



Positive News From USCIS
and
Updates From the AILA Annual Conference 2021

By
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Foreign nationals, employers and immigration practitioners do not need any reminders that the last four years have been a regulatory and administrative nightmare for anyone seeking to secure an immigration benefit. From the horrors of family separations to historical processing delays and from unlawful interpretations of laws and regulations to a significant increase in Requests for Evidence, rejections of properly filed petitions, and denials of lawfully filed applications and petitions, foreign nationals and their families, employers, communities and advocates have suffered. The Trump Administration's policies wreaked havoc on the U.S. Citizenship and Immigration Services (USCIS) and the Department of State (DOS), which, when paired with the global pandemic caused by COVID-19, have resulted in unprecedented hardships for many stakeholders in the U.S. immigration system.

When President Biden, whose campaign promised to reform our immigration system to one that was fair and compassionate, took office, we were all very excited. However, as we noted after President Biden's first 100 days in office, change was slow and many of the changes made to that point were cosmetic or otherwise low hanging fruit that did not create meaningful reform. We had yet to see any significant policy changes and USCIS continued to operate much like it had under the Trump Administration -- clearly approvable cases were being denied, the agency was interpreting and applying immigration laws and regulations in an arbitrary and capricious manner, and processing delays continued to grow to all time historic levels.

Well, something wonderful happened on June 9th, which was the first day of the AILA Annual Conference (AC21), and it created a sense of immense optimism amongst immigration practitioners, who, along with their clients, have suffered these past four years. While there is definitely room for more improvement, the **proposed changes we learned of during AC21 make us very optimistic that USCIS is returning to its original mission** of securing "America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system."

On June 9th, during the first day of AC21, USCIS announced three major policy changes:

1. **Employment Authorizations will be valid for two (2) years:** First, in Policy Alert (PA-2021-10), USCIS announced that it will now issue initial and renewal employment

authorization documents (EADs) to applicants for adjustment of status that are valid for two years (compared to the previous one year validity period).

2. **Issuance of RFEs and NOIDs (instead of denials) for additional information:** Second, in Policy Alert (PA-2021-11), USCIS announced that it was returning to its 2013 policy of issuing Request for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) when additional evidence could show that a beneficiary or applicant was eligible for an immigration benefit. In 2018, USCIS issued a policy authorizing adjudicating officers to deny petitions and applications that lacked evidence without first providing the beneficiary or applicant with the opportunity to provide additional documentation. By returning to its 2013 adjudicating principles, USCIS is ensuring that the Agency is fairly and efficiently adjudicating immigration benefits.
3. **Expansion of Expedite Request Criteria:** Third, in Policy Alert (PA-2021-12), USCIS announced a revision to the expedite criteria and circumstances, wherein USCIS may expedite a request for a benefit where: (1) there is severe financial loss to a company or person, provided that the need for the expedite request is not due to the petitioner or applicant's failure to timely file the benefit request or timely respond to an RFE; (2) there is an emergent or urgent humanitarian need; (3) a nonprofit organization makes a request in the furtherance of a cultural or social interest of the United States; (4) a government agency makes the request in the furtherance of a U.S. government interest; and (5) USCIS needs to fix a clear Agency error.

Additional welcoming news from AC21 included:

- **Employing Immigration Attorneys as Special Adjudicators at USCIS:** Secretary of Homeland Security, Alejandro Mayorkas, announced his intent to create a pilot program to hire immigration attorneys to serve as special adjudicators for challenging USCIS cases, with the goal of having such attorney adjudicators call or email a foreign national's immigration counsel directly to discuss the elements of the matter and secure additional information and documentation required to adjudicate a USCIS petition or application, instead of mailing an RFE. Secretary Mayorkas acknowledged that the USCIS process of issuing and mailing or faxing RFEs is plagued with deficiencies, is archaic, and has led to too many delays. The aim of this pilot program would be to reduce processing times and ensure efficient and fair adjudication of petitions and applications;
- **Hiring Additional Officers:** After the Trump Administration essentially gutted USCIS, Secretary Mayorkas announced that USCIS is continuing to work on a five-year stabilization plan to hire more officers, obtain additional funding through a combination of fee increases and congressional appropriations, and reduce the historic delays in case processing;
- **Focusing on Detention Facilities:** Secretary Mayorkas also acknowledged that detention facilities are overused under the current immigration system and that only those individuals who pose a public safety threat should be detained;

- **Addressing Significant Immigration Court Delays:** Additionally, Secretary Mayorkas acknowledged that the current backlog in immigration courts has resulted in undue delays, which is unfair to individuals and the system itself. Secretary Mayorkas recognized the Agency's responsibility to process cases more efficiently, without compromising fairness.
- **Application Support Centers will be fully operational by July:** the Agency announced that all USCIS Application Support Centers (ASCs), which are responsible for collecting biometrics for applications for adjustment of status, among other benefits, will be 100% operational in July;
- **Going Digital:** USCIS is investigating technologies and methods to create a digital infrastructure so that more benefits applications and petitions can be filed electronically, including expanding their E-request system to accommodate re-scheduling requests for biometrics appointments;
- **Expansion of Premium Processing:** USCIS is looking to expand the categories for which it allows premium processing, which guarantees the processing of certain petitions or applications in 15 calendar days for an additional fee; and
- **Reducing Visa Retrogression:** For Fiscal Year 2022, which starts October 1, 2021, there will be approximately 262,000 employment-based immigrant visa numbers made available and 226,000 family-based immigrant visa numbers made available, which will help to reduce some of the visa retrogression that we have experienced this year.

With this positive news, there remains areas that require immediate improvement including:

- **Rescission of the regional COVID-19 travel bans:** As we previously noted in our podcast, these regional COVID-19 travel bans are not scientifically based as they prohibit the entry of only certain nonimmigrants (e.g., H-1B, E-1, E-2, L-1, and O-1 nonimmigrants) and immigrants, who were physically in India, the United Kingdom, Ireland, China, Iran, Brazil, South Africa and the Schengen Area countries, which include Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland, during the 14-day period preceding their entry or attempted entry into the United States. Individuals physically present in these countries, but who enter the United States in A, G, C or D visa classification are not barred from entering. These regional COVID-19 travel bans would seem to imply that COVID-19 infects individuals based on nationality, citizenship or immigration status, when we know that it does not.
- **Alleviating Department of State backlogs:** There is a backlog of approximately 600,000 documentarily qualified applications for immigrant visas at the National Visa Center (compared to a typical backlog of 40,000 applications). This is the result of the U.S. Embassy and Consulate closures due to COVID-19 and staffing shortages as a result of the Trump Administration eliminating approximately 200-300 Consular Officers positions over the course of its term.

- **DOL guidance on remote workers and “digital nomads”:** the U.S. Department of Labor (DOL) has not provided clear and concise guidance on what to do when a U.S. employer no longer has a physical presence (brick and mortar) headquarters or main office location. In response to the financial burdens created by COVID-19 and the shift to remote work, many companies have given up their physical office locations. In order to meet regulatory requirements for the H-1B and PERM Labor Certification Programs, employers are required to post notices at their physical premises. DOL must provide clear, real world guidance (beyond telling practitioners to refer to the *Farmer Memo*, which was drafted in 1994 and never contemplated COVID-19, where employers no longer have a headquarters or main office location) for digital nomad companies that conduct business but have no physical presence.
- **Processing of National Interest Exceptions:** U.S. Embassies and Consulates are being inundated with requests for National Interest Exceptions (NIEs) to the regional COVID-19 travel bans. If granted each NIE is valid for 30 days and one entry into the United States. Paired with staffing shortages and local COVID restrictions, Consular Officers have struggled to keep up with the demand to process NIE requests. As stated above, these travel bans are not scientifically based. If the Administration will not rescind the travel bans, then it should consider making these NIEs valid for multiple entries for at least six months.

The news that we received this week from USCIS and AC21 was a much needed and welcome change from the past four years, and gives us tremendous hope that the Biden Administration will reform our U.S. immigration system to one that is fair and compassionate. In addition, we are grateful to the dedicated staff at AILA whose tireless advocacy and litigation have encouraged the Biden Administration to take these positive and meaningful steps towards a better immigration system.

As always, Meyner and Landis will continue to closely monitor all immigration-related government operations and will publish updates as they happen.

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