

PUBLICATION

Biden-Harris Administration Pushes Out Key Immigration Updates in May

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Keeping true to the February executive order, "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans," the Biden-Harris administration announced key policy changes last month, which offer some relief from Trump-era employment-based immigration restrictions. Changes include ending biometrics intake for certain spouse work permit applications, reviving the international entrepreneur parole rule, canceling plans for certain H-1B changes, and adding India to the countries from which travel is restricted due to COVID.

Rule Withdrawals

As of May 17, 2021, USCIS has suspended a rule requiring the spouses of certain employment visa holders to submit to biometrics screening to receive work permits. The rule, which went into effect in 2019, has caused application processing times to skyrocket to at least six months, and up to 13 months in some cases. Prior to the implementation of the rule, processing times typically ranged from three to six months. The added delay caused by biometric screening has made it nearly impossible for spousal work permit holders to avoid gaps in employment authorization over the past two years, leading affected applicants to file suit against USCIS in federal court. The suspension covers all applications filed and pending with USCIS on May 17, 2021, and any new applications filed during the 24-month suspension period, which is set to expire May 17, 2023, barring any future policy changes by the agency. At the time of this alert, USCIS has not updated its posted processing times, which remain at least six months.

The agency also withdrew a 2018 notice of proposed rulemaking that sought to eliminate the International Entrepreneur Rule (IER). The IER program, which launched in early 2017, was an early victim of the Trump administration's regressive immigration policies. However, the legal mechanism to eliminate the program from the law was never completed, allowing the current administration to easily revive the program. The IER offers temporary permission to enter and stay in the U.S. (i.e., parole) to foreign-born entrepreneurs seeking to launch or run U.S.-based start-up companies. The rule requires the start-up company to offer a "significant public benefit" and have "substantial potential for rapid growth and job creation" – as demonstrated through the receipt of significant capital investments and/or government grants to support early-stage operations. To learn more about the program and eligibility requirements, you can read our 2017 overview of the rule [here](#).

Furthermore, the agency eliminated the controversial interim final rule, "Strengthening the H-1B Nonimmigrant Visa Classification Program," from the text of the immigration regulations. The rule, which would have fundamentally changed many aspects of the H-1B visa program, was vacated by a federal court in December 2020 before it could go into effect. However, eliminating the text of the rule from the regulations signals that the administration does not intend to revive or pursue those alterations to the long-standing H-1B work visa program.

New COVID-19 Restrictions

Finally, on the COVID front, the administration added India to the list of countries subject to regional COVID restrictions due to the recent surge that has swept the country. These regional COVID proclamations prohibit

individuals from entering the U.S. if they were physically present in one of the following restricted countries within the 14 days preceding the date of travel: China; Iran; the European Schengen Area (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, Switzerland, Monaco, San Marino, Vatican City); the United Kingdom (England, Scotland, Wales, Northern Ireland); the Republic of Ireland; Brazil; South Africa; and India.

Certain individuals, like U.S. citizens and Lawful Permanent Residents, are exempt from these restrictions. Travelers who are not exempt may apply for a National Interest Exception (NIE) to the 14-day quarantine requirement if they satisfy any of the following criteria (current as of the date of this alert):

1. Travelers seeking to provide vital support or executive direction for critical infrastructure or significant economic activity in the U.S.;
2. Journalists;
3. Students and certain academics covered by exchange visitor programs;
4. Immigrants;
5. Fiancés of U.S. citizens;
6. F-1 students whose programs begin on/after August 1, 2021; or
7. Travelers seeking to enter the U.S. for purposes related to humanitarian travel, public health response, and national security.

Significantly, individuals who have received COVID vaccinations are not exempt from the 14-day regional travel restrictions and may require an NIE to enter the U.S. You can read more about NIEs in our recent alert [here](#).

Additionally, all travelers to the U.S. – including U.S. citizens and Lawful Permanent Residents – are now required to take a COVID test within 72 hours of their inbound flight, regardless of vaccination status or departing country. As domestic and international travel resumes, it is important to be aware of continuing travel restrictions and to anticipate delays.

If you have any questions on these developments, please contact [Meredith Doll](#) or any member of [Baker Donelson's Immigration Team](#).