



## IMMIGRATION UPDATE - AUGUST 02, 2021

*Posted on August 2, 2021 by Cyrus Mehta*

### Headlines:

[USCIS Conducts Second Random Selection From Previously Submitted FY 2022 H-1B Cap Registrations](#) – On July 28, 2021, USCIS selected additional previously submitted electronic registrations using a random selection process. The petition filing period based on registrations selected on July 28 will begin on August 2 and close on November 3, 2021.

[Consent Order Provides Interim Relief to Certain Applicants Filing I-765s for OPT and STEM OPT](#) – Under a court order, USCIS extended flexibilities for certain foreign students affected by delayed receipt notices for work authorization applications. The extension includes applications received on or after October 1, 2020, through October 31, 2021.

[DHS Announces Registration Process for Haitian TPS](#) – The 18-month initial registration period runs from August 3, 2021, through February 3, 2023. To be eligible, individuals must demonstrate that they have continuously resided in the United States since July 29, 2021.

[USCIS Issues Reminder About Immigration Services That May Help Those Affected by Natural Disasters and Other Unforeseen Circumstances](#) – Immigration services may be available on a case-by-case basis to help people "affected by unforeseen circumstances such as natural disasters." Examples include "the wildfires in the western United States and the recent building collapse in Surfside, Florida."

[Biometrics Processing Unit Closes in Alexandria, VA](#) – USCIS has closed the Biometrics Processing Unit in Alexandria, Virginia, which no longer receives mail.

[New Asylum Office Opens in Tampa](#) – USCIS will open a new asylum office in

Tampa on August 2, 2021, "in response to an increasing asylum workload in Florida."

[New Credentialing Organization Approved for Healthcare Workers in Nursing](#) – Josef Silny Associates, Inc., is approved as a credentialing organization for individuals seeking to enter the United States to work as a nurse.

[Mass Afghan Evacuations Begin in Operation Fraught With Risk](#) – In a complex operation fraught with delays, difficulties, and risk, the U.S. government is evacuating groups of Afghans eligible for Special Immigrant Visas based on their work for the United States, such as serving as translators and interpreters for U.S. forces in Afghanistan.

[USCIS Updates Policy Manual](#) – USCIS made several updates to its *USCIS Policy Manual*.

[ABIL](#) Global: Canada – This article updates border measures for travelers entering Canada.

#### **Details:**

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### **USCIS Conducts Second Random Selection From Previously Submitted FY 2022 H-1B Cap Registrations**

U.S. Citizenship and Immigration Services (USCIS) announced on July 29, 2021, that it needed to select additional H-1B registrations to reach the fiscal year (FY) 2022 quota. On July 28, 2021, the agency selected additional previously submitted electronic registrations using a random selection process. The petition filing period based on registrations selected on July 28 will begin on August 2 and close on November 3, 2021. Individuals with selected registrations will have their myUSCIS accounts updated to include a selection notice, which includes details of when and where to file. Registration selection only indicates that petitioners are eligible to file H-1B cap-subject petitions; it does not indicate that the petition will be approved.

USCIS conducted an initial random selection in March 2021 of electronic registrations submitted for the FY 2022 H-1B cap and of beneficiaries eligible for the advanced degree exemption. The initial filing period for those selected for FY 2022 was April 1, 2021, through June 30, 2021.

On July 27, 2021, a group of plaintiffs in *Liu v. Mayorkas* filed a motion seeking to preliminarily enjoin the defendants from implementing, applying, or enforcing the H-1B cap registration rules (8 CFR § 214.2(h)(8)(iii)). They alleged that the Department of Homeland Security exceeded its authority and argued that implementation of the rules is arbitrary, capricious, an abuse of discretion, and not in accordance with the law. This was because there was evidence and data indicating that the FY 2022 registration process, if implemented, would lead to fraud, abuse, and a likely second lottery. Arguments regarding the injunction request will be heard on August 27, 2021.

#### Details:

- USCIS alert, July 29, 2021, <https://www.uscis.gov/news/alerts/uscis-conducts-second-random-selection-from-previously-submitted-fy-2022-h-1b-cap-registrations>
- Motion for preliminary injunction in *Liu v. Mayorkas*, <https://www.dropbox.com/s/j7dk2asy52yp7y3/Liu%20Motion%20for%20P.I..pdf?dl=0>
- Amended complaint, <https://aboutblaw.com/Ymz>
- "Suit Seeks to Halt H-1B Visa System Called 'Rife' With Abuse," Bloomberg Law, July 28, 2021, <https://news.bloomberglaw.com/daily-labor-report/suit-seeks-to-halt-h-1b-visa-system-said-to-be-rife-with-abuse>

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### **Consent Order Provides Interim Relief to Certain Applicants Filing I-765s for OPT and STEM OPT**

Under a court order, U.S. Citizenship and Immigration Services (USCIS) extended flexibilities for certain foreign students affected by delayed receipt notices for Form I-765, Application for Employment Authorization. USCIS said the extension includes applications received on or after October 1, 2020, through October 31, 2021. Applicants can file Form I-765 up to 120 days before the program end date if the application is received by October 31, 2021.

For applicants who timely filed Form I-765 for Optional Practical Training (OPT) and Science, Technology, Engineering, and Mathematics (STEM) OPT and whose applications were later rejected, USCIS will accept a refiled Form I-765 as filed on the original filing date if:

- The original, timely filed application was received on or after October 1, 2020, through October 31, 2021; and
- USCIS subsequently rejected it.

For USCIS to treat the application as though filed on the original received date, refiled applications must be received by November 30, 2021.

#### Details:

- USCIS notice, July 29, 2021, <https://bit.ly/3yjS4P3>
- Li v. USCIS, consent order, July 23, 2021, <https://www.uscis.gov/sites/default/files/document/legal-docs/ECF%20No.%2013%20Signed%20Consent%20Order.pdf>

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### **DHS Announces Registration Process for Haitian TPS**

The registration process for Haitian Temporary Protected Status (TPS) will open on August 3, 2021, when the Federal Register notice is published. The 18-month initial registration period runs from August 3, 2021, through February 3, 2023.

Those who wish to request TPS under the Haiti designation must file an application, including approximately 55,000 current TPS Haiti beneficiaries whose TPS-related documentation was automatically extended at least through October 4, 2021, in compliance with court orders who must file a new TPS application under this designation to retain their status. An estimated 100,000 additional individuals can file initial applications for TPS if otherwise eligible.

To be eligible, individuals must demonstrate that they have continuously resided in the United States since July 29, 2021. Department of Homeland Security (DHS) Secretary Alejandro Mayorkas modified the date from what was previously announced "in light of recent events in Haiti, including the July assassination of President Jovenel Moïse." DHS said that those "who attempt to travel to the United States after July 29, 2021, will not be eligible for TPS and may be subject to expulsion or removal."

#### Details:

- Haiti TPS designation, Federal Register notice (unpublished), DHS, <https://public-inspection.federalregister.gov/2021-16481.pdf>
- DHS announcement, July 30, 2021,

<https://www.uscis.gov/news/news-releases/dhs-announces-registration-process-for-temporary-protected-status-for-haiti>

- Initial Haiti TPS announcement, DHS, May 22, 2021, <https://www.dhs.gov/news/2021/05/22/secretary-mayorkas-designates-haiti-temporary-protected-status-18-months>

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## **USCIS Issues Reminder About Immigration Services for Those Affected by Natural Disasters and Other Unforeseen Circumstances**

U.S. Citizenship and Immigration Services (USCIS) issued a reminder on July 28, 2021, that immigration services may be available on a case-by-case basis to help people "affected by unforeseen circumstances such as natural disasters." Examples the agency listed include "the wildfires in the western United States and the recent building collapse in Surfside, Florida." USCIS suggested the following measures:

- Changing a nonimmigrant status or extending a nonimmigrant stay for an individual currently in the United States. Failure to apply for the extension or change before expiration of an authorized period of admission may be excused if the delay was due to extraordinary circumstances beyond the individual's control;
- Re-parole of individuals previously granted parole by USCIS;
- Expedited processing of advance parole requests;
- Expedited adjudication of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited adjudication of employment authorization applications, where appropriate;
- Consideration of fee waiver requests due to an inability to pay;
- Flexibility for those who received a Request for Evidence or a Notice of Intent to Deny but were unable to submit evidence or otherwise respond in a timely manner;
- Flexibility if an individual was unable to appear for a scheduled interview with USCIS;
- Expedited replacement of lost or damaged immigration or travel documents issued by USCIS, such as a Permanent Resident Card (Green Card), Employment Authorization Documents, and Arrival/Departure

- Record (Form I-94); and
- Rescheduling a biometrics appointment.

Those making such a request "should explain how the impact of unforeseen circumstances, such as a natural disaster, created a need for the requested relief. If you lost all forms of evidence in an unforeseen circumstance, include an explanation in your description and a copy of a police report, insurance claim, or other report, if available, to support your request."

#### Details:

- USCIS alert, July 28, 2021,  
<https://www.uscis.gov/news/alerts/immigration-help-available-to-those-affected-by-natural-disasters-and-other-unforeseen-circumstances>

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### **Biometrics Processing Unit Closes in Alexandria, VA**

U.S. Citizenship and Immigration Services (USCIS) has closed the Biometrics Processing Unit in Alexandria, Virginia. Those who need to reschedule an appointment for biometric services must call the USCIS Contact Center at 800-375-5283 before the date of the original appointment and "establish good cause for rescheduling." The unit in Alexandria no longer receives mail.

#### Details:

- USCIS guidance, July 28, 2021,  
<https://www.uscis.gov/forms/filing-guidance/preparing-for-your-biometric-services-appointment>

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### **New Asylum Office Opens in Tampa**

U.S. Citizenship and Immigration Services (USCIS) will open a new asylum office in Tampa on August 2, 2021, "in response to an increasing asylum workload in Florida." The agency reported that the new office becomes the 11th asylum office in the United States and the second in Florida, joining the existing Miami Asylum Office.

According to USCIS, Florida currently leads the country in asylum applications

filed with the agency, and more than a quarter of the national pending caseload is from Florida residents. The addition of the Tampa Asylum Office "will help USCIS resolve urgent cases quickly and better address the large number of asylum applications pending with USCIS in the state," the agency said.

The Tampa Asylum Office will adjudicate asylum claims filed by individuals residing in western and northern Florida as well as portions of central Florida. The Miami Asylum Office will continue to adjudicate asylum claims filed by individuals residing in south Florida and portions of central Florida. Asylum interviews are by appointment only.

#### Details:

- USCIS release, July 30, 2021, <https://www.uscis.gov/news/news-releases/new-uscis-asylum-office-to-open-in-tampa-on-aug-2>

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### **New Credentialing Organization Approved for Healthcare Workers in Nursing**

U.S. Citizenship and Immigration Services (USCIS) announced that Josef Silny Associates, Inc., is approved as of July 22, 2021, as a credentialing organization for individuals seeking to enter the United States to work as a nurse.

#### Details:

- Federal Register notice, July 29, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-07-29/pdf/2021-16181.pdf>

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### **Mass Afghan Evacuations Begin in Operation Fraught With Risk**

In a complex operation fraught with delays, difficulties, and risk, the U.S. government is evacuating groups of Afghans eligible for Special Immigrant Visas based on their work for the United States, such as serving as translators and interpreters for U.S. forces in Afghanistan. Among other obstacles, the Taliban have been expanding across the country and setting up checkpoints on various roads, and airport operations are threatened by violence. Although the situation is fluid and the numbers are somewhat unclear, below are reported

highlights of the evacuations under "Operation Allies Refuge":

- About 200 Afghans were flown to Fort Lee, Virginia, for processing before resettlement in the United States. They are among a larger group of about 2,500 eligible for Special Immigrant Visas who are further along in processing.
- About 4,000 Afghans and their relatives who are earlier in the visa application process will be flown to other countries for lengthier processing.
- There are roughly 20,000 applicants in the pipeline, along with family members. It is unclear whether all of them will be evacuated safely or what will happen to applicants who were deemed not qualified. The Department of State and the Pentagon reportedly are working together on relocation options at U.S. military installations in the country and elsewhere, possibly to include Qatar and Kuwait, with a goal of evacuating eligible Afghans by August 31, 2021, when the U.S. combat presence is targeted to end.
- Approximately 74,000 Afghans under the program have already been resettled since 2008.
- A bill passed the U.S. Senate and House of Representatives last week to provide more than \$1 billion to pay for the evacuations, related transportation and housing, and resettlement costs. The bill also provides 8,000 additional visas over the 26,500 allocated currently. President Biden said he will sign the bill.

#### Details:

- "About 200 Afghan Interpreters and Family Members Arrive in U.S., in First Wave of Evacuations," Washington Post, July 30, 2021, <https://www.washingtonpost.com/world/2021/07/30/afghan-interpreters-evacuations/>
- 'Complete Disaster': Inside the Biden Team's Chaotic Bid to Evacuate Afghan Interpreters," Politico, July 30, 2021, <https://www.politico.com/news/2021/07/30/biden-evacuate-afghan-interpreters-501773>

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## USCIS Updates Policy Manual

U.S. Citizenship and Immigration Services (USCIS) made several updates to its *USCIS Policy Manual*. Highlights include:

- Policy guidance to address the urgent need for additional civil surgeons to conduct immigration medical examinations in support of Operation Allies Refuge (for certain Afghan Special Immigrant Visa applicants)
- Technical update adding references to the EB-5 visa program in Child Status Protection Act guidance
- Revised policy guidance to comply with a recent court order involving immigrant investors and investment of loan proceeds
- Policy guidance on change of status to nonimmigrant student (F-1) visa classification

### Details:

- USCIS Policy Manual updates, <https://www.uscis.gov/policy-manual/updates>

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## ABIL Global: Canada

*This article updates border measures for travelers entering Canada.*

On July 19, 2021, the government of Canada [announced](#) the details of the next phase of its approach to easing border measures for travelers entering Canada. As a result of increased vaccination rates, declining COVID-19 cases, and reduced pressure on health care capacity in Canada, the government plans a number of changes.

Beginning August 9, 2021, fully vaccinated U.S. citizens and permanent residents, currently residing in the United States, will be permitted to enter Canada for discretionary (non-essential) travel. On September 7, 2021, provided that the domestic epidemiologic situation remains favorable, the government will open Canada's borders to all fully vaccinated travelers.

As of July 5, 2021, fully vaccinated travelers who are permitted to enter Canada are not subject to the federal requirement to quarantine or to take a Covid-19 test. In addition, fully vaccinated travelers arriving by air will not be required to stay at a government-authorized hotel. Pre-and on-arrival Covid-19 testing

requirements for travelers arriving by air or land to Canada continue to apply.

Below are questions and answers on selected highlights of these developments:

### **What will change on August 9, 2021?**

#### ***Entry to Canada***

As noted above, fully vaccinated U.S. citizens and permanent residents, currently residing in the United States, can travel to Canada for discretionary (non-essential) purposes. Additionally, unvaccinated children under 12 years of age, or unvaccinated dependent children (due to a mental or physical condition), who are U.S. citizens or permanent residents currently residing in the United States may also enter Canada. To be allowed entry, such children must be accompanying a fully vaccinated parent, step-parent, guardian, or tutor who is permitted to enter Canada.

To be considered fully vaccinated, travelers must have received two doses or a combination of the Pfizer, Moderna, or AstraZeneca/COVISHIELD vaccines or a single dose of the Janssen (Johnson & Johnson) vaccine, at least 14 days before their entry to Canada.

Also, Transport Canada will expand the scope of the existing Notice to Airmen that currently directs scheduled international commercial passenger flights into the four major Canadian airports. Effective August 9, 2021, international flights carrying passengers will be permitted to land at the following five additional Canadian airports: Halifax Stanfield International Airport; Québec City Jean Lesage International Airport; Ottawa Macdonald-Cartier International Airport; Winnipeg James Armstrong Richardson International Airport; and Edmonton International Airport.

#### ***Testing and Temperature Screening Requirements***

Canada will begin a new border testing surveillance program at airports and land border crossings. Beginning August 9, 2021, fully vaccinated travelers will not need a post-arrival test unless they have been randomly selected to complete a Day 1 COVID-19 molecular test. Transport Canada will also remove the requirement for the Canadian Air Transport Security Authority to perform pre-board temperature screening of passengers and airport workers on all domestic flights and international departures.

In a positive development for Canadians, Canadian citizens and permanent residents traveling to the United States for less than 72 hours will now be permitted to do their pre-entry test in Canada. Therefore, such individuals will no longer be required to receive a second COVID-19 molecular test result in the United States before returning to Canada.

### ***Quarantine Requirements***

As of August 9, 2021, the three-night government-authorized hotel stay requirement for all travelers arriving by air will be eliminated. Additionally, unvaccinated children under 12 years of age and dependent children (due to a mental or physical condition) of fully vaccinated travelers will no longer have to complete a 14-day quarantine but must follow strict public health measures. This means they can move around with their parents, but must avoid group settings—such as camps, daycares, or schools—during the first 14 days after their arrival. Unvaccinated children will remain subject to the Day 1 and Day 8 testing requirements.

Provinces and territories may have more stringent rules regarding people who have recently returned from travel.

### **What will change on September 7, 2021?**

As of July 22, 2021, the government of Canada plans to open Canada's borders to all fully vaccinated travelers as of September 7, 2021. This plan is contingent on the domestic epidemiologic situation remaining favorable in Canada. The preliminary step of permitting U.S. travelers' entry into Canada for discretionary (non-essential) purposes will allow the government to fully operationalize the adjusted border measures ahead of September 7, 2021.

### **What requirements are still in place?**

For travelers who are not fully vaccinated, there are no changes to Canada's current mandatory testing requirements. Such travelers must still complete a mandatory 14-day quarantine requirement, subject to limited exceptions. However, as mentioned above, the three-night government-authorized hotel stay requirement for all travelers arriving by air will be eliminated.

Fully vaccinated travelers must also be asymptomatic, have a paper or digital copy of their vaccination documentation in English or French (or certified translation, along with the original), and provide COVID-19-related information

electronically through the ArriveCAN app before arriving in Canada. They must still present a suitable quarantine plan and be prepared to quarantine if it is determined at the border that they do not meet all of the conditions required to be exempt from quarantine. As with all other exempt travelers, they must follow public health measures in place, such as wearing a mask when in public and keeping a copy of their vaccine and test results available, as well as a list of close contacts for 14 days after entry to Canada.

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