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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - MARCH 31, 2025

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Headlines:

Scrutiny of Visa Applicants, Green Card Holders, Students, Exchange Visitors Heightened Under Trump Administration – The Trump administration is increasingly scrutinizing visa applicants and even permanent residents (green card holders) and has placed a "temporary pause" on certain green card applications "to do more vetting."

ABIL: Tips for International Travelers Entering the United States – Travel to the United States has gotten trickier in recent months. This article summarizes tips recommended by the Alliance of Business Immigration Lawyers for international travelers to the United States.

USCIS Reaches H-2B Cap for Second Half of FY 2025; Filing Dates Now Available for Supplemental Visas – U.S. Citizenship and Immigration Services has received enough petitions to meet the H-2B statutory cap for the second half of fiscal year 2025. Also, the filing dates for supplemental H-2B visas for the remainder of this fiscal year are now available.

DOL Updates Allowable Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging – The Department of Labor's Employment and Training Administration announced annual updates to allowable monetary charges that employers of H-2A workers, in occupations other than herding or production of livestock on the range, may charge workers when the employer provides three meals per day. The notice also announced the minimum and maximum amount of travel-related subsistence reimbursements required under the H-2A and H-2B programs, and reminded employers of their obligations for overnight lodging costs.

Elon Musk Arrested on April 1 for Working Illegally in the United States –

On April 1, 2025, as part of a crackdown on immigrant students for national security reasons, the Department of Homeland Security announced the arrest of Elon Musk for working illegally in the United States in the 1990s while he was in J-1 student status.

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Scrutiny of Visa Applicants, Green Card Holders, Students, Exchange Visitors Heightened Under Trump Administration

According to reports, the Trump administration is increasingly scrutinizing visa applicants and even permanent residents (green card holders) and has placed a "temporary pause" on certain green card applications "to do more vetting."

As part of these activities, Secretary of State Marco Rubio recently sent a cable to some Department of State employees on enhanced screening and social media vetting of visa applicants. Among other things, the cable states that effective immediately, consular officers must refer new or returning student and exchange visitor (F, M, and J) visa applicants to the Fraud Prevention Unit (FPU) for a mandatory social media check if they meet certain criteria:

- An applicant who the officer has reason to believe has openly advocated for a designated foreign terrorist organization;
- An applicant who was previously in the United States in F-1, M-1, or J-1 visa status between October 7, 2023, and August 31, 2024;
- An applicant whose previous SEVIS record was terminated between October 7, 2023, and the present.

The cable states that evidence that an applicant:

...advocates for terrorist activity, or otherwise demonstrates a degree of public approval or public advocacy for terrorist activity or a terrorist organization, may be indicative of ineligibility. evident in conduct that bears a hostile attitude toward U.S. citizens or U.S. culture (including government, institutions, or founding principles). Or it may be evident in advocacy or sympathy for foreign terrorist organizations. All of these matters may open lines of inquiry regarding the applicant's credibility and purpose of travel.

The cable notes that a consular officer's revocation of a visa "must be based on an actual finding that the individual is ineligible for the visa," not merely on suspected ineligibility or based on derogatory information that is insufficient to support an ineligibility finding "other than a revocation based on driving under the influence." If an officer suspects ineligibility, the post should refer the case for further review.

Some students on visas or even with green cards, have been detained and targeted for removal under INA § 237(a)(4)(C)(i), which authorizes the Secretary of State to "personally determine that alien's presence would compromise a compelling U.S. foreign policy interest" even if their statements, associations, and beliefs would be lawful.

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ABIL: Tips for International Travelers Entering the United States

Travel to the United States has gotten trickier in recent months. Below is a summary of tips recommended by the Alliance of Business Immigration Lawyers for international travelers to the United States:

- Make sure all of your documents are in order and have not expired, and that you do not have a renewal application pending. Consult with an immigration attorney before traveling for advice in specific situations.
- Consider not entering the United States now if your country is on a proposed "red" list of travel ban countries, which includes Afghanistan, Bhutan, Cuba, Iran, Libya, North Korea, Somalia, Sudan, Syria, Venezuela, and Yemen.
- Remember that U.S. Customs and Border Patrol officers have wide leeway at ports of entry to decide who enters and who does not, regardless of visa status, and to conduct electronic searches. They can require travelers to unlock cell phones, reveal laptop passwords, or give officers their digital cameras, for example. U.S. citizens and green card holders can refuse to answer questions (other than those establishing identity and status) and still enter the country (although this could lead to delays or seizure of devices), but those with visas do not have the same rights. The American Civil Liberties Union of Northern California advises not giving up your green card voluntarily. Some advise turning off phones and wiping data from all devices before passing through a port of entry.

- If your device is confiscated, request the name, badge number, and agency of the officer, and ask for a receipt or call the agency to request one.
- Keep your immigration attorney's contact information handy, along with contact information for a local friend. If it appears that you might be going into secondary inspection, you can text your friend and ask them to get in touch with your immigration attorney.
- Keep in mind that in the past, rejected travelers were often put on the next plane out, but more recently, some have been detained for days, weeks, or more.
- Check your home country's travel advisories and warnings before traveling. Consider deferring travel to or from the United States if not necessary.
- If you are referred to secondary inspection, request an interpreter if needed and available. There ordinarily will be a transcript (official record) of the questions and answers also.

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USCIS Reaches H-2B Cap for Second Half of FY 2025; Filing Dates Now Available for Supplemental Visas

On March 26, 2025, U.S. Citizenship and Immigration Services (USCIS) announced that it has received enough petitions to meet the H-2B statutory cap for the second half of fiscal year (FY) 2025. Also, the filing dates for supplemental H-2B visas for the remainder of FY 2025 are now available.

USCIS said that March 5, 2025, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date on or after April 1, 2025, and before October 1, 2025.

A chart in Temporary Increase in H-2B Nonimmigrant Visas for FY 2025 includes information about the supplemental visas and relevant filing dates.

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DOL Updates Allowable Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging

On March 24, 2025, the Department of Labor's (DOL) Employment and Training Administration (ETA) announced annual updates to allowable monetary

charges that employers of H-2A workers, in occupations other than herding or production of livestock on the range, may charge workers when the employer provides three meals per day. The notice also announced the minimum and maximum amount of travel-related subsistence reimbursements required under the H-2A and H-2B programs, and reminded employers of their obligations for overnight lodging costs as part of required subsistence and reasonable travel costs to and from a worksite.

The updated maximum allowable charge for meals is $16.28 per day, and an employer is not permitted to charge a worker more than that amount unless an Office of Foreign Labor Certifications Certifying Officer approves a higher charge.

The standard meals and incidental expenses (M&IE) rate for the continental United States (CONUS) is $68 per day for 2025. Workers who qualify for subsistence reimbursement are entitled to reimbursement for meals and lodging up to the standard CONUS M&IE rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the notice states, the employer may limit the meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals, or $51, based on the General Services Administration per diem schedule.

The notice states that an employer is responsible for costs necessary for the worker to travel to the place of employment if the worker completes 50 percent of the work contract period. The employer also is responsible for the costs of return transportation.

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Elon Musk Arrested on April 1 for Working Illegally in the United States

On April 1, 2025, as part of a crackdown on immigrant students for national security reasons, the Department of Homeland Security announced the arrest of Elon Musk for working illegally in the United States in the 1990s after he was in J-1 student status and dropped out of school.

Mr. Musk, born in South Africa, obtained Canadian citizenship through his mother. On a J-1 visa, Mr. Musk graduated from the University of Pennsylvania and enrolled in a graduate program at Stanford University's Materials Science

and Engineering school, but dropped out to launch his start-up company. To maintain J-1 status, a student must be actively engaged in a full course of study to be allowed to work. Mr. Musk has stated in tweets that he went from J-1 to H-1B status, but it is unclear how he eventually got H-1B status if he had fallen out of J-1 status, and what happened in between. According to reports, enforcement of student visa restrictions increased after the terror attacks of September 11, 2001.

Noting that there are "a lot of men that maybe we don't want in our country," President Trump said it was time to crack down on immigration scofflaws like Mr. Musk who skirt the rules, as "a defense of our country" in the face of a "national emergency." He said Mr. Musk would be sent to a tent before being deported. "We have thousands of tents. We have a lot of tents; we have a lot of everything," he said, adding that he told Mr. Musk, "Out. Get out. Just get out." Such people, he said, "disrespect the foundations of American government by voluntarily choosing to break the law." If Mr. Musk wants to come back, President Trump said, he can buy a "gold card" visa.

Mr. Trump therefore signed a new, big, beautiful "April Fool's" executive order deporting Mr. Musk, effective April 1, 2025. "It's the best executive order you've ever seen," he said.

According to rumors, Melania Trump, who also has possible gray areas in her immigration history, was seen trying out the new CBP Home self-deportation app.

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Cyrus Mehta was quoted by the *Times of India* in Brace for Immigration Changes To Be Introduced Overnight, Warn Attorneys, As Inviting Public Comments Is No Longer Required. Mr. Mehta said, "I foresee that the administration will issue more regulations without getting public input. Obtaining such input from the public is a win-win for all as the administration can issue rules that would be acceptable and less likely to be challenged in court later as not being consistent with the statutory provision. After a Supreme Court decision last June 2024 (*Loper Bright v. Raimondo*), courts are no longer required to give deference to a government agency's interpretation of the statutory provision enacted by Congress. Therefore, there is now a greater

chance that a new rule could be successfully challenged in court as the government's interpretation of the rule can be more easily set aside." Mr. Mehta also said, "It may be difficult to challenge as it is just a general pronouncement. However, when the administration next issues a rule and claims the foreign affairs function exception in the Administrative Procedure Act , the invocation of the exception can certainly be challenged in court on grounds that the rule has no relation to the foreign affairs of the U.S. In *CAIR Coalition v. Trump*, a rule barring asylum seekers, who had traveled through other countries, from applying for asylum at the southern border was struck down as it did not meet the exception, among other grounds. To meet the 'foreign affairs' exception, a rulemaking must 'clearly and directly' involve a foreign affairs function of the United States."

Mr. Mehta was quoted by *Law360* in Lawyers Slam Trump Memo on 'Vexatious' Attys. Calling a Trump administration memorandum "outlandish," he said, "To taint the whole legal profession that is involved in immigration work is totally unwarranted and uncalled for, because it undermines the rule of law and it also basically demeans the good work that's been done."

Mr. Mehta was quoted by the *Times of India* in AILA Condemns Trump's Crackdown on Immigration Lawyers, Calls It a Threat to Legal Integrity. He said that President Trump believes that "upposedly unethical lawyers are standing in way to dismantle an immigration system that allows the persecuted to seek protection in the U.S." A Trump administration memorandum, he said, "suggests ways to 'kill the lawyers' by sanctioning and disciplining them through an assortment of court and disciplinary rules. Obviously, there is no truth to this assertion . The immigration bar and lawyers in Big Law doing immigration pro bono are ethical. Otherwise, they would have been sanctioned and disbarred by vigilant disciplinary authorities. Trump is engaging in delirious fantasy. Lawyers must stand firm together notwithstanding this nonsensical bluster and continue to represent noncitizens in asylum claims and other immigration cases."

Mr. Mehta was quoted by *The Hindu* in 'Foreign Students Whose Visa Is Revoked Can Legally Stay in the U.S. and Continue Studies If University Doesn't Disenroll.' Commenting on media reports about Indian students receiving emails from the U.S. government that their visas have been revoked and they need to self-deport because loss of immigration status would invite fines and deportation, Mr. Mehta said that the students can challenge the visa revocation

provided they are not disenrolled from their institution. "If the State Department revokes the visa, the student can technically remain in nonimmigrant status in the U.S. and will need to apply for a new visa when he or she travels outside the U.S. Therefore, the student can still be in student visa status and continue with her studies. But the student can also be placed in deportation proceedings although then he/she will get the opportunity to challenge the visa revocation before an Immigration Judge," he said.

tension between everyone's right to First Amendment freedom of expression in the United States and this broad immigration ground that basically gives the Secretary of State carte blanche to declare anyone a threat to our national security, and the courts will have to decide which wins out. And so, this could be going on for a long time."

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