



IMMIGRATION UPDATE - FEBRUARY 22, 2021

Posted on February 22, 2021 by Cyrus Mehta

Headlines:

["U.S. Citizenship Act of 2021" Unveiled by Biden Administration, Democrats](#) –

The Biden administration and Democratic sponsors in the Senate and House of Representatives have put forth a sweeping new immigration reform bill, the 353-page "U.S. Citizenship Act of 2021."

[USCIS Reaches FY 2021 H-1B Cap](#) – USCIS issued official confirmation that it has received a sufficient number of petitions needed to reach the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa U.S. advanced degree exemption for fiscal year 2021. This officially closes the FY 2021 H-1B cap season, which was based on the March 2020 registration period.

[DV-2020 Winners Get Six-Month Reprieve](#) – A U.S. district judge extended DV-2020 visas for six months so they will not lapse while he renders a decision on plaintiffs' challenge to Trump-era travel bans that are still in place.

[ICE Issues Interim Guidance on Civil Immigration Enforcement and Removal Priorities](#) – The guidance prioritizes for removal noncitizens with a national security, border security, or public safety issue, as defined in the memorandum.

[DHS Announces Process for Individuals in Mexico Under the Migrant Protection Protocols](#) – DHS issued a fact sheet on its plan to process eligible individuals who have pending cases in the United States but were forced to return and wait in Mexico under the Trump administration's "Migrant Protection Protocols (MPP)."

[USCIS Clarifies Delays at Lockboxes in Issuing Receipt Notices for I-765 Employment Authorization for OPT](#) – USCIS notified stakeholders that the agency continues to experience delays at certain lockboxes in issuing receipt

notices for Form I-765, Application for Employment Authorization, based on eligibility categories relating to optional practical training (OPT) for F-1 students.

[Dept. of State Revises Definition of "Equivalent of Diplomatic Passport" and Clarifies Eligibility for "Diplomatic Type" or "Official Type" Visa Categories](#) – DOS issued a final rule to revise the definition of "equivalent of a diplomatic passport" and to clarify the categories of nonimmigrants who may be eligible for a "diplomatic type" or "official type" visa.

Firm in the News

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"U.S. Citizenship Act of 2021" Unveiled by Biden Administration, Democrats

The Biden administration and Democratic sponsors in the Senate and House of Representatives have put forth a sweeping new immigration reform bill, the 353-page "U.S. Citizenship Act of 2021." The bill states its purpose as providing an earned path to citizenship, addressing the root causes of migration, responsibly managing the southern border, reforming the immigrant visa system, and other goals. The bill does not emphasize enforcement.

The bill would amend the Immigration and Nationality Act by striking the term "alien" and replacing it with "noncitizen." The term "alien" has been in use for centuries, but some find it demeaning. According to reports, Tracy Renaud, who is serving as acting director for U.S. Citizenship and Immigration Services, recently sent a memorandum to agency staff encouraging them to avoid use of the terms "alien" and "illegal alien" and instead to use "more inclusive language in the agency's outreach efforts, internal documents and in overall communication with stakeholders, partners and the general public," including "noncitizen" and "undocumented noncitizen" or "undocumented individual."

It is likely that the bill will not pass intact, but smaller targeted pieces could be moved forward and supported separately. Another avenue being suggested for implementation is via the budget reconciliation process.

Below is a non-exhaustive list of selected highlights of the proposed legislation. The bill would:

- Establish an "earned path to citizenship" for "eligible entrants" (and their

spouses and children) that provides for an initial period of authorized admission as a "lawful prospective immigrant," valid for six years and extendable. Qualifying individuals would also receive a work permit and travel authorization. A lawful prospective immigrant could become eligible for permanent residence after at least five years of prospective status. Prospective applicants would need to have been in the United States before 2021.

- Raise to 170,000 (from 140,000) the annual number of employment-based immigrants, and add unused employment-based green cards to the maximum. (Derivatives of employment-based immigrants will not count against numerical caps.)
- Provide permanent residence, without numerical limits, to international students with PhDs in science, technology, engineering, and math fields from U.S. universities.
- Provide for adjustment to lawful permanent resident status for noncitizens who entered the United States as children (e.g., "Dreamers" under the Deferred Action for Childhood Arrivals program).
- Provide permanent residence to those who have had an approved immigrant petition for 10 years.
- Provide for adjustment to lawful permanent resident status for agricultural workers who have performed agricultural labor or services during the immediately preceding five-year period for at least 2,300 hours or 400 work days.
- Provide for adjustment to lawful permanent resident status for certain nationals of countries designated for temporary protected status or deferred enforced departure.
- Increase diversity green cards from 55,000 to 80,000 each year. (Derivatives of DV immigrants will not count against numerical caps.)
- Eliminate employment-based per-country levels.
- Increase immigrant visas for "other workers."
- Provide for the establishment of a procedure to temporarily limit admission of certain immigrants in geographic areas or labor market sectors that are experiencing high levels of unemployment.
- Establish a pilot program for up to five years to admit annually up to 10,000 "admissible immigrants whose employment is essential to the economic development strategies of the cities or counties in which they will live or work."

- Consider prioritizing nonimmigrant visas (including H-1B) based on the wages offered by employers.
- Allow work authorization for H-4 nonimmigrant spouses and children of H-1B nonimmigrants.
- Provide for expediting legitimate trade and travel at ports of entry.
- Authorize employment for asylum applicants who are not detained and whose applications have not been determined to be frivolous.
- Establish an employment authorization commission to make recommendations on policies to verify the eligibility of noncitizens for employment in the United States.
- Conduct a study on factors affecting employment opportunities for immigrants and refugees with professional credentials obtained in foreign countries.

The bill also includes provisions to address "migration needs by strengthening regional humanitarian responses for refugees and asylum seekers in the Western Hemisphere and repatriation initiatives, promote "immigrant and refugee integration," address immigration court backlogs, and expand programs to address the "root causes of migration" and "responsibly the southern border."

Details:

- Text of House bill, <https://lindasanchez.house.gov/sites/lindasanchez.house.gov/files/2021.02.18%20US%20Citizenship%20Act%20Bill%20Text%20-%20SIGNED.pdf>
- Text of Senate bill, <https://www.menendez.senate.gov/imo/media/doc/USCitizenshipAct2021BillText.pdf>
- Siskind Summary, <https://bit.ly/3duYkfn>
- "Joe Biden's Administration Orders Immigration Officials to Remove 'Alien' and 'Illegal Alien' From Official Communications and Use 'Noncitizen' Instead to Avoid 'Dehumanizing Language,'" Daily Mail, Feb. 16, 2021, <https://www.dailymail.co.uk/news/article-9265823/Biden-orders-officials-remove-illegal-alien-official-communications-use-non-citizen.html?ITO=applenews>
- "'Aliens' No More: Biden Administration Directs Immigration Officials To Use 'Inclusive Language,'" Forbes, Feb. 16, 2021, <https://bit.ly/3dx978H>

- "New Bill Has Many Good But Two Bad Measures for Employment Immigrants," Forbes, Feb. 19, 2021, <https://www.forbes.com/sites/stuartanderson/2021/02/19/new-bill-has-many-good-but-two-bad-measures-for-employment-immigrants/?sh=4bec5be35af9>
- "Democrats Introduce an Immigration Overhaul Bill. Here's What Would Change," NBC News, Feb. 18, 2021, <https://www.nbcnews.com/politics/immigration/white-house-throws-support-behind-democratic-immigration-bill-ahead-rollout-n1258206>
- "Biden's Immigration Bill Lands on the Hill Facing Bleak Odds," Politico, Feb. 18, 2021, <https://www.politico.com/news/2021/02/18/bidens-immigration-bill-bleak-odds-469769>
- "Democratic Lawmakers Unveil Biden-Backed Immigration Overhaul Bill," CBS News, Feb. 18, 2021, <https://www.cbsnews.com/news/immigration-bill-democrats-biden-unveil/>
- "House Announces Sweeping Immigration Bill," CNN, Feb. 18, 2021, <https://www.cnn.com/2021/02/18/politics/biden-immigration-legislation/index.html>

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USCIS Reaches FY 2021 H-1B Cap

U.S. Citizenship and Immigration Services (USCIS) formally announced that it has received a sufficient number of petitions needed to reach the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa U.S. advanced degree exemption for fiscal year (FY) 2021. USCIS has also completed posting of non-selection notifications to registrants' online accounts. This announcement formally closes the FY 2021 H-1B lottery season based on the registration period of March 2020. Any selected and timely filed FY 2021 H-1B petitions still pending adjudication with USCIS are included in the count and will proceed to adjudication.

USCIS will continue to accept and process petitions that are otherwise exempt from the cap.

Details:

- "USCIS Reaches Fiscal Year 2021 H-1B Cap," USCIS, Feb. 16, 2021,

<https://www.uscis.gov/news/alerts/uscis-reaches-fiscal-year-2021-h-1b-cap>
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- H-1B Cap Season, USCIS,

<https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-cap-season>

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DV-2020 Winners Get Six-Month Reprieve

A U.S. district judge extended DV-2020 immigrant visas for six months so they will not lapse while he renders a decision on plaintiffs' challenge to Trump-era travel bans that are still in place.

"Even if the court were to declare the proclamations unlawful as plaintiffs request, a DV-2020 plaintiff who lacked a current, valid visa still could not enter the country. Accordingly, an order declaring the proclamations unlawful would provide no relief to a DV-2020 plaintiff without a current, valid visa," the judge said in his opinion in *Gomez v. Trump*.

According to reports, shortly before the judge issued his order, the Department of State announced an exemption from the travel ban for diversity lottery green card winners whose visas will expire soon.

Details:

- "Diversity Visas Extended While Legal Battle Continues," Law360, Feb. 20, 2021,
<https://www.law360.com/classaction/articles/1357149/diversity-visas-extended-while-legal-battle-continues>

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ICE Issues Interim Guidance on Civil Immigration Enforcement and Removal Priorities

On February 18, 2021, U.S. Immigration and Customs Enforcement (ICE) issued interim guidance, effective immediately, on priorities for enforcement actions, custody decisions, the execution of final orders of removal, financial expenditures, and strategic planning. The guidance will remain in effect until Alejandro Mayorkas, Department of Homeland Security Secretary, issues new

enforcement guidelines, which are expected in fewer than 90 days.

The guidance prioritizes for removal noncitizens with a national security, border security, or public safety issue, as defined in the memorandum. Any civil immigration enforcement or removal actions that do not meet the criteria in the memorandum for "presumed priority" cases will require written justification and preapproval.

Details:

- "Interim Guidance: Civil Immigration Enforcement and Removal Priorities," ICE, Feb. 18, 2021, https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf

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DHS Announces Process for Individuals in Mexico Under the Migrant Protection Protocols

The Department of Homeland Security issued a fact sheet on its plan to process eligible individuals who have pending cases before the Executive Office for Immigration Review and were forced to return to Mexico to await their hearing dates under the Trump administration's "Migrant Protection Protocols (MPP)." DHS began processing a small group of such individuals under phase 1 on February 19, 2021.

A virtual registration process is available at <https://conecta.acnur.org/>.

Details:

- Fact sheet, Feb. 18, 2021, <https://www.dhs.gov/news/2021/02/18/fact-sheet-dhs-announces-process-address-individuals-outside-united-states-active>

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USCIS Clarifies Delays at Lockboxes in Issuing Receipt Notices for I-765 Employment Authorization for OPT

U.S. Citizenship and Immigration Services (USCIS) notified stakeholders that the agency continues to experience delays at certain lockboxes in issuing receipt

notices for Form I-765, Application for Employment Authorization, based on eligibility categories relating to optional practical training (OPT) for F-1 students. USCIS currently recommends that such applicants wait eight weeks before contacting the agency to ask about case status.

USCIS provided clarifications and reminders:

- The delays will not affect the received date. All submissions are date-stamped upon arrival at the lockbox, so regardless of when the lockbox processes the application, the received date will reflect the date it actually arrived at the lockbox.
- USCIS will not reject applications solely because they were filed at the lockbox address in use before the change to the filing address instructions announced on January 8, 2021. The agency encourages applicants filing Form I-765 to always check the form instructions on USCIS's website for the most up-to-date filing instructions.
- If an applicant timely filed Form I-765 based on STEM OPT, and the post-completion OPT period expires while the application is pending, USCIS will automatically extend the employment authorization for 180 days. The Form I-20 endorsed by the designated school official recommending a STEM extension together with the expired Form I-766 employment authorization document issued for post-completion OPT establishes identity and work authorization for purposes of documenting employment authorization.

Details:

- "Direct Filing Addresses for Form I-765, Application for Employment Authorization," Feb. 19, 2021, <https://www.uscis.gov/i-765-addresses>
- USCIS Lockbox Updates (the notice above had not yet been posted on USCIS's website as of February 21, 2021), <https://www.uscis.gov/news/alerts/uscis-lockbox-updates>

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Dept. of State Revises Definition of "Equivalent of Diplomatic Passport" and Clarifies Eligibility for "Diplomatic Type" or "Official Type" Visa Categories

The Department of State issued a final rule on February 22, 2021, to revise the definition of "equivalent of a diplomatic passport" to include non-national

passports issued by a competent authority other than a foreign government and as designated by the Secretary of State; and to clarify the categories of nonimmigrants who may be eligible for a "diplomatic type" or "official type" visa, irrespective of the nonimmigrant visa classification.

Details:

- Visas: Eligibility for Diplomatic and Official Visas, Final Rule, Dept. of State, Feb. 22, 2021, <https://bit.ly/3s7xfmk>

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Firm in the News

Cyrus Mehta was quoted by Forbes in "New Bill Has Many Good But Two Bad Measures for Employment Immigrants." The article notes that people who reach their 6-year limit in H-1B status while waiting in the immigration backlog can have their H-1B status extended while they remain in the United States. The new Biden administration immigration reform bill expands the provision to be used by more individuals in H-1B status, and also F-1 students, L-1 intracompany transferees and O-1 (individuals with extraordinary ability or achievement) visa holders, the article states. Mr. Mehta said he believes that provision holds the potential for an international student to bypass H-1B status and go straight to a green card, if an employer sponsored him or her and the measure became law.

<https://www.forbes.com/sites/stuartanderson/2021/02/19/new-bill-has-many-good-but-two-bad-measures-for-employment-immigrants/?sh=4bec5be35af9>

Mr. Mehta was quoted in a Time of India article that provided an overview of President Biden's immigration bill

<https://timesofindia.indiatimes.com/world/us/the-wide-sweeping-reforms-in-the-us-citizenship-act-decoded/articleshow/81110569.cms> Mr. Mehta stated,

"President Joe Biden's US Citizenship Act is sweeping in its humanity and views immigrants as an asset to America rather than as threats either to security or American workers. It starts by abolishing all references to the term 'alien' and instead replaces it with 'noncitizen'".

<https://timesofindia.indiatimes.com/world/us/the-wide-sweeping-reforms-in-the-us-citizenship-act-decoded/articleshow/81110569.cms>

Mr. Mehta's views are also reflected in a Times of India article regarding the Employment related aspect of Biden's bill,

<https://timesofindia.indiatimes.com/world/us/us-immigration-bill-to-help-clear-job-based-green-card-backlog/articleshow/81114101.cms>, and his views were reflected in yet another Times of India article regarding the Family related aspects of the Biden bill,
<https://timesofindia.indiatimes.com/world/us/immigration-bill-aims-to-keep-and-unite-families-it-gives-a-boost-to-the-v-visa/articleshow/A81113335.cms>

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