



IMMIGRATION UPDATE - FEBRUARY 22, 2022

Posted on February 22, 2022 by Cyrus Mehta

Headlines:

[USCIS Urges Eligible Applicants to Switch Employment-Based Categories](#) – USCIS) is encouraging eligible applicants to consider requesting to transfer the underlying basis of their adjustment of status applications to the first (priority workers) or second (noncitizens in professions with advanced degrees or with exceptional ability) employment-based preference categories.

[Visa Bulletin for March Includes Updates on Employment-Based Expirations and Retrogressions](#) – The Department of State's Visa Bulletin for March 2022 includes several updates on expiring or retrogressing employment-based visa categories.

[DHS To Propose 'Fair and Humane' Public Charge Rule](#) – According to DHS, the proposed rule would provide "fair and humane treatment" for noncitizens requesting admission to the United States or applying for lawful permanent residence from within the United States.

[DHS Announces National Interest Exception for 'Noncitizen Nonimmigrants' Traveling From Ukraine With a U.S. Citizen or Lawful Permanent Resident](#) – In light of the current situation in Ukraine, Homeland Security Secretary Alejandro Mayorkas announced a national interest exception (NIE) to permit the entry until March 1, 2022, of certain noncitizen nonimmigrants traveling from Ukraine with U.S. citizens or permanent residents.

[Two California Executives Charged With Fraud in Obtaining Dozens of H-1B Specialty Occupation Visas](#) – The indictment alleges that the two executives submitted approximately 85 fraudulent H-1B visa applications and laundered \$1 million in fraud proceeds.

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USCIS Urges Eligible Applicants to Switch Employment-Based Categories

U.S. Citizenship and Immigration Services (USCIS) is encouraging eligible applicants to consider requesting to transfer the underlying basis of their adjustment of status applications to the first (priority workers) or second (noncitizens in professions with advanced degrees or with exceptional ability) employment-based preference categories. USCIS said this is because of the availability of an exceptionally high number of employment-based immigrant visas in these green card categories during fiscal year (FY) 2022.

USCIS explained that the overall employment-based annual limit for fiscal year 2022 is approximately twice as high as usual because it includes all unused family-sponsored visa numbers from FY 2021, which was approximately 140,000.

In addition, USCIS noted, under the relevant statute, any visas not required in the fifth employment-based preference category are made available in the first employment-based preference category, and any visas not required in the first employment-based preference category are made available in the second employment-based preference category.

These visas cannot be made available to applicants in the third employment-based preference category because, given the significant number of noncitizens awaiting visas in the second employment-based preference category, these visas must be used for the second preference category., USCIS said.

Details:

- USCIS alert, Feb. 18, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-urges-eligible-applicants-to-switch-employment-based-categories>
- Green Card for Employment-Based Immigrants (scroll down to "Transfer of Underlying Basis"), <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-employment-based-immigrants>

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Visa Bulletin for March Includes Updates on Employment-Based Expirations and Retrogressions

The Department of State's Visa Bulletin for March 2022 includes the following updates:

- Final action dates for the employment-based fifth preference I5 and R5 regional center visa categories are "Unavailable" for March. If legislative action extends this category for March, the final action dates would immediately become "Current" for March for all countries except China-mainland born I5 and R5, which would be subject to a November 22, 2015, final action date.
- Final action dates have retrogressed for the employment-based fourth and Certain Religious Workers (SR) categories for El Salvador, Guatemala, and Honduras to hold worldwide number use within the maximum allowed under the FY 2022 annual limits.
- The non-minister special immigrant program expired on February 18, 2022. No SR visas may be issued overseas or final action taken on adjustment of status cases in that category.
- The SR category is "Unavailable" for all countries for March. If legislative action extends the category, it will become "Current" effective immediately for all countries except El Salvador, Guatemala, and Honduras, which are subject to a May 1, 2017, final action date, and Mexico, which is subject to an April 1, 2020, final action date.

Details:

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

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DHS To Propose 'Fair and Humane' Public Charge Rule

The Department of Homeland Security (DHS) announced on February 17, 2022, that it will issue a proposed rule soon that would regulate how DHS applies the public charge ground of inadmissibility. The proposed rule would provide "fair and humane treatment" for noncitizens requesting admission to the United States or applying for lawful permanent residence from within the United

States, DHS said. According to reports, the proposed rule is expected to be published on February 24, 2022.

DHS Secretary Alejandro N. Mayorkas said, "Under this proposed rule, we will return to the historical understanding of the term 'public charge' and individuals will not be penalized for choosing to access the health benefits and other supplemental government services available to them."

Under the proposed rule, DHS proposes to define "likely at any time to become a public charge" as "likely to become primarily dependent on the government for subsistence." Consistent with longstanding agency practice, DHS proposes to consider the following public benefits when making a public charge inadmissibility determination:

- Supplemental Security Income (SSI);
- Cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF) program;
- State, Tribal, territorial, and local cash assistance for income maintenance; and
- Long-term institutionalization at government expense.

DHS proposes that it will not consider noncash benefits such as food and nutrition assistance programs, including the Supplemental Nutrition Assistance Program (SNAP), the Children's Health Insurance Program, most Medicaid benefits (except for long-term institutionalization at government expense), housing benefits, and transportation vouchers. DHS would also not consider disaster assistance received under the Stafford Act; pandemic assistance; benefits received via a tax credit or deduction; or Social Security, government pensions, or other earned benefits.

By law, many categories of noncitizens are exempt from the public charge ground of inadmissibility and would not be subject to the proposed rule, DHS noted. Some exempt categories include refugees, asylees, noncitizens applying for or re-registering for temporary protected status (TPS), special immigration juveniles, T and U nonimmigrants, and self-petitioners under the Violence Against Women Act (VAWA).

Details:

- Advance copy of public charge proposed rule, 17, 2022,

https://www.dhs.gov/sites/default/files/2022-02/22_0217_nprm-public-charge_0.pdf

- "Rulemaking on Public Charge Determinations," NAFSA: Association of International Educators, 18, 2022, <https://www.nafsa.org/regulatory-information/rulemaking-public-charge-determinations>

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DHS Announces National Interest Exception for 'Noncitizen Nonimmigrants' Traveling From Ukraine With a U.S. Citizen or Lawful Permanent Resident

In light of the current situation in Ukraine, Homeland Security Secretary Alejandro Mayorkas announced a national interest exception (NIE) to permit the entry until March 1, 2022, of noncitizen nonimmigrants who (1) are traveling with a U.S. citizen or lawful permanent resident; (2) were physically present in Ukraine as of February 10, 2022; and (3) possess valid travel documents allowing them to travel to the United States.

Such individuals can enter the United States without showing proof of COVID-19 vaccination. They will need to arrange for a COVID-19 test within three to five days of arrival and self-quarantine for seven days, among other requirements.

Details:

- Mayorkas statement, https://www.dhs.gov/sites/default/files/2022-02/22_0215_S1_national-interest-exemption_0.pdf

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Two California Executives Charged With Fraud in Obtaining Dozens of H-1B Specialty Occupation Visas

The U.S. attorney's office for the Northern District of California announced that two executives of Perfect VIPs, Inc., which was incorporated in 2010 as a computer chip design product and services company, were indicted on charges of visa fraud and conspiracy to commit visa fraud. One of the executives was also charged with money laundering. The indictment alleges that they submitted approximately 85 fraudulent H-1B visa applications and laundered

\$1 million in fraud proceeds.

Once the applications were approved, instead of employing the workers, the two executives created a pool of H-1B workers and placed them at employment positions with other employers, not with PerfectVIPs, the indictment alleges.

"This practice provided PerfectVIPs an unfair and illegal advantage over employment-staffing firms," the U.S. attorney's office stated. During the period of their conspiracy, the indictment alleges, the other employers paid fees of nearly \$7 million to PerfectVIPs to cover the cost of the H-1B workers' wages and salaries as well as a profit markup for PerfectVIPs.

The company is headquartered in San Jose, California. The executives live in Saratoga and Santa Clara.

Details:

- Media release, U.S. Attorney's Office for the Northern District of California, Feb. 11, 2022,
<https://www.justice.gov/usao-ndca/pr/two-south-bay-executives-charged-fraud-obtaining-specialty-occupation-visas>

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