



IMMIGRATION UPDATE - JULY 28, 2020

Posted on July 28, 2020 by Cyrus Mehta

Headlines:

[SEVP Issues 'Clarifying' Q&A for Foreign Students re Online-Only Coursework Visa Ban](#) – SEVP released new guidance on the Trump administration's shifting policy on foreign students taking online coursework in the fall.

[USCIS Postpones Staff Furloughs After 'Surplus' Memo Surfaces](#) – USCIS announced that planned furloughs of more than 13,000 of its employees have been postponed for a month.

[State Dept. Issues Guidance on National Interest Exceptions for Certain Travelers From the Schengen Area, United Kingdom, and Ireland](#) – DOS released updated guidance stating that certain business travelers, investors, treaty traders, academics, and students may qualify for national interest exceptions to COVID-19-related travel restrictions.

[State Dept. Issues One-Month Extension for Immigrant Visa Medical Exams](#) – DOS announced that the CDC approved a one-month extension for medical examinations conducted between January 1 and June 30, 2020.

[USCIS Issues Clarifying Guidance on EB-5 Deployment of Investment Capital](#) – USCIS issued a policy alert regarding the deployment of investment capital, including further deployment after the job creation requirement is satisfied. USCIS said the clarifications apply to all Form I-526 and I-829 petitions pending on or after July 24, 2020.

[USCIS Releases Visitor Policy re COVID-19 Restrictions](#) – USCIS has released guidance on face masks and social distancing for visitors to its facilities.

[USCIS Ombudsman Assists With, Reports on Card Delays](#) – The USCIS Ombudsman recently reported on the agency's delays in printing green cards, employment authorization documents, and other secure documents, and

offered help.

[U.S. Chamber of Commerce, Trade Associations Sue Trump Administration to Stop Restrictions on Nonimmigrant Visas](#) – The U.S. Chamber of Commerce, the National Association of Manufacturers (NAM), the National Retail Federation, and several others sued the Trump administration on July 21, 2020, seeking an injunction to block President Trump's recent proclamation suspending new nonimmigrant visas.

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SEVP Issues 'Clarifying' Q&A for Foreign Students re Online-Only Coursework Visa Ban

U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program (SEVP) released new guidance dated July 24, 2020, in the form of "clarifying" questions and answers regarding the Trump administration's shifting policy on foreign students taking online coursework in the fall. The guidance follows the Trump administration's agreement on July 14, 2020, to rescind a new policy to bar all 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. The bar now applies to certain new students.

Below are selected highlights of the new guidance from SEVP:

- One question asks whether F or M students outside the United States obtain a visa to study in the United States if their program of study will be fully online for the fall 2020 session. Noting that individual eligibility determinations for F and M visas are made by the Department of State, ICE responds that new or initial nonimmigrant students who intend to pursue a full course of study conducted completely online "will likely not be able to obtain an F-1 or M-1 visa to study in the United States." If a nonimmigrant student was enrolled in a course of study in the United States on March 9, 2020, but subsequently left the country, "that student likely remains eligible for a visa since the March 2020 guidance permitted a full online course of study from inside the United States or from

abroad." The Q&A notes that the SEVP March 2020 guidance applies to nonimmigrant students who were actively enrolled at a U.S. school on March 9, 2020, and otherwise are complying with the terms of their nonimmigrant status.

- The Q&A also states that nonimmigrant students seeking to enroll in a "hybrid" program of study that includes both in-person and online components may maintain F-1 or M-1 nonimmigrant status if pursuing such programs during the fall 2020 school term. Nonimmigrant students in new or initial status after March 9, 2020, will not be able to enter the United States to enroll in a U.S. school as a nonimmigrant student for the fall term to pursue a full course of study that is 100 percent online. The Q&A notes that nonimmigrant students who have remained in the United States engaged in a full course of study and whose study will be fully online in the fall may remain in the United States, including "students who have remained in the U.S. in active status and are starting a new program of study that is 100 percent online."
- SEVP-certified schools that have not yet filed procedural change plans and have active nonimmigrant students enrolled in programs of study this fall should submit a procedural change plan, detailing any changes to existing procedures necessitated by COVID-19, the Q&A states.

COVID-19-related travel bans remain in place for several countries and regions. However, the Department of State released guidance on July 22, 2020, indicating that students may qualify for national interest exceptions in some cases. For example, students traveling from the Schengen Area, the United Kingdom, and Ireland with valid F-1 and M-1 visas "do not need to contact an embassy or consulate to seek an individual national interest exception to travel. Students seeking to apply for new F-1 or M-1 visas should check the status of visa services at the nearest embassy or consulate; those applicants who are found to be otherwise qualified for an F-1 or M-1 visa will automatically be considered for a national interest exception to travel."

Details:

- SEVP Q&A issued July 24, 2020, <https://www.ice.gov/doclib/sevis/pdf/fall2020faq.pdf>
- SEVP broadcast message follow-up to all SEVIS users issued July 24, 2020, <https://www.ice.gov/doclib/sevis/pdf/bcmFall2020guidance.pdf>

- "National Interest Exceptions for Certain Travelers from the Schengen Area, United Kingdom, and Ireland," issued July 22, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exceptions-from-certain-travelers-from-the-schengen-area-uk-and-ireland.html>
- SEVP COVID-19 FAQ issued July 15, 2020, <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>
- SEVP COVID-19 guidance for stakeholders, March 13, 2020, <https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance%203.13.20.pdf>
- SEVP COVID-19 guidance for all SEVIS users issued March 9, 2020, <https://www.ice.gov/doclib/sevis/pdf/bcm2003-01.pdf>
- SEVP optional school reporting template for COVID-19-related procedural adaptations, https://www.ice.gov/doclib/sevis/pdf/coronavirusSEVP_ReportingTemplate.pdf

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USCIS Postpones Staff Furloughs After 'Surplus' Memo Surfaces

U.S. Citizenship and Immigration Services (USCIS) announced on July 24, 2020, that planned furloughs of more than 13,000 of its employees have been postponed for a month to allow Congress to move on the agency's emergency funding request for \$1.2 billion. Jessica Collins, a USCIS spokesperson, said that recent assurances from Congress and an "uptick" in receipts allowed the agency "the flexibility to responsibly delay the start date" of the furlough until August 30, 2020.

Regarding the previously projected USCIS deficit, Sen. Patrick Leahy (D-VT) said that he is "committed to addressing this issue in the next coronavirus supplemental so that USCIS can continue accomplishing its missions without a furlough." He noted that new revenue estimates show the agency could end the fiscal year with a surplus rather than a deficit, based on an internal staff memorandum. Shortly before USCIS announced the one-month delay in furloughs, Sens. Leahy and Jon Tester (D-MT) had called for the Trump administration to call off the furlough plans in light of the new estimates. Ms. Collins said the funding request remains unchanged "and the agency is depending on Congress to provide emergency funding to ensure agency

operations continue uninterrupted."

Details:

- "USCIS Postpones Plans to Furlough 13,400 Employees, for Now," Roll Call, <https://www.rollcall.com/2020/07/24/uscis-postpones-plans-to-furlough-13400-employees-for-now/>
- "USCIS Postpones Planned Furloughs," Federal Computer Week, <https://fcw.com/articles/2020/07/24/russell-uscis-furloughs-postponed.aspx>

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State Dept. Issues Guidance on National Interest Exceptions for Certain Travelers From the Schengen Area, United Kingdom, and Ireland

COVID-19-related travel bans remain in place for several countries and regions. The Department of State released updated guidance on July 22, 2020, stating that certain business travelers, investors, treaty traders, academics, and students may qualify for national interest exceptions. Below are highlights:

- Business travelers, investors, academics, J-1 students, and treaty traders who have a valid visa or Electronic System for Travel Authorization (ESTA) issued before Presidential Proclamation 9993 or 9996's effective date or who are seeking to apply for a visa and believe they may qualify for a national interest exception should contact the nearest U.S. embassy or consulate before traveling.
- The Department of State also continues to grant national interest exceptions for qualified travelers seeking to enter the United States for purposes related to humanitarian travel, public health response, and national security.
- As noted above, students traveling from the Schengen Area, the United Kingdom, and Ireland with valid F-1 and M-1 visas do not need to contact an embassy or consulate to seek an individual national interest exception to travel. Students seeking to apply for new F-1 or M-1 visas should check the status of visa services at the nearest embassy or consulate; those applicants who are found to be otherwise qualified for an F-1 or M-1 visa will automatically be considered for a national interest exception to travel.

Details:

- "National Interest Exceptions for Certain Travelers from the Schengen Area, United Kingdom, and Ireland," issued July 22, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exceptions-from-certain-travelers-from-the-schengen-area-uk-and-ireland.html>
- "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>

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State Dept. Issues One-Month Extension for Immigrant Visa Medical Exams

On July 24, 2020, the Department of State announced that the Centers for Disease Control and Prevention approved a one-month extension for medical examinations conducted between January 1 and June 30, 2020.

The announcement notes that immigrant visas are limited to the validity of the medical exam for a maximum of six months. Those who were unable to travel on their issued visa, or obtained their medical exam but did not receive their visa, should contact the Immigrant Visa Unit of the U.S. embassy or consulate that issued or is adjudicating the visa application to determine whether they may be issued or reissued a visa for one additional month. "If you are not able to travel within the one additional month, consider waiting until you are able to travel and obtain a new, full validity medical examination and visa," the announcement states.

Details:

- Department of State announcement, <https://travel.state.gov/content/travel/en/News/visas-news/one-month-extension-of-immigrant-visa-medical-examinations.html>

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USCIS Issues Clarifying Guidance on EB-5 Deployment of Investment Capital

U.S. Citizenship and Immigration Services (USCIS) issued a policy alert on July 24, 2020, that provides "clarifying guidance" included in the USCIS Policy

Manual regarding the deployment of investment capital, including further deployment after the job creation requirement is satisfied. USCIS said the clarifications apply to all Form I-526 and I-829 petitions pending on or after July 24, 2020. The guidance:

- Clarifies requirements for deployment of capital generally, including providing new language regarding the deployment of capital through any financial instrument that meets applicable requirements as well as explaining how the purchase of financial instruments on the secondary market will generally not satisfy such requirements.
- Clarifies that capital may be further deployed into any commercial activity that is consistent with the purpose of the new commercial enterprise to engage in the ongoing conduct of lawful business. USCIS said this clarification "is meant to address potential confusion among stakeholders regarding prior language about the 'scope' of the new commercial enterprise while remaining consistent with applicable eligibility requirements."
- Provides that further deployment must be through the same new commercial enterprise.
- Provides that further deployment must be within the geographic area of the same regional center, including any amendments to the regional center's geographic area approved before the further deployment.
- Explains that, based on an internal review and analysis of typical EB-5 capital deployment structures, USCIS generally considers 12 months as a reasonable amount of time to further deploy capital, but will consider evidence showing that a longer period was reasonable.

Details:

- USCIS Policy Alert, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200724-EB5FurtherDeployment.pdf>

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USCIS Releases Visitor Policy re COVID-19 Restrictions

U.S. Citizenship and Immigration Services (USCIS) has released guidance on face masks and social distancing for visitors to its facilities.

Among other things, the guidance states that all applicants, petitioners, and visitors over the age of two must wear face coverings while in a USCIS office until further notice. USCIS notes that social distancing requirements are also in place. The guidance restricts who may accompany applicants with scheduled appointments or those who are attending naturalization ceremonies.

Details:

- USCIS Visitor Policy, <https://www.uscis.gov/about-us/uscis-visitor-policy>

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USCIS Ombudsman Assists With, Reports on Card Delays

The U.S. Citizenship and Immigration Services (USCIS) Ombudsman recently reported on the agency's delays in printing lawful permanent resident (LPR) cards (green cards), employment authorization documents, and other secure documents, and offered help.

The Ombudsman noted that the reduced capacity followed USCIS' ending of a contract with an outside company responsible for printing the cards. USCIS said it intended to hire federal employees to replace the contractors, but its financial situation resulted in a hiring freeze.

The Ombudsman said that USCIS "expects these backlogs will continue for the foreseeable future" and that stakeholders are submitting requests for case assistance to the Ombudsman, which is assisting. Specifically, for those whose applications have been approved but whose cards have not yet been produced, the Ombudsman is sending weekly spreadsheets to USCIS to verify that card requests are in line to be processed. Such requests may be submitted at <https://www.dhs.gov/topic/cis-ombudsman/forms/7001>.

The Ombudsman also noted that LPRs may obtain proof of their status by requesting a stamp of temporary evidence in a valid passport. "Please reach out to USCIS' Contact Center (800-375-5283) to make an appointment at your local USCIS field office," the Ombudsman said.

Details:

- USCIS Ombudsman's alert to stakeholders re card production delays, <https://content.govdelivery.com/accounts/USDHS/bulletins/2969646>

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U.S. Chamber of Commerce, Trade Associations Sue Trump Administration to Stop Restrictions on Nonimmigrant Visas

The U.S. Chamber of Commerce, the National Association of Manufacturers (NAM), the National Retail Federation, and several others sued the Trump administration on July 21, 2020, seeking an injunction to block President Trump's recent proclamation suspending new nonimmigrant visas.

Thomas Donohue, U.S. Chamber of Commerce CEO, said the lawsuit "seeks to overturn these sweeping and unlawful immigration restrictions that are an unequivocal 'not welcome' sign to the engineers, executives, IT experts, doctors, nurses and other critical workers who help drive the American economy." He said that left in place, the restrictions would "push investment abroad, inhibit economic growth and reduce job creation." Linda Kelly, NAM Senior Vice President and General Counsel, said the visa restrictions would "hand other countries a competitive advantage because they will drive talented individuals away from the United States." Marcie Schneider, President of Intrax, another party to the lawsuit, noted that J-1 cultural exchange programs "contribute more than \$1.4 billion to the American economy each year."

Details:

- "NAM Files Suit Against Administration's 'Unlawful Restrictions' to Visas," https://www.nam.org/nam-files-suit-against-administrations-unlawful-restrictions-to-visas-9874/?stream=series-press-releases&utm_source=link&utm_medium=social
- "Why the U.S. Chamber of Commerce is Suing the Trump Administration," New York Times (opinion by U.S. Chamber of Commerce CEO), <https://www.nytimes.com/2020/07/23/opinion/trump-chamber-of-commerce-lawsuit.html?referringSource=articleShare>
- Complaint, <https://www.nam.org/wp-content/uploads/2020/07/2020-07-21-Complaint-for-Declaratory-Injunctive-Relief.pdf>

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Cyrus Mehta was:

Speaker, Ethical Issues and Immigration Law, Defending Immigration Removal Proceedings 2020, Zoom Video, July 23, 2020.

Discussion Leader, Ethically Navigating Changing Circumstances During the Course of Representation, 2020 AILA Annual Virtual Conference, July 23, 2020.

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