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

IMMIGRATION UPDATE - APRIL 20, 2021

Posted on April 20, 2021 by Cyrus Mehta

Headlines:

President Biden Will Raise Refugee Cap Following Backlash – President Biden plans to raise the cap on refugees for FY 2021 by May 15, 2021. The announcement followed a backlash after he announced originally that refugee admissions this fiscal year would be kept at 15,000.

President Biden Picks Nominees for USCIS, CBP – President Biden has chosen Ur Jaddou to lead U.S. Citizenship and Immigration Services and Chris Magnus to lead U.S. Customs and Border Protection.

F-1 Students Seeking OPT Can Now File Form I-765 Online – USCIS announced that F-1 students seeking optional practical training (OPT) can now file Form I-765, Application for Employment Authorization, online if they are filing under one of several categories.

State Dept. Releases FAQ on Immigrant Visa Backlog and Consular Processing – The Department said it is committed to decreasing the backlog by "prioritizing certain visas, creating efficiencies in the visa process, and utilizing all available resources until our task is accomplished."

DHS Seeks Comments on How USCIS Can Reduce Barriers/Burdens in Regulations and Policies – DHS seeks comments from the public on how U.S. Citizenship and Immigration Services can reduce administrative and other barriers and burdens within its regulations and policies, including those that prevent foreign citizens from easily obtaining access to immigration services and benefits.

Firm in the News

Details:

Back to Top

President Biden Will Raise Refugee Cap Following Backlash

White House Press Secretary Jen Psaki said on April 16, 2021, that President Joe Biden plans to raise the cap on refugees for fiscal year 2021 by May 15, 2021. The announcement followed a backlash after plans were announced to keep the number of refugee admissions at 15,000, which contradicted earlier statements that the cap would be raised. According to reports, a senior administration official said the cap was lower than anticipated due to a combination of insufficient infrastructure to process refugees and issues related to the COVID-19 pandemic.

Previously, the Biden administration had said the FY 2021 cap would be 62,500 and the FY 2022 cap would be 125,000. It remains unclear how much the administration will raise the FY 2021 cap. The allocations announced earlier on April 16 included Africa (7,000), East Asia (1,000), Europe and Central Asia (1,500), Latin America and the Caribbean (3,000), Near East and South Asia (1,500), and an unallocated reserve of 1,000 to be used "where the need for additional admissions arises and to transfer unused allocations from a particular category to one or more other categories" if needed.

A White House statement also said that persons in the following countries "may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence": Cuba; Eurasia and the Baltics; Iraq; Honduras, Guatemala, and El Salvador; and in special circumstances, "persons identified by a United States Embassy in any location or initially referred to the Federal Government by a designated non-governmental organization."

Ms. Psaki indicated that flights from key regions where refugees are located could begin "within days."

Details:

- "Biden Will Raise Trump Refugee Cap Following Democratic Outcry," Bloomberg, Apr. 16, 2021, https://www.msn.com/en-us/news/politics/biden-will-raise-trump-refugee-cap-following-democratic-outcry/ar-BB1fJksf?ocid=msedgntp
- "Memorandum for the Secretary of State on the Emergency Presidential

Determination on Refugee Admissions for Fiscal Year 2021," White House, Apr. 16, 2021, https://bit.ly/2RJqhar

Back to Top

President Biden Picks Nominees for USCIS, CBP

President Joe Biden has chosen Ur Jaddou to lead U.S. Citizenship and Immigration Services (USCIS) and Chris Magnus to lead U.S. Customs and Border Protection (CBP), according to reports. Below are biographical highlights.

Ur Jaddou, USCIS nominee. A White House statement notes that Ms. Jaddou has two decades of experience in immigration law, policy, and administration. Most recently, she was Director of DHS Watch, a project of America's Voice. She is an adjunct professor of law at American University's Washington College of Law, and counsel at Potomac Law Group, PLLC. From June 2014 to January 2017, she was Chief Counsel for USCIS. She also served as Chief Counsel to the House of Representatives' Subcommittee on Immigration, and as Deputy Assistant Secretary for Regional, Global and Functional Affairs in the Bureau of Legislative Affairs at the Department of State. Ms. Jaddou is a daughter of immigrants from Mexico (mother) and Iraq (father), and was born in California. She earned bachelor's and master's degrees from Stanford University and a law degree from UCLA School of Law.

Chris Magnus, CBP nominee. The White House statement notes that Mr. Magnus is Police Chief in Tucson, Arizona. He has a long career in public safety, including with the Lansing, Michigan, police department and serving as Police Chief in Fargo, North Dakota; Richmond, California; and Tucson, Arizona. In those roles, Mr. Magnus focused on relationship-building between the police and community, implementing evidence-based best practices, promoting reform, and police accountability. Because of Tucson's proximity to the U.S.-Mexico border, Mr. Magnus has "extensive experience in addressing immigration issues," the White House said. He earned bachelor's and master's degrees from Michigan State University and attended the Senior Executives in State and Local Government program at Harvard University's Kennedy School of Government.

Details:

- "President Biden Announces His Intent to Nominate Key Members for the U.S. Department of Homeland Security," White House, Apr. 12, 2021, https://bit.ly/3sqtDf8
- "Biden to Tap Former Police Chief to Lead CBP and Former NSA Official to Head Cybersecurity Agency," CBS News, Apr. 12, 2021, https://www.cbsnews.com/news/biden-citizen-immigration-services-cybersecurity-border-protection/

Back to Top

F-1 Students Seeking OPT Can Now File Form I-765 Online

U.S. Citizenship and Immigration Services (USCIS) announced on April 12, 2021, that F-1 students seeking optional practical training (OPT) can now file Form I-765, Application for Employment Authorization, online if they are filing under one of these categories:

- (c)(3)(A), Pre-Completion OPT
- (c)(3)(B), Post-Completion OPT
- (c)(3)(C), 24-Month Extension of OPT for science, technology, engineering, and mathematics (STEM) students

USCIS emphasized that the option to file Form I-765 online is only available to F-1 students filing Form I-765 for OPT, noting that "f an applicant submits Form I-765 online to request employment authorization on or after April 15, but is eligible for a different employment authorization category, USCIS will deny the application and retain the fee. As USCIS continues to transition to paperless operations, the agency will work to expand online filing for Form I-765 to additional categories."

To submit a form online, an individual must first create a USCIS online account at myaccount.uscis.gov. The free account allows people to submit forms, pay fees, track the status of their case, communicate with USCIS through a secure inbox, and respond to requests for additional evidence. USCIS continues to accept the latest paper versions of forms by mail.

Details:

- USCIS release, https://www.uscis.gov/news/news-releases/f-1-students-seeking-optional-practical-training-can-now-file-form-i-765-online

Back to Top

State Dept. Releases FAQ on Immigrant Visa Backlog and Consular Processing

On April 13, 2021, the Department of State released frequently asked questions (FAQ) on the immigrant visa backlog and consular processing. The FAQ notes that the immigrant visa interview backlog has developed "because of limitations in staffing and other COVID-related operational constraints preventing us from processing the same volume of applicants as pre-pandemic." In addition, the FAQ cites previous presidential proclamations that "restricted visa processing for many immigrants for nearly a year." The Department said it would take time to process the cases affected by these travel restrictions.

The Department said it is committed to decreasing the backlog by "prioritizing certain visas, creating efficiencies in the visa process, and utilizing all available resources until our task is accomplished." Applicants should check the website of their nearest U.S. embassy or consulate for updates on currently available visa services, the FAQ states. Virtual interviews are not available because current regulations "require all immigrant visa applicants to appear in person before a consular officer," the FAQ states.

Details:

- "Frequently Asked Questions Regarding the Immigrant Visa Backlog," Dept. of State, Apr. 13, 2021, https://www.facebook.com/travelgov

Back to Top

DHS Seeks Comments on How USCIS Can Reduce Barriers/Burdens in Regulations and Policies

The Department of Homeland Security (DHS) seeks comments from the public on how U.S. Citizenship and Immigration Services (USCIS) can reduce administrative and other barriers and burdens within its regulations and policies, including those that prevent foreign citizens from easily obtaining access to immigration services and benefits.

This effort "will help DHS identify process improvements for USCIS, with benefits for state, local, and tribal governments, for businesses (including small businesses and startups), for educational institutions of all kinds, for

nonprofits, and for individuals," the request states.

The request is scheduled to be published in the Federal Register on April 19, 2021.

Details:

- Advance notice of DHS request, https://bit.ly/3sszpwN

Back to Top

Firm in the News

Cyrus Mehta was quoted by the *Times of India* in "Green Card Holders Stuck in India Need to Prove U.S. Ties." He said, "With respect to green card holders who have been outside for more than a year, they should first try to apply for the returning resident or SB-1 visa. On the ground level, obtaining an appointment at the U.S. Consulate during the pandemic can be challenging. Even pre-Covid, the U.S. consulates have not been very generous in issuing SB-1 visas." He noted that "if the green card holder cannot obtain the SB-1 visa, and the green card date has not expired, they can still try to board a flight and assert that they have not abandoned their green card at the U.S. port of entry." Mr. Mehta also said that U.S. courts "have provided a test regarding green card abandonment, which is quite generous. Even if the green card holder has been outside the U.S. for much longer than a year, the key question is whether they consistently harbored an intent to return to the U.S. and continued to maintain ties with the country. Under the law, the government has a very heavy burden to prove that the green card holder has abandoned that status. During Covid, a green card holder who has been away for more than a year still has a good chance of being allowed entry if this person otherwise kept ties with the U.S." https://bit.ly/3toIx6S

Back to Top