



## IMMIGRATION UPDATE - MARCH 01, 2021

*Posted on March 1, 2021 by Cyrus Mehta*

### Headlines:

[President Biden Revokes Trump-Era Ban on Entry of Many Immigrants; State Dept. Issues Instructions on Exceptions to Nonimmigrant Ban](#) – President Biden revoked former President Trump's proclamation issued in April 2020 that banned many immigrants from entering the United States. The Department of State issued instructions on exceptions to the nonimmigrant ban.

[March Visa Bulletin Shows Big Leap Forward for Chinese and Indian EB-1s](#) – The Department of State's Visa Bulletin for March 2021 shows a seven-month leap forward for Chinese and Indian EB-1s, with a final action date of August 1, 2020, for both countries.

[USCIS Updates FAQ on H-1B Electronic Registration](#) – USCIS updated its frequently asked questions on the H-1B registration process, which opens at noon ET on March 9, 2021, and runs through noon ET on March 25, 2021.

[USCIS Extends Flexibilities for Certain F-1 Foreign Students Applying for OPT](#) – USCIS announced flexibilities for certain foreign students applying for Optional Practical Training whose receipt notices for Form I-765, Application for Employment Authorization, are delayed. The flexibilities apply only to applications received from October 1, 2020, through May 1, 2021.

[Federal Judge Blocks Biden Administration's 100-Day Pause on Removals](#) – A U.S. district judge in Texas blocked the Biden administration's 100-day "pause" on certain removals announced in a memorandum on President Biden's first day in office. The order applies nationwide but only to the 100-day pause, not to the entire memorandum.

[USCIS Reverts to 2008 Version of Naturalization Civics Test](#) – Starting March 1, 2021, USCIS is reverting from the 2020 revised version to the 2008 version of

the naturalization civics test. There will be a transition period in which certain applicants can choose which test to take.

[H-2B Cap Reached for Second Half of FY 2021](#) – February 12, 2021, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before October 1, 2021.

[State Dept. Releases Update on Phased Resumption of Routine Visa Services](#) – Among other things, DOS has extended the validity of machine-readable visa fees until September 30, 2022.

[DOL Announces 2021 Adverse Effect Wage Rates for Non-Range Occupations](#) – The new AEWRs are effective immediately, pursuant to a recent federal court order.

[Premium Processing Service Now Available to Australian E-3 Petitioners](#) – The E-3 classification applies only to nationals of Australia coming to the United States to perform services in a specialty occupation.

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### **Details:**

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## **President Biden Revokes Trump-Era Ban on Entry of Many Immigrants; State Dept. Issues Instructions on Exceptions to Nonimmigrant Ban**

On February 24, 2021, President Biden revoked former President Trump's proclamation issued in April 2020 that banned many immigrants from entering the United States.

### **Biden Proclamation Revoking Immigrant Ban**

Included in the Trump administration's freeze on immigrant admissions were green cards for new immigrants and certain family members.

President Biden's proclamation states that the Trump-era ban, whose stated purpose was to prevent entry by those who presented a risk to the U.S. labor market during the coronavirus outbreak, does not advance the interests of the United States. "To the contrary, it harms the United States" and "harms industries in the United States that utilize talent from around the world," the new proclamation states. It also "harms individuals who were selected to

receive the opportunity to apply for, and those who have likewise received" fiscal year 2020 diversity visas.

The Biden proclamation orders the Departments of State, Labor, and Homeland Security to review any related regulations, orders, guidance, policies, or other agency actions and, as appropriate, issue revised guidance consistent with the new proclamation.

### **DOS Instructions on Exceptions to Nonimmigrant Ban**

The new Biden proclamation did not lift a Trump-era ban on certain H-1B, H-2B, L-1, and J-1 temporary work visas, set to expire on March 31, 2021. It is unclear whether the Biden administration plans to revoke that ban before it expires. In the meantime, the Department of State announced on February 24, 2021, that those who believe they may qualify for a national interest or other exception should "follow the instructions on the nearest U.S. Embassy or Consulate's website regarding procedures necessary to request an emergency appointment and should provide specific details as to why they believe they may qualify for an exception."

#### Details:

- "A Proclamation on Revoking Proclamation 10014," Feb. 24, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/a-proclamation-on-revoking-proclamation-10014/>
- "National Interest Exceptions to Presidential Proclamation 10052," DOS, Feb. 24, 2021, <https://bit.ly/3kvXRuT>
- "Biden Reopens Gateway for Green Cards, Reversing Trump COVID-19 Freeze," National Public Radio, Feb. 24, 2021, <https://www.npr.org/2021/02/24/971206197/biden-reopens-gateway-for-green-cards-work-visas-reversing-trump-covid-19-freeze>
- "White House Lifts Trump Order That Temporarily Banned Certain Immigrant Visas During Pandemic," CNN, Feb. 25, 2021, <https://www.cnn.com/2021/02/24/politics/biden-immigration-coronavirus-pandemic/index.html>
- "The Biden Administration Reversed a Policy That Used the Coronavirus Pandemic To Limit Immigration," BuzzFeed, Feb. 24, 2021, <https://www.buzzfeednews.com/article/hamedaleaziz/biden-green-card-policy-coronavirus>

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## **March Visa Bulletin Shows Big Leap Forward for Chinese and Indian EB-1s**

The Department of State's Visa Bulletin for March 2021 shows a seven-month leap forward for Chinese and Indian green card applicants in the employment-based first preference category, with a final action date of August 1, 2020, for both countries. In February, , immigrant visas were available for those with priority dates earlier than January 1, 2020.

The March bulletin also includes information on diversity category cut-offs for April and instructions on reporting address changes for overseas cases.

Details:

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

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## **USCIS Updates FAQ on H-1B Electronic Registration**

U.S. Citizenship and Immigration Services updated its frequently asked questions (FAQ) on the H-1B registration process, which opens at noon ET on March 9, 2021, and runs through noon ET March 25, 2021. USCIS also announced that employers and their representatives can create H-1B Registrant Accounts beginning at noon ET on March 2, 2021.

Details:

- "H-1B Electronic Registration Process" (scroll down for FAQ dropdown), USCIS, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process>

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## **USCIS Extends Flexibilities for Certain F-1 Foreign Students Applying for OPT**

U.S. Citizenship and Immigration Services (USCIS) announced flexibilities for certain foreign students applying for Optional Practical Training (OPT) whose

receipt notices for Form I-765, Application for Employment Authorization, are delayed. The flexibilities apply only to applications received on or after October 1, 2020, through May 1, 2021.

To allow F-1 students to complete their full periods of requested OPT (up to 12 months), the 14-month period within which they must complete OPT will start from the date of approval of the I-765 for applications for post-completion OPT. Beginning on February 26, 2021, USCIS is approving applications for post-completion OPT with validity dates reflecting the same amount of time as originally recommended by the designated school official on Form I-20, Certificate of Eligibility for Nonimmigrant Student Status.

USCIS also said that F-1 students requesting post-completion OPT who receive I-765 approval for less than the full amount of OPT time requested (not to exceed 12 months) due to the requirement that the OPT be completed within 14 months of the program end date may request a correction of the employment authorization document due to USCIS error.

USCIS is also accepting certain refiled I-765s for OPT and STEM (science, technology, engineering, and mathematics) OPT as filed on the original date until May 31, 2021.

#### Details:

- "USCIS Extends Flexibilities to Certain Applicants Filing Form I-765 for OPT," USCIS, <https://www.uscis.gov/news/alerts/uscis-extends-flexibilities-to-certain-applicants-filing-form-i-765-for-opt>

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### **Federal Judge Blocks Biden Administration's 100-Day Pause on Removals**

On February 23, 2021, a U.S. district judge in Texas blocked the Biden administration's 100-day "pause" on certain removals announced in a memorandum on President Biden's first day in office. The order applies nationwide but only to the 100-day pause, not to the entire memorandum.

"This preliminary injunction is granted on a nationwide basis and prohibits enforcement and implementation of the in every place Defendants have jurisdiction to enforce and implement the January 20 Memorandum," Judge

Drew Tipton wrote. He said the Department of Homeland Security's "core failure" was "its omission of a rational explanation grounded in the facts reviewed and the factors considered." This "fatal" failure, Judge Tipton said, made the 100-day pause "arbitrary and capricious."

#### Details:

- *Texas v. United States*,  
[https://www.courtlistener.com/recap/gov.uscourts.txsd.1811836/gov.uscourts.txsd.1811836.85.0\\_2.pdf](https://www.courtlistener.com/recap/gov.uscourts.txsd.1811836/gov.uscourts.txsd.1811836.85.0_2.pdf)
- "Federal Judge Deals Biden Another Blow on 100-Day Deportation Ban," Politico, Feb. 24, 2021,  
<https://www.politico.com/news/2021/02/24/texas-judge-biden-deportation-ban-471315>
- "Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities," Dept. of Homeland Security, Jan. 20, 2021,  
[https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf)

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### **USCIS Reverts to 2008 Version of Naturalization Civics Test**

U.S. Citizenship and Immigration Services (USCIS) announced on February 22, 2021, that it is reverting to the 2008 version of the naturalization civics test beginning March 1, 2021. USCIS said it determined that the "development process, content, testing procedures, and implementation schedule" for the Trump-era revision implemented on December 1, 2020, "may inadvertently create potential barriers to the naturalization process."

Those who filed naturalization applications on or after December 1, 2020, and before March 1, 2021, "likely have been studying for the 2020 test," USCIS noted. The agency will offer such applicants the option to take either the 2020 or the 2008 civics test. There will be a transition period where both tests are offered. The 2020 test will be phased out on April 19, 2021, for initial test-takers. Applicants filing on or after March 1, 2021, will take the 2008 civics test, USCIS said.

#### Details:

- "USCIS Reverts to the 2008 Version of the Naturalization Civics Test," USCIS, Feb. 22, 2021, <https://www.uscis.gov/news/news-releases/uscis-reverts-to-the-2008-version-of-the-naturalization-civics-test>

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## **H-2B Cap Reached for Second Half of FY 2021**

U.S. Citizenship and Immigration Services (USCIS) has received enough petitions to meet the congressionally mandated H-2B cap for temporary nonagricultural workers for the second half of fiscal year (FY) 2021.

February 12, 2021, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before October 1, 2021. USCIS said it will reject new cap-subject H-2B petitions received after February 12 that request an employment start date before October 1.

USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap. This includes petitions for:

- Current H-2B workers in the United States who wish to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.

Details:

- "H-2B Cap Reached for Second Half of FY 2021," USCIS, <https://www.uscis.gov/news/alerts/h-2b-cap-reached-for-second-half-of-fy-2021>

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## **State Dept. Releases Update on Phased Resumption of Routine Visa Services**

On February 24, 2021, the Department of State (DOS) released the latest update on phased resumption of routine visa services.

Among other things, the update notes that as a result of the pandemic, many visa applicants have paid the visa application processing fee but are still waiting to schedule a visa appointment. DOS said it is "working diligently to restore all routine visa operations as quickly and safely as possible." In the meantime, DOS has extended the validity of machine-readable visa (MRV) fees until September 30, 2022, "to allow all applicants who were unable to schedule a visa appointment due to the suspension of routine consular operations an opportunity to schedule and/or attend a visa appointment with the fee they already paid."

#### Details:

- "Phased Resumption of Routine Visa Services," DOS, Feb. 24, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/phased-resumption-routine-visa-services.html>

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### **DOL Announces 2021 Adverse Effect Wage Rates for Non-Range Occupations**

On February 23, 2021, the Department of Labor (DOL)'s Employment and Training Administration announced the 2021 Adverse Effect Wage Rates for the employment of temporary or seasonal H-2A nonimmigrant foreign workers to perform agricultural labor or services other than the herding or production of livestock on the range.

The AEWRs are effective immediately, pursuant to a recent federal court order in *United Farm Workers v. Dept' of Labor*.

#### Details:

- "Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2021 Adverse Effect Wage Rates for Non-Range Occupations," DOL notice, Federal Register, Feb. 23, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-02-23/pdf/2021-03752.pdf>

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### **Premium Processing Service Now Available to Australian E-3 Petitioners**

Petitioners filing Form I-129, Petition for a Nonimmigrant Worker, requesting a change or extension of status to E-3 classification now have the option to



request premium processing service for their petition, U.S. Citizenship and Immigration Services (USCIS) announced. The E-3 classification applies only to nationals of Australia coming to the United States to perform services in a specialty occupation.

USCIS said that an Australian national who is outside the United States may apply for an E-3 nonimmigrant visa directly through the Department of State or, in the case of an individual already in the United States, by filing Form I-129 with USCIS.

#### Details:

- "USCIS Expands Premium Processing Service to E-3 Petitioners," USCIS, <https://www.uscis.gov/news/alerts/uscis-expands-premium-processing-service-to-e-3-petitioners>

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

**Cyrus Mehta** was quoted by the Times of India in "Wait Time in the Green Card Queue for Some is 150 Years!" He noted that the U.S. Citizenship Act of 2021 eliminates country caps for employment-based immigrants, but he pointed out that the big question is whether the bill will be passed by a closely divided Senate.

<https://timesofindia.indiatimes.com/nri/us-canada-news/wait-time-in-the-green-card-queue-for-some-is-150-years/articleshow/81245570.cms>

**Mr. Mehta** was quoted by the Times of India in "The Wide Sweeping Reforms in the U.S. Citizenship Act Decoded." He said, "President Joe Biden's U.S. 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** was quoted by the Times of India in "U.S. Immigration Bill to Help Clear Job-Based Green Card Backlog." He said, "The bill is not perfect, though, and does little to accommodate the demand for scarce H-1B visas each year. Nor does it create a start-up visa for entrepreneurs. One provision authorizes

the prioritization of distribution of scarce H-1B visas based on wages offered by their employers and also authorizes similar prioritization based on wages for other nonimmigrant worker categories. However, he added, "Even if the H-1B visa is not reformed, hopefully the ability to get a green card more quickly under the new law may compensate for the imperfect H-1B visa program that may remain in place." Referring to some provisions in the bill that the article calls "ingenious," Mr. Mehta said, "The bill authorizes the extension of nonimmigrant stays for certain categories of visa holders. For instance, an F-1 student in practical training who is sponsored for a green card can remain in F-1 status" and "get a green card directly."

<https://timesofindia.indiatimes.com/world/us/us-immigration-bill-to-help-clear-job-based-green-card-backlog/articleshow/81114101.cms>

**Mr. Mehta** was quoted by the Times of India in "Immigration Bill Aims to Keep and Unite Families, It Gives a Boost to the 'V' Visa." He said, "The immigration bill increases the per-country limit from 7% to 20%. In addition, spouses and minor children of green card holders will not be subject to the quotas. Under current law, only spouses and minor children of U.S. citizens are exempt from being included in the quota. Further, the unused family visas from fiscal 1992 through 2020 will be added back. These measures will reduce wait times, including for 'V' visa applicants."

<https://timesofindia.indiatimes.com/world/us/immigration-bill-aims-to-keep-and-unite-families-it-gives-a-boost-to-the-v-visa/articleshow/81113335.cms>

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