



MAY 2013 IMMIGRATION UPDATE

Posted on May 2, 2013 by Cyrus Mehta

HEADLINES

- [1. DOL, DHS Publish Interim Final Rule on H-2B Prevailing Wage Methodology; DOL, USCIS Resume Processing](#)** - The rule revises the prevailing wage methodology used by the DOL to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification.
- [2. CBP Rolling Out Automation of I-94 Arrival/Departure Records](#)** - The change was implemented at air and sea ports on April 30 at Charlotte-Douglas International Airport, Orlando International Airport, Las Vegas Airport, Chicago O'Hare, Miami International Airport, and Houston Bush Intercontinental Airport. It will be rolled out across the country through May 21.
- [3. SSA Adds Admission Stamp in Unexpired Foreign Passport To List of Primary Evidence of Identity, Updates Policy on New Types of Nonimmigrant Evidence](#)** -The Social Security Administration has updated its Program Operations Manual System, adding "admission stamp in unexpired foreign passport" to its list of acceptable primary evidence of identity.
- [4. CBP To Launch New Arrival/Departure Record Process for Foreign Visitors](#)** -Under the new process, CBP will no longer require international nonimmigrant visitors to fill out a paper Form I-94 Arrival/Departure Record upon arrival to the U.S. by air or sea.
- [5. Temporary Protected Status Extended for Hondurans, Nicaraguans](#)** - DHS has extended TPS for eligible nationals of Honduras and Nicaragua for an additional 18 months, beginning July 6, 2013, and ending January 5, 2015. Current Honduran and Nicaraguan beneficiaries seeking to extend their TPS

status must re-register by June 3, 2013.

6. [State Dept. Introduces Visa Status Check Online](#) - Users can check their U.S. visa application status at the Consular Electronic Application Center (CEAC) on the site by entering the type and case number.

7. [ABIL Global \(www.abil.com\): Peru](#) - Amendments have been made recently to Peruvian immigration rules.

8. [Firm In The News](#) ...

Details:

1. DOL, DHS Publish Interim Final Rule on H-2B Prevailing Wage Methodology; DOL, USCIS Resume Processing

On April 24, 2013, the Departments of Labor (DOL) and Homeland Security published a joint interim final rule on wage methodology for the temporary non-agricultural employment H-2B program. The rule revises the prevailing wage methodology used by the DOL to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification.

The interim final rule was published in response to a court order issued by the U.S. District Court for the Eastern District of Pennsylvania on March 21, 2013, in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis*, 09-cv-00240 (E.D. Pa). The court order vacated a portion of the 2008 wage methodology rule dealing with the way the DOL determines the prevailing wage when relying on the Bureau of Labor Statistics' Occupational Employment Statistics (OES) survey, and provided the Department of Labor with 30 days to come into compliance. On April 1, 2013, the US Court of Appeals for the 11th Circuit agreed that the DOL lacked the H-2B rulemaking authority. *Bayou Lawn & Landscape Servs. et al. v Secretary of Labor*, F.3d, 2013 WL 1286129, No. 12-12462 (11th Cir. Apr. 1, 2013). As a result, the DOL has proposed this new rule along with the Department of Homeland Security, consistent with the ruling in *Bayou Lawn & Landscape Servs. et al* stating that "DHS was given overall responsibility, including rulemaking authority, for the H-2B program. DOL was designated a consultant. It cannot bootstrap that supporting role into a co-equal one."

On April 24, 2013, the effective date of the interim final rule, the DOL also resumed processing both pending H-2B prevailing wage requests and H-2B

applications for temporary labor certification based on the OES wage survey data, in accordance with standards set in the interim final rule.

USCIS also has resumed processing of all Form I-129 (Petition for Nonimmigrant Worker) H-2B petitions for temporary nonagricultural workers. On March 22, 2013, USCIS temporarily [suspended adjudication](#) of most I-129 H-2B petitions while the government considered appropriate action in response to the court order.

The DOL released frequently asked questions (FAQs) to assist filers in complying with the requirements of the interim final rule. The FAQs address the applicability of the new prevailing wage methodology, employer wage obligations, requests for review, and processing pending H-2B prevailing wage requests and H-2B applications for temporary labor certification. The FAQs were updated on April 25, 2013, and are available at http://www.foreignlaborcert.doleta.gov/pdf/faq_final_rule_april_2013.pdf.

The DOL/DHS interim final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2013-04-24/pdf/2013-09723.pdf>. The DOL's announcement is available at <http://www.foreignlaborcert.doleta.gov/>. USCIS's related announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=4cf5b6f39b14e310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>. The decision in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis* is available at http://www.oalj.dol.gov/PUBLIC/INA/DECISIONS/COURT_DECISIONS/09_00240_Comite_de_Apoyo_ED_Pa_03_21_2013.pdf.

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2. CBP Rolling Out Automation of I-94 Arrival/Departure Records

U.S. Customs and Border Protection (CBP) announced on April 26, 2013, that it has automated the Form I-94, Arrival/Departure Record. The I-94 provides international visitors evidence that they have been lawfully admitted to the United States, which is necessary to verify registration, immigration status, and employment authorization. Affected visitors will no longer need to fill out a paper form when arriving in the U.S. by air or sea. CBP will now generate

records of admission using traveler information already transmitted electronically.

The change was implemented at air and sea ports on April 30 at Charlotte-Douglas International Airport, Orlando International Airport, Las Vegas Airport, Chicago O'Hare, Miami International Airport, and Houston Bush Intercontinental Airport. It will be rolled out across the country through May 21.

Travelers wanting a hard copy or other evidence of admission may access that information online at <http://www.cbp.gov/I94> if they did not receive a hard copy attached to their passport. From there, individuals can print a copy of the I-94 based on electronically submitted data, including the I-94 number from the form, to provide as necessary to benefit providers or as evidence of lawful admission.

The announcement is available at

http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/04262013_4.xml.

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3. SSA Adds Admission Stamp in Unexpired Foreign Passport To List of Primary Evidence of Identity, Updates Policy on New Types of Nonimmigrant Evidence

The Social Security Administration has updated its Program Operations Manual System (POMS), effective April 30, 2013, adding "admission stamp in unexpired foreign passport" to its list of acceptable primary evidence of identity. The updated SSA information, "List of Documents in Priority of Acceptability for Use as Evidence of Identity," says that this is considered a separate document from an unexpired passport.

The updated SSA information in POMS refers to "Policy for Number of Documents Required for an SSN Card," which explains:

- An I-551 stamp (Temporary Lawful Permanent Resident stamp) or a U.S. immigration stamp in the applicant's foreign passport and the foreign passport are two separate documents.
- Likewise, an Arrival Departure Record (Form I-94) stapled in a foreign passport and the foreign passport are two separate documents.
- A machine-readable immigrant visa (MRIV) issued by the U.S. Department of State and placed in the foreign passport and the foreign passport are

two separate documents.

- The Department of Homeland Security (DHS) admission stamp placed partially on the MRIV is a third document.
- While you can use the immigration and admission stamp to establish identity and lawful alien status, you can use the foreign passport to establish age.

SSA has also posted policy information on new types of nonimmigrant evidence, including the admission stamp and recently introduced versions of the I-94 Arrival/Departure record, including U.S. Customs and Border Protection's I-94 website printout and the Global Entry I-94, and has added a parole stamp placed in an unexpired foreign passport as acceptable evidence of parole status for a Social Security number (SSN).

SSA also updated the 10-day hold procedure for verifying evidence of status for an SSN using the Systematic Alien Verification for Entitlements (SAVE) program through the enumeration system (SSNAP). SSA said it is making these changes as a result of Department of Homeland Security (DHS) automation of the I-94 Arrival/Departure record and recent DHS information regarding the real-time verification of alien evidence. SSA has eliminated the 10-day hold policy for all DHS evidence except DHS Forms N-550/N-570 (Certificate of Naturalization) and N-560/N-561 (Certificate of Citizenship).

The updated information on admission stamps is included in RM 10210 TN 16 (effective date: 4/30/2013), and is available at

<https://secure.ssa.gov/apps10/public/reference.nsf/links/04162013014723PM>.

The referenced document, RM 10210.020, is available at

<https://secure.ssa.gov/poms.nsf/lnx/0110210020#c3>.

The new policy documents, also effective April 30, 2013, are available at

<https://secure.ssa.gov/apps10/public/reference.nsf/links/04122013093257AM>

and

<https://secure.ssa.gov/apps10/public/reference.nsf/links/04112013010840PM>.

The 10-day hold update is available at

<https://secure.ssa.gov/apps10/public/reference.nsf/links/04122013093259AM>.

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4. CBP Launches New Arrival/Departure Record Process for Foreign Visitors

Under the new process, CBP is no longer requiring international nonimmigrant visitors to fill out a paper Form I-94 Arrival/Departure Record upon arrival to the U.S. by air or sea. The agency will gather travelers' arrival/departure information automatically from their electronic travel records. CBP said it expects this automation to streamline the entry process for travelers, facilitate security, and reduce federal costs. CBP anticipates that the automated process will save the agency an estimated \$15.5 million per year.

Because advance information is only transmitted for air and sea travelers, CBP will still issue a paper I-94 at land border ports of entry.

CBP will phase in the I-94 automation at air and sea ports of entry into May. Foreign visitors will continue to receive the paper I-94 until the automated process arrives at their port of entry. Following automation, if travelers need the information from their I-94 admission record to verify immigration status or employment authorization, the record number and other admission information will be available at CBP.gov/I94.

With the new CBP process, a CBP officer will stamp the travel document of each arriving nonimmigrant traveler. The admission stamp will show the date of admission, class of admission, and the date until which the traveler is admitted. Travelers will also receive upon arrival a flier alerting them to go to CBP.gov/I94 for their admission record information.

Travelers will not need to do anything differently upon exiting the U.S. Those previously issued a paper I-94 will surrender it to the commercial carrier or to CBP upon departure. If a traveler did not receive a paper I-94, CBP will record the departure electronically via manifest information provided by the carrier or by CBP.

Implementation began on April 30 at five pilot ports of entry and will continue to the remaining ports of entry over a total of four weeks. For more information and for answers to frequently asked questions, a fact sheet/FAQ is available at http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/travel/i94_factsheet.ctt/i94_factsheet.pdf.

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5. Temporary Protected Status Extended for Hondurans, Nicaraguans

The Department of Homeland Security has extended temporary protected

status (TPS) for eligible nationals of Honduras and Nicaragua for an additional 18 months, beginning July 6, 2013, and ending January 5, 2015.

Current Honduran and Nicaraguan beneficiaries seeking to extend their TPS status must re-register by June 3, 2013. U.S. Citizenship and Immigration Services (USCIS) encourages beneficiaries to register as soon as possible.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible Honduran and Nicaraguan TPS beneficiaries who request an EAD and meet the re-registration deadline will receive a new EAD with an expiration date of January 5, 2015. USCIS recognizes that some re-registrants may not receive their new EADs until after their current EADs expire. Therefore, USCIS is automatically extending current TPS Honduras EADs that have a July 5, 2013, expiration date for an additional six months. These existing EADs are now valid through January 5, 2014.

To re-register, current TPS beneficiaries must submit Form I-821, Application for Temporary Protected Status. TPS re-registrants must also submit Form I-765, Application for Employment Authorization, but no application fee is required if the re-registrant does not want an EAD. Re-registrants do not need to pay the I-821 application fee, but they must submit the biometric services fee, or a fee waiver request, if they are 14 years of age or older. All TPS re-registrants applying for an EAD must submit the I-765 application fee, or a fee waiver request.

TPS applicants may request that USCIS waive any fees by filing a Form I-912, Request for Fee Waiver, or by submitting a personal letter asking that these fees be waived. Failure to submit the required filing fees or a properly documented fee waiver request will result in rejection of the entire TPS application, USCIS said.

Additional information on TPS for Honduras and Nicaragua, including guidance on the application process and eligibility, is available online at <http://www.uscis.gov/tps>. Further details on this extension of TPS for Honduras, including the application requirements and procedures, appeared in a Federal Register notice published on April 3, 2013, and available at <http://www.gpo.gov/fdsys/pkg/FR-2013-04-03/pdf/2013-07673.pdf>. The USCIS announcement for Honduras is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid>

[=382d8aea586bd310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD](#). The Federal Register notice for Nicaragua is available at <http://www.gpo.gov/fdsys/pkg/FR-2013-04-03/pdf/2013-07674.pdf>. The USCIS announcement for Nicaragua is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=5d4e41f935a4d310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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6. State Dept. Introduces Visa Status Check Online

The Department of State's Bureau of Consular Affairs has launched "Visa Status Check" online. Users can check their U.S. visa application status at the Consular Electronic Application Center (CEAC) on the site by entering the type and case number. The service is available at

<https://ceac.state.gov/CEACStatTracker/Status.aspx?>. The CEAC is available at <https://ceac.state.gov/CEAC/>.

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7. ABIL Global (www.abil.com): Peru

Amendments have been made recently to Peruvian immigration rules.

Changes do not often occur in Peruvian immigration law, but there have been some recent modifications to certain aspects of immigration proceedings and requirements by the Peruvian Immigration Administrative Authority concerning visa processes for foreign nationals.

Legislative Decree No. 1130 has created a new immigration Peruvian authority based on the former authority known as "DIGEMIN" and now called "MIGRACIONES." This legislative decree took effect December 7, 2012. The new government office, the National Superintendence of Migration (MIGRACIONES), is a technical and specialized entity within the Ministry of the Interior of Peru that has its own administrative, economic, and functional autonomy.

In addition, on December 23, 2012, Supreme Decree No. 003-2012-IN was published, which included the Text of Administrative Procedures of the Ministry of the Interior (TUPA), comprising procedures and related administrative

services. Among them are those pertinent to MIGRACIONES, which is now the lead agency in domestic immigration policy in Peru. Among its different powers, however, there still exists the recently issued DIGEMIN TUPA. MIGRACIONES has not yet issued its own TUPA.

In general, MIGRACIONES has become more demanding and rigorous. Previously, there were only the discretionary judgment and criteria of DIGEMIN in some aspects. Now the legal basis has been incorporated into the recent DIGEMIN TUPA regarding such aspects. DIGEMIN TUPA contains the administrative rules to apply to immigration law in Peru.

Now there are more requirements for work visas and appointed worker visas related to performing labor activities in Peru for those who are either working in the country employed by local companies registered on their payroll as "dependent workers," or as foreigners who provide services in Peru to some local companies as "consultants or advisors" on a regular basis and who hold a migratory status and visa regulated by law, maintaining their capacity as workers for foreign companies because they are not included on the payroll of Peruvian companies.

The most significant changes include:

- **Change of status (in-country processing) or obtaining of visa proceeding (with a consular step):**

Resident - Worker (WRA)

- A foreign citizen who requires this type of visa must sign the Initiation "F-0004" form, in the case of "Change of Status" procedure (in-country processing), since he or she is in the country.
- At present, the F-0004 is obtained online either for in-country or obtaining of visa proceeding.
- No more than 15 working days should elapse between the date of approval of the employment contract for foreign nationals and the start date of filing the case before MIGRACIONES.
- Where the parties in an employment contract related to a foreign national have agreed to a probationary period, MIGRACIONES shall first grant a visa with temporary worker status only until the completion of this period. After that, the applicant applies for a "change of visa process" to get his or her WRA visa at

MIGRACIONES.

- The power of attorney letter granted by the foreign citizen must be addressed to the National Superintendence of Migration-MIGRACIONES, not to DIGEMIN.
- A copy of the Registry of Taxpayers (*RUC*) of the local company employing the foreign national, which is obtained from SUNAT's website (<http://www.sunat.gob.pe/>) using the key password "clave sol," must be "Active" (*Activo*) and "Existing" (*Habido*), and the local company must have workers enrolled on its payroll.
- A certified copy of the validity of the power of attorney (*Vigencia de Poder*) of the representative of the contracting employer updated and recently issued by the Registry Office must show explicitly that this is a representative of the employer who has signed the employment contract on behalf of the local company, and has the authorization to hire staff.
- The foreign passport of the applicant must have a minimum validity of one year.

Appointed Worker (WD1)

- A foreign citizen who requires this type of visa must sign the Initiation "F-0004" form in the case of a change of status (in-country process), because he or she is in the country.
- At present, the F-0004 is obtained online either for in-country or obtaining of visa proceeding.
- In addition to the requirements within the scope of the letter of appointment to be granted to the appointed worker by the foreign company that will provide services to the local company, a letter that is addressed to the receiving company must state that both wages, as per diem, or any payment to the appointed worker, shall be paid by the foreign company. The age of the individual must also be indicated in this letter.
- A Certificate of Specialization in the work that the appointed worker will perform in the local company in Peru, should be issued by the foreign company or foreign study center, duly legalized by the Peruvian consulate abroad and endorsed by the Peruvian Ministry of Foreign relations or with an apostil abroad, as appropriate.
- - A copy of the Registry of Taxpayers (*RUC*) of the local company employing the

foreign national, which is obtained from SUNAT's website (<http://www.sunat.gob.pe/>) using the key password "clave sol," must be "Active" (*Activo*) and "Existing" (*Habido*), and the local company must have workers enrolled on its payroll.

- A certified copy of the validity of the power of attorney (*Vigencia de Poder*) of the representative of the local company receiving the services, who has signed the service agreement and the letter of the beneficiary company (local company), should be recently updated and issued by the corresponding Registry Office.

- The applicant's passport should be valid for at least six months.

The requirements above apply to both types of procedures, either "change of immigration status" or "obtainment of visa," unless specific reference to only one of them is made.

Other requirements, depending on the type of procedure to be followed, remain mandatory.

In case of an extension or renewal of the permit for an appointed worker (WD1) beyond the additional 90 days initially granted, the INTERPOL International Exchange sheet should be attached to the file and submitted to MIGRACIONES for this purpose, provided that the extension or renewal requested is at least three months.

II. Procedure for Extension of Residence Permit

Resident Worker

Three original recent payslips for the foreign worker must be presented to MIGRACIONES in addition to other documentation, demonstrating continued employment during the last year of stay in the country.

III. Procedure of Extension of Authorization of Permanency:

Temporary Worker/Appointed Worker

The INTERPOL International Exchange Sheet should be presented if the requested extension is at least three months.

This must be presented to MIGRACIONES in addition to other required documents in the case of extension beyond the additional 90 days initially granting authorization to work for a local company under a dependent labor

relationship as a subordinated worker (temporary worker), or as a consultant or advisor (appointed worker).

In addition, three original recent payslips of the foreign worker for a temporary worker visas must be filed.

Requirements in immigration proceedings for change of status and obtaining visa for immigrants, investors, among others, have also been amended.

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8. Firm In The News

Cyrus Mehta was a Panelist on the topic "*The Time is Now: How South Asians are Affected By Immigration Reform,*" South Asian Summit 2013, Washington, DC, April 2013.

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