CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

# IMMIGRATION UPDATE - FEBRUARY 11, 2020

*Posted on February 11, 2020 by Cyrus Mehta*

**Headlines:**

**DHS Suspends New York Residents from Trusted Traveler Programs; New York to Sue** – DHS informed the New York State Department of Motor Vehicles on February 5, 2020, that New York residents are no longer eligible to apply for or renew their enrollment in Trusted Traveler Programs. New York's Attorney General immediately announced plans to sue the Trump administration for "unfair targeting."

**New H-1B Cap Registration Period Starts March 1** – Sponsoring entities can create an account in the new system starting February 24, 2020.

**In a Win for International Students, Federal District Court Permanently Enjoins Change in 'Unlawful Presence' Policy** – A U.S. District Judge issued a decision on February 6, 2020, permanently enjoining the Trump administration's change in "unlawful presence" policy set forth in a USCIS memorandum.

**USCIS Releases Revised Forms and Updates Policy Manual on Public Charge Inadmissibility Final Rule** – USCIS has published revised forms and updated guidance related to the final rule on the public charge ground of inadmissibility, which the U.S. Department of Homeland Security, including USCIS, will implement on February 24, 2020.

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## DHS Suspends New York Residents from Trusted Traveler Programs; New York to Sue

The Department of Homeland Security (DHS) informed the New York State Department of Motor Vehicles on February 5, 2020, that New York residents are no longer eligible to apply for or renew their enrollment in Trusted Traveler Programs. Acting Secretary Chad F. Wolf explained that the suspension was in response to New York State's implementing the Driver's License Access and Privacy Act ("Green Light Law"), which prohibits the New York Department of Motor Vehicles from sharing information with DHS, which the agency said prevented DHS from fully vetting New York residents.

New York's Attorney General Letitia James immediately announced plans to sue the Trump administration for "unfair targeting." Also, the chairs of the Oversight and Homeland Security committees of the House of Representatives, and several others, sent a letter to DHS to "express our strong opposition" to the "senseless, retaliatory decision." They requested documentation of the rationale for the decision and its economic impact, noting among other things that a driver's license is not required to participate in Trusted Traveler Programs and disputing DHS's statements that the action was due to security concerns. New York's Governor Andrew Cuomo said, "This is unbounded arrogance, disrespect of the rule of law, hyper-political government, and this is another form of extortion."

U.S. Customs and Border Protection runs Trusted Traveler Programs that permit expedited processing into the United States, like Global Entry (international), FAST (commercial truck drivers entering and exiting), SENTRI (entering from Canada and Mexico), and NEXUS (entering from Canada), all of which are included in the ban on New York residents.

Details: · DHS release, https://www.dhs.gov/news/2020/02/06/department-homeland-security-suspends-new-enrollmentreenrollment-cbp-trusted · DHS letter to New York State, https://www.dhs.gov/sites/default/files/publications/20_0206_as1-letter-to-ny-dmv-signed.pdf · House of Representatives letter to DHS, https://homeland.house.gov/imo/media/doc/GlobalEntryLetter.pdf · News articles, https://www.cnn.com/2020/02/07/politics/new-york-dhs-global-entry/index.htm

l, https://www.nytimes.com/2020/02/06/nyregion/green-light-law-global-entry.html · Global Entry website, https://bit.ly/2H4Eh5R

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## New H-1B Cap Registration Period Starts March 1

U.S. Citizenship and Immigration Services (USCIS) held a webinar for employers on February 6, 2020, on the new H-1B registration system for the fiscal year (FY) 2021 cap season. The initial registration period runs from noon March 1, 2020, until noon March 20, 2020, for the FY 2021 H-1B numerical allocations. At the webinar, USCIS said that sponsoring entities can create an account in the new system starting February 24, 2020. Every H-1B cap sponsoring entity will need an account, USCIS said. Those selected in the FY 2021 H-1B lottery will be notified by March 31, 2020. Employers for those entries may submit petitions starting April 1, 2020, and the filing period will close no earlier than June 30, 2020.

During the initial registration period:

- H-1B cap-subject petitioners, including those eligible for the advanced degree exemption, seeking to file a FY 2021 H-1B cap petition must first register electronically with USCIS and pay the associated $10 H-1B registration fee for each submission.
- Prospective petitioners or their authorized representatives must electronically submit a separate registration naming each person for whom they seek to file an H-1B cap-subject petition. Duplicate registrations are prohibited.
- As described in the H-1B registration final rule, if more than a sufficient number of registrations are received, USCIS will randomly select the number of registrations projected as needed to reach the FY 2021 H-1B numerical allocations after the initial registration period closes and notify registrants with selected registrations no later than March 31, 2020.
- Prospective petitioners with selected registrations will be eligible to file a FY 2021 cap-subject petition only for the person named in the registration and within the filing period indicated on the eligibility notice.

USCIS has cautioned that although petitioners can register multiple aliens during a single online submission, a petitioner may only submit one

registration per beneficiary in any fiscal year. If a petitioner submits more than one registration per beneficiary in the same fiscal year, all registrations filed by that petitioner relating to that beneficiary for that fiscal year will be considered invalid.

Details:

- USCIS announcement, https://www.uscis.gov/news/alerts/uscis-formally-announces-implementation-electronic-h-1b-registration-process-and-registration-timeframe
- H-1B registration final rule, https://bit.ly/39rhe1z

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## In a Win for International Students, Federal District Court Permanently Enjoins Change in 'Unlawful Presence' Policy

U.S. District Judge Loretta Biggs, of North Carolina, issued a decision on February 6, 2020, permanently enjoining nationwide the Trump administration's change in "unlawful presence" policy set forth in a U.S. Citizenship and Immigration Services (USCIS) memorandum, "Accrual of Unlawful Presence and F, J, and M Nonimmigrants." The policy previously was temporarily blocked by the same judge while the underlying district court case developed.

The Presidents' Alliance on Higher Education and Immigration said the policy "fundamentally and radically altered when F-1, J-1, and M-1 visa holders accrue unlawful presence." Accrual would begin retroactively on the date a visa holder engaged in prohibited conduct instead of when they were adjudicated as "out of status." Accrual of unlawful presence, the Alliance noted, "directly affects whether collateral inadmissibility immigration bars potentially affect and penalize visa holders who seek admission to the United States prospectively." This made it substantially more likely that the accrual of unlawful presence would more easily occur as a result of "administrative, unintentional, or innocent errors and lead to significant, unforeseen consequences, including being barred from the United States." In response, higher education institutions, including members of the Alliance, filed a challenge against the policy. The Presidents' Alliance also coordinated an *amicus* brief signed by more than 60 institutions of higher education in support of the legal challenge.

Details:

- February 6, 2020, court opinion and order in *Guilford College et al. v. Chad Wolf, U.S. Department of Homeland Security et al.*, https://www.presidentsimmigrationalliance.org/wp-content/uploads/2020/02/Guilford-College-v.-Nielsen-summary-judgment-permanent-injunction.pdf
- USCIS policy memorandum, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-08-09-PM-602-1060.1-Accrual-of-Unlawful-Presence-and-F-J-and-M-Nonimmigrants.pdf
- Guilford College release, https://www.guilford.edu/news/2020/02/federal-district-court-permanently-enjoins-unlawful-presence-policy-targeting
- Presidents' Alliance on Higher Education and Immigration statement, https://bit.ly/2OTKyGb
- News articles, https://www.forbes.com/sites/stuartanderson/2020/02/07/court-hands-international-students-big-immigration-victory/#7e334132147f, https://www.natlawreview.com/article/federal-judge-blocks-enforcement-dhs-unlawful-presence-calculation

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## USCIS Releases Revised Forms and Updates Policy Manual on Public Charge Inadmissibility Final Rule

U.S. Citizenship and Immigration Services (USCIS) has published revised forms related to the final rule on the public charge ground of inadmissibility, which the U.S. Department of Homeland Security, including USCIS, will implement on February 24, 2020. Beginning on that date, applicants and petitioners must use new editions of the forms listed in a USCIS announcement.

In addition, except in Illinois, applicants for adjustment of status subject to the public charge ground of inadmissibility and the final rule must submit Form I-944, Declaration of Self-Sufficiency.

Certain classes of aliens (such as refugees, asylees, petitioners under the federal Violence Against Women Act, and certain T and U visa applicants) are exempt from the public charge ground of inadmissibility and therefore are not

subject to the final rule.

Details:

- USCIS announcement, which includes links to new editions of the forms, https://www.uscis.gov/news/alerts/public-charge-inadmissibility-final-rule-revised-forms-and-updated-policy-manual-guidance
- Related USCIS policy alert, https://www.uscis.gov/sites/default/files/policymanual/updates/20200205-PublicCharge.pdf
- Declaration of Self-Sufficiency, https://www.uscis.gov/forms/i-944
- USCIS Policy Manual, https://www.uscis.gov/policy-manual/volume-8-part-g#tabs-3

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## Firm in the News

**Cyrus Mehta** was quoted by *Law360* in "Calif. Atty's Unique Win May Offer New Relief for TPS Holders." Regarding temporary protected status (TPS) holders who wish to become permanent residents through their jobs, Mr. Mehta said, among other things, "These are people who deserve to be able to adjust status under the law if they have been properly sponsored by employers based on their skills and based on shortages in the U.S. labor markets." The article is available by registering at https://www.law360.com/articles/1240590/calif-atty-s-unique-win-may-offer-new-relief-for-tps-holders. **Mr. Mehta** recently chaired two Practising Law Institute (PLI) seminars:

- Program Chair, "Asylum, Special Immigrant Juvenile Status, Crime Victim, and Other Related Relief," PLI, New York City and via webcast, February 7, 2020.
- Program Chair and Speaker, Basic Immigration Law 2020, PLI, New York City and via webcast, February 6, 2020.

**Cora-Ann Pestaina** and **David Isaacson** also participated as speakers in these PLI programs.

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