



IMMIGRATION UPDATE - JUNE 28, 2021

Posted on June 28, 2021 by Cyrus Mehta

Headlines:

[EB-5 Program To Expire June 30 After Efforts Fail in Senate; Reauthorization Still Possible Later](#) – Since the Senate has recessed until July, it appears that the EB-5 regional center program will expire. It remains to be seen whether Congress will reauthorize it later.

[USCIS Allows Resubmission of Certain FY 2021 H-1B Petitions Rejected or Closed Due to Start Date](#) – USCIS will accept resubmitted fiscal year 2021 H-1B cap-subject petitions that were rejected or administratively closed solely because the requested start date was after October 1, 2020.

[Flexibilities Extended for Responding to Certain USCIS Requests](#) – In response to the COVID-19 pandemic, USCIS is extending to September 30, 2021, previously announced flexibilities to assist applicants, petitioners, and requestors responding to certain requests.

[Employers Encouraged to Consider Supplemental H-2B Allocation in Filling Positions](#) – If by July 8, 2021, fewer than 6,000 beneficiaries are requested toward the visas initially set aside for Northern Triangle countries, USCIS will announce by July 23 that the unused visas will be made available to employers "regardless of the beneficiary's country of nationality, subject to the returning worker requirement."

[Labor Dept. Announces H-2B Application Filing Timeline for 2021 Peak Filing Season](#) – The three-day filing window to submit an H-2B *Application for Temporary Employment Certification* requesting a work start date of October 1, 2021, **will open on July 3, 2021.**

[CBP Continues Temporary Travel Restrictions From Canada, Mexico Into United States Via Land POEs and Ferries](#) – Temporary limits on nonessential travel of

individuals from Canada or Mexico into the United States at land ports of entry along the border, including ferry service, will continue through July 21, 2021.

[H-2B Employer Data Hub Launched](#) – USCIS launched the hub to provide information to the public on employers or agents petitioning for H-2B workers.

[Afghans To Be Evacuated Who Worked To Help United States, Biden Says](#) – A group of affected Afghans will be brought to Guam or a third country to complete their application process before receiving Special Immigrant Visas.

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EB-5 Program To Expire June 30 After Efforts Fail in Senate; Reauthorization Still Possible Later

The EB-5 regional center program, under which foreign investors indirectly finance projects in the United States in exchange for green cards, is set to expire on June 30, 2021. An effort to extend the program failed in the Senate on June 24, 2021, because Sen. Lindsey Graham (R-S.C.) objected to unanimous consent.

Since the Senate has recessed until July, it appears that the EB-5 regional center program will expire. It remains to be seen whether Congress will reauthorize it later. Invest in the USA (IIUSA), a trade association of EB-5 regional centers, said the outcome was "disappointing, but it is not the end of the road." The organization noted that "investors have questions about their investments and their immigration status. IIUSA is not only working on Capitol Hill to protect the program, we are also working with U.S. Citizenship and Immigration Services (USCIS) to get clarity on process and investor priorities during this time."

Details:

- "What Happens if the EB-5 Regional Center Program Expires on June 30?," EB-5 Daily, May 4, 2021, <https://www.eb5daily.com/2021/05/what-happens-if-the-eb-5-regional-center-program-expires-on-june-30/>
- "Advocacy Alert: EB-5 Regional Center Program Will Sunset on June 30, 2021," IIUSA: Invest in the USA, June 25, 2021, <https://iiousa.org/blog/advocacy-alert-eb-5-regional-center-program-will-sunset-on-june-30-2021/>

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USCIS Allows Resubmission of Certain FY 2021 H-1B Petitions Rejected or Closed Due to Start Date

U.S. Citizenship and Immigration Services (USCIS) announced on June 23, 2021, that it will accept resubmitted fiscal year (FY) 2021 H-1B cap-subject petitions that were rejected or administratively closed solely because the requested start date was after October 1, 2020.

Those whose FY 2021 petitions were rejected or administratively closed solely because the petition was based on a registration submitted during the initial registration period, but the petitioner requested a start date after October 1, 2020, may resubmit that previously filed petition, with all applicable fees, at the address provided in the USCIS alert. Such petitions must be resubmitted before October 1, 2021, USCIS said. If properly resubmitted, the agency will consider the petition to have been filed on the original receipt date.

Details:

- USCIS alert, June 23, 2021, <https://www.uscis.gov/news/alerts/uscis-will-allow-resubmission-of-certain-fy-2021-h-1b-petitions-rejected-or-closed-due-to-start-date>

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Flexibilities Extended for Responding to Certain USCIS Requests

In response to the COVID-19 pandemic, U.S. Citizenship and Immigration Services (USCIS) is extending to September 30, 2021, the flexibilities it announced on March 30, 2020, to assist applicants, petitioners, and requestors responding to certain requests, including:

- Requests for Evidence
- Continuations to Request Evidence (N-14)
- Notices of Intent to Deny, Revoke, or Rescind
- Notices of Intent to Terminate (regional centers)
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant.

In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or

Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if (1) the form was filed up to 60 calendar days from the issuance of a decision USCIS made; and the agency made that decision from March 1, 2020, through September 30, 2021. USCIS said it will consider a response to the above requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action. Additionally, the agency will consider a Form N-336 or Form I-290B received up to 60 calendar days from the date of the decision before taking any action.

Details:

- USCIS alert, June 24, 2021, <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-5>

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Employers Encouraged to Consider Supplemental H-2B Allocation in Filling Positions

Following up on a temporary final rule issued on May 25, 2021, that made 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 the additional workers, U.S. Citizenship and Immigration Services (USCIS) said on June 24, 2021, that it "strongly encourages qualified U.S. employers to consider" the supplemental allocation of 6,000 visas initially reserved for nationals of Northern Triangle countries (Honduras, El Salvador, and Guatemala) in filling positions for which they cannot find qualified and available U.S. workers.

If by July 8, 2021, fewer than 6,000 beneficiaries are requested toward the visas initially set aside for Northern Triangle countries, USCIS will announce by July 23 that the unused visas will be made available to employers "regardless of the beneficiary's country of nationality, subject to the returning worker requirement."

USCIS announced the information above in an email broadcast on June 24, 2021.

Details:

- "Cap Reached for Additional Returning Worker H-2B Visas for FY 2021," June 3, 2021, <https://www.uscis.gov/news/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-fy-2021>

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Labor Dept. Announces H-2B Application Filing Timeline for 2021 Peak Filing Season

The Department of Labor's Office of Foreign Labor Certification (OFLC) reminded employers and other interested stakeholders on June 23, 2021, that the three-day filing window to submit an H-2B *Application for Temporary Employment Certification* (Form ETA-9142B and appendices) requesting a work start date of October 1, 2021, **will open on July 3, 2021, at 12 a.m. ET and close on July 5, 2021, at 11:59 p.m. ET**. This three-day period is the earliest an employer may file an application for an October 1, 2021, work start date, which is the first day of the semiannual visa allotment for the first half of fiscal year 2022. OFLC said that employers seeking start dates of October 2, 2021, or later must comply with the timeliness requirements at 20 CFR § 655.15(b).

OFLC said that H-2B applications requesting an October 1, 2021, work start date **will be denied if they are filed before the start date**.

OFLC will randomly order for processing all H-2B applications requesting a work start date of October 1, 2021, that are filed during the three-day filing window using randomization procedures published in the Federal Register on March 4, 2019.

Details:

- OFLC notice (scroll down to "June 23, 2021. H-2B Application Filing Timelines for 2021 Peak Filing Season"), <https://www.dol.gov/agencies/eta/foreign-labor>
- "Selection Procedures for Reviewing Applications Filed by Employers Seeking Temporary Employment of H-2B Foreign Workers in the United States," Employment and Training Administration, March 4, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-03-04/pdf/2019-03809.pdf>

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CBP Continues Temporary Travel Restrictions From Canada, Mexico Into United States Via Land POEs and Ferries

The Department of Homeland Security (DHS) announced that temporary limits on nonessential travel of individuals from Canada or Mexico into the United States at land ports of entry along the border, including ferry service, will continue through July 21, 2021. The restrictions only allow processing for entry into the United States of those travelers engaged in "essential travel," as defined in the notice.

Details:

- Federal Register notice (Canada), June 23, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-06-23/pdf/2021-13238.pdf>
- Federal Register notice (Mexico), June 23, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-06-23/pdf/2021-13235.pdf>

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H-2B Employer Data Hub Launched

U.S. Citizenship and Immigration Services (USCIS) launched an H-2B Employer Data Hub to provide information to the public on employers or agents petitioning for H-2B workers. The hub allows the public to search for H-2B petitioners by cap fiscal year back to 2015; employer (petitioner) name, city, state, zip code, worksite state, cap type, North American Industry Classification System code, and Standard Occupational Classification code.

Details:

- USCIS notice, June 23, 2021, <https://www.uscis.gov/news/alerts/uscis-launches-h-2b-employer-data-hub>

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Afghans To Be Evacuated Who Worked To Help United States, Biden Says

Following urgent pleas from lawmakers and affected Afghans, the United States will evacuate some Afghans who helped the country by working as interpreters and translators for the U.S. military and in other roles, officials said on June 24, 2021. "Those who helped us are not going to be left behind," President Joe

Biden said to reporters. The goal is to evacuate them before the U.S. military drawdown from Afghanistan in September.

According to reports, a group of affected Afghans will be brought to Guam or a third country to complete their application process before receiving Special Immigrant Visas (SIVs). The details are unclear about how many will be evacuated, which country they will go to, and how long the process will take. An estimated 18,000 Afghans are in the SIV pipeline, according to a Department of State spokesperson.

Details:

- The Biden Administration Says It Will Evacuate Afghans Who Worked With U.S. Troops," NBC News, June 24, 2021, <https://www.nbcnews.com/news/world/biden-administration-says-it-will-evacuate-afghans-who-worked-u-n1272265>

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