

IMMIGRATION INSIDER

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Headlines:

House Budget Reconciliation Bill Retains High-Skilled Immigrant Provisions, Would Impose Fee Increases – The House of Representatives' draft social spending bill contains several immigration measures, including provisions paving the way for high-skilled scientists and engineers, and raising immigration-related fees.

CDC Issues Order for Negative Pre-Departure COVID-19 Test or Documentation of Recovery from COVID-19 for All Arriving Air Passengers – The Centers for Disease Control and Prevention issued an order, effective November 8, 2021, requiring air passengers two years of age and older boarding flights to the United States to present documentation related to COVID-19 testing or recovery.

Labor Dept. Responds to Stakeholder Requests to Raise H-2B Visa Cap for First Half of FY 2022 – The Department noted that it reached the congressionally mandated cap of 33,000 H-2B visas on September 30, 2021.

USCIS Expands Credit Card Payment Pilot Program to California Service Center – The California Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, for petitioners filing Form I-129, Petition for a Nonimmigrant Worker, for O and P nonimmigrants.

Justice Dept. Settles With Construction Company to Resolve Immigration-Related Discrimination Claims – Under the settlement, Priority Construction will pay \$40,600 in civil penalties and conduct enhanced U.S. worker recruitment and advertising for future positions. The settlement also requires Priority Construction to be subject to monitoring and reporting requirements and train employees on how to avoid discrimination.

President Biden Replaces Country-by-Country Pandemic-Related Air Travel Restrictions With Vaccine Requirement – Effective November 8, 2021, a new Presidential Proclamation that governs the entry into the United States by air of "noncitizen nonimmigrants" revokes previous country-by-country restrictions applied during the COVID-19 pandemic and replaces them with a vaccination requirement.

Settlement Agreement Outlines 'New, Overarching' Guidance for H-1B Petitions for Market Research Analysts – USCIS reached a settlement agreement in the case of *MadKudu Inc. v. USCIS* that the agency said "outlines new, overarching guidance" for adjudicating pending or future H-1B petitions for market research analysts.

USCIS Releases E-Verify Updates on Referred TNCs and Open Cases – E-Verify will begin updating some referred Social Security number tentative nonconfirmations with final responses.

USCIS Expands Guidance on Supporting Evidence for Liberian Refugee Immigration Fairness Applications; Deadline is Dec. 20 – USCIS has clarified steps applicants must take if they cannot submit primary evidence of Liberian nationality to support an LRIF-based application for adjustment of status.

DHS Terminates Migrant Protection Protocols – Alejandro Mayorkas, Secretary of Homeland Security, announced the termination of the MPP, a controversial program under which undocumented migrants seeking admission to the United States via Mexico must await their court proceedings in Mexico.

DHS Issues New Guidelines on Avoiding Enforcement Actions in or Near 'Protected Areas' – A non-exhaustive list of protected areas includes schools; medical or mental health care facilities; places of worship or religious study; places where children gather; social services facilities; places where disaster or emergency services are provided; funerals; weddings; and ongoing parades, demonstrations, or rallies.

DHS Continues Travel Restrictions at Land Border Ports of Entry With Mexico – DHS will continue to temporarily limit non-essential travel of individuals from Mexico into the United States at land ports of entry along the U.S.-Mexico border until January 21, 2022.

DOJ, DOL Reach Settlements With Facebook Resolving Claims of Discrimination Against U.S. Workers – The Departments of Justice and Labor released a joint statement on October 19, 2021, announcing separate settlement agreements with Facebook regarding its use of the permanent labor certification program.

USCIS Implements Employment Authorization for Individuals Covered by Deferred Enforced Departure for Hong Kong Residents – USCIS released information on how to apply for employment authorization for eligible Hong Kong residents covered under President Biden's memorandum allowing DED through February 5, 2023.

USCIS Accepts Credit Card Payments From Petitioners for O and P Nonimmigrant Workers – As part of its credit card payment pilot program, U.S. Citizenship and Immigration Services' Vermont Service Center is now accepting credit card payments from petitioners filing Form I-129, Petition for a Nonimmigrant Worker, for O and P nonimmigrants. The program is also in operation at the Nebraska and Texas Service Centers.

DHS Announces Fully Vaccinated Travelers From Canada and Mexico Will Be Allowed to Enter United States at Land Borders and Ferry Crossings – The modifications will occur in two phases over the next few months.

India and China EB-3 Dates Retrogress in November 2021 Visa Bulletin – The Department of State's Visa Bulletin for November 2021 is causing consternation and raising queries from beneficiaries trapped in backlogs.

Senate Democrats Review Options for Immigration Provisions in Reconciliation Bill – Senate Democrats are considering various options for including scaled-down immigration provisions in a budget reconciliation bill following rejection by the Senate parliamentarian of proposals for more sweeping changes.

USCIS Reaches H-2B Cap for First Half of FY 2022 – USCIS received enough petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of fiscal year 2022.

DHS Secretary Mayorkas Announces New Immigration Enforcement Priorities – Secretary Mayorkas announced new guidelines for immigration enforcement priorities that focus on national security, public safety, and border security, and emphasize prosecutorial discretion and individual assessment. The new guidelines take effect November 29, 2021.

DHS Ends Mass Worksite Enforcement Operations, Issues Policy Guidance – DHS updated its policies on worksite enforcement to focus on unscrupulous employers. DHS said it no longer conducts mass worksite operations, sometimes called raids.

Court Establishes Timeframe for Processing 9,905 Diversity Visas – A federal court has ordered the Department of State to finish processing 9,905 DV-2020 visas by September 30, 2022.

CIS Ombudsman Releases Tips on Communicating With USCIS Contact Center – Tips include when to reach out to the USCIS Contact Center; where to check case status; when to use online tools; how to submit case inquiries and service requests; what constitutes an emergency; how to expedite a case; how biometrics appointments are scheduled; how to reschedule appointments and interviews; and other advice.

CIS Ombudsman Releases Readout and Q&As From Webinar on Filing for TPS and Concurrent Work Authorization – The CIS Ombudsman released information from its public webinar discussing eligibility, required evidence, and account features for online filing of Form I-821, Application for Temporary Protected Status, and concurrent filing of Form I-765, Application for Employment Authorization.

State Dept. Announces Changes in Vaccination Requirements for Immigrants and Certain Nonimmigrants – All immigrant visa applicants, all K fiancé(e) visa applicants, and nonimmigrant visa applicants who are referred to panel physicians must receive a full COVID-19 vaccine series as part of their medical exam before being issued a visa. The vaccine must be approved through either the WHO or the FDA.

Registration Period Begins for Diversity Visa 2023 Program – Registration for the DV-2023 program began October 6, 2021, and ends Tuesday, November 9, 2021, at noon ET. Applicants must submit entries for the DV-2023 program electronically.

State Dept. Posts Update on Plans for Complying With Diversity Visa Court Orders – The agency is aware of various court orders regarding the reservation of DV-2020 and DV-2021 diversity visas, and will publish guidance on its plans for complying with the orders as the guidance becomes available.

SAVE Publishes Info on Afghan Special Immigrant Conditional Permanent Resident Status and Non-Special Immigrant Parolees – Although some Afghans will continue to be admitted as SI LPRs or provided SI parole, DHS recently started admitting a third category: SI conditional permanent residents.

ABIL Global: Canada – This article discusses recent developments in COVID-19-related border measures.

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House Budget Reconciliation Bill Retains High-Skilled Immigrant Provisions, Would Impose Fee Increases

The House of Representatives' 2,135-page draft budget reconciliation bill retains several immigration measures, including provisions paving the way for high-skilled scientists and engineers, and raising immigration-related fees. It also would provide for up to 10 years of work authorization and protection from removal for undocumented people who have been in the United States since before 2011, \$2.8 billion for the Department of Homeland Security to reduce processing backlogs, and recapturing unused green cards that would otherwise expire each year. It remains to be seen whether the bill will become law. A vote in the House is expected in the next few weeks.

Provisions for High-Skilled Immigrants

The bill's provisions would allow an employee in the backlog of approved legal immigration applications to pay a supplemental fee of \$5,000 and file for adjustment of status without waiting for a priority date to become available.

Fee Increases

Also among the provisions in the bill are several immigration-related fee increases, including a measure to add a supplemental fee of \$500 to existing fees for H-1B petitions, thus further killing the "cheap labor" myth about why companies hire H-1B workers.

According to a study by the National Foundation for American Policy (NFAP) that considered overall costs, "employers pay government-imposed fees and attorney costs of up to \$16,560 for an initial H-1B petition and \$28,620 for the combined cost of an initial H-1B petition and an extension." The new fee would increase the cost further. Mandated H-1B fees primarily fund scholarships for U.S. students and training for U.S. workers, according to NFAP.

Other immigration-related fees that would be imposed by the House budget reconciliation bill, if passed, include:

- \$100 for certain family-sponsored immigrant visa petitions (Form I-130)
- \$800 for each employment-based immigrant visa petition (Form I-140)
- \$15,000 for each employment-based fifth preference petition (Form I-526)
- \$19 for each Form I-94/I-94W issued to nonimmigrants who enter the United States
- \$250 for each F-1 and M-1 nonimmigrant student and J-1 exchange visitor to be paid by the approved educational institution or designated exchange visitor program
- \$500 for each application to replace a legal permanent resident card that has expired or is expiring
- \$500 for each petition for E, H-1B, L, O, or P status (Form I-129)
- \$500 for each application to change or extend nonimmigrant status (Form I-539)
- \$500 for applications for employment authorization (Form I-765) filed by spouses of certain nonimmigrants, students seeking optional practical training, and applicants for adjustment of status
- \$75 for each approved nonimmigrant visa

Details:

- "Build Back Better Act," H.R. 5376 (House budget reconciliation bill), Nov. 3, 2021, <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf>
- Immigration provisions of the budget reconciliation bill, https://judiciary.house.gov/uploadedfiles/judiciary_committee_print.pdf
- Bill section-by-section summary, https://rules.house.gov/sites/democrats.rules.house.gov/files/Section_by_Section_BBB_RCP117-18_.pdf
- "House Bill Keeps Immigration measures for High-Skilled Immigrants," Forbes, Nov. 1, 2021, <https://www.forbes.com/sites/stuartanderson/2021/11/01/house-bill-keeps-immigration-measures-for-high-skilled-immigrants/?sh=2001d4b9168e>
- "New Increase in H-1B Visa Fees Further Shatters 'Cheap Labor' Myth," Forbes, Nov. 1, 2021, <https://www.forbes.com/sites/stuartanderson/2021/11/01/new-increase-in-h-1b-visa-fees-further-shatters-cheap-labor-myth/?sh=20f005c15b15>
- "Employer-Paid H-1B Fees Have Funded Nearly 90,000 College Scholarships; Companies Have Paid \$5 Billion in Government-Mandated Fees to Hire H-1B Visa Holders Since 1999," NFAP press release, April 1, 2019, <https://nfap.com/wp-content/uploads/2019/04/H-1B-Visa-Fees.DAY-OF-RELEASE.April-2019-1.pdf>
- "NFAP Policy Brief: Employer-Paid H-1B Visa Fees for College Scholarships and Job Training," April 2019, <https://nfap.com/wp-content/uploads/2019/04/Employer-Paid-H-1B-Visa-Fees.NFAP-Policy-Brief.April-2019-2.pdf>

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CDC Issues Order for Negative Pre-Departure COVID-19 Test or Documentation of Recovery from COVID-19 for All Arriving Air Passengers

The Centers for Disease Control and Prevention (CDC) issued an order, effective November 8, 2021, requiring air passengers two years of age and older boarding flights to the United States to present:

(1) Paper or digital documentation of a negative pre-departure viral test result for SARS CoV-2, the virus that causes COVID-19, that meets one of the following requirements:

- For passengers who are fully vaccinated against COVID-19, the viral test must be conducted on a specimen collected no more than three days before the flight's departure from a foreign country.
- For passengers not fully vaccinated against COVID-19, the viral test must be conducted on a specimen collected no more than one day before the flight's departure from a foreign country.

Or—

(2) Paper or digital documentation of recovery from COVID-19 in the form of both:

- A positive viral test result conducted on a specimen collected no more than 90 days before the flight; and
- A letter from a licensed health care provider or public health official stating that the passenger has been cleared for travel.

Details:

- CDC notice, 86 Fed. Reg. 61252 (Nov. 5, 2021), <https://www.federalregister.gov/documents/2021/11/05/2021-24388/requirement-for-negative-pre-departure-covid-19-test-result-or-documentation-of-recovery-from>

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Labor Dept. Responds to Stakeholder Requests to Raise H-2B Visa Cap for First Half of FY 2022

In response to stakeholder requests to raise the H-2B visa cap for the first half of fiscal year 2022, the Department of Labor (DOL) noted that it reached the congressionally mandated cap of 33,000 H-2B visas on September 30, 2021. DOL said it encourages employers seeking workers "to visit the almost 2,400 American Job Centers (AJC) nationwide to find and hire talented workers, as well as to train and retain qualified workers." DOL also suggested that employers consider hiring veterans.

DOL also noted that the Secretary of Homeland Security has "time-limited, discretionary authority to increase the H-2B cap beyond the number set forth in the INA after consultation with the Secretary of Labor." DOL said it will "continue working collaboratively with our partners at DHS in an ongoing effort to ensure effective operation of the H-2B program."

Details:

- DOL announcement, Nov. 3, 2021, <https://www.dol.gov/agencies/eta/foreign-labor>

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USCIS Expands Credit Card Payment Pilot Program to California Service Center

As part of U.S. Citizenship and Immigration Services' (USCIS) credit card payment pilot program, the California Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, for petitioners filing Form I-129, Petition for a Nonimmigrant Worker, for O and P nonimmigrants.

At the end of the pilot, USCIS will evaluate the results and determine the next steps for expanding this payment option for other forms or other service centers. USCIS said the goal of this pilot is "to bring USCIS one step closer to accepting digital payments using a credit card at

all service centers." The program is available at the Nebraska, Texas, and Vermont service centers.

Details:

- USCIS alert, Nov. 5, 2021, <https://www.uscis.gov/newsroom/alerts/uscis-expands-credit-card-payment-pilot-program-to-california-service-center>

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Justice Dept. Settles With Construction Company to Resolve Immigration-Related Discrimination Claims

The Department of Justice (DOJ) reached a settlement agreement with Priority Construction Corporation, based in Baltimore, Maryland. The settlement resolves claims that Priority Construction violated the anti-discrimination provision of the Immigration and Nationality Act (INA) by failing to consider workers in the United States (such as U.S. citizens, U.S. nationals, asylees, refugees, and recent lawful permanent residents) for employment opportunities.

DOJ's investigation determined that for at least several months in 2019, Priority Construction discriminated against applicants in the United States by failing to fully and fairly consider them for temporary laborer positions, due to the company's preference for H-2B visa workers. Specifically, Priority Construction claimed that it could not find sufficient qualified U.S. workers, when in fact it had not fairly assessed the local applicants who had applied. The company also attempted to discourage U.S. workers from applying by putting unnecessarily restrictive job requirements in a 2019 job announcement, DOJ said, such as three months of experience, when it would have accepted workers with one month of experience.

Under the settlement, Priority Construction will pay \$40,600 in civil penalties and conduct enhanced U.S. worker recruitment and advertising for future positions. The settlement also requires Priority Construction to be subject to monitoring and reporting requirements and train employees on how to avoid discrimination under the INA.

Details:

- DOJ press release, Oct. 27, 2021, <https://www.justice.gov/opa/pr/justice-department-settles-construction-company-resolve-immigration-related-discrimination>

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President Biden Replaces Country-by-Country Pandemic-Related Air Travel Restrictions With Vaccine Requirement

Effective November 8, 2021, a new Presidential Proclamation that governs the entry into the United States by air of "noncitizen nonimmigrants" revokes previous country-by-country restrictions applied during the COVID-19 pandemic and replaces them with a vaccination requirement.

The new policy suspends the entry of unvaccinated noncitizen nonimmigrants, except in limited circumstances, and "ensures that the entry of unvaccinated noncitizen nonimmigrants is consistent" with applicable health and safety determinations. These include, when appropriate, requiring that such individuals arrange to become fully vaccinated against COVID-19 upon arrival. Exceptions to the new policy include certain noncitizens with medical, humanitarian, or emergency issues, among other reasons.

Details:

- Presidential Proclamation, Oct. 25, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/>

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Settlement Agreement Outlines 'New, Overarching' Guidance for H-1B Petitions for Market Research Analysts

U.S. Citizenship and Immigration Services (USCIS) reached a settlement agreement in the case of *MadKudu Inc. v. USCIS* that the agency said "outlines new, overarching guidance" for adjudicating pending or future H-1B petitions for market research analysts.

USCIS had denied plaintiffs' H-1B petitions for market research analyst positions based on the agency's determination that the Department of Labor's *Occupational Outlook Handbook* entry for market research analysts did not establish that this occupation was a "specialty occupation." The settlement agreement includes detailed instructions on how USCIS is to evaluate submitted evidence for and adjudicate such petitions, including how educational requirements and documentation can be met.

The agreement allows class members, as defined in the USCIS news alert and the settlement agreement, to submit a Form I-290B, Notice of Appeal or Motion, to request that certain denied Forms I-129, Petition for a Nonimmigrant Worker, seeking H-1B classification for a market research analyst be reopened and adjudicated per the terms of the settlement agreement. No fee will be charged for such requests. Class members have until April 26, 2022, to submit their Forms I-290B.

USCIS said it will make a decision on all eligible, timely filed reopening requests within 90 days of receipt of the physical file at the adjudicating office. USCIS will "attempt to prioritize" reopening requests for petitions with labor condition applications (LCAs) expiring fewer than 90 days after the Form I-290B is properly filed with USCIS.

Details:

- USCIS news alert, Oct. 28, 2021, <https://www.uscis.gov/newsroom/alerts/directions-for-class-members-filing-motions-to-reopen-pursuant-to-settlement-agreement-in-h-1b>
- Settlement agreement, *MadKudu Inc. v. USCIS*, <https://www.uscis.gov/sites/default/files/document/legal-docs/Madkudu-settlement-agreement.pdf>

- Statement from the American Immigration Lawyers Association, Oct. 28, 2021, <https://www.aila.org/advo-media/press-releases/2021/aila-press-statement-denial-of-h1b-petitions>

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USCIS Releases E-Verify Updates on Referred TNCs and Open Cases

In March 2020, E-Verify extended the timeframe employees had to contest tentative nonconfirmations (TNCs) of their Social Security numbers. U.S. Citizenship and Immigration Services (USCIS) said this extension was due in part to the Social Security Administration (SSA) closing its offices to the public. Many referred TNCs have not received final responses. USCIS said E-Verify will begin updating some referred TNCs with final responses.

Highlights of USCIS's updates released on October 26, 2021, include:

- To complete the E-Verify process, employers must close every case, including those cases that were recently updated with final responses. However, E-Verify will automatically close cases that receive a result of Employment Authorized.
- Employers must close cases that were created in error, with incorrect information, or for employees who are no longer employed. Incomplete cases must also be closed.
- Cases that are in a status of "Referred," "Verification In Process," or "Case in Continuance" are exceptions as these cases cannot be closed until final case results are issued.

Details:

- USCIS notice, Oct. 26, 2021, <https://www.e-verify.gov/about-e-verify/whats-new>
- E-Verify Quick Reference Guide for Employers, <https://www.e-verify.gov/e-verify-quick-reference-guide-for-employers>
- E-Verify manual, section 4.1, "Close Case," <https://www.e-verify.gov/e-verify-user-manual-40-case-resolution/41-close-case>

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USCIS Expands Guidance on Supporting Evidence for Liberian Refugee Immigration Fairness Applications; Deadline is Dec. 20

U.S. Citizenship and Immigration Services (USCIS) has expanded its guidance on Liberian Refugee Immigration Fairness (LRIF) applications, clarifying steps applicants must take if they cannot submit primary evidence of Liberian nationality to support an LRIF-based application for adjustment of status. The deadline to apply to adjust status under LRIF is December 20, 2021.

USCIS said it "strongly encourages applicants to submit any and all evidence available to them when applying for LRIF." The agency said it will consider "any and all evidence," including the applicant's testimony during an interview, when determining eligibility for adjustment of status. USCIS recommended submission of a written and signed statement explaining the applicant's attempts to acquire primary evidence (e.g., an unexpired Liberian passport or Liberian certificate of naturalization), to include accompanying records demonstrating these attempts (e.g., proof of an application for a Liberian passport; proof of an application to renew an expired Liberian passport; proof of communication with Liberian government authorities responsible for issuing primary evidence; or receipts of transactions to obtain primary evidence). Applicants must also provide secondary evidence of Liberian nationality (e.g., an expired Liberian passport, Liberian baptismal record or other religious document, Liberian school records, and Liberian medical records).

Details:

- USCIS Policy Update, Oct. 29, 2021, <https://www.uscis.gov/newsroom/alerts/policy-update-liberian-refugee-immigration-fairness-lrif>
- USCIS Policy Manual, Chapter 5—Liberian Refugee Immigration Fairness, <https://www.uscis.gov/policy-manual/volume-7-part-p-chapter-5>

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DHS Terminates Migrant Protection Protocols

Alejandro Mayorkas, Secretary of Homeland Security, announced on October 29, 2021, the termination of the Migrant Protection Protocols (MPP), a controversial program started by the Trump administration in early 2019 under which undocumented migrants seeking admission to the United States via Mexico must await their court proceedings in Mexico.

Mr. Mayorkas said he recognized that MPP "likely contributed to reduced migratory flows," but did so "by imposing substantial and unjustifiable human costs on the individuals who were exposed to harm while waiting in Mexico." Among other things, he noted that "[s]ignificant evidence indicates that individuals awaiting their court hearings in Mexico under MPP were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited by exploiting migrants' vulnerabilities." He concluded that policies being pursued by the Biden-Harris administration will more effectively address migratory flows "while holding true to our nation's values."

Mr. Mayorkas previously concluded that the program should be terminated and announced that decision in a June 1, 2021, memorandum, but a U.S. district court in *Texas v. Biden* vacated that memo and remanded the matter to the Department of Homeland Security for further consideration. Following issuance of Mr. Mayorkas' decision, "the termination of MPP will be implemented as soon as practicable after a final judicial decision to vacate the *Texas* injunction," the memo states.

Details:

- "Termination of the Migrant Protection Protocols," memorandum from Secretary Mayorkas, Oct. 29, 2021, https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf
- "Migrant Protection Protocols," DHS, Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

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DHS Issues New Guidelines on Avoiding Enforcement Actions in or Near 'Protected Areas'

Alejandro Mayorkas, Secretary of Homeland Security, announced new guidelines for enforcement actions in or near "protected areas." The memo states, "To the fullest extent possible, we should not take an enforcement action in or near a location that would restrain people's access to essential services or engagement in essential activities."

A non-exhaustive list of protected areas includes schools; medical or mental health care facilities; places of worship or religious study; places where children gather; social services facilities; places where disaster or emergency services are provided; funerals; weddings; and ongoing parades, demonstrations, or rallies.

The memo includes exceptions to be made, such as when there is a national security threat or imminent risk of death, violence, or physical harm.

Details:

- "Guidelines for Enforcement Actions in or Near Protected Areas," memorandum from Secretary Mayorkas, Oct. 27, 2021, https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf

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DHS Continues Travel Restrictions at Land Border Ports of Entry With Mexico

The Department of Homeland Security (DHS) announced it will continue to temporarily limit non-essential travel of individuals from Mexico into the United States at land ports of entry (POEs) along the U.S.-Mexico border until January 21, 2022.

The limit does not apply to those who are fully vaccinated for COVID-19 as defined by the Centers for Disease Control and Prevention, DHS said.

Details:

- DHS notice, 86 Fed. Reg. 58216 (Oct. 21, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-10-21/pdf/2021-23005.pdf>

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DOJ, DOL Reach Settlements With Facebook Resolving Claims of Discrimination Against U.S. Workers

The Departments of Justice (DOJ) and Labor (DOL) released a joint statement on October 19, 2021, announcing separate settlement agreements with Facebook regarding its use of the permanent labor certification program (PERM).

The DOJ settlement includes about \$14 million in fines, along with additional notice, recruitment, and training requirements. The DOJ settlement resolves its claims that Facebook routinely refused to recruit, consider, or hire U.S. workers—a group that includes U.S. citizens, U.S. nationals, asylees, refugees, and lawful permanent residents—for positions it had reserved for temporary visa holders in connection with the PERM process.

Additionally, the DOL settlement resolves issues it separately identified through audit examinations of Facebook's recruitment activities related to its PERM applications filed with the Employment and Training Administration's Office of Foreign Labor Certification (OFLC).

Details:

- Joint DOJ-DOL Statement, Oct. 19, 2021, <https://www.justice.gov/opa/pr/justice-labor-departments-reach-settlements-facebook-resolving-claims-discrimination-against>
- DOJ-Facebook Settlement Agreement, <https://www.justice.gov/opa/press-release/file/1443336/download>

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USCIS Implements Employment Authorization for Individuals Covered by Deferred Enforced Departure for Hong Kong Residents

U.S. Citizenship and Immigration Services (USCIS) released information on how to apply for employment authorization for eligible Hong Kong residents covered under President Biden's August 5, 2021, memorandum allowing Deferred Enforced Departure (DED) for 18 months, through February 5, 2023.

DED for Hong Kong residents applies only to certain eligible Hong Kong residents who were present in the United States as of August 5, 2021; who have continuously resided here since that date; and who meet other eligibility criteria described in the President's memorandum. For purposes of this DED policy, USCIS explained, Hong Kong residents "are individuals of any nationality, or without nationality, who have met the requirements and been issued a Hong Kong Special Administrative Region (HKSAR) passport, a British National Overseas passport, a

British Overseas Citizen passport, a Hong Kong Permanent Identity Card, or an HKSAR Document of Identity for Visa Purposes."

There is no application for DED. Eligible Hong Kong residents may apply for an Employment Authorization Document by submitting a completed Form I-765, Application for Employment Authorization. Eligible Hong Kong residents covered by the August memorandum may also receive travel authorization. Individuals must file Form I-131, Application for Travel Document, to apply for advance parole if they wish to travel based on DED.

Details:

- USCIS news release, Oct. 20, 2021, <https://bit.ly/3njEUNF>
- USCIS Deferred Enforced Departure page, <https://www.uscis.gov/humanitarian/deferred-enforced-departure>

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USCIS Accepts Credit Card Payments From Petitioners for O and P Nonimmigrant Workers

As part of its credit card payment pilot program, U.S. Citizenship and Immigration Services' (USCIS) Vermont Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, from petitioners filing Form I-129, Petition for a Nonimmigrant Worker, for O and P nonimmigrants.

The program is also in operation at the Nebraska and Texas Service Centers. USCIS hopes eventually to expand this payment option to other forms and service centers. The goal is "to bring USCIS one step closer to accepting digital payments using a credit card at all service centers," the agency said.

Details:

- USCIS alert, Oct. 22, 2021, <https://bit.ly/3nmvAZn>

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DHS Announces Fully Vaccinated Travelers From Canada and Mexico Will Be Allowed to Enter United States at Land Borders and Ferry Crossings

Secretary Alejandro N. Mayorkas announced on October 12, 2021, that the Department of Homeland Security will amend Title 19 regulations to allow nonessential travelers who have been fully vaccinated for COVID-19 and have appropriate documentation to enter the United States via land and ferry ports of entry (POEs) across U.S. borders.

The modifications will occur in two phases over the next few months:

- First, in November 2021, U.S. Customs and Border Protection will begin allowing fully vaccinated travelers from Mexico or Canada to enter the United States at land and ferry POEs for nonessential reasons. Travelers must have proof of vaccination.
- Second, beginning in early January 2022, all inbound foreign national travelers crossing U.S. land or ferry POEs—whether for essential or non-essential reasons—must be fully vaccinated for COVID-19 and provide proof of vaccination.

Officials did not give an exact date for lifting the travel restrictions. People entering the United States at the borders with Mexico or Canada will be questioned by U.S. Customs and Border Protection officers about their vaccination status before being allowed to cross. The officers will have discretion to send travelers to secondary screenings for their documents to be checked, officials said. The administration will have limited exemptions for unvaccinated travelers from Mexico and Canada, including some children.

Details:

- DHS Press Release, Oct. 12, 2021, <https://www.dhs.gov/news/2021/10/12/secretary-mayorkas-allow-fully-vaccinated-travelers-canada-and-mexico-enter-us-land>
- "The U.S. Will Reopen Its Land Borders for Fully Vaccinated Travelers," New York Times, Oct. 12, 2021 (updated Oct. 14, 2021), <https://www.nytimes.com/2021/10/12/us/politics/us-canada-mexico-borders-open.html>

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India and China EB-3 Dates Retrogress in November 2021 Visa Bulletin

The Department of State's (DOS) Visa Bulletin for November 2021 is causing consternation and raising queries from beneficiaries trapped in backlogs. For example, the employment-based third preference immigrant visa category for India and China final action dates retrogressed substantially.

DOS said the retrogressions were "a direct result of extraordinarily heavy applicant demand for [visa] numbers," primarily by U.S. Citizenship and Immigration Services offices for adjustment of status cases.

Details:

- Visa Bulletin for November 2021, Dept. of State, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-november-2021.html>

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Senate Democrats Review Options for Immigration Provisions in Reconciliation Bill

According to news reports, Senate Democrats are considering various options for including scaled-down immigration provisions in a budget reconciliation bill following rejection by the

Senate parliamentarian, Elizabeth MacDonough, of proposals for more sweeping changes. Under consideration is providing parole to immigrants who arrived in the United States before January 1, 2011, but do not have permanent legal status. The idea would be to allow them to stay in the United States, work legally, and remain with their families.

The House of Representatives' Judiciary Committee passed immigration provisions in September that would be included in a reconciliation bill. Among those were several sections that the Senate parliamentarian has not yet considered, such as recapturing unused family and employment-based immigrant visas.

Details:

- "Immigrants and Green Cards: Immigration in a Reconciliation Bill," Forbes, Oct. 12, 2021, <https://www.forbes.com/sites/stuartanderson/2021/10/12/immigrants-and-green-cards-immigration-in-a-reconciliation-bill/?sh=735cae7678a3>

USCIS Reaches H-2B Cap for First Half of FY 2022

U.S. Citizenship and Immigration Services (USCIS) announced on October 12, 2021, that it received enough petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of fiscal year 2022.

September 30, 2021, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2022. USCIS said it will reject new cap-subject H-2B petitions received after September 30 that request an employment start date before April 1, 2022.

USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap, including petitions for:

- Current H-2B workers in the United States who extend their stay, change employers, or change the terms and conditions of their employment;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.

Details:

- USCIS alert, Oct. 12, 2021, <https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022>

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DHS Secretary Mayorkas Announces New Immigration Enforcement Priorities

Secretary of Homeland Security Alejandro Mayorkas announced new guidelines for immigration enforcement priorities that focus on national security, public safety, and border security, and emphasize prosecutorial discretion. The new guidelines take effect November 29, 2021.

"For the first time, our guidelines will, in the pursuit of public safety, require an assessment of the individual and take into account the totality of the facts and circumstances" to ensure resources are focused most effectively on those who pose a threat, Secretary Mayorkas said. DHS also noted that most of the more than 11 million undocumented or otherwise removable noncitizens in the United States "have been contributing members of our communities across the country for years. The fact an individual is a removable noncitizen will not alone be the basis of an enforcement action against them."

Continuous training, a process to review the guidelines' effective implementation, extensive data collection, and a case review process will all be required, DHS said. Secretary Mayorkas is expected to issue additional immigration-related policy memos soon.

Details:

- DHS Press Release, Sept. 30, 2021, <https://www.dhs.gov/news/2021/09/30/secretary-mayorkas-announces-new-immigration-enforcement-priorities>
- "Guidelines for the Enforcement of Civil Immigration Law," DHS, Sept. 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>

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DHS Ends Mass Worksite Enforcement Operations, Issues Policy Guidance

The Department of Homeland Security (DHS) issued a memorandum on October 12, 2021, updating its policies on worksite enforcement to focus on "unscrupulous employers who exploit the vulnerability of undocumented workers" and "create an unfair labor market." The guidance memo states that DHS "no longer conduct[s] mass worksite operations," sometimes called raids, that can result in the simultaneous arrests of hundreds of workers. DHS said that in addition to a lack of focus on exploitative employers, such operations misallocate resources and are inconsistent with DHS's new guidelines requiring individualized assessments.

The guidance memo, among other things, directs DHS agencies to propose recommendations for protecting noncitizen victims and witnesses who report unlawful labor practices or participate in investigations or prosecutions.

Details:

- "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual," DHS Policy Statement 065-06, Oct. 12, 2021, https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf
- "Biden Administration Orders Halt to ICE Raids at Worksites," Washington Post, Oct. 12, 2021, https://www.washingtonpost.com/national/biden-administration-halts-ice-raids/2021/10/12/631dc86e-2b70-11ec-92bd-d2ffe8570c7d_story.html

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Court Establishes Timeframe for Processing 9,905 Diversity Visas

In recent months, several courts have ordered the Department of State (DOS) to reserve and adjudicate DV-2020 and DV-2021 diversity visas. On August 17, 2021, the U.S. District Court for the District of Columbia in *Gomez v. Biden* ordered DOS to "process DV-2020 applications in random order until all 9,905 diversity visas have been granted." On October 13, 2021, the court ordered DOS to begin processing the 9,905 DV-2020 visas "as soon as is feasible and to conclude such processing no later than the end of the 2022 Fiscal Year, or September 30, 2022."

Details:

- Diversity Visa 2020 and 2021 Updates, Dept. of State, Oct. 13, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-2020-and-2021-updates.html>

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CIS Ombudsman Releases Tips on Communicating With USCIS Contact Center

The Office of the Citizenship and Immigration Services (CIS) Ombudsman released tips on making communications with the U.S. Citizenship and Immigration Services (USCIS) Contact Center more effective, in response to recent changes in Contact Center processes. The CIS Ombudsman explained that the changes were made "to reduce reliance on telephonic live assistance while promoting the use of online self-help tools and digital inquiry channels" as a result of "financial limitations and resource constraints."

Tips include when to reach out to the USCIS Contact Center; where to check case status; when to use online tools; how to submit case inquiries and service requests; what constitutes an emergency; how to expedite a case; how biometrics appointments are scheduled; how to reschedule appointments and interviews; and other advice.

Details:

- "How to Make Your Communication With the USCIS Contact Center More Effective," Office of the Citizenship and Immigration Services Ombudsman, Dept. of Homeland Security, Sept. 2021, https://www.dhs.gov/sites/default/files/publications/uscis_contact_center_tip_sheet_final.pdf

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CIS Ombudsman Releases Readout and Q&As From Webinar on Filing for TPS and Concurrent Work Authorization

The Office of the Citizenship and Immigration Services (CIS) Ombudsman released a readout and Q&As from its public webinar discussing eligibility, required evidence, and account features for online filing of Form I-821, Application for Temporary Protected Status, and concurrent filing of Form I-765, Application for Employment Authorization.

Details:

- DHS announcement, <https://www.dhs.gov/publication/cis-ombudsmans-webinar-series-uscis-introduces-e-filing-initial-form-i-821>
- DHS Engagement Readout, https://www.dhs.gov/sites/default/files/publications/engagement_readout_-_form_i-821_online_08.24.21.pdf
- DHS Q&A, https://www.dhs.gov/sites/default/files/publications/questions_and_answers_-_form_i-821_online_filing_engagement_08.24.21_1.pdf

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State Dept. Announces Changes in Vaccination Requirements for Immigrants and Certain Nonimmigrants

The Department of State (DOS) announced that effective October 1, 2021, the Centers for Disease Control and Prevention (CDC) Technical Instructions for panel physicians is requiring all immigrant visa applicants, all K fiancé(e) visa applicants, and nonimmigrant visa applicants who are referred to the panel physicians to receive a full COVID-19 vaccine series as part of their medical exam before being issued a visa. The vaccine must be approved through either the World Health Organization or the U.S. Food and Drug Administration.

Blanket waivers for the COVID-19 vaccination will be applied in countries where the vaccine is not routinely available or when the vaccine is not age-appropriate, DOS said. DOS "encourages all immigrant visa applicants and others subject to a medical exam to get vaccinated against COVID-19 as soon as possible to not experience delays in their visa processing."

Details:

- Changes in Vaccination Requirements for Immigrant Visa Applicants, K Fiancé(e) Visa Applicants and Some Nonimmigrant Visa Applicants," Dept. of State, Oct. 1, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/changes-to-vaccination-requirements-for-immigrant-visa-applicants.html>

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Registration Period Begins for Diversity Visa 2023 Program

The Department of State (DOS) announced that registration for the diversity visa (DV)-2023 program began October 6, 2021, and ends Tuesday, November 9, 2021, at noon ET. Applicants must submit entries for the DV-2023 program electronically at <https://dvprogram.state.gov/>. DOS warned applicants not to wait until the last week because "heavy demand may result in website delays."

For DV-2023, natives of the following countries are *not* eligible to apply because more than 50,000 natives of these countries immigrated to the United States in the previous five years: Bangladesh, Brazil, Canada, China (including Hong Kong SAR), Colombia, Dominican Republic, El Salvador, Haiti, Honduras, India, Jamaica, Mexico, Nigeria, Pakistan, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, Venezuela, and Vietnam.

Natives of Macau SAR and Taiwan *are* eligible.

DV applicants must meet the education/work experience requirement by having either:

- At least a high school education or equivalent, defined as successful completion of a 12-year course of formal elementary and secondary education; or
- Two years of work experience within the past five years in an occupation that requires at least two years of training or experience to perform.

DOS noted that individuals who submit more than one entry during the registration period will be disqualified. The agency noted that for purposes of eligibility, some countries include "components and dependent areas overseas." Those who are natives of a dependency or overseas territory should "select the appropriate country of eligibility. For example, natives of Macau S.A.R. should select Portugal, and natives of Martinique should select France."

DOS posted DV-2023 program instructions in English and said those are the "only official version. Unofficial translations in additional languages" will be added as they become available. So far, unofficial translations in Nepali, Polish, Romanian, and Ukrainian were posted.

Details:

- Diversity Visa Instructions (announcement), Dept. of State, <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/diversity-visa-instructions.html>
- Instructions for the 2023 Diversity Immigrant Visa Program, <https://travel.state.gov/content/dam/visas/Diversity-Visa/DV-Instructions-Translations/DV-2023-Instructions-Translations/DV-2023-Instructions-English.pdf>

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State Dept. Posts Update on Plans for Complying With Diversity Visa Court Orders

The Department of State (DOS) released a statement on October 6, 2021, noting that the agency is aware of various court orders regarding the reservation of DV-2020 and DV-2021 diversity visas. DOS said it will publish guidance regarding its plans for complying with the orders as the guidance becomes available. DOS summarized the court orders:

- On August 17, 2021, the U.S. District Court for the District of Columbia in *Gomez v. Biden* ordered DOS to "process DV-2020 applications in random order until all 9,905 diversity visas have been granted." However, as of September 30, 2021, the court had not issued a final order establishing a time frame for processing.
- On September 27, 2021, the U.S. District Court for the District of Columbia in *Rai v. Biden* ordered DOS to "reserve 966 diversity visa numbers of applicants awaiting adjudication at the twenty-seven embassies and posts previously subject to Proclamations 9984 and 10143 and Defendants' regional No-Visa Policy."
- On September 30, 2021, the U.S. District Court for the District of Columbia in the *Goodluck v. Biden*-related matters ordered DOS to "reserve 6,914 diversity visas for adjudication pending final judgment in the *Goodluck*-related matters."
- On September 30, 2021, the U.S. District Court for the District of Columbia in *Goh v. Biden* ordered DOS "to make 481 diversity visas available for adjudication" and to "adjudicate those diversity visas by the close of Fiscal Year 2022."

Details:

- Diversity Visa 2020 and 2021 Updates, Dept. of State, Oct. 6, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-2020-and-2021-updates.html>

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SAVE Publishes Info on Afghan Special Immigrant Conditional Permanent Resident Status and Non-Special Immigrant Parolees

The Systematic Alien Verification for Entitlements (SAVE) program published supplemental information regarding Afghan special immigrant (SI) lawful permanent residents (LPRs) and parolees. SAVE noted that although some Afghans will continue to be admitted as SI LPRs or provided SI parole, the Department of Homeland Security (DHS) recently started admitting a third category: SI conditional permanent residents (CPRs). In addition, SAVE said, U.S. Customs and Border Protection (CBP) is allowing certain Afghans to enter the United States in a fourth category: non-SI parolee.

SAVE noted that a CPR becomes an LPR after DHS removes the conditions on their LPR admission. When these SI CPRs complete a medical examination and U.S. Citizenship and Immigration Services (USCIS) determines they are not medically inadmissible, DHS removes their conditions and they become an SI LPR. Such persons meet the immigration status

requirement for public benefits under the Afghan Allies Protection Act of 2009, including refugee resettlement assistance and other benefits available to refugees.

Details:

- Afghan Special Immigrant Conditional Permanent Resident Status and Non-SI Parolees, USCIS/SAVE, <https://www.uscis.gov/save/whats-new/afghan-special-immigrant-conditional-permanent-resident-status-and-non-si-parolees>

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ABIL Global: Canada

This article discusses recent developments in COVID-19-related border measures.

The government of Canada has eased border measures for fully vaccinated foreign travelers entering Canada. All fully vaccinated foreign nationals are now permitted to enter Canada for discretionary (non-essential) travel. Also, in August, the government opened Canada's borders to fully vaccinated U.S. citizens and permanent residents.

Below are questions and answers summarizing these developments:

What changed?

Fully vaccinated travelers, from any country, can now travel to Canada for discretionary (non-essential) purposes and will not be subject to a 14-day quarantine requirement.

To be considered fully vaccinated, travelers must have received two doses or a combination of the Pfizer, Moderna, or AstraZeneca/COVISHIELD vaccines, or a single dose of the Janssen (Johnson & Johnson) vaccine, at least 14 days before entering Canada.

What requirements are still in place?

For travelers who are not fully vaccinated, there are no changes to Canada's mandatory testing requirements, and such travelers still must complete a mandatory 14-day quarantine requirement, subject to limited exceptions.

Foreign nationals who are fully vaccinated continue to be required to have a negative pre-arrival COVID-19 molecular test result taken no more than 72 hours before the scheduled departure time of their last direct flight to Canada, or no more than 72 hours before their entry into Canada if arriving by land or water. Travelers who have already had COVID-19 and recovered can provide proof of a positive COVID-19 molecular test taken at least 14 and no more than 180 days before the initial scheduled departure time of their aircraft, or their entry into Canada by water or land. If arriving by air, they must provide proof of their test result to the airline before boarding their flight to Canada.

As has been the case since August 9, 2021, fully vaccinated travelers do not need to take a test on arrival unless they are randomly selected to complete a day-one COVID-19 molecular test. All travelers who are randomly selected for the border testing surveillance program must

complete the mandatory arrival test; however, they do not need to quarantine while awaiting the result.

Fully vaccinated travelers must also be asymptomatic, have a paper or digital copy of their vaccination documentation in English or French (or certified translation, along with the original), and provide COVID-19-related information electronically through the ArriveCAN app before arrival in Canada. Travelers should ensure that they are using the updated version of ArriveCAN (available as of September 7, 2021) and that they include unvaccinated children under 18 years and dependent adults in their ArriveCAN submission.

They must still present a suitable quarantine plan, and be prepared to quarantine, in case it is determined at the border that they do not meet all of the conditions required to be exempt from quarantine. As with all other exempt travelers, they must follow public health measures in place, such as wearing a mask when in public and keeping a copy of their vaccine and test results, as well as a list of close contacts for 14 days after entry to Canada.

Because the situation with COVID-19 worldwide remains in a state of flux, travelers should check for updates before traveling.

Details:

- COVID-19: Travel, Testing and Borders, <https://travel.gc.ca/travel-covid>
- COVID-19 Travel: Checklists for Requirements and Exemptions, <https://travel.gc.ca/travel-covid/travel-restrictions/exemptions>
- Travel advisory, Government of Canada, <https://www.canada.ca/en/border-services-agency/news/2021/09/travel-advisory-reminder--on-september-7-new-measures-for-fully-vaccinated-international-travellers-to-canada-will-come-into-force.html>

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New Publications and Items of Interest

Fact sheet on naturalization statistics. USCIS released updated naturalization statistics in a fact sheet. The fact sheet notes that among the top five countries of birth for people naturalizing in FY 2020, Mexico was the lead country, with 13.3% of all naturalizations, followed by India (7.7%), the Philippines (5.3%), Cuba (5%), and the People's Republic of China (3.7%). The top five countries of birth comprised 35% of the naturalized citizens in FY 2020. More than 7.3 million people became naturalized citizens over the last decade, the fact sheet states. <https://www.uscis.gov/citizenship-resource-center/naturalization-statistics>

Immigrant and Employee Rights Section webinars. The Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division is offering free webinars for the public. There are webinars for workers, employers, and advocates. <https://www.justice.gov/crt/webinars>

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
 - Round 2 (Apr. 1, 2020): 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

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.

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

Dagmar Butte (bio: <http://www.abil.com/lawyers/lawyers-butte.cfm?c=US>) was quoted by *Forbes* in "New Increase in H-1B Visa Fees Further Shatters 'Cheap Labor' Myth." She said, "I think employers sponsor H-1B professionals because they have to, not necessarily because they want to. It's expensive, comes with compliance issues that are not a factor in hiring domestically and is limited to 6 years. At the end of that time and significant investment, there is no guarantee that the employee will ultimately be able to remain in the United States. If not, the employer starts all over again. I have talked to employers who say the worst thing is when you develop a star employee who excels and then their visa is not renewed, or the green card application fails. Then you have to replace them with someone new and it's such a waste of time, money and human potential." <https://www.forbes.com/sites/stuartanderson/2021/11/01/new-increase-in-h-1b-visa-fees-further-shatters-cheap-labor-myth/?sh=e5d580e5b15d>

Klasko Immigration Law Partners, LLP, has published a new client alert: "Biden Replaces Country Travel Bans for Vaccine-Based Policy for US-Bound Nonimmigrant Travelers." <https://bit.ly/2Y0ElzV>

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) was quoted in a press release on *MadKudu Inc. v. USCIS*, a case in which the parties reached a settlement agreement about the classification of market research analyst positions as H-1B specialty occupations. Mr. Kuck said, "It is unfortunate that the only way for USCIS to follow the law and do the right thing is to bring litigation. But, know this—we will be watching for USCIS compliance with this decision, and we will be prepared to pursue litigation for other interpretive violations of written law and regulation that the agency has permitted to occur."

Mr. Kuck was quoted by *Bloomberg Law* in "Chronic Green Card Backlog Gains Lawmakers' Bipartisan Attention." Commenting on things U.S. Citizenship and Immigration Services (USCIS) could do to reduce backlogs, Mr. Kuck said, "The idea that USCIS does not have the resources is not true. They don't have the will." <https://bit.ly/3ARW2ii> (registration required)

Mr. Kuck was quoted by the *Atlanta Journal-Constitution* in "Kemp's Immigration Policy Could Complicate Bid for Second Term." Mr. Kuck said Governor Brian Kemp of Georgia was in search of a "shiny object" to distract from former President Trump's ongoing attacks targeting

the governor. "This is a reelection stunt. If he's going to the border, he's searching for a solution that does not exist," Mr. Kuck said. <https://bit.ly/3Bt9gDo>

Mr. Kuck, Jeff Joseph of Berry Appleman & Leiden LLP, and Greg Siskind of Siskind Susser PC represented plaintiffs in a recent case, *Kinsley v. Blinken*, in which a U.S. district court judge issued a decision on October 5, 2021, prohibiting the use of travel bans as a reason not to process or issue visas. Mr. Siskind and Mr. Kuck were quoted by the *Times of India* in "Good News for H-1B Visa Holders Stranded in India." Mr. Siskind said, "This is a pretty important win for us because [the lawsuit] was specifically aimed at killing the illegal interpretation across the board and not just for the plaintiffs. This will also hopefully bar a President in the future from abusing this power." Mr. Kuck said, "We are grateful that Judge Boasberg saw through the cascade of baseless legal theories put forward by the Department of State to finally and affirmatively rule that it is a violation of federal law to refuse to issue visas solely because a President has proclaimed an entry ban under the Immigration and Nationality Act 212(f). We call on the Department of State to now do away with its ridiculous and legally unnecessary national interest exemption program and get back to the business of visa issuance around the world regardless of those entry bans." <https://bit.ly/30bBbKI>

Mr. Kuck was quoted by *Atlanta Magazine* in "Freedom University Wasn't Meant to Last This Long." He said the Board of Regents of Freedom University is "not answerable to the state legislature" and can change policies if it chooses, at least for Deferred Action for Childhood Arrivals recipients. He blamed a lack of progress on "constant finger-pointing between the legislature and the regents. " 'It's their fault. It's their fault. It's their fault.' That's what's extraordinarily frustrating about this. Nobody wants to take responsibility for depriving these kids of an education." <https://www.atlantamagazine.com/great-reads/freedom-university-wasnt-meant-to-last-this-long/>

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) co-authored several new blog posts with **Kaitlyn Box**: "The Facebook Settlement Resolving Claims of Discrimination Against U.S. Workers Only Adds to the Contradictions in the Labor Certification Program," <https://bit.ly/3EUaPeH>; and "November 2021 Visa Bulletin Seesaw: Frequently Asked Questions." <http://blog.cyrusmehta.com/2021/10/november-2021-visa-bulletin-seesaw-frequently-asked-questions.html>

Mr. Mehta co-authored a new blog post with **Jessica Paszko**: "Florida Detox Centers Provides Further Guidance on Rejecting U.S. Workers on Resume Review." <https://bit.ly/3CU2IUj>

Mr. Mehta co-authored a new blog post with **Brad Banias**: "Handling Confidentiality, Adverse Interests and Settlements in Group Suits." <http://blog.cyrusmehta.com/2021/10/handling-confidentiality-adverse-interests-and-settlements-in-group-suits.html>

Mr. Mehta was quoted by *Forbes* in "House Bill Keeps Immigration Measures for High-Skilled Immigrants." He said, "The provisions in the House bill would allow employees in the backlog to file for adjustment of status without regard to whether a priority date is available. From an employer's perspective, they may not need to rely on the uncertainty of the H-1B visa lottery as much as they do now. An F-1 on Optional Practical Training (OPT) can be sponsored for permanent residence through labor certification during the F-1 OPT period, although one eligible for F-1 STEM OPT will have more time for the labor certification to get processed and approved."

Once the labor certification is approved, the employee will be eligible to file an I-485 adjustment of status application concurrently with the I-140 petition and obtain employment authorization during its pendency," which would allow an employee to remain in the United States and be eligible for continued employment with the employer. "Employers may help an employee with an approved petition by paying the \$5,000 on their behalf so that he or she can get permanent residence more quickly. An employer that facilitates permanent residence will be more attractive to noncitizen employees. An individual can pay the \$5,000, both under current law and the bill." <https://www.forbes.com/sites/stuartanderson/2021/11/01/house-bill-keeps-immigration-measures-for-high-skilled-immigrants/?sh=1ecae8f2168e>

Mr. Mehta delivered the Professor K. D. Irani Memorial Lecture 2021 at the Zoroastrian Association of Greater New York on October 30, 2021. The topic of the lecture was "Legal Ethics in Contemporary Times." Further details are at <https://zagny.org/2021-professor-k-d-irani-memorial-lecture/>

Mr. Mehta and **Ms. Box** authored an article, "CSPA Triumphs in Cuthill v. Blinken: Child of Parent Who Naturalizes Should Not Be Penalized," published in 26 Bender's Immigration Bulletin 1665 (October 15, 2021).

Mr. Mehta was quoted by *Forbes* in "DOJ Legal Settlement Discourages Hiring High-Skilled Immigrants." He said, "A U.S. employer is not required to hire the U.S. worker when conducting recruitment in conjunction with labor certification, and is required to conduct a good faith recruitment pursuant to recruitment rules, which DOL has acknowledged deviate from an employer's normal recruitment practice." <https://www.forbes.com/sites/stuartanderson/2021/10/20/doj-legal-settlement-discourages-hiring-high-skilled-immigrants/?sh=4e6747d83721> (and for background, see also <http://blog.cyrusmehta.com/2020/12/justice-departments-discrimination-lawsuit-against-facebook-chills-employers-ability-to-legitimately-sponsor-skilled-foreign-national-workers-for-a-green-card.html>)

Mr. Mehta was quoted by *Forbes* in "Immigrants and Green Cards: Immigration in a Reconciliation Bill." He said, "The provisions in the House bill would allow employees in the backlog to file for adjustment of status without regard to whether a priority date is available. From an employer's perspective, they may not need to rely on the uncertainty of the H-1B visa lottery as much as they do now. An F-1 on Optional Practical Training (OPT) can be sponsored for permanent residence through labor certification during the F-1 OPT period, although one eligible for F-1 STEM OPT will have more time for the labor certification to get processed and approved. Once the labor certification is approved, the employee will be eligible to file an I-485 adjustment of status application concurrently with the I-140 petition and obtain employment authorization during its pendency," which would allow an employee to remain in the United States and be eligible for continued employment with the employer. "Employers may help an employee with an approved petition by paying the \$5,000 on their behalf so that he or she can get permanent residence more quickly," and an employer that facilitates permanent residence will be more attractive to noncitizen employees, he noted. <https://www.forbes.com/sites/stuartanderson/2021/10/12/immigrants-and-green-cards-immigration-in-a-reconciliation-bill/?sh=735cae7678a3>

Kaitlyn Box, of **Cyrus D. Mehta & Partners PLLC**, authored a new blog post. "Migration in the Time of COVID-19 Ebook – How Much Has the Pandemic Really Shifted the Immigration Landscape?" <http://blog.cyrusmehta.com/2021/10/migration-in-the-time-of-covid-19-ebook-how-much-has-the-pandemic-really-shifted-the-immigration-landscape.html>

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted by the *New York Times* in "Missing Foreign Workers Add to Hiring Challenges." He said, "Employers are having to wait a long time to get their petitions approved, and renewals are not being processed in a timely manner. It's going to take a long time for them to work through the backlog." <https://www.nytimes.com/2021/10/25/business/economy/foreign-workers-shortage-hiring.html> (subscription)

Mr. Yale-Loehr was interviewed by the *Cornellians* (Cornell University's online magazine) in "The Ins and Outs of Immigration Law." He discussed the current state of the U.S. immigration system and other topics. In response to a question about whether now is the toughest time in American history to immigrate legally, he said, "In my 30-plus years of practicing immigration law, I've found it the most challenging in terms of the background checks that are required and the slowness of the process. Then you have the pandemic on top of everything else: it's hard to get a visa interview in an embassy. I feel sorry for people who are trying to immigrate to the U.S. now." <https://alumni.cornell.edu/cornellians/immigration-law/>

The Florence Immigration Project gave the Cornell Law School asylum clinic a pro bono award. **Mr. Yale-Loehr** is included in the multimedia awards booklet at <https://online.flippingbook.com/view/483149697/10/>

Mr. Yale-Loehr was quoted by the *Cornell Daily Sun* in " 'I'm Living History': A Student's Journey Out of Kabul as It Fell." The article describes the difficulties a Cornell student had in returning to campus from Afghanistan. The end of the article expands beyond the individual student's experience to summarize the work the law school and Cornell are doing generally to help Afghans at risk. Mr. Yale-Loehr said, "We now are doing over 50 humanitarian parole applications for Afghans at risk, and are starting a formal clinic [in the] spring semester to continue this work. It is heartwarming to see the enthusiasm and energy of the many law students volunteering their time and talent to help get people out of Afghanistan." The law school published a similar article here: <https://www.lawschool.cornell.edu/news/cornell-law-students-and-professors-assist-afghans-at-risk/>

Mr. Yale-Loehr was mentioned by *Law360* in "Feds Want DACA Appeal Paused Until New Rule Is Finalized." The publication noted that Mr. Yale-Loehr previously said the rule is likely to receive a substantial number of public comments and that it could be more than six months before a final rule is issued. <https://www.law360.com/appellate/articles/1428343/feds-want-daca-appeal-paused-until-new-rule-is-finalized> (registration required)

Alliance of Business Immigration Lawyers attorneys and their partners listed in the Top 25 Global Migration Attorneys by *Uglobal Immigration Magazine* include:

H. Ronald Klasko
Ira Kurzban
Marco Mazzeschi
Bernard Wolfsdorf
Stephen Yale-Loehr

<https://www.uglobal.com/en/immigration/posts/top-25-global-migration-attorneys/>

The following ABIL members and associates were listed in *Best Lawyers 2022*:

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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/travel/en/legal/visa-law0/visa-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.

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