

Mayor's International Affairs Advisory Commission
Immigration Issues Committee
Report to the Co-Chairs of MIAAC

Date: August 6, 2021

Co-Chairs: Marilyn Daniel, Charles Baesler

Members: Karen Slaymaker (MIAAC Commissioner), Glen Krebs, Emily Jones, Katie Taylor, Tatiana Lipsey, Sarah Adkins, Jerry Clark, Isabel Taylor

Intern: Mihir Kale

Goals:

- (1) Establish, activate and update a Google spreadsheet summarizing the changes occurring in Immigration Law and Practice in 2021.
- (2) Develop a Communication Plan to disseminate the spreadsheet information to appropriate recipients.
- (3) Provide written summaries of the most significant changes for MIAAC quarterly meetings.

The Immigration Issues Committee met by Zoom on Monday, August 2, 2021. We had ongoing discussions on the changes in immigration regulations, policies, and practices since May 2021. Members are to provide a brief description of the most significant changes they have dealt with since the last quarter in the areas they work with. Those comments are included in this report.

Next Committee meeting: Monday, November 1, 2021, noon - 1:00 pm by Zoom

Most significant changes since May 2021:

DACA (Deferred Action for Childhood Arrivals):

1. On July 16, 2021, Texas federal district Judge Andrew Hanen ruled that the Department of Homeland Security (DHS) violated the Administrative Procedures Act (APA) when it created the DACA program in 2012. Judge Hanen held that DHS was required to go through the notice and comment rulemaking under the APA. On July 17, 2021, the White House announced that the government will appeal Judge Hanen's decision and that DHS plans to announce a proposed rule concerning DACA in the newer future. For DACA recipients as of 7/16/2021:

If you have DACA now, it is still valid.

If you have a DACA renewal application pending, you can keep renewing until further notice.

If you have a pending initial DACA application, there is an indefinite freeze on that application.

If you are eligible for DACA but haven't applied yet, USCS can accept your application but can't process it.

If you have advance parole through DACA, it is still valid.

If you have DACA and a pending advance parole application, USCIS will still process it.

(Marilyn Daniel, Source: American Immigration Lawyers's Association (AILA) Doc. 18011035,7/21/21)

The Southern Border

2. On July 28, 2021, DHS announced it would begin subjecting some families attempting to enter the US to expedited removal. This legal procedure allows individual immigration officials to issue deportation orders without the non-citizen ever going in front of a judge. Instead of returning these individuals to Mexico without entering a deportation order, Customs and Border protection (CBP) will enter the deportation order into their records. DHS provided assurances that asylum-seekers would not be deported. The entry of the deportation order results in future punitive immigration consequences for these individuals.

(Marilyn Daniel, Source: American Immigration Council, 7/28/2021)

Temporary Protected Status for Haiti

3. Temporary Protected Status (TPS) grants work authorization and temporary protection from removal to individuals of certain countries when the situation in the country is so precarious that it is unreasonable to force people to return until the situation can improve. Individuals from Haiti who were present in the United States before July 29, 2021 and have continuously resided in the United States since then (and who meet other eligibility criteria) can apply to USCIS from August 3, 2021, through February 3, 2023. The grant of TPS will be for that same 18-month period. This status is valuable for anyone who does not currently have immigration status or whose status will be expiring soon, but it provides no permanent status in the United States. Approximately 55,000 current TPS Haitian beneficiaries (whose status has been extended only through Oct. 4, 2021) and an additional 100,000 individuals may be eligible to apply.

(Marilyn Daniel, Source: USCIS website, 7/30/2021)

Temporary Protected Status for Burma (Myanmar)

4. On May 24, 2021, DHS designated Burma (Myanmar) for TPS for 18 months: May 25, 2021 - Nov. 15, 2022. At that time, all applicants were required to submit applications by Nov. 22, 2021. On August 3, 2021, DHS announced initial applicants can file anytime during the 18-month approved period and they can file online.

(Marilyn Daniel, Source: USCIS website)

Temporary Protected Status for Venezuela

5. On March 8, 2021, DHS designated Venezuela for TPS for 18 months: March 9, 2021, through Sept. 9, 2022. At that time, all applicants were required to submit applications by Sept. 5, 2021. On August 3, 2021, DHS announced initial applicants can file anytime during the 18-month approved period and they can file online.

(Marilyn Daniel, Source: USCIS website)

Temporary Protected Status Re-designated for Syria

6. On March 18, 2021, DHS re-designated Syria for TPS for 18 months: March 19, 2021 - Sept. 30, 2022. At that time, all applicants were required to submit applications

by May 18, 2021. On August 3, 2021, DHS announced initial applicants can file anytime during the 18-month approved period and they can file online.
(Marilyn Daniel, Source: USCIS website)

Additional H-2B Visas Available

7. The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary non-agricultural jobs. On May 25, 2021, the USCIS and DOL announced that they would authorize 22,000 additional H-2B visas for the second half of the fiscal year which began on April 1, 2021. Normally, the USCIS authorizes 33,000 H-2B visas beginning on October 1st, and another 33,000 beginning on April 1st. The additional 22,000 visas are in addition to those authorized on April 1, 2021. 16,000 were available to returning H-2B workers and 6,000 to citizens of El Salvador, Guatemala, and Honduras. H-2B visas are for unskilled non-agricultural workers who will be filling a temporary seasonal or peak-load need – less than 10 months.

(Glen Krebs, Source: USCIS website)

Employment-Based Immigration (EB-5)

8. The U.S. government created the EB-5 Immigrant Investor Program **to encourage foreign investment in U.S. businesses**. In exchange for investing in a business that creates jobs for U.S. workers, foreign nationals and their families are eligible to become permanent residents of the United States with a pathway to citizenship.

EB-5 is broken down into Direct EB-5 and Regional Center EB-5. Being able to count indirect job creation on the Regional Center side is the fundamental difference between the two options. **Around 95%** of EB-5 projects are through an EB-5 Regional Center. **Nearly \$11 billion** of capital investments in EB-5 projects through regional centers supported more than 355,000 U.S. jobs over just a two-year period. The EB-5 Immigrant Investor program has stimulated the economy through difficult times. All without raising taxes for U.S. residents. (Aug 28, 2020)

The EB-5 Regional Center Program expired on June 30, 2021. The program was decoupled from automatic renewals in the Congressional budgetary process following years of being renewed in that way. The disagreement is over who defines a Targeted Employment Area. A **targeted employment area (TEA)** is a rural area or an area characterized by high unemployment that would benefit from the economic growth brought about by foreign investment. This is important because a TEA project attracts more foreign investors for a particular project than a non-TEA project.

Currently EB-5 projects are approved for TEA status at the State level. Some in Congress want the rule changed whereby TEAs are defined at the Federal level to prevent big developer manipulation. Despite the last-minute effort of Senator Grassley to “hot line” a bill through the Senate before the 6/30/21 deadline (which would require unanimous consent of all the Senators), it was blocked. Senator Lindsey Graham objected to the effort thereby killing the passage of the bill.

Concerns are (1) I-526 petitions will be on hold; (2) DHS cannot issue Green Cards; and (3) Investors may seek a rebate of funds invested. The most likely scenarios appear to be that the EB-5 program will indeed be reinstated by Congress.

(Jerry Clark * Founder * SAA Cedibus EB-5 Projects)

Travel to the U.S.

9. The Department of State continues to alter significantly the categories of travelers from the Schengen Area*, United Kingdom, Ireland and other COVID-19 hot spots who are eligible for National Interest Exceptions (“NIEs”) and who are otherwise banned from travel to the US. From July 2020 to March 2021, the Department of State granted NIEs to certain individuals if they could demonstrate that their admission would substantially benefit the US economy, including technical experts, specialists, managers and executives, investors and professional athletes. On March 2, 2021, the Department of State substantially revised and restricted the categories to apply only to individuals coming to the US to offer critical infrastructure support. The new guidance allowed students, academics and journalists to qualify. Then on July 6, 2021, the criteria were revised again to provide that NIE’s were available to senior level executives who provide strategic direction, certain technical experts, and other visa holders whose travel would provide significant economic impact. NIE’s are also available to individuals whose travel is critical to defense, law enforcement, diplomacy, public health, and who are professional athletes and their essential staff. The NIE criteria continue to evolve and travelers should be aware of limitations and frequent changes to US policy.

*(The 26 Schengen countries are [Austria](#), [Belgium](#), [Czech Republic](#), [Denmark](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Iceland](#), [Italy](#), [Latvia](#), [Liechtenstein](#), [Lithuania](#), [Luxembourg](#), [Malta](#), [Netherlands](#), [Norway](#), [Poland](#), [Portugal](#), [Slovakia](#), [Slovenia](#), [Spain](#), [Sweden](#), and [Switzerland](#).)

(Charles Baesler)

International Students

10. International students coming to study in the U.S have experienced many challenges over the last 2 years. Though some travel restrictions remain for some countries, National Interest Exceptions (NIEs) are in place for students coming to the U.S. on F-1 and J-1 visas from these areas. NIEs are valid for 12 months and multiple entries. U.S. Consulates are re-opening and the State Department has put a priority on processing student visas. Incoming international student numbers are not back to pre-pandemic numbers but they will certainly be higher this academic year than last year. U.S. Citizenship and Immigration Services announced new policy guidance that eliminates the need for individuals who have applied for a change of status (COS) to F-1 student to apply to change or extend their nonimmigrant status while their initial F-1 COS application is pending. DHS announced special student relief employment benefits to F-1 international students from Haiti, Burma, Venezuela, Syria, Yemen and Somali experiencing severe economic hardship.

(Karen Slaymaker)

Asylum Seekers and the “Remain in Mexico” (MPP) Policy

11. We are starting to see migrants arriving in the Lexington area after they' have crossed the border from the "Remain in Mexico" program. The "Remain in Mexico" program violates international laws in that it requires asylum seekers in the United States to remain in Mexico while the United States slowly processes them in. Many of them are in need of legal services and also housing and financial support while their asylum applications are pending.

(Sarah Adkins)

Removal/Deportation Proceedings

12. **The Louisville Immigration Court closed its doors on August 15, 2019.** As of July 31, 2021, the court has dissolved and is now part of the Memphis Immigration Court once again. There will not be a physical court in Louisville again but there are plans to build a hearing room in Louisville where respondents will go to videochat with judges. There is not an estimated date on when this hearing room will be completed. On August 2, 2021, the court reopened via WebEx (a virtual, remote platform).

The Department of Homeland Security attorneys have prosecutorial discretion again. This means that they have the ability to join with an immigrant's counsel to ask the judge to make different decisions in a case such as joining in a stipulation, asking for a continuance, dismissing a case, or agreeing not to file a case. This may allow the immigration courts to close many cases, or not even file them to begin with, opening up court dockets and allowing some immigrants to get out of removal proceedings even without obtaining lawful immigration status first.

Finally, in *Matter of A-C-A-A-*, 28 I&N Dec. 351 (A.G. 2021), **the Attorney General restored the ability of immigration judges, and the BIA, to rely on stipulations in court and narrow the issues to those on which the parties actually disagree.**

Administrative closure is available again in most federal circuit courts; however, in the sixth circuit which covers Kentucky, it is only allowed for I-601A waiver cases. This allows a judge to temporarily close a case while awaiting the adjudication of an immigration benefit.

(Emily Jones, Katie Taylor, Tatiana Lipsey - KRM Legal Office)

Asylum

13 In June and July, the Attorney General reviewed several decisions issued by the prior Attorney General and reversed several decisions issued in the last couple of years, including *Matter of A-B-* (2018 & 2021), *Matter of L-E-A-* (2019), and *Matter of A-C-A-A-* (2020). The new decision in *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) (“A-B- III”) represents a return to prior precedent regarding the evaluation of a particular social group for the purposes of asylum and determining whether a person was persecuted on account of their membership in a particular social group. Pending forthcoming rulemaking that will seek to create a clearer definition, immigration judges and the Board of Immigration Appeals (BIA) are to apply **a set of standards that are decidedly more forgiving, especially in cases of people fleeing gang- and gender-based violence.** Similarly, the new decision in *Matter of L-E-A-*, 28 I&N Dec. 304 (A.G. 2021) (“L-E-A- III”) also returns the immigration system to the preexisting state of affairs, pending completion of the ongoing rulemaking process and the issuance of a final rule addressing

the definition of “particular social group.” **The preexisting precedent is much broader, especially in cases of family-based persecution.**

(Emily Jones, Katie Taylor, Tatiana Lipsey - KRM Legal Office)

Refugees

14. Refugee arrivals have returned. KRM is expecting to resettle over 100 individuals between June 1 and the end of August. We have been struggling to find housing so please send any available rentals our way.

(Emily Jones, Katie Taylor, Tatiana Lipsey - KRM Legal Office)

Central American Minors Program

15. The Biden administration has begun the process to reopen the Central American Minors Program ("CAM Program"). This program was started by the Obama administration in response to the unaccompanied minors from Guatemala, Honduras, and El Salvador arriving at the border. It allows those parents with certain statuses here in the U.S. to petition for access to the U.S. Refugee Admissions Program on behalf of their children for potential resettlement or parole into the United States. It was terminated by the previous administration. In the second phase of reopening the CAM program, the eligibility to petition will now be extended to include legal guardians (in addition to parents) who are in the United States pursuant to any of the following qualifying categories: lawful permanent residence; temporary protected status; parole; deferred action; deferred enforced departure; or withholding of removal. In addition, this expansion of eligibility will now include certain U.S.-based parents or legal guardians who have a pending asylum application or a pending U visa petition filed before May 15, 2021. These applications are not yet being accepted and will need to be filed through a refugee resettlement agency, like KRM.

(Emily Jones, Katie Taylor, Tatiana Lipsey - KRM Legal Office)

Respectfully submitted,
Marilyn S, Daniel, Co-Chair