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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - AUGUST 31, 2021

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Headlines:

COVID Vaccinations To Be Required for Many Green Card Applicants – Effective October 1, 2021, with few exceptions, those applying for permanent residence (green card) must be vaccinated against COVID-19, now classified as a "Class A inadmissible condition," the CDC announced.

Justice Dept. Settles Immigration-Related Discrimination Claims With Large Health Care Organization – DOJ reached a settlement related to immigration discrimination claims with Ascension Health Alliance, a Missouri-based health care organization with more than 2,600 sites—including 146 hospitals and more than 40 senior living facilities—in 19 states and the District of Columbia.

DHS Releases Guidance for Immigration Processing of Afghan Citizens Fleeing Afghanistan – DHS released new guidance for the immigration processing of Afghan citizens during Operation Allies Refuge, under which many thousands are being evacuated from Afghanistan.

DHS Seeks Comments on New Civil Rights/Liberties Form – DHS seeks comments by September 22, 2021, on a new DHS civil rights and civil liberties complaint and privacy waiver form.

Details:

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COVID Vaccinations To Be Required for Many Green Card Applicants

Effective October 1, 2021, with few exceptions, those applying for permanent residence (green card) must be vaccinated against COVID-19, now classified as a "Class A inadmissible condition," the Centers for Disease Control and Prevention (CDC) announced. The CDC explained that the COVID-19 vaccination

meets the criteria for required vaccinations and is a requirement for applicants eligible for the vaccine regardless of evidence of immunity, a negative COVID-19 test, or prior COVID-19 infection. The new vaccine requirements apply to a foreign national filing an I-485 application for adjustment of status and completing the I-693 medical examination with a designated U.S. Citizenship and Immigration Services (USCIS) civil surgeon or to a foreign national applying for an immigrant visa or refugee status at a U.S. consulate and undergoing a medical examination with a panel physician.

With respect to I-485 adjustment applicants, the CDC has stated that the applicant "must complete the COVID-19 vaccine series and provide documentation of vaccination to the civil surgeon in person before completion of the medical examination." The COVID-19 vaccination requirement differs from previous requirements in that "the entire vaccine series (1 or 2 doses depending on formulation) must be completed in addition to the other routinely required vaccines. COVID-19 vaccinations can now be given at any time, without regard to the timing of other vaccinations." Acceptable vaccines include Pfizer-BioNTech, Moderna, and Janssen (Johnson & Johnson).

Panel physicians in countries outside the United States may accept vaccines authorized for emergency use or approved by the U.S. Food and Drug Administration or vaccines listed for emergency use by the World Health Organization (WHO). In addition to the three vaccines used in the United States, WHO lists many other vaccines used outside the United States, such as AstraZeneca, Covishield and Covaxin, Sputnik, Sinopharm and Sinovac, among others.

Waivers are available for applicants under both circumstances if the vaccine is not age-appropriate, the vaccine is medically contraindicated, or the applicant does not have access to one of the approved vaccines in their home country. Applicants may also apply for an individual waiver on religious or moral grounds.

According to reports, the Biden administration also is developing plans for a COVID-19 vaccine mandate for almost all foreign visitors to the United States, with some exceptions. As there is a great disparity in COVID-19 vaccination programs across the world, the mandating of vaccines for green card applicants and visitors may hinder the ability of people to easily come to the United States. According to the *New York Times* vaccine tracker, the United Arab

Emirates has the highest percentage of fully vaccinated people within its population (76%), while the percentage of fully vaccinated people in countries such as India (10%), Senegal (3.5%), and Haiti (<0.1%) is abysmally low.

Details:

- "CDC Requirements for Immigrant Medical Examinations: COVID-19 Technical Instructions for Civil Surgeons," Aug. 17, 2021, https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/covid-19-technical-instructions.html
- "CDC Requirements for Immigrant Medical Examinations: COVID-19 Technical Instructions for Panel Physicians," Aug. 17, 2021, https://www.cdc.gov/immigrantrefugeehealth/panel-physicians/covid-19-technical-instructions.html
- "COVID-19 Vaccinations Required for Most Green Card Applicants," Roll Call, Aug. 26, 2021, https://www.rollcall.com/2021/08/26/covid-19-vaccinations-required-for-most-green-card-applicants/
- "Biden Administration Developing Plan to Require Almost All Foreign Visitors to be Vaccinated," Aug. 4, 2021, https://www.cnn.com/2021/08/04/politics/vaccines-foreign-visitors-to-us/index.html
- New COVID-19 Vaccination Requirement for Green Card Applicants," JDSupra, Aug. 26, 2021, https://www.jdsupra.com/legalnews/new-covid-19-vaccination-requirement-7487840/

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Justice Dept. Settles Immigration-Related Discrimination Claims With Large Health Care Organization

The Department of Justice (DOJ) announced on August 25, 2021, that it reached a settlement related to immigration discrimination claims with Ascension Health Alliance, a Missouri-based health care organization with more than 2,600 sites—including 146 hospitals and more than 40 senior living facilities—in 19 states and the District of Columbia.

The settlement resolves DOJ's claims that Ascension violated the Immigration and Nationality Act (INA) when it discriminated against work-authorized non-

U.S. citizens because of their citizenship status. Based on its investigation, DOJ determined that Ascension told its non-U.S. citizen employees to present new documents to prove their continued work authorization even when it was not required. The investigation found that Ascension improperly programmed customized software to send automated emails requesting proof of continued work authorization to all non-U.S. citizen employees, including U.S. nationals, lawful permanent residents, asylees and refugees, close to the expiration date of the documents they provided when completing the Form I-9. These non-U.S. citizen employees often presented documents that did not require reverification of employment eligibility. In some instances after sending the emails, Ascension further required non-U.S. citizen employees to present new documents to continue working. In contrast, Ascension did not program the software to send emails to U.S. citizens and therefore did not notify U.S. citizens near the expiration of their documents.

Under the terms of the settlement agreement, Ascension will pay the United States a civil penalty of $84,832.00. Additionally, Ascension will train its employees on the requirements and be subject to monitoring for a three-year period.

Details:

- Press release, Dept. of Justice, https://www.justice.gov/opa/pr/justice-department-settles-large-health-care-organization-resolve-software-based-immigration
- Settlement agreement, https://www.justice.gov/opa/press-release/file/1427891/download

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DHS Releases Guidance for Immigration Processing of Afghan Citizens Fleeing Afghanistan

The Department of Homeland Security (DHS) released new guidance for the immigration processing of Afghan citizens during Operation Allies Refuge, under which many thousands are being evacuated from Afghanistan.

The memo states that some of these individuals were in various stages of processing for immigration status in the United States, and through various paths based on family relationships, Special Immigrant Visas, or refugee

programs, for example. Many were not able to complete these processes because of the current situation in Afghanistan. The memo notes that others, despite likely eligibility, never applied because they had not previously sought to leave Afghanistan and relocate to the United States. DHS Secretary Alejandro Mayorkas is therefore authorizing U.S. Customs and Border Protection officers to parole certain Afghan nationals into the United States, "on a case-by-case basis, for a period of two years and subsequent to appropriate vetting, provided their movement to the United States is being carried out pursuant to Operation Allies Refuge." Once paroled into the United States by CBP, Afghan nationals may be eligible to apply for status through U.S. Citizenship and Immigration Services. "Afghan nationals paroled by CBP may also have conditions placed on their parole, to include medical screening and reporting requirements. Failure to follow these conditions may be cause for termination of the parole and initiation of detention and removal," the memo notes.

Details:

- "Guidance for the Immigration Processing of Afghan Citizens During Operation Allies Refuge," DHS memorandum, Aug. 23, 2021.

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DHS Seeks Comments on New Civil Rights/Liberties Form

The Department of Homeland Security (DHS) seeks comments by September 22, 2021, on a new DHS civil rights and civil liberties complaint and privacy waiver form. The form will allow DHS's Office for Civil Rights and Civil Liberties (CRCL) to review and investigate civil rights and civil liberties complaints filed by the public regarding DHS programs and activities. The information provided also will be entered into a CRCL complaint management system and may be used by CRCL to track allegations and identify trends and systemic issues within CRCL's jurisdiction.

Details:

- 86 Fed. Reg. 47133 (Aug. 23, 2021), https://www.govinfo.gov/content/pkg/FR-2021-08-23/pdf/2021-17959.pdf

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