



IMMIGRATION UPDATE - MAY 03, 2021

Posted on May 3, 2021 by Cyrus Mehta

Headlines:

[President Biden Suspends Entry of Noncitizens/Non-LPRs Traveling From India; U.S. Mission in India Announces Limits on Visa Services](#) – President Biden has issued a proclamation suspending the entry of non-U.S. citizens who were physically present within India during the 14-day period preceding their entry or attempted entry into the United States, with some exceptions. The proclamation takes effect May 4, 2021.

[State Dept. Announces Global National Interest Exceptions to COVID-19 Travel Restrictions](#) – Students seeking to start studies in the fall, certain academics, journalists, and individuals who provide critical infrastructure support in countries affected by a geographic COVID-19 restriction may now qualify for a national interest exception.

[Supreme Court Rules in Favor of Relief for Long-Term Noncitizen U.S. Resident Removed From United States](#) – The U.S. Supreme Court ruled on April 29, 2021, that "onpermanent resident aliens ordered removed from the United States under federal immigration law may be eligible for discretionary relief if, among other things, they can establish their continuous presence in the country for at least 10 years."

[USCIS Reverses Trump Policy, Instructs Adjudicators to Resume Granting Deference to Prior Determinations in Petition Validity Extension Requests](#) – Effective immediately, U.S. Citizenship and Immigration Services updated its policy guidance to generally restore its 2004 instructions directing officers to defer to prior determinations of eligibility when adjudicating petition extensions involving the same parties and facts as the initial petition.

[State Dept. Announces Tiered Immigrant Visa Prioritization](#) – On April 30, 2021,

the Department of State announced a tiered prioritization approach to "triage" immigrant visa applications in light of reduced operating capacity as a result of the COVID-19 pandemic.

[ABIL Global: Canada](#) – This article discusses the demise of the Owner Operator labour market impact assessment, and what options remain for entrepreneurs hoping to come to Canada.

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President Biden Suspends Entry of Noncitizens/Non-LPRs Traveling From India; U.S. Mission in India Announces Limits on Visa Services

President Biden has issued a proclamation suspending the entry of non-U.S. citizens who were physically present within India during the 14-day period preceding their entry or attempted entry into the United States, with some exceptions. The proclamation takes effect May 4, 2021, and will remain in effect until terminated by the President.

The proclamation states that India "is experiencing widespread, ongoing person-to-person transmission of the virus" that causes COVID-19 and its variants. The proclamation cites the Centers for Disease Control and Prevention, which has concluded that proactive measures are required to protect U.S. "public health from travelers entering the United States from that jurisdiction."

The Proclamation does not apply to green card holders, spouses of U.S. citizens or green card holders, parents of unmarried U.S. citizen or LPR children under the age of 21, or certain other categories of travelers. This proclamation takes effect at 12:01 a.m. EDT on May 4, 2021, and will not apply to noncitizens who are already on a flight to the United States that has departed before that time. It would also not apply to a nonimmigrant who spends 14 days outside India or another country not subject to a Covid-19 proclamation before entering the US.

The White House has alerted U.S. airlines and Congress. Also, the U.S. embassy and consulates in India announced significant temporary limitations on visa and other services.

Details:

- "A Proclamation on the Suspension of Entry as Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019," White House, Apr. 30, 2021, <https://bit.ly/3356kNO>
- "Biden Administration to Restrict Travel From India Starting Tuesday," CNN, Apr. 30, 2021, <https://www.cnn.com/2021/04/30/politics/us-india-travel-restrictions/index.html>
- Announcement, U.S. Embassy and Consulates in India, <https://in.usembassy.gov/visas/>

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State Dept. Announces Global National Interest Exceptions to COVID-19 Travel Restrictions

On April 27, 2021, the Department of State (DOS) announced national interest exceptions to all regional travel restrictions currently in effect as a result of the COVID-19 pandemic.

DOS said that students seeking to start studies in the fall, certain academics, journalists, and individuals who provide critical infrastructure support in countries affected by a geographic COVID-19 restriction may now qualify for a national interest exception. This includes qualified applicants who have been in Brazil, China, Iran, or South Africa.

DOS also said that the pandemic "continues to limit the number of visas our embassies and consulates abroad are able to process," and that visa applicants should check the website of their nearest U.S. embassy or consulate for the latest information about visa appointment availability.

Details:

- "Uniform Global National Interest Exceptions to COVID-19 Travel Restrictions," Dept. of State, Apr. 27, 2021, <https://www.state.gov/uniform-global-national-interest-exceptions-to-covid-19-travel-restrictions/>

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Supreme Court Rules in Favor of Relief for Long-Term Noncitizen U.S. Resident Removed From United States

The U.S. Supreme Court ruled on April 29, 2021, that "onpermanent resident aliens ordered removed from the United States under federal immigration law may be eligible for discretionary relief if, among other things, they can establish their continuous presence in the country for at least 10 years."

The Court noted that the period of continuous presence is deemed to end when the individual is served a notice to appear in a removal proceeding. This principle is called the "stop-time rule." In this case, the government ordered the removal of petitioner Agosto Niz-Chavez and sent him a document containing the charges against him. Two months later, it sent a second document providing Mr. Niz-Chavez with the time and place of his hearing. The government contended that because the two documents collectively specified all statutorily required information for a notice to appear, Mr. Niz-Chavez's continuous presence in the United States stopped when he was served with the second document. The Court disagreed, holding that a notice to appear sufficient to trigger the stop-time rule "is a single document containing all the information about an individual's removal hearing."

Details:

- Niz-Chavez v. Garland, Apr. 29, 2021, https://www.supremecourt.gov/opinions/20pdf/19-863_new_5426.pdf
- "U.S. Supreme Court Hands Victory to Immigrants Facing Deportation," Reuters, Apr. 29, 2021, <https://www.yahoo.com/news/u-supreme-court-hands-victory-154737133.html>

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USCIS Reverses Trump Policy, Instructs Adjudicators to Resume Granting Deference to Prior Determinations in Petition Validity Extension Requests

Effective immediately, U.S. Citizenship and Immigration Services (USCIS) updated its policy guidance on April 27, 2021, to generally restore its 2004 instructions directing officers to defer to prior determinations of eligibility when adjudicating petition extensions involving the same parties and facts as the initial petition. USCIS had rescinded the 2004 guidance in 2017.

The updated policy clarifies that USCIS will once again give deference unless there was a material error, material change in circumstances or eligibility, or new material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility. The updated policy also affirms that USCIS "considers, but does not defer to, previous eligibility determinations on petitions or applications made by other U.S. government agencies," and that "officers make determinations on the evidence of record in the petition or application under adjudication."

Details:

- "Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity," USCIS Policy Alert, Apr. 27, 2021, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>
- "USCIS Issues Policy Guidance on Deference to Previous Decisions," USCIS Release, Apr. 27, 2021, <https://www.uscis.gov/news/alerts/uscis-issues-policy-guidance-on-deference-to-previous-decisions>

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State Dept. Announces Tiered Immigrant Visa Prioritization

On April 30, 2021, the Department of State (DOS) announced a tiered prioritization approach to "triage" immigrant visa applications in light of reduced operating capacity as a result of the COVID-19 pandemic.

The main categories of immigrant visas in priority order are:

- Tier One: Immediate relative intercountry adoption visas, age-out cases (cases where the applicant will soon no longer qualify due to their age), and certain Special Immigrant Visas (SQ and SI for Afghan and Iraqi nationals working with the U.S. government)
- Tier Two: Immediate relative visas; fiancé(e) visas; and returning resident visas
- Tier Three: Family preference immigrant visas and SE Special Immigrant Visas for certain employees of the U.S. government abroad
- Tier Four: All other immigrant visas, including employment preference and diversity visas

Details:

- "Immigrant Visa Prioritization," DOS, Apr. 30, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-prioritization.html>

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ABIL Global: Canada

This article discusses the demise of the Owner Operator labour market impact assessment, and what options remain for entrepreneurs hoping to come to Canada.

In Canada, the starting point to obtain a work permit as a foreign national is a labour market impact assessment (LMIA). This requires a Canadian company to demonstrate that they advertised the position and that Canadian citizens and permanent residents were given a reasonable opportunity to apply for the position. Until recently, one of the most popular exemptions from advertising to support an LMIA application was the Owner Operator category. Where a foreign national owned more than 50 percent of a Canadian company, no advertising was required, and the Canadian company merely had to establish that the impact of hiring the foreign national would have a neutral or positive impact on the Canadian labor market and that the job offer was genuine.

The Entrepreneur permanent residence category was eliminated approximately two decades ago. Since then, many of the provinces have designed entrepreneur programs, but these provincial programs typically require a minimum investment and creation of jobs in Canada and often take months to be approved. Accordingly, in the absence of a true entrepreneur program, the Owner Operator LMIA provided a path for many self-employed business entrepreneurs to initially come to Canada to work, gain Canadian experience working for a Canadian company, and then ultimately apply for permanent residence under the Express Entry path.

What options remain for entrepreneurs hoping to come to Canada and start a new business?

Recently, Immigration, Refugees and Citizenship Canada (IRCC) launched the Start-Up Visa Program. This program requires foreign nationals to secure financial backing from a designated angel fund or venture capital funds or the support of a business incubator. The Start-Up Visa Program has been

underutilized, likely because entrepreneurs are not interested in sharing their business ideas or ownership in their future business.

There is also a C-11 work permit for Entrepreneurs /Self-Employed candidates, but it does not include a direct path to permanent residence. Since most successful candidates for permanent residence require "Canadian work experience," and self-employed work is not considered "Canadian work experience" (*Immigration and Refugee Protection Act*), it is unlikely that C-11 work permit holders will qualify for permanent residence.

With the elimination of the Owner Operator LMIA and limitations with the Start-Up Visa, C-11 work permit, and provincial programs for entrepreneurs, Canada is missing out on the potential to attract entrepreneurs. Given that it is well-established that new immigrants are often risk-takers and therefore make good entrepreneurs, this could have a negative long-term impact on Canada's immigration program and economy. This is particularly relevant in light of estimates of approximately a trillion dollars' worth of small and medium-sized businesses in Canada that are owned by baby boomers who are set to retire within the next 10 years. So far there has been no indication IRCC plans to develop more policies and programs to create paths for entrepreneurs.

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Firm in the News

Cyrus Mehta was quoted by Bloomberg Law in " 'Legal Dreamers' See Renewed Chance for Relief in Legislation." Regarding the children of the H-1B specialty visa applicant population awaiting green cards who age out, he said, "If they start all over again they'll have to wait another 50 years. It's a hopeless situation for H-4 children of parents born in India."

<https://news.bloomberglaw.com/daily-labor-report/legal-dreamers-see-renewed-chance-for-relief-in-legislation>

Mr. Mehta spoke at the AILA Philadelphia Chapter's 2021 CLE Conference on April 20, 2021 in a Plenary Session entitled Biden's First Hundred Days.

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