



IMMIGRATION UPDATE - NOVEMBER 22, 2021

Posted on November 22, 2021 by Cyrus Mehta

Headlines:

Build Back Better Act, Passed in House, Includes Immigration Provisions; Senate's Next – The House of Representatives passed the "Build Back Better" budget reconciliation bill. It includes \$100 billion toward immigration measures, including provisions paving the way for employees and others waiting in backlogs, and raising some 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 living 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.

[USCIS Conducts Third Random Selection From Previously Submitted FY 2022 H-1B Cap Registrations](#) – On November 19, 2021, USCIS selected additional registrations to reach the FY 2022 H-1B numerical allocations, including the advanced degree exemption. This follows a second random selection in July 2021, after the initial selection in March.

[New Work Authorization Extensions Affect Form I-9 Completion for Certain Employees](#) – USCIS automatically extended work authorization for L-2 nonimmigrants who are the dependent spouses of L-1 nonimmigrants, and E nonimmigrants who are the dependent spouses of E-1, E-2, and E-3 nonimmigrants. USCIS also automatically extended work authorization for certain H-4 nonimmigrants who are dependent spouses of H-1B nonimmigrants.

[China-Mainland Born EB-5 Non-Regional Center Visa Categories are Current for December](#) – The Department of State's Visa Bulletin for December 2021 notes that China-mainland born EB-5 (C5 and T5) non-regional center visa categories

are "Current" for December.

[ESTA Application Revisions to Include Mandatory Social Media Collection; DHS Seeks Public Comment](#) – U.S. Customs and Border Protection is amending the ESTA application to change social media collection from optional to mandatory. CBP also will begin collecting biometric data for identity confirmation on ESTA applications.

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Build Back Better Act, Passed in House, Includes Immigration Provisions; Senate's Next

The House of Representatives passed the \$1.75 trillion "Build Back Better Act" budget reconciliation bill, 220-213, on November 19, 2021. It includes \$100 billion toward immigration measures, including provisions paving the way for employees and others waiting in backlogs, and increases in some 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 living in the United States since before 2011, and \$2.8 billion for the Department of Homeland Security to reduce processing backlogs. The House bill would also recapture more than 200,000 unused green cards that would otherwise expire each year.

In addition, it would provide for diversity visas for those refused a visa, prevented from seeking admission, or denied admission to the United States solely because of certain executive orders and limitations on visa processing, visa issuance, travel and other effects associated with the COVID-19 pandemic.

The Senate will take up the bill next, likely in December. It remains to be seen whether the bill will become law in its current version or will be revised or defeated. Among various factors, Senate Parliamentarian Elizabeth MacDonough earlier rejected several previous immigration-related provisions in the draft bill, such as a path to citizenship for undocumented immigrants, but observers believe some provisions may survive her scrutiny, such as one that would recover roughly 400,000 currently unused green cards.

Below are selected highlights of the House-passed version of the "Build Back Better Act":

Green Card Provisions for Immigrants Waiting in Backlogs

The House bill's provisions would allow an employee waiting for more than two years 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. Those with approved green card applications awaiting visa availability could pay \$1,500 to essentially jump the queue and file for adjustment.

Work Permits

As noted above, the House bill would allow about seven million undocumented immigrants living in the United States since before 2011 to stay in the United States through parole, and to be eligible for work permits valid for five years (renewable once), authorization to travel, and driver's licenses if they file an application and pay a fee. They could also apply for health insurance under the Affordable Care Act. They would need to pass background checks.

Fee Increases

Examples of supplemental immigration-related fees that would be imposed by the House bill, if passed, include:

- \$100 for certain family-sponsored immigrant visa petitions (Forms I-130)
- \$800 for each employment-based immigrant visa petition (Forms I-140)
- \$15,000 for each employment-based fifth preference petition (Forms I-526)

Details:

- "Build Back Better Act" (most of the immigration-related provisions are on pp. 899–914), H.R. 5376, <https://bit.ly/3HJ06Gs>
- "President Biden Announces the Build Back Better Framework," White House, Oct. 28, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/28/president-biden-announces-the-build-back-better-framework/>
- House Democrats Just Passed Build Back Better—Here's What's Included," CNBC, Nov. 19, 2021, <https://www.cnbc.com/2021/11/19/house-dems-just-passed-build-back-be>

[tterheres-whats-included.html](#)

- "How the House Spending Bill Sets a Path to Legalization for Undocumented Immigrants," Washington Post, Nov. 19, 2021, <https://www.washingtonpost.com/us-policy/2021/11/19/immigration-biden-spending-bill/> (subscription)
- "What Will the Senate Do With the Build Back Better Bill?," Time, Nov. 19, 2021, <https://time.com/6121614/build-back-better-spending-bill-senate/>

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USCIS Conducts Third Random Selection From Previously Submitted FY 2022 H-1B Cap Registrations

U.S. Citizenship and Immigration Services (USCIS) announced that on November 19, 2021, it selected additional registrations to reach the fiscal year (FY) 2022 H-1B numerical allocations, including the advanced degree exemption. This follows a second random selection in July 2021, after the initial selection in March.

USCIS said the petition filing period will begin November 22, 2021, and close on February 23, 2022. Those with selected registrations will receive a selection notice in their myUSCIS accounts with details about when and where to file.

Details:

- USCIS alert, Nov. 19, 2021, <https://www.uscis.gov/newsroom/alerts/uscis-conducts-third-random-selection-from-previously-submitted-fy-2022-h-1b-cap-registrations>

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New Work Authorization Extensions Affect Form I-9 Completion for Certain Employees

Effective November 12, 2021, U.S. Citizenship and Immigration Services (USCIS) automatically extended work authorization for L-2 nonimmigrants who are the dependent spouses of L-1 nonimmigrants, and E nonimmigrants who are the dependent spouses of E-1, E-2, and E-3 nonimmigrants. USCIS also automatically extended work authorization for certain H-4 nonimmigrants who are dependent spouses of H-1B nonimmigrants.

Such individuals may receive automatic extensions of their employment authorization documents.

Details:

- "New Requirements Affecting Form I-9 Completion for Certain Employees," USCIS, Nov. 17, 2021, <https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/new-requirements-affecting-form-i-9-completion-for-certain-employees>
- "Automatic Extensions Based on a Timely Filed Application to Renew Employment Authorization and/or Employment Authorization Document," Handbook for Employers, Nov. 16, 2021, USCIS, <https://bit.ly/3FwnW6k>

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China-Mainland Born EB-5 Non-Regional Center Visa Categories are Current for December

The Department of State's Visa Bulletin for December 2021 notes that China-mainland born EB-5 (C5 and T5) non-regional center visa categories (i.e., "direct" EB-5 investors) are "Current" for December. Both the filing date and final action date are "Current," meaning that in December, qualified Chinese EB-5 applicants in the visa phase can get green cards regardless of their priority date.

If China-mainland-born number use were to increase at a level that could potentially jeopardize visa availability under the overall FY 2022 employment-based fifth preference annual limit, it would then be necessary to once again impose a final action date, the bulletin says.

The bulletin also notes that:

- Final action dates for the EB-5 (I5 and R5) regional center categories are "Unavailable" for December, but if legislative action extends this category for December, the final action dates would immediately become "Current" for December for all countries except China-mainland born I5 and R5, which would be subject to a November 22, 2015, final action date.
- The non-minister special immigrant program expires on December 3, 2021. No SR green cards may be issued overseas or final action taken on related adjustment of status cases after that date. Visas issued before this date will have a validity date of December 2, 2021, and all individuals

seeking admission as non-minister special immigrants must be admitted into the United States by midnight, December 2, 2021. The final action date for this category is "Current" for December for all countries except for El Salvador, Guatemala, Honduras, and Mexico, which are subject to specific final action dates for December. If there is no legislative action extending this category for fiscal year 2022, the final action date would immediately become "Unavailable" for December for all countries effective December 3, 2021.

Details:

- Visa Bulletin for December 2021, Dept. of State, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html>
- Adjustment of Status Filing Charts From the Visa Bulletin (includes information on dates for filing and final action dates), <https://bit.ly/3HIZY9J>

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ESTA Application Revisions to Include Mandatory Social Media Collection; DHS Seeks Public Comment

The Department of Homeland Security issued a 60-day notice and request for comments on revisions to the Electronic System for Travel Authorization (ESTA) for Visa Waiver Program travelers. Specifically, U.S. Customs and Border Protection is amending the ESTA application to change social media collection from optional to mandatory. CBP also will begin collecting biometric data for identity confirmation on ESTA applications. ESTA applicants will be prompted to take a selfie or "live" photo "to conduct a 'liveness' test to determine if the ESTA application is interfacing with a physically present human being and not an inanimate object, or if it is a photo of someone other than the lawful passport holder." Respondents will be able to scan their passport biographic page to submit biographic information, including passport photo.

CBP will also implement the ESTA mobile application for Visa Waiver Program travelers. The mobile app will collect biometric data.

Details:

- "Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, Electronic System for Travel Authorization (ESTA)," 60-

day notice and request for comments; revision, 86 Fed. Reg. 64508 (Nov. 18, 2021),

<https://www.govinfo.gov/content/pkg/FR-2021-11-18/pdf/2021-25147.pdf>

- ESTA application, <https://esta.cbp.dhs.gov/>

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Firm in the News

Cyrus Mehta was quoted by India West in "USCIS Reaches Settlement With H-4 Workers, Allowing Automatic Renewal of Employment Authorization for Some." He tweeted, "USCIS needs to be sued again. H-4s who file EAD renewals concurrently with an I-539 extension may receive only a brief auto-extension, just to the end of their current I-94 date, but most existing EADs end with the current I-94 date." <https://bit.ly/30NZi24>

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