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IMMIGRATION AND COMPLIANCE BRIEFING: COVID-19 SUMMER SCOOP & QUICK TIPS

Since March 2020, the U.S. Department of Homeland Security (DHS), Department of State (DOS), and Department of Labor (DOL) have issued and/or revised a significant number of rules and policies in response to the global COVID-19 pandemic. Below is a roundup of the current rules/policies covering the major areas of global mobility impacted by COVID-19.

INTERNATIONAL TRAVEL

U.S. Land Borders

- Canada: The border between the U.S. and Canada remains closed until July 21, 2021 except for essential workers and services. As of July 5, fully vaccinated Canadian citizens, permanent residents, and certain exempted individuals are not required to quarantine upon entry or undergo an 8-day COVID test.
- Mexico: The border between the U.S. and Mexico remains closed until July 21, 2021 except for essential workers and services.

The U.S. land borders have been closed **since March 21, 2020**. While the border closures are currently set to expire on July 21, they may be extended for additional 30-day periods. As a reminder, the following types of travel/travelers are exempt from the restrictions:

- U.S., Canadian, and Mexican citizens and permanent residents returning to their **home country**
- Individuals traveling for medical purposes (e.g., to receive medical treatment)
- Individuals traveling to attend educational institutions
- Individuals traveling to work in the U.S.
- Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders)
- Individuals engaged in lawful cross-border trade (e.g., truck drivers transporting cargo between the U.S., Canada and Mexico)
- Individuals engaged in official government or diplomatic travel
- Individuals engaged in military-related travel or operations

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Geographical Travel Bans

Entry into the U.S. is prohibited, with some exceptions, for most travelers who have been in any of the following countries at any time within the past 14 days (including transit):

- **China; Iran; 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); **United Kingdom** (England, Scotland, Wales, Northern Ireland); **Republic of Ireland; Brazil; South Africa; India**

Exceptions to this ban include, but are not limited to:

- U.S. Citizens and Lawful Permanent Residents (LPRs)
- Certain family members of U.S. citizens
- Diplomatic Travelers
- Individuals traveling with an approved National Interest Exception (NIE)

QUICK TIP: The current COVID-19 travel bans are based on physical presence and do not ban citizens or residents of any country.

QUICK TIP: Even a layover/connecting flight in an impacted countries is enough to trigger the entry ban, so if traveling to the U.S. from a *non-banned* country, travelers are advised to double-check their itineraries to ensure that they do not inadvertently become subject to the ban.

NATIONAL INTEREST EXCEPTIONS

Travelers and their derivative beneficiaries who would otherwise be subject to the geographic travel ban may request a National Interest Exception (NIE) based on their visa type and/or their intended purpose of stay in the United States.

QUICK TIP: Effective July 6, 2021, the DOS announced that approved NIEs are valid for 12 months and multiple entries. This policy applies retroactively to travelers granted an NIE within the prior 12 months. Previously, NIEs were valid for a single entry within 30 days of approval.

On June 24, 2021, the DOS updated its guidance on NIEs, including categories of individuals who are automatically considered for an NIE at ports of entry and those who may apply for an NIE at the U.S. Consulate.

Individuals automatically considered for an NIE include:

- Immigrants (those seeking permanent residence in the U.S.)
- Fiancé(e)s of U.S. citizens and their dependents (K visas)
- Students (F and M visas)

Note: New or returning students present in China, Brazil, Iran, South Africa, or India may arrive no earlier than 30 days before the start of an academic program beginning August 1, 2021 or after, including Optional Practical Training (OPT)

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Individuals who may apply for an NIE include:

- Certain J-visa holders (exchange visitors, students, and academics; Educational Commission for Foreign Medical Graduates (ECFMG) participants)
- Journalists
- Travelers providing executive direction or vital support for critical infrastructure sectors, or directly linked supply chains
- Travelers providing vital support or executive direction for significant economic activity in the U.S.
- Travelers whose purpose of travel falls within one of these categories:
 - 1) Lifesaving medical treatment for the principal applicant and accompanying close family members;
 - 2) Public health for those traveling to alleviate the effects of the COVID-19 pandemic, or to continue ongoing research in an area with substantial public health benefit (e.g., cancer or communicable disease research);
 - 3) Humanitarian travel, including those providing care, medical escorts, and legal guardians
- Travelers whose work is in the national interest of the U.S.
- Derivative family members accompanying or following to join a noncitizen who has been granted or would be reasonably expected to receive an NIE

Individuals who are automatically considered for an NIE at a port of entry do not need to apply for the NIE at their consulate in advance of their travel. Those who believe they may be eligible

for an NIE should contact their local consulate for instructions.

QUICK TIP: Approved NIEs may be noted directly in a visa or an applicant may be notified via email that they have received a digital approval. Both formats are equally valid, and travelers are advised to carry copies of the application materials and confirmation of approval with them when they travel.

I-9 COMPLIANCE

Extended Flexibility

For employees hired between **June 1, 2021** and **August 31, 2021**, Immigration and Customs Enforcement (ICE) has temporarily waived the in-person I-9 document inspection requirement for employers that are fully remote due to COVID-19. Initially implemented on March 20, 2020, this guidance has been extended in 30 to 60-day increments since and may be extended after August 31.

To avoid inadvertent I-9 regulatory violations, employers should note the following:

- **As of April 1, 2021**, an employer may utilize the flexible I-9 guidelines *even if some employees are present at the worksite*. However, this flexibility ends once the employee begins non-remote work on a regular, consistent, or predictable basis. This guidance does not extend to remote employees whose employment is normally remote, but only applies to remote employees who are temporarily remote due to COVID-19.

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- **Prior to April 1, 2021**, these guidelines applied only to employers and work-places operating fully remotely due to COVID-19. If employees were present at the worksite, no exceptions were permitted. This guidance did not extend to remote employees whose employment is normally remote, but only applied to remote employees who are temporarily remote due to COVID-19.
- Within three days of the remote employee returning to regular in-person employment or the termination of the flexible guidelines, whichever is earlier, the employer must physically inspect any I-9 documents that were inspected electronically in reliance on this policy. Failure to timely physically inspect these documents constitutes an I-9 violation.

QUICK TIP: To avoid missing the three-day deadline, employers may begin the physical I-9 document inspection for individual employees *prior* to the return to in-person employment.

QUICK TIP: To avoid I-9 compliance violations, employers are encouraged to conduct regular internal I-9 audits and periodically review the M-274 Handbook for Employers, guidance for completing Form I-9.

ONGOING COVID-19 FLEXIBILITIES

Additional Time for Responding to Agency Requests

On June 24, 2021, U.S. Citizenship and Immigration Services (USCIS) extended its policy granting additional time to respond to the following types of agency

requests as long as they were mailed by the agency between **March 1, 2020** and **September 30, 2021**:

- Requests for Evidence
- Continuations to Request Evidence (N-14)
- Notices of Intent to Deny, Revoke, Rescind, or Terminate
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5

If a response to an eligible USCIS request and/or notice is received within **60 days** of the stated deadline, then USCIS will consider the response prior to making a final determination.

Refiling Certain Applications Due to Delayed Rejection From USCIS Lockbox

Due to COVID-19, USCIS lockbox facilities are experiencing significant delays in intake and processing of immigrant and nonimmigrant applications and petitions. In some cases, delayed rejections can prevent an applicant from timely refiling or cause an applicant to “age out” of a benefit. Therefore, for certain applications filed at a USCIS lockbox between **October 1, 2020** and **August 9, 2021**, the agency has issued the following guidance:

- For applicants whose application was rejected solely because the filing fee expired due to USCIS lockbox delays, the applicant may refile and USCIS will deem the application to have been received on the date the initial application was received. USCIS will also waive the \$30 dishonored check fee.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

- For applicants, co-applicants, beneficiaries, or derivatives who aged out of eligibility for the requested benefit due to a delayed rejection from a USCIS lockbox, the applicant may refile and USCIS will deem the application to have been received on the date the initial application was received. This does not apply to Form N-600K, Application for Citizenship and Issuance of Certificate.

QUICK TIP: Both petitioners and applicants should periodically review the [USCIS COVID-19 Response webpage](#) and the websites of other government agencies for up-to-date information on guidance on COVID-19 related policies and flexibilities.

FORM I-539 BIOMETRICS

On May 3, 2021, USCIS announced that it will suspend the biometrics requirements for I-539 applicant categories (H-4, L-2, E-1, E-2, E-3) for a two-year period beginning on May 17, 2021. The suspension applies to Form I-539 applications that are 1) pending on May 17, 2021, and have not yet received a biometric services appointment notice, or 2) new applications received by USCIS from May 17, 2021, through May 23, 2022.

Associate **Ashley Moore** contributed to this briefing.

Wiggin and Dana's Immigration and Nationality Law and Compliance Practice Group will continue to provide briefings as more information becomes available. Please contact the practice group Co-Chair, Najia Khalid, at 203.498.4314 or nkhalid@wiggin.com if you have any questions.