



## IMMIGRATION UPDATE - FEBRUARY 08, 2021

*Posted on February 8, 2021 by Cyrus Mehta*

### Headlines:

[USCIS Delays H-1B Wage-Based Selection Process](#) for Cap-Subject Petitions – The wage-based selection process is delayed to December 31, 2021, meaning that it will not be in effect for the upcoming H-1B cap filing season this March.

[FY 2022 H-1B Visa Registration Period Starts March 9](#) – The initial registration period for FY 2022 H-1B cap-subject petitions opens at noon ET on March 9, 2021, and runs through noon ET on March 25, 2021.

[DOL Proposes To Delay Effective Date of H-1B/PERM Wage Rule Until May](#) – The proposed delay "will allow agency officials the opportunity to review any questions of fact, law, or policy the rule may raise."

[USCIS Rescinds 2017 Policy Memorandum on H-1B Computer-Related Positions](#) – USCIS said its officers should not apply the rescinded memo "to any pending or new requests for H-1B classification, including motions on and appeals of revocations and denials of H-1B classification," and that further guidance is forthcoming.

[Alejandro Mayorkas Confirmed To Lead Department of Homeland Security](#) – Mr. Mayorkas has become the first immigrant and first Latino to serve as Secretary of Homeland Security.

[Biden Signs Immigration-Related Executive Orders](#) – President Biden recently signed several immigration-related executive orders.

[ABIL Global: United Kingdom](#) – This article provides an update on issues for European Union citizens to consider in light of Brexit.

Firm in the News

**Details:**[Back to Top](#)**USCIS Delays H-1B Wage-Based Selection Process for Cap-Subject Petitions**

U.S. Citizenship and Immigration Services (USCIS) is delaying the effective date of a final rule that changed the selection process for cap-subject H-1B petitions. The rule would essentially eliminate the lottery process to give priority to higher wage offerings. The wage-based selection process is delayed to December 31, 2021, meaning that it will not be in effect for the upcoming H-1B filing season this March.

For the upcoming H-1B cap lottery, USCIS will use the current regulations and selection process (random selection) to select registrations submitted during the filing window of March 9 to March 25, 2021. The H-1B lottery process saw significant changes last year, with the implementation of a pre-registration process.

**Details:**

- "DHS Delays Effective Date of H-1B Selection Final Rule," Feb. 4, 2021, <https://www.uscis.gov/news/alerts/dhs-delays-effective-date-of-h-1b-selection-final-rule>
- "Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions; Delay of Effective Date," USCIS, Feb. 8, 2021, Federal Register, <https://www.federalregister.gov/documents/2021/02/08/2021-02665/modification-of-registration-requirement-for-petitioners-seeking-to-file-cap-subject-h-1b-petitions>
- "USCIS Modifies H-1B Selection Process to Prioritize Wages," USCIS, Jan. 7, 2021, <https://www.uscis.gov/news/news-releases/uscis-modifies-h-1b-selection-process-to-prioritize-wages>

[Back to Top](#)**FY 2022 H-1B Visa Registration Period Starts March 9**

U.S. Citizenship and Immigration Services (USCIS) announced that the initial registration period for FY 2022 H-1B cap-subject petitions opens at noon ET on

March 9, 2021, and runs through noon ET on March 25, 2021. Representatives and registrants must wait until March 9 to create and submit H-1B registrations.

USCIS explained that prospective petitioners (registrants) must use a "registrant" account within myUSCIS to submit their registrations. Registrants will not be able to add more information after they select "I am an H-1B registrant" account type until the initial registration period opens. Petitioners submitting their own registrations will enter their company information as part of their first H-1B registration. Petitioners working with a representative will review company information that the representative enters before submitting the registration for each prospective beneficiary.

Representatives can create an account at any time by using the same kind of account already available to representatives. Representatives who already have a representative account may use that account; they do not need to create a new account, USCIS said.

USCIS has released instructions and a video on how to set up an account and register (link below).

#### Details:

- "H-1B Electronic Registration Process," USCIS, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process> (scroll down to "Step-by-Step Instructions" for video)
- "H-1B Visa Registration for 2022 to Begin on Mar. 9, Lottery Results to be Notified by Mar. 31," Economic Times, <https://bit.ly/3rqxuJ2>

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### **DOL Proposes To Delay Effective Date of H-1B/PERM Wage Rule Until May**

The Department of Labor's Employment and Training Administration has proposed to delay the effective date of a Trump administration rule, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States." The implementation of the rule published in January will now be delayed until May 14, 2021. The notice states that the proposed delay "will allow agency officials the opportunity to review any questions of fact, law, or policy the rule may raise."

Comments may be submitted until February 16, 2021.

#### Details:

- "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States: Proposed Delay of Effective Date," Federal Register, Feb. 1, 2021, <https://bit.ly/3aKAKSB>

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### **USCIS Rescinds 2017 Policy Memorandum on H-1B Computer-Related Positions**

On February 3, 2021, U.S. Citizenship and Immigration Services (USCIS) rescinded PM-602-0142, "Rescission of the December 22, 2000 'Guidance memo on H-1B computer related positions.'" USCIS said its officers should not apply the rescinded memo "to any pending or new requests for H-1B classification, including motions and appeals of revocations and denials of H-1B classification," and that further guidance is forthcoming.

USCIS explained that on December 16, 2020, the U.S. Court of Appeals for the 9th Circuit issued a decision in *Innova Solutions v. Baran*, where the court overturned USCIS's denial of an H-1B nonimmigrant visa petition as arbitrary and capricious. The court's opinion noted that while USCIS did not explicitly rely on PM-602-0142, the denial followed its logic. To ensure "consistent adjudications across the H-1B program, USCIS is rescinding PM-602-0142," the new USCIS policy memorandum said.

#### Details:

- "Rescission of 2017 Policy Memorandum PM-602-0142," USCIS, Feb. 3, 2021, [https://www.uscis.gov/sites/default/files/document/memos/PM-602-0142.1\\_RescissionOfPM-602-0142.pdf](https://www.uscis.gov/sites/default/files/document/memos/PM-602-0142.1_RescissionOfPM-602-0142.pdf)

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### **Alejandro Mayorkas Confirmed To Lead Department of Homeland Security**

The U.S. Senate confirmed Alejandro Mayorkas as Secretary of Homeland Security on February 2, 2021, making Mr. Mayorkas the first immigrant and first Latino to serve in that role.

Mr. Mayorkas comes from a 30-year career as a law enforcement official and a nationally recognized lawyer in the private sector. He served as Deputy Secretary of the Department of Homeland Security (DHS) from 2013 to 2016, and as Director of U.S. Citizenship and Immigration Services from 2009 to 2013. During his tenure at DHS, he led the development and implementation of Deferred Action for Childhood Arrivals, negotiated cybersecurity and homeland security agreements with foreign governments, led the agency's response to Ebola and Zika, helped build and administer the Blue Campaign to combat human trafficking, and developed an emergency relief program for orphaned youth following the January 2010 earthquake in Haiti. He also created the Fraud Detection and National Security Directorate.

Mr. Mayorkas began his government service in the Department of Justice, where he served as Assistant United States Attorney in the Central District of California, specializing in the prosecution of white-collar crime. After nearly nine years as a federal prosecutor, he became a U.S. Attorney.

Mr. Mayorkas received a bachelor's degree with distinction from the University of California at Berkeley and a law degree from Loyola Law School.

#### Details:

- "Alejandro Mayorkas," DHS announcement, Feb. 4, 2021, <https://www.dhs.gov/person/alejandro-mayorkas>
- "Alejandro Mayorkas Nominated To Direct Department of Homeland Security," Miller Mayer, <https://millermayer.com/2020/alejandro-mayorkas-nominated-to-direct-department-of-homeland-security/>
- Senate Vote Summary—Mayorkas Confirmation, Roll Call Vote 117<sup>th</sup> Congress, 1<sup>st</sup> Session, Feb. 2, 2021, [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=117&session=1&vote=00012](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=117&session=1&vote=00012)

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## **Biden Signs Immigration-Related Executive Orders**

President Biden recently signed several immigration-related executive orders to:

- **Develop a strategy to address irregular migration across the southern border and create a humane asylum system.** The Biden administration said it will address the underlying causes of migration; collaborate with regional partners, including foreign governments, international organizations, and nonprofits to shore up asylum seekers' and migrants' protection and opportunities closer to home; and ensure that Central American refugees and asylum seekers have access to legal avenues to the United States. The order also directs the Secretary of Homeland Security to review the Migrant Protection Protocols program, and directs a series of actions to restore the U.S. asylum system, "including by rescinding and directing agency review of a host of Trump Administration proclamations, rules, and guidance documents that have effectively closed the U.S. border to asylum seekers."
- **Restore the U.S. refugee admissions program.** This order launches administrative reform efforts with a goal of increasing refugee admissions to 125,000 in the first full fiscal year of the Biden administration, and proposing a raise in refugee admissions for this fiscal year after consulting with Congress. Among other things, the order will expand refugee adjudication capacity and review the current Special Immigrant Visa program for Iraqis and Syrians.
- **Elevate the role of the White House in coordinating the federal government's strategy to promote immigrant integration and inclusion.** This order includes re-establishing a Task Force on New Americans, and "ensuring that our legal immigration system operates fairly and efficiently." The order requires agencies to review "recent regulations, policies, and guidance that have set up barriers to our legal immigration system" and "rescinds President Trump's memorandum requiring family sponsors to repay the government if relatives receive public benefits, instructs the agencies to review the public charge rule and related policies, and begins a review to streamline the naturalization process."
- **Create a task force to reunify families.** This task force will work across the U.S. government, with "key stakeholders and representatives of impacted families," and with "partners across the hemisphere to find parents and children separated by the Trump Administration." The task force will make recommendations on next steps for reunification, and "to prevent such tragedies from occurring again," and will report regularly to

the President.

#### Details:

- "Fact Sheet: President Biden Outlines Steps to Reform Our Immigration System by Keeping Families Together, Addressing the Root Causes of Irregular Migration, and Streamlining the Legal Immigration System," White House, Feb. 2, 2021, <https://bit.ly/39VLHrC>
- "Fact Sheet: President Biden to Sign Executive Actions Restoring America's Place in the World," White House, Feb. 4, 2021, <https://bit.ly/36OfyQP>
- "Biden Signs Immigration Executive Orders and Establishes Task Force to Reunite Separated Families," CNN, Feb. 2, 2021, <https://www.cnn.com/2021/02/02/politics/biden-immigration-executive-orders/index.html>

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## **ABIL Global: United Kingdom**

*This article provides an update on issues for European Union citizens to consider in light of Brexit.*

### **Issues for EU Citizens to Consider**

European Union (EU) (and European Economic Area and Swiss) citizens who have already been resident in the United Kingdom (UK) are expecting no major issues after the Brexit transition period ended on December 31, 2020. So long as they were resident by the end of 2020, they can apply to the EU Settlement Scheme before the deadline of June 30, 2021. But there are several issues to be aware of regarding absences from the UK for those with pre-settled status and those relying on permanent residence to naturalize as British citizens.

Absences for those with pre-settled status. EU citizens who have pre-settled status must apply for settled status after 5 years in the UK. Pre-settled status is not extendable, so it is important that the residence requirements be met in order to qualify for settled status. Otherwise it will be necessary to switch into a different UK immigration category, such as Skilled Worker. Those with pre-settled status should not be absent for more than 6 months in any 12-month period. A single period of absence of up to 12 months is permitted for an "important" reason, which the rules specify includes pregnancy/childbirth, serious illness, study, vocational training, or an overseas posting.

Given the circumstances, the obvious question is why absences due to the COVID-19 pandemic have not been included in the EU Settlement Scheme rules and guidance. Elsewhere in the rules, absences due to the pandemic have been covered. For example, travel disruption due to the pandemic because there were no available flights or the visa application centers were closed has been a ground for absences above the usual threshold to be allowable on an exceptional basis where they can be evidenced.

The Home Office has advised that absences over 6 months for those with pre-settled status could be permitted on a discretionary basis if:

- The EU citizen, or a person with whom they are living, is suffering from COVID-19 and they are either too ill to travel or forcibly in quarantine for public health reasons; or
- There were no available flights to the UK and in essence the individual has been stranded overseas.

A general reluctance to return to the UK is not expected to be sufficient. As a result of this policy, EU citizens with pre-settled status who have had or may shortly have absences of more than 6 months in a 12-month period that are not very clearly for an important reason must consider:

- Traveling to the UK before they reach 6 months of absence from the UK; or
- Reapplying from outside the UK for pre-settled status before they reach 6 months of absence; or

Relying on permanent residence for naturalization. EU citizens who have been granted a permanent residence document under EU law (not from the EU Settlement Scheme) and who have held permanent residence for 12 months can normally apply to naturalize as a British citizen. Plus, some applicants' permanent residence will be backdated, meaning they can apply to naturalize right away.

EU citizens should be aware, though, of a rule change as of January 1, 2021. For applications submitted in the new year:

- If the applicant only has a permanent residence document and does not have settled status, they can continue to rely on the permanent residence document for a naturalization application. They should ensure that they



do not become an overstayer on July 1, 2021, by applying for settled status (from the EU Settlement Scheme) before that date if their naturalization application remains outstanding; and

- If, on the other hand, the applicant has both a permanent residence document and settled status, as of January 1, 2021, they cannot rely on the permanent residence document and instead must wait until they have held settled status for 12 months.

#### Details:

- New UK immigration system FAQs, <https://www.kingsleynapley.co.uk/services/department/immigration/the-uks-new-immigration-system-what-you-need-to-know>

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#### **Firm in the News**

**Cyrus Mehta** was quoted by the Tennessee Tribune in "Biden Starts to Unwind Trump Rules and Advocates Are Happy." Mr. Mehta said, "For example, if somebody has been sponsored on an H-1B visa and the employer files for a green card on behalf of a person born in India, it would take several decades before that person gets a green card." He said that in the family categories, it could take 10 to 20 years for family members of U.S. citizens to immigrate. "It's ridiculous. That's not the way Congress intended it to be when the last reform with immigration numbers happened in the 1990 Act. They were thinking that 2- to 3-year waits would be too long but now we have waits that stretch into several decades."

<https://tntribune.com/biden-starts-to-unwind-trump-rules-and-advocates-are-happy/>

**Mr. Mehta** chaired several recent events:

- "Basic Immigration Law 2021: Business, Family, Naturalization and Related Areas," Practising Law Institute, Feb. 4, 2021 (webcast), <https://www.pli.edu/programs/basic-immigration-law>
- "Asylum, Special Immigrant Juvenile Status, Crime Victim, and Other Immigration Relief 2021," Practising Law Institute, Feb. 5, 2021 (webcast), <https://www.pli.edu/programs/asylum-juvenile-immigration-relief>

**Mr. Mehta** was featured and quoted by India West in "Immigration Advocates Cheer as President Biden Launches Bold Initiatives for Immigration Reform." Mr. Mehta said, "The numbers of green cards allotted each year are woefully inadequate." He added that the wait could be lessened by eliminating the per-country cap that currently allots only 7 percent of all employment-based visas per year. India, for example, "gets less than 10,000 green cards per year, while 800,000 wait in the queue," he said. <https://bit.ly/3tymlyw>

**Mr. Mehta** was quoted by the Economic Times in "Joe Biden Revokes Buy American, Hire American Order, Eases Path to H-1B." Mr. Mehta said, "The BAHA policy gave justification to immigration officers to deny H-1B and L-1A petitions in the name of protecting American workers. Since the BAHA policy came from the President, officers felt incentivized to find ways to deny these petitions even when they were otherwise meritorious." <https://economictimes.indiatimes.com/nri/work/biden-revokes-buy-american-hire-american-order/articleshow/80653866.cms?from=mdr>

David Isaacson was a speaker at:

- "Basic Immigration Law 2021: Business, Family, Naturalization and Related Areas," Practising Law Institute, Feb. 4, 2021 (webcast), <https://www.pli.edu/programs/basic-immigration-law> where he spoke on a panel entitled "Inadmissibility and Removability: Grounds, Consequences, Custody and Immigration Court Proceedings."
- "Asylum, Special Immigrant Juvenile Status, Crime Victim, and Other Immigration Relief 2021," Practising Law Institute, Feb. 5, 2021 (webcast), <https://www.pli.edu/programs/asylum-juvenile-immigration-relief> where he spoke on a panel entitled "Immigration Special Topic: Cancellation of Removal and Related Relief."

Cora-Ann Pestaina spoke at:

- "Basic Immigration Law 2021: Business, Family, Naturalization and Related Areas," Practising Law Institute, Feb. 4, 2021 (webcast), <https://www.pli.edu/programs/basic-immigration-law> where she was part

of a panel entitled "Immigrant (Permanent) Visas."

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