

2021 US Labor & Employment Webinar Week
Insights and Compliance Strategies for a New World
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Immigration in Transition

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Presenters



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Immigration in Transition

US Immigration Primer

Travel Ban and Visa Processing Update

Policies and Processes in Flux

Compliance and Enforcement

Prospects for Comprehensive Immigration Legislation

Take Aways





US Immigration – A Primer

The Agencies



DHS
Department of Homeland Security

USCIS
U.S. Citizen &
Immigration
Services

ICE
Immigration &
Customs
Enforcement

CBP
Customs &
Border
Protection

TSA
Transportation
Security
Administraion





Immigrant Categories

Nonimmigrant

Immigrant

Refugee/Asylee

Temporary Protected Status

Visa Process and Entry Procedures

- Entering on permanent basis – Immigrant (green card)
- Coming to the U.S. temporarily - Nonimmigrant
 - Retain residence abroad
 - Presumed to have immigrant intent
 - Dual intent - only for H or L visa holders
- Approved petition, Notice of Action, I-797
- Visa application at Consulate (Canadians exempt)
- Inspection - admission by CBP at U.S. port of entry
- I-94 Arrival/Departure document
 - Controls legal status and duration of admission
 - Now obtained electronically - <https://i94.cbp.dhs.gov/I94/>



Business/Employment Nonimmigrant Visas

Business visitors (B-1)	Intracompany transferees (L-1)	Treaty Traders and Investors (E-1 & E-2)
Professionals (H-1B, O, P)	Free Trade (H-1B1 - Chile and Singapore; E-3 - Australia)	USMCA (TN)
Trainees (J-1 & H-3)	Students on Practical Training (F-1)	Agricultural Workers (H-2A) & Temporary/Seasonal Workers (H-2B)

Employment-Based Immigrant Visas

EB-1: Priority workers

- Extraordinary Ability (eligible to self-petition w/o job offer)
- Outstanding Professors & Researchers
- Multinational Managers/Executives

EB-2: Advance-degree professionals & National Interest Waiver/Exceptional Ability

EB-3: Professional, skilled & unskilled workers

EB-4: Special immigrants

EB-5: Employment creation



Immigrant Visa Quota

140,000 per year
(incl family members)

Per-country limit set at 7%

Monthly Visa Bulletins

Travel Bans and Consular Processing



Travel Bans

Mixed Bag of Bans and When They'll End

The speed at which the varying types of travel bans are lifted will depend on science and the type of ban:

- “Muslim” travel ban revoked on Day 1
- COVID travel bans – Physical Presence during 14 days prior.
 - Trump’s late attempt to lift failed. Biden added South Africa.
 - Will likely depend on COVID rates
 - Many exceptions (e.g., USC and Green Cards) and Waivers
- Immigrant Visa and Nonimmigrant Visa Bans
 - Extended by Trump Administration through March 2021
 - Waiting for Biden to Act
- Canada/US/Mexico land border bans
- National Interest Exceptions (NIEs) and Emergency Interviews are still available for many business travelers.



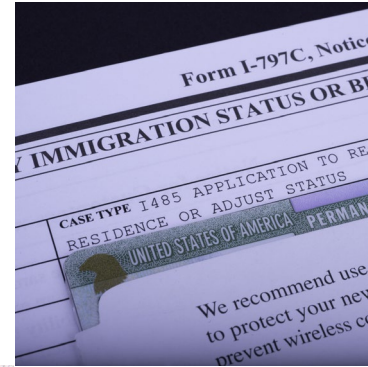
Consular Operations – A New Day?

Changes will come, but how quickly?

Used by Trump Admin. 2017-2020, even pre-COVID, to slow visa issuances.



Leadership changes will increase predictability of visa issuances and better planning for transfers.



Number of interviews will likely increase, based on science, but movement on visa bans will determine how fast.



Visa bans will also influence the number of interviews.



Student Visas





Policies and Processes in Transition

New Leadership

New direction?

DHS **Alejandro Mayorkas**

DOS **Antony Blinken**

DOJ **Merrick Garland**

DOL **Martin Walsh**



Policy Changes in Transition

Some Trump policies will linger

Impact of Regulatory Freeze Directive

- DOL Rule Restructuring Prevailing Wage Levels
- H-1B Cap Registration
- “Zero Tolerance” & Cultural of “No”

Rescinded or Withdrawn:

- Strengthening H-1B Nonimmigrant Visa Classification Program Final Rule
- Buy American and Hire American – BAHA



Additional Policy Changes

Some Trump policies will linger

- Expansion of Premium Processing (H4s, EADs, EB-1s, more)
- Fee Schedule Rule Increases Thrown Out, Likely Dead.
- Health Coverage and Public Charge Rules
- Receipting Delays (lead to problems with many workers seeking extensions)
- USCIS Office Full Re-openings. Timing TBD.
- OPT Restrictions and Investigations at Worksites



Compliance and Enforcement

Fiscal Year 2017 to 2019



- 303% increase cases initiated
- 375% increase I-9 inspections
- FY19 - \$14.3M in fines
- FDNS expands scope
- Federal Civil Monetary Penalties Inflation Adjustment Act
- Penalties increase annually



Executive Action and Proposed Legislation

Day One Policy Changes

Executive Orders and Agency Policy Directives

- 100-day pause on deportations and rescission of the Trump order announcing all-out enforcement
- Ending “national emergency” at southern border
- Halting border wall construction
- Initiative to preserve and fortify DACA
- Halting exclusion of noncitizens from the census
- Suspending new enrollments in “remain in Mexico” Migrant Protection Protocols



Comprehensive Reform: The US Citizenship Act of 2021



Still High Hurdles for Passage

- Largest Democrat-Led Effort Since Bipartisan Bill Passed in Senate in 2013. Died in the House.
- More a statement of beliefs and goals than a workable solution in its current form.
- Portions could be shaved off and passed alone.
- Three major goals:
 - Provide pathways to citizenship and strengthen labor protections.
 - Prioritize smart border controls.
 - Address root causes of migration.



COVID Silver Linings

Some efficiencies and changes should continue

- Employment green card interviews less frequent and might go away entirely (revert to Obama-era practices).
- Scanned signatures permitted on most filings.
- Second lottery run when H-1B cap cases are insufficient.
- Green Card Backlogs moved faster for Adjustments of Status cases filed in the U.S. (since Immigrant Visas nearly halted).

Take Aways

SUMMARY BY CATEGORY			
Category	Budget	Actual	Difference
Travel	\$200.00	\$180.00	\$20.00
Meals	\$300.00	\$320.00	-\$20.00
Transportation	\$150.00	\$140.00	\$10.00
Entertainment	\$100.00	\$110.00	-\$10.00
Utilities	\$500.00	\$520.00	-\$20.00
Insurance	\$200.00	\$210.00	-\$10.00
Medical	\$100.00	\$110.00	-\$10.00
Other	\$100.00	\$100.00	\$0.00
Total	\$1,500.00	\$1,520.00	-\$20.00

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