



## June 2021 ICYMI

As usual, there have been several policy and practice updates over the last few weeks, from new ICE guidance, Supreme Court decisions, a flurry of new updates from USCIS, some important consular processing information from NVC and a consolidated guide on CDC COVID travel restriction exemptions from CBP. Read more below about these important announcements below.

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## I. **USCIS Updates**

### A. **USCIS Policy Manual Update on U Visas**

On June 14, 2021, USCIS announced changes to the Policy Manual on U visa including provisions regarding [the U visa waitlist](#) and [Bona Fide Determination EAD and Deferred Action for pending U Visa Petitioners](#). Please see [ASISTA's full statement](#) and our [Policy Alert with details](#). We're working on a more in-depth practice advisory that we will share soon.

## B. [Additional USCIS Policy Manual Updates](#)

On June 9, 2021, USCIS announced three new Policy Manual updates regarding expedite criteria for case processing, Requests For Evidence/Notices of Intent to Deny (RFEs/NOIDs) and extending certain employment authorization document (EAD) validity periods.

1. [Expedite Criteria and webpage updates](#): This alert clarifies the circumstances under which USCIS will approve expedited processing requests and has restored the expedite category for nonprofit organizations in certain circumstances. The update also states that expedited processing of benefit requests for noncitizens with final orders of removal or noncitizens in removal proceedings is coordinated between USCIS and ICE. Read how to make an expedite request [here](#) and about USCIS case processing in special situations [here](#).
2. [RFE/NOID policy updates](#): This update rescinds [the 2018 guidance on RFEs/NOIDs](#) and restores [the 2013 policy](#) regarding their issuance. Officers are now instructed to issue an RFE or NOID when additional evidence could potentially demonstrate eligibility for an immigration benefit. The rescinded guidance allowed officers to deny certain benefit requests without first issuing an RFE or NOID. This change is effective immediately.
3. [EAD policy update](#): For adjustment of status applicants under INA § 245, the current one-year validity of both initial and renewal EADs has been extended to two years. USCIS made this change due to the ongoing processing delays affecting adjustment of status applications. This change is effective immediately.

## C. USCIS Filing Updates

1. [Refiling after USCIS Lockbox Rejections](#): USCIS has provided guidance on refiling rejected applications from USCIS lockbox locations.
2. [USCIS Vermont Service Center has Moved](#): This week USCIS announced that effective June 25, 2021, the Vermont Service Center will no longer receive any incoming mail at the St. Albans, VT facility, which is being decommissioned. Mail sent to the St. Albans addresses will be forwarded for one year, but any mail sent to the previous addresses after June 2022 may be returned to the sender by the United States Postal

Service or the courier service used. ASISTA has reached out to USCIS regarding the discrepancies in zip code between St. Albans and Essex Junction and will send updates as soon as they are available.

## II. ICE Updates

### A. ICE OPLA Memo on Prosecutorial Discretion/Enforcement Priorities

On [May 27, 2021, ICE issued interim guidance to OPLA Attorneys](#) to provide guidance on implementing the current enforcement priorities and exercising prosecutorial discretion. The guidance echoes the three categories of enforcement priorities listed in [previous ICE guidance](#) and outlines factors for the exercise of discretion including an individual's "status as a victim, witness, or plaintiff in civil or criminal proceedings and whether the individual has potential immigration relief available." ICE has also recently published guidance on how individuals may request prosecutorial discretion from OPLA. Each OPLA field location has a local email address for the submission of prosecutorial discretion requests, [which can be found here](#).

See helpful resources on the new OPLA guidance from Professor Shoba Sivaprasad Wadhia [here](#) and from NIPNLG [here](#).

### B. [ICE Launches Victims Engagement and Services Line \(VESL\)](#)

ICE also recently announced the launch of the Victims Engagement and Services Line (VESL) to replace the Victim Of Immigration Crime Engagement (VOICE) Office. The new program aims to be a more inclusive victim support system offered to all victims regardless of immigration status of the victim or perpetrator. The expanded services provided through VESL will include guidance on available U- and T-visa resources and information about the Department of Homeland Security (DHS) Blue Campaign to counter human trafficking. A new telephone number will be issued, which is available [here](#).

### III. Supreme Court Decisions

- A. [Sanchez v. Mayorkas](#): The Supreme Court issued a unanimous decision in the *Sanchez v. Mayorkas* case that TPS holders who originally entered the U.S. without inspection are unable to adjust their status based on that status. The Supreme Court ruled that having been granted TPS does not constitute an "admission" and therefore does not provide the lawful entry necessary in most cases for TPS holders to adjust status through an employment petition (this case dealt directly with 245(k) so not clear it applies to 245(a) adjustment and advocates will argue that it does not).<sup>1</sup>

NOTE: This decision does NOT affect TPS holders who entered with admission, as in, it does not affect anyone who entered the country on any type of visa. Similarly, this decision does NOT affect TPS holders who entered without admission and have already adjusted their status to permanent residence. The decision should not be applied retroactively. It should only impact applications filed after issuance of the mandate. We are currently assessing this decision with our partners to ascertain its impact on those with U nonimmigrant status and their ability to adjust status under INA 245(a) and will provide additional analysis of this issue soon.

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<sup>1</sup> There was previously a circuit court split on this issue. TPS holders who entered without admission were eligible to adjust their status only in the 9th, 8th and 6th circuits. This decision means that TPS holders who reside in those circuits will no longer be able to adjust their status once the decision goes into effect in 33 days from the date of the decision when the mandate issues. Until then, TPS holders in these circuits are still eligible to adjust their status unless the Biden administration seeks an earlier issuance of the mandate.

- B. [Niz-Chavez v. Garland](#) The U.S. Supreme Court ruled in [Niz-Chavez v. Garland](#) that the “stop-time rule” — used to calculate the 10-year continuous physical presence requirement for non-lawful permanent resident (non-LPR) cancellation of removal and the 7-year continuous residence requirement for lawful permanent resident (LPR) cancellation of removal — is only triggered when the Department of Homeland Security (DHS) serves a single Notice to Appear (NTA) that contains all of the statutorily required information, including the time and place of the immigration court hearing. This decision may also impact VAWA cancellation of removal cases whose eligibility may have been cut off by a defective NT.
- C. Given the far reaching implications of Niz-Chavez, ICE issued an “[Interim Litigation Position Regarding Motions to Reopen in Light of the U.S. Supreme Court Decision in Niz-Chavez v. Garland](#)”, which specifies that “...for 180 days from the date of the Supreme Court’s decision (i.e., until November 16, 2021), Our partners at CLINIC have prepared [this helpful summary](#) of the issues presented in NIZ-Chavez.

#### IV. Department of State Updates

- A. **NVC Telephone Contacts:** Attorneys inquiring about immigrant visas may contact the NVC by phone at (603) 334-0700 (Monday through Friday, 7:00 am to 12:00 midnight ET). NVC reports that, due to high call volume, wait time may be up to 30 minutes. The National Visa Center (NVC) has a specific telephone number for VAWA related NVC/Consular Electronic Application Center (CEAC) consular processing issues: (603)-334-0828.
- B. **Contact NVC Research for lost USCIS approval notices:** If a case has been approved by USCIS, but the file has not been received by the NVC, the NVC has indicated its willingness to work with USCIS to locate the petition and have it transferred to the NVC. Stakeholders are encouraged to email [NVCResearch@state.gov](mailto:NVCResearch@state.gov), along with:
- a) A copy of the approval notice;
  - b) Correspondence with USCIS and NVC about the issue; and
  - c) Additional information that may help identify the case.

#### C. Updates from recent Department of State Stakeholder Engagement

On May 27, 2021, Representatives from the Department of State met with members from AILA Department of State Liaison committee and discussed numerous issues including consular post reopening. See notes [here](#).

#### D. **Expediting Emergency Cases**

NVC has confirmed that for urgent humanitarian or medical inquiries, applicants and their attorneys should still use the [NVCexpedite@state.gov](mailto:NVCexpedite@state.gov) email address along with proof of the need for an earlier appointment. NVC will forward the request to the appropriate post for their consideration. NVC cannot provide wait times for expedite requests to be processed since that is dependent on local factors at individual posts.

NOTE: Submitting an expedite request through the online [Public Inquiry Form](#) will delay consideration of the expedite request and NVC's subsequent response. Additionally, copying the consular section on your email is generally not necessary.

#### V. **CBP Updates**

##### A. **I-94s Issued at a Port of Entry (POE)**

During a recent open forum at the AILA National Conference, CBP confirmed that issues with I-94 cards can be corrected at any port of entry (POE). If there is an error or mistake on the paper or electronic form I-94, the noncitizen or their representative can contact the Deferred Inspection office closest to their location. A list of Deferred Inspection Sites and POEs can be found on CBP's website, <http://www.cbp.gov>, under the "Ports" link at the bottom of the page.

However, CBP recommends that rather than contacting the POE directly, attorneys should first contact the CBP Traveler Communication Center. The Traveler Communication Center will assist callers with determining the best route to correct their I-94 card and will coordinate with the POE on next steps. CBP indicates that this may alleviate some of the issues in trying to obtain a deferred inspection appointment.

The number for the Travel Communication Center is 202-325-5120. The Traveler Communication Center is an alternative to the Traveler Redress Inquiry Program, [TRIP](#), online services. CBP recommends that attorneys contact the Traveler Communication Center instead of the online system if they know they will need live assistance, like a deferred inspection appointment.

- B. On June 7, 2021, CBP Issued the [\*\*\*Presidential Proclamation Exemptions of Certain Persons Who Pose a Risk of Transmitting Coronavirus Disease\*\*\*](#). This guidance is a consolidation of all exemptions currently available to travelers and does not contain any new exemptions or restrictions.