

Immigration Newsletter 02.2021

Biden Immigration Updates

In the days following his inauguration, President Biden has undertaken a number of executive actions impacting immigration policy, specifically reversing the policies of the previous administration. Noteworthy actions include:

■ By Proclamation, President Biden has **reversed the former administration's discriminatory Travel Bans**, which prevented certain persons from Chad, Iran, Iraq, Libya, Somalia, Sudan, Syria, Yemen, Eritrea, Kyrgyzstan, Myanmar, Nigeria and Tanzania entering the United States.

■ As part of his Executive Order Promoting COVID-19 Safety and Domestic and International Travel, President Biden has established updated requirements for **all persons traveling from a foreign country to the United States. Travelers are "required to produce proof of a recent negative COVID-19 test prior to entry."** Travelers must provide a negative test result from a viral test conducted no more than 3 days before the flight.

■ President Biden has **reinstated restrictions for noncitizens traveling to the United States from Europe and Brazil** due to COVID-19 variants discovered in those areas. He has also **added South Africa** to this list, effective January 31. These restrictions provide that **certain noncitizens will not be allowed to enter the United States if they have spent any period of time in the named countries within the 14 days** preceding their travel to the United States. This Proclamation does **not** apply to the following:

- Any lawful permanent resident or noncitizen national of the United States
- Spouses of a U.S. citizen or lawful permanent resident
- Parents or Legal Guardians of a U.S. citizen or lawful permanent resident
- Siblings of a U.S. citizen or lawful permanent resident, provided both the noncitizen and their sibling are under the age of 21
- Noncitizens invited to help fight or contain COVID-19
- Noncitizens traveling on diplomatic visas or members of the U.S. Armed Forces.
- Noncitizens who meet the Department of State's criteria for a National Interest Exception based on their employment in the United States.

■ President Biden reversed the Trump administration's emergency declaration for the southern border and is **actively redirecting border wall funding**. The President has also called for review of enforcement policies and priorities for Immigration and Customs Enforcement (ICE),



U.S. Citizenship and Immigration Services, and Customs and Border Protection.

■ The Biden Administration has put a **temporary hold on all regulations proposed or published by the Trump administration** but not yet in effect. This includes rules impacting the [H-1B lottery selection process](#) and prevailing wages. The administration instructed agencies to review the regulations during the 60-day hold period, and agencies may open additional comment periods or propose revisions during this time.

■ Looking ahead, President Biden has **proposed sweeping legislation providing a pathway to citizenship** for 11 million undocumented immigrants currently inside the United States, including Dreamers and agricultural workers, as well as reforms to the family and employment-based immigration system to clear backlogs and provide improved access to green cards for families, STEM workers, and historically lower-wage jobs and industries.

FY 2022 H-1B Lottery Process

The US Department of Homeland Security (DHS) has announced that the FY 2022 H-1B lottery will be conducted as a random selection not involving consideration of offered wages. We are currently working with clients to identify employees who should be registered in this year's lottery.

When considering H-1B sponsorship, employers should identify the following employees for inclusion:

- Employees in F-1 status with Post-Completion or STEM OPT workauthorization
- Employees in TN status where the company is considering green card sponsorship
- Employees in L-1 status currently subject to immigrant visa backlogs that may require further extension of nonimmigrant status
- Employees working pursuant to an EAD based on dependent status (H-4, L-2, etc.)

If you have any questions about identifying employees who should be included in the lottery, please reach out to your [Parker Gallini attorney](#) to discuss.

The Slow and Uncertain Pace of Reopening Consular Services at U.S. Consulates Abroad

On March 20, 2020, the U.S. State Department announced the closing of visa services at all U.S. Consulates around the world. In July, the State Department announced that U.S. Consulates and their visa services operations could begin to open but would do so on a schedule determined by each Consulate based on the specific circumstances of the country in which they are located.

As a result of these lengthy closures and the slow reopening process, significant backlogs developed for Immigrant Visa applications (that is, applications for U.S. permanent resident status processed by a U.S. Consulate abroad). These closures plus expansive travel and visa application bans have also resulted in a pent-up demand for Nonimmigrant Visa applications (B-1/B-2, H-1B, L-1, TN, O-1, etc.). More information on prior presidential actions impacting [immigrant](#) and [nonimmigrant](#) visa issuance is available on our website.

As Consulates began to reopen in the late Summer, they started to process both Immigrant Visa applications not subject to the ban on certain applications set forth in [Presidential Proclamation 10014](#) and Nonimmigrant Visa applications, with a particular focus on F-1 and M-1 student visas. Some Consulates are processing Nonimmigrant Visa applications in all categories (for example Singapore) but most are either not allowing visa application appointments to be scheduled at all, or are scheduling appointments months in the future. Consulates are also generally expanding dropbox eligibility for visa renewals and allowing Nonimmigrant Visa applicants to request an expedited visa appointment. While there is little guidance on the basis for requesting an expedited appointment, acceptable requests include significant personal issues like a medical emergencies and emergency business issues, particularly where the U.S. business is involved in the care or treatment of patients with or research into COVID-19.



Another recent trend we have seen is the cancellation by Consulates of already scheduled visa appointments. Sometimes the Consulate provides a reason – for instance, the country in which it is located imposes business opening restrictions that require closure of Consular visa services. Often, however, no explanation is given, but the cancellations are presumably a result of limited staffing at the Consulate, COVID-19 spiking in the country or both.

The best source of information about the status of Immigrant and Nonimmigrant Visa Services at Consulates is the web site of the Consulate itself. A list of these sites can be found at: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/list-of-posts.html>.

The impact of COVID-19 on U.S. Consular operations has been significant and continues to be fluid. We strongly recommend that foreign nationals who are currently in proper visa status in the United States not leave the U.S. to apply for a visa at a U.S. Consulate abroad. Visa application appointments are hard, and in many cases impossible, to get. And even if you are able to schedule a visa appointment, there is clearly a risk that it will be cancelled. Finally, there is the risk that the U.S. will expand the stop of visa application and travel bans in the months ahead.

Please contact any Parker Gallini immigration attorney to discuss any immigration issues at (781) 810-8990.

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Our blog: immigrationatwork.com