



IMMIGRATION UPDATE - JUNE 14, 2021

Posted on June 14, 2021 by Cyrus Mehta

Headlines:

[USCIS Updates Policies to Improve Immigration Services: Expedited Processing, RFEs/NOIDs, EADs](#) – USCIS issued new policy updates to clarify the criteria and circumstances for expedited processing; improve guidance for requests for evidence and notices of intent to deny; and increase the validity period for initial and renewal work authorization documents for certain noncitizens with pending adjustment of status applications.

[USCIS Announces Lockbox Filing Flexibilities](#) – USCIS announced filing flexibilities to provide relief to certain applicants and petitioners affected by delays at a USCIS lockbox. These flexibilities only apply to benefit requests submitted to a USCIS lockbox and not to USCIS service centers or field offices.

[I-9 Guidance Released for H-2B Workers Seeking to Change Employers](#) – USCIS issued guidance on the Form I-9 Employment Authorization Verification process, for H-2B workers seeking to change employers.

[Supreme Court Rules Unlawful Entry Precludes TPS Recipient's Eligibility for LPR Status](#) – In *Sanchez v. Mayorkas*, the U.S. Supreme Court held that a Temporary Protected Status recipient is not eligible for lawful permanent resident status merely because of the TPS. Eligibility for LPR status generally requires an "admission" into the United States.

[Judge Robert Katzmann Dies](#) – Robert A. Katzmann, who served as chief judge of the U.S. Court of Appeals for the Second Circuit in New York, among other roles, was widely known and respected in the immigration law community.

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USCIS Updates Policies to Improve Immigration Services: Expedited Processing, RFEs/NOIDs, EADs

U.S. Citizenship and Immigration Services (USCIS) issued new policy updates to clarify the criteria and circumstances for expedited processing; improve guidance for requests for evidence (RFE) and notices of intent to deny (NOID); and increase the validity period for initial and renewal employment authorization documents (EADs) for certain noncitizens with pending adjustment of status applications.

Secretary of Homeland Security Alejandro Mayorkas said the agency is "taking action to eliminate policies that fail to promote access to the legal immigration system, and will continue to make improvements that help individuals navigate the path to citizenship, and that modernize our immigration system." Acting USCIS Director Tracy Renaud said that USCIS is "committed to promoting policies and procedures that ensure we operate in a fair, efficient, and humane manner that reflects America's heritage as a land of opportunity for those who seek it."

Highlights of the updates include:

Expedited Processing

USCIS is providing enhanced guidance to clarify when expedited processing of a benefit request may be warranted. The new guidance also permits nonprofit organizations whose request is "in furtherance of the cultural and social interests of the United States" to request that a benefit be considered for expedited processing regardless of whether premium processing is available for that benefit.

Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs)

USCIS is returning to the adjudicative principles of a June 2013 memo, and is rescinding a July 2018 memo that allowed agency officers to deny certain immigration benefit requests instead of first issuing an RFE or NOID. The updated policy will give benefit requestors "an opportunity to correct innocent mistakes and unintentional omissions."

Employment Authorization Documents (EADs)

The one-year validity period on both initial and renewal EADs is increased to two years for certain adjustment-of-status applicants. This is expected "to reduce the number of employment authorization requests USCIS receives and allow the agency to shift limited resources to other priority areas."

Details:

- USCIS notice, <https://www.uscis.gov/news/news-releases/uscis-updates-policies-to-improve-immigration-services>
- "Policy Alert: USCIS Expedite Criteria and Circumstances," PA-2021-12, USCIS, June 9, 2021, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210609-ExpediteCriteria.pdf>
- "How to Make an Expedite Request," USCIS, <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>
- "Policy Alert: Requests for Evidence and Notices of Intent to Deny," PA-2021-11, USCIS, June 9, 2021, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210609-RFEs%26NOIDs.pdf>
- "Policy Alert: Employment Authorization for Certain Adjustment Applicants," PA-2021-10, USCIS, June 9, 2021, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210609-EmploymentAuthorization.pdf>
- USCIS Policy Manual, <https://www.uscis.gov/policy-manual>

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USCIS Announces Lockbox Filing Flexibilities

U.S. Citizenship and Immigration Services (USCIS) announced filing flexibilities to provide relief to certain applicants and petitioners affected by delays at a USCIS lockbox. These flexibilities only apply to benefit requests submitted to a USCIS lockbox and not to USCIS service centers or field offices, the agency said.

The following temporary flexibilities are effective until August 9, 2021:

- If an applicant/petitioner submitted a benefit request to a USCIS lockbox between October 1, 2020, and April 1, 2021, and that request was rejected

during that timeframe solely due to a filing fee payment that expired while the benefit request was awaiting processing, the applicant/petitioner may resubmit the request with a new fee payment. If USCIS concurs that it rejected the benefit request because of the delay, USCIS will deem the request to have been received on the initial filing date it was first received and waive the \$30 dishonored check fee.

- USCIS will allow applicants/petitioners to submit documentation with a benefit request resubmission demonstrating that because of the time that elapsed between when a benefit request was originally submitted to a USCIS lockbox and when USCIS rejected it, an applicant, co-applicant, beneficiary, or derivative has reached an age that makes them no longer eligible to file for the benefit requested. If USCIS agrees that the delayed rejection caused the person to be ineligible due to age, USCIS will accept the request and deem it to have been received on the date the initial benefit request was received. This flexibility does not apply to Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322.

Applicants and petitioners can contact USCIS to verify that previously filed benefit requests were not rejected in error. If USCIS concurs, it may allow applicants and petitioners to resubmit an erroneously rejected benefit request and deem the benefit request to have been received on the date the initial benefit request was first received at a USCIS lockbox, the agency said.

Details:

- USCIS notice, <https://www.uscis.gov/news/alerts/uscis-announces-lockbox-filing-flexibilities>

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I-9 Guidance Released for H-2B Workers Seeking to Change Employers

U.S. Citizenship and Immigration Services (USCIS) issued guidance on the Form I-9 Employment Authorization Verification process for H-2B workers seeking to change employers. The guidance follows a joint temporary rule published on May 25, 2021, by the Departments of Homeland Security and Labor to increase the numerical limits on fiscal year 2021 H-2B nonimmigrant visas and

temporarily provide job portability for H-2B workers already in the United States so they can begin work immediately with a new employer after an H-2B petition (supported by a valid temporary labor certification) is received by USCIS and before it is approved.

Under the temporary rule, portability applies if:

- The new employer's extension of stay H-2B petition was received before May 25, 2021, and was pending on May 25. The new employer may employ the H-2B worker while the extension of stay petition is pending, for a period not to exceed 60 days, beginning on the employment start date on the petition or May 25, whichever date is later; or
- USCIS receives the H-2B petition between May 25 and November 22, 2021. The H-2B worker is authorized to begin employment with the new employer for a period not to exceed 60 days beginning on the Received Date on Form I-797 (Notice of Action) acknowledging receipt of the petition requesting an extension of stay or if the start date occurs after the I-797 Received Date, for a period up to 60 days beginning on the employment start date on the petition.

The H-2B employee's unexpired Form I-94, Arrival/Departure Record, indicating his or her H-2B status, along with the employee's foreign passport, qualify as a Form I-9 List A document.

The notice includes additional information about how the new employer should complete List A, among other details.

Details:

- USCIS notice, <https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/form-i-9-guidance-for-h-2b-workers-seeking-to-change-employers>

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Supreme Court Rules Unlawful Entry Precludes TPS Recipient's Eligibility for LPR Status

In *Sanchez v. Mayorkas*, decided June 7, 2021, the U.S. Supreme Court held that a Temporary Protected Status (TPS) recipient is not eligible for lawful permanent resident (LPR) status merely because of the TPS. Eligibility for LPR

status generally requires an "admission" into the United States—defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer"—which precludes TPS recipients who entered the United States unlawfully from eligibility for LPR status.

Details:

- *Sanchez v. Mayorkas*,
https://www.supremecourt.gov/opinions/20pdf/20-315_q713.pdf
- "Supreme Court Rules Against Immigrants in Temporary Status Seeking Green Cards," CNN, June 7, 2021,
<https://www.cnn.com/2021/06/07/politics/supreme-court-immigrants-green-card-case/index.html>

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Judge Robert Katzmann Dies

Robert A. Katzmann, who served as chief judge of the U.S. Court of Appeals for the Second Circuit in New York, among other roles, died on June 9, 2021, at the age of 68.

Judge Katzmann inspired many practitioners to do pro bono work and find ways for immigrants to get adequate representation in removal proceedings. He was considered a brilliant jurist whose influence went far beyond the bench. One of his last decisions on the Second Circuit was *Cuthill v. Blinken*, in which he dissected the Child Status Protection Act (CSPA) and found a link between Sections 2 and 3 to hold that a child's age was protected even when the parent naturalized. Because the plaintiff's daughter was statutorily under 21 years old when the plaintiff naturalized, she qualified for an immediate relative green card, the judge held.

Among his many accomplishments, Judge Katzmann authored a book, *Judging Statutes*, which Oxford University Press called "spirited and compelling defense of why judges must look at the legislative record behind a law—and not merely the statute itself."

Details:

- "Robert Katzmann, U.S. Judge With Reach Beyond the Bench, Dies at 68," New York Times, June 11, 2021,

<https://www.nytimes.com/2021/06/10/us/robert-katzmann-dead.html>

- "A Humane Judge, Gone Too Soon," New York Times, June 11, 2021, <https://www.nytimes.com/2021/06/11/opinion/Robert-Katzmann-judge-dead.html?action=click&module=RelatedLinks&pgtype=Article>
- *Cuthill v. Blinken*, <https://law.justia.com/cases/federal/appellate-courts/ca2/19-3138/19-3138-2021-03-09.html>
- "Judging Statutes," by Robert A. Katzmann, <https://global.oup.com/academic/product/judging-statutes-9780199362134?cc=us&lang=en&>

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Cyrus Mehta and **David Isaacson** were invited speakers at the AILA 2021 Annual Virtual Conference, which took place from June 9, 2021 to June 12, 2021. Mr. Mehta was the Discussion Leader on a panel entitled "Employment-Based Adjustment of Status Today" on June 9, 2021. Mr. Isaacson was a speaker on a panel entitled "INA 237(a)(1)(H) Works Like Magic: Fraud Waivers" on June 12, 2021.

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