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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - SEPTEMBER 07, 2021

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Headlines:

State Dept. Releases Guidance on Immigrant Visa Prioritization – DOS released guidance on how its embassies and consulates are prioritizing immigrant visa applications as they work to reduce the backlog resulting from travel restrictions and operational constraints caused by the global COVID pandemic.

DHS Extends I-9 Flexibility to End of December – DHS announced an extension until December 31, 2021, of the flexibility in complying with certain requirements related to Form I-9, Employment Eligibility Verification, due to continuing issues related to the COVID-19 pandemic.

DHS, OFLC Release Hurricane Ida-Related Guidance – DHS and OFLC released guidance related to Hurricane Ida and its aftermath, including immigration enforcement and other employer-related issues.

DHS To Serve as Lead Federal Agency Coordinating Afghan Resettlement – President Biden has directed DHS to serve as the lead agency coordinating ongoing efforts across the federal government "to resettle vulnerable Afghans, including those who worked on behalf of the United States."

DHS 'Respectfully Disagrees' With Court Decision on MPP – DHS "respectfully disagrees" with a district court decision that maintains the Migrant Protection Protocols.

USCIS Requests Public Comments on Revision of H-1B Registration Tool – USCIS requests public comments on a revision of the H-1B Registration Tool. This includes changes associated with a final rule USCIS published in January.

USCIS Creates New Webpage for Lockbox Filing Location Updates – USCIS has

launched a new Lockbox Filing Location Updates page, to be updated regularly.

ABIL Global: Italy – Following the European Union's announcement that travelers from the United States have been removed from its safe travel list, Italy added testing and self-isolation requirements for U.S. travellers.

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State Dept. Releases Guidance on Immigrant Visa Prioritization

The Department of State (DOS) released guidance on how its embassies and consulates are prioritizing immigrant visa applications and making "difficult decisions" as they work to reduce the backlog "resulting from travel restrictions and operational constraints caused by the global COVID pandemic."

DOS said the guiding principle is family reunification: "Specifically, the Department's prioritization relie on clear direction from Congress that the Department must adopt a policy of prioritizing immediate relative visa applicants and K-1 of U.S. citizens, followed by family preference immigrant visa applicants."

Immigrant visas are prioritized over nonimmigrant visas. U.S. embassies and consulates are using a "tiered approach to triage immigrant visa applications based on the category of immigrant visa as they resume and expand processing." Consular sections are scheduling some appointments within all four priority tiers every month. The following lists the main categories of immigrant visas in priority order:

- Tier One: Immediate relative intercountry adoption visas, age-out cases (cases where the applicant will soon no longer qualify due to their age), certain Special Immigrant Visas (SQ and SI for Afghan and Iraqi nationals working with the U.S. government), and emergency cases as determined on a case-by-case basis.
- Tier Two: Immediate relative visas; fiancé(e) visas; and returning resident visas
- Tier Three: Family preference immigrant visas and SE Special Immigrant Visas for certain employees of the U.S. government abroad
- Tier Four: All other immigrant visas, including employment preference and diversity visas

Also, U.S. embassies and consulates were instructed that they may "prioritize as emergencies on a case-by-case basis the immigrant visa cases of certain healthcare professionals who will work at a facility engaged in pandemic response," the guidance states.

Details:

- "Immigrant Visa Prioritization," Dept. of State, Aug. 30, 2021, https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-prioritization.html

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DHS Extends I-9 Flexibility to End of December

The Department of Homeland Security (DHS) announced an extension until December 31, 2021, of the flexibility in complying with certain requirements related to Form I-9, Employment Eligibility Verification, due to continuing issues related to the COVID-19 pandemic. The temporary guidance previously was set to expire August 31, 2021.

A U.S. Immigration and Customs Enforcement (ICE) release from March 2020 provides information on how to obtain, remotely inspect, and retain copies of the identity and employment eligibility documents to complete Section 2 of Form I-9. DHS said employers must monitor DHS's and ICE's Workforce Enforcement announcements for information on when the extensions will end and normal operations will resume. E-Verify participants who choose the remote inspection option "should continue to follow current guidance and create cases for their new hires within three business days from the date of hire," DHS said.

Details:

- ICE announcement, Aug. 31, 2021, https://www.ice.gov/news/releases/ice-announces-extension-new-employee-guidance-i-9-compliance-flexibility-1
- ICE news release, Mar. 31, 2021, https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance
- DHS releases, https://www.dhs.gov/
- ICE releases, https://bit.ly/2Ycd6Sw

- Temporary policies related to COVID-19, USCIS, Aug. 31, 2021, https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/temporary-policies-related-to-covid-19

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DHS, OFLC Release Hurricane Ida-Related Guidance

The Department of Homeland Security (DHS) and the Department of Labor's Office of Foreign Labor Certification (OFLC) released guidance related to Hurricane Ida and its aftermath.

- DHS said that absent exceptional circumstances, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection, will not conduct immigration enforcement at locations where disaster and emergency relief related to Hurricane Ida is being provided, "such as along evacuation routes, sites used for sheltering or the distribution of emergency supplies, food or water, or registration sites for disaster-related assistance or the reunification of families and loved ones." DHS also said that DHS officials "do not and will not pose as individuals providing emergency-related information as part of any enforcement activities."
- OFLC released frequently asked questions (FAQ) advising that whenever possible, the most effective means of communicating with the OFLC is through the established Foreign Labor Application Gateway (FLAG) or the PERM Case Management System. The FAQ provides alternative methods of contacting OFLC for each of its programs in the event that an employer or its authorized attorney or agent is unable to communicate via FLAG.

OFLC said that it will grant extensions to deadlines and make other reasonable accommodations for employers affected by Hurricane Ida, including delays caused by the storm and those that occurred as a result of businesses preparing to adjust their normal operations due to the storm.

The OFLC FAQ also includes guidance on short-term placements of H-1B workers at worksites outside of the areas of intended employment and other issues.

Details:

- DHS statement on safety and immigration enforcement during Hurricane

Ida, Aug. 27, 2021, https://www.dhs.gov/news/2021/08/27/dhs-statement-safety-and-immigration-enforcement-during-hurricane-ida

- Same statement translated into Chinese, French, Haitian Creole, Spanish, and Vietnamese, Aug. 28, 2021, https://www.dhs.gov/publication/dhs-statement-safety-and-immigration-enforcement-during-hurricane-ida
- OFLC FAQ, Sept. 1, 2021, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Hurricane%20Ida%20Disaster%20Guidance%20-%209.1.21.pdf

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DHS to Serve as Lead Federal Agency Coordinating Afghan Resettlement

President Biden has directed the Department of Homeland Security to serve as the lead agency coordinating ongoing efforts across the federal government "to resettle vulnerable Afghans, including those who worked on behalf of the United States."

DHS Secretary Alejandro N. Mayorkas announced that Robert J. Fenton, Jr., will lead the interagency Unified Coordination Group (UCG). UCG will report directly to Secretary Mayorkas and will include "a broad range of services throughout the resettlement process, from initial immigration processing, COVID-19 testing, and isolation of COVID-positive individuals for anticipated quarantine, to resettlement support for individuals who are neither U.S. citizens nor lawful permanent residents. The resettlement support will include initial processing at pre-designated U.S. military bases prior to being resettled into communities."

Details:

- DHS release, Aug. 29, 2021, https://www.dhs.gov/news/2021/08/29/dhs-serve-lead-federal-agency-coordinating-efforts-resettle-vulnerable-afghans
- SIV/Iraqi & Syrian P-2/Afghan P-2 instructions, Refugee Processing Center, https://www.wrapsnet.org/siv-iraqi-syrian-afghan-p2/

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DHS 'Respectfully Disagrees' With Court Decision on MPP

The Department of Homeland Security (DHS) said on August 24, 2021, that it "respectfully disagrees" with a district court decision that maintains the Migrant Protection Protocols (MPP) and "regrets that the Supreme Court declined to issue a stay." DHS said it appealed the district court's order and will continue to "vigorously challenge" it, but that as the appeal process continues, DHS "will comply with the order in good faith."

DHS said that alongside interagency partners, the agency has begun to engage with the government of Mexico in diplomatic discussions surrounding MPP. DHS also "continues to expel single adults and families encountered at the Southwest Border."

Details:

- DHS statement, Aug. 24, 2021, https://www.dhs.gov/news/2021/08/24/dhs-statement-supreme-court-decision-mpp

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USCIS Requests Public Comments on Revision of H-1B Registration Tool

U.S. Citizenship and Immigration Services (USCIS) requests public comments on a revision of the H-1B Registration Tool. This includes changes associated with a final rule USCIS published on January 8, 2021, "Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions."

USCIS said the hour and cost time burden estimates also include the time and cost burden estimates associated with the final rule. On February 8, 2021, USCIS published a rule delaying the effective date to December 31, 2021.

Details:

- Federal Register notice, Sept. 1, 2021, https://www.govinfo.gov/content/pkg/FR-2021-09-01/pdf/2021-18850.pdf
- Final rule, USCIS, Jan. 8, 2021, https://www.govinfo.gov/content/pkg/FR-2021-01-08/pdf/2021-00183.pdf
- Final rule, delay of effective date, USCIS, Feb. 8, 2021, https://www.govinfo.gov/content/pkg/FR-2021-02-08/pdf/2021-02665.pdf

USCIS Creates New Webpage for Lockbox Filing Location Updates

U.S. Citizenship and Immigration Services (USCIS) has launched a new Lockbox Filing Location Updates page, to be updated regularly. USCIS noted that it periodically adjusts filing locations among its lockbox facilities to balance its incoming workload.

Details:

- USCIS alert, Sept. 1, 2021, https://www.uscis.gov/news/alerts/uscis-creates-new-webpage-for-lockbox-filing-location-updates

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ABIL Global: Italy

Following the European Union's announcement that travelers from the United States have been removed from its safe travel list, Italy added testing and self-isolation requirements for U.S. travelers.

Following the European Union's announcement that travelers from the United States have been removed from its safe travel list, Italy added testing and self-isolation requirements for U.S. travelers. All travelers must receive a negative coronavirus test result (molecular or antigenic swab) within 72 hours before arrival and complete a digital passenger locator form. Unvaccinated people without proof of recovery must quarantine (self-isolate) for five days and take another test after that.

Those from European Union and Schengen area countries can enter Italy with a COVID-19 "Green Certificate" after either completing the vaccination cycle for at least 14 days, recovering from COVID-19, or receiving a negative molecular or antigen swab test within 48 hours before entering Italy. Vaccinated U.S. citizens who want to enter Italy can avoid the quarantine by showing their vaccination certificates, which Italy considers to be equivalent to the Green Certificate. Acceptable vaccines include those approved by the European Medicines Agency: Comirnaty (Pfizer-BioNTech), Janssen (Johnson & Johnson), Moderna, and Vaxzevria.

Admission requirements worldwide have been changing frequently due to rapidly evolving pandemic conditions, so travelers should check for the latest

updates before traveling.

Details:

- COVID-19 information for travelers, https://www.salute.gov.it/portale/nuovocoronavirus/dettaglioContenutiNuovoCoronavirus.jsp?lingua=english&id=5412&area=nuovoCoronavirus&menu=vuoto
- "Italy Tightens Entry Requirements on U.S. Tourists, Adds Self-Isolation Mandate for the Unvaccinated," USA Today, Aug. 31, 2021, https://www.usatoday.com/story/travel/destinations/2021/08/31/italy-travel-country-tightens-entry-requirements-us-tourists/5667008001/
- European Digital Passenger Locator Form, https://app.euplf.eu/#/
- Green Certificate (Italian), https://www.dgc.gov.it/web/
- Information on European Union Digital COVID Certificate, https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate_en
- "Accessing Italy with Green Certificate: Japan, Canada, United States and Israel," Aug. 28, 2021, https://www.dgc.gov.it/web/

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