CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

# IMMIGRATION UPDATE - JUNE 06, 2022

*Posted on June 6, 2022 by Cyrus Mehta*

**Headlines:**

Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022 – U.S. Citizenship and Immigration Services has received enough petitions to reach the cap for the additional 23,500 visas made available for returning workers only, under the recently announced H-2B supplemental cap temporary final rule.

USCIS Releases New Forms for EB-5 Immigrant Investor Program – U.S. Citizenship and Immigration Services has released two new forms under the EB-5 Reform and Integrity Act of 2022.

SEVIS Update: COVID-19 Guidance Extended for Nonimmigrant Students – U.S. Immigration and Customs Enforcement's March 2020 guidance continues for the 2022-23 academic year only for nonimmigrant students who were actively enrolled at a U.S. school on March 9, 2020, and have continuously complied with the terms of their nonimmigrant status. Students who enrolled after March 9, 2020, must adhere to the Student and Exchange Visitor Program's existing regulations regarding online learning.

CBP Expands Biometric Facial Recognition Technology at U.S. International Airports – Travelers arriving at an international airport in the United States will pause for a photo at the primary inspection point. U.S. travelers and foreign nationals who are not required to provide biometrics and wish to opt out of the new biometric process can notify a CBP officer as they approach the primary inspection point.

Public Charge Resources Webpage Updated – Among other updates, a question-and-answer section addresses concerns and misconceptions about the public charge ground of inadmissibility.

ABIL Global: Schengen Area – This article discusses how to calculate the 90/180-days allowance for non-European Union nationals traveling to Schengen countries, and the new Electronic Entry System.

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**Details:**

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## Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022

U.S. Citizenship and Immigration Services (USCIS) announced on May 31, 2022, that it has received enough petitions to reach the cap for the additional 23,500 visas made available for returning workers only, under the recently announced H-2B supplemental cap temporary final rule, which increased by up to 35,000 the cap for additional H-2B nonimmigrant visas through the end of fiscal year (FY) 2022.

The random selection, completed on May 27, included all H-2B cap-subject petitions filed under the H-2B returning worker allotment that were received between May 19 and May 25. Petitions accepted for processing will have a receipt date of May 31, 2022.

USCIS said that petitioners whose workers were not selected for the 23,500 returning worker allotment "are encouraged to refile for workers from El Salvador, Guatemala, Honduras and Haiti while visas for that allotment remain available." The final date for filing petitions for nationals of those countries who are exempt from the returning worker requirement is September 15, 2022, or when the cap is reached, whichever occurs first.

The agency will continue to accept H-2B petitions for workers filing under the El Salvador, Guatemala, Honduras, and Haiti allotment, as well as those that are exempt from the congressionally mandated cap. This includes petitions for:

- Current H-2B workers in the United States petitioning to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of Northern

Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.

Details:

- "Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022," USCIS alert, May 31, 2022, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022
- "Temporary Increase in H-2B Nonimmigrant Visas for FY 2022," USCIS, https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/temporary-increase-in-h-2b-nonimmigrant-visas-for-fy-2022
- "DHS and DOL Announce Availability of Additional H-2B Visas for Second Half of Fiscal Year," USCIS news release, May 16, 2022, https://www.uscis.gov/newsroom/news-releases/dhs-and-dol-announce-availability-of-additional-h-2b-visas-for-second-half-of-fiscal-year

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## USCIS Releases New Forms for EB-5 Immigrant Investor Program

U.S. Citizenship and Immigration Services (USCIS) has released two new forms under the EB-5 Reform and Integrity Act of 2022. The new forms are:

- Form I-956F, Application for Approval of an Investment in a Commercial Enterprise
- Form I-956G, Regional Center Annual Statement

USCIS explained that Form I-956F can only be filed by an approved regional center. Form I-956F is similar in some respects to an "exemplar" submission on Form I-924 under the previous program; however, Form I-956F is required by statute for regional centers to apply for approval of each particular investment offering through an associated new commercial enterprise. Form I-956G takes the place of Form I-924A from the previous program but incorporates the increased statutory reporting requirements.

The next series of forms to be released are Form I-526, Immigrant Petition by Standalone Investor, and Form I-526E, Immigrant Petition by Regional Center Investor. USCIS will notify stakeholders once these forms are available.

Effective June 2, 2022, Forms I-956F and I-956G must be submitted in compliance with new program requirements. The filing fee is $17,795 for Form I-956F and $3,035 for Form I-956G.

Details:

- USCIS alert, June 2, 2022, https://www.uscis.gov/newsroom/alerts/uscis-releases-new-forms-for-immigrant-investor-program

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## SEVIS Update: COVID-19 Guidance Extended for Nonimmigrant Students

U.S. Immigration and Customs Enforcement (ICE) released guidance regarding distance learning to all Student and Exchange Visitor Information System (SEVIS) users to clarify that its March 2020 guidance continues for the 2022-23 academic year only for nonimmigrant students who were actively enrolled at a U.S. school on March 9, 2020, and have continuously complied with the terms of their nonimmigrant status. Students who enrolled after March 9, 2020, must adhere to the Student and Exchange Visitor Program's existing regulations regarding online learning.

The March 2020 guidance "enables schools and students to engage in distance learning in excess of regulatory limits due to the continuing public health concerns created by COVID-19," ICE said.

Details:

- "Broadcast Message: ICE Clarifies Continuation of March 2020 Guidance for the
2022-23 Academic Year," ICE, May 31, 2022, https://www.ice.gov/doclib/sevis/pdf/bcm2205-03.pdf

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## CBP Expands Biometric Facial Recognition Technology at U.S. International Airports

U.S. Customs and Border Protection (CBP) has expanded biometric facial comparison technology at all international airports across the United States under the "Simplified Arrival" process. CBP said that this expansion

complements biometric boarding at select departure locations.

Travelers arriving at an international airport will pause for a photo at the primary inspection point. A CBP officer will review and query the travel document, which will retrieve the traveler's passport or visa photo from government holdings and compare it to the new photo. CBP said the process "takes a few seconds and is more than 98% accurate."

CBP said that U.S. travelers and foreign nationals who are not required to provide biometrics and wish to opt out of the new biometric process can notify a CBP officer as they approach the primary inspection point. These travelers must present a valid travel document for inspection by a CBP officer and will be processed consistent with existing requirements for admission into the United States.

CBP explained that "Simplified Arrival" is an enhanced international arrival process that uses facial biometrics to automate the manual document checks required for admission into the United States. The process fulfills a Congressional mandate to biometrically record the entry and exit of non-U.S. citizens. Foreign travelers who have traveled to the United States previously "may no longer need to provide fingerprints, as their identity will be confirmed through the touchless facial biometric process." CBP said that more than 171 million travelers have participated in the biometric facial comparison process at air, land, and sea ports of entry.

Details:

- CBP media release, June 2, 2022, https://bit.ly/3mi8K52

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## Public Charge Resources Webpage Updated

U.S. Citizenship and Immigration Services (USCIS) has updated its public charge resources webpage "with more information to help reduce undue fear and confusion among immigrants and their families, including U.S. citizens and their children, that may prevent them from obtaining access to critical government services available to them."

A question-and-answer section addresses concerns and misconceptions about the public charge ground of inadmissibility. For example, USCIS does not

consider vaccines or public benefits specifically related to the COVID-19 pandemic when making public charge determinations. "We encourage everyone, including noncitizens, to seek necessary medical care, including treatment or preventive services for COVID-19. Noncitizens may seek pandemic-related benefits and services (including food assistance, housing programs, and others) for which they are eligible—without fear of negative consequences to their immigration status."

The updated content also "clarifies that relatively few noncitizens in the United States are both subject to the public charge ground of inadmissibility and eligible for the public benefits considered under the 1999 Interim Field Guidance, including Supplemental Security Income, Temporary Assistance for Needy Families, and programs (including Medicaid) supporting noncitizens who are institutionalized for long-term care at government expense," USCIS said.

Details:

- USCIS alert, June 3, 2022, https://www.uscis.gov/newsroom/alerts/uscis-updates-public-charge-resources-webpage-to-provide-information-on-the-public-charge-ground-of

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## ABIL Global: Schengen Area

This article discusses how to calculate the 90/180-days allowance for non-European Union nationals traveling to Schengen countries, and the new Electronic Entry System.

***How to Count Your 90 Days***

Non-European Union (EU) visitors can stay in the Schengen countries for maximum of 90 days in any 180-day period, but the calculation is not easy.

The Schengen area currently includes 26 EU countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

The scannable QR code below leads to EU Migration and Home Affairs, which includes visa policy information and lists of countries whose citizens must have a visa or are exempt from visa requirements when crossing Schengen external

borders.

*Third-country nationals (e.g., those who are not citizens of the EU and Iceland, Norway, Liechtenstein, or Switzerland), irrespective of being visa-required or exempt, who intend to travel to the Schengen area for a short trip for business or tourism can stay for a maximum of 90 days in any 180-day period. A few terms and rules apply:*

**Date of entry:** The first day of stay on the territory of the Schengen Member State

**Date of exit:** The last day of stay in the Schengen Area

This applies only to short-term visitors. Periods of stay authorized under a residence permit or a long-stay visa are not taken into account in the calculation of the duration of stay on the territory of the Member States.

Reference to "any 180-day period" implies the application of a "**moving" 180-day reference period**, looking backwards at each day of the stay (be it at the entry or at the day of an actual check), into the last 180-day period, to verify if the 90-days/180-day-period requirement continues to be fulfilled.

As noted above, calculation is often not easy. The EU has created an online calculator.

**New Entry/Exit System**

The new Entry/Exit System (EES), to be operational in 2022, will automatically identify those who overstay their periods of admission. It will collect identity information and the date and place of entry and exit. The EES will apply to non-EU nationals, visa-required and visa-exempt travelers in the Schengen area. It will replace manual stamping of passports.

Details:

- "How to Count Your Schengen 90 Days," Medium, https://medium.com/studiomazzeschi/how-to-count-your-schengen-90-days-ee96f5d25326
- Entry/Exit System (EES), Migration and Home Affairs, European Commission, https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/smart-borders/entry-exit-system_en

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## Firm in the News

**Cyrus Mehta** has accepted the position of Editor-in-Chief (EIC) of the American Immigration Lawyers Association's *Law Journal*, following the previous EIC's departure on June 30, 2022.

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