

Immigration: A Review of the Biden Administration's First Year and 2022 Trends

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Program Overview

- Immigration: A review of 2021
- The Pandemic
 - Vaccination requirements
 - Travel restrictions
 - Consular processing
- Relief for EAD delays
- Remote employment and immigration considerations
- FY22 H-1B cap and the lotteries

Biden Immigration Policy

- Desire to update/modernize our immigration system for new global reality
- A humanitarian quagmire
 - Southern border policy
 - Refugee ceiling
 - Afghan resettlement program
- U.S. Citizenship Act of 2021 – submitted to congress on February 18, 2021

One Year Later: The Biden Immigration Impact

- Rescission of BAHA (Buy American/Hire American)
- DACA protected
- Rescission of Muslim travel ban
- Reprieve from computation to increase prevailing wage levels
- Revocation of public charge rule

One Year Later: The Biden Immigration Impact

- Revision of naturalization civics exams
- Reinstatement of H-1B eligibility for computer professionals
- Suspension of H-1B lottery use of wage levels
- Deference to prior adjudications policy restored
- Elimination of regional travel bans

What Has Not Changed

- Basic architecture remains unchanged (quotas and backlogs)
- Culture of “no” among USCIS adjudicators (EB1, NIW, O-1)
- Uncertainties/instabilities at US consulates
- Delays...delays...delays
- Backlogs...backlogs...backlogs
- Re-implementation of return to Mexico (migrant protection protocols)

The Pandemic and Immigration

Travel to the United States

- Travel bans largely lifted
- Replaced with COVID-19 vaccine requirement
 - Assessed by airlines

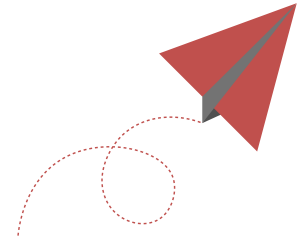


Travel to the United States

- Ongoing restrictions possible
- Northern/Southern border open to nonessential travel



International Travel



- Confirm country's entry requirements before travel
 - Visa requirements
 - Covid vaccination/testing requirements
 - Quarantine requirements
 - Regional lockdowns
- Employer quarantine/restrictions upon return?

Visa Processing

- Consular posts backlogged
- Focus is on:
 - USC/LPR services
 - Immigrant visas
- Expedited appointments
 - Must show urgent need

Visa Processing

- Interview waiver process expanded
- Third country processing
 - Mexico/Canada
 - All other posts

Relief for Employment Authorization Document Processing Delays

EAD Extension Relief for H-4, L-2 and E-2 Spouses

- Current processing times
- Policy change due to settlement from litigation

Policy Change: Automatic 180-Day Extensions

- Must have properly filed I-765 and receipt notice
- Must have facially-expired EAD card
- Must continue to maintain non-immigrant status

Policy Change: L and E Dependent Spouses Authorized for Employment Incident to Status

- Effective November 12, 2021
- DHS has four months implement policy to annotate I-94 record
- EAD still required in interim for I-9 employment eligibility verification process



USCIS Announces EAD Expedite Process for Healthcare Workers

- Announced December 28, 2021
- May be eligible to expedite EAD renewal if:
 - EAD expires in 30 days or less; or
 - EAD already expired
- Request to expedite through USCIS call center

Immigration Compliance in a Brave New Remote World

General Guidelines: It's All About Compliance

- Why it matters?
 - FDNS site visits/investigations
 - Labor condition application compliance
- Keep up-to-date records on employees
- Know where your employees are working
- Maintain open lines of communication

Going Remote: When Does It Matter for Nonimmigrant Visas?

- Depends on nonimmigrant visa category
- Non-LCA nonimmigrant petitions: O-1, L-1, E-2, TN
- LCA based petitions: H-1B, H-1B1, E-3
 - Location must be considered when determining prevailing wage

Special Considerations LCA-Based Cases: Pre-Filing

- Include all worksites on LCA
- Multiple prevailing wages for multiple worksites → highest prevailing wage controls
- Posting required at all worksites: Physical or Electronic
- Include catch-all phrase for remote location in “area of intended employment”

Special Considerations LCA-Based Cases: Post-Filing

- Considerations when your employee moves
- Moving within area of intended employment may not require amendment
- Moving outside of area of intended employment requires amended petition

PERM Labor Certification: Remote Employment

- Remember: PERM is prospective employment
- Pre-filing
 - Requires a test of the labor market in the geographic area of intended employment
 - Telecommuting/remote employment must be noted in job description

PERM Labor Certification: Remote Employment

- Recruitment for telecommuting positions
 - Conflicting DOL guidance
 - DOL “Farmer Memo,” May 16, 1994 – conduct recruitment out of headquarters’ worksite
- Changes in employment condition post-PERM filing
 - Do not make changes without determining immigration consequences
 - Contact immigration counsel first

FY2022 H-1B Cap and the Lotteries

What is an H-1B Visa?

- Reserved for specialty occupations
- Requires meeting the prevailing wage
- Authorizes work with a specific employer for three years
- Cap of 65,000 regular + 20,000 masters degrees
- Cap exempt institutions

What Happened in FY2022?

- Second year of electronic registration
- 308,000 registrations submitted
- Three rounds of selections

What to Expect in FY2023?



Continuation of electronic registration process



Registration window likely to open early March 2022



Attend our next webinar on February 17, 2022 for more details!

Question & Answer

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