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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - FEBRUARY 16, 2021

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Headlines:

State Dept. Exempts Certain Travelers From Restrictions – DOS announced exemptions for certain travelers from COVID-19-related restrictions based on the national interest.

President Biden Reinstates DED for Liberians – President Biden has directed the Secretary of Homeland Security to reinstate Deferred Enforced Departure for eligible Liberians and to provide for continued work authorization through June 30, 2022.

New Asylum Process at Southern Border To Be Phased In Gradually – The Biden administration's new asylum process will begin phasing in on February 19, 2021.

FY 2021 H-1B Cap-Subject Nonselection Notices Issued – USCIS appears to have finished selecting H-1B cap-subject lottery registrations for fiscal year 2021.

USCIS To Dispose of Old SAVE Records – SAVE users have until May 10, 2021, to download case information if they want to retain information about SAVE cases that are more than 10 years old.

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State Dept. Exempts Certain Travelers From Restrictions

The Department of State announced exemptions for certain travelers from COVID-19-related restrictions based on the national interest:

- On February 10, 2021, the Department of State (DOS) announced that certain business travelers, investors, treaty traders, academics, students,

and journalists may qualify for national interest exceptions under the Presidential Proclamation (PP) covering travelers from the Schengen Area, United Kingdom (UK), and Ireland. Qualified travelers who are applying for or have valid visas or Electronic System for Travel Authorization (ESTA) may travel to the United States while the PP remains in effect following the procedures below, DOS said.

- Also, on January 28, 2021, DOS announced that certain H-2 travelers from South Africa may qualify for national interest exceptions.

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. Applicants who are 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 or an ESTA authorization issued before the PP'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. If a national interest exception is approved, they may travel on either a valid visa or ESTA authorization, as appropriate.

"Granting national interest exceptions for this travel to the United States from the Schengen area, UK, and Ireland, will assist with the economic recovery from the COVID-19 pandemic and bolster key components of our transatlantic relationship," DOS said.

H-2A and certain H-2B travelers who have been present in South Africa may qualify for national interest exceptions "if they are providing temporary labor or services essential to the United States food supply chain." A non-exhaustive list of covered occupations includes seafood processors, fish cutters, salmon roe technicians, farm equipment mechanics, and agriculture equipment operators. Applicants applying for a visa will be considered for an exception at the time of interview, DOS said. "Travelers who already hold valid H-2A or food-supply-chain related H-2B visas and believe they meet the exception criteria should follow the procedures set forth on the Embassy/Consulate website where their visa was processed for consideration

for an exception," DOS said. The exception criteria only apply to H-2 travelers and applicants subject to a January 25, 2021, Presidential Proclamation due to physical presence in South Africa.

DOS said it 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:

- "National Interest Exceptions for Certain Travelers From the Schengen Area, United Kingdom, and Ireland," Dept. of State, Feb. 10, 2021, https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exceptions-from-certain-travelers-from-the-schengen-area-uk-and-ireland.html
- "National Interest Exception for Certain H-2 Travelers From South Africa," Dept. of State, Jan. 28, 2021, https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exception-for-certain-h-2-travelers-from-south-africa.html

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President Biden Reinstates DED for Liberians

President Biden has directed the Secretary of Homeland Security to reinstate Deferred Enforced Departure (DED) for eligible Liberians and to provide for continued work authorization through June 30, 2022.

Eligible Liberian nationals (and persons without nationality who last habitually resided in Liberia) covered under DED as of January 10, 2021, may remain in the United States through June 30, 2022. Their employment authorization documents (EADs) with a March 30, 2020, or January 10, 2021, expiration date are automatically extended through June 30, 2022.

U.S. Citizenship and Immigration Services said that reinstating DED "will allow additional time for eligible Liberians to apply for adjustment of status on or before Dec. 20, 2021, under the extension of the Liberian Refugee Immigration Fairness (LRIF) provision. Liberians who apply for adjustment of status under LRIF may immediately apply for employment authorization consistent with that provision. Individuals who applied for LRIF but were denied are not covered under this DED extension."

Details:

- "President Biden Reinstates DED for Eligible Liberians," USCIS, Feb. 12, 2021, https://www.uscis.gov/news/alerts/president-biden-reinstates-ded-for-eligible-liberians
- "Reinstating Deferred Enforced Departure for Liberians," USCIS (scheduled for publication in the February 16, 2021, edition of the Federal Register), https://bit.ly/3d7BN8c

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New Asylum Process at Southern Border To Be Phased In Gradually

According to reports, the Biden administration's new asylum process at the southern border will begin phasing in on February 19, 2021. The Department of Homeland Security will start with a very small number of asylum-seekers from the estimated 25,000 who have "active cases" in the former Migrant Protection Protocols program. Few details have been shared in an effort to avoid overwhelming ports of entry.

Secretary of Homeland Security Alejandro Mayorkas warned migrants not to begin traveling to the U.S. border immediately. "It's a very, very important cautionary note that they should not travel to the border. That will only increase the pressure on the humanitarian effort to provide for them carefully and safely," he said.

The new system, to be publicized via social media networks, will include registration with certain as-yet unidentified nongovernmental organizations (NGOs), according to National Public Radio. After initial screening, there will be additional steps, including an appointment to enter the United States and be tested for the coronavirus. They will then be enrolled in "alternative detention programs" while awaiting their asylum proceedings.

The effort also includes rescinding Trump-era agreements with El Salvador, Guatemala, and Honduras "as efforts to establish a cooperative, mutually respectful approach to managing migration across the region begin," Secretary of State Antony Blinken said.

Details:

- "Biden Team Unveils New Asylum System to Replace Trump's 'Remain in Mexico,' " National Public Radio, Feb. 12, 2021, https://www.npr.org/2021/02/12/967201293/biden-team-unveils-new-asylum-system-to-replace-trumps-remain-in-mexico
- "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," Feb. 2, 2021, https://bit.ly/3aZD5zy
- "Biden Administration Takes Steps to Dismantle Trump-Era Asylum Agreements," Politico, Feb. 6, 2021, https://www.politico.com/news/2021/02/06/biden-dismantle-trump-era-asylum-agreements-466565

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FY 2021 H-1B Cap-Subject Nonselection Notices Issued

According to reports, U.S. Citizenship and Immigration Services (USCIS) appears to have finished selecting H-1B cap-subject lottery registrations for fiscal year (FY) 2021 (Oct. 1, 2020-Sept. 30, 2021). Employers and counsel who have not yet been notified can check their accounts in https://my.uscis.gov/ for a Form I-797C, Registration Nonselection. (The nonselection notices include a typo referring to FY 2022 rather than FY 2021. USCIS said it will send corrected notices.)

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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USCIS To Dispose of Old SAVE Records

On May 14, 2021, U.S. Citizenship and Immigration Services (USCIS) will dispose of Systematic Alien Verification for Entitlements (SAVE) records that are more

than 10 years old, which are defined as those dated on or before December 31, 2010. SAVE users have until May 10, 2021, to download case information from the Historic Records Report if they want to retain information about these SAVE cases.

Questions and requests for additional information may be emailed to SAVE.Help@uscis.dhs.gov.

Details:

- "SAVE Instructions to Download Historic Records Report Tip Sheet," https://www.uscis.gov/sites/default/files/document/guides/Instructions_to_Download_NARA_Reports_in_SAVE.pdf

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