



IMMIGRATION UPDATE - OCTOBER 05, 2020

Posted on October 5, 2020 by Cyrus Mehta

Headlines:

[Federal Judge Issues Preliminary Injunction Against Trump Block on H, L, J Foreign Workers](#) – On October 1, 2020, a U.S. district judge ruled in *NAM v. DHS* against aspects of President Trump's June 22, 2020, Proclamation that blocked visa issuance to many foreign workers.

[USCIS Issues Guidance on Fee Rule Following Litigation](#) – A U.S. district court in *Immigrant Legal Resource Center et al. v. Wolf, et al.*, temporarily enjoined DHS from implementing or enforcing USCIS' August 3, 2020, fee schedule rule and changes to certain other immigration benefit request requirements.

[DHS Proposes Rule to Amend Affidavit of Support Regulations](#) – DHS proposes to amend its regulations governing the affidavit of support requirements.

[State Dept. Issues Guidance on National Interest Exceptions for Travelers from the Schengen Area, United Kingdom, and Ireland](#) – DOS recently released guidance on national interest exceptions for travelers from the Schengen Area, United Kingdom, and Ireland. Certain business travelers, investors, treaty traders, academics, students, and journalists may qualify for national interest exceptions under related Presidential Proclamations.

[Federal Judge Rules on DV-2020 Visas](#) – A U.S. district court judge ruled in *Gomez v. Trump* that the Department of State intentionally misinterpreted the Trump administration's entry ban by not issuing diversity visas.

[State Dept. Releases Instructions for DV-2022 Visa Lottery Program](#) – DOS has released instructions on the diversity visa program for fiscal year 2022, under which up to 55,000 visas will be available. Applicants must submit entries electronically between noon ET, October 7, 2020, and noon ET, November 10, 2020.

[ABIL Global: United Kingdom and Global Highlights](#) – This article highlights the United Kingdom's (UK) new immigration system, which starts January 1, 2021, and summarizes key changes to immigration rules in global jurisdictions, including the European Union (EU), Ireland, Belgium, Poland, Luxembourg, Singapore, Australia, Canada, and Barbados.

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Federal Judge Issues Preliminary Injunction Against Trump Block on H, L, J Foreign Workers

On October 1, 2020, a U.S. district judge ruled in *NAM v. DHS* against aspects of President Trump's June 22, 2020, proclamation that effectively blocked visa issuance to many foreign workers.

More specifically, the proclamation prevented visa issuance to intracompany transferees (L-1A and L-1B), skilled workers in specialty occupations (H-1B), seasonal nonagricultural laborers responding to proven domestic labor shortages (H-2B), and certain exchange visitors in work-study programs (J). The plaintiffs include Intrax, Inc. (a leading operator of cultural exchange programs), the National Association of Manufacturers (NAM), the U.S. Chamber of Commerce, the National Retail Federation, and TechNet. Collectively, the plaintiffs' members include hundreds of thousands of U.S. businesses of all sizes and a variety of economic sectors.

Among other things, the court rejected the government's position that the Presidential Proclamation implicated the President's foreign affairs powers simply because it affects immigration. The court noted that this Proclamation deals with a purely domestic economic issue – the loss of employment during a national pandemic – and that in domestic economic matters, the national security and foreign affairs justifications for policy implementations disappear, and normal policy-making channels are the default, which includes the traditional pathway of public rulemaking. Indeed, the court said, "there must be some measure of constraint on Presidential authority in the domestic sphere in order not to render the executive an entirely monarchical power in the immigration context, an area within clear legislative prerogative."

The court also noted that the Proclamation at issue nullified significant portions of the Immigration and Nationality Act (INA) by declaring invalid statutorily established visa categories in their entirety for the remainder of this calendar year and indefinitely beyond that deadline. "Until, at a minimum, the end of the year, the Proclamation simply eliminates H-1B, H-2B, L-1, and J-1 visas and nullifies the statutes creating those visa categories," the court noted, "and rewrites the carefully delineated balance between protecting American workers and the need of American businesses to staff their operations with skilled, specialized, and temporary workers." The court said that the work visa provisions of the INA set out a "finely reticulated statutory scheme" that "reflects a set of legislative judgments that the entry of international workers is in the national interest provided they enter the market under the specific terms and conditions provided by the statute." The court found that the President's "wholesale elimination of categories of workers does not supplement this legislative judgment but rather explicitly supplants it by refusing admission to all categories of foreign workers."

The court granted the plaintiffs' request for a preliminary injunction pending trial in this action or further order of the court. The scope of relief applies only to the named plaintiffs and their members. Some practitioners advise employers to consider joining NAM or the U.S. Chamber of Commerce to gain relief under the injunction. The government is expected to appeal.

Details:

- *NAM v. DHS*, order granting plaintiffs' motion for a preliminary injunction (Oct 1, 2020),
<https://www.courtlistener.com/recap/gov.uscourts.cand.362746/gov.uscourts.cand.362746.87.0.pdf>
- "Judge Blocks Trump's Ban on Foreign Workers," New York Times,
<https://www.nytimes.com/2020/10/01/us/foreign-workers-visas-h-1b-trump.html>
- "Judge Rules Against Trump's H-1B Visa Ban: President Is Not a Monarch," Forbes,
<https://www.forbes.com/sites/stuartanderson/2020/10/02/judge-rules-against-trumps-h-1b-visa-ban-president-is-not-a-monarch/#5c6bc32851cc>
- "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak," Presidential

Proclamation,

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

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USCIS Issues Guidance on Fee Rule Following Litigation

On September 29, 2020, a U.S. district court preliminarily enjoined the Department of Homeland Security from implementing or enforcing any part of U.S. Citizenship and Immigration Services' (USCIS) rule on its fee schedule and changes to certain other immigration benefit request requirements.

USCIS said that while the rule is preliminarily enjoined, the agency will continue to:

- Accept USCIS forms with the current editions and current fees; and
- Use the current regulations and guidance to adjudicate applications and petitions. This includes accepting and adjudicating fee waiver requests as provided under Adjudicator's Field Manual chapters 10.9 and 10.10.

Details:

- Court order, *Immigrant Legal Resource Center et al. v. Wolf, et al.*, https://www.nafsa.org/sites/default/files/media/document/preliminjonfee_rule2020.pdf
- USCIS alert, <https://www.uscis.gov/forms/filing-fees>
- USCIS final rule on fees (Aug. 3, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16389.pdf>
- Adjudicators Field Manual, chapter 10.9 (<https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm10-external.pdf>) and 10.10 (<https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm10-external.pdf>)

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DHS Proposes Rule to Amend Affidavit of Support Regulations

The Department of Homeland Security (DHS) proposes to amend its regulations

governing affidavit of support requirements.

Certain immigrants must submit an Affidavit of Support executed by a sponsor who agrees to provide financial support to the sponsored immigrant and accepts liability for reimbursing the costs of any means-tested public benefits a sponsored immigrant receives while the affidavit is in effect. In its October 2, 2020, notice of proposed rulemaking, DHS proposes to clarify how a sponsor demonstrates the means to maintain income, such as revising the documentation that sponsors and household members must submit. DHS also proposes to modify when an applicant is required to submit an affidavit from a joint sponsor, who may be a household member for purposes of executing a Contract Between Sponsor and Household Member, and who is considered as part of a sponsor's household size. DHS also proposes to update reporting and information-sharing requirements between authorized parties and U.S. Citizenship and Immigration Services.

Written comments on the proposed rule and related information collection should be submitted by the deadlines and using the methods specified in the notice.

Details:

- DHS notice of proposed rulemaking, 85 Fed. Reg. 62432 (Oct. 2, 2020), <https://bit.ly/2EVJKhY>

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

The Department of State (DOS) recently released updated guidance on national interest exceptions for travelers from the Schengen Area, United Kingdom (UK), and Ireland. Certain business travelers, investors, treaty traders, academics, students, and journalists may qualify for national interest exceptions under related Presidential Proclamations. Qualified travelers who are applying for or have valid visas or Electronic System for Travel Authorization (ESTA) authorization may travel to the United States following the procedures below:

- Students traveling from the Schengen Area, the UK, 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.

- Business travelers, investors, academics, J-1 students, journalists, and treaty traders who have a valid visa in the appropriate class, an ESTA authorization that was issued before Presidential Proclamations' 9993 or 9996 effective dates, 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. If a national interest exception is approved, they may travel on either a valid visa or ESTA authorization, as appropriate.

DOS said it 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.

Details:

- DOS notice, <https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exceptions-from-certain-travelers-from-the-schengen-area-uk-and-ireland.html>

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Federal Judge Rules on DV-2020 Visas

A U.S. district court judge ruled on September 30, 2020, that the Department of State intentionally misinterpreted the Trump administration's entry ban by not issuing diversity visas. The court reserved 9,095 DV-2020 visas for issuance after the final order in the case, which extends the FY 2020 deadline well into FY 2021. The court also granted class status to all non-plaintiffs whose visas had not been issued when Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

Details:

- *Gomez v. Trump*, opinion and amended order, <https://law.justia.com/cases/federal/district-courts/district-of-columbia/dc-dce/1:2020cv01419/218517/151/>

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State Dept. Releases Instructions for DV-2022 Visa Lottery Program

The Department of State (DOS) released instructions on the diversity visa (DV) program for fiscal year 2022, under which up to 55,000 immigrant visas will be available. Applicants must submit entries for the DV-2022 program electronically at <https://dvprogram.state.gov/> between noon ET, October 7, 2020, and noon ET, November 10, 2020. DOS recommends entering earlier in the registration period due to likely heavy demand and consequent website delays toward the end of the period. Submission of more than one entry will result in ineligibility.

There is no cost to register for the program. Applicants must meet "simple but strict" eligibility requirements. DOS determines selectees through a randomized computer drawing and distributes diversity visas among six geographic regions. No single country may receive more than 7 percent of the available diversity visas in any one year.

For DV-2022, persons born in the following countries are not eligible to apply: Bangladesh, Brazil, Canada, China (including Hong Kong SAR), Colombia, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Mexico, Nigeria, Pakistan, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Details:

- "Instructions for the 2022 Diversity Immigrant Visa Program (DV-2022)," <https://travel.state.gov/content/dam/visas/Diversity-Visa/DV-Instructions-Translations/DV-2022-Instructions-Translations/DV-2022-Instructions-and-FAQs-English.pdf>

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UNITED KINGDOM and Global Highlights

This article notes that the United Kingdom's (UK) new immigration system starts January 1, 2021. The article also highlights key changes to immigration rules in global jurisdictions, including the European Union (EU), Ireland, Belgium, Poland, Luxembourg, Singapore, Australia, Canada, and Barbados.

New Immigration System

The UK will have a new immigration system starting January 1, 2021.

The new immigration system will apply to both EU and non-EU citizens. EU citizens moving to the UK on or after January 1, 2021, will need a visa to be able to work. This also applies to other European Economic Area (EEA) nationals and Swiss nationals. This does not apply to Irish citizens. They will still be free to work in the UK without a visa.

Highlights of Key Changes to Immigration Rules in Global Jurisdictions

European Union (EU). The European Council has updated its list of countries whose residents should be allowed or denied entry into the EU Member States. Travel restrictions were also lifted for highly skilled workers by many EU Member States as well as Schengen Area countries.

Ireland. All immigration permissions that expired between August 20 and September 20, 2020, are automatically extended for an additional one-month period. The Department of Justice Registration Offices also temporarily closed again in light of the ongoing coronavirus outbreak.

Also, as of July 20, 2020, the renewal process for the Online Residence Card (IRP card) is open to all non-EEA nationals and their dependent families residing in Dublin.

Belgium. On July 30, 2020, Belgium implemented the revised EU Posted Worker Directive. This is expected to result in only minimal changes because most of the rules were already in place.

Poland. On July 30, 2020, Poland implemented the revised EU Posted Worker Directive, making changes to its posted worker laws.

Luxembourg. The Luxembourg government published information on what British nationals residing in Luxembourg must do before December 31, 2020 (end of the Brexit transition period) to maintain their right of residence and work in Luxembourg.

Singapore. The minimum qualifying monthly salary threshold for Employment Passes increased to SGD 4,500 as of September 1, 2020. As of October 1, 2020, employers wishing to employ foreign workers must adhere to stricter advertising requirements and job postings when carrying out the labor market test for employers.

Australia. To expedite Temporary Skill Shortage visa application processing,

the Australian government introduced a new Priority Migration Skilled Occupation List for certain critical workers. Also, as of October 1, 2020, additional labor market testing requirements are required for certain visa types.

Canada. On July 22, 2020, new restrictions took effect on the Québec Experience Program (PEQ). The restrictions extend the length of required prior qualifying employment from 24 months to 36 months for foreign nationals seeking permanent residence under PEQ.

Barbados. Barbados introduced New Welcome Stamp Visas to enable foreign nationals to reside and work remotely from Barbados for up to one year. There is a requirement to show sufficient income for this visa.

Details:

- New Immigration System, Gov.UK, <https://www.gov.uk/guidance/new-immigration-system-what-you-need-to-know>
- "The UK's New Immigration System: What You Need to Know," Kingsley Napley, <https://www.kingsleynapley.co.uk/services/department/immigration/the-uks-new-immigration-system-what-you-need-to-know> and <https://online.flowpaper.com/74120717/TheUKsNewImmigrationSystemFAQs/#page=1>
- "Global Immigration Update," Kingsley Napley, <https://www.kingsleynapley.co.uk/insights/news/kn-global-immigration-update-july-and-august-2020>

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Firm in the News

Cyrus Mehta was quoted in a Times of India article on NAM v. Trump, which held that the President's work visa ban was unlawful. The article can be found here,

<https://timesofindia.indiatimes.com/world/us/us-district-court-halts-donald-trumps-entry-ban-for-h-1b-and-other-categories-indicating-that-the-president-exceeded-his-powers/articleshow/78446145.cms>

Mr. Mehta was a speaker on "Public Charge and Ethical Issues Arising in the

Representation of Athletes and Entertainers" at the 2020 AILA Athletics, Culture, Entertainment, and Science (ACES) Virtual Conference on October 2, 2020.

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