

March 2022 U.S. Immigration Update for Australian Expats



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Topics Previously Covered in AAA Webinar Series:

- Furlough and Unpaid Leave – **Webinar April 6, 2020**
- Long-dated I-94s and Filing an Additional LCA – **Webinar December 15, 2020**
- RFEs and Filing I-129 Extension or Change of Employer Petition within the U.S. for E-3s – **Webinar July 28, 2020 and March 16, 2021**
- Green Card Holders Outside of the U.S. for More Than 6 Months - **Webinar March 16, 2021**
- E-3 Premium Processing - **Webinar March 16, 2021**
- Social Media Foot Print and Immigration – **Webinar May 4, 2021**
- Visa re-validation – **Webinar October 25, 2021**

Tonight We Will Discuss...

- Automatic Work Authorization for E-1, E-2, E-3 and L-1 Spouses
 - Can My Dependent Children Work Once They Reach a Certain Age?
 - What About Work Authorization for H-4, O-3, F-2, J-2, and P-2 Visa Holders?
- Updated USCIS Guidance on O-1Bs in Motion Picture and Television
- Australian Entry Requirements
- US Entry Requirements
- H-1B vs E-3 for Australian Professionals
- US Visa Consequences of Alcohol-Related Offences
- E-3 Visa Processing Times
- Overview of Green Card and Citizenship Processing Times (No AP on EADS)

Ukraine

Ukraine has been **designated Temporary Protected Status (TPS) for 18 months**.

Individuals eligible for TPS must have continuously resided in the U.S. since March 1, 2022.

Those who attempt to travel to the US after March 1, 2022 will not be eligible.

If eligible for TPS:

- Not removable from US
- Can obtain employment authorization
- May be granted travel authorization

Other options for Ukrainians abroad:

- Poland, Germany, Hungary, Israel, Belgium, Netherlands, Mexico.

Entering the US:

- Can only enter with a visa (cannot enter with visa waiver – must obtain B2).
- Once in the US, if not here before March 1, 2022, options include change of status to a work visa, or extension of B2, or other petition such as family-based but there is no specific exception for Ukrainians.

Automatic Work Authorization for E-1,E-2, E-3 and L-1 Spouses

- From January 31, 2022, all E and L dependent spouses entered into the US will have work authorization incidental to status by virtue of new I94 admission code.
 - E and L spouses and will now be admitted in the below-listed codes:
 - E-1S – Spouse of E-1
 - E-2S – Spouse of E-2
 - E-3S – Spouse of E-3
 - L-2S – Spouse of L-1A or B
- Only applies to those who have entered **the US after January 31, 2022 and have the new admission code annotated on I94.**
- If you entered before January 31, 2022 – need to travel abroad and re-enter the US to get new code.
- When entering the US, make sure you advise the CBP officer of the admission code you should be issued – take our email alert when you travel.
- If you entered after January 31, 2022 and were given the incorrect I94 you need to have I94 corrected through CBP deferred inspections at port of entry. We can help with this!
- What do you need to show your employer for automatic work authorization:
 1. Passport
 2. Visa
 3. I-94 (as annotated with an above-listed admission code)
- Take passport, I94 and marriage certificate when applying for SSN.
- No work authorization for E and L dependent children.
 - E-1Y – Child of E-1
 - E-2Y – Child of E-2
 - E-3Y – Child of E-3
 - L-2Y – Child of L-1A or B

Most Recent I-94

Admission (I-94) Record Number : 766481679A2

Most Recent Date of Entry: 2022 February 10

Class of Admission : E3S

Admit Until Date : 02/09/2024

Notice Type: Approval Notice
Class: E3S
Valid from 02/01/2022 to 03/22/2022

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What About Work Authorization for H-4, O-3, F-2, J-2, and P-2 Visa Holders?

H-4 Dependent Spouses (Spouses of H-1B, H-1A, H-2A, H-2B or H-3 Visa Holders)

- Spouses of H-1B visa holders are not allowed to work unless and until the primary H-1B holder spouse has an approved I-140 green card petition. In which case need to apply for EAD.
- Can take advantage of the automatic extension of work authorization to minimize gaps.
- Spouses of H-1A, H-2A, H-2B or H-3 visa holders are not allowed to work in the U.S.

Automatic Extension of EADS

E and L spouses and H-4s automatically qualify for automatic extension of their valid EAD for 180 days beyond the date of the EAD expiration if the nonimmigrant spouse:

1. Timely files a Form I-765 EAD renewal application to USCIS before the current EAD expires; and
2. Continues to maintain dependent status beyond the expiration of the existing EAD, as evidenced on their I-94 record (i.e. I94 expiry is in more than 180 days).

Note that the validity of the expired EAD will be extended until the earliest of the following:

- 180 days following the EAD expiration;
 - The expiration of I-94 record; or
 - When a final decision is made by USCIS on the EAD renewal application.
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- J-2 Visa holders need to apply for EAD.
 - No work authorization for O-3, F-2, P-2 visa holders.

Updated USCIS Guidance on O-1Bs in Motion Picture and Television

USCIS Policy Update from January 13, 2022, provides guidance for O-1B MPTV

- O-1B (MPTV) beneficiary has a record of extraordinary achievement in the motion picture and television industry such that he or she has a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the field.

Policy update provides more guidance for internet-based media

- Analysis of whether a production is MPTV:
 - Not MPTV: web materials and self-produced video blogs and social media content generally do not fall into the MPTV category.
 - MPTV: streaming movies, web series, commercials, and other programs with formats that correspond to more traditional motion picture and television productions to generally fall within the MPTV.

The updated guidance provides clarity in cases where individuals fall into both categories

“USCIS interprets the eligibility requirements for O-1B (MPTV) to apply if the beneficiary will perform services for motion picture or television productions while in the United States regardless of other prospective services outside the MPTV industry. If, however, an artist’s work or appearance on an MPTV production is incidental to their non-MPTV work as an artist, the O-1B (MPTV) classification may not be appropriate, and the person may instead seek classification under O-1B (Arts).”

- TV Hosts and Judges in reality TV: MPTV
- Contestants: Not MPTV

Australian Entry Requirements

- From February 21, 2022, all fully vaccinated visa holders can enter the Australia (includes ETA). Recognized vaccines **include**: Pfizer, AstraZeneca, Moderna, Johnson & Johnson.
- Australian Travel Checklist:
 1. Complete the Digital Passenger Declaration Form (<https://covid19.homeaffairs.gov.au/digital-passenger-declaration>)
 2. Proof of full-vaccination against COVID-19 (vaccination certificate with name, DOB, type of vaccine and date administered).
 3. Either 1) Negative COVID-19 PCR or other Nucleic Acid Amplification Test (NAAT) test taken within 3 days before your flight's scheduled departure, **OR** 2) a medical certificate as proof of a negative Rapid Antigen Test taken under medical supervision within 24 hours before your flight's scheduled departure.
- Unvaccinated Australia citizens and permanent residents will be able to travel to Australia but may be subject to airline passenger and quarantine requirements (requirements vary from state to state).

Australian Entry Requirements cont'd

Check state testing/quarantine requirements for unvaccinated children arriving from overseas

- **Queensland:** 16 and under treated as fully vaccinated if traveling with vaccinated adult.
- **NSW:** Under 18 year olds treated as fully vaccinated if travelling with vaccinated adult.
- **VIC:** If over 12 years and 2 months and have not had two doses of vaccine = need to quarantine for 7 days in accommodation.
- **WA:** Requires proof of vaccination for all travelers to WA who are eligible to be vaccinated.
- **SA:** Children 17 years and under traveling with a fully vaccinated parent or guardian are considered fully vaccinated.
- **NT:** Children 17 years and under are considered fully vaccinated regardless of vaccination status.
- **Tas:** Children 17 years and under are considered fully vaccinated regardless of vaccination status.
- **ACT:** Children aged under 12 years and 2 months and are travelling with a fully vaccinated adult – over 12 years and 2 months will be considered unvaccinated.

COVID-19 Related US Entry Requirements

- All non-US citizens and LPRs traveling to the US will need to show proof of **full vaccination against COVID-19** in order to enter the US
- All travelers are required to present either **documentation of a negative rapid or PCR COVID-19 test** taken no more than one (1) calendar day before flight to the US or **documentation of recovery: meaning written or electronic documentation of recovery from a COVID-19 infection in the form of a positive viral test result taken no more than 90 days before travel and a letter from a licensed healthcare provider or public health official stating that the passenger has been cleared for travel.**
- You will not be able to board your flight to the US if you cannot present either documentation of a negative COVID-19 test or documentation of recovery.
- Friendly reminder: Always check the vaccination/testing requirements of your destination.

H-1B vs E-3 for Australian Professionals

- Friendly reminder – H-1B 2022-23 registration window closes noon EST on March 18, 2022.

Things to consider:

1. Immigrant intent and adjustment of status within the US
2. Need for frequent overseas travel? (H-1B has advantage during AOS process)
3. Does your spouse need work authorization? (esp. non-Australia spouses H-4 no work authorization until I-140 approved)
4. Time limit 6 years on H-1B/E-3 can renew indefinitely
5. Lottery – October start
6. Cost (For H-1B)
 - \$460 filing fee
 - \$500 fraud fee
 - ACWIA \$750 <25 employees or \$1500 >25 employees
 - \$2500 premium processing fee
 - Minimum fees = \$4210 - \$4960

* You do not need to switch to H-1B to pursue a Green Card. You CAN adjust to Green Card from E-3.

- Do you have dependent children who are aging out of their dependent status or want to work?

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US Visa Consequences of Alcohol-Related Offences

If you have alcohol-related arrests or convictions (i.e. DUI, public intoxication, open container), you may be required to see a panel physician for a medical examination, which can cause delays to your nonimmigrant visa application.

Consulate Officer **MUST** refer an nonimmigrant visa applicant to a panel physician if:

- Applicant has a single alcohol-related arrest or conviction within the last five years;
- Two or more alcohol-related arrests or convictions within the last ten years; OR
- Any other evidence to suggest you have an alcohol problem.

When renewing:

- If you only have a single alcohol-related arrest or conviction in the last five years and were referred to a panel physical for your previous visa, and have not had a subsequent alcohol related arrest or conviction, you are **not** required to have another examination.
- If you have two or more alcohol-related arrests or convictions within the last ten years, you must be referred to a panel physical for a medical examination with each new nonimmigrant visa application.

E-3 Visa Processing Times

Securing an E-3 Interview in Australia

- Earliest interviews in Sydney and Melbourne are **September/October 2022**. Perth currently has availability in **June 2022**. Look to consulates outside of Australia.
- US consulates in Sydney still canceling interviews due to moving locations. April interviews canceled.
- Mail in still a good option (only in Melbourne) – process taking 2-3 weeks.
 - Must be renewing visa and only certain visa types can do mail in (i.e. E-1, E-2, blanket L not eligible to do mail in) – as of January 2022 first time F, academic J, M, O, P, Q, H-1, H-3, H-4, or non-blanket L can do mail in if qualify.
 - Must be Australian citizen or resident, not have lost passport or changed name, and no arrests.

Securing an E-3 Interview Outside of Australia

- Ideally start the process 2 months before your visa expires.
- Find a country that you can enter as an Australian national.
- Check the vaccination/quarantine requirements in that country.
- Ensure you can travel back to the US from that country as an Australian National (or if you are exempt from any travel restrictions).
- Is the consulate in that country accepting Third Country Nationals for visa appointments?
- Are there regular appointments available in the time frame you need/ If so will the regular appointments be honored?
- Will you need an emergency appointment request? If so, do you have a good reason?
- Have been able to get appointments close by (i.e. Canada).

In country E-3 I-129 Petition Filed with USCIS

- Can file **Premium Processing (\$2500)** and get response in 15 days.
- Regular processing taking up 2.5 to 4.5 months for approval.

Overview of Green Card and Citizenship Processing Times

Processing times depends on where you live

Family-based –

New York, NY (approx. 8 months – USCIS says 10-33 months), Los Angeles, CA (approx. 8 months USCIS says 9-25 months), Lawrence, MA (approx. 4 months – website says 10-19 months) :

Name	Residence	Receive Date	Biometrics	Biometrics Appt	EAD/AP Issued	Case Approved
RIGHT, Shelby	New York, NY	01/25/2022	02/05/2022	03/02/2022	03/04/2022 (No AP)	Pending
BOGAN, Sheila	Lawrence, MA	12/08/2021	12/18/2021	1/12/2022	N/A	03/09/2022
BANKS, Robyn	Los Angeles, CA	11/09/2020	06/18/2021	07/13/2021	08/11/2021	08/23/2021
FRIED, Petra	New York, NY	06/29/2021	08/14/2021	09/08/2021	N/A	02/02/2022

Overview of Green Card and Citizenship Processing Times

Processing times depends on where you live

Employment-based:

Name	Residence	Receive Date	Biometrics Notice	Biometrics Appt	EAD/AP Issued	Case Approved
O'SHEA, Rick (EB1 - Executive and Managers)	Houston, TX	03/31/2020	07/28/2020	08/10/2020	08/18/2020	Pending
SUNG, Sam (EB1 - Extraordinary Ability)	Los Angeles, CA	04/30/2021	07/17/2021	08/09/2021	NA	08/28/2021

- IV Consular Processing Severely backlogged.

Overview of Green Card and Citizenship Processing Times – cont'd

- N-400 Processing times – depends on where you live
- New York, NY (approx. 4 months – USCIS says 11-18 months), Santa Clara, CA (approx. 11 months USCIS says 6-18 months), Boston, MA (now approx. 6 months – website says 11-16 months)

Location	N-400 Received	Interview Date	Oath Ceremony
New York, NY	11/17/2021	2/15/2022	03/10/2022
Santa Clara, CA	04/09/2021	03/03/2022	03/26/2022
Boston, MA	10/22/2021	03/29/2022	Pending
Boston, MA	05/20/2020	11/2/2020	12/21/2020

Disclaimer

The information provided in this webinar is intended as guidance on current immigration policy and procedures. **It is by no means intended to be used as legal advice for your particular situation.** Every individual's situation is different. If you would like our firm's legal advice and a strategy particular to your situation, please reach out to us by email.

A Cammisa Markel case manager can assist you, hold your hand (figuratively, in-line with social distancing) and create a personalized plan for you, whatever your situation might be. Our firm prides itself on working with our clients in ways that serve to reduce any anxiety you may be experiencing, by providing you with a plan of action specifically tailored to your situation, taking into account your unique needs and desires regarding your future in the U.S.

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