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NYC SHRM Navigating NEXT
Seismic Shifts in US Immigration Policy
April 20, 2021

Rescinded and delayed policies

- Reversed the “Muslim travel ban.”
- Sunset of the Nonimmigrant Visa Ban.
- Rescinded the Immigrant Visa Ban.
- Rescinded H-1B memos about third party worksites and computer programmer related positions.
- The Public Charge Rule.
- Affidavit of Support.
- Delayed the implementation of higher prevailing wages.

Updates in Humanitarian Immigration

- Southern Border migration:
 - Humanitarian crisis.
 - Not impacting family, business immigration.
- Temporary Protected Status (TPS):
 - Extended for 18 months for Syrian nationals in March 2021.
 - Granted for Venezuelan and Burmese nationals in March 2021.

H-1B Cap Lottery Registration

- The H-1B cap lottery registration period ran from March 9, 2021 to March 25, 2021.
- In order to be entered in the US Master's degree cap lottery, beneficiaries must hold a US Master's degree from an accredited US college or university by the time of registration in the lottery.
- USCIS issued the lottery results on March 30, 2021.
- Over 300,000 registrations were entered by 50,000 employees. 65k Regular Cap, 20k US Masters. USCIS accepts more than 85k based on statistical rates of approval and denial.
- Petitioners have 90 days to file H-1B cap petitions on behalf of selected registrants.
- USCIS could select additional cases if the cap is not reached during the initial filing period.



FY 2022 What to Expect

- For beneficiaries to receive “cap gap” protection, their H-1B cap petitions must be filed before their EADs expire.
- Premium processing remains open for filing of all eligible case types including H-1B cap cases.
- With the uncertainties of the pandemic and international travel, it was extra important to work with the beneficiaries and petitioners to decide whether petitions should be filed with Consular Processing or Change of Status.
- USCIS will open the lottery back up in late summer if the cap is not filled after the initial 90-day filing period.
 - Additional cases were selected on August 14, 2020. These cases had to be filed between 8/17/2020 - 11/16/2020.



USCIS Delays

- Delays in issuance of receipt notices, especially for Adjustment of Status cases from the filing surge in the Fall of 2020.
 - Partially due to the impending fee increase that was stopped by litigation and the influx of cases filed in fall 2020 as the priority dates of many Chinese and Indian foreign nationals became eligible for filing the next step in the green card process with USCIS.
- Delays in receipting and processing of I-539 Applications to Extend/Change Nonimmigrant Status applications.
- Delays in receipting and processing of I-765 Employment Authorization Document applications.

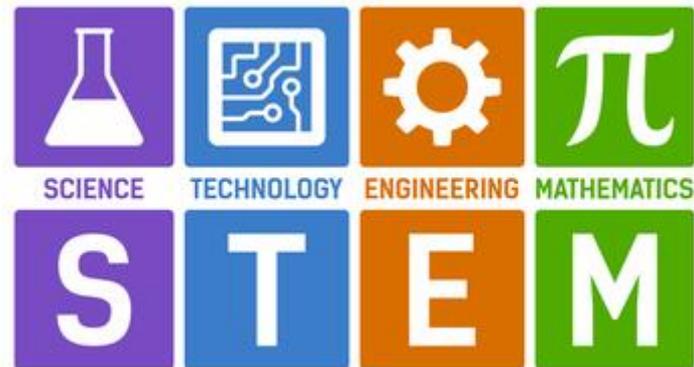
OPT EADs

- F-1 visa holders may participate in 12 months of post-completion OPT within a 14-month period.
- The start date of the 14-month period in which F-1 visa holders must complete their OPT has changed due to USCIS's delay in processing EAD applications.
- The 14-month period now begins on the date of approval of the Form I-765 application for post-completion OPT.
- Previously, F-1 visa holders had to complete their post-competition OPT within 14 months from the end of their program.



STEM EADs

- Due to the delay in USCIS processing of EADs, individuals who have timely filed their STEM OPT EAD extensions and their post-completion OPT period expires while the application is pending, will receive an automatic extension of their employment authorization for 180 days.
- Employees can show their continued work authorization with their Form I-20s that are endorsed by the Designated School Officials recommending a STEM extension along with their expired post-completion OPT EADs.



The Future of Work

- Telecommuting Issues:
 - Labor Condition Application (LCA) posting.
 - Areas of intended employment/normal commuting distance.
 - Short term placement.

- PERM Labor Certification – location(s) of employment

- I-9 Compliance: Temporary COVID Accommodations for in person I-9 completion extended until May 31, 2021.

US Embassies



- Limited operating capacity due to the pandemic.
- Emergency Appointments.
- Visa Interview Waivers/Lockbox Processing.
- Cancelled appointments.
- Placeholder visa appointments.
- Nonimmigrant visa (NIV) ban on H-1B, H-2B, L-1 and certain J-1 visa categories sunset as of March 31, 2021.

National Interest Exemptions

- An individual can apply for a National Interest Exemption (NIE) who is subject to one of the COVID-related travel restrictions in place from China, Iran, Schengen Area, Ireland & United Kingdom, Brazil and South Africa.
- There are explicit exemptions to the COVID-related travel restrictions (e.g. spouses/children under 21 of US citizens and green card holders, approved Major League Sports.)
- Travelers can also break the chain of travel by spending 14 days in a country that is not subject to a travel ban.



National Interest Exemption Criteria

- Department of State (DOS) issued new guidance on March 2, 2021. The applicant must provide “vital support to critical infrastructure sectors as defined by the Department of Homeland Security or critical infrastructure linked supply chain.”
- Must also prove why the individual’s travel is urgent and why the individual’s work must be done in person and cannot be completed remotely.
- Critical Infrastructure Sectors:
 - Chemical Sector
 - Commercial Facilities Sector
 - Critical Manufacturing Sector
 - Defense Industrial Base Sector
 - Emergency Services Sector
 - Energy Sector
 - Food and Agriculture Sector
 - Government Facilities Sector
 - Healthcare and Public Health Sector
 - Nuclear Reactors, Materials, and Waste Sector



Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response



H.R. 6 and H.R. 1603

- Bills passed in the House on Friday March 19, 2021 that pave a pathway to citizenship for Dreamers and undocumented agricultural workers.
- The future of the bills is now in the Senate's hands.



Future Changes?

- Expand the ability to waive in person visa interviews/increase dropbox availability for visas at US Embassies and Consulates worldwide.
- Rescind the USCIS No Deference Memo.
- Creation and implementation of a STEM (Science, Technology, Engineering and Mathematics) Non-immigrant visa category.
- End of mandatory, in person USCIS interviews for employment based green cards and increase eligibility for waiver of other type of green card interviews.
- Rescind requirement for biometrics for dependents (Form I-539).
- Institutional change to address receipting and processing delays at USCIS.
- Codify certain spouses' ability to work incident to status – no need for approved Employment Authorization Document (EAD).

Q&A





Alexis S. Axelrad

Born in New York City, Alexis S. Axelrad has over two decades of experience in US Immigration and Nationality law. Ms. Axelrad received her B.A. from the University of Maryland at College Park in 1994. After earning her J.D. from New York Law School, Ms. Axelrad was admitted to practice in New York in 1998.

Ms. Axelrad is a frequent national and international speaker on US Immigration and Nationality Law and served as the author of a quarterly column on immigration matters published in the New York Law Journal. Ms. Axelrad maintains a busy corporate and family-based immigration practice with a particular emphasis on interaction with the various offices of Department of Homeland Security and the Justice Department including USCIS, Department of State, and Customs and Border Protection.

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