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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - JULY 28, 2021

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Headlines:

U.S. Extends Nonessential Travel Restrictions at Canada, Mexico Land Borders; Canada Opens to U.S. Citizens/Permanent Residents August 9 – Canadians and many other U.S.-bound international travelers can fly into the United States if they receive a negative COVID-19 test.

Applicants for Change of Status to F-1 Student No Longer Need to Submit Subsequent Applications to 'Bridge the Gap' – New USCIS policy guidance eliminates the need for individuals who have applied for a change of status to F-1 student to apply to change or extend their nonimmigrant status while their initial F-1 change of status application is pending.

Employers May File H-2B Petitions for Returning Workers for FY 2021, USCIS Says – Employers may file H-2B petitions for returning workers under the FY 2021 H-2B supplemental visa temporary final rule if they are likely to suffer irreparable harm without these additional workers, USCIS said.

USCIS Updates Addresses for Filing Locations for Certain Forms I-131 – USCIS did not change any filing locations but "refined attention lines and ZIP codes to improve internal processes at our lockboxes."

Credit Card Payment Pilot Program Expanded for Certain Premium Processing Applicants – USCIS is expanding a pilot program at the Nebraska Service Center for accepting credit card payments from certain applicants applying for premium processing.

Temporary Protected Status Updates: Somalia, Burma, Syria, Venezuela, Yemen – DHS announced the extension and redesignation of Somalia for TPS through March 17, 2023. Also, TPS applicants who are eligible nationals of Burma, Somalia, Syria, Venezuela, or Yemen, or individuals without nationality who last

habitually resided in one of those countries, can now file their TPS applications online if they are applying for TPS for the first time.

Justice Dept. Issues Reminder for DACA Recipients and Employers – Among other tips, DOJ noted that "existing DACA recipients are allowed to retain their grant of DACA and apply for renewal" and that employers are not expected to know which employees, if any, have DACA.

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U.S. Extends Nonessential Travel Restrictions at Canada, Mexico Land Borders; Canada Opens to U.S. Citizens/Permanent Residents August 9

The United States has once again extended travel restrictions at its borders with Canada and Mexico for nonessential travel into the United States at least through August 21, 2021. The United States has done so monthly since March 2020 in response to the pandemic.

Canadians and many other U.S.-bound international travelers can fly into the United States if they receive a negative COVID-19 test. Canada announced on July 19, 2021, that fully vaccinated U.S. citizens and permanent residents can enter the country as of August 9, 2021. U.S. travelers to Canada must submit information electronically through ArriveCAN, meet eligibility and testing requirements, and bring vaccination documentation.

Canada plans to open its borders for discretionary travelers from any country, traveling by any means, on September 7, 2021, if they have been fully vaccinated with Canadian government-accepted vaccines at least 14 days before entering Canada and meet specific entry requirements, "provided that Canada's COVID-19 epidemiology remains favourable," the government announced on July 19, 2021.

U.S. and Mexican officials "have mutually determined that non-essential travel between the United States and Mexico currently poses additional risk of transmission and spread of the virus associated with COVID-19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19," the Federal Register notice for Mexico states. "Moreover, given the sustained human-to-human transmission of the virus, coupled with risks

posed by new variants, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID-19." The Federal Register notice for Canada makes similar statements.

Details:

- Federal Register notice (Canada), July 22, 2021, https://www.govinfo.gov/content/pkg/FR-2021-07-22/pdf/2021-15573.pdf
- Federal Register notice (Mexico), July 22, 2021, https://www.govinfo.gov/content/pkg/FR-2021-07-22/pdf/2021-15574.pdf
- COVID-19 Information—Canada, U.S. Embassy & Consulates in Canada, July 21, 2021, https://ca.usembassy.gov/covid-19-information-canada-3/
- "U.S. Extends Travel Curbs at Canada, Mexico Land Borders Through Aug. 21," Reuters, July 21, 2021, https://www.reuters.com/world/us/us-extends-travel-restrictions-canada-mexico-land-borders-through-aug-21-2021-07-21/
- "U.S. Border Closure Makes 'No Sense' as Canada Starts to Reopen for Fully Vaccinated Americans: Critics," Vancouver Sun, July 21, 2021, https://vancouversun.com/news/politics/u-s-border-closure-makes-no-sense-as-canada-starts-to-reopen-for-fully-vaccinated-americans-critics
- "Easing Border Measures for Fully Vaccinated Travellers Entering Canada – Permitting Discretionary Travel for Citizens and Permanent Residents of the United States," Govt. of Canada, July 19, 2021, https://bit.ly/3eR1Twn
- "Canada to Reopen Its Borders to Fully Vaccinated Americans Starting Aug. 9," USA Today, July 20, 2021, https://www.usatoday.com/story/travel/news/2021/07/19/canada-border-reopening-fully-vaccinated-us-citizens-aug-9/8016368002/
- "White House Won't Commit to Reopening Northern Border, Despite Announcement From Canada," CNN, July 20, 2021, https://www.cnn.com/2021/07/19/politics/us-canada-border-white-house/index.html

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Applicants for Change of Status to F-1 Student No Longer Need to Submit

Subsequent Applications to 'Bridge the Gap'

U.S. Citizenship and Immigration (USCIS) announced on July 20, 2021, new policy guidance that eliminates the need for individuals who have applied for a change of status to F-1 student to apply to change or extend their nonimmigrant status while their initial F-1 change of status application is pending.

Under the previous policy, applicants needed to maintain status up to 30 days before the program start date listed on their Form I-20, Certificate for Eligibility for Nonimmigrant Student Status, which required them to file extensions, or an initial change of status and subsequent extensions ensuring that they would not have a "gap" in status, USCIS explained.

To prevent a gap in status, USCIS said it will grant the change of status to F-1 effective the day the agency approves an applicant's Form I-539, Application to Extend/Change Nonimmigrant Status. If USCIS approves an application more than 30 days before the student's program start date, the student must not violate F-1 status during that time. An example of a violation, USCIS said, "would be engaging in employment, including on-campus employment, more than 30 days before the program start date as listed on their Form I-20."

USCIS said it is revising the Form I-539 instructions to reflect these changes.

Details:

- USCIS alert, July 20, 2021, https://www.uscis.gov/news/alerts/applicants-for-change-of-status-to-f-1-student-no-longer-need-to-submit-subsequent-applications-to
- "Policy Change to Benefit Children of H-1B Visa Holders in the U.S.," Economic Times, July 22, 2021, https://economictimes.indiatimes.com/nri/migrate/policy-change-to-benefit-children-of-h-1b-visa-holders-in-the-us/articleshow/84607555.cms?from=mdr

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Employers May File H-2B Petitions for Returning Workers for FY 2021, USCIS Says

U.S. Citizenship and Immigration Services (USCIS) announced on July 23, 2021, that employers may file H-2B petitions for returning workers under the fiscal

year (FY) 2021 H-2B supplemental visa temporary final rule. "Employers may take this action if they are likely to suffer irreparable harm without these additional workers," USCIS said. Petitions will be accepted until September 15, 2021, or until the remainder of the cap is reached, whichever occurs first.

The agency noted that a petitioner must file a new Form I-129, Petition for a Nonimmigrant Worker, together with an approved and valid temporary labor certification that states an employment start date for the second half of the fiscal year, and attest that these noncitizens will be returning workers. USCIS defines returning workers as "workers who were issued an H-2B visa or otherwise granted H-2B status in FY 2018, 2019, or 2020."

USCIS received requests for an unspecified "significant number" of Northern Triangle (El Salvador, Guatemala, and Honduras) workers, "nearly enough to reach the 6,000 allocation," but did not receive enough petitions by the July 8, 2021, deadline. According to the temporary final rule, "the few remaining visas are now available to eligible H-2B returning workers, regardless of their country of origin."

Details:

- USCIS release, July 23, 2021, https://www.uscis.gov/news/alerts/employers-may-file-h-2b-petitions-for-returning-workers-for-fy-2021
- FY 2021 H-2B supplemental visa temporary final rule, https://www.uscis.gov/news/alerts/employers-may-file-h-2b-petitions-for-returning-workers-for-fy-2021
- "Temporary Increase in H-2B Nonimmigrant Visas for FY 2021," USCIS, updated July 23, 2021, https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/temporary-increase-in-h-2b-nonimmigrant-visas-for-fy-2021

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USCIS Updates Addresses for Filing Locations for Certain Forms I-131

U.S. Citizenship and Immigration Services (USCIS) has adjusted the addresses for certain applicants filing Form I-131, Application for Travel Document. USCIS did not change any filing locations but "refined attention lines and ZIP codes to

improve internal processes at our lockboxes." The address update affects:

- Applicants with a pending Form I-485, Application to Register Permanent Residence or Adjust Status, who are filing Form I-131 alone with a Form I-485 receipt notice;
- Haitian family members filing for advance parole under the Haitian Family Reunification Parole program;
- Cuban family members filing under the Cuban Family Reunification Parole program;
- Deferred Action for Childhood Arrivals recipients;
- Humanitarian parole applicants;
- Refugee travel document applicants;
- Temporary Protected Status applicants; and
- All other applicants as noted on the Direct Filing Addresses for Form I-131 page.

USCIS said that it will still process any I-131 applications that were already mailed to the previous lockbox address.

Details:

- USCIS release, July 22, 2021, https://www.uscis.gov/news/alerts/filing-location-updates-for-certain-forms-i-131
- Direct Filing Addresses for Form I-131, updated July 22, 2021, https://www.uscis.gov/i-131-addresses

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Credit Card Payment Pilot Program Expanded for Certain Premium Processing Applicants

U.S. Citizenship and Immigration Services (USCIS) announced on July 20, 2021, the expansion of a pilot program at the Nebraska Service Center (NSC) for accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, from certain applicants applying for premium processing.

On July 19, 2021, the NSC started accepting credit card payments using Form G-1450 for petitioners filing Form I-140, Immigrant Petition for Alien Workers, with Form I-907, Request for Premium Processing Service, or when filing Form I-907 to upgrade a pending Form I-140 to premium processing. The pilot

continues to be limited to the NSC. At the end of the pilot, USCIS said, it "will evaluate the results and determine the next steps for expanding this payment option for other forms or other service centers. The goal of this pilot is to bring USCIS one step closer to accepting digital payments using a credit card at all service centers."

Details:

- USCIS notice, July 20, 2021, https://www.uscis.gov/news/alerts/uscis-expands-credit-card-payment-pilot-program-to-form-i-140-when-requesting-premium-processing

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Temporary Protected Status Updates: Somalia, Burma, Syria, Venezuela, Yemen

On July 21, 2021, the Department of Homeland Security announced the extension and redesignation of Somalia for Temporary Protected Status (TPS) for 18 months, from September 18, 2021, through March 17, 2023, due to "the ongoing armed conflict and extraordinary and temporary conditions in Somalia."

Also, TPS applicants who are eligible nationals of Burma, Somalia, Syria, Venezuela, or Yemen, or individuals without nationality who last habitually resided in one of those countries, can now file Form I-821, Application for Temporary Protected Status, online if they are applying for TPS for the first time. The option to file Form I-821 online is only available to initial TPS applicants from these five countries. USCIS said it is starting with these countries because they are either new designations or recently announced re-designations.

All other TPS applicants and current beneficiaries who are re-registering under the extension of a TPS designation must continue to file a paper Form I-821. If an initial TPS applicant from a country other than Burma, Somalia, Syria, Venezuela, or Yemen or a re-registrant files Form I-821 online, USCIS "will deny the application and retain the fee. USCIS is working to make online filing available for re-registrants and initial applicants for all TPS designations in the future."

Details:

- DHS announcement re Somalia TPS, July 21, 2021, https://www.uscis.gov/news/news-releases/dhs-announces-extension-and-redesignation-of-somalia-for-temporary-protected-status
- Extension and Redesignation of Somalia for Temporary Protected Status, DHS/USCIS, July 22, 2021 (Federal Register notice), https://www.govinfo.gov/content/pkg/FR-2021-07-22/pdf/2021-15595.pdf
- "TPS Applicants From Five Designated Countries Can Now File Initial Applications Online," USCIS, July 21, 2021, https://www.uscis.gov/news/news-releases/tps-applicants-from-five-designated-countries-can-now-file-initial-applications-online

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Justice Dept. Issues Reminder for DACA Recipients and Employers

The Department of Justice (DOJ) released a reminder for Deferred Action for Childhood Arrivals (DACA) recipients and employers on July 21, 2021. The reminder notes that on July 16, 2021, a federal court found DACA unlawful, which means that the government cannot grant new DACA applications. But existing DACA recipients are allowed to retain their grant of DACA and apply for renewal, DOJ noted. "The district court ruling does not affect ICE's existing enforcement guidelines. The ruling made clear that it did not 'require DHS or the Department of Justice to take any immigration, deportation, or criminal action against any DACA recipient, applicant, or any other individual that it would not otherwise take.' In light of the court decision, DOJ said, "we are issuing these reminders about employment discrimination and immigrant employee rights."

The reminders include these and other points:

- DACA recipients with current, unexpired Employment Authorization Documents (EADs) continue to be authorized to work.
- For the time being, workers who already have DACA can continue to renew their DACA EADs.
- USCIS will provide additional guidance for DACA requestors and recipients in the coming days.
- DACA recipients are not required to tell employers they have DACA.
- Employers are not expected to know which employees, if any, have DACA, and the court's decision does not require employers to review Forms I-9,

reverify employment authorization, or take any action at all.
- Employers are not required or encouraged to ask their employees or job applicants about their immigration status or whether they have DACA.
- When hiring a new employee, employers are required to verify the employee's identity and authorization to work, not their immigration status.
- The court decision does not require employers to review or audit their Forms I-9. If an employer decides to review its Forms I-9, it should do so in a non-discriminatory way.

Details:

- "Reminders for DACA Recipients and Employers," Dept. of Justice, July 21, 2021, https://www.justice.gov/crt/reminders-daca-recipients-and-employers (English), https://www.justice.gov/crt-espanol/recordatorios-para-beneficiarios-de-daca-y-empleadores (Spanish)
- Statement from USCIS Acting Director Tracy Renaud on Deferred Action for Childhood Arrivals (DACA) Court Decision, July 19,, 2021, https://www.uscis.gov/news/news-releases/statement-from-uscis-acting-director-tracy-renaud-on-deferred-action-for-childhood-arrivals-daca

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Firm in the News

Cyrus Mehta was quoted by the *Economic Times of India* in "Policy Change to Benefit Children of H-1B Visa Holders in the U.S." The article quoted Mr. Mehta's tweet, "USCIS does away with burdensome 'gap' status applications when one changes to F-1. This will provide some relief to children of backlogged skilled immigrants who age out, although the optimum solution is to get rid of per country limits and add more visas." https://economictimes.indiatimes.com/nri/migrate/policy-change-to-benefit-children-of-h-1b-visa-holders-in-the-us/articleshow/84607555.cms?from=mdr (article); https://twitter.com/cyrusmehta/status/1417628691241349121 (Twitter)

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