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## Transcending Borders – July 2021

### International Entrepreneur Parole Program Returns

USCIS recently breathed life back into the “International Entrepreneur” parole program, which provides badly needed options to noncitizen entrepreneurs who have demonstrated strong potential to create jobs. In [this blog post](#), Denise Hammond explains this welcome development.

### EB-5 Changes

The EB-5 investor visa program saw major events in the past few weeks. On June 30<sup>th</sup>, the EB-5 Regional Center program expired when Congress failed to reach an agreement on its reauthorization. Despite the lapse, it is anticipated that negotiations to reauthorize the program will continue and that the program will eventually be reauthorized, though the timing remains uncertain and reauthorization is not guaranteed. United States Citizenship and Immigration Services (USCIS) offers [guidance](#) on its website for how it will handle EB-5 Regional Center filings during the lapse.

On June 22<sup>nd</sup>, a U.S. District Court issued a ruling in *Bebring Regional Center LLC vs. Wolf*, vacating the “[Modernization Regulations](#)” passed in November 2019, which substantially increased the required minimum investment amounts, among other changes. On July 6, 2021 USCIS issued a [notice](#) reinstating EB-5 regulations that were in effect prior to the Modernization Regulations while it considers the impact of the court’s decision. It is important to note that this expiration does not impact EB-5 investors applying through the Direct Jobs Program, which is separate from the Regional Center program.

### What does this mean?

The USCIS notice reinstating the pre-Modernization Regulations has no impact on new filings under the EB-5 Regional Center program, as it lapsed on June 30<sup>th</sup>. However, the ruling at least temporarily benefits EB-5 investors filing under the Direct Jobs program because they may now prove eligibility with a \$500,000 investment in targeted employment areas (TEAs) as opposed to \$900,000 under the Modernization Regulations, or a \$1,000,000 investment in non-TEAs, down from \$1,800,000 under the Modernization Regulations.

It is unclear whether USCIS will appeal the District Court’s decision in the case of *Bebring Regional Center LLC vs. Wolf*. We also do not know what impacts might come with I-526 filings relying on the reinstated Pre-Modernization Regulations if an appeals court reverses the lower court decision. We will continue to monitor events surrounding EB-5 regulations and will provide further updates as they arise.

### Supreme Court Ruling on Green Cards for TPS Recipients

The Supreme Court ruled unanimously on Monday, June 7, 2021 in *Sanchez v. Mayorkas* that recipients of Temporary Protected Status (TPS) in the United States who entered without inspection must undergo consular processing outside the U.S. if they want to obtain green cards or other



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adjustments of status. Thousands of people are affected by this ruling. Justice Kagan, writing for the Court, explained that while TPS-holders have been provided humanitarian protection from the government, “[t]he TPS program gives foreign nationals nonimmigrant status, but does not admit them.” The Justice also noted that “Congress, of course, could have gone further, by deeming TPS recipients to have not only nonimmigrant status but also a lawful admission. Legislation pending in Congress would do just that.”

Justice Kagan’s reference is to the American Dream and Promise Act of 2021 (H.R. 6, 117<sup>th</sup> Cong., 1<sup>st</sup> Sess.), passed by the House of Representatives in March 2021. This Act would provide most TPS, DACA, DED recipients in the United States, a pathway to Legal Permanent Residency. The Senate has held Committee hearings on the Act, but is unlikely to move it to a floor vote in the near future. Through his Congressional proxies, President Biden has introduced his own legislation, the U.S. Citizenship Act, (H.R. 1177, 117<sup>th</sup> Cong, 1<sup>st</sup> Sess.), which would also give TPS-holders a pathway to citizenship, but this proposal has gotten even less traction, receiving only references out to House committees and subcommittees.

## Biden Terminates Reman in Mexico

On June 1, 2021, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas announced that DHS would end the Trump Administration’s so-called “Migrant Protection Protocols” (MPP), better known as the “remain in Mexico” program. Under MPP, it was DHS policy that most non-Mexican applicants for admission who arrived on land at the Southwest Border would be returned to Mexico to await their removal proceedings. In practice, given the length of time required for normal asylum processing magnified by the difficulties imposed by Covid-19, this policy left applicants for admission on the Mexican side of the U.S. border indefinitely. .

Secretary Mayorkas found that MPP did not enhance border management or safety increase efficiency of asylum adjudication, or decrease backlogs of cases pending adjudication. The Secretary has promised implementation of a “Dedicated Docket” program for certain families arriving along the southern border, which will provide alternatives to detention, working of the root causes of migration with Mexico and other countries to the south of the United States.

## DACA Update

The Biden Administration has, from its first days, supported restoration of Deferred Action for Childhood Arrivals (DACA) and expansion of legal protections for DACA recipients. In concert with a series of federal court cases, the Biden Administration has restored the DACA program to its status before the Trump Administration’s changes.

- USCIS is processing new DACA applications, and current and former DACA holders may apply for renewal. Anyone who received a one-year renewal for deferred action and/or employment authorization under a Trump Administration policy ruled invalid by a federal judge will have it extended to two years.
- USCIS is again accepting applications for advance parole documents for DACA holders.



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- Last summer, in June 2020, the United States Supreme Court struck down the Trump Administration’s rescission of the DACA program in *DHS v. Regents of the Univ. of Calif.*, determining that the rules terminating the program had been promulgated in violation of the Administrative Procedures Act.
- Following that decision, in November 2020, a judge in the Eastern District of New York blocked another effort by the Trump Administration to end DACA by ruling that then-Acting DHS Secretary Chad Wolf lacked authority to issue a memo blocking new applicants for DACA and shortening current DACA approvals to one year.
- On January 20, 2021, President Biden directed the Secretary of Homeland Security, in consultation with the Attorney General, to “take all actions he deems appropriate consistent with applicable law, to preserve and fortify DACA.”
- On February 18, 2021, through his allies in Congress, President Biden introduced the [U.S. Citizenship Act.](#), which would offer a path to citizenship for DACA recipients as well as TPS-holders and some immigrant farm workers.
- On June 15, 2021, DACA’s ninth Anniversary, DHS Secretary Mayorkas wrote an op-ed in *USA Today* urging “Congress to finally pass the permanent legislative protections that would give Dreamers the opportunity to earn citizenship – so that they can live their lives with true certainty, free from fear.”

## Policy Updates

### USCIS Updates RFE and NOID Guidance

On June 9<sup>th</sup>, USCIS [issued an alert](#) instructing officers to issue Requests for Evidence (RFEs) or Notices of Intent to Deny (NOIDs) before denying a case for immigration benefits. This was the previous guidance for years, until a 2018 policy instructed officers that they could deny benefit requests for lack of evidence without first issuing an RFE or NOID. This change signifies a shift in thinking at the agency and a return to a more immigration-friendly climate.

### 1-Year Validity for NIEs

Nation Interest Exceptions (NIEs) granted in the past year are [now extended](#) from single-entry, 30 day validity to multiple-entry, 12-month validity after the original approval date as long as the NIE holder is travelling for the same purpose for which it was granted. The extension applies to travelers from China, Iran, Brazil, South Africa, the Schengen area, the United Kingdom, Ireland, and India who currently have approved NIEs or who were granted NIEs in conjunction with a visa application.

## Client Resources

AILA’s Client Resources Committee released several useful and informative infographics covering common questions attorneys receive. These resources are provided below for your reference.



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[How a Bill Becomes a Law](#)

[The Nonimmigrant Visa Waiver Process](#)

[Immigrant Visa \(Green Card\) Processing Delays](#)

## Firm News

GYH is thrilled to announce that over the past several months we added three new attorneys to our team.



### Rochelle Dramesi

Rochelle Dramesi is an Attorney focusing her practice on U.S. immigration matters, representing individuals in all stages of family-based immigration, naturalization, and inadmissibility issues. She has wide-ranging experience in representing clients before U.S. Citizenship and Immigration Services (USCIS) and U.S. consulates abroad. Rochelle is particularly experienced in extraordinary ability petitions and representing individuals requiring Conrad 30 J-1 Physician Waivers, Physician National Interest Waivers, and other National Interest Waivers. Thanks to her background in both family-based and employment-based immigration

matters, Rochelle is known for her well-rounded approach to navigating the most complex immigration situations amidst an unpredictable U.S. immigration system.

Rochelle also has extensive experience strategizing with employers to navigate a wide variety of complex employment-based non-immigrant and immigrant visa petitions before USCIS, the Department of State (DOS), and Department of Labor (DOL).

Rochelle speaks English and Sinhalese.



### Amanda Wise

Amanda Greenwold Wise, Counsel, focuses her practice on U.S. immigration matters and Interpol defense. She has represented clients appearing before the U.S. Citizenship and Immigration Service (USCIS), the Executive Office for Immigration Review (EOIR), the Board of Immigration Appeals (BIA), United States Circuit Courts, and INTERPOL. Amanda has experience with consular processing abroad. She also works with Congressional representative and legislative agencies to get the best results for her clients.

Before joining Grossman Young & Hammond, Amanda worked for a Prince George's County-based refugee assistance non-profit, and later had her own legal practice where she worked largely with refugees, asylees, Temporary Protected Status applicants, and Special Immigrant Visa holders.



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Before her career as an immigration attorney, Amanda spent almost 20 years as a lawyer in the financial services regulation field, first in the Office of the General Counsel at the Department of the Treasury, then at Debevoise & Plimpton. She lobbied briefly before turning to immigration work. Amanda started her legal career as clerk to United States District Court Judge Louis L. Stanton, Jr. of the Southern District of New York.

Amanda speaks English, French, and Spanish.



**Nikki Whetstone**

Nikki is an Associate Attorney at Grossman Young & Hammond where she represents corporate and individual clients on a broad variety of employment-based and family-based immigration matters, including nonimmigrant and immigrant visas, consular processing, PERM applications, Adjustment of Status, and citizenship. She specializes in researching, analyzing, and developing case strategy for complex business immigration cases.

Before joining the firm, Nikki served as a business immigration attorney at Fragomen, Del Rey, Bernsen & Loewy, LLP representing some of the world's largest firms within the financial services and technology industries.

During law school, Nikki served as an editor of the *International Law Society Digest* and Program Coordinator of the *Courtroom Advocates Project* where she trained and supervised law students advocating for survivors of domestic violence in Family Court.