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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 05, 2021

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Headlines:

Bipartisan Bill Introduced in Senate Would Provide Up to 40,000 Unused Immigrant Visas for Doctors, Nurses – The Healthcare Workforce Resilience Act would provide unused employment-based immigrant visas for up to 25,000 foreign nurses and 15,000 foreign physicians and their family members.

USCIS Completes Initial FY 2022 H-1B Cap Season Selections; Petitions May Be Filed Now – The agency notified all prospective petitioners with selected registrations that they are eligible to file H-1B cap-subject petitions for the named beneficiaries. The filing period for petitions began on April 1, 2021.

DHS Extends I-9 Requirement Flexibility Until May 31, 2021 – DHS announced an extension until May 31, 2021, of the flexibility in complying with requirements related to Form I-9, Employment Eligibility Verification, due to ongoing COVID-19 pandemic precautions.

"Blank Space" Criteria Eliminated for Rejection of Forms – USCIS has eliminated "blank space" form rejection criteria introduced in 2019 and reverted to the criteria it applied before October 2019.

ICE Announces New SEVIS Process for Cap-Gap Extensions – The Student and Exchange Visitor Program updated the Student and Exchange Visitor Information System (SEVIS) to remove the cap-gap extension link. SEVIS will automatically add the cap-gap extension to the record of an eligible F-1 student who is a beneficiary of a pending cap-subject H-1B petition.

State Dept. Issues Update on Suspension of Entry for Certain Nonimmigrants – Applicants who have not yet been interviewed or scheduled for an interview will have their applications prioritized and processed in accordance with existing "phased resumption of visa services" guidance. Visa applicants who

were previously refused visas due to the restrictions "may reapply by submitting a new application including a new fee."

EOIR Implements Revised Case Flow Processing Model for Certain Non-Detained Cases – The Executive Office for Immigration Review issued a revised case flow processing model and canceled a policy memorandum issued in November 2020 that implemented a new model generally applying to removal cases involving non-detained respondents with representation.

Labor Dept. Asks for Info on Data Sources/Methods for Prevailing Wage Determinations – The Department of Labor invited interested parties to provide information on the sources of data and methodologies for determining prevailing wage levels covering employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H–1B, H–1B1, and E–3 nonimmigrant visas.

Labor Dept. Solicits Comments on O*NET Data Collection Authority – The database "provides the most comprehensive standardized source of occupational and skills information in the nation," the Department said.

Maryland Governor Asks for Elimination of Lottery System and More H-2B Visas to Help Seafood Industry, Others – Gov. Hogan said that H-2B workers are "essential" and "vital to Maryland's seafood industry and market, which has grown to include regional, national, and international reach."

USCIS to Reopen Naturalization Application and Visa Approval for Melania Trump – USCIS announced on April 1, 2021, that it plans to reopen Melania Trump's naturalization application and "Einstein" EB-1 visa petition approval based on new information that there was not good and sufficient cause to approve the petition.

ABIL Global: Canada – There are new pandemic-related rules for travel across the land border and by air.

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Bipartisan Bill Introduced in Senate Would Provide Up to 40,000 Unused Immigrant Visas for Doctors, Nurses

New legislation introduced on March 29, 2021, by Democratic and Republican senators would provide unused employment-based immigrant visas for up to 25,000 foreign nurses and 15,000 foreign physicians and their family members. The Healthcare Workforce Resilience Act (S. 1024) is intended to beef up the U.S. response to the COVID-19 pandemic. Below are highlights:

- The visas would be made available from a pool of recaptured visas that were unused in fiscal years 1992 through 2020, and would not be counted against the total number of immigrant visas reserved for professional nurses and physicians.
- The visas would be exempt from per-country numerical limits and would be issued in order of the priority date assigned at the time the visa petition was filed.
- The petitioner would need to attest that the hiring would not displace a U.S. worker.
- Processing would be expedited.
- The filing period would be limited to 90 days following the termination of President Biden's COVID-19 pandemic emergency declaration.

The bill is supported by several dozen organizations, including the American Academy of Family Physicians, the American Academy of Pediatrics, the American Hospital Association, the American Medical Association, the National Rural Health Association, and others.

Details:

- "Young, Durbin, Senators Introduce Bipartisan Bill Addressing Shortage of Doctors, Nurses," Press Release, Sen. Todd Young (R-Ind.), Mar. 29, 2021, https://www.young.senate.gov/newsroom/press-releases/young-durbin-senators-introduce-bipartisan-bill-addressing-shortage-of-doctors-nurses
- Bill text, https://www.congress.gov/bill/117th-congress/senate-bill/1024?q=%7B%22search%22%3A%5B%22S.+1024%22%5D%7D&s=3&r=1

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USCIS Completes Initial FY 2022 H-1B Cap Season Selections; Petitions May Be Filed Now

U.S. Citizenship and Immigration Services (USCIS) announced on March 30, 2021, that it received enough electronic registrations during the initial registration period to reach the fiscal year (FY) 2022 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap).

The agency notified all prospective petitioners with selected registrations that they are eligible to file H-1B cap-subject petitions for the named beneficiaries. The filing period for petitions began on April 1, 2021. USCIS said that when completing the Form I-129, Petition for a Nonimmigrant Worker:

lease ensure that the below question is included as Question 5 in Supplement H on page 13. If you have already filled out Form I-129 and this question was not included, you may replace Supplement H in your petition by printing out and completing pages 13 and 14 from the current version of Form I-129 on uscis.gov and including them with your petition. Starting July 1, 2021, we will only accept the 03/10/21 edition of Form I-129. Until then, you can also use the 09/30/20 and 01/27/20 editions.

The question to be included states, "If you selected a. or d. in Item Number 4., and are filing an H-1B cap petition (including a petition under the U.S. advanced degree exemption), provide the Beneficiary Confirmation Number from the H-1B Registration Selection Notice for the beneficiary named in this petition (if applicable)."

Details:

- FY 2022 H-1B Cap Season Updates, USCIS, Mar. 30, 2021, https://www.uscis.gov/news/alerts/fy-2022-h-1b-cap-season-updates
- H-1B Electronic Registration Process, USCIS, Mar. 4, 2021, https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process
- H-1B Cap Season, USCIS, Mar. 31, 2021, 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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DHS Extends I-9 Requirement Flexibility Until May 31, 2021

The Department of Homeland Security (DHS) announced an extension until May 31, 2021, of the flexibility in complying with requirements related to Form I-9, Employment Eligibility Verification, due to ongoing COVID-19 pandemic precautions. The temporary guidance had been set to expire March 31.

The flexibility applies only to employers and workplaces that are operating remotely.

Details:

- DHS announcement, Mar. 31, 2021, https://www.uscis.gov/i-9-central/form-i-9-related-news/dhs-extends-form-i-9-requirement-flexibility-effective-mar-31-2021

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"Blank Space" Criteria Eliminated for Rejection of Forms

U.S. Citizenship and Immigration Services (USCIS) has eliminated "blank space" form rejection criteria introduced in 2019 and reverted to the criteria it applied before October 2019.

USCIS will no longer reject the following forms based solely on whether an applicant leaves a blank space anywhere on the form: Form I-589, Application for Asylum and for Withholding of Removal; Form I-612, Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended); and Form I-918, Petition for U Nonimmigrant Status.

However, USCIS said it may reject these forms, or delays might be created, if an applicant leaves required spaces blank, fails to respond to questions related to filing requirements, or omits any required initial evidence.

Details:

- USCIS announcement, April 1, 2021, https://www.uscis.gov/news/alerts/uscis-confirms-elimination-of-blank-space-criteria

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ICE Announces New SEVIS Process for Cap-Gap Extensions

On March 26, 2021, the Student and Exchange Visitor Program (SEVP) updated the Student and Exchange Visitor Information System (SEVIS) to remove the cap-gap extension link. This link allowed designated school officials (DSOs) to temporarily apply cap-gap relief to the record of an eligible F-1 student who is the beneficiary of a filed H-1B petition but is awaiting confirmation from U.S. Citizenship and Immigration Services (USCIS) that their petition was selected for processing. USCIS implementation of the H-1B Electronic Registration Process in 2020 eliminated this need, U.S. Immigration and Customs Enforcement (ICE) said.

SEVIS will automatically add the cap-gap extension to the record of an eligible F-1 student who is a beneficiary of a pending cap-subject H-1B petition, ICE said. If the cap-gap extension notation is missing from an eligible student's record or other changes are needed, DSOs must contact the SEVP Response Center (SRC) at 703-603-3400 or 800-892-4829 (email: SEVP@ice.dhs.gov) and request a data fix.

Details:

- "New SEVIS Process for Cap-Gap Extensions," SEVP Broadcast Message, Mar. 29, 2021, https://www.ice.gov/doclib/sevis/pdf/bcm2103-02.pdf

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State Dept. Issues Update on Suspension of Entry for Certain Nonimmigrants

The Department of State issued an update on Presidential Proclamation 10052, which temporarily suspended the entry of certain H-1B, H-2B, J (for certain categories within the Exchange Visitor Program), and L nonimmigrants. That proclamation expired on March 31, 2021.

The Department said that applicants who have not yet been interviewed or scheduled for an interview will have their applications prioritized and processed in accordance with existing "phased resumption of visa services" guidance. Visa applicants who were previously refused visas due to the restrictions "may reapply by submitting a new application including a new fee."

The resumption of routine visa services, prioritized after services to U.S. citizens, is occurring on a post-by-post basis, the Department's said: "Applicants

should check the website of their nearest U.S. Embassy or Consulate for updates on the services that post is currently offering."

Details:

- Update on Presidential Proclamation 10052, Dept. of State, Apr. 1, 2021, https://travel.state.gov/content/travel/en/News/visas-news/update-on-presidential-proclamation-10052.html

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EOIR Implements Revised Case Flow Processing Model for Certain Non-Detained Cases

In a memorandum issued on April 2, 2021, the Department of Justice's Executive Office for Immigration Review (EOIR) issued a revised case flow processing model and canceled a policy memorandum issued in November 2020 (PM 21-05) that implemented a new model generally applying to removal cases involving non-detained respondents with representation.

In general, under the new model, for non-detained cases in which a representative files a Form EOIR-28 at least 15 days before a master calendar hearing, "the hearing will be vacated and the court will send to the parties a scheduling order, setting deadlines for the filing of written pleadings and any evidence related to the charges of removability. The deadline will be 30 days after the most recently scheduled hearing date, whether vacated or held, unless pleadings have already been taken or a deadline is otherwise specified by the immigration judge. Where necessary, parties may request a master calendar hearing or seek extensions of filing deadlines by written motion," EOIR said.

Details:

- "Revised Case Flow Processing Before the Immigration Courts," EOIR (PM 21-18), Apr. 2, 2021, https://www.justice.gov/eoir/book/file/1382736/download

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Labor Dept. Asks for Info on Data Sources/Methods for Prevailing Wage

Determinations

On April 2, 2021, the Department of Labor invited interested parties to provide information on the sources of data and methodologies for determining prevailing wage levels covering employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H–1B, H–1B1, and E–3 nonimmigrant visas.

The information received in response to this request for information "will inform and be considered by the Department as it reviews the final rule," Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, published on January 14, 2021. The Department said that its review "may result in the development of a future notice of proposed rulemaking to revise the computation of prevailing wage levels in a manner that more effectively ensures the employment of certain immigrant and nonimmigrant workers does not adversely affect the wages of U.S. workers similarly employed."

Details:

- Request for Information, Dept. of Labor, Apr. 2, 2021, https://www.govinfo.gov/content/pkg/FR-2021-04-02/pdf/2021-06889.pdf

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Labor Dept. Solicits Comments on O*NET Data Collection Authority

The Department of Labor's Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "O*NET Data Collection Program."

The O*NET Data Collection Program is "an ongoing effort to collect and maintain current information on the detailed characteristics of occupations and skills for more than 900 occupations," the notice explains. The resulting database "provides the most comprehensive standardized source of occupational and skills information in the nation." The Department noted that O*NET information is "used by a wide range of audiences, including individuals making career decisions, public agencies and schools providing career exploration services or education and training programs, and businesses

making staffing and training decisions. The O*NET system provides a common language, framework and database to meet the administrative needs of various federal programs, including workforce investment and training programs."

Comments are due by May 28, 2021.

Details:

- of Labor notice, Mar. 29, 2021, https://www.govinfo.gov/content/pkg/FR-2021-03-29/pdf/2021-06387.pdf

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Maryland Governor Asks for Elimination of Lottery System and More H-2B Visas to Help Seafood Industry, Others

On March 23, 2021, Maryland Governor Larry Hogan sent a letter to Alejandro Mayorkas, Secretary of Homeland Security, and Marty Walsh, Secretary of Labor, asking for elimination of the H-2B nonimmigrant visa lottery system and an increase in the number of H-2B visas, now capped annually at 66,000, "to the maximum allowable under federal law and under the legislative language included in the omnibus bill." Of particular concern is Maryland's blue crab harvest season, which started on April 1.

Gov. Hogan said the request was in support of "Maryland's seafood industry and other seasonal employers." He said that H-2B workers are "essential" and "vital to Maryland's seafood industry and market, which has grown to include regional, national, and international reach." He noted that Maryland "has fought" to support the seafood industry during the COVID-19 pandemic and to "find creative ways to protect our markets and workers." A loss of H-2B workers would "negate that work, disrupt an already abnormal supply chain, jeopardize the state's $355 million seafood industry, and threaten thousands of direct and indirect jobs," he warned, citing research by the University of Maryland indicating that every H-2B temporary worker in crab processing, for example, "helps create an average 2.5 jobs for American citizens." He said that without the temporary workers and an end to the "arbitrary lottery system," iconic family and small businesses could be forced to close.

Details:

- Letter from Gov. Larry Hogan of Maryland, Mar. 23, 2021,

https://governor.maryland.gov/wp-content/uploads/2021/03/H2B-Letter_3.21.21.pdf

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USCIS to Reopen Naturalization Application and Visa Approval for Melania Trump

U.S. Citizenship and Immigration Services (USCIS) announced on April 1, 2021, that it plans to reopen Melania Trump's naturalization application and "Einstein" EB-1 visa petition approval based on new information that there was not good and sufficient cause to approve the petition. The visa is intended for those with extraordinary ability and sustained national and international acclaim.

After reportedly entering the United States on a B-1/B-2 visitor visa in 1996 and then obtaining an H-1B visa, Melania applied for the "extraordinary ability" EB-1 visa while dating Donald Trump in 2000. It was approved in 2001. The two married in 2005, and she acquired U.S. citizenship in 2006. She then sponsored her parents, who acquired U.S. citizenship in 2018.

Her attorney said, "There is no doubt that she is highly accomplished. She has been associated with some of the biggest ad campaigns in the world, and she was highly remunerated." When pressed, he could not recall what those campaigns were, but he noted that there were some mighty convincing documents included with the application. "I studied them. I studied them with a magnifying glass. I studied them three-dimensionally," he said emphatically.

Donald—entrepreneur, renowned reality rogue, and now erstwhile President—also vouched for Melania's qualifications. He filed an affidavit in support of her application, stating that she was the most phenomenal model in world history and should have gotten the Nobel Prize, the Pulitzer, and an Oscar by then. He noted that, among other things, she was dating a very powerful, successful, smart, and rich man: "In fact, I'm like filthy rich. That alone should qualify her," he said, but added that she has many other attributes. "I mean, come on! She's fabulous. Just look at me—I mean her. She looks so good on my arm," he said when interviewed at the time. When asked whether modeling and dating a wealthy and powerful man were sufficient to qualify her for an extraordinary ability visa and how that jibed with his general anti-immigration stance, he said the question was "nasty" and "fake news," and called the questioner a loser.

Asked what prompted the decision to reopen Melania's naturalization case and look into her visa history, an agency spokesperson who wished to remain anonymous said USCIS now is "waking up as if from a long stupor, or a tornado perhaps, rubbing its eyes and looking around at the immigration landscape like a newborn."

Responding to a follow-up question regarding additional details on Melania's case, the spokesperson would only say, "Happy April Fool's Day!"

Details:

- "What is the Einstein Visa? And How Did Melania Trump Get One?", BBC News, Mar. 2018, https://www.bbc.com/news/world-us-canada-43256318
- "How Did Melania Trump Get U.S. Citizenship?", Jewish Standard, Dec. 22, 2016, https://jewishstandard.timesofisrael.com/how-did-melania-trump-get-u-s-citizenship/
- "Melania Trump's 'Einstein' Visa and 'Chain Migration' Detailed in New Book," Mercury News, June 16, 2020, https://www.mercurynews.com/2020/06/16/melania-trumps-einstein-visa-and-chain-migration-detailed-in-new-book/

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ABIL Global: Canada

There are new pandemic-related rules for travel across the land border and by air.

New COVID-19 Travel Rules

The federal government announced new COVID-19 pandemic-related travel rules in February:

Travel Across the Land Border

Non-essential travelers (such as returning “snowbirds”) must show proof of a negative COVID-19 test taken no longer than 72 hours earlier. In addition to the pre-departure COVID test, another COVID test will be administered at the land border. The traveler can then continue to the planned place of quarantine and must self-administer another COVID test during the 14-day quarantine. The self-test kit will be provided at the border.

Travel by Air

In addition to the pre-departure COVID test taken 72 hours before boarding a flight to Canada, all individuals, Canadians included, must take a test upon arrival at the first Canadian airport. They must then wait for the test result at a hotel on the official list and cover the cost of up to CA $2,000 for the hotel (prices will vary) and testing. The hotel must be booked before boarding the plane to Canada. Upon receipt of the test result, they may travel to their final quarantine destination for the remaining days (14 days total) and must self-administer another COVID test. The self-test kit will be provided at the airport. The following details also apply:

- The hotel must be booked at the first Canadian airport, meaning that a traveler who has a layover in Canada before their final destination must remain at the transit airport hotel until the test comes back negative. Only then can the final leg of the journey be completed.
- There is no exemption for vaccinated travelers.
- It is expected that the current exemptions (e.g., for medical personnel and essential workers) will remain valid, but this has not yet been confirmed.
- Flights on Canadian airlines to and from Mexico and the Caribbean remain suspended until April 30, 2021.

ArriveCAN remains mandatory for airport and land border arrivals. See https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19/arrivecan.html

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Cyrus Mehta was quoted by *India West* in "To the Relief of H-1B Workers, Biden Lets Trump's Ban on Foreign Workers Expire." Mr. Mehta called for an overhaul of the H-1B program in a March 27, 2021, tweet quoted by the article: "The H-1B lottery—a game of chance—is an inappropriate way for U.S. employers to hire skilled foreign workers. Quotas and lotteries have no place in a modern immigration system. Let talent and skills freely come to the U.S." https://bit.ly/3rLblVv

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