CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 12, 2021

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Headlines:

State Dept. Updates Visa Services Guidance, Policy on National Interest Exceptions for Regional COVID Proclamations – The Department of State recently released several updates.

Attorneys, AILA Sue State Dept. for Unlawfully Refusing to Issue Visas Due to Certain Travel Bans – Attorneys Jeff Joseph of Joseph and Hall PC, Charles Kuck of Kuck Baxter Immigration LLC, and Greg Siskind of Siskind Susser PC, along with the American Immigration Lawyers Association, filed a complaint on behalf of scores of plaintiffs against the Department of State and Secretary Antony Blinken, alleging that the agency has unlawfully relied on certain travel bans in refusing to issue visas.

OFLC Announces New Application for Prevailing Wage Determination – The Department of Labor's Office of Foreign Labor Certification revised its Form ETA-9141, Application for Prevailing Wage Determination, for use beginning May 3, 2021.

CBP Reminds Carriers of LPR Boarding Policy – U.S. Customs and Border Protection issued guidance on March 5, 2021, for its Carrier Liaison Program on the current policy for boarding of lawful permanent residents (LPRs).

Border Czar to Leave Biden Administration; Vice President to Lead Efforts with Mexico and Northern Triangle Countries – Roberta Jacobson, whom President Biden appointed as Special Assistant to the President and Coordinator for the Southwest Border, plans to leave the position at the end of April, as the number of migrants attempting to cross the border is surging.

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State Dept. Updates Visa Services Guidance, Policy on National Interest Exceptions for Regional COVID Proclamations

The Department of State recently released several updates on visa services and national interest exception policy for regional COVID proclamations:

Visa Services Guidance

Referring to continued restrictions due to the COVID-19 pandemic worldwide, the Department announced on April 6, 2021, that U.S. embassies and consulates that process nonimmigrant visa applications "are prioritizing travelers with urgent needs, foreign diplomats, mission-critical categories of travelers (such as those coming to assist with the U.S. response to the COVID-19 pandemic, and workers who are essential to the American food supply), followed by students, exchange visitors, and some temporary employment visas."

With respect to visa services, for consular sections that have the capacity, "the processing of immigrant and visas, particularly for immediate relatives and other family-sponsored applicants, is our highest priority. U.S. Embassies and Consulates are also prioritizing the processing of immigrant visa cases previously refused under the rescinded Presidential Proclamations 9645 and 9983," the Department said.

The Department noted that as a result of the pandemic, appointment capacity continues to be reduced, which "has created a significant backlog of both immigrant and nonimmigrant visa applicants awaiting a visa interview." The Department said it is working to reduce the backlog.

National Interest Exceptions

The Department announced on April 8, 2021, that the travel of immigrants, fiancé(e) visa holders, certain exchange visitors, and pilots and aircrew traveling to the United States for training or aircraft pickup, delivery, or maintenance is in the national interest for purposes of approving exceptions under the "geographic" COVID Presidential Proclamations (9984, 9992, and 10143).

The Department noted that these proclamations "restrict the entry of

individuals physically present, within the 14-day period prior to their attempted entry into the United States, in the People's Republic of China, Islamic Republic of Iran, Schengen Area, United Kingdom, Republic of Ireland, Federative Republic of Brazil, or Republic of South Africa."

Details:

- "Visa Services Operating Status Update," Dept. of State, Apr. 6, 2021, https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html
- "Updates to National Interest Exceptions for Regional COVID Proclamations," Dept. of State, Apr. 8, 2021, https://travel.state.gov/content/travel/en/News/visas-news/updates-to-national-interest-exceptions-for-regional-covid-proclamations.html

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Attorneys, AILA Sue State Dept. for Unlawfully Refusing to Issue Visas Due to Certain Travel Bans

Attorneys Jeff Joseph of Joseph and Hall PC, Charles Kuck of Kuck Baxter Immigration LLC, and Greg Siskind of Siskind Susser PC, along with the American Immigration Lawyers Association (AILA), filed a complaint on April 7, 2021, on behalf of scores of plaintiffs against the Department of State and Secretary Antony Blinken, alleging that the agency has unlawfully relied on certain travel bans in refusing to issue visas.

Specifically, the travel bans relate to suspensions of entry that apply to individuals who were physically present in Iran, China, Brazil, South Africa, the Republic of Ireland, the United Kingdom, and the Schengen area of Europe during the 14 days before seeking entry. The complaint states that these regional bans based on presence allow for entry after the individual has remained outside a designated country for 14 days, but that the defendants have refused to issue visas that would allow the plaintiffs to quarantine in a third country for 14 days before seeking entry.

Details:

- Complaint, April 7, 2021, https://www.aila.org/infonet/complaint-unlawful-suspension-of-visa-processing

- Press statement, AILA, April 8, 2021, https://www.aila.org/advo-media/press-releases/2021/litigation-team-sues-biden-administrations-state

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OFLC Announces New Application for Prevailing Wage Determination

The Department of Labor's Office of Foreign Labor Certification (OFLC) revised its Form ETA-9141, Application for Prevailing Wage Determination, for use beginning May 3, 2021.

As of 8 a.m. on May 3, 2021, OFLC will only accept prevailing wage applications submitted using the new form. OFLC will reject, without further review, prevailing wage paper applications submitted using the current version of the form. A stakeholder webinar will be held on April 27, 2021, at 2 p.m. ET (2 hours).

Details:

- OFLC announcement, https://www.dol.gov/agencies/eta/foreign-labor (scroll down to announcement on April 2, 2021)
- Webinar meeting link, https://usdol.webex.com/usdol/j.php?MTID=mdecd014fcb2a1d00e8ae503dca9890d4 (for more information, including alternative ways to join the webinar, see https://www.dol.gov/agencies/eta/foreign-labor (scroll down to webinar information on April 2, 2021)

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CBP Reminds Carriers of LPR Boarding Policy

U.S. Customs and Border Protection issued guidance on March 5, 2021, for its Carrier Liaison Program on the current policy for boarding of lawful permanent residents (LPRs):

Unexpired Valid Permanent Resident Card

- Passengers with a valid, unexpired Permanent Resident Card (PRC or "green card") may be boarded without any additional documentation.

Re-Entry Permit (I-327): *Valid and Unexpired*

- Passengers with valid, unexpired re-entry permit are permitted to board without additional documentation.
- The document must be the original re-entry permit. Copies are not accepted.

Expired Permanent Resident Cards: *Ten-year validity*

- Lawful permanent residents (LPRs) with an expired I-551 may be boarded without penalty, provided the card was issued with a 10-year expiration date.

Expired Permanent Resident Cards: Containing Extension Sticker/Form I-797

- Starting in January 2021, the sticker that is currently issued to LPRs to extend the validity of their PRC (placed on the back of the card) has been discontinued.
- The revised I-797 receipt notice, together with an applicant's PRC, will serve as temporary evidence of lawful permanent resident status for 12 months from the expiration date on the front of the green card.
- PRCs that contain the extension sticker will remain valid until the expiration date.
- The document must be the original I-797 permit. Copies are not accepted.

Expired Conditional Resident: *Two-year validity*

- A Conditional Resident with an expired PRC (with a two-year expiration date) may be boarded if also in possession of a Notice of Action (Form I-797).
- The Notice of Action extends the validity of the card for a specified length of time, generally 18 months.
- Do not board the traveler if they are not in possession of Form I-797.

SB-1 Visas: *Valid and Unexpired*

- Travelers in possession of a valid, unexpired SB-1 visa in their passport may be boarded without additional documentation.

The guidance notes that "irlines should not be determining admissibility of a outside the parameters of the document requirements.

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Border Czar to Leave Biden Administration; Vice President to Lead Efforts with Mexico and Northern Triangle Countries

Roberta Jacobson, whom President Biden appointed as Special Assistant to the President and Coordinator for the Southwest Border, plans to leave the position at the end of April, as the number of migrants attempting to cross the border is surging. She had committed to serve for the first 100 days of the Biden administration, according to an April 9, 2021, statement from Jake Sullivan, National Security Advisor.

Ms. Jacobson, formerly U.S. Ambassador to Mexico, "launched our renewed efforts with the Northern Triangle nations of El Salvador, Guatemala, and Honduras," and "underscored this Administration's commitment to reenergizing the U.S. immigration system." Ms. Jacobson had said the Biden administration "plans to approach U.S. companies about increasing investment in Mexico and Central America to try to reduce migration."

President Biden appointed Vice President Kamala Harris to lead "efforts with Mexico and the Northern Triangle," Mr. Sullivan said. He added that Vice President Harris will oversee "a whole-of-government approach supported by outstanding public servants across the interagency including Secretary of Homeland Security Alejandro Mayorkas and Secretary of Health and Human Services Xavier Becerra, who were tasked by the President at the beginning of the administration to rebuild our immigration system." Vice President Harris is expected to use diplomacy in her efforts rather than being responsible for the border, according to reports.

Details:

- Statement from National Security Advisor Jake Sullivan on the Service of Ambassador Jacobson, Coordinator for the Southwest Border, Apr. 9, 2021, https://bit.ly/320r7BA
- "Roberta Jacobson, Senior Biden Official Overseeing Border, Stepping Down at End of Month," ABC News, Apr. 9, 2021, https://abcnews.go.com/Politics/roberta-jacobson-senior-biden-official-overseeing-border-stepping/story?id=76984133
- "White House Urges Private Investment to Stem Migrant Surge," Bloomberg, Apr. 9, 2021,

https://www.bloomberg.com/news/articles/2021-04-09/white-house-urges-private-investment-to-help-stem-migrant-surge?sref=jxky9jlk

- "Young Migrants Crowd Shelters, Posing Test for Biden," New York Times, Apr. 10, 2021, https://www.nytimes.com/2021/04/10/us/politics/biden-immigration.html

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Firm in the News

Cyrus Mehta was a featured speaker at the AILA Chicago Employment Conference on April 9, 2021 where he spoke during the PERM Session regarding the latest updates on labor certification issues.

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