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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - SEPTEMBER 27, 2021

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Headlines:

Biden Admin Announces New Policy: Vaccines, Testing Required for International Travelers to United States – The Biden administration will ease pandemic travel restrictions to allow fully vaccinated travelers to enter the United States beginning in November 2021.

USCIS Extends Flexibility for Responding to Agency Requests – The flexibility, extended in response to the ongoing pandemic, applies to certain documents if the issuance date listed on the request, notice, or decision is between March 1, 2020, and January 15, 2022, inclusive.

EB-5 Regional Center Program Lapse Strands Investors – According to a new report, the lapse is hurting more than 32,000 stranded EB-5 investors, putting at least $15 billion in capital investment and more than 486,900 U.S. jobs in jeopardy.

Non-U.S. Citizens Can Now Apply for SSNs on I-765 or I-485, SSA Says – Non-U.S. citizens can apply for a Social Security number (SSN) or replacement SSN card on the same forms used to apply for permission to work in the United States or for lawful permanent resident status. They no longer need to apply directly via the SSA.

CIS Ombudsman Shares Tips on Submitting DACA Renewal Requests – DHS announced the CIS Ombudsman's tips for submitting a request to USCIS to renew Deferred Action for Childhood Arrivals.

CBP Announces Extension of Temporary Restrictions on Travelers Crossing U.S. Land Borders – Non-essential travel will continue to be restricted across the U.S.-Canada and Mexico land borders through October 21, 2021.

DHS Announces New Strategy in Response to Migrant Surge at U.S.-Mexico

Border – Activities include, among other things, moving migrants to other processing locations; accelerating the pace of removal flights to Haiti and other destinations; reducing crowding and improving conditions for migrants on U.S. soil; and directing appropriate U.S. agencies to work with the Haitian and other regional governments to provide assistance and support to detainees.

GAO Faults USCIS for Insufficient Efforts to Address Backlogs – The GAO noted that policy changes, longer forms, staffing issues, and delays from COVID-19 have all contributed to longer processing times.

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Biden Admin Announces New Policy: Vaccines, Testing Required for International Travelers to United States

According to reports, the Biden administration announced on September 20, 2021, a major easing of pandemic travel restrictions that will allow fully vaccinated travelers to enter the United States beginning in November 2021. Under the new policy, all foreign travelers flying to the United States must present proof of vaccination before boarding a U.S.-bound airline, as well as proof of a negative COVID-19 test taken within 72 hours before flying.

There will be no quarantine requirement. The Biden administration will implement enhanced contact tracing and continue to require masks on flights. Additionally, unvaccinated Americans returning to the United States will need to provide a negative test within one day of leaving and again after arriving.

The administration said that it will task the Centers for Disease Control and Prevention (CDC) with determining which vaccines qualify under the new policy. The Associated Press reported that CDC has announced that the United States will accept any of the vaccines approved for emergency use by the World Health Organization.

Biden administration officials shared with the American Immigration Lawyers Association that limited exceptions will be available, such as for children; COVID-19 vaccine clinical trial participants; and humanitarian exceptions for people traveling for an important reason and who lack access to vaccination in a timely manner. Individuals who are exempted from the vaccine requirement

may be required to be vaccinated upon arrival.

The administration will also be making additional recommendations to stop the spread of COVID-19, including (1) continuing the mask mandate through January 18, 2022; (2) expanding pre-departure and post-arrival testing requirements; and (3) implementing a contact tracing order for airlines.

Administration officials also indicated that they are lifting restrictions under INA § 212(f) for the countries to which it applies now, concurrent with the early November start of the new policy.

Separately, President Biden signed an executive order adding measles to the list of quarantinable communicable diseases.

Details:

- "Starting in November: Travel Bans Are Out; Covid Vaccine and Testing Requirements Are In," Klasko Immigration Law Partners, LLP, https://bit.ly/3AVRYPb
- "U.S. to Ease Covid Travel Entry Rules, Require Vaccinations for Foreign Visitors," NBC News, Sept. 20, 2021, https://www.nbcnews.com/politics/white-house/u-s-require-covid-vaccinations-international-travelers-n1279635
- "U.S. Easing Virus Restrictions for Foreign Flights to America," WTOP, Sept. 20, 2021, https://wtop.com/white-house/2021/09/biden-easing-foreign-travel-restrictions-requiring-vaccines/
- Executive Order, "Adding Measles to the List of Quarantinable Communicable Diseases," Sept. 17, 2021, https://www.govinfo.gov/content/pkg/FR-2021-09-22/pdf/2021-20629.pdf

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USCIS Extends Flexibility for Responding to Agency Requests

In response to the ongoing COVID-19 pandemic, U.S. Citizenship and Immigration Services (USCIS) is extending certain flexibilities it originally announced in March 2020 to assist applicants, petitioners, and requestors. This flexibility applies to the documents listed below if the issuance date listed on the request, notice, or decision is between March 1, 2020, and January 15, 2022, inclusive:

- Requests for Evidence
- Continuations to Request Evidence (N-14)
- Notices of Intent to Deny, Revoke, or Rescind
- Notices of Intent to Terminate regional centers
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant

In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if:

- The form was filed up to 60 calendar days from the issuance of a decision USCIS made; and
- USCIS made that decision from March 1, 2020, through January 15, 2022.

USCIS said it will consider a response to the above requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action. Additionally, the agency will consider a Form N-336 or Form I-290B received up to 60 calendar days from the date of the decision before it takes any action.

Details:

- USCIS alert, Sept. 24, 2021, https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests

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EB-5 Regional Center Program Lapse Strands Investors

The lapse in the EB-5 regional center program has had a major impact on certain investors. According to a report from IIUSA: Invest in the USA, the lapse is hurting more than 32,000 stranded EB-5 investors, putting at least $15 billion in capital investment and more than 486,900 U.S. jobs in jeopardy.

The report notes that under the current lapse in authorization, U.S. Citizenship and Immigration Services (USCIS) has halted adjudication of all I-526 petitions filed by EB-5 investors affiliated with regional centers. According to USCIS, nearly 12,800 EB-5 investors had a pending I-526 petition as of June 30, 2021, when the program expired. The report says that historically, according to the

Department of State, 93.4% of the EB-5 visa numbers have been used by applicants who invested through a regional center. This means that nearly 12,000 EB-5 investors with an I-526 petition on file will not receive an adjudication on their EB-5 cases during the lapse of the program and will experience delays in their legal immigration process. Also, visa applicants with a currently approved I-526 petition are not able to receive a EB-5 visa number as of the program's expiration on June 30.

A draft bill, the Foreign Investor Fairness Protection Act (FIFPA), which has not been introduced yet, would help stranded investors if Congress fails to reauthorize the EB-5 regional center program. The bill would protect "job-creating foreign investors from loss of immigration benefits under the EB-5 Program due to expiration of temporary legislation or from future amendments to statute."

A new organization, the American Immigrant Investor Alliance (AIIA), has formed to help stranded EB-5 investors.

The Alliance of Business Immigration Lawyers encourages stranded investors to write their members of Congress, their ambassadors, and AIIA to urge reauthorization of the EB-5 program and passage of the FIFPA.

Details:

- IIUSA Data Analysis: Impact of the Lapse of the EB-5 Regional Center Program on Investors, Investments and Job Creation," IIUSA: Invest in the USA, Aug. 20, 2021 (updated Aug. 27, 2021), https://iiusa.org/blog/iiusa-data-analysis-impact-of-the-lapse-of-the-eb-5-regional-center-program-on-investors-investments-and-job-creation/
- Foreign Investor Fairness Protection Act, draft summary, https://drive.google.com/file/d/1-wELBUwVtOsewe1hDhdCndFAPMTmyhgT/view
- American Immigrant Investor Alliance website, https://goaiia.org/
- AIIA statement on Foreign Investor Fairness Protection Act, https://goaiia.org/blog/f/aiia-will-push-for-the-foreign-investor-fairness-protection-act
- Contact your member of Congress, https://www.usa.gov/elected-officials
- Contact your ambassador, https://travel.state.gov/content/travel/en/consularnotification/ConsularNotificationandAccess.html

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Non-U.S. Citizens Can Now Apply for SSNs on I-765 or I-485, SSA Says

The Social Security Administration (SSA) announced that non-U.S. citizens can apply for a Social Security number (SSN) or replacement SSN card on the same forms used to apply for permission to work in the United States (Form I-765) or for lawful permanent resident status (Form I-485). They no longer need to apply directly via the SSA.

The SSA said that such applicants should receive their SSN cards within seven business days after receiving their employment authorization documents from U.S. Citizenship and Immigration Services.

Details:

- SSA announcement, https://www.ssa.gov/ssnvisa/ebe.html
- USCIS flyer, https://www.uscis.gov/sites/default/files/document/flyers/EBE_Flyer_Apply_for_your_Social_Security_Number_While_Applying_for_Your.pdf

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CIS Ombudsman Shares Tips on Submitting DACA Renewal Requests

The Department of Homeland Security sent an email alert on September 22, 2021, announcing the CIS Ombudsman's tips for submitting a request to U.S. Citizenship and Immigration Services (USCIS) to renew Deferred Action for Childhood Arrivals (DACA). The tips include:

- File as early as possible. USCIS recommends that applicants submit a DACA renewal request 150 to 120 days before the expiration date on the current Form I-797, Notice of Action, and Employment Authorization Document (EAD)
- Make sure your request is complete. This includes submitting the most recent versions of Forms I-821D, I-765, and the I-765 Worksheet.
- Check USCIS processing times.
- No expedites.

Details:

- USCIS DACA site, https://www.uscis.gov/DACA

- USCIS DACA FAQ, https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#renewal
- DHS CIS Ombudsman site, https://www.dhs.gov/topic/cis-ombudsman
- USCIS Case Processing Times, https://egov.uscis.gov/processing-times/

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CBP Announces Extension of Temporary Restrictions on Travelers Crossing U.S. Land Borders

U.S. Customs and Border Protection (CBP) announced on September 22, 2021, that non-essential travel will continue to be restricted across the U.S.-Canada and Mexico land borders through October 21, 2021. Cross-border activities with Canada and Mexico "that support health security, trade, commerce, supply security, and other essential activities" will continue. The order does not apply to those "who should be excepted based on considerations of law enforcement, officer and public safety, humanitarian, or public health interests."

The CBP announcement states that the agency "will no longer detain migrants in our holding facilities and will immediately return migrants to the country they entered from – Canada or Mexico. Where such a return is not possible, CBP will return migrants to their country of origin."

Details:

- CBP announcement, Sept. 22, 2021, https://help.cbp.gov/s/article/Article-1596?language=en_US

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DHS Announces New Strategy in Response to Migrant Surge at U.S.-Mexico Border

The Department of Homeland Security (DHS) announced a new strategy to deal with a surge in migrants at the Del Rio, Texas, border with Mexico. Activities include, among other things, moving migrants to other processing locations; accelerating the pace of removal flights to Haiti and other destinations; reducing crowding and improving conditions for migrants on U.S. soil; and directing appropriate U.S. agencies to work with the Haitian and other regional

governments to provide assistance and support to detainees.

The DHS announcement said, "The majority of migrants continue to be expelled under Title 42 authority. Those who cannot be expelled under Title 42 and do not have a legal basis to remain will be placed in expedited removal proceedings. DHS is conducting regular expulsion and removal flights to Haiti, Mexico, Ecuador, and Northern Triangle countries ."

Details:

- DHS notice, Sept. 18, 2021, https://www.dhs.gov/news/2021/09/18/dhs-outlines-strategy-address-increase-migrants-del-rio

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GAO Faults USCIS for Insufficient Efforts to Address Backlogs

The U.S. Government Accountability Office (GAO) issued a new report examining U.S. Citizenship and Immigration Services' (USCIS) efforts to reduce its pending caseload, which has increased by 85% in recent years. The GAO noted that policy changes, longer forms, staffing issues, and delays from COVID-19 have all contributed to longer processing times. The GAO found that although USCIS has several plans to address the backlog, it has not implemented them and has not identified necessary resources to address its pending caseload.

The GAO concluded, among other things, that developing a strategic workforce plan "would better position USCIS to address long-term workforce challenges and reduce its growing pending caseload." USCIS has not implemented or updated its plans to reduce its caseload to reflect the funding and other resources needed to address the pending caseload, the GAO said: "Identifying the resources necessary to address its pending caseload and providing the estimates to the Office of Management and Budget and Congress would better inform them about USCIS's resource needs."

Details:

- GAO report, https://www.gao.gov/products/gao-21-529

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Cyrus Mehta was quoted by Forbes in "Immigrants Hope Registry Saves Immigration Bill." Mr. Mehta said, "Registry would help a whole swath of people, and the only criteria would be that the individual entered the U.S. by a particular date and has resided continuously from that date in the U.S. They would be able to apply for adjustment of status, and the government can impose supplemental or super-fees that would generate revenues for the United States. The person must also demonstrate good moral character and certain criminal, smuggling, narcotics law violations and some other grounds of inadmissibility apply. Waivers that exist under the INA for these grounds of inadmissibility would apply even for an adjustment application under registry. Unlike the prior immigration provisions that were rejected by the parliamentarian, there is no need to establish that you came into the U.S. before 18 or are an essential worker or have an approved I-130 or I-140 petition. A qualified applicant needs to show that he or she entered the U.S. prior to the cutoff date, which is January 1, 1972, under current law and has resided continuously since that date." Regarding moving the registry date closer to the present, he said, "I completely agree that the date should move to January 1, 2021, so that the new provision can help as many people as possible who have been waiting to either regularize their status or to get a green card. The fees that can be collected for each adjustment application under Section 249 will generate billions of dollars in revenues to the Treasury . There are no quotas or caps for green cards under registry." He was not certain that the parliamentarian would approve changing the registry date in a reconciliation bill, as has been proposed. "It is difficult to say whether the parliamentarian will accept this alternate proposal. She ought to this time because the is not being substantively changed and no new categories are being created under which people may file adjustment of status applications. All that is happening is that the cutoff date will move from January 1, 1972, to a more recent date." https://www.forbes.com/sites/stuartanderson/2021/09/22/immigrants-hope-registry-saves-immigration-bill/?sh=b6dff6ae3b17

Mr. Mehta was quoted in several other media outlets on the registry proposal:

- "U.S. Immigration Reforms: Setback for Indians Looking to Pay 'Super Fee' for Green Card," Times of India. Mr. Mehta said that the registry would allow anyone present in the United States before a certain date to

become a legal permanent resident. https://timesofindia.indiatimes.com/world/us/us-immigration-its-back-to-the-drawing-board-for-dems-with-a-cut-off-date-for-permanent-residency/articleshow/86363843.cms

"Senate Parliamentarian Deals Crushing Blow to Indian American Workers Stuck in Green Card Backlog," India-West. The registry would be a "once-in-a-generation opportunity," he said. "It would give people an opportunity to immediately move out of the backlog." https://timesofindia.indiatimes.com/world/us/us-immigration-its-back-to-the-drawing-board-for-dems-with-a-cut-off-date-for-permanent-residency/articleshow/86363843.cms

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