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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - NOVEMBER 08, 2021

Posted on November 8, 2021 by Cyrus Mehta

Headlines:

House Budget Reconciliation Bill Retains High-Skilled Immigrant Provisions, Would Impose Fee Increases – The House of Representatives' draft social spending bill contains several immigration measures, including provisions paving the way for high-skilled scientists and engineers, and raising immigration-related fees.

CDC Issues Order for Negative Pre-Departure COVID-19 Test or Documentation of Recovery from COVID-19 for All Arriving Air Passengers – The Centers for Disease Control and Prevention issued an order, effective November 8, 2021, requiring air passengers two years of age and older boarding flights to the United States to present documentation related to COVID-19 testing or recovery.

Labor Dept. Responds to Stakeholder Requests to Raise H-2B Visa Cap for First Half of FY 2022 – The Department noted that it reached the congressionally mandated cap of 33,000 H-2B visas on September 30, 2021.

USCIS Expands Credit Card Payment Pilot Program to California Service Center – The California Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, for petitioners filing Form I-129, Petition for a Nonimmigrant Worker, for O and P nonimmigrants.

Justice Dept. Settles With Construction Company to Resolve Immigration-Related Discrimination Claims – Under the settlement, Priority Construction will pay $40,600 in civil penalties and conduct enhanced U.S. worker recruitment and advertising for future positions. The settlement also requires Priority Construction to be subject to monitoring and reporting requirements and train employees on how to avoid discrimination.

ABIL Global: Canada – This article discusses recent developments in COVID-19-related border measures.

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House Budget Reconciliation Bill Retains High-Skilled Immigrant Provisions, Would Impose Fee Increases

The House of Representatives' 2,135-page draft budget reconciliation bill retains several immigration measures, including provisions paving the way for high-skilled scientists and engineers, and raising immigration-related fees. It also would provide for up to 10 years of work authorization and protection from removal for undocumented people who have been in the United States since before 2011, $2.8 billion for the Department of Homeland Security to reduce processing backlogs, and recapturing unused green cards that would otherwise expire each year. It remains to be seen whether the bill will become law. A vote in the House is expected in the next few weeks.

Provisions for High-Skilled Immigrants

The bill's provisions would allow an employee in the backlog of approved legal immigration applications to pay a supplemental fee of $5,000 and file for adjustment of status without waiting for a priority date to become available.

Fee Increases

Also among the provisions in the bill are several immigration-related fee increases, including a measure to add a supplemental fee of $500 to existing fees for H-1B petitions, thus further killing the "cheap labor" myth about why companies hire H-1B workers.

According to a study by the National Foundation for American Policy (NFAP) that considered overall costs, "employers pay government-imposed fees and attorney costs of up to $16,560 for an initial H-1B petition and $28,620 for the combined cost of an initial H-1B petition and an extension." The new fee would increase the cost further. Mandated H-1B fees primarily fund scholarships for U.S. students and training for U.S. workers, according to NFAP.

Other immigration-related fees that would be imposed by the House budget

reconciliation bill, if passed, include:

- $100 for certain family-sponsored immigrant visa petitions (Form I-130)
- $800 for each employment-based immigrant visa petition (Form I-140)
- $15,000 for each employment-based fifth preference petition (Form I-526)
- $19 for each Form I-94/I-94W issued to nonimmigrants who enter the United States
- $250 for each F-1 and M-1 nonimmigrant student and J-1 exchange visitor to be paid by the approved educational institution or designated exchange visitor program
- $500 for each application to replace a legal permanent resident card that has expired or is expiring
- $500 for each petition for E, H-1B, L, O, or P status (Form I-129)
- $500 for each application to change or extend nonimmigrant status (Form I-539)
- $500 for applications for employment authorization (Form I-765) filed by spouses of certain nonimmigrants, students seeking optional practical training, and applicants for adjustment of status
- $75 for each approved nonimmigrant visa

Details:

- "Build Back Better Act," H.R. 5376 (House budget reconciliation bill), Nov. 3, 2021, https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf
- Immigration provisions of the budget reconciliation bill, https://judiciary.house.gov/uploadedfiles/judiciary_committee_print.pdf
- Bill section-by-section summary, https://rules.house.gov/sites/democrats.rules.house.gov/files/Section_by_Section_BBB_RCP117-18__.pdf
- "House Bill Keeps Immigration measures for High-Skilled Immigrants," Forbes, Nov. 1, 2021, https://www.forbes.com/sites/stuartanderson/2021/11/01/house-bill-keeps-immigration-measures-for-high-skilled-immigrants/?sh=2001d4b9168e
- "New Increase in H-1B Visa Fees Further Shatters 'Cheap Labor' Myth," Forbes, Nov. 1, 2021, https://www.forbes.com/sites/stuartanderson/2021/11/01/new-increase-i

n-h-1b-visa-fees-further-shatters-cheap-labor-myth/?sh=20f005c15b15

- "Employer-Paid H-1B Fees Have Funded Nearly 90,000 College Scholarships; Companies Have Paid $5 Billion in Government-Mandated Fees to Hire H-1B Visa Holders Since 1999," NFAP press release, April 1, 2019, https://nfap.com/wp-content/uploads/2019/04/H-1B-Visa-Fees.DAY-OF-RELEASE.April-2019-1.pdf
- "NFAP Policy Brief: Employer-Paid H-1B Visa Fees for College Scholarships and Job Training," April 2019, https://nfap.com/wp-content/uploads/2019/04/Employer-Paid-H-1B-Visa-Fees.NFAP-Policy-Brief.April-2019-2.pdf

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CDC Issues Order for Negative Pre-Departure COVID-19 Test or Documentation of Recovery from COVID-19 for All Arriving Air Passengers

The Centers for Disease Control and Prevention (CDC) issued an order, effective November 8, 2021, requiring air passengers two years of age and older boarding flights to the United States to present:

(1) Paper or digital documentation of a negative pre-departure viral test result for SARS CoV-2, the virus that causes COVID-19, that meets one of the following requirements:

- For passengers who are fully vaccinated against COVID-19, the viral test must be conducted on a specimen collected no more than three days before the flight's departure from a foreign country.
- For passengers not fully vaccinated against COVID-19, the viral test must be conducted on a specimen collected no more than one day before the flight's departure from a foreign country.

Or—

(2) Paper or digital documentation of recovery from COVID-19 in the form of both:

- A positive viral test result conducted on a specimen collected no more than 90 days before the flight; and
- A letter from a licensed health care provider or public health official stating that the passenger has been cleared for travel.

Details:

- CDC notice, 86 Fed. Reg. 61252 (Nov. 5, 2021), https://www.federalregister.gov/documents/2021/11/05/2021-24388/requirement-for-negative-pre-departure-covid-19-test-result-or-documentation-of-recovery-from

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Labor Dept. Responds to Stakeholder Requests to Raise H-2B Visa Cap for First Half of FY 2022

In response to stakeholder requests to raise the H-2B visa cap for the first half of fiscal year 2022, the Department of Labor (DOL) noted that it reached the congressionally mandated cap of 33,000 H-2B visas on September 30, 2021. DOL said it encourages employers seeking workers "to visit the almost 2,400 American Job Centers (AJC) nationwide to find and hire talented workers, as well as to train and retain qualified workers." DOL also suggested that employers consider hiring veterans.

DOL also noted that the Secretary of Homeland Security has "time-limited, discretionary authority to increase the H-2B cap beyond the number set forth in the INA after consultation with the Secretary of Labor." DOL said it will "continue working collaboratively with our partners at DHS in an ongoing effort to ensure effective operation of the H-2B program."

Details:

- DOL announcement, Nov. 3, 2021, https://www.dol.gov/agencies/eta/foreign-labor

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USCIS Expands Credit Card Payment Pilot Program to California Service Center

As part of U.S. Citizenship and Immigration Services' (USCIS) credit card payment pilot program, the California Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, for petitioners filing Form I-129, Petition for a Nonimmigrant Worker, for O and P nonimmigrants.

At the end of the pilot, USCIS will evaluate the results and determine the next

steps for expanding this payment option for other forms or other service centers. USCIS said the goal of this pilot is "to bring USCIS one step closer to accepting digital payments using a credit card at all service centers." The program is available at the Nebraska, Texas, and Vermont service centers.

Details:

- USCIS alert, Nov. 5, 2021, https://www.uscis.gov/newsroom/alerts/uscis-expands-credit-card-payment-pilot-program-to-california-service-center

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Justice Dept. Settles With Construction Company to Resolve Immigration-Related Discrimination Claims

The Department of Justice (DOJ) reached a settlement agreement with Priority Construction Corporation, based in Baltimore, Maryland. The settlement resolves claims that Priority Construction violated the anti-discrimination provision of the Immigration and Nationality Act (INA) by failing to consider workers in the United States (such as U.S. citizens, U.S. nationals, asylees, refugees, and recent lawful permanent residents) for employment opportunities.

DOJ's investigation determined that for at least several months in 2019, Priority Construction discriminated against applicants in the United States by failing to fully and fairly consider them for temporary laborer positions, due to the company's preference for H-2B visa workers. Specifically, Priority Construction claimed that it could not find sufficient qualified U.S. workers, when in fact it had not fairly assessed the local applicants who had applied. The company also attempted to discourage U.S. workers from applying by putting unnecessarily restrictive job requirements in a 2019 job announcement, DOJ said, such as three months of experience, when it would have accepted workers with one month of experience.

Under the settlement, Priority Construction will pay $40,600 in civil penalties and conduct enhanced U.S. worker recruitment and advertising for future positions. The settlement also requires Priority Construction to be subject to monitoring and reporting requirements and train employees on how to avoid discrimination under the INA.

Details:

- DOJ press release, Oct. 27, 2021, https://www.justice.gov/opa/pr/justice-department-settles-construction-company-resolve-immigration-related-discrimination

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ABIL Global: Canada

This article discusses recent developments in COVID-19-related border measures.

The government of Canada has eased border measures for fully vaccinated foreign travelers entering Canada. All fully vaccinated foreign nationals are now permitted to enter Canada for discretionary (non-essential) travel. Also, in August, the government opened Canada's borders to fully vaccinated U.S. citizens and permanent residents.

Below are questions and answers summarizing these developments:

What changed?

Fully vaccinated travelers, from any country, can now travel to Canada for discretionary (non-essential) purposes and will not be subject to a 14-day quarantine requirement.

To be considered fully vaccinated, travelers must have received two doses or a combination of the Pfizer, Moderna, or AstraZeneca/COVISHIELD vaccines, or a single dose of the Janssen (Johnson & Johnson) vaccine, at least 14 days before entering Canada.

What requirements are still in place?

For travelers who are not fully vaccinated, there are no changes to Canada's mandatory testing requirements, and such travelers still must complete a mandatory 14-day quarantine requirement, subject to limited exceptions.

Foreign nationals who are fully vaccinated continue to be required to have a negative pre-arrival COVID-19 molecular test result taken no more than 72 hours before the scheduled departure time of their last direct flight to Canada, or no more than 72 hours before their entry into Canada if arriving by land or water. Travelers who have already had COVID-19 and recovered can provide proof of a positive COVID-19 molecular test taken at least 14 and no more than

180 days before the initial scheduled departure time of their aircraft, or their entry into Canada by water or land. If arriving by air, they must provide proof of their test result to the airline before boarding their flight to Canada.

As has been the case since August 9, 2021, fully vaccinated travelers do not need to take a test on arrival unless they are randomly selected to complete a day-one COVID-19 molecular test. All travelers who are randomly selected for the border testing surveillance program must complete the mandatory arrival test; however, they do not need to quarantine while awaiting the result.

Fully vaccinated travelers must also be asymptomatic, have a paper or digital copy of their vaccination documentation in English or French (or certified translation, along with the original), and provide COVID-19-related information electronically through the ArriveCAN app before arrival in Canada. Travelers should ensure that they are using the updated version of ArriveCAN (available as of September 7, 2021) and that they include unvaccinated children under 18 years and dependent adults in their ArriveCAN submission.

They must still present a suitable quarantine plan, and be prepared to quarantine, in case it is determined at the border that they do not meet all of the conditions required to be exempt from quarantine. As with all other exempt travelers, they must follow public health measures in place, such as wearing a mask when in public and keeping a copy of their vaccine and test results, as well as a list of close contacts for 14 days after entry to Canada.

Because the situation with COVID-19 worldwide remains in a state of flux, travelers should check for updates before traveling.

Details:

- COVID-19: Travel, Testing and Borders, https://travel.gc.ca/travel-covid
- COVID-19 Travel: Checklists for Requirements and Exemptions, https://travel.gc.ca/travel-covid/travel-restrictions/exemptions
- Travel advisory, Government of Canada, https://www.canada.ca/en/border-services-agency/news/2021/09/travel-advisory-reminder--on-september-7-new-measures-for-fully-vaccinated-international-travellers-to-canada-will-come-into-force.html

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Cyrus Mehta was quoted by Forbes in "House Bill Keeps Immigration Measures for High-Skilled Immigrants." 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. An employer that facilitates permanent residence will be more attractive to noncitizen employees. An individual can pay the $5,000, both under current law and the bill."
https://www.forbes.com/sites/stuartanderson/2021/11/01/house-bill-keeps-immigration-measures-for-high-skilled-immigrants/?sh=1ecae8f2168e

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