



IMMIGRATION UPDATE - DECEMBER 27, 2021

Posted on December 27, 2021 by Cyrus Mehta

Headlines:

[State Dept. Expands Waivers of In-Person Interviews for Certain Temporary Nonimmigrant Visa Applicants](#) – The Secretary of State, in consultation with the Department of Homeland Security, has authorized consular officers to waive the in-person interview requirement for certain temporary employment nonimmigrant visa applicants who have a petition approved USCIS.

[Restrictions on Travelers From Southern African Countries To Be Lifted December 31](#) – In addition to South Africa, the other countries include Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, and Zimbabwe.

[For First Time, DHS to Supplement H-2B Cap With Additional Visas in First Half of Fiscal Year](#) – The Departments of Homeland Security (DHS) and Labor (DOL) announced a forthcoming joint temporary final rule to make available an additional 20,000 H-2B temporary nonagricultural worker visas for FY 2022. These visas will be set aside for U.S. employers seeking to employ additional workers on or before March 31, 2022.

[OFLC Reminds Employers That H-2B Filing Window Starts January 1](#) – The filing window opens on January 1, 2022, for employers of H-2B workers to submit Form ETA-9142B, Application for Temporary Employment Certification, with appendices, requesting work start dates of April 1, 2022, or later. OFLC warned that H-2B applications requesting an April 1, 2022, work start date will be denied if they are filed before January 1, 2022.

[State Dept. Updates Guidance on F-1, M-1 Student Intent to Depart and Residence Abroad Requirements](#) – The Department of State updated its Foreign Affairs Manual on intent to depart and residence abroad requirements for F-1 and M-1 students. The guidance may also be useful for J-1 exchange visitors

and Afghan scholars.

[DHS Withdraws H-1B Selection Final Rule](#) – Following a related action by the Department of Labor in response to a court order, the DHS withdrew a rule that would have changed the way USCIS selects H-1B registrations submitted by prospective petitioners seeking to file an H-1B cap-subject petition by ranking and selecting registrations based generally on corresponding wage levels.

[U.S. Passport Fees To Rise December 27](#) – The fee for a U.S. passport book will increase by \$20 on December 27, 2021, the Department of State announced.

[CBP Confirms Lifting of Temporary Travel Restrictions Between the United States and Canada, Mexico](#) – U.S. Customs and Border Protection published notices on December 23, 2021, announcing the lifting on November 8, 2021, of temporary restrictions that applied to non-essential travel by fully vaccinated travelers with proof of COVID-19 vaccination status entering via land ports and ferry service along the U.S. borders with Canada and Mexico.

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State Dept. Expands Waivers of In-Person Interviews for Certain Temporary Nonimmigrant Visa Applicants

The Secretary of State, in consultation with the Department of Homeland Security, has authorized consular officers to waive the in-person interview requirement for certain temporary employment nonimmigrant visa applicants who have a petition approved by U.S. Citizenship and Immigration Services.

The new authorization applies to temporary workers applying for H-1, H-3, H-4, L, O, P, and Q visas who meet certain conditions, including that they are applying for a visa in their country of nationality or residence, the Department of State (DOS) said. In addition, the Secretary extended previously approved policies to waive the visa interview for certain students, professors, research scholars, short-term scholars, and specialists (F, M, and academic J visa applicants) through the end of 2022.

Additionally, the Secretary of State has extended consular officers' ability to waive the in-person interview through December 31, 2022, for the following other categories of nonimmigrant visas: temporary agricultural and non-agricultural workers (H-2 visas), students (F and M visas), and student exchange

visitors (academic J visas).

One change to the previous policy, DOS noted, is that applicants eligible for the waiver authority because they are citizens or nationals of a Visa Waiver Program (VWP) participating country must have previously traveled to the United States using an authorization obtained via the Electronic System for Travel Authorization to qualify.

DOS said it encourages applicants to check the website of the relevant U.S. embassy or consulate to confirm the level of services currently offered and to find guidelines for applying for a visa without an interview. Embassies and consulates may still require an in-person interview on a case-by-case basis and depending on local conditions, the agency noted.

Details:

- "Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas," Dept. of State, Dec. 23, 2021, <https://bit.ly/3HbODOx>
- "Expanded Interview Waivers for Certain Nonimmigrant Visa Applicants," Dept. of State, Media Note, Dec. 23, 2021, <https://www.state.gov/expanded-interview-waivers-for-certain-nonimmigrant-visa-applicants/>
- "Limited Operations at U.S. Consulates Keep Visa Holders on Edge," Roll Call, Dec. 22, 2021, <https://www.rollcall.com/2021/12/22/limited-operations-at-us-consulates-keep-visa-holders-on-edge/>

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Restrictions on Travelers From Southern African Countries To Be Lifted December 31

Kevin Munoz, White House Assistant Press Secretary, tweeted on December 24, 2021, that temporary travel restrictions the Biden administration imposed in November on foreign travelers from South Africa and seven other countries in the region, due to the spread of the Omicron variant of COVID-19, are expected be lifted on December 31, 2021, following recommendations from the Centers for Disease Control and Prevention. In addition to South Africa, the other countries include Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, and Zimbabwe.

Those traveling from South Africa and the other seven countries will now need to meet the same requirements as other foreign travelers to the United States: be fully vaccinated and obtain a negative COVID-19 test within a day of their departure to the United States.

Details:

- Tweet from Kevin Munoz, White House Assistant Press Secretary, Dec. 24, 2021, <https://twitter.com/kmunoz46>

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For First Time, DHS to Supplement H-2B Cap With Additional Visas in First Half of Fiscal Year

The Departments of Homeland Security (DHS) and Labor (DOL) announced on December 20, 2021, the forthcoming publication of a joint temporary final rule to make available an additional 20,000 H-2B temporary nonagricultural worker visas for fiscal year (FY) 2022. These visas will be set aside for U.S. employers seeking to employ additional workers on or before March 31, 2022, DHS said.

The agency said, "This supplemental cap marks the first time that DHS is making additional

H-2B visas available in the first half of the fiscal year. Earlier this year, USCIS received enough petitions for returning workers to reach the additional 22,000 H-2B visas made available under the FY 2021 H-2B supplemental visa temporary final rule."

The supplemental H-2B visa allocation consists of 13,500 visas available to returning workers who received an H-2B visa, or were otherwise granted H-2B status, during one of the last three fiscal years, DHS noted. The remaining 6,500 visas, which are exempt from the returning worker requirement, are reserved for nationals of Haiti and the Northern Triangle countries of Honduras, Guatemala, and El Salvador.

Details:

- DHS release, Dec. 20, 2021, <https://www.dhs.gov/news/2021/12/20/first-time-dhs-supplement-h-2b-cap-additional-visas-first-half-fiscal-year>

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OFLC Reminds Employers That H-2B Filing Window Starts January 1

The Department of Labor's Office of Foreign Labor Certification (OFLC) reminded employers and other stakeholders that the filing window for employers of H-2B workers opens on January 1, 2022, to submit Form ETA-9142B, Application for Temporary Employment Certification, with appendices, requesting work start dates of April 1, 2022, or later. OFLC warned that H-2B applications requesting an April 1, 2022, work start date will be denied if they are filed before January 1, 2022.

OFLC said it will randomly order for processing all H-2B applications requesting a work start date of April 1, 2022, that are filed during the initial three calendar days (January 1-3, 2022) using randomization procedures. Each day, from January 2 through January 4, 2022, OFLC will publish on the Foreign Labor Application Gateway System the number of H-2B applications received to date and the total number of requested worker positions on those applications.

Details:

- "H-2B Application Filing Timelines for 2022 Peak Filing Season," OFLC, Dec. 20, 2021, <https://www.dol.gov/agencies/eta/foreign-labor/news>

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State Dept. Updates Guidance on F-1, M-1 Student Intent to Depart and Residence Abroad Requirements

The Department of State (DOS) updated its Foreign Affairs Manual (FAM) on intent to depart and residence abroad requirements for F-1 and M-1 students. The guidance may also be useful for J-1 exchange visitors and Afghan scholars.

The guidance states that student visa applicants must possess a present intent to depart the United States at the conclusion of their approved activities, but that such intentions may be subject to, or even likely to, change and that this is not a sufficient reason to deny a visa. Further, the guidance notes, the present intent to depart does not imply a need to return to the country from which they hold a passport; it only means that they must intend to leave the United States upon completion of studies. A student can be considered as maintaining a residence abroad if he or she intends to return to reside with parents or guardians.

The guidance notes that students, who are typically young, are at a phase in life

where they are not expected to necessarily have long-range plans or be able to fully explain what their plans are after they finish their studies. The guidance notes that the context of the residence abroad requirement for student visas inherently differs from the context for B visitor or other short-term visas: "It is natural that the student does not possess ties of property, employment, and continuity of life typical of B visa applicants."

Details:

- 9 FAM 402.5-5(E)(1)(U), Residence Abroad Required, <https://fam.state.gov/fam/09FAM/09FAM040205.html>

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DHS Withdraws H-1B Selection Final Rule

The Department of Homeland Security (DHS) published a final rule on December 22, 2021, that withdraws the "Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions" final rule, also known as the H-1B Selection Final Rule, issued January 8, 2021. That rule was vacated by the U.S. District Court for the Northern District of California.

On September 15, 2021, the court in *Chamber of Commerce of the United States of America et al. v. United States Department of Homeland Security, et al.*, No. 4:20-cv-07331 (N.D. Cal. March 19, 2021) vacated the H-1B Selection Final Rule. The rule would have changed the way USCIS selects H-1B registrations (or petitions, if registration is suspended) submitted by prospective petitioners seeking to file an H-1B cap-subject petition by ranking and selecting registrations based generally on corresponding wage levels.

DHS's action follows a similar final rule from the Department of Labor, effective December 13, 2021.

Details:

- DHS alert, Dec. 21, 2021, <https://www.uscis.gov/newsroom/alerts/dhs-withdraws-h-1b-selection-final-rule>
- "Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions," 86 Fed. Reg. 72516 (Dec. 22, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-22/pdf/2021-27714.pdf>

- "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States, Implementation of Vacatur," 86 Fed. Reg. 70729 (Dec. 13, 2021), <https://bit.ly/3yg4s3k>

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U.S. Passport Fees To Rise December 27

The fee for a U.S. passport book will increase by \$20 on December 27, 2021, the Department of State (DOS) announced, attributing the rise to a need "to ensure we continue to produce one of the most secure travel and identity documents in the world."

As examples, the current fee for renewing a U.S. passport book by mail is \$110; as of December 27, that fee will rise by 18.2% to \$130.

DOS also said it plans to launch its long-awaited online passport renewal system by fall 2022. The system is undergoing pilot-testing by federal employees and contractors. President Biden issued an executive order on December 13, 2021, requiring a system that does not require physical documents to be mailed.

Details:

- "Fees for U.S. Passports Are About to Pop Way Up," Dec. 22, 2021, <https://www.cnn.com/travel/article/us-passport-fee-increase/index.html>
- Tweet from Dept. of State, Dec. 20, 2021, <https://twitter.com/TravelGov/status/1472997744600096771>
- "Apply Early and Save," Dept. of State, <https://travel.state.gov/content/travel/en/passports/how-apply/fees.html>
- Passport fee chart (current fees before Dec. 27), https://travel.state.gov/content/dam/passports/forms-fees/Passport%20Fees%20Chart_TSG_JAN2021.pdf
- Dept. of State fee calculator, <https://travel.state.gov/content/travel/en/passports/how-apply/fees/fee-calculator.html>
- "State Dept. Expects Long-Awaited Online Passport Renewal System to Launch by Fall 2022," Federal News Network, Dec. 17, 2021, <https://bit.ly/3mxBHdW>

- Executive Order, White House, Dec. 13, 2021, <https://bit.ly/3H39fbI>

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CBP Confirms Lifting of Temporary Travel Restrictions Between the United States and Canada, Mexico

U.S. Customs and Border Protection (CBP) published notices on December 23, 2021, announcing the lifting on November 8, 2021, of temporary restrictions that applied to non-essential travel by fully vaccinated travelers with proof of COVID-19 vaccination status entering via land ports and ferry service along the U.S. borders with Canada and Mexico.

Details:

- CBP notice (Canada), 86 Fed. Reg. 72842 (Dec. 23, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-23/pdf/2021-28063.pdf>
- CBP notice (Mexico), 86 Fed. Reg. 72843 (Dec. 23, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-23/pdf/2021-28064.pdf>

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