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US IMMIGRATION & NATIONALITY LAW

2021 IN PERSPECTIVE FROM THE INSIGHTFUL IMMIGRATION BLOG

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Thank you for reading and supporting The Insightful Immigration Blog. Listed below are the blogs that were published in 2021.

While President Biden's presidency ushered in new hope, former President Trump's restrictive immigration policies still reared their ugly heads into the early weeks of 2021. On the last day of 2020, President Trump extended two previously issued Presidential Proclamations suspending the entry of certain immigrants and nonimmigrants. Then, in the second week of the new year, mere days before the inauguration of President Biden, President Trump's administration promulgated a new rule that changed the way in which prevailing wage levels were computed for purposes of permanent labor certifications and Labor Condition Applications. Once in office, President Biden aggressively rescinded many of President Trump's harshest immigration actions including the Muslim and Africa bans and also promised bold new legislation and changes to our immigration system. New Attorney General Merrick Garland also overturned *Castro-Tum* and reinstated *Matter of Avetisyan* which allows immigration judges and the Board of Immigration Appeals to administratively close removal proceedings. In his first five days in office, President Biden signed an executive order entitled the Future is Made in All of America by All of America's Workers revoking President Trump's Buy American Hire American Executive Order which unlike the former President's order was not designed to impede immigration.

Amid promises of new immigration reform and attempts to remedy the former president's immigration policies, the COVID-19 pandemic ravaged on, and the new president could not ignore the topic of travel restrictions, but offered some reprieve in the form of national interest exceptions. We covered these

developments through our widely disseminated blogs and argued that imposing travel bans for certain classes of individuals and in some cases immigrants and nonimmigrants alike is not an effective way to curb the spread of COVID-19.

Delays have been a prominent theme under the Biden Administration. Trump era biometrics requirements for H-4 and L-2 dependents resulted in their extensions being processed months behind their principal applicants. Additionally, processing delays prevented many H-4 and L-2 spouses from getting their Employment Authorization Documents (EADs) ahead of their employment start dates. The November 2021 Visa Bulletin seesaw reflected in our blog was widely read as it provided practical tips for negotiating the employment based backlogs and delays. When the USCIS issued a policy allowing auto extensions of EADS for pending H-4 and L-2 spouses, we explained why this policy has limited practical usefulness and the need to improve it.

Our blogs have also focused on problems in USCIS policy regarding the Child Status Protection Act ("CSPA") and argued that a derivative-child's age should be frozen using the Dates for Filing and not the Final Action Date as current policy dictates. However, the Department of State's latest policy regarding interview waivers has been salutary, but here too we pointed how these administrative fixes can be extended to provide even more relief.

On the business immigration front, we wrote about changes in the Standard Occupation Classification and how a new Board of Alien Labor Certification Appeals decision and DOJ and DOL settlements with Facebook may affect an employer's good faith recruitment for labor certification purposes.

Our blogs have reflected many of these trends and advocated for further improvements. LexBlog has featured some of our blogs such as the blog critiquing the latest Omicron ban against Southern African countries, which will be rescinded on December 31. Our blogs are published on LexisNexis Immigration News and other online sites, and are also picked up in the media. In addition to blogs of Cyrus Mehta, Kaitlyn Box, Isabel Rajabzadeh, David Isaacson, Jessica Paszko, and Cora-Ann Pestaina contributed to The Insightful Immigration Blog making it the go to resource on contemporary immigration issues and trends. Additionally, this year, we warmly welcomed contributions from guest bloggers Professor Stacy Caplow, Sophia Genovese, and Brad

Banias.

While it is disappointing that the immigration reform provisions in the Build Back Better Act ("BBBA") have not gone through, President Biden's presidency still offers hope. There is also hope for more administrative actions that can provide relief to millions including granting parole to unauthorized noncitizens as INA § 212(d)(5) already authorizes such an act even if it did not pass in the proposed BBBA. Other innovative ideas for agency action as proposed in this Cato report (that incorporated two ideas from our blogs) should also be implemented, and we will continue to provide refreshing new perspectives and ideas for immigration reform through our blogs.

Notwithstanding the new challenges posed by the corona virus and its variants, we look forward to blogging in 2022, and wish all our readers a safe and happy new year. Below are all the blogs we published in 2021:

1. Extending the Immigrant and Nonimmigrant Visa Bans: The Last Gasps of 212(f) Jurisprudence Under Trump
2. Trump's Final Attacks on H-1B Visas and Legal Immigration: Reintroduction of the Wage Rule and Rule Requiring Client Companies to File H-1B Petitions
3. President Biden Ushers in New Hope on Immigration after Trump's Destructive and Xenophobic Four Years
4. The Rescission of Trump's Buy American Hire American Will Benefit Immigrants and America
5. State Dept. Exempts Certain Travelers From Restrictions: Is there a Better Way So That the Least Number Get Impacted?
6. To Amend, or Not to Amend: That is the Question For Visas Not Associated With a Labor Condition Application
7. Overcoming a COVID Travel Ban Through the National Interest Exception
8. President Biden Must Reject Trump Era H-1B Lottery Rule and Work Visa Travel Ban
9. CSPA Triumphs in Cuthill v. Blinken: Child of Parent who Naturalizes Should not be Penalized
10. The Law Does Not Compel the Impossible– Or Does It?: Matter of C-C- and Awuku-Asare v. Garland
11. End the Arbitrary H-1B Lottery and Visa Quotas – and other practical considerations for the winners!

12. Coping with Delays Facing H-4 and L-2 Spouses
13. Coping with Delays Facing H-4 and L-2 Spouses When They Have a Pending Adjustment Application – Part 2
14. What Happens to a Lawful Permanent Resident Who Has Been Stranded For Over One Year Abroad and the Green Card Validity Has Expired?
15. US Imposes Covid Travel Ban on India: How Effective Are Such Travel Bans?
16. The First Step for Reforming the Immigration Courts is to Allow Immigration Judges to Administratively Close Cases
17. Proposals for Shattering Barriers and Obstacles to Legal Immigration Without Waiting for Congress to Act
18. State Department's New Guidance Broadening Transmission of Citizenship to Children Born Abroad Is Welcome and Consistent with Federal Court Decisions
19. Sanchez v. Mayorkas: Although TPS Is Not An Admission, Justice Kagan's Opinion Leaves Open Avenues for TPS Recipients to Adjust Status as Nonimmigrants
20. Reflections on Giuliani's Suspension of his New York Bar License
21. Requesting Premium Processing on a Downgraded I-140 Petition
22. Wang v. Blinken Nixes Any Hope for Excluding the Counting of Family Members in the Green Card Caps
23. No Longer in Use: How Changes in SOC Systems Affect Employment-based Immigration
24. The Fight for Immigration Justice Is Not Over: SCOTUS Rules Mandatory Detention of Certain Immigrants Seeking Safety in the United States
25. The Sinking Immigration Court: Change Course, Save the Ship
26. Matter of Castro-Tum is Dead Everywhere Except in the Sixth Circuit: It Must be Buried There Too
27. "The Process By Which Removability Will Be Determined": How the Recent District Court Decision Ordering the Reinstatement of MPP Contradicts Itself
28. If the US Does Not Eradicate Vaccine Inequality, the Requirement of COVID Vaccinations for Many Green Card Applicants Will Result in a De Facto Ban
29. Reflections of Two Immigration Lawyers on the 20th Anniversary of the September 11 Attacks
30. Long Live Matter of Hosseinpour: Making the Case for Dual Intent in All

Nonimmigrant Visas

31. Recent Trends in Requests for Evidence on I-140 Petitions
32. Migration in the Time of COVID-19 Ebook – How Much Has the Pandemic Really Shifted the Immigration Landscape?
33. November 2021 Visa Bulletin Seesaw: Frequently Asked Questions
34. Handling Confidentiality, Adverse Interests, and Settlements in Group Suits
35. The Facebook Settlement Resolving Claims of Discrimination Against U.S. Workers Only Adds to the Contradictions in the Labor Certification Program
36. Florida Detox Centers Provides Further Guidance on Resume Review in Labor Certification Recruitment
37. The Legal Basis Underpinning the New Automatic Extension of Work Authorization for H-4, L-2 and E-2 Spouses, and Why It Must Still Be Challenged
38. The Ineffectiveness of the Latest Omicron Travel Ban From the Perspective of Immigration Lawyers
39. The Denial of Adjustment of Status Applications of Derivative Children Who Turn 21 Before the Final Action Date in the Visa Bulletin Became Current is Inconsistent with the Child Status Protection Act: Can More Lawsuits Reverse Erroneous USCIS and DOS Policy?
40. State Department's Holiday Gifts: Expanded Interview Waivers and Lenient View on Student Nonimmigrant Intent

(Jessica Paszko, a Law Clerk with Cyrus D. Mehta & Partners, significantly contributed to this final post of 2021.)