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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - JANUARY 03, 2022

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Headlines:

USCIS Extends Flexibilities for Responding to Certain Agency Requests – The flexibilities apply if the issuance date listed on the request, notice, or decision is between March 1, 2020, and March 26, 2022, inclusive. USCIS said it will consider a response to such requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action.

State Dept. Proposes Raising Consular Service Fees for Nonimmigrant and Special Visas – The Department of State has proposed raising fees for consular services for several nonimmigrant visa application processing fees, the Border Crossing Card for Mexican citizens age 15 and over, and the waiver of the two-year residency requirement fee for certain J exchange visitors.

Restrictions on Travelers From Southern African Countries Lifted – Affected countries include Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, and Zimbabwe.

Certain Healthcare Workers Can Request Expedited Work Permits, USCIS Says – Qualified healthcare workers who have pending employment authorization document (EAD) renewal applications and EADs that will expire in 30 days or less, or that have already expired, can request expedited processing of the EAD application.

Labor Dept. Issues H-2A FAQ on Wage Disclosure and Calculation Requirements for Agricultural Clearance Orders – The Department of Labor's Employment and Training Administration has released a set of frequently asked questions related to the wage disclosure and calculation requirements for agricultural clearance orders, including in the H-2A temporary labor certification program.

ABIL Global: Italy – The Italian government announced the number of non-European Union workers allowed into Italy.

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USCIS Extends Flexibilities for Responding to Certain Agency Requests

U.S. Citizenship and Immigration Services (USCIS) is extending the flexibilities it originally announced on March 30, 2020, to assist applicants, petitioners, and requestors who are responding to certain requests.

The flexibilities apply if the issuance date listed on the request, notice, or decision is between March 1, 2020, and March 26, 2022, inclusive. USCIS said it will consider a response to such requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action.

The flexibilities cover responses to Requests for Evidence; Continuations to Request Evidence (N-14); Notices of Intent to Deny, Revoke, or Rescind; Notices of Intent to Terminate regional centers; and Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant. In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if the form was filed up to 90 calendar days from issuance of a decision USCIS made, and the agency made that decision between November 1, 2021, and March 26, 2022, inclusive.

Details:

- USCIS alert, Dec. 30, 2021, https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-0

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State Dept. Proposes Raising Consular Service Fees for Nonimmigrant and Special Visas

The Department of State (DOS) has proposed raising fees for consular services for several nonimmigrant visa (NIV) application processing fees, the Border Crossing Card (BCC) for Mexican citizens age 15 and over, and the waiver of the

two-year residency requirement fee for certain J exchange visitors. Specifically, the Department proposes:

- To increase the non-petition-based NIV fee from $160 to $245 per application. Non-petition-based NIVs include a variety of nonimmigrant visas, such as those for business and tourist travel (B1/B2); students and exchange visitors (F, M, and J); crew and transit visas (C and D); representatives of foreign media (I), and other country-specific visa classes, as well as BCCs for applicants age 15 or older who are citizens of and resident in Mexico.
- To increase fees for all petition-based NIVs related to employment in the United States from $190 to $310. Petition-based NIVs include categories for temporary workers and trainees (H); intracompany transferees (L); aliens of extraordinary ability (O); athletes, artists, and entertainers (P); international cultural exchange participants (Q); and religious workers (R).
- To increase the E category NIV fee from $205 to $485.
- To increase the J waiver fee from $120 to $510.

DOS will accept comments on the proposed rule until February 28, 2022.

Details:

- Proposed rule, Dept. of State, 86 Fed. Reg. 74018 (Dec. 29, 2021), https://www.govinfo.gov/content/pkg/FR-2021-12-29/pdf/2021-28010.pdf

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Restrictions on Travelers From Southern African Countries Lifted

Temporary travel restrictions the Biden administration imposed in November on foreign travelers from South Africa and seven other countries in the region, due to the spread of the Omicron variant of COVID-19, were lifted on December 31, 2021, following recommendations from the Centers for Disease Control and Prevention. In addition to South Africa, the other countries include Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, and Zimbabwe. A related Presidential Proclamation noted, among other things, that "scientific experts have determined that people who are vaccinated against COVID-19 are protected against severe disease and hospitalization from the Omicron variant. Moreover, the Omicron variant has now spread to more than 100 countries, and it is prevalent in the United States."

People traveling from South Africa and the other seven countries will now need to meet the same requirements as other foreign travelers to the United States: be fully vaccinated and obtain a negative COVID-19 test within a day before their departure to the United States. All travelers, including U.S. citizens, lawful permanent residents, and foreign nationals, must show to the airline documentation of a negative viral test result taken within one day of the flight's departure before boarding. The CDC recently shortened the testing time period from within three days before travel to within one day.

The Department of State (DOS) noted that the rescission of the travel ban does not necessarily mean that a local U.S. embassy or consulate can immediately schedule all affected applicants for visa interviews. DOS recommended that travelers check the embassy or consulate website for information on what services they are offering and instructions on how to apply for a visa.

Details:

- "A Proclamation on Revoking Proclamation 10315," White House Briefing Room, Dec. 28, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/28/a-proclamation-on-revoking-proclamation-10315/
- "Rescission of Travel Restrictions on Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, and Zimbabwe," Dept. of State, Dec. 28, 2021, https://bit.ly/3FLNsVL

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Certain Healthcare Workers Can Request Expedited Work Permits, USCIS Says

U.S. Citizenship and Immigration Services (USCIS) announced that qualified healthcare workers who have pending employment authorization document (EAD) renewal applications and EADs that will expire in 30 days or less, or that have already expired, can request expedited processing of the EAD application.

Workers should check the related DHS advisory memorandum to determine whether they qualify. Workers requesting expedited processing of their EADs must provide evidence of their profession or current employment as a healthcare workers. To request expedited processing, workers should call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

Details:

- "How to Make an Expedite Request" (see "Alert: If you are a healthcare worker"), USCIS, https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request
- "Advisory Memorandum on Ensuring Essential Critical Infrastructure Workers' Ability to Work During the COVID-19 Response," Dept. of Homeland Security, https://www.cisa.gov/sites/default/files/publications/essential_critical_infrastructure_workforce-guidance_v4.1_508.pdf

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Labor Dept. Issues H-2A FAQ on Wage Disclosure and Calculation Requirements for Agricultural Clearance Orders

The Department of Labor's Employment and Training Administration (ETA) has released a set of frequently asked questions (FAQ) related to the wage disclosure and calculation requirements for agricultural clearance orders, including in the H-2A temporary labor certification program.

The FAQ reminds State Workforce Agencies that they must check an employer's piece rate offer, estimated in hourly wage rate equivalents for each activity and unit size, when reviewing the Forms ETA-790A and 790B (collectively referred to as "agricultural clearance orders") and to clarify related wage disclosure and calculation requirements of these forms for employers.

Details:

- ETA announcement, Dec. 29, 2021, https://www.dol.gov/agencies/eta/foreign-labor

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ABIL Global: Italy

The Italian government announced the number of non-European Union (EU) workers allowed into Italy for the year 2021. New quotas are expected to be issued in early 2022.

The government set 69,700 quotas allocated for the year 2021 for different categories of non-EU citizens intending to work in the country:

- 42,000 were reserved to entries for seasonal work
- 27,700 were reserved for subordinate work, but only for specific sectors of activity and for certain nationalities
- 2,000 were reserved to permit conversion for foreign citizens who already possessed a residence permit in Italy or the EU (study, seasonal work, permanent) intending to change status, i.e., to convert the existing permit into a permit for employment/self-employment
- 500 quotas were for self-employment work (entrepreneurs, start-ups, professionals, well-known artists, chairpersons/CEOs, members of boards of directors, auditors in an Italian company active for at least three years)

Details:

- "Italian Government Announces (Late!) the Number of Non-EU Workers Allowed in Italy for 2021," Mazzeschi, Dec. 24, 2021, https://www.mazzeschi.it/italian-government-announces-late-the-number-of-non-eu-workers-allowed-in-italy-for-2021/

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