



IMMIGRATION UPDATE - JANUARY 18, 2022

Posted on January 18, 2022 by Cyrus Mehta

Headlines:

[USCIS Clarifies Guidance on O-1 Nonimmigrants in Arts vs. Motion Pictures and Television](#) – USCIS clarified guidance on how the agency determines whether an O-1B beneficiary will be evaluated as a person of extraordinary ability in the arts or as a person of extraordinary achievement in the motion picture or television industry when a case has elements of both.

[February Visa Bulletin Warns of High Demand in Employment Fourth Category, Notes Upcoming Expiration of SR Religious Workers Category](#) – High demand in the employment fourth preference category may necessitate the establishment of a worldwide final action date in the coming months. Also, no SR visas may be issued overseas, or final action taken on adjustment of status cases, after February 17, 2022, and all individuals seeking admission as a non-minister special immigrant must be admitted into the U.S. by February 17, 2022.

[USCIS Issues Reminder re Immigration Help Available for Natural Disasters, 'Other Unforeseen Circumstances'](#) – USCIS reminded the public that the agency offers immigration services "that may help people affected by unforeseen circumstances such as natural disasters," including the Marshall fire in Colorado.

[USCIS Clarifies Guidance on O-1 Nonimmigrants in Arts vs. Motion Pictures and Television](#) – USCIS clarified guidance on how the agency determines whether an O-1B beneficiary will be evaluated as a person of extraordinary ability in the arts or as a person of extraordinary achievement in the motion picture or television industry when a case has elements of both.

[Justice Dept. Settles Immigration-Related Discrimination Claims With Frozen Food Company](#) – The settlement resolves claims that the company

discriminated against non-U.S. citizens based on their citizenship status when checking their permission to work in the United States.

[USCIS To Hold Listening Session on L Petition Adjudications](#) – The listening session is for stakeholders to provide feedback on modernizing and simplifying the regulations governing L petition adjudications.

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USCIS Clarifies Guidance on O-1 Nonimmigrants in Arts vs. Motion Pictures and Television

U.S. Citizenship and Immigration Services (USCIS) clarified guidance on how the agency determines whether an O-1B beneficiary will be evaluated as a person of extraordinary ability in the arts or as a person of extraordinary achievement in the motion picture or television industry when a case has elements of both.

USCIS explained that individuals of extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry may be eligible for O-1B classification. The updated guidance "will help officers and petitioners determine whether a beneficiary falls into the arts category or the motion picture and television category" and "will help with cases that have elements of both classifications, such as actors, directors, composers, or set designers who work in both motion pictures and television and live theater. It will also help officers and petitioners understand where streaming internet productions fall in these categories," USCIS said.

Among other things, the guidance notes that analysis of whether a production is within the motion picture or television industry (MPTV) is not limited to whether it will air on a television screen or in a movie theater, as the industry has grown to encompass some online content. "While static web materials and self-produced video blogs and social media content generally do not fall into the MPTV category, USCIS considers 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 industry's purview," USCIS said. Accordingly, USCIS "may properly consider work on such productions to fall under the O-1B (MPTV) classification."

Details:

- USCIS alert, Jan. 13, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-provides-clarifying-guidance-on-o-1-nonimmigrants-in-arts-vs-motion-picture-and-television>
- "Policy Alert: Determining the Appropriate O-1B Classification for Persons of Extraordinary Ability in the Arts or Extraordinary Achievement in the Motion Picture or Television Industry," USCIS, Jan. 13, 2022, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220113-ExtraordinaryAbility.pdf>
- USCIS Policy Manual, Chapter 4, O-1 Beneficiaries, <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4>

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February Visa Bulletin Warns of High Demand in Employment Fourth Category, Notes Upcoming Expiration of SR Religious Workers Category

The Department of State's Visa Bulletin for February 2022 notes that high demand in the employment fourth preference category may necessitate the establishment of a worldwide final action date in the coming months to hold number use within the maximum allowed under the fiscal year 2022 annual limit. DOS said the situation will be continually monitored and any necessary adjustments will be made.

The bulletin notes that for El Salvador, Guatemala, and Honduras, the rate of demand increased primarily for adjustment of status cases "and will require corrective action as early as March to hold number use within allowable limits. Also, for Mexico, the bulletin says that "corrective action may be necessary in the coming months."

The bulletin also notes the upcoming expiration of the employment fourth preference Certain Religious Workers (SR) category as of February 18, 2022: "No SR visas may be issued overseas, or final action taken on adjustment of status cases," after February 17, 2022, and "all individuals seeking admission as a non-minister special immigrant must be admitted (repeat, admitted) into the U.S." by February 17, 2022.

Details:

- Visa Bulletin for February 2022, Dept. of State, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-february-2022.html>

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USCIS Issues Reminder re Immigration Help Available for Natural Disasters, 'Other Unforeseen Circumstances'

U.S. Citizenship and Immigration Services (USCIS) issued a notice on January 12, 2022, reminding the public that the agency offers immigration services "that may help people affected by unforeseen circumstances such as natural disasters," including the Marshall fire in Colorado.

USCIS said following measures may be available on a case-by-case basis upon request:

- Changing nonimmigrant status or extending a nonimmigrant stay for an individual currently in the United States. "Failure to apply for the extension or change before expiration of your authorized period of admission may be excused if the delay was due to extraordinary circumstances beyond your control," USCIS said;
- Re-parole of individuals previously granted parole by USCIS;
- Expedited processing of advance parole requests;
- Expedited adjudication of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited adjudication of employment authorization applications, where appropriate;
- Consideration of fee waiver requests due to an inability to pay;
- Flexibility for those who received a Request for Evidence or a Notice of Intent to Deny but were unable to submit evidence or otherwise respond in a timely manner;
- Flexibility if you were unable to appear for a scheduled interview with USCIS;
- Expedited replacement of lost or damaged immigration or travel documents issued by USCIS, such as a Permanent Resident Card (Green Card), Employment Authorization Documents, and Arrival/Departure Record (Form I-94); and
- Rescheduling a biometric services appointment.

Details:

- USCIS alert, Jan. 12, 2022, <https://www.uscis.gov/newsroom/alerts/immigration-help-available-to-tho>

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Justice Dept. Settles Immigration-Related Discrimination Claims With Frozen Food Company

The Department of Justice (DOJ) reached a settlement agreement with Buddy's Kitchen Inc., a Minnesota-based company that produces and distributes frozen foods. The settlement resolves claims that the company discriminated against non-U.S. citizens based on their citizenship status when checking their permission to work in the United States.

DOJ said its investigation revealed that the company routinely discriminated by asking non-U.S. citizens, primarily lawful permanent residents, to present specific Department of Homeland Security-issued documents to prove their authorization to work in the United States, while making no such request of U.S. citizens. Under the settlement, Buddy's Kitchen will pay \$40,000 in civil penalties, change its employment policies to comply with the anti-discrimination provision of the Immigration and Nationality Act, and train its employees who are responsible for verifying workers' permission to work in the United States.

In a statement released on January 14, 2022, DOJ said, "All employees have the right to choose the valid documentation they wish to present when demonstrating that they have permission to work in the United States."

Details:

- Media release, Dept. of Justice, Jan. 10, 2022, <https://bit.ly/3Gt9UDk>

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USCIS To Hold Listening Session on L Petition Adjudications

U.S. Citizenship and Immigration Services (USCIS) will hold a listening session on Tuesday, January 25, 2022, from 2 to 3:30 p.m. ET. The listening session is for stakeholders to provide feedback on modernizing and simplifying the regulations governing L petition adjudications. USCIS is seeking input on all aspects of L adjudications, including L-1A managers and executives, L-1B specialized knowledge workers, new office petitions, blanket petitions, and evidentiary issues. USCIS said this is part of a series of listening sessions that

USCIS will host in the coming months to seek input on business and foreign worker-related policy considerations.

Details:

- To register, visit https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new?topic_id=USDHSCIS_530 and complete the registration process. Send any questions to public.engagement@uscis.dhs.gov or see <https://www.uscis.gov/outreach/contact-public-engagement>

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