

# Sports and Entertainment Immigration: New Administration, New Goals

By Michael Cataliotti

Previously, in our little world of sports and entertainment immigration, we spoke about what to expect in a world where the previous administration was not “the previous administration,” where the former president of the United States was not “former,” where the difficulties that we were experiencing for five and a half years<sup>1</sup> continued on for another four.

Luckily, that did not come to pass: As we know, on or about November 3, 2020, Joe Biden became the President-elect of the United States, with Kamala Harris as the Vice President-elect.<sup>2</sup> Now, I say “luckily,” because despite any individual political persuasions or preferences, in the realm of immigration, the previous administration was . . . deplorable.<sup>3</sup>

The fundamental question then, is, what will come of American immigration policy and practice under the Biden administration? In this installment of *Sports and Entertainment Immigration*, we will look at (1) what this new administration has done as of this writing and (2) discuss some possibilities of what may come to pass over the next four years.

Now, without further ado, let us talk about the fun stuff that is, immigration.

## “It’s Been a Hard Day’s Night, and I’ve Been Working Like a Dog!”<sup>4</sup>

You may recall that the former resident of the White House left a voluminous amount of immigration messiness to be evaluated and revised. If you do *not* recall, however, that messiness includes (i) executive orders or “Presidential Proclamations,”<sup>5</sup> (ii) matters pending in district and appellate courts,<sup>6</sup> (iii) proposed rules,<sup>7</sup> (iv) a massive backlog of cases that have taken months to be accepted or rejected,<sup>8</sup> and (v) a near-complete suspension of routine visa services at U.S. embassies and consulates, worldwide.<sup>9</sup> There is plenty more as well, such as the detention, separation, and loss of individuals in detention centers along the U.S. border with Mexico.<sup>10</sup>

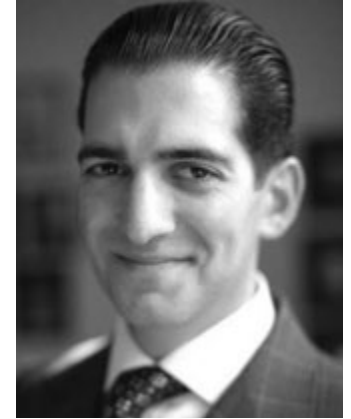
What to do about all of this? President Biden, officially the oldest President in U.S. history,<sup>11</sup> immediately got down to business rescinding, releasing, and introducing executive actions, policies, and legislation of his own.

For our purposes, the most notable of these actions is the creation of various task forces to *Restore Faith in Our Legal Immigration System and Promote Integration of New Americans*.<sup>12</sup> From the White House’s press release:

President Biden believes that immigrants are essential to who we are as a nation and critical to our aspirations for the future. The prior administration enacted hundreds of policies that run counter to our history and undermine America’s character as a land of opportunity that is open and welcoming to all who come here seeking protection and opportunity. *This Executive Order elevates the role of the White House in coordinating the federal government’s strategy to promote immigrant integration and inclusion, including re-establishing a Task Force on New Americans, and ensuring that our legal immigration system operates fairly and efficiently.* The order requires agencies to conduct a top-to-bottom review of recent regulations, policies, and guidance that have set up barriers to our legal immigration system. It also rescinds President Trump’s memorandum requiring family sponsors to repay the government if relatives receive public benefits, instructs the agencies to review the public charge rule and related policies, and streamline the naturalization process.<sup>13</sup>

Though this language is positive, what exactly it means is unknown at present; however, we can infer from other actions that the Biden-Harris administration will continue to make lawful immigration more attractive and amenable to individuals around the world. Whether the administration is friendly—and if so, how much—to our particular clients and industries remains to be seen; the executive order that suspended the issuance of H-1B and L-1 visas at consulates was not rescinded. From the *Financial Times*:

Although the ban on worker visas, including H-1B and L visas, is set to expire in March, Biden’s failure to rescind the



order worries immigration lawyers. They fear the administration will continue to view overseas workers as a threat to American employees.

“There was a view put forward by restrictionists in the Trump administration that jobs are fungible, and if you have a foreign worker in a job there’s not a job for an American worker, and that’s just not true,” said Leslie Dellon, an attorney specialising in business immigration for the American Immigration Council.<sup>14</sup>

Should we be worried? I believe that a healthy bit of worrying keeps us attuned and attentive to our surroundings. It is important to know, however, that the administration *did* allow the executive order (Presidential Proclamation 10052),<sup>15</sup> to expire on March 31, 2021.<sup>16</sup> If this is an indication of the administration’s goals, then it is a pleasant indicator of things to come.

Nonetheless, that executive order does not necessarily impact athletes, artists, and entertainers as much as it does individual executives, administrators, supervisors, and the like. For those unsure or unfamiliar, (1) the H-1B is typically used by “engineers, teachers, computer programmers, medical doctors, and physical therapists,”<sup>17</sup> as well as graphic designers, architects, and many other individuals whose occupations would require a bachelor’s degree or its equivalent, as well as models.<sup>18</sup> On the other hand, (2) the L-1 visa is typically used by individual executives or managers (L-1A), or individuals who have specialized knowledge (L-1B), and are being transferred from a non-U.S. office into the U.S. either to open a new office or direct/contribute to operations within the U.S.<sup>19</sup>

Still, as per an esteemed colleague of mine:

“There is a view within the Biden camp that US workers need protection from H-1B workers in terms of wages, or that somehow H-1B workers are undercutting the wages of US workers” said Jennifer Minear, an immigration lawyer at McCandlish Holton.

“It’s clear that the administration is in favour of legal immigration and wants to be supportive of it,” Minear said. “But there’s been some signalling from the administration that it intends to tighten and make more difficult some of the prevailing wage requirements for H-1B workers...so it’s not all going to be birthday cake for immigrants.”<sup>20</sup>

This certainly is not ideal, but it is leaps and bounds ahead of where we were before, and, considering the typical uses for H-1B and L-1 visas, it is not the worst

situation, either. After all, we were told to give Trump a chance.<sup>21</sup>

Moreover, the proposed immigration reform bill was introduced in the Senate by Senator Menendez on January 20, 2021, and was pushed by the Biden-Harris administration.<sup>22</sup> That bill, however, had little if anything to do with reforms to business immigration or the legal immigration system, unlike what we saw in 2013 with that delightful “Gang of 8” bill that made it through the Senate and languished in the House.<sup>23</sup>

Therefore, what is the current administration’s position with respect to business-based immigration? We understand that there is a generally positive tone, which is far better than the previous administration’s posture.

### **“Roads? Where We’re Going, We Don’t NEED Roads!”<sup>24</sup>**

What, then, might happen under a Biden-Harris administration? It is doubtful with a simple majority that we will be able to see major immigration overhaul like we saw in 2013, unless, somehow, it is tied into a spending, revenue or federal debt limit bill.<sup>25</sup> This would allow the Senate to use the procedure of “reconciliation,” allowing for, among other things, a simple majority of votes in favor.<sup>26</sup> It is unlikely that anyone can get nine Republicans to vote “Yes” on immigration legislation.

We can look back to the Obama years to see if we can glean what may be forthcoming. Back then, we had Alejandro Mayorkas as the director of the United States Citizenship and Immigration Services (USCIS), and we had some more consistency in adjudications, policy implementation, and petition/application reviews. As the Biden-Harris administration has tapped Mayorkas to once again lead an agency, only this time it is USCIS’s parent, the Department of Homeland Security (DHS)—and he has since been sworn in to do so<sup>27</sup>—we have a sense of stability and perhaps, normalcy, whatever that is. For example, rather than issue an unnecessary spate of requests for evidence (RFE)<sup>28</sup> that have the (intended, it would seem) result of unnecessarily delaying the processing of petitions and applications, I suspect that Secretary Mayorkas will direct the director of USCIS to have front-line adjudicators (i.e. USCIS officers) do their jobs without a prejudged negative inference or interpretation. Likewise, I suspect that adjudicators will actually take some time to review the material submitted to them, which, it has appeared, many have not, or have been confused by the laws, rules, and regulations by which they are bound. The resumption of objective and knowledgeable adjudications would be most welcome, and in my opinion, likely.

I also believe that we will see some new and improved adjudication policies promulgated by USCIS, which too, would be most welcome. If we are to look to the Biden-Harris administration as more aggressive in its attempts to move the U.S. immigration system into the

21st century, and with the former director of USCIS now heading DHS, we may be in a position for great things over the next four years. We also note the rumors that Ur Jaddou is slated to take the directorship at USCIS. Jaddou is unknown to most, but she has years of experience that would serve her, USCIS, and us all quite well. From her employer's website, her biography reads:

She served as Chief Counsel to U.S. Citizenship and Immigration Services from July 2014 to January 2017 where she provided legal counsel to the agency and interacted with the DHS General Counsel and other immigration component counsel. She was previously responsible for developing and executing congressional strategy for the U.S. Department of State as Deputy Assistant Secretary for the Bureau of Legislative Affairs.<sup>29</sup>

Jaddou is also the Director of DHS Watch, which is a division of America's Voice. As per its "About Us" webpage:

The mission of America's Voice (AV) and America's Voice Education Fund (AVEF) is to build the public support and the political will needed to enact policy changes that secure freedom and opportunity for immigrants in America. Priority goal: win reforms that put 11 million undocumented Americans on a path to full citizenship.

The immigration reforms we support include[] the following elements:

- A direct, fair, and inclusive road to citizenship for immigrants in the U.S. without papers.
- Channels for future legal immigration that are flexible and functional.
- Robust protections and guaranteed rights for all workers.
- Enforcement that is targeted and fair, and respects immigrants' rights.
- Full and equal rights for all immigrants.<sup>30</sup>

My word. If I did not know any better, I would say that Jaddou is someone whose background is highly accomplished and knowledgeable in government affairs, as well as immigration matters, and that her current employer is in line with the majority of Americans who want to see immigration reform.<sup>31</sup>

As far as visa issuances are concerned, those are managed by the Department of State (DoS or the State Department), which oversees all U.S. consulates and embassies. As many of our people are stuck outside the U.S. and are unable to return without a newly issued visa, or stuck within the U.S. and are unable to depart because they will not be able to obtain a visa, we must look to the Secretary of State to determine whether that person will be friendly or not. President Biden's pick, Antony Blinken, was confirmed and sworn in by the Senate on January 26, 2021, making him Secretary Blinken. The name means little to many of us, so, as usual, let us look at Blinken's biography:

Blinken is a longtime Biden aide and a key member of his 2020 campaign team. He is considered a moderate who is well regarded by foreign diplomats and can pass muster with Republicans in the Senate, where he will have to seek confirmation. At the same time, he's served as an intermediary for Biden and members of the progressive community, engaging the latter on their demands for what a Biden foreign policy will look like.

[...]

He served on the National Security Council during the Clinton administration and has spent time on Capitol Hill, where he was Democratic staff director for the Senate Foreign Relations Committee when Biden was chairman. During the Obama years, Blinken served as deputy national security adviser and deputy secretary of State.<sup>32</sup>

Diplomatic experience. Check. Muscle memory. Check. State Department experience. Check. Extremist? Crickets. That is what we like, especially in the realm of national security and international relations. Lovely.

So, seeing as how Blinken is now in charge of the State Department, how then, will his presence impact us or our clients? The same policies and practices that we saw USCIS officers utilize were also utilized worldwide at consular posts: delay, frustrate, and ultimately, prolong for as long as possible the wait time for a visa. COVID's global sprint exacerbated this by shutting down consular posts to routine nonimmigrant visa services, but as we note above, there has been a "Rephrasing" in of procedures. That rephrasing has been terribly slow and inefficient, most likely due to a combination of antagonistic policies, incompetency by the former Secretary, and of course, social distancing/COVID-related measures.

Blinken has the authority to review the practices of the State Department, identify logjams, and relieve the pressure where appropriate. We are already seeing some

movement at consular posts, and so, with optimism, let us believe that this is a positive trend.

On the other hand, Secretary Blinken has already tightened restrictions for travelers seeking to come directly into the U.S. from Europe. A summary from the good folks at Tarter Krinsky & Drogin:

On March 2, 2021, the U.S. Department of State announced further tightening of its COVID-19 restrictions for foreign nationals present in the Schengen areas of Europe, the United Kingdom, and Ireland. Anthony Blinken, the Secretary of State, rescinded prior guidance by the State Department granting “national interest exceptions” to the travel restrictions for senior level managers and executives, technical experts, professional athletes, and E visa treaty traders and investors. The new guidance limits the issuance of national interest exception to those foreign nationals who will offer “vital support to critical infrastructure sectors.” The interpretation of the new directive has varied at each consulate.<sup>33</sup>

This is certainly not ideal.

How will it impact most people? Well, the tightening of this national-interest-exception criteria means that executives and managers coming into the U.S. to observe operations, hold meetings, meet with clients and managers/other executives, will no longer qualify for national interest exceptions.<sup>34</sup> Likewise, individuals who have invested into businesses within the U.S. will not qualify for national interest exceptions—despite potentially having invested a significant sum into their U.S. business—unless those individuals can demonstrate that they/their ventures are fundamental to the “critical infrastructure” sectors within the U.S. None of this is desirable.

As above, a healthy dose of worrying is not necessarily a bad thing. We just don’t want to be like Mr. Worry, who, unfortunately, worried about everything, all the time, even to the extent that he worried when he had no more worries!<sup>35</sup>

## Concluding Thoughts

The new administration has done quite a bit already, but the hope is that we will see a change in attitude by the frontline USCIS officers who are tasked with adjudicating petitions and applications. The *Financial Times* captured this when it quoted Minear, saying: “A lot of the tone of executive orders already issued is basically—‘let’s not be racist any more.’ [...] They send a signal from the administration to the public and to career employees in the federal government that there’s a new sheriff in town.”<sup>36</sup>

Very true, but I go several steps further—and say that the real change in tone and attitude will come from the top of USCIS, as well as DHS with Mayorkas and the State Department with Blinken, we have some idea of what to expect; and with the Biden-Harris administration already pointing to a strong pro-immigration set of policies, the Secretaries may go beyond Biden’s tenure under the Obama administration.

Overall, things are looking up, so stay optimistic, but stay vigilant, because we never know which way the wind will blow, and no one likes getting a gust of air to the face, especially when it is unexpected.<sup>37</sup>

## Endnotes

1. You may think I am terrible with numbers, but I assure you, I can count. I say five and a half years, because from the time that Trump floated down that escalator, we (or at least, I) started seeing shifts in USCIS officer practices. And seeing as how that special day was on June 16, 2015, and his presidency officially ended January 20, 2021, it was five and a half years of terrible rhetoric and practices.
2. <https://www.nytimes.com/live/2020/11/07/us/biden-trump>.
3. <https://time.com/4486502/hillary-clinton-basket-of-deplorables-transcript/>.
4. The Beatles, “A Hard Day’s Night,” <https://www.youtube.com/watch?v=Yjyj8qnqkYI>.
5. <https://www.federalregister.gov/presidential-documents>.
6. <https://www.texastribune.org/2021/02/04/joe-biden-immigraton-court-backlog/>; see also <https://www.americanimmigrationcouncil.org/litigation>.
7. <https://www.aila.org/advo-media/issues/all/dhs-dol-rules-altering-h1b-prevailing-wage-levels>.
8. <https://www.uscis.gov/news/alerts/uscis-lockbox-updates>.
9. <https://travel.state.gov/content/travel/en/News/visas-news/phased-resumption-routine-visa-services.html>.
10. <https://www.cfr.org/backgrounder/us-detention-child-migrants>.
11. <https://apnews.com/article/joe-biden-donald-trump-health-ronald-reagan-coronavirus-pandemic-b43ea0d0049ae2cd72aead6e1816f6d5>.
12. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/02/fact-sheet-president-biden-outlines-steps-to-reform-our-immigration-system-by-keeping-families-together-addressing-the-root-causes-of-irregular-migration-and-streamlining-the-legal-immigration-syst/>. Emphasis in original.
13. *Id.*
14. <https://www.ft.com/content/517a70a6-bb6e-4880-abff-323176e4a211>.
15. <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-amendment-proclamation-10052/>.
16. <https://travel.state.gov/content/travel/en/News/visas-news/update-on-presidential-proclamation-10052.html>.
17. <https://webapps.dol.gov/elaws/elg/h1b.htm>.
18. *Id.*
19. <https://www.uscis.gov/forms/explore-my-options/l-visas-l-1a-and-l-1b-for-temporary-workers>.
20. <https://www.ft.com/content/517a70a6-bb6e-4880-abff-323176e4a211>.
21. <https://www.cnn.com/2016/11/14/politics/obama-news-conference-donald-trump-transition/index.html>.

22. <https://www.nbcnews.com/politics/immigration/biden-immigration-bill-would-provide-more-protections-child-migrants-n1255167>.
23. <https://www.menendez.senate.gov/newsroom/press/menendez-to-lead-biden-harris-immigration-legislation-in-the-senate>.
24. Dr. Emmett Brown, as played by Christopher Lloyd, *Back to the Future Part II*, 1989, <https://www.imdb.com/title/tt0096874/characters/nm0000502>.
25. [https://en.wikipedia.org/wiki/Reconciliation\\_\(United\\_States\\_Congress\)](https://en.wikipedia.org/wiki/Reconciliation_(United_States_Congress)).
26. *Id.*
27. <https://www.dhs.gov/news/2021/02/02/alejandra-mayorkas-sworn-secretary-homeland-security>.
28. I know, why isn't it, "RsFE"? I'm not sure. But it isn't. Moving on...
29. <https://americasvoice.org/staff/ur-jaddou/>.
30. <https://americasvoice.org/about-us/>.
31. <https://www.majorityleader.gov/content/yet-another-poll-showing-americans-want-action-immigration-reform>.
32. <https://www.politico.com/news/2020/12/08/joe-biden-administration-cabinet-picks-442621>.
33. <https://www.jdsupra.com/legalnews/state-department-tightens-regulations-8399655/>.
34. *Id.*
35. <https://www.amazon.com/Mr-Worry-Men-Little-Miss/dp/084319961X>; *see also* <https://www.youtube.com/watch?v=8wanaz8aj2g>.
36. <https://www.ft.com/content/517a70a6-bb6e-4880-abff-323176e4a211>.
37. Do not let anyone tell you: "Don't worry about it! Biden-Harris have it all under control! It's easy! You worry too much." We are trained lawyers. We worry. We think of ideas for how to resolve those worries. It's what we're paid to do!

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