

Sports and Entertainment Immigration Ukraine, Russia, and, as Always, Immigration Frustration

By Michael Cataliotti

Some 55 years ago, in 1967, Jim Morrison sang these words: “People are strange / When you’re a stranger / Faces look ugly / When you’re alone”; though I cannot say with certainty what he was talking about, that has never stopped me from ascribing a meaning to it! I was a Comparative Literature and Languages major, focusing on Russian and Latin, after all. To me and for our purposes here, these words could easily be related to immigrants within the United States at any time in this country’s history.¹

You see, no matter the individual’s achievements, international reputation, national recognition, or the amount of people who attest to their qualifications; international artists, entertainers, athletes, and entrepreneurs—across all industries and in all jobs—are having their American travels frustrated by U.S. Citizenship & Immigration Services (USCIS) officers, and agents at both Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE). These actions and activities are having a direct impact on American businesses.

Additionally, Russia’s invasion of Ukraine has left a country in despair and its people rushing to figure out what to do next: stay or go, and if the latter, then where? It has also left Russian citizens, as well as those individuals in adjacent countries (i.e., the former Soviet states), rushing to leave for better global opportunities.

As a result of all of this, in this edition of *Sports and Entertainment Immigration*, we are going to discuss some of the American policies put in place to support those Ukrainian citizens fleeing a country at war, look at a potential policy that may be rolling out soon from the Biden administration to pull talent from Russia and elsewhere in the region, and finally, we will close with a few case examples of difficulties encountered by individuals to provide some color and context to immigration frustrations.

Temporary Protected Status for Ukrainians

On April 19, 2022, the Department of Homeland Security (DHS) Secretary Alejandro Mayorkas “designated Ukraine for Temporary Protected Status (TPS) for 18 months, effective April 19, 2022, or later date if Secretary so determines], through October 19, 2023.”² It sounds good, but what does this actually mean? “This designation allows eligible Ukrainian nationals (and individuals having no nationality who last

habitually resided in Ukraine) who have continuously resided in the United States since April 11, 2022, and who have been continuously physically present in the United States since April 19, 2022 to apply for TPS.”³

This was an expansion of Secretary Mayorkas’s initial announcement in early March that “only Ukrainians living in the U.S. as of March 1 would qualify for TPS, which also provides work permits.”⁴ There was obvious consternation and frustration over this restrictive decision, and so, we all welcomed the expansion of the program to those former Ukrainian residents who were in the U.S. at any time on or before April 19, 2022. From CBS News, “The cut-off date change could make thousands of additional Ukrainians who have managed to reach the U.S. following the Russian invasion, including those who have been allowed to enter the U.S. through the Mexican border on humanitarian grounds, eligible for TPS.”⁵

As an explanation, TPS allows certain individuals to remain in the United States, without being removed, for the designated period. Those individuals may apply for work authorization (in the form of an employment authorization document (EAD)), and in some instances, travel authorization (in the form of advanced parole).⁶ It is also worth noting that individuals who obtain TPS often can pursue permanent residency (i.e., a green card) or other more permanent non-immigrant classification. In the words of Democratic Texas Rep. Lloyd Doggett, the goal with TPS is “to help Ukrainians seeking refuge to safely live, learn, work, and participate in American society as their home country is devastated by Putin’s terror.”⁷

To put this into perspective, CBS provides some details around the number of Ukrainians who have entered the United States since February 1st:

Because they need visas to come to the U.S. directly, thousands of Ukrainians have undertaken a days-long trek from Europe to Mexico to reach the U.S. southern border, where officials have been instructed to consider exempting Ukrainians from pandemic-era entry restrictions and admit them on humanitarian grounds.



Between February 1 and April 6, U.S. Customs and Border Protection (CBP) officials processed nearly 10,000 Ukrainians who lacked prior permission to enter the country, an unprecedented number, according to internal DHS data obtained by CBS News.

During that same time period, 41,000 Ukrainians entering the U.S. with visas were processed by CBP officials, the DHS figures show.

Uniting for Ukraine

In March, President Biden asserted that the United States would accept up to 100,000 Ukrainian refugees. “Many Ukrainian refugees will wish to stay in Europe, closer to their homes, but we’ll also welcome 100,000 Ukrainians to the United States with a focus on reuniting families,” Biden said.”⁸ At that time, there was much fanfare over the statement, though there was also quite a lot of questioning about how this would be realized: the Administration provided no specifics or even a general plan for accomplishing this significant task.⁹

Then, on April 21, 2022, came “Uniting for Ukraine,” which is “a new streamlined process to provide Ukrainian citizens who have fled Russia’s unprovoked war of aggression opportunities to come to the United States. This represents a key step toward fulfilling the President’s commitment to welcome Ukrainians fleeing Russia’s invasion of Ukraine.”¹⁰

From the DHS’s “Uniting for Ukraine” Frequently Asked Questions (FAQs):

Uniting for Ukraine is an innovative approach to provide a safe and orderly process for displaced Ukrainians who have been impacted by Russia’s invasion of Ukraine. Ukrainians who have a supporter in the United States may be considered for parole, on a case-by-case basis, for a period of up to two years. Once granted parole, Ukrainians are eligible to apply for employment authorization in the United States.¹¹

Although that sounds great, there is more from the DHS’s FAQs that reveals the degree to which this program is unique and welcomed:

Am I eligible to participate in *Uniting for Ukraine*?

To be eligible, Ukrainians must have been resident in Ukraine as of February 11, 2022, have a supporter in the United States, complete vaccinations and other public health requirements, and pass biometric and biographic screening and vetting security checks. Ukrainians approved via this process will be authorized to travel to the United States to be considered for parole, on a case-by-case basis, for a period of up to two years. Once paroled through this process, Ukrainians will be eligible to apply for work authorization.¹²

Further, just *who* may be considered a “supporter” under these provisions?

What is the role of a financial supporter?

Ukrainians must have a financial supporter in the United States. Supporters initiate the *Uniting for Ukraine* process by filing the Form I-134 Declaration of Financial Support and providing information about themselves and the Ukrainian beneficiary. Supporters will be vetted by the U.S. government to ensure that they are able to support Ukrainians and to mitigate against potential exploitation.

Every Ukrainian seeking authorization to travel to the United States to seek parole must be supported by a U.S.-based individual, including representatives of non-governmental organizations. Each supporter must pass security and background vetting and demonstrate sufficient financial resources to “receive, maintain, and support” the Ukrainians they commit to support.¹³

This supporter, therefore, can be anyone who agrees to undertake financial responsibility for ensuring the safety and well-being of a Ukrainian citizen.

However, does a supporter have to be a person or can it be a corporate entity? Considering how many not-for-profits and other humanitarian-based organizations exist for these kinds of circumstances, would it be possible for one of them to sponsor a Ukrainian under this program? The short answer is yes, but an individual must still sign the form and attest to their sponsorship.

From the FAQs:

Can U.S.-based organizations support Ukrainian beneficiaries?

Yes, they may provide the financial or in-kind support, but the Form I-134 still requires an individual to sign the form. Organizations may not serve as the named supporter on a Form I-134. However, if an organization or other entity is providing financial or other services to the named individual for the purpose of facilitating support, this information should be provided as part of the evidence submitted with the Form I-134 and will be taken into account in determining the supporter’s ability to support the named beneficiary.¹⁴

Fantastic, and now, this financial sponsorship will last for . . . how long?

How long can I stay in the United States under *Uniting for Ukraine*?

Individuals granted parole under this process will generally be paroled for a period not exceeding two years.¹⁵

Understood: so, up to two years, generally, meaning it could be more, or less . . . Nonetheless, very welcome information, because at least we know when completing the paperwork, that it would be best to indicate a departure date of approximately two years from the start date that is being requested.

Unfortunately, however, we have no precise metrics yet, but from the folks at Al Jazeera, “Around 14,500 Ukrainians have filed for applications as of last week [the week of May 1–7,] to come to the United States under a humanitarian parole programme that allows Ukrainians to stay with American sponsors”, i.e., *Uniting for Ukraine*.¹⁶ Considering the Administration’s goal of resettling 100,000 Ukrainian refugees, this is a start.

Ultimately, the *Uniting for Ukraine* program is a great setup that is in place for folks to be able to file some financial and other paperwork online and to try and have their loved ones, or even liked ones enter the U.S. during this inimitable situation.

Biden Wants Russian Brains!

According to a report by *Bloomberg*, “Biden Seeks to Rob Putin of His Top Scientists With Visa Lure.”¹⁷ Well, this could be very interesting:

One proposal, which the White House included in its latest supplemental request to Congress, is to drop the rule that Russian professionals applying for an employment-based visa must have a current employer.

It would apply to Russian citizens who have earned master's or doctoral degrees in science, technology, engineering or mathematics in the U.S. or abroad, the proposal states.

A spokesman for the National Security Council confirmed that the effort is meant to weaken Putin's high-tech resources in the near term and undercut Russia's innovation base over the long run—as well as benefit the U.S. economy and national security.¹⁸

As someone who works with a broad spectrum of Russian entrepreneurs who fall within this sector, I can assure you that this would be tremendously detrimental to Russia's scientific and technological advancement.¹⁹ Worth noting is that this modification to the application or petition processes would “expire in four years” without any “changes to the vetting process, fees or other rules in the Immigration and Nationality Act.”²⁰

Anti-immigrant Policies and Practices Are Harming American Businesses

As I have been writing about for several years now:

Foreign immigration into the United States has been unusually low since peaking in 2016, according to Census Bureau data. Since then, government policy has cut the number of immigrant visas granted, and

Covid-19 restrictions further reduced the number of foreigners coming into the country. These annual declines in immigration, combined with baby boomers retiring, will keep the labor market tight for years to come.²¹

As *Forbes* reports,

The Census Bureau reported that three major factors were at work in last year's immigration: declining immigration of foreign-born people, increasing exits of foreign-born from the U.S., and changes in Puerto Rican movement after Hurricane Maria in 2017. Part of the drop in immigration resulted from Trump-era rules, while Covid-19 also played a significant role. But the downward trend started in 2017, and by 2019 net foreign immigration into the United States had dropped almost in half.²²

This has been demonstrable to any of us working on processing immigration petitions and applications, whether with USCIS or the Department of State. In some instances, journalists have been placed in what is known as “administrative processing”—that is, a black hole of visa application processing where we know nothing and receive little information from the U.S. Embassy or Consulate—and in others, clients who have raised hundreds of thousands of dollars for their businesses at multi-million-dollar valuations, have been profiled in the likes of *Le Monde* and *Forbes*, and employ multiple individuals throughout the United States to work on their Fortune 500 clients, have had their petitions denied by USCIS.

Ultimately, then, this will have a negative impact on U.S. businesses from 2020 through 2030:

Official Census Bureau projections show this decade, from 2020 through 2030, will have the lowest growth of the working age population since the Civil War. And those projections were made in 2017, before we had the data to show that 2016 was the immigration peak. The projections looked for net foreign immigration of around one million people per year. We had less than a quarter million last year. In other words, the projections that show extremely low growth in the working age population are overly optimistic.

The business implication is straightforward. Success in this entire decade will depend on



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great achievements in employee retention, employee recruiting and employee productivity. Average performing companies will struggle, while below-average companies will fail. This labor challenge will overwhelm other business challenges for years to come.²³

If only there were things that could be done to address these unnecessarily harsh immigration policies and practices that have had negative impacts. Here is hoping that we see some positive movement in the coming months.

Endnotes

1. I'll spare you all the history, but if you would like to hear, or read, feel free to e-mail or call me!
2. <https://www.federalregister.gov/documents/2022/04/19/2022-08390/designation-of-ukraine-for-temporary-protected-status>.
3. *Id.*
4. <https://www.cbsnews.com/news/temporary-protected-status-ukrainians-us-eligibility/>.
5. *Id.*
6. *Supra* at note 1.
7. *Supra* at note 3, CBS News, "Biden administration expands Temporary Protected Status eligibility for Ukrainians in U.S."
8. <https://www.washingtonpost.com/politics/2022/03/24/biden-announce-us-will-accept-ukrainian-refugees/>.
9. *Id.*; see also <https://www.thedailybeast.com/biden-made-a-promise-to-let-100k-ukrainians-into-the-us-but-whats-the-plan>; <https://www.nytimes.com/2022/03/24/us/ukrainian-refugees-biden.html>; <https://www.politico.com/news/2022/03/24/us-ukrainian-refugees-00019978>; <https://www.voanews.com/a/in-context-us-pledges-to-admit-up-to-100-000-ukrainians/6507359.html>; <https://www.cbsnews.com/news/ukraine-refugees-us-100000-russia-invasion/>; but see <https://www.cato.org/blog/biden-has-no-actual-plan-admit-100000-ukrainian-refugees> (Providing stark criticism of the lack of specifics and details surrounding the statement, without much, if any, positive interpretation).
10. <https://www.dhs.gov/ukraine>.
11. *Id.* at Frequently Asked Questions, "What is *Uniting for Ukraine*?"
12. *Id.* at "Am I eligible to participate in *Uniting for Ukraine*?"
13. *Id.* at "What is the role of financial supporter?"
14. *Id.* at "Can U.S.-based organizations support Ukrainian beneficiaries?"
15. *Id.* at "How long can I stay in the United States under *Uniting for Ukraine*?"
16. <https://www.aljazeera.com/news/2022/5/9/ukrainians-fleeing-war-try-different-ways-to-enter-the-us>.
17. <https://www.bloomberg.com/news/articles/2022-04-29/biden-seeks-to-rob-putin-of-his-top-scientists-with-visa-lure>.
18. *Id.*
19. I wholeheartedly encourage this move, and would hope that Biden would expand it to those citizens in Belarus, as well, who are also victims of Lukashenko's support of Putin's war.
20. *Id.*
21. <https://www.forbes.com/sites/billconerly/2022/04/28/immigration-very-low-despite-border-controversy-contributing-to-tight-labor-market/?sh=ab226642e30f>.
22. *Id.*
23. *Id.*



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