



# IMMIGRATION UPDATE - NOVEMBER 01, 2021

*Posted on November 1, 2021 by Cyrus Mehta*

## Headlines:

[President Biden Replaces Country-by-Country Pandemic-Related Air Travel Restrictions With Vaccine Requirement](#) – Effective November 8, 2021, a new Presidential Proclamation that governs the entry into the United States by air of "noncitizen nonimmigrants" revokes previous country-by-country restrictions applied during the COVID-19 pandemic and replaces them with a vaccination requirement.

[Settlement Agreement Outlines 'New, Overarching' Guidance for H-1B Petitions for Market Research Analysts](#) – USCIS reached a settlement agreement in the case of *MadKudu Inc. v. USCIS* that the agency said "outlines new, overarching guidance" for adjudicating pending or future H-1B petitions for market research analysts.

[USCIS Releases E-Verify Updates on Referred TNCs and Open Cases](#) – E-Verify will begin updating some referred Social Security number tentative nonconfirmations with final responses.

[USCIS Expands Guidance on Supporting Evidence for Liberian Refugee Immigration Fairness Applications; Deadline is Dec. 20](#) – USCIS has clarified steps applicants must take if they cannot submit primary evidence of Liberian nationality to support an LRIF-based application for adjustment of status.

[DHS Terminates Migrant Protection Protocols](#) – Alejandro Mayorkas, Secretary of Homeland Security, announced the termination of the MPP, a controversial program under which undocumented migrants seeking admission to the United States via Mexico must await their court proceedings in Mexico.

[DHS Issues New Guidelines on Avoiding Enforcement Actions in or Near 'Protected Areas'](#) – A non-exhaustive list of protected areas includes schools;

medical or mental health care facilities; places of worship or religious study; places where children gather; social services facilities; places where disaster or emergency services are provided; funerals; weddings; and ongoing parades, demonstrations, or rallies.

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### **Details:**

## **President Biden Replaces Country-by-Country Pandemic-Related Air Travel Restrictions With Vaccine Requirement**

Effective November 8, 2021, a new Presidential Proclamation that governs the entry into the United States by air of "noncitizen nonimmigrants" revokes previous country-by-country restrictions applied during the COVID-19 pandemic and replaces them with a vaccination requirement.

The new policy suspends the entry of unvaccinated noncitizen nonimmigrants, except in limited circumstances, and "ensures that the entry of unvaccinated noncitizen nonimmigrants is consistent" with applicable health and safety determinations. These include, when appropriate, requiring that such individuals arrange to become fully vaccinated against COVID-19 upon arrival. Exceptions to the new policy include certain noncitizens with medical, humanitarian, or emergency issues, among other reasons.

### Details:

- Presidential Proclamation, Oct. 25, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/>

[Back to Top](#)

## **Settlement Agreement Outlines 'New, Overarching' Guidance for H-1B Petitions for Market Research Analysts**

U.S. Citizenship and Immigration Services (USCIS) reached a settlement agreement in the case of *MadKudu Inc. v. USCIS* that the agency said "outlines new, overarching guidance" for adjudicating pending or future H-1B petitions for market research analysts.

USCIS had denied plaintiffs' H-1B petitions for market research analyst positions based on the agency's determination that the Department of Labor's *Occupational Outlook Handbook* entry for market research analysts did not establish that this occupation was a "specialty occupation." The settlement agreement includes detailed instructions on how USCIS is to evaluate submitted evidence for and adjudicate such petitions, including how educational requirements and documentation can be met.

The agreement allows class members, as defined in the USCIS news alert and the settlement agreement, to submit a Form I-290B, Notice of Appeal or Motion, to request that certain denied Forms I-129, Petition for a Nonimmigrant Worker, seeking H-1B classification for a market research analyst be reopened and adjudicated per the terms of the settlement agreement. No fee will be charged for such requests. Class members have until April 26, 2022, to submit their Forms I-290B.

USCIS said it will make a decision on all eligible, timely filed reopening requests within 90 days of receipt of the physical file at the adjudicating office. USCIS will "attempt to prioritize" reopening requests for petitions with labor condition applications (LCAs) expiring fewer than 90 days after the Form I-290B is properly filed with USCIS.

#### Details:

- USCIS news alert, Oct. 28, 2021, <https://www.uscis.gov/newsroom/alerts/directions-for-class-members-filing-motions-to-reopen-pursuant-to-settlement-agreement-in-h-1b>
- Settlement agreement, *MadKudu Inc. v. USCIS*, <https://www.uscis.gov/sites/default/files/document/legal-docs/Madkudu-settlement-agreement.pdf>
- Statement from the American Immigration Lawyers Association, Oct. 28, 2021, <https://www.aila.org/advo-media/press-releases/2021/aila-press-statement-denial-of-h1b-petitions>

[Back to Top](#)

### **USCIS Releases E-Verify Updates on Referred TNCs and Open Cases**

In March 2020, E-Verify extended the timeframe employees had to contest

tentative nonconfirmations (TNCs) of their Social Security numbers. U.S. Citizenship and Immigration Services (USCIS) said this extension was due in part to the Social Security Administration (SSA) closing its offices to the public. Many referred TNCs have not received final responses. USCIS said E-Verify will begin updating some referred TNCs with final responses.

Highlights of USCIS's updates released on October 26, 2021, include:

- To complete the E-Verify process, employers must close every case, including those cases that were recently updated with final responses. However, E-Verify will automatically close cases that receive a result of Employment Authorized.
- Employers must close cases that were created in error, with incorrect information, or for employees who are no longer employed. Incomplete cases must also be closed.
- Cases that are in a status of "Referred," "Verification In Process," or "Case in Continuance" are exceptions as these cases cannot be closed until final case results are issued.

Details:

- USCIS notice, Oct. 26, 2021, <https://www.e-verify.gov/about-e-verify/whats-new>
- E-Verify Quick Reference Guide for Employers, <https://www.e-verify.gov/e-verify-quick-reference-guide-for-employers>
- E-Verify manual, section 4.1, "Close Case," <https://www.e-verify.gov/e-verify-user-manual-40-case-resolution/41-close-case>

[Back to Top](#)

### **USCIS Expands Guidance on Supporting Evidence for Liberian Refugee Immigration Fairness Applications; Deadline is Dec. 20**

U.S. Citizenship and Immigration Services (USCIS) has expanded its guidance on Liberian Refugee Immigration Fairness (LRIF) applications, clarifying steps applicants must take if they cannot submit primary evidence of Liberian nationality to support an LRIF-based application for adjustment of status. The deadline to apply to adjust status under LRIF is December 20, 2021.

USCIS said it "strongly encourages applicants to submit any and all evidence

available to them when applying for LRIF." The agency said it will consider "any and all evidence," including the applicant's testimony during an interview, when determining eligibility for adjustment of status. USCIS recommended submission of a written and signed statement explaining the applicant's attempts to acquire primary evidence (e.g., an unexpired Liberian passport or Liberian certificate of naturalization), to include accompanying records demonstrating these attempts (e.g., proof of an application for a Liberian passport; proof of an application to renew an expired Liberian passport; proof of communication with Liberian government authorities responsible for issuing primary evidence; or receipts of transactions to obtain primary evidence). Applicants must also provide secondary evidence of Liberian nationality (e.g., an expired Liberian passport, Liberian baptismal record or other religious document, Liberian school records, and Liberian medical records).

#### Details:

- USCIS Policy Update, Oct. 29, 2021, <https://www.uscis.gov/newsroom/alerts/policy-update-liberian-refugee-immigration-fairness-lrif>
- USCIS Policy Manual, Chapter 5—Liberian Refugee Immigration Fairness, <https://www.uscis.gov/policy-manual/volume-7-part-p-chapter-5>

[Back to Top](#)

## **DHS Terminates Migrant Protection Protocols**

Alejandro Mayorkas, Secretary of Homeland Security, announced on October 29, 2021, the termination of the Migrant Protection Protocols (MPP), a controversial program started by the Trump administration in early 2019 under which undocumented migrants seeking admission to the United States via Mexico must await their court proceedings in Mexico.

Mr. Mayorkas said he recognized that MPP "likely contributed to reduced migratory flows," but did so "by imposing substantial and unjustifiable human costs on the individuals who were exposed to harm while waiting in Mexico." Among other things, he noted that "significant evidence indicates that individuals awaiting their court hearings in Mexico under MPP were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited by exploiting migrants' vulnerabilities." He concluded that policies being pursued by the Biden-Harris administration will

more effectively address migratory flows "while holding true to our nation's values."

Mr. Mayorkas previously concluded that the program should be terminated and announced that decision in a June 1, 2021, memorandum, but a U.S. district court in *Texas v. Biden* vacated that memo and remanded the matter to the Department of Homeland Security for further consideration. Following issuance of Mr. Mayorkas' decision, "the termination of MPP will be implemented as soon as practicable after a final judicial decision to vacate the *Texas* injunction," the memo states.

#### Details:

- "Termination of the Migrant Protection Protocols," memorandum from Secretary Mayorkas, Oct. 29, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_1029\\_mpp-termination-memo.pdf](https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf)
- "Migrant Protection Protocols," DHS, Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

#### [Back to Top](#)

### **DHS Issues New Guidelines on Avoiding Enforcement Actions in or Near 'Protected Areas'**

Alejandro Mayorkas, Secretary of Homeland Security, announced new guidelines for enforcement actions in or near "protected areas." The memo states, "To the fullest extent possible, we should not take an enforcement action in or near a location that would restrain people's access to essential services or engagement in essential activities."

A non-exhaustive list of protected areas includes schools; medical or mental health care facilities; places of worship or religious study; places where children gather; social services facilities; places where disaster or emergency services are provided; funerals; weddings; and ongoing parades, demonstrations, or rallies.

The memo includes exceptions to be made, such as when there is a national security threat or imminent risk of death, violence, or physical harm.

#### Details:

- "Guidelines for Enforcement Actions in or Near Protected Areas," memorandum from Secretary Mayorkas, Oct. 27, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf)

[Back to Top](#)

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**Cyrus Mehta** delivered the Professor K.D. Irani Memorial Lecture 2021 at the Zoroastrian Association of Greater New York on October 30, 2021. The topic of the lecture was "Legal Ethics in Contemporary Times." Further details can be found at <https://zagny.org/2021-professor-k-d-irani-memorial-lecture/>

**Mr. Mehta** and **Kaitlyn Box** published an article entitled "CSPA Triumphs in Cuthill v. Blinken: Child of Parent who Naturalizes Should Not be Penalized" in 26 Bender's Immigration Bulletin 1665 (October 15, 2021).

[Back to Top](#)