



## IMMIGRATION UPDATE - JULY 20, 2020

*Posted on July 20, 2020 by Cyrus Mehta*

### Headlines:

#### [Trump Administration Agrees to Rescind New Foreign Student Online-Only Ban](#)

– The Trump administration agreed to rescind its new policy to bar nonimmigrant F-1 and M-1 students taking only online classes for the fall 2020 semester from entering into or remaining in the United States.

#### [State Dept. Lists Exceptions Under Recent Presidential Proclamations](#)

[Suspending Entry of Immigrants and Nonimmigrants](#) –The list includes exceptions for H-1B, H-2B, H-4, L-1, L-2, J-1, and J-2 visas.

#### [Phased Resumption of Services Begins for Visa and Passport Processing; MRV](#)

[Fees Paid During Suspension Remain Valid](#) – The resumption will occur on a post-by-post basis. Each individual U.S. embassy or consulate's website should be consulted for information regarding operating status and which services it is currently offering.

#### [Plaintiffs Prevented From Entering U.S. Sue Trump Administration, State Dept.](#)

– Several lawsuits were filed recently by individuals and organizations affected by the Trump administration's bans on the entry of certain immigrants and nonimmigrants into the United States.

#### [OFLC Releases Public Disclosure Data and Selected Program Statistics for Third](#)

[Quarter of FY 2020](#) – The Office of Foreign Labor Certification has released public disclosure data through the third quarter of FY 2020 drawn from employer applications requesting prevailing wage determinations and labor certifications for the PERM, H-1B, H-1B1, E-3, H-2A, H-2B, CW-1, and Prevailing Wage programs.

#### [USCIS Consolidates Policy Guidance on Applying Discretion in Agency](#)

[Adjudications](#) – USCIS recently consolidated existing policy guidance regarding agency officers' application of discretion in adjudications.

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**Details:**

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### **Trump Administration Agrees to Rescind New Foreign Student Online-Only Ban**

The Trump administration agreed on July 14, 2020, to rescind a new policy to bar nonimmigrant F-1 and M-1 students taking only online classes, due to the pandemic, for the fall 2020 semester from entering into or remaining in the United States. U.S. District Judge Allison D. Burroughs announced the Trump administration's agreement to rescind the new policy during a court hearing related to a lawsuit filed in federal court in Boston, Massachusetts, by Harvard University and the Massachusetts Institute of Technology (MIT), which have about 9,000 international students between them.

The policy, against which numerous entities had also filed lawsuits, declared that students enrolled in schools and/or programs that are fully online for the fall semester would not receive visas or be allowed to enter the United States. Active students currently in the United States enrolled in such programs were told they must depart the country or take other measures, such as transferring to a school with in-person instruction to remain in lawful status.

NAFSA: Association of International Educators welcomed the decision to rescind the new policy, saying the organization was "heartened to see the guidance put to rest." However, NAFSA said it "cannot ignore the damage inflicted by the perception of the July 6 guidance" that would have "force international students to choose between maintaining legal immigration status and what is best for their health and safety." NAFSA noted that regardless of the rescission, international student confidence in studying in the United States "has been lagging as shown by three straight academic years of declining new international student enrollment (nearly 11% since fall 2016)." According to one analysis, international student enrollment at U.S. universities in the fall semester of the 2020-21 academic year is expected to decline 63 to 98 percent from the levels in the 2018-2019 school year.

The controversy may not be fully over. Reportedly, the Trump administration is

considering applying the new policy to new students only rather than to those already in the United States. For now, according to reports, the administration will revert to its policy guidance issued in March. As of press time, the Trump administration had not issued any official communications related to the rescission of the policy.

#### Details:

- Harvard/MIT complaint, [https://www.harvard.edu/sites/default/files/content/sevp\\_filing.pdf](https://www.harvard.edu/sites/default/files/content/sevp_filing.pdf)
- "NAFSA Applauds Decision to Rescind ICE Guidance Threatening International Students with Deportation," NAFSA, <https://www.nafsa.org/about/about-nafsa/nafsa-applauds-decision-rescind-ice-guidance-threatening-international-students>
- "Trump Move Against International Students May Have Backfired," Forbes, <https://www.forbes.com/sites/stuartanderson/2020/07/09/trump-move-against-international-students-may-have-backfired/#63fe937fe3d1>
- "Trump Administration Drops Restrictions on Online-Only Instruction for Foreign Students," CNN, <https://www.cnn.com/2020/07/14/politics/immigration-harvard-visa-policy-online-only/index.html>
- "Trump Administration Backs Off Plan Requiring International Students to Take Face-to-Face Classes," Washington Post, [https://www.washingtonpost.com/local/education/ice-rule-harvard-international-students-rescinded/2020/07/14/319fdae0-c607-11ea-a99f-3bbdffb1af38\\_story.html](https://www.washingtonpost.com/local/education/ice-rule-harvard-international-students-rescinded/2020/07/14/319fdae0-c607-11ea-a99f-3bbdffb1af38_story.html)
- "Even With the Administration's About-Face on International Student Visas, Enrollment is Still Set to Plummet," Catherine Rampell (opinion), Washington Post, <https://www.washingtonpost.com/opinions/2020/07/14/even-with-administrations-about-face-international-student-visas-enrollment-is-still-set-plummet/>
- SEVP notice about the new policy issued on July 6, 2020, <https://bit.ly/2Cu4hsh>

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## **State Dept. Lists Exceptions Under Recent Presidential Proclamations Suspending Entry of Immigrants and Nonimmigrants**

On July 17, 2020, the Department of State (DOS) provided a detailed list of exceptions under two recent Presidential Proclamations that suspended the entry of immigrants and nonimmigrants into the United States. The list includes exceptions for H-1B, H-2B, H-4, L-1, L-2, J-1, and J-2 visas.

DOS said that travelers who believe their travel falls into one of the excepted categories (see link below) or is otherwise in the national interest may request a visa appointment at the closest U.S. embassy or consulate and a decision will be made at the time of interview. Travelers are encouraged to refer to the embassy/consulate website for detailed instructions on what services are currently available and how to request an appointment.

On July 16, 2020, DOS also issued guidance on national interest exceptions for certain travelers from the Schengen Area, the United Kingdom, and Ireland.

### Details:

- "Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak," Department of State, <https://bit.ly/2ZH079H>
- "National Interest Exceptions for Certain Travelers from the Schengen Area, United Kingdom, and Ireland," Department of State, <https://bit.ly/3jgQxSF>

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## **Phased Resumption of Services Begins for Visa and Passport Processing; MRV Fees Paid During Suspension Remain Valid**

Following the suspension of routine services worldwide in March 2020 due to the COVID-19 pandemic, U.S. embassies and consulates are beginning a phased resumption of routine visa services. The resumption will occur on a post-by-post basis. Each individual U.S. embassy or consulate's website should be consulted for information regarding operating status and which services it is currently offering.

The Department of State (DOS) said it is closely monitoring local conditions in each country where the agency has a U.S. presence. Local conditions that may affect reopening of various public services include "medical infrastructure, COVID-19 cases, emergency response capabilities, and restrictions on leaving home," DOS said, noting that machine-readable visa (MRV) fees that expired while routine services were suspended remain "valid and may be used to schedule a visa appointment in the country where it was purchased within one year of the date of payment."

#### Details:

- Phased Resumption of Routine Visa Services, Department of State, <https://bit.ly/32JwLd1>
- COVID-19 Update: Safely Working for You (Passports), <https://travel.state.gov/content/travel/en/passports.html>

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### **Plaintiffs Prevented From Entering U.S. Sue Trump Administration, State Dept.**

Several lawsuits were filed recently by individuals and organizations affected by the Trump administration's bans on the entry of certain immigrants and nonimmigrants into the United States.

- On July 17, 2020, 23 individual and organizational plaintiffs, including family-based immigrant visa petitioners, diversity visa lottery winners, and nonimmigrant visa sponsors, sued to overturn President Trump's bans. Litigators from the American Immigration Lawyers Association, Justice Action Center, and Innovation Law Lab, with pro bono support from Mayer Brown LLP, filed the plaintiffs' claims as an amended complaint, which had initially challenged President Trump's April immigration ban. The amended complaint, filed in the U.S. District Court for the District of Columbia, "marks the first legal challenge to the entirety of President Trump's immigration ban, which has been extended through the end of 2020," the plaintiffs said in a statement.
- On July 16, 2020, 149 diversity visa (DV) lottery selectees from 14 countries sued the Trump administration and the Department of State seeking immediate relief from a June 22, 2020, Presidential Proclamation that effectively bars them from entering the United States. Some have

immigrant visa stamps, were interviewed before being issued visa stamps, or were waiting for their final interviews. They argue that President Trump acted illegally when he ended the 2020 DV lottery program, and that he does not have the authority to interrupt the statutory scheme of immigration created by Congress.

#### Details:

- Press statement on lawsuit challenging entirety of immigration ban, Justice Action Center, <https://justiceactioncenter.org/individuals-employers-and-organizations-join-to-file-first-lawsuit-challenging-entirety-of-trumps-immigration-ban/>
- Press statement on DV case, Kuck Baxter Immigration Partners LLC, <https://www.immigration.net/2020/07/16/press-statement-on-lawsuit-filed-by-diversity-lottery-selectees-against-trump-administration-and-department-of-state-2/>

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### **OFLC Releases Public Disclosure Data and Selected Program Statistics for Third Quarter of FY 2020**

The Department of Labor's Office of Foreign Labor Certification (OFLC) has released a comprehensive set of public disclosure data through the third quarter of fiscal year (FY) 2020 drawn from employer applications requesting prevailing wage determinations and labor certifications for the PERM, H-1B, H-1B1, E-3, H-2A, H-2B, CW-1, and Prevailing Wage programs.

The public disclosure files include all final determinations OFLC issued for these programs during the third quarter. OFLC has also released third-quarter selected program statistics for these programs.

#### Details:

- Public disclosure files, OFLC, <https://www.foreignlaborcert.doleta.gov/performancecdm>
- Selected program statistics, OFLC, <https://www.foreignlaborcert.doleta.gov/performancecdm>

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## USCIS Consolidates Policy Guidance on Applying Discretion in Agency Adjudications

U.S. Citizenship and Immigration Services (USCIS) recently consolidated existing policy guidance regarding agency officers' application of discretion in adjudications.

Details:

- USCIS announcement, <https://www.uscis.gov/news/alerts/applying-discretion-uscis-adjudications>

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### Firm in the News

**Cyrus Mehta** was the invited speaker at a Zoom Video training entitled "Visitor Visa Extensions - Nuts and Bolts" that was sponsored by Volunteers of Legal Service (VOLS) for pro bono lawyers on July 15, 2020.

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