



IMMIGRATION UPDATE - JANUARY 11, 2021

Posted on January 11, 2021 by Cyrus Mehta

Headlines:

[USCIS Issues Final Rule Prioritizing Higher Wages in H-1B Cap Selection Process](#)

– USCIS published a final rule prioritizing the selection of new H-1B petitions in 2021 based on proffered wages.

[USCIS Announces Delays in Issuing Receipt Notices Filed at Lockbox Facilities](#) –

USCIS announced delays of four to six weeks in sending out receipt notices after receiving properly filed applications and petitions with a USCIS lockbox.

[Judges Block Trump Asylum Rule, Refugee Local Placement Order](#) – A U.S.

district judge blocked the Trump administration's rule that would have severely limited asylum in the United States by curtailing eligibility criteria. In another ruling on the same day, a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit ruled against a Trump executive order requiring consent from state and local entities for refugee placements.

[SAVE Issues Notice on Verifying Applicants' Extended Deferred Action Under](#)

[DACA](#) – The Systematic Alien Verification for Entitlements program announced that it can verify when an applicant for a federal, state, or local government benefit or license has received deferred action under Deferred Action for Childhood Arrivals.

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USCIS Issues Final Rule Prioritizing Higher Wages in H-1B Cap Selection Process

On January 7, 2021, U.S. Citizenship and Immigration Services (USCIS) published a final rule prioritizing the selection of new H-1B petitions in 2021 based on higher proffered wages.

The new rule gives priority to petitions that offer "Level IV" wages (wages around the 75th-80th percentile of local wages for the occupation) based on the Department of Labor's Occupational Employment Statistics (OES) survey, and then gives priority in descending order to petitions offering Level III, Level II, and Level I wages. The selection of new H-1B petitions when demand exceeds the available 85,000 numbers has been by random selection, or "lottery," for over a decade. The final rule states that random selection will happen only for petitions in the lowest wage band for which numbers are still available.

The rule is scheduled to go into effect March 9, 2021, before the FY 2022 H-1B visa lottery. However, there are several potential impediments. President-elect Biden's inauguration will occur well before the rule's effective date.

Practitioners note that he may eliminate or delay late-breaking final rules, such as this one. Moreover, the rule could be challenged in court based on the argument that Congress mandated that H-1B visas be made available in the order in which petitions are filed, not based on wages offered.

Details:

- USCIS final rule, <https://bit.ly/38s6r9s>
- USCIS news release, <https://www.uscis.gov/news/news-releases/uscis-modifies-h-1b-selection-process-to-prioritize-wages>
- "With Democratic Senate Majority, Biden Has Power To Quickly Undo Trump Regulatory Rollbacks," Forbes, <https://bit.ly/3i0pQBF>
- "DHS Publishes Final Rule To End H-1B Visa Lottery," <https://www.forbes.com/sites/stuartanderson/2021/01/08/dhs-publishes-final-rule-to-end-h-1b-visa-lottery/?sh=7b8df1f94af0>

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USCIS Announces Delays in Issuing Receipt Notices Filed at Lockbox Facilities

U.S. Citizenship and Immigration Services (USCIS) announced delays of four to six weeks in sending out receipt notices after receiving properly filed applications and petitions with a USCIS lockbox. The agency said a variety of factors were to blame, including "COVID-19 restrictions, an increase in filings, current postal service volume and other external factors." Among other things, USCIS said there may be "significant delays" in receipt notices for Form I-765,

Application for Employment Authorization, based on categories related to F-1 students.

USCIS said its lockbox workforce was working extra hours and redistributing its workload to minimize delays. "We do not anticipate any receipting delays that would result in a payment that is past its validity date," the agency said. For those who have not yet filed an application, USCIS recommends filing online if possible, creating a USCIS online account to check case status, and completing a Form G-1145, E-Notification of Application/Petition Acceptance to request a text message and/or email when USCIS accepts the form via a lockbox.

Details:

- USCIS alert, <https://www.uscis.gov/news/alerts/uscis-lockbox-updates>

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Judges Block Trump Asylum Rule, Refugee Local Placement Order

On January 8, 2021, a U.S. judge in the Northern District of California blocked the Trump administration's rule that would have severely limited asylum in the United States by curtailing eligibility criteria. Judge James Donato blocked the rule on the basis that Chad Wolf, whom President Trump appointed as Acting Secretary of Homeland Security, did not have the authority to impose rules because he was not lawfully appointed. Noting that limiting the decision "would result in a fragmented and disjointed patchwork of immigration policy," Judge Donato said the temporary restraining order applies nationwide.

Judge Donato said the government "has recycled exactly the same legal and factual claims made in the prior cases, as if they had not been soundly rejected in well-reasoned opinions by several courts. This is a troubling litigation strategy. In effect, the government keeps crashing the same car into a gate, hoping that someday it might break through."

Asylum at the U.S.-Mexico border is otherwise also limited due to COVID-19 pandemic-related and other reasons. President Trump reportedly withdrew his nomination of Mr. Wolf to serve as Secretary of Homeland Security after Mr. Wolf condemned those who rioted and invaded the U.S. Capitol and said he supported an orderly transition to the Biden administration.

In another ruling on the same day, a three-judge panel of the U.S. Court of

Appeals for the Fourth Circuit ruled against a Trump executive order requiring consent from state and local entities for refugee placements.

Details:

- "Judge Blocks Dramatic Overhaul of U.S. Asylum System From Taking Effect," Reuters, <https://reut.rs/3s40ZBs>
- S. Judge Blocks Trump Administration's Sweeping Asylum Rules," Associated Press, <https://apnews.com/article/donald-trump-immigration-courts-local-governments-3d6ab9e79153e67d974cee1bf592862f>

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SAVE Issues Notice on Verifying Applicants' Extended Deferred Action Under DACA

The Systematic Alien Verification for Entitlements (SAVE) program announced that it can verify when an applicant for a federal, state, or local government benefit or license has received deferred action under Deferred Action for Childhood Arrivals (DACA).

SAVE noted that applicants may present an unexpired Form I-766, Employment Authorization Document (EAD), in combination with an I-797, Extension Notice, issued by USCIS showing that their deferred action has been extended for one year. This unexpired EAD must contain a Category code of C33 and be issued on or after July 28, 2020, SAVE said, adding that SAVE user agencies may need to institute additional verification in these situations.

Details:

- USCIS notice, <https://www.uscis.gov/save/whats-new/verifying-applicants-extended-deferred-action-under-daca>

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