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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - JANUARY 10, 2022

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Headlines:

DHS OIG Finds That Manual Processing Slowed USCIS Benefits Delivery During Pandemic – In a new report, the Department of Homeland Security's Office of Inspector General found that continued reliance on manual processing slowed U.S. Citizenship and Immigration Services' benefits delivery during the COVID-19 pandemic. USCIS concurred with OIG's recommendations.

OFLC Completes Random Assignments of H-2B Applications Submitted for Work Starting April 1, 2022 – OFLC has completed randomly assigning all H-2B applications submitted during the initial filing window, January 1-3, 2022, requesting an April 1, 2022, work start date for the second half of the FY 2022 H-2B statutory visa cap.

EOIR Mandates E-Filing as of February 11, 2022 – Effective February 11, 2022, the Executive Office for Immigration Review is requiring electronic filing and records applications for all cases before the immigration courts and the Board of Immigration Appeals.

State Dept. Announces Diversity Visa Reassignment Procedures for Kabul and Baghdad – Those who are DV selectees for the 2022 DV program year with a case assigned to the U.S. embassy in Kabul, Afghanistan, or Baghdad, Iraq, should request reassignment of their DV cases to another embassy or consulate that processes immigrant visa applications.

USCIS Plans E-Verify Records Disposal for April 1, 2022 – E-Verify employers have until March 31, 2022, to download case information from the Historic Records Report.

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DHS OIG Finds That Manual Processing Slowed USCIS Benefits Delivery During Pandemic

The Department of Homeland Security's Office of Inspector General (OIG) released a report on December 28, 2021, finding that continued reliance on manual processing slowed U.S. Citizenship and Immigration Services' benefits delivery during the COVID-19 pandemic.

OIG found that USCIS had limited capability to electronically process more than 80 types of benefits, which still required some manual workflows and paper files to complete cases. Recurring technology performance issues and equipment limitations further constrained USCIS employees' productivity, OIG said, attributing the challenges to "funding cuts and lost fee revenue that limited spending during this time." OIG noted that these challenges "further increased processing times and resulted in a backlog of 3.8 million cases as of May 2021."

The report includes two recommendations aimed at improving USCIS's electronic processing of benefits, with which USCIS concurred:

Recommendation 1: Update the USCIS pandemic plan to incorporate additional technology guidance and lessons learned during the COVID-19 pandemic. The estimated completion date is December 30, 2022. OIG considers this recommendation to be "open and resolved." OIG said a formal closeout letter to be submitted should be accompanied by "evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts."

Recommendation 2: Develop an updated strategy for digitizing all benefits work and tracking the outcome of improving case processing times, including a detailed funding plan, in accordance with the Emergency Stopgap USCIS Stabilization Act. OIG considers this recommendation to be "resolved and closed."

Details:

- "Continued Reliance on Manual Processing Slowed USCIS' Benefits Delivery During the COVID-19 Pandemic," DHS/OIG, Dec. 28, 2021, https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-12-Dec21.pdf

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OFLC Completes Random Assignments of H-2B Applications Submitted for Work Starting April 1, 2022

The Department of Labor's Office of Foreign Labor Certification (OFLC) has completed randomly assigning all H-2B applications submitted during the initial filing window, January 1-3, 2022, requesting an April 1, 2022, work start date for the second half of the fiscal year 2022
H-2B statutory visa cap.

OFLC reported receiving 7,875 H-2B applications requesting 136,555 worker positions during the filing period. OFLC said it will notify employers (and authorized attorneys or agents) of their H-2B Assignment Group. The agency published a list of the H-2B applications assigned to each group on January 7, 2022.

Details:

- OFLC notices, Jan. 7, 2022, and Jan. 4, 2022, https://www.dol.gov/agencies/eta/foreign-labor
- Assignment Group list, OFLC, Jan. 7, 2022, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H2B%20Randomization%20List%20January%202022.pdf
- Randomization procedures, Employment and Training Administration, 84 Fed. Reg. 7399 (Mar. 4, 2019), https://www.govinfo.gov/content/pkg/FR-2019-03-04/pdf/2019-03809.pdf

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EOIR Mandates E-Filing as of February 11, 2022

Effective February 11, 2022, the Executive Office for Immigration Review (EOIR) will require electronic filing and records applications for all cases before the immigration courts and the Board of Immigration Appeals.

Users can view training materials on EOIR's website, including infographics and videos on how to upload and download documents on its Courts & Appeals System.

Details:

- EOIR final rule, 86 Fed. Reg. 70708 (Dec. 13, 2021),

https://www.govinfo.gov/content/pkg/FR-2021-12-13/pdf/2021-26853.pdf
- ECAS User Manual and other how-to information, https://www.justice.gov/eoir/ecas/attorney-and-ar-resources

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State Dept. Announces Diversity Visa Reassignment Procedures for Kabul and Baghdad

The Department of State announced on January 5, 2022, that those who are Diversity Visa (DV) selectees for the 2022 DV program year with a case assigned to the U.S. embassy in Kabul, Afghanistan, or Baghdad, Iraq, should request reassignment of their DV cases to another embassy or consulate that processes immigrant visa applications. Such persons must be physically present in the consular district where the embassy or consulate is located at the time of interview and have permission to remain in the country by the host government for a period sufficient to complete processing.

Reassignment of a case to another embassy or consulate does not mean that it will be automatically scheduled for an immigrant visa interview. The interview will be scheduled after the DS-260 immigrant visa application has been fully processed, when the case number is current according to the Visa Bulletin, and when the reassigned embassy or consulate has an interview appointment available.

Details:

- "Diversity Visa Reassignment Procedures for Kabul and Baghdad," Jan. 5, 2022, https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-reassignment-procedures-for-kabul-and-baghdad.html

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USCIS Plans E-Verify Records Disposal for April 1, 2022

U.S. Citizenship and Immigration Services (USCIS) plans to dispose of E-Verify records that are more than 10 years old on April 1, 2022. (USCIS defined "more than 10 years old" as "those dated on or before Dec. 31, 2011.) E-Verify employers have until March 31, 2022, to download case information from the Historic Records Report if they want to retain information about these E-Verify cases, USCIS said.

USCIS noted that employers must record the E-Verify case verification number on the corresponding Form I-9, Employment Eligibility Verification, or attach a copy of the case details page to the I-9 form. Employers should retain the Historic Records Report with the I-9 forms.

Details:

- "E-Verify Records Disposal," USCIS, Jan. 6, 2022, https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/e-verify-records-disposal
- "Fact Sheet: E-Verify Records Retention and Disposal," USCIS, Jan. 20, 2021, https://www.e-verify.gov/sites/default/files/everify/factsheets/E-VerifyNARAFactSheet.pdf
- "Instructions to Download Historic Records Reports in E-Verify," USCIS, Jan. 20, 2021, https://www.e-verify.gov/sites/default/files/everify/infosheets/DownloadNARAReportsinE-Verify.pdf

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