



IMMIGRATION UPDATE - OCTOBER 18, 2021

Posted on October 18, 2021 by Cyrus Mehta

Headlines:

[DHS Announces Fully Vaccinated Travelers From Canada and Mexico Will Be Allowed to Enter United States at Land Borders and Ferry Crossings](#) – The modifications will occur in two phases over the next few months.

[India and China EB-3 Dates Retrogress in November 2021 Visa Bulletin](#) – The Department of State's Visa Bulletin for November 2021 is causing consternation and raising queries from beneficiaries trapped in backlogs.

[Senate Democrats Review Options for Immigration Provisions in Reconciliation Bill](#) – Senate Democrats are considering various options for including scaled-down immigration provisions in a budget reconciliation bill following rejection by the Senate parliamentarian of proposals for more sweeping changes.

[USCIS Reaches H-2B Cap for First Half of FY 2022](#) – USCIS received enough petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of fiscal year 2022.

[DHS Secretary Mayorkas Announces New Immigration Enforcement Priorities](#) – Secretary Mayorkas announced new guidelines for immigration enforcement priorities that focus on national security, public safety, and border security, and emphasize prosecutorial discretion and individual assessment. The new guidelines take effect November 29, 2021.

[DHS Ends Mass Worksite Enforcement Operations, Issues Policy Guidance](#) – DHS updated its policies on worksite enforcement to focus on unscrupulous employers. DHS said it no longer conducts mass worksite operations, sometimes called raids.

[Court Establishes Timeframe for Processing 9,905 Diversity Visas](#) – A federal court has ordered the Department of State to finish processing 9,905 DV-2020

visas by September 30, 2022.

[CIS Ombudsman Releases Tips on Communicating With USCIS Contact Center](#) –

Tips include when to reach out to the USCIS Contact Center; where to check case status; when to use online tools; how to submit case inquiries and service requests; what constitutes an emergency; how to expedite a case; how biometrics appointments are scheduled; how to reschedule appointments and interviews; and other advice.

[CIS Ombudsman Releases Readout and Q&As From Webinar on Filing for TPS and Concurrent Work Authorization](#) –

The CIS Ombudsman released information from its public webinar discussing eligibility, required evidence, and account features for online filing of Form I-821, Application for Temporary Protected Status, and concurrent filing of Form I-765, Application for Employment Authorization.

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DHS Announces Fully Vaccinated Travelers From Canada and Mexico Will Be Allowed to Enter United States at Land Borders and Ferry Crossings

Secretary Alejandro N. Mayorkas announced on October 12, 2021, that the Department of Homeland Security will amend Title 19 regulations to allow nonessential travelers who have been fully vaccinated for COVID-19 and have appropriate documentation to enter the United States via land and ferry ports of entry (POEs) across U.S. borders.

The modifications will occur in two phases over the next few months:

- First, in November 2021, U.S. Customs and Border Protection will begin allowing fully vaccinated travelers from Mexico or Canada to enter the United States at land and ferry POEs for nonessential reasons. Travelers must have proof of vaccination.
- Second, beginning in early January 2022, all inbound foreign national travelers crossing U.S. land or ferry POEs—whether for essential or non-essential reasons—must be fully vaccinated for COVID-19 and provide proof of vaccination.

Officials did not give an exact date for lifting the travel restrictions. People entering the United States at the borders with Mexico or Canada will be questioned by U.S. Customs and Border Protection officers about their vaccination status before being allowed to cross. The officers will have discretion to send travelers to secondary screenings for their documents to be checked, officials said. The administration will have limited exemptions for unvaccinated travelers from Mexico and Canada, including some children.

Details:

- DHS Press Release, Oct. 12, 2021, <https://www.dhs.gov/news/2021/10/12/secretary-mayorkas-allow-fully-vaccinated-travelers-canada-and-mexico-enter-us-land>
- "The U.S. Will Reopen Its Land Borders for Fully Vaccinated Travelers," New York Times, Oct. 12, 2021 (updated Oct. 14, 2021), <https://www.nytimes.com/2021/10/12/us/politics/us-canada-mexico-borders-open.html>

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India and China EB-3 Dates Retrogress in November 2021 Visa Bulletin

The Department of State's (DOS) Visa Bulletin for November 2021 is causing consternation and raising queries from beneficiaries trapped in backlogs. For example, the employment-based third preference immigrant visa category for India and China final action dates retrogressed substantially.

DOS said the retrogressions were "a direct result of extraordinarily heavy applicant demand for numbers," primarily by U.S. Citizenship and Immigration Services offices for adjustment of status cases.

Details:

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

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Senate Democrats Review Options for Immigration Provisions in Reconciliation

Bill

According to news reports, Senate Democrats are considering various options for including scaled-down immigration provisions in a budget reconciliation bill following rejection by the Senate parliamentarian, Elizabeth MacDonough, of proposals for more sweeping changes. Under consideration is providing parole to immigrants who arrived in the United States before January 1, 2011, but do not have permanent legal status. The idea would be to allow them to stay in the United States, work legally, and remain with their families.

The House of Representatives' Judiciary Committee passed immigration provisions in September that would be included in a reconciliation bill. Among those were several sections that the Senate parliamentarian has not yet considered, such as recapturing unused family and employment-based immigrant visas.

Details:

- "Immigrants and Green Cards: Immigration in a Reconciliation Bill," Forbes, Oct. 12, 2021, <https://www.forbes.com/sites/stuartanderson/2021/10/12/immigrants-and-green-cards-immigration-in-a-reconciliation-bill/?sh=735cae7678a3>

USCIS Reaches H-2B Cap for First Half of FY 2022

U.S. Citizenship and Immigration Services (USCIS) announced on October 12, 2021, that it received enough petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of fiscal year 2022.

September 30, 2021, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2022. USCIS said it will reject new cap-subject H-2B petitions received after September 30 that request an employment start date before April 1, 2022.

USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap, including petitions for:

- Current H-2B workers in the United States who extend their stay, change employers, or change the terms and conditions of their employment;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe

processing; and

- Workers performing labor or services in the Commonwealth of Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.

Details:

- USCIS alert, Oct. 12, 2021, <https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022>

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DHS Secretary Mayorkas Announces New Immigration Enforcement Priorities

Secretary of Homeland Security Alejandro Mayorkas announced new guidelines for immigration enforcement priorities that focus on national security, public safety, and border security, and emphasize prosecutorial discretion. The new guidelines take effect November 29, 2021.

"For the first time, our guidelines will, in the pursuit of public safety, require an assessment of the individual and take into account the totality of the facts and circumstances" to ensure resources are focused most effectively on those who pose a threat, Secretary Mayorkas said. DHS also noted that most of the more than 11 million undocumented or otherwise removable noncitizens in the United States "have been contributing members of our communities across the country for years. The fact an individual is a removable noncitizen will not alone be the basis of an enforcement action against them."

Continuous training, a process to review the guidelines' effective implementation, extensive data collection, and a case review process will all be required, DHS said. Secretary Mayorkas is expected to issue additional immigration-related policy memos soon.

Details:

- DHS Press Release, Sept. 30, 2021, <https://www.dhs.gov/news/2021/09/30/secretary-mayorkas-announces-new-immigration-enforcement-priorities>
- "Guidelines for the Enforcement of Civil Immigration Law," DHS, Sept. 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>

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DHS Ends Mass Worksite Enforcement Operations, Issues Policy Guidance

The Department of Homeland Security (DHS) issued a memorandum on October 12, 2021, updating its policies on worksite enforcement to focus on "unscrupulous employers who exploit the vulnerability of undocumented workers" and "create an unfair labor market." The guidance memo states that DHS "no longer conduct mass worksite operations," sometimes called raids, that can result in the simultaneous arrests of hundreds of workers. DHS said that in addition to a lack of focus on exploitative employers, such operations misallocate resources and are inconsistent with DHS's new guidelines requiring individualized assessments.

The guidance memo, among other things, directs DHS agencies to propose recommendations for protecting noncitizen victims and witnesses who report unlawful labor practices or participate in investigations or prosecutions.

Details:

- "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual," DHS Policy Statement 065-06, Oct. 12, 2021, https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf
- "Biden Administration Orders Halt to ICE Raids at Worksites," Washington Post, Oct. 12, 2021, https://www.washingtonpost.com/national/biden-administration-halts-ice-raids/2021/10/12/631dc86e-2b70-11ec-92bd-d2ffe8570c7d_story.html

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Court Establishes Timeframe for Processing 9,905 Diversity Visas

In recent months, several courts have ordered the Department of State (DOS) to reserve and adjudicate DV-2020 and DV-2021 diversity visas. On August 17, 2021, the U.S. District Court for the District of Columbia in *Gomez v. Biden* ordered DOS to "process DV-2020 applications in random order until all 9,905 diversity visas have been granted." On October 13, 2021, the court ordered DOS to begin processing the 9,905 DV-2020 visas "as soon as is feasible and to

conclude such processing no later than the end of the 2022 Fiscal Year, or September 30, 2022."

Details:

- Diversity Visa 2020 and 2021 Updates, Dept. of State, Oct. 13, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-2020-and-2021-updates.html>

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CIS Ombudsman Releases Tips on Communicating With USCIS Contact Center

The Office of the Citizenship and Immigration Services (CIS) Ombudsman released tips on making communications with the U.S. Citizenship and Immigration Services (USCIS) Contact Center more effective, in response to recent changes in Contact Center processes. The CIS Ombudsman explained that the changes were made "to reduce reliance on telephonic live assistance while promoting the use of online self-help tools and digital inquiry channels" as a result of "financial limitations and resource constraints."

Tips include when to reach out to the USCIS Contact Center; where to check case status; when to use online tools; how to submit case inquiries and service requests; what constitutes an emergency; how to expedite a case; how biometrics appointments are scheduled; how to reschedule appointments and interviews; and other advice.

Details:

- "How to Make Your Communication With the USCIS Contact Center More Effective," Office of the Citizenship and Immigration Services Ombudsman, Dept. of Homeland Security, Sept. 2021, https://www.dhs.gov/sites/default/files/publications/uscis_contact_center_tip_sheet_final.pdf

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CIS Ombudsman Releases Readout and Q&As From Webinar on Filing for TPS and Concurrent Work Authorization

The Office of the Citizenship and Immigration Services (CIS) Ombudsman released a readout and Q&As from its public webinar discussing eligibility,

required evidence, and account features for online filing of Form I-821, Application for Temporary Protected Status, and concurrent filing of Form I-765, Application for Employment Authorization.

Details:

- DHS announcement,
<https://www.dhs.gov/publication/cis-ombudsmans-webinar-series-uscis-introduces-e-filing-initial-form-i-821>
- DHS Engagement Readout,
https://www.dhs.gov/sites/default/files/publications/engagement_readout_-_form_i-821_online_08.24.21.pdf
- DHS Q&A,
https://www.dhs.gov/sites/default/files/publications/questions_and_answers_-_form_i-821_online_filing_engagement_08.24.21_1.pdf

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Firm in the News

Cyrus Mehta was quoted by Forbes in "Immigrants and Green Cards: Immigration in a Reconciliation Bill." He said, "The provisions in the House bill would allow employees in the backlog to file for adjustment of status without regard to whether a priority date is available. From an employer's perspective, they may not need to rely on the uncertainty of the H-1B visa lottery as much as they do now. An F-1 on Optional Practical Training (OPT) can be sponsored for permanent residence through labor certification during the F-1 OPT period, although one eligible for F-1 STEM OPT will have more time for the labor certification to get processed and approved. Once the labor certification is approved, the employee will be eligible to file an I-485 adjustment of status application concurrently with the I-140 petition and obtain employment authorization during its pendency," which would allow an employee to remain in the United States and be eligible for continued employment with the employer. "Employers may help an employee with an approved petition by paying the \$5,000 on their behalf so that he or she can get permanent residence more quickly," and an employer that facilitates permanent residence will be more attractive to noncitizen employees, he noted.

<https://www.forbes.com/sites/stuartanderson/2021/10/12/immigrants-and-green-cards-immigration-in-a-reconciliation-bill/?sh=735cae7678a3>

David Isaacson was a moderator at the AILA New York Chapter CLE panel on October 13, 2021, regarding Petitions for Review and Litigation Under the Administrative Procedures Act.

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