



IMMIGRATION UPDATE - MAY 24, 2021

Posted on May 24, 2021 by Cyrus Mehta

Headlines:

[DHS, DOL Issue Joint Rule Increasing H-2B Visa Cap](#) – The Departments of Homeland Security and Labor published a joint temporary final rule making available an additional 22,000 H-2B temporary nonagricultural guest worker visas for fiscal year 2021 "to employers who are likely to suffer irreparable harm without these additional workers." Of the supplemental visas, 6,000 are reserved for nationals of Honduras, El Salvador, and Guatemala.

[DHS Issues Final Rule to Remove Vacated H-1B Rule](#) – The vacated interim final rule, issued in October 2020, made changes to the regulatory definitions and standards for "specialty occupation," "worksite," "third-party worksite," "U.S. employer," "employer-employee relationship," and others.

[USCIS Extends SAVE Records Download Deadline to June 4, 2021](#) – U.S. Citizenship and Immigration Services has extended the deadline to June 4, 2021, for SAVE users to download older case information before USCIS disposes of it. This applies to SAVE records that are more than 10 years old (those dated on or before December 31, 2010).

[ETA Proposes Revision to CW-1 Application for Temporary Employment Certification in Marianas](#) – The information collected through the form remains unchanged.

[State Dept. Announces Updated Interpretation of Acquisition of Citizenship at Birth](#) – The Department of State announced on May 18, 2021, an update in its interpretation and application of the requirements for acquisition of U.S. citizenship at birth in light of advances in assisted reproductive technology.

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DHS, DOL Issue Joint Rule Increasing H-2B Visa Cap

The Departments of Homeland Security (DHS) and Labor (DOL) published a joint temporary final rule making available an additional 22,000 H-2B temporary nonagricultural guest worker visas for fiscal year (FY) 2021 "to employers who are likely to suffer irreparable harm without these additional workers." Of the supplemental visas, 6,000 are reserved for workers from Honduras, El Salvador, and Guatemala (Northern Triangle).

The supplemental H-2B visa allocation consists of 16,000 visas available only to returning H-2B workers from one of the last three fiscal years (FY 2018, 2019, or 2020), and 6,000 visas for Northern Triangle nationals, which are exempt from the returning worker requirement.

USCIS Acting Director Tracy L. Renaud said that the rule "requires that employers take additional steps to recruit U.S. workers, and provides for 'portability,' which allows H-2B workers already in the United States to begin employment with a new H-2B employer or agent once USCIS receives a timely filed, non-frivolous H-2B petition, but before the petition is approved." She noted that portability enables H-2B workers to "change employers more quickly if they encounter unsafe or abusive working conditions." She said DHS and DOL "will conduct a significant number of post-adjudication reviews to ensure compliance with the program's requirements."

Starting May 25, 2021, eligible employers who have already completed a test of the U.S. labor market to verify that there are no U.S. workers who are willing, qualified, and able to perform the seasonal nonagricultural work can file Form I-129, Petition for a Nonimmigrant Worker, to seek additional H-2B workers. They must submit an attestation with their petition to demonstrate that their business is likely to suffer irreparable harm without a supplemental workforce.

Details:

- "U.S. Departments of Homeland Security and Labor Issue Joint Rule Supplementing H-2B Visa Cap," May 21, 2021, <https://www.uscis.gov/news/news-releases/us-departments-of-homeland-security-and-labor-issue-joint-rule-supplementing-h-2b-visa-cap>

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DHS Issues Final Rule to Remove Vacated H-1B Rule

The Department of Homeland Security issued a final rule, effective May 19, 2021, that removes an interim final rule issued in October 2020 and later vacated by a federal district court, "Strengthening the H-1B Nonimmigrant Visa Classification Program." The interim final rule made changes to the regulatory definitions and standards for "specialty occupation," "worksite," "third-party worksite," "U.S. employer," "employer-employee relationship," and others.

The final rule removes from the Code of Federal Regulations the regulatory text that DHS promulgated in the October 2020 interim final rule and restores the regulatory text to appear as it did before.

Details:

- Final rule, DHS, May 19, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-05-19/pdf/2021-10489.pdf>
- Vacated interim final rule, October 8, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-22347.pdf>

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USCIS Extends SAVE Records Download Deadline to June 4, 2021

The Systematic Alien Verification for Entitlements (SAVE) program announced that U.S. Citizenship and Immigration Services has extended the deadline to June 4, 2021, for SAVE users to download older case information before USCIS disposes of it. This applies to SAVE records that are more than 10 years old (those dated on or before December 31, 2010).

The downloadable Historic Records Report "provides data about each SAVE case that is more than 10 years old and slated for deletion in accordance with the governing National Archives and Records Administration (NARA) Retention and Disposal schedule," SAVE explained. The data includes basic SAVE verification case information. The report is available annually to SAVE Super Users for about 90 days to allow user agencies to download and retain information about these cases before their deletion.

Details:

- "SAVE Instructions to Download Historic Records Report Tip Sheet," https://www.uscis.gov/sites/default/files/document/guides/Instructions_to_Download_NARA_Reports_in_SAVE.pdf

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ETA Proposes Revision to CW-1 Application for Temporary Employment Certification in Marianas

The Department of Labor's Employment and Training Administration (ETA) proposes to amend Form ETA-9141C, *Application for Prevailing Wage Determination*, and its instructions, "to make sure this form, which is specific to the CW-1 program, conforms to the information collected through the general Form ETA-9141, *Application for Prevailing Wage Determination* (Form ETA-9141C)," used by employers in connection with prevailing wage requests for other labor certification application programs and for labor condition applications. The information collected through the form remains unchanged.

The CW-1 nonimmigrant visa program permits employers who meet program requirements to hire nonimmigrant workers temporarily in the Commonwealth of the Northern Mariana Islands to perform services or labor based on the employer's need.

The notice informs the public of the Department's request to seek an extension of the validity of this information collection while also revising the Form-9141C, and its instructions, and invites comments from the public for 60 days. The deadline for comments is July 19, 2021.

Details:

- Office of Foreign Labor Certification notice, May 19, 2021, <https://www.dol.gov/agencies/eta/foreign-labor>
- Federal Register notice, May 19, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-05-19/pdf/2021-10529.pdf>
- Supporting statement, <https://bit.ly/345x69h>

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State Dept. Announces Updated Interpretation of Acquisition of Citizenship at

Birth

The Department of State announced on May 18, 2021, an update in its interpretation and application of the requirements for acquisition of U.S. citizenship at birth in light of advances in assisted reproductive technology. Children born abroad to parents, at least one of whom is a U.S. citizen and who are married to each other at the time of the birth, "will be U.S. citizens from birth if they have a genetic or gestational tie to at least one of their parents and meet the other requirements." Previously, the Department's interpretation and application of the INA required that children born abroad have a genetic or gestational relationship to a U.S. citizen parent. Requirements for children born to unmarried parents remain unchanged.

Details:

- S. Citizenship Transmission and Assisted Reproductive Technology," May 18, 2021, <https://www.state.gov/u-s-citizenship-transmission-and-assisted-reproductive-technology/>

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Firm in the News

Cyrus Mehta was an invited Speaker at the 2021 AILA Chicago Spring Ethics Conference on May 21, 2021 and spoke on Scope of Representation issues.

Cyrus Mehta submitted comments in response to the Biden administration's invitation to suggest ways to overcome barriers to legal immigration, which can be found at <https://www.regulations.gov/comment/USCIS-2021-0004-6585>. A news article in the Times of India regarding Mr. Mehta's proposals, which include not counting dependent family members, is available at <https://timesofindia.indiatimes.com/nri/us-canada-news/stop-counting-family-members-to-mitigate-green-card-backlogs-says-cyrus-mehta-immigration-attorney/articleshow/82905749.cms>

Cyrus Mehta, Cora-Ann Pestaina and **David Isaacson** have also been ranked in Chambers USA 2021. The firm has also been ranked. Further details are available at <https://chambers.com/department/cyrus-d-mehta-partners-pllc-immigration-us>

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