloomberg Law in "Their Papers Mired in Pandemic Backlog, Visa Seekers Go to Court." Mr. Kuck said that delays abroad have prompted EB-5 immigrant investors to join a third class action lawsuit that will be filed imminently. <https://news.bloomberglaw.com/daily-labor-report/their-papers-mired-in->

[pandemic-backlog-visa-seekers-go-to-court](#)

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) and **Kaitlyn Box** co-authored a new blog posting: "End the Arbitrary H-1B Lottery and Visa Quotas – and Other Practical Considerations for the Winners!" <http://blog.cyrusmehta.com/2021/04/end-the-arbitrary-h-1b-lottery-and-visa-quotas-and-other-practical-considerations-for-the-winners.html>

**Mr. Mehta** was quoted by *India West* in "To the Relief of H-1B Workers, Biden Lets Trump's Ban on Foreign Workers Expire." Mr. Mehta called for an overhaul of the H-1B program in a March 27, 2021, tweet quoted by the article: "The H-1B lottery—a game of chance—is an inappropriate way for U.S. employers to hire skilled foreign workers. Quotas and lotteries have no place in a modern immigration system. Let talent and skills freely come to the U.S." <https://bit.ly/3rLbIVv>

**Mr. Mehta** has authored a new blog posting: "CSPA Triumphs in Cuthill v. Blinken: Child of Parent Who Naturalizes Should Not Be Penalized." <http://blog.cyrusmehta.com/2021/03/cspa-triumphs-in-cuthill-v-blinken-child-of-parent-who-naturalizes-should-not-be-penalized.html>

**Mr. Mehta** was quoted by *India West* in "President Biden Unlikely to Rescind Trump's H-1B Ban." He said, "The optics aren't great. Biden hasn't taken any actions to rescind it, possibly because of push-back from organized labor and a thrashing from Republicans. Biden needs support to pass a stimulus bill." [https://www.indiawest.com/news/business/president-biden-unlikely-to-rescind-trump-s-h-1b-ban/article\\_ed7563ea-7fe6-11eb-92fa-6378f2d25fce.html](https://www.indiawest.com/news/business/president-biden-unlikely-to-rescind-trump-s-h-1b-ban/article_ed7563ea-7fe6-11eb-92fa-6378f2d25fce.html)

**Mr. Mehta** was quoted by *American Bazaar* in "H-1B Visa Holders Seek Extension of 60-Day Grace Period After Job Loss Due to Pandemic." He said, "Biden should at least allow the H-1B ban to lapse on March 31 even though he does not rescind it before the date. Although it would be powerful if he affirmatively rejects the ban any time from now till March 31." <https://www.americanbazaaronline.com/2021/03/11/h-1b-visa-holders-seek-extension-of-grace-period-due-to-job-losses-444512/?amp>

**David Isaacson**, of **Cyrus D. Mehta & Partners, PLLC**, authored a new blog posting: "The Law Does Not Compel the Impossible – Or Does It?: Matter of C-C- and Awuku Asare v. Garland." <http://blog.cyrusmehta.com/2021/03/the-law-does-not-compel-the-impossible-or-does-it-matter-of-c-c-and-awuku-asare-v-garland.html>

**Wolfsdorf Rosenthal LLP** published several blog postings: "Celebrating Women Empowered," "E-Verify Update: Watch Your State's Requirements," and "Weekly Immigration Update." <https://wolfsdorf.com/blog/>

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted by *Veja* in "Kamala Harris' First Major Mission: The Problem Is Not Simple: Finding a Solution for the Crowds of Immigrants Who Accumulate at the Border in Search of the American Dream." He noted that Ms. Harris's role "highlights the importance of the mission to untie the immigration knot, but it is a difficult task." He added that it "will take a long time to stabilize Central American economies and create a safer environment from which people don't feel they have to flee for their lives." <https://veja.abril.com.br/mundo/a-primeira-grande-missao-de-kamala-harris/> [Portuguese]

**Mr. Yale-Loehr** co-authored a blog: "Overcoming Polarization: How to Talk with Immigration Opponents." <https://inclusion.americanimmigrationcouncil.org/content/overcoming-polarization-how-talk-immigration-opponents>

**Mr. Yale-Loehr** was quoted by *Univision* in "Titles 8 and 42, the Invisible Wall for Thousands of Immigrants Seeking Asylum in the United States." He said, "The term 'border crisis' is exaggerated and too simplistic. In general, undocumented immigration to the United States is lower now than 20 years ago." However, he noted an increase in unaccompanied children in part because former President Trump "refused to let them enter the country" to apply for asylum. "In the short term, we can deal with that by increasing the bed spaces for them (in processing centers) and placing more asylum agents at the border to decide their cases faster," he said. But in the long term, "we need to work with Central American governments to stabilize

their economies and reduce gang violence, so that people do not feel the need to come to the United States." <https://www.univision.com/noticias/inmigracion/titulos-8-42-muro-invisible-trunca-suenos-inmigrantes-buscan-asilo-eeuu> [Spanish]

**Mr. Yale-Loehr** presented a webinar on how to overcome immigration polarization on March 19, 2021, as part of the Cornell Advocacy Project's four-part speaker series, "Speak Now." Mr. Yale-Loehr discussed how issues of immigration have fractured along party lines and how that trend can be reversed. Topics included how and why immigration issues are polarized, how to advocate for those fighting within politically polarized immigration systems, and strategies for engaging in discussion with those who hold opposing views on immigration.

<https://www.youtube.com/watch?v=VwdCR698Nol> (video);

[https://open.spotify.com/episode/7B6fMLTTcksOmGddaekmyT?si=PcYO44H5QjqEzd0vGYwU\\_g&nd=1](https://open.spotify.com/episode/7B6fMLTTcksOmGddaekmyT?si=PcYO44H5QjqEzd0vGYwU_g&nd=1) (podcast)

**Mr. Yale-Loehr** was quoted by *Inside Higher Ed* in "Dream Derailed Leads to Lawsuit Against Berkeley." The article discusses a lawsuit filed by a former international student of law at the University of California, Berkeley, for allegedly misinforming him of a deadline for applying for work authorization and costing him his "dream job" in New York and his right to remain in the United States, an error that ultimately led to his being arrested in shackles and handcuffs by U.S. immigration enforcement agents and escorted to a plane bound for Brazil, his home country. "We're generally seeing an increase in OPT [Optional Practical Training] denials for a variety of reasons. That is causing consternation for both international students and international offices at universities. I think that international student advisers feel torn because technically it's the student's responsibility to make sure that applications are filed on time, and the application is technically filed by the student, not by the school, so the school cannot be making sure that all applications are filed by the students in a timely manner. Schools do their best most of the time to educate students about all aspects of OPT applications, including filing deadlines, but ultimately it is the student's responsibility to make sure that the application is filed on time," Mr. Yale-Loehr said. <https://www.insidehighered.com/news/2021/03/19/former-international-student-who-lost-dream-job-sues-berkeley-alleging-negligence>

**Mr. Yale-Loehr** was quoted by *USA Today* in "Immigration was a Scorching Topic at the Supreme Court Last Year. With Trump Gone, That's Changed." The article notes that "[p]ending immigration cases stemming from the Obama administration are in part a function of the years it takes for disputes to work their way through the courts. But it also underscores that many of the technical aspects of immigration enforcement don't change much from president to president—despite the rhetoric from both parties." Mr. Yale-Loehr said, "People may think, 'Oh, well, now the government is always going to be trying to find ways to help immigrants' and that's not the case. You see that in some of these cases...where the government is still appealing to the Supreme Court on these technical but important issues."

<https://www.usatoday.com/story/news/politics/2021/03/12/donald-trump-has-left-supreme-court-immigration-cases-went-him/4633025001/>

**Mr. Yale-Loehr** will present a webinar on how to overcome immigration polarization on Friday, March 19, 2021, at 4:30 pm ET, as part of the Cornell Advocacy Project's four-part speaker series, "Speak Now." Mr. Yale-Loehr will discuss how issues of immigration have fractured along party lines and how that trend can be reversed. Topics include how and why immigration issues are polarized, how to advocate for those fighting within politically polarized immigration systems, and strategies for engaging in discussion with those who hold opposing views on immigration. For more information or to register, see

<https://ecornell.cornell.edu/keynotes/overview/K031921/>

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## Government Agency Links

*Follow these links to access current processing times of the USCIS Service Centers and the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:*

**USCIS case processing times online:** <https://egov.uscis.gov/processing-times/>

**Department of State Visa Bulletin:** <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>

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## About ABIL

*The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 390 member lawyers and their more than 1,100 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.*

*The Alliance of Business Immigration Lawyers' website is at <http://www.abil.com/>. ABIL is also on Twitter: @ABILImmigration.*

### **Disclaimer/Reminder**

*This email does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.*

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