



IMMIGRATION UPDATE - FEBRUARY 01, 2021

Posted on February 1, 2021 by Cyrus Mehta

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[USCIS To Abide by Previous Filing Fee Amounts Under Preliminary Injunction](#) – USCIS will continue to abide by previous filing fee amounts because of two preliminary injunctions.

[Judge May Extend Hold on Deportation Moratorium Until February 23](#) – The Department of Justice may appeal, but it was unclear as of press time whether it would.

[OFLC To Reissue Certain Prevailing Wage Determinations](#) – In response to a court order, OFLC will reissue certain PWDs issued under an interim final rule in two phases.

[February Visa Bulletin Announces Green Card Projections for the Coming Months](#) – The Department of State's Visa Bulletin for February 2021 included information on potential monthly movement for employment-based green card categories through May.

[Judge Rules STEM OPT Program Lawful](#) – The order means that both the 12-month OPT and STEM OPT extension programs are lawful.

[USCIS Extends Flexibility for Responding to Agency Requests](#) – USCIS is extending the flexibilities it initially announced on March 30, 2020, to assist applicants, petitioners, and requestors responding to certain agency requests.

[President Biden Names Jean King as New Acting Director of EOIR](#) – Ms. King is a former general counsel for EOIR and most recently served as EOIR's chief administrative law judge.

[President Biden Issues Executive Order Revoking Trump "Buy American and Hire American" Executive Order](#) – The order states that the federal government

should "maximize the use of goods, products, and materials produced in, and services offered in, the United States." It also revokes several Trump administration orders.

[TPS for Syria Extended, Redesignated](#) – DHS announced an 18-month extension and redesignation of abil

[Biden Administration Withdraws Proposed H-4 EAD Rescission Rule From OMB Review](#) – About 100,000 H-4 EAD holders (spouses of H-1B workers who are mostly women from India) are affected, along with their employers.

[ICE Extends I-9 Compliance Flexibility](#) – ICE announced an extension of flexibilities in rules related to employment eligibility verification compliance due to continued precautions related to the COVID-19 pandemic. The policy is extended until March 31, 2021.

[ICE Cancels Plans for OPT Employment Compliance Unit](#) – The agency determined that the Student and Exchange Visitor Program already addressed many of the same responsibilities.

[President Biden Signs Proclamation Continuing Suspension of Entry for Certain Travelers, Adding South Africa; DOS Provides Related Info](#) – President Biden signed a proclamation continuing the suspension of entry of certain travelers from the Schengen Area, the United Kingdom, the Republic of Ireland, Brazil, China, and Iran, and expanding restrictions to include travelers from South Africa.

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Details:

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USCIS To Abide by Previous Filing Fee Amounts Under Preliminary Injunction

U.S. Citizenship and Immigration Services (USCIS) will continue to abide by previous filing fee amounts because of preliminary injunctions in *ILRC v. Wolf* and *Nw. Immigrant Rts. Project v. USCIS*. USCIS said it is complying with the terms of these orders and "is not enforcing the regulatory changes set out in the Final Rule. USCIS will continue to accept the fees that were in place prior to October 2, 2020, and follow the guidance in place prior to October 2, 2020 to adjudicate fee waiver requests."

Details:

- Notification of Preliminary Injunction, USCIS, 86 Fed. Reg. 7493, Jan. 29, 2021, <https://www.justice.gov/eoir/page/file/1361621/download>

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Judge May Extend Hold on Deportation Moratorium Until February 23

Judge Drew Tipton of the Southern District of Texas, who recently blocked for 14 days the Biden administration's 100-day pause on deportations in response to a lawsuit led by Texas Attorney General Ken Paxton, said he is likely to extend the block until February 23, 2021.

The Department of Justice may appeal, but it was unclear as of press time whether it would.

Details:

- "Judge Likely to Extend Hold on Biden's Deportation Pause Until Late February," CNN, Jan. 29, 2021, <https://www.cnn.com/2021/01/29/politics/immigration-biden-deportation-s-texas/index.html>
- Texas v. United States, Order Granting Plaintiff's Emergency Application for a Temporary Restraining Order, Jan. 26, 2021, <https://www.courthousenews.com/wp-content/uploads/2021/01/tx-deportation-order.pdf>

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OFLC To Reissue Certain Prevailing Wage Determinations

On January 20, 2021, a U.S. district court issued a modified order governing the manner and schedule in which the Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) will reissue certain prevailing wage determinations (PWDs) that were issued from October 8, 2020, through December 4, 2020, under the wage methodology for a related DOL interim rule issued in October, and at the request of employers under the H-1B, H-1B1, and E-3 temporary programs and PERM labor certification program.

OFLC said DOL is taking necessary steps to comply with the modified order issued by the district court. Accordingly, OFLC will reissue certain PWDs issued

under the interim final rule in two phases: high priority (within 15 days of receiving the requested list of named plaintiffs from plaintiffs' counsel) and emergency situations (by March 2, 2021).

Employers that have already submitted a request in response to a December 3, 2020, announcement posted by OFLC have been issued a PWD and do not need to resubmit a second request for reissuance or take other additional action, OFLC said.

Details:

- OFLC announcement, Jan. 22, 2021,
<https://www.dol.gov/agencies/eta/foreign-labor>

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February Visa Bulletin Announces Green Card Projections for the Coming Months

The Department of State's Visa Bulletin for February 2021 included the following information on final action date projections (potential monthly movement) for employment-based green card categories through May. The bulletin notes that determination of the actual monthly final action dates is subject to fluctuations in applicant demand and other variables affecting processing:

Employment First:

Worldwide: Current

China: Up to six months

India: Up to six months

Employment Second:

Worldwide: Current

China: Up to three weeks

India: Up to two weeks

Employment Third:

Worldwide: Current

China: Up to one month

India: Up to three weeks

Mexico: Current

Philippines: Current

Employment Fourth:

Current for most countries

El Salvador, Guatemala, and Honduras: Up to three months

Mexico: Up to one month

Employment Fifth:

Will remain Current for most countries

China: No forward movement

Vietnam: Up to three weeks

Details:

- Visa Bulletin for February 2021,
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-february-2021.html>

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Judge Rules STEM OPT Program Lawful

On January 28, 2021, a U.S. district court judge issued a summary judgment order finding that the STEM OPT (Optional Practical Training for science, technology, engineering, and mathematics students) program is a valid exercise of authority under the Immigration and Nationality Act. This means that both the 12-month OPT and STEM OPT extension programs are lawful.

The plaintiff, Washington Alliance of Technology Workers, has appealed.

Details:

- Memorandum opinion, *Washington Alliance of Technology Workers v. DHS*,
<https://bit.ly/2MaCWRv>

USCIS Extends Flexibility for Responding to Agency Requests

U.S. Citizenship and Immigration Services (USCIS) announced on January 28, 2021, that it is extending the flexibilities it initially announced on March 30, 2020, to assist applicants, petitioners, and requestors responding to certain agency requests.

Included are Requests for Evidence and Continuations to Request Evidence (N-14); Notices of Intent to Deny, Revoke, or Rescind; Notices of Intent to Terminate regional centers; and Motions to Reopen an N-400 Pursuant to 8 CFR

335.5, Receipt of Derogatory Information After Grant. In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if the form was filed up to 60 calendar days from the issuance of a USCIS decision, and the agency made that decision between March 1, 2020 and March 31, 2021, inclusive.

Details:

- USCIS alert,
<https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-3>

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President Biden Names Jean King as New Acting Director of EOIR

According to reports, effective January 31, 2021, Jean King is the new Acting Director of the Executive Office for Immigration Review (EOIR). She is a former general counsel for EOIR and most recently served as EOIR's chief administrative law judge.

Ms. King replaces James McHenry, who led initiatives to close cases much faster and to limit asylum, among others. Greg Chen, director of government affairs for the American Immigration Lawyers Association, said the organization had "deep concerns" about Mr. McHenry, and other Trump administration appointees leading EOIR, "who have stripped judges of fundamental authorities that make it impossible for them to render fair and consistent decisions." He said Mr. McHenry was the architect of changes that tarnished the credibility and impartiality of the immigration courts and "converted the courts into conveyor belts for rapid deportation."

The news of Ms. King's appointment, signaling a policy shift, came in a memorandum from Acting Deputy Attorney General John Carlin to staff and judges. The memo reportedly stated that Ms. King would provide continuity in EOIR leadership until a new director is selected.

Details:

- "Biden Administration Replaces Top Immigration Court Official," Politico, 27, 2021,

<https://www.politico.com/news/2021/01/27/biden-replaces-immigration-court-463053>

- "Biden Admin. Takes 'Essential Step' in Altering Trump-Era Immigration Policy," Newsweek, Jan. 27, 2021, <https://www.newsweek.com/biden-admin-takes-essential-step-altering-trump-era-immigration-policy-1564924>

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President Biden Issues Executive Order Revoking Trump "Buy American and Hire American" Executive Order

On January 25, 2021, President Biden issued an executive order, "Ensuring the Future Is Made in All of America by All of America's Workers." The order states that the federal government should "maximize the use of goods, products, and materials produced in, and services offered in, the United States." It also revokes several Trump administration orders, including "Buy American and Hire American" (Executive Order 13788, April 18, 2017). U.S. Citizenship and Immigration Services used that executive order as a justification to issue several restrictive immigration policy changes.

Details:

- Biden Executive Order #14005, Jan. 25, 2021, <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>

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TPS for Syria Extended, Redesignated

The Department of Homeland Security (DHS) announced an 18-month extension and redesignation of temporary protected status (TPS) for Syrians. This enables more than 6,700 eligible Syrian nationals (and individuals without nationality who last resided in Syria) to retain their TPS through September 2022, and allows approximately 1,800 additional individuals to file initial TPS applications.

Current beneficiaries as well as Syrian nationals who entered the United States after August 1, 2016, and are otherwise eligible may register. DHS plans to publish a notice in the Federal Register with instructions for re-registration and

employment authorization. The DHS Secretary will make the next decision to extend or terminate the designation for Syria on or before July 31, 2022.

Details:

- "Acting DHS Secretary Pekoske Extends Temporary Protected Status for Syria," DHS Press Release, Jan. 29, 2021, <https://www.dhs.gov/news/2021/01/29/acting-dhs-secretary-pekoske-extends-temporary-protected-status-syria>

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Biden Administration Withdraws Proposed H-4 EAD Rescission Rule From OMB Review

The Biden administration withdrew a proposed rule to rescind the H-4 employment authorization document (EAD) program from review by the Office of Management and Budget. This means that about 100,000 H-4 EAD holders (spouses of H-1B workers who are mostly women from India) and their employers no longer need to worry about losing their work authorization.

Details:

- "Proposed H-4 EAD Rule Withdrawn for Review," National Law Review, <https://www.natlawreview.com/article/proposed-h-4-ead-rule-withdrawn-for-review>
- "Removing H-4 Dependent Spouses From the Classes of Aliens Eligible for Employment Authorization," Proposed Rule, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202010&RIN=1615-AC15>

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ICE Extends I-9 Compliance Flexibility

U.S. Immigration and Customs Enforcement (ICE) announced an extension of flexibilities in rules related to Form I-9 (Employment Eligibility Verification) compliance due to continued precautions related to the COVID-19 pandemic. The policy is extended until March 31, 2021.

About a year ago, the Department of Homeland Security deferred physical presence requirements associated with the I-9 process. The policy applies only

to employers and workplaces operating remotely.

Details:

- "ICE Announces Extension to I-9 Compliance Flexibility," ICE, Jan. 27, 2021, <https://www.ice.gov/news/releases/ice-announces-extension-i-9-compliance-flexibility-2>

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ICE Cancels Plans for OPT Employment Compliance Unit

According to reports, U.S. Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) canceled plans for a new Optional Practical Training (OPT) Employment Compliance Unit. The agency determined that SEVP already addressed many of the same responsibilities.

Details:

- Compliance Whiplash: ICE Establishes, and Then Rescinds, Plan to Create OPT Employment Compliance Unit," Seyfarth, Jan. 28, 2021, <https://www.seyfarth.com/news-insights/compliance-whiplash-ice-establishes-and-then-rescinds-plan-to-create-opt-employment-compliance-unit.html>

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President Biden Signs Proclamation Continuing Suspension of Entry for Certain Travelers, Adding South Africa; DOS Provides Related Info

On January 25, 2021, President Biden signed a proclamation continuing the suspension of entry of certain travelers from the Schengen Area, the United Kingdom, the Republic of Ireland, Brazil, China, and Iran, and expanding restrictions to include travelers from South Africa.

U.S. citizens and lawful permanent residents are not subject to the proclamations. Exceptions also include foreign diplomats traveling to the United States on A or G visas; air and sea crew traveling to the United States on C, D, or C1/D visas; and others. For the full list of exceptions, refer to the proclamations.

The Department of State also released a listing with descriptions of previous

COVID-19-related Presidential Proclamations that remain in force.

Details:

- "Proclamation on the Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease," Presidential Proclamation, Jan. 25, 2021, <https://bit.ly/39BmaUi>
- "Presidential Proclamations on Novel Coronavirus," Department of State, Jan. 26, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/presidential-proclamation-coronavirus.html>

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Cyrus Mehta spoke at "President Biden's Bold Immigration Plan: What Can Immigrants Expect?" The briefing was sponsored by Ethnic Media Services. Link to broadcast (video):

<https://drive.google.com/file/d/1ZZAbwMtXL4ZGQS0-8x8gwE1gP9fgZWzV/view>

Mr. Mehta spoke at an American Immigration Lawyers Association webinar, "Preparing for H-1B Cap Season 2021," on January 26, 2021.

<https://agora.aila.org/Conference/Detail/1848>

Mr. Mehta's blog, "President Biden Ushers in New Hope on Immigration After Trump's Destructive and Xenophobic Four Years," was included in LexBlog's Top 10 in Law Blogs. Top 10 list:

<https://www.lexblog.com/2021/01/29/top-10-in-law-blogs-tesla-law-suit-climate-change-inaction-investor-fraud/>. Mr. Mehta's blog, co-authored with Kaitlyn

Box:

<https://www.lexblog.com/2021/01/25/president-biden-ushers-in-new-hope-on-immigration-after-trumps-destructive-and-xenophobic-four-years/>

Mr. Mehta was quoted in an Economic Times article on the reissuance of the DOL Wage rule. "The rule was scheduled to take effect on July 1, 2021. Therefore, the 60-day pause does not have that much of a practical effect unless the 60-day pause will allow DOL to reconsider putting this rule to effect. The 15-day comment period allows the public to send in comments, and thus convince the new administration to rescind the rule"

<https://economictimes.indiatimes.com/nri/migrate/biden-administration-to-review-rule-proposing-higher-wages-for-h-1b-workers/articleshow/80512649.cms>

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