



IMMIGRATION UPDATE - MARCH 23, 2020

Posted on March 23, 2020 by Cyrus Mehta

Headlines:

COVID-19 Update: USCIS Suspends Most In-Person Services, U.S.

North/South Borders Closed to Nonessential Traffic, Other Developments

– This article presents a few highlights of developments in the short term for the fast-evolving COVID-19 pandemic.

USCIS Announces Temporary Suspension of Premium Processing for FY

2021 Cap-Subject H-1B Petitions – USCIS announced the temporary suspension of premium processing service for FY 2021 cap-subject H-1B petitions due to the pandemic.

Initial H-1B Electronic Registration Period Has Closed – If USCIS has received enough applications during this period, the agency will randomly select the number it projects is needed and notify users via their online accounts by March 31, 2020.

USCIS Issues Reminder on New Form I-9 – Employers may use the 07/17/2017 edition through April 30, 2020. Starting May 1, 2020, employers can use only the new form with a 10/21/2019 edition date. A revised Spanish edition is available for Puerto Rico only.

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COVID-19 Update: USCIS Suspends Most In-Person Services, U.S. North/South Borders Closed to Nonessential Traffic, Other Developments

As many know by now, the novel coronavirus (SARS-CoV-2), which causes the

disease COVID-19, is now a pandemic threatening populations worldwide. With respect to its effects on employment-based immigration, foreign students, and cross-border travel, the following are a few highlights of developments in the short term, as of press time:

- S. Citizenship and Immigration Services (USCIS) has **suspended routine in-person services until at least April 1, 2020**, to help slow the spread of COVID-19. USCIS staff will continue to perform duties that do not involve contact with the public. The agency said it will provide emergency services in limited situations. To schedule an emergency appointment, contact the USCIS Contact Center (<https://www.uscis.gov/contactcenter>). USCIS field offices will send notices to applicants and petitioners with scheduled appointments and naturalization ceremonies affected by this closure.
- The **stoppage includes visa interviews for H-2A Mexican temporary farmworkers** at U.S. consular posts in Mexico who want to work in the United States. Some may be able to obtain interview waivers, but growers reportedly were told that H-2A visa applications for new workers would not be processed. This has raised concerns about potential effects on the U.S. produce supply.
- USCIS is **accepting all benefit forms and documents with reproduced original signatures** for submissions dated March 21, 2020, and beyond.
- The Department of Labor's Office of Foreign Labor Certification (OFLC) said it **continues to process and issue prevailing wage determinations and labor certifications**. OFLC released frequently asked questions on March 20, 2020, including information about what is considered timely notice when a worker must be moved to a new worksite due to pandemic concerns.
- E-Verify has **extended the timeframe for taking action to resolve Tentative Nonconfirmations (TNCs)** due to Social Security Administration office closures. E-Verify is also extending the timeframe to take action to resolve Department of Homeland Security TNCs "in limited circumstances when an employee cannot resolve a TNC due to public or private office closures. Employers may not take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee's case is in an extended interim case status.
- The **Student and Exchange Visitor Program (SEVP) released guidance for stakeholders** on March 13, 2020. The guidance notes that if a school

must close temporarily with no online or other alternative learning procedures, the students "should remain in active status in SEVIS so long as the students intend to resume their course of study when classes resume." If a school offers online instruction or another alternative upon closing temporarily, nonimmigrants should participate and remain in active status in SEVIS. Schools must notify SEVP of COVID-19-related procedural changes within 10 business days.

- **President Trump and Canadian Prime Minister Justin Trudeau closed the U.S.-Canada border** as of March 18, 2020, to "non-essential traffic," such as recreation and tourism, for an indefinite period. President Trump tweeted that "trade will not be affected," and workers who live on one side and work on the other are expected to continue traveling across the border for work.
- Similarly, the **United States and Mexico are limiting nonessential travel across the border**, with exceptions.
- **S. Immigration and Customs Enforcement (ICE)** announced that it is temporarily "adjust its enforcement posture" as of March 18, 2020. ICE's Enforcement and Removal Operations will **focus on "public safety risks and individuals subject to mandatory detention based on criminal grounds."** For those who do not fall into these categories, the agency said it will "exercise discretion to delay enforcement actions until after the crisis or utilize alternatives to detention, as appropriate." ICE said it will not carry out enforcement operations at or near health care facilities "except in the most extraordinary of circumstances."
- According to reports, immigration attorneys have sent multiple letters to the Departments of Homeland Security, State, and Labor, raising **concerns about agency office closures and potential disruptions to the immigration system.** Some are calling for a suspension of immigration compliance deadlines. Attorneys are also **calling for the suspension of in-person immigration hearings** and the use of telephone bond hearings for detainees.

Details:

- USCIS COVID-19 announcement, <https://www.uscis.gov/about-us/uscis-response-coronavirus-disease-2019-covid-19>
- USCIS announcement regarding office closures,

<https://www.uscis.gov/news/alerts/uscis-temporarily-closing-offices-public-march-18-april-1>

- USCIS announcement regarding required signatures,
<https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>
- OFLC FAQ,
https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%2003.20.2020.pdf
- SEVP guidance for stakeholders,
https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf
- E-Verify announcement,
<https://www.e-verify.gov/about-e-verify/whats-new/e-verify-extends-timeframe-for-taking-action-to-resolve-tentative>
- ICE announcement,
<https://content.govdelivery.com/accounts/USDHSICE/bulletins/281f30b>
- President Trump's U.S.-Canada border closing tweet,
<https://twitter.com/realDonaldTrump/status/1240271178692005889?s=20>
- Related news articles:
- Washington Post, "Trump, Trudeau Agree to Close U.S.-Canada Border to 'Nonessential' Traffic,"
https://www.washingtonpost.com/world/the_americas/trump-trudeau-us-canada-border-coronavirus/2020/03/18/90a27da8-6924-11ea-b199-3a9799c54512_story.html
- The Guardian, "Trump Announces U.S.-Canada Border Traffic Closed to 'Nonessential' Traffic,"
<https://www.theguardian.com/us-news/2020/mar/18/us-canada-border-closed-non-essential-traffic>
- Washington Post, "Americans, Canadians Scramble to Get Home Before Border Largely Shuts Down,"
https://www.washingtonpost.com/world/the_americas/americans-canadians-scramble-to-get-home-before-border-largely-shuts-down/2020/03/20/bd997a20-6a4e-11ea-b199-3a9799c54512_story.html
- NBC News, "U.S. Restricts Visas for Farmworkers, Raising Concerns About Food Supply,"
<https://www.nbcnews.com/news/us-news/u-s-restricts-visas-farmworkers-raising-concerns-about-food-supply-n1164216>

- CNN, "13 Changes to the U.S. Immigration System During the Coronavirus Pandemic,"
<https://www.cnn.com/2020/03/18/politics/immigration-changes-coronavirus/index.html>
- com, "Lawyers Push for Change to Immigration Court Amid COVID-19 Concerns,"
<https://www.law.com/texaslawyer/2020/03/18/lawyers-push-for-change-to-immigration-court-amid-covid-19-concerns/?sreturn=20200221163437>
- Al Jazeera, "U.S. Border Closings," video news report,
https://www.youtube.com/watch?v=qdv8ga_IP48
- Practical Law, "Expert Q&A: COVID-19 and Immigration,"
[https://content.next.westlaw.com/w-024-5004?isplcus=true&transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://content.next.westlaw.com/w-024-5004?isplcus=true&transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)
- S.-Mexico border restriction notice,
<https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-06253.pdf>

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USCIS Announces Temporary Suspension of Premium Processing for FY 2021 Cap-Subject H-1B Petitions

On March 16, 2020, U.S. Citizenship and Immigration Services (USCIS) announced the temporary suspension of premium processing service for fiscal year (FY) 2021 cap-subject H-1B petitions due to the pandemic, and provided the following information:

- Petitioners filing FY 2021 cap-subject H-1B petitions will not be able to request premium processing when USCIS begins accepting cap-subject petitions on April 1, 2020. Until premium processing resumes for FY 2021 cap-subject H-1B petitions, USCIS will reject any Form I-907 concurrently filed with a cap-subject H-1B Form I-129.
- Premium processing will resume in a two-phased approach during the FY 2021 cap season. The first phase will include FY 2021 cap-subject H-1B petitions, including those eligible for the advanced-degree exemption, requesting a change of status from F-1 nonimmigrant status. The second phase will include all other FY 2021 cap-subject petitions.
- USCIS said it will resume premium processing for FY 2021 cap-subject

H-1B petitions requesting a change of status from F-1 nonimmigrant status by May 27, 2020, and will notify the public before premium processing resumes for these petitions. Petitioners must appropriately select response “b” for Item 4 in Part 2 of Form I-129, and indicate “F-1” for Item 5 and “Current Nonimmigrant Status” in Part 3 of Form I-129, to be eligible to file a Form I-907 as part of this first group.

- The earliest date that USCIS will resume premium processing for all other FY 2021 cap-subject H-1B petitions is June 29, 2020.
- Petitioners filing FY 2021 H-1B cap-subject petitions will be eligible to upgrade to premium processing by filing Form I-907 once premium processing resumes, as applicable. USCIS said it will notify the public with a confirmed date for resuming premium processing for FY 2021 H-1B cap-subject petitions.
- Premium processing remains available for H-1B petitions that are exempt from the cap, such as extension-of-stay requests.

Details:

- USCIS release,
<https://www.uscis.gov/news/alerts/uscis-announces-temporary-suspension-premium-processing-fy2021-cap-subject-petitions>

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Initial H-1B Electronic Registration Period Has Closed

The initial registration period for fiscal year 2021 H-1B numerical allocations has closed. If U.S. Citizenship and Immigration Services (USCIS) has received enough applications during this period, the agency will randomly select the number of projects it needs and notify users via their online accounts by March 31, 2020.

An H-1B cap-subject petition must be properly filed within the filing period indicated on the notice. The period for filing the H-1B cap-subject petition will be at least 90 days, USCIS said.

Details:

- USCIS release,
<https://www.uscis.gov/news/alerts/initial-h-1b-electronic-registration-period-closes-march-20>

- H-1B electronic registration process page, <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process>

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USCIS Issues Reminder on New Form I-9

U.S. Citizenship and Immigration Services (USCIS) has issued a reminder that a new Form I-9, Employment Eligibility Verification, has been released.

Employers may use the 07/17/2017 edition through April 30, 2020. Starting May 1, 2020, employers can use only the new form with a 10/21/2019 edition date located in the lower left corner of the form.

A revised Spanish edition with the same date (10/21/2019) is available for use in Puerto Rico only.

Details:

- English edition of the new Form I-9, <https://www.uscis.gov/i-9>
- Spanish edition of the new Form I-9, <https://www.uscis.gov/es/formularios/i-9>
- I-9 Central, <https://www.uscis.gov/i-9-central>
- Federal Register notice announcing the new form, <https://www.govinfo.gov/content/pkg/FR-2020-01-31/html/2020-01821.htm>

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Firm in the News

Cyrus Mehta was quoted in Times of India in an article entitled "COVID-19 Impact: US Cos May Require Additional Compliance to Cover H-1B Employees in their Work From Home Policies". The article is at <https://timesofindia.indiatimes.com/city/mumbai/covid-19-impact-us-cos-may-require-additional-compliance-to-cover-h-1b-employees-in-their-work-from-home-policies/articleshow/74664240.cms>

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