



IMMIGRATION UPDATE - SEPTEMBER 20, 2021

Posted on September 20, 2021 by lashawnwilkins

Headlines:

[Senate Parliamentarian Rejects Inclusion of Immigration Language in \\$3.5 Trillion Bill](#) – In a blow to Democrats, President Biden, and immigration advocates, the Senate parliamentarian ruled that immigration language cannot be included in the \$3.5 trillion filibuster-proof budget reconciliation bill.

[District Court Vacates H-1B Lottery Wage-Based Final Rule](#) – The rule would have prioritized H-1B visa selection based on wages.

[State Dept. Announces Tiered Triage of Immigrant Visa Applications at U.S. Embassies and Consulates](#) – 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.

[State Dept. Expands Categories of International Students That Can Be Adjudicated Without In-Person Interviews](#) – The Department authorized consular officers through the end of 2021 to expand the categories of F, M, and "academic J visa applicants" (students, professors, research scholars, short-term scholars, and specialists) whose applications can be adjudicated without an in-person interview in their consular district of residence, with certain exceptions.

[Visa Bulletin for October Includes Outlook for Next Several Months](#) – The Department of State's Visa Bulletin for October 2021 includes information on potential movement in visa availability for the next several months.

[Diversity Visa 2021 Update: State Dept Ordered to "Expediently Process" DV-2021 Applications by Sept. 30](#) – A U.S. district court preliminarily enjoined the Department from applying November 2020 prioritization policy guidance to DV-2021 applicants and ordered the Department to undertake good-faith

efforts to expeditiously process DV applications (including derivative beneficiaries) by September 30, 2021.

[COVID-19 Vaccination Required for Immigration Medical Exams](#) – Effective October 1, 2021, applicants subject to the immigration medical examination must be fully vaccinated against COVID-19 before the civil surgeon can complete the exam.

[USCIS Expands Credit Card Payment Pilot Program to Texas Service Center](#) – The Texas Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, 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.

[FY 2022 H-2B Cap Count Updated](#) – The agency received 26,123 petitions toward the 33,000 cap for the first half of FY 2022, with 21,096 approved and 5,027 pending.

[Haitians Stream to U.S.-Mexico Border; Administration Plans Flights Out](#) – An estimated 8,000 Haitian migrants have converged in Texas at the border with Mexico, along with several thousand migrants from other countries. Biden administration officials told the media that many would be put on flights back to Haiti.

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Senate Parliamentarian Rejects Inclusion of Immigration Language in \$3.5 Trillion Bill

In a blow to Democrats, President Biden, and immigration advocates, Senate parliamentarian Elizabeth MacDonough ruled on September 19, 2021, that immigration language cannot be included in the \$3.5 trillion filibuster-proof budget reconciliation bill. She said, "The policy changes of this proposal far outweigh the budgetary impact."

The rejected language would have allowed eligible persons to pay a fee to be exempted from numerical limits when adjusting status to permanent

residence, among other provisions. The immigration provisions are expected to have a dim chance of passing separately in the Senate.

Details:

- Senate Parliamentarian Says \$3.5 Trillion Bill Can't Include Citizenship Path for Immigrants," Associated Press, Sept. 19, 2021, <https://on.mktw.net/3hOsawG>
- "Senate Parliamentarian Rejects Democrats' Immigration Bid," Roll Call, Sept. 19, 2021, <https://www.rollcall.com/2021/09/19/senate-parliamentarian-rejects-democrats-immigration-bid/>
- MacDonough decision, Politico, Sept. 19, 2021, <https://www.politico.com/f/?id=0000017c-009c-d47e-ab7e-9cbc658a0000>

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District Court Vacates H-1B Lottery Wage-Based Final Rule

A U.S. district court judge vacated a final rule, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States," because Chad Wolf was not lawfully appointed as Acting Secretary of the Department of Homeland Security when the final rule was approved. The rule would have prioritized H-1B visa selection based on wages.

Details:

- Chamber of Commerce v. DHS, Sept. 15, 2021, <https://www.courthousenews.com/wp-content/uploads/2021/09/H1B-visa-ruling.pdf>

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State Dept. Announces Tiered Triage of Immigrant Visa Applications at U.S. Embassies and Consulates

The Department of State (DOS) announced that 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, where possible, are scheduling some appointments within all four priority tiers every month. The following are the main categories in priority

order:

- Tier One: Immediate relative intercountry adoption visas, age-out cases (cases where the applicant will soon no longer qualify due to 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

Details:

- DOS notice, Sept. 13, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-prioritization.html>

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State Dept. Expands Categories of International Students That Can Be Adjudicated Without In-Person Interviews

The Department of State (DOS) announced on September 14, 2021, that it has authorized consular officers through the end of 2021 to expand the categories of F, M, and "academic J visa applicants" (students, professors, research scholars, short-term scholars, and specialists) whose applications can be adjudicated without an in-person interview in their consular district of residence, with certain exceptions. DOS said:

Consular officers may, if they so choose, and pursuant to local conditions, now waive the visa interview requirement for F, M, and academic J visa applicants who were previously issued any type of visa, and who have never been refused a visa unless such refusal was overcome or waived, and who have no apparent ineligibility or potential ineligibility; or first-time F, M, and academic J visa applicants who are citizens or nationals of a country that participates in the Visa Waiver Program (VWP), provided they have no apparent ineligibility or potential ineligibility.

This applies only to non-U.S. citizens who are nationals of eligible countries, the agency said, noting that details about country eligibility and necessary procedures will be available on the website of the relevant embassy or consulate. Applicants from non-VWP countries "whose prior visa was issued when they were less than 14 years of age may need to submit biometric fingerprints, but can still be approved for an interview waiver."

Students seeking to apply for a new F-1 or M-1 visa should check the status of visa services at the nearest embassy or consulate; those who are found to be otherwise qualified for an F-1 or M-1 visa will automatically be considered for an NIE to travel, DOS said. Students and academics traveling on J-1 visas must contact the nearest embassy or consulate prior to travel to receive an NIE. DOS encourages applicants to check the website of the relevant U.S. embassy or consulate to confirm the services currently offered and to find guidelines for applying for a visa without an interview.

Details:

- DOS announcement, Sept. 14, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-F-M-and-academic-J-Visas.html>

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Visa Bulletin for October Includes Outlook for Next Several Months

The Department of State's Visa Bulletin for October 2021 includes information on potential movement in visa availability for the next several months:

Employment First:

Worldwide: Current

China: Current

India: Current

Employment Second:

Worldwide: Current

China: Up to several months

India: Up to several months

Employment Third:

Worldwide: A final action date could be imposed as early as November

China: A retrogression of this date could occur as early as November

India: A retrogression of this date could occur as early as November

Mexico: A final action date could be imposed as early as November

Philippines: A final action date could be imposed as early as November

Employment Fourth: Current for most countries

El Salvador, Guatemala, and Honduras: Limited, if any, movement expected

Mexico: Limited, if any, movement expected

Employment Fifth: Current for most countries

China: No forward movement

The bulletin also includes a reminder that if there is no legislative action, two employment categories will expire on September 30, 2021: non-minister special immigrant and I5 and R5 regional center visa categories.

Details:

- Visa Bulletin for October 2021, Dept. of State,
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-october-2021.html>

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Diversity Visa 2021 Update: State Dept Ordered to "Expediently Process" DV-2021 Applications by Sept. 30

On September 9, 2021, the U.S. District Court for the District of Columbia preliminarily enjoined the Department of State (DOS) from applying November 2020 prioritization policy guidance to diversity visa (DV) 2021 applicants and ordered DOS to undertake good-faith efforts to expediently process DV applications (including derivative beneficiaries) by September 30, 2021.

The court said the order "does not prevent any embassy personnel, consular officer, or administrative processing center from prioritizing the processing, adjudication, or issuance of visas based on resource constraints, limitations due to the COVID-19 pandemic, or country conditions."

Details:

- DOS notice,

<https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-2021-update.html>

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COVID-19 Vaccination Required for Immigration Medical Exams

U.S. Citizenship and Immigration Services (USCIS) announced that effective October 1, 2021, applicants subject to the immigration medical examination must be fully vaccinated against COVID-19 before the civil surgeon can complete the exam and sign Form I-693, Report of Medical Examination and Vaccination Record.

USCIS may grant blanket waivers if the COVID-19 vaccine is:

- Not age-appropriate;
- Contraindicated due to a medical condition;
- Not routinely available where the civil surgeon practices; or
- Limited in supply and would cause significant delay for the applicant to receive the vaccination.

Individuals may also apply for waivers based on religious beliefs or moral convictions.

Details:

- USCIS alert, Sept. 14, 2021,
<https://www.uscis.gov/news/alerts/covid-19-vaccination-required-for-immigration-medical-examinations>

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USCIS Expands Credit Card Payment Pilot Program to Texas Service Center

U.S. Citizenship and Immigration Services (USCIS) announced that the Texas Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, 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 Nebraska Service Center also accepts credit card payments. At the end of

the pilot, the agency will evaluate the results and determine the next steps for expanding this payment option to other forms or other service centers.

Details:

- USCIS alert, Sept. 16, 2021,
<https://www.uscis.gov/newsroom/alerts/uscis-expands-credit-card-payment-pilot-program-to-texas-service-center>

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FY 2022 H-2B Cap Count Updated

U.S. Citizenship and Immigration Services (USCIS) updated its "approximate" cap count for H-2B visas for fiscal year (FY) 2022. The agency received 26,123 petitions toward the 33,000 cap for the first half of FY 2022, with 21,096 approved and 5,027 pending.

USCIS said it is currently accepting petitions for employment start dates of October 1, 2021, through March 31, 2022. Such petitions will be subject to the first half of the FY 2022 H-2B cap.

Details:

- USCIS notice, updated Sept. 16, 2021,
<https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants>

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Haitians Stream to U.S.-Mexico Border; Administration Plans Flights Out

According to news reports, an estimated 8,000 Haitian migrants have converged in Del Rio, located in Texas at the border with Mexico, along with several thousand migrants from other countries. The nearest major city is San Antonio. Biden administration officials told the media that many would be put on flights back to Haiti. Vehicular and pedestrian traffic in both directions is closed at the Del Rio-Ciudad Acuna border crossing.

Haitian temporary protected status does not apply to migrants who arrived after August 3, 2021.

Details:

- "Official: U.S. to Expel Haitians From Border, Fly to Haiti," WTOP News, Sept. 18, 2021, <https://wtop.com/national/2021/09/thousands-of-haitian-migrants-converge-on-texas-border-town/>
- "U.S. Plans to Deport Massive Number of Haitians From Del Rio, Texas, An Official Says," NPR, Sept. 17, 2021, <https://www.npr.org/2021/09/17/1038482663/u-s-plans-to-deport-massive-number-of-haitians-from-del-rio-texas-an-official-sa>
- "Thousands of Haitian Migrants Wait Under Bridge in South Texas After Mass Border Crossing," Washington Post, Sept. 16, 2021, https://www.washingtonpost.com/national/haitian-migrants-mexico-texas-border/2021/09/16/4da1e366-16fe-11ec-ae9a-9c36751cf799_story.html
- Temporary Protected Status Designated Country: Haiti, USCIS, updated Sept. 9, 2021, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti>

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Firm in the News

- **Cyrus Mehta** provided his views to several media outlets on the immigration provisions of a bill in the House of Representatives to be added to the reconciliation measure. "If enacted, these immigration provisions will dramatically change the immigration system and will provide relief to millions of people," Mr. Mehta said:
- "Dreamers and Legal Immigration Changes Highlight New House Bill," Forbes, <https://www.forbes.com/sites/stuartanderson/2021/09/13/dreamers-and-legal-immigration-changes-highlight-new-house-bill/?sh=546acd3b69a9>
- "Bill: Payment of a Super-Fee Will Enable Indians Caught in Decades-Long Backlog to Get a Green Card," Times of India, <https://timesofindia.indiatimes.com/world/us/bill-payment-of-a-super-fee-will-enable-indians-caught-in-decades-long-backlog-to-get-a-green-card/articleshow/86139144.cms>
- "Landmark Proposal in Budget Reconciliation Bill Could Grant Green Cards Immediately to Thousands Stuck in Backlog," India-West, https://www.indiawest.com/news/global_indian/landmark-proposal-in-bu

[dget-reconciliation-bill-could-grant-green-cards-immediately-to-thousands-stuck-in/article_666bc822-165d-11ec-b89b-17fa22700888.html](#)

- "New Provisions Could Ease Green Card Process for Indians," Economic Times of India,
<https://economictimes.indiatimes.com/nri/migrate/new-provisions-could-ease-green-card-process-for-indians/articleshow/86160640.cms>

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