



## IMMIGRATION UPDATE - MAY 10, 2021

*Posted on May 10, 2021 by Cyrus Mehta*

### Headlines:

[President Biden Raises Refugee Cap to 62,500 in FY 2021](#) – President Joe Biden revised the United States' annual refugee admissions cap to 62,500 for fiscal year FY 2021, with a goal of 125,000 admissions for FY 2022.

[DHS Will Withdraw Proposed Rule on Work Authorization for Certain Persons With Final Removal Orders](#) – The Department of Homeland Security will withdraw a proposed rule that would have revised DHS regulations to eliminate employment authorization for individuals who have final orders of removal and are released from DHS custody on an order of supervision, with a narrow exception.

[DHS Will Withdraw Proposed Rule on Expanding Biometrics Collection, Use](#) – The Department of Homeland Security plans to withdraw a proposed rule concerning the use and collection of biometrics in the enforcement and administration of immigration laws by U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

[DHS Ratifies Rule That Removes 30-Day EAD Processing Requirement](#) – Secretary of Homeland Security Alejandro Mayorkas ratified a rule regarding applications for employment authorization documents filed by people who have applied for asylum.

[Labor Dept. Proposes Rule on H-2A Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range](#) – The Department of Labor proposes to amend its regulations regarding the adjudication of temporary need for employers seeking herding or production of livestock on the range job opportunities under the H-2A program.

[EOIR Announces 17 New Immigration Judges](#) – The Executive Office for Immigration Review announced 17 new Immigration Judges, including one Assistant Chief Immigration Judge and six Unit Chief Immigration Judges, and released biographical information about all of them.

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**Details:**

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### **President Biden Raises Refugee Cap to 62,500 in FY 2021**

President Joe Biden revised the United States' annual refugee admissions cap to 62,500 for fiscal year (FY) 2021, with a goal of 125,000 admissions for FY 2022. The announcement followed criticism after he announced plans to keep the number of refugee admissions at 15,000 this fiscal year primarily because of logistical concerns.

President Biden said that the "sad truth is that we will not achieve 62,500 admissions this year. We are working quickly to undo the damage of the last four years." He said that "we are going to rebuild what has been broken and push hard to complete the rigorous screening process for those refugees already in the pipeline for admission."

Details:

- "Statement by President Joe Biden on Refugee Admissions," White House, May 3, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/03/statement-by-president-joe-biden-on-refugee-admissions/>
- "Biden, in Reversal, Raises the Refugee Admission Cap to 62,500 in the Next Six Months," New York Times, May 3, 2021, <https://www.nytimes.com/2021/05/04/us/politics/biden-refugee-numbers.html>

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### **DHS Will Withdraw Proposed Rule on Work Authorization for Certain Persons With Final Removal Orders**

On May 10, 2021, the Department of Homeland Security (DHS) will withdraw a

proposed rule published on November 19, 2020, that would have revised DHS regulations to eliminate employment authorization for individuals who have final orders of removal and are released from DHS custody on an order of supervision, with a narrow exception.

DHS noted that it received more than 302 comments in response to the proposed rule, nearly 98 percent of which were in opposition. Commenters who opposed the rule argued that it "would significantly limit the ability of individuals who have a final order of removal and are released on an order of supervision to legally work, be self-sufficient, and support their families, which may include U.S. citizen children and lawful permanent resident spouses or partners. Several commenters also noted the proposed rule would impose exorbitant costs and burdens on U.S. employers related to labor turnover and the proposed E-Verify requirement," DHS said. Also, various state and local agencies, including Attorneys General from 15 states, opposed the rule on the basis that "it would decrease tax revenue, deny states various revenue streams, and increase costs related to state-funded public benefit programs." Many commenters also disagreed with the proposed rule's assertion that the proposed changes would incentivize individuals with final orders of removal to leave the United States.

DHS said it decided to withdraw the proposed rule because the original bases and rationale "no longer align with the immigration enforcement priorities." Withdrawing the proposed rule, DHS said, will allow covered individuals "to continue to work for American businesses that provide services in key industries and to supplement the existing U.S. workforce."

#### Details:

- Proposed rule, withdrawal (prepublication copy), <https://bit.ly/3w5rWWT>
- USCIS announcement, <https://www.uscis.gov/news/alerts/dhs-withdraws-proposed-biometrics-rule>

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### **DHS Will Withdraw Proposed Rule on Expanding Biometrics Collection, Use**

On May 10, 2021, the Department of Homeland Security (DHS) plans to withdraw a proposed rule concerning the use and collection of biometrics in

the enforcement and administration of immigration laws by U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

The proposed rule called for providing DHS with flexibility to change its biometrics collection practices and policies as needed. Included were expanding the use of biometrics beyond background checks and document production to include identity verification and management in the immigration lifecycle, enhancing vetting to prove identity and familial relationships, precluding imposters, and improving consistency in biometrics terminology.

DHS said it still supports some of these goals but "not in a way that conflicts" with Executive Order, 14012, "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans," which instructs the Secretary of Homeland Security to identify barriers impeding access to immigration benefits.

In response to the notice of proposed rulemaking published on September 11, 2020, DHS received more than 5,000 comments, most of them in opposition. Commenters mentioned immigration policy, privacy, and economic concerns, and said the rule was "unnecessary, offensive, an invasion of privacy, would infringe on freedoms, and violate the respect, privacy rights, and civil liberties of U.S citizens, legal immigrants, noncitizens, victims of domestic violence, other vulnerable parties, and children." Many commenters also said the rule was "overly broad, highly invasive, and would impose excessive monetary costs on applicants and result in administration delays," DHS said.

DHS said it will analyze the entirety of the proposed rule in the context of the directive in EO 14012 and consider what changes may be appropriate. In the meantime, DHS will maintain its current biometrics collection practices and policies.

#### Details:

- Proposed rule, withdrawal (prepublication copy), <https://bit.ly/3vVsD4D>
- "USCIS Will Suspend Trump-Era Biometric Screening Rule for Work-Permit Applicants," Reuters, May 4, 2021, <https://www.reuters.com/business/legal/uscis-will-suspend-trump-era-biometric-screening-rule-work-permit-applicants-2021-05-04/>

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## **DHS Ratifies Rule That Removes 30-Day EAD Processing Requirement**

On May 7, 2021, Secretary of Homeland Security Alejandro Mayorkas ratified a rule regarding applications for employment authorization documents (EADs) filed by people who have applied for asylum.

The Department of Homeland Security (DHS) said that although the promulgation of the rule and its ratification "were necessary and justified due to operational realities, Secretary Mayorkas recognizes that work authorization is crucially important to people requesting asylum and reaffirms commitment to adjudicate applications as quickly and efficiently as possible." The Department said it "plans to engage in future rulemaking to advance this important interest."

### Details:

- "DHS Ratifies Rule That Removes 30-Day EAD Processing Requirement and Acknowledges Importance of Issuing Timely Work Authorizations," Dept. of Homeland Security, May 7, 2021, <https://www.dhs.gov/news/2021/05/07/dhs-ratifies-rule-removes-30-day-e-ad-processing-requirement>

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## **Labor Dept. Proposes Rule on H-2A Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range**

The Department of Labor proposes to amend its regulations regarding the adjudication of temporary need for employers seeking herding or production of livestock on the range job opportunities under the H-2A program. Consistent with a court-approved settlement agreement, the proposed rule would rescind the regulation that governs the period of need for such job opportunities to ensure that "the Department's adjudication of temporary or seasonal need is conducted in the same manner for all applications for temporary agricultural labor certification."

Comments are due by June 7, 2021.

### Details:

- Proposed rule, May 6, 2021, <https://bit.ly/3bcTzF7>

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## EOIR Announces 17 New Immigration Judges

The Executive Office for Immigration Review (EOIR) announced 17 new Immigration Judges (IJs), including one Assistant Chief Immigration Judge (ACIJ) and six Unit Chief Immigration Judges (UCIJs).

Attorney General Merrick B. Garland appointed Megan B. Herndon, Wade T. Napier, Tamaira Rivera, David H. Robertson, Elizabeth Crites, Bryan E. DePowell, Nicholle M. Hempel, Kathy J. Lemke, Martinque M. Parker, David M. Paxton, Bryan D. Watson, Kenya L. Wells, and Mark R. Whitworth to their new positions; former Acting Attorney General Monty Wilkinson appointed Adam Perl to his new position; former Acting Attorney General Jeffrey A. Rosen appointed William H. McDermott to his new position; and former Attorney General William P. Barr appointed Elliot M. Kaplan and Jeb T. Terrien to their new positions.

Details:

- "EOIR Announces 17 New Immigration Judges," Executive Office for Immigration Review, May 6, 2021 (includes biographical information), <https://www.justice.gov/eoir/file/1392116/download>

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## Firm in the News

**Cyrus Mehta** has been quoted in Mother Jones, <https://www.motherjones.com/politics/2021/05/they-went-back-to-india-to-care-for-parents-dying-of-covid-19-now-theyre-stranded/> and Times of India, <https://timesofindia.indiatimes.com/india/as-us-travel-ban-kicks-in-families-are-sundered-and-study-plans-are-disrupted/articleshow/82391846.cms> regarding the travel ban imposed on India as a result of the Covid-19 outbreak. The stories of H-1Bs who travelled to India to look after their Covid stricken parents, and then cremated and buried them, are very sad. This India ban disproportionately impacts Indian H-1Bs, who constantly bear the brunt and get the rough end of the stick.

**David Isaacson** spoke at a CLE event hosted by the AILA New York Chapter ICE Liaison Committee on May 3, 2021, regarding "Prosecutorial Discretion and Advocacy Under the Interim Enforcement Priorities" (see

<http://www.ailany.org/events/> and  
<http://www.ailany.org/events/ice-liaison-committee-cle/>).

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