



## IMMIGRATION UPDATE - JANUARY 25, 2022

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### Headlines:

[Biden Administration Implements New Actions to Increase Opportunities for STEM Students, Professionals, Others](#) – Highlights of the new actions announced by the Departments of Homeland Security and State are summarized.

[USCIS Notes 'Exceptionally High Number' of Employment-Based Green Cards Available This Fiscal Year](#) – USCIS said many more visas are available in the first (priority workers) and second (workers with advanced degrees of exceptional ability) employment-based green card categories than there are adjustment of status applications pending with USCIS.

[State Dept. Issues Final Rule Allowing Certain Fee Exemptions](#) –The Department is allowing an exemption from immigrant visa fees for certain applicants previously denied an immigrant visa pursuant to certain Presidential Proclamations issued by the previous administration who wish to reapply.

[State Dept. Announces F/M/J Nonimmigrant Visa Processing Posts Outside of Moscow for Applicants Resident in Russia](#) – Russia-based student visa applicants (F and M categories), academic exchange visitors (student, professor, research scholar, short-term scholar, and specialist J visa categories), and participants in U.S. government-funded exchange visitor programs may apply at Mission Kazakhstan and the U.S. embassies in Belgrade and Yerevan.

[USCIS Requests Comments on New Form I-129H1](#) – The notice is part of agency efforts to separate Form I-129, Petition for a Nonimmigrant Worker, into individual forms. Comments are due by February 18, 2022.

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## **Biden Administration Implements New Actions to Increase Opportunities for STEM Students, Professionals, Others**

The Biden administration announced new actions to increase opportunities in the United States for science, technology, engineering, and mathematics (STEM) students and professionals, among others. A White House statement said the new actions are intended to "advance predictability and clarity for pathways for international STEM scholars, students, researchers, and experts to contribute to innovation and job creation efforts across America. These actions will allow international STEM talent to continue to make meaningful contributions to America's scholarly, research and development, and innovation communities."

According to the Department of State (DOS), in 2020, international students contributed more than \$39 billion to the U.S. economy and supported an estimated 410,000 jobs in cities and towns across the United States. "U.S. entities and businesses gain a competitive edge in our global economy with the perspectives and skillsets of international students and scholars, particularly in the STEM fields," DOS said.

Below are highlights of the new actions announced by the Departments of Homeland Security (DHS) and DOS:

### **DHS Initiatives**

- DHS added 22 new fields of study to the STEM optional practical training (OPT) program to "enhance the contributions of nonimmigrant students studying" in STEM fields and to "support the growth of the U.S. economy and innovation." The STEM OPT program permits F-1 students earning bachelor's, master's, or doctoral degrees in certain STEM fields to remain in the United States for up to 36 months after they graduate to work in their fields of study.
- DHS is also updating its guidance to clarify how certain STEM graduates can use the national interest waiver for employment-based immigrant visa classification as an advanced degree professional noncitizen or noncitizen of exceptional ability. DHS noted that certain noncitizens with an advanced degree or exceptional ability "can self-petition for employment-based immigrant visa classification, without testing the labor market and obtaining certification from the Department of Labor, if USCIS determines the waiver of the labor market test to be in the national interest."

- USCIS is also updating its guidance related to O-1A nonimmigrant status for noncitizens of extraordinary ability in the fields of science, arts, education, business, or athletics. The update explains how USCIS determines eligibility for O-1A petitioners and, for the first time, provides examples of evidence that might satisfy the criteria, including for individuals working in STEM fields, DHS said.

## DOS Initiatives

- The Early Career STEM Research Initiative seeks to connect BridgeUSA exchange sponsors with interested U.S.-based STEM host organizations (e.g., small and medium businesses) to increase the number of STEM-focused educational and cultural exchanges.
- DOS is also announcing an extension for undergraduate and graduate students in STEM fields on the J-1 visa that will facilitate additional academic training for periods of up to 36 months. The extension applies to the 2021-22 and 2022-23 academic years.
- DOS said these initiatives are "consistent with the recent Joint Statement of Principles in Support of International Education," issued by DOS and the Department of Education.

### Details:

- "Fact Sheet: Biden-Harris Administration Actions to Attract STEM Talent and Strengthen Our Economy and Competitiveness," White House, Jan. 21, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/21/fact-sheet-biden-harris-administration-actions-to-attract-stem-talent-and-strengthen-our-economy-and-competitiveness/>
- "DHS Expands Opportunities in U.S. for STEM Professionals" (includes a list of the 22 new fields added to STEM OPT), Jan. 21, 2022, <https://www.dhs.gov/news/2022/01/21/dhs-expands-opportunities-us-stem-professionals>
- "Update to the Department of Homeland Security STEM Designated Degree Program List," 87 Fed. Reg. 3317 (Jan. 21, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-01-21/pdf/2022-01188.pdf>
- "USCIS Provides Clarifying Guidance for O-1 Petitions With a Focus on STEM Fields," USCIS, Jan. 21, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-provides-clarifying-guidanc>

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- "USCIS Updates Guidance on National Interest Waivers," USCIS, Jan. 21, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-national-interest-waivers>
- "New Initiatives Further Opportunity for International STEM Students, Scholars and Researchers, U.S. Entities," Jan. 21, 2022, <https://www.state.gov/new-initiatives-further-opportunity-for-international-stem-students-scholars-and-researchers-u-s-entities/>
- Early Career STEM Research Initiative, <https://j1visa.state.gov/programs/early-career-stem-research-initiative/>
- BridgeUSA, <https://j1visa.state.gov/>
- "Opportunity for Academic Training Extensions for J-1 College and University Students in STEM Fields," BridgeUSA, Dept. of State, <https://j1visa.state.gov/opportunity-for-academic-training-extensions-for-j-1-college-and-university-students-in-stem-fields/>

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## **USCIS Notes 'Exceptionally High Number' of Employment-Based Green Cards Available This Fiscal Year**

U.S. Citizenship and Immigration Services (USCIS) recently issued an alert noting that an "exceptionally high number" of employment-based green cards are available this fiscal year (October 2021 through September 2022).

USCIS said that it is committed, in "partnership with the U.S. Department of State," to "attempting to use all these visa numbers." USCIS said many more visas are available in the first (priority workers) and second (workers with advanced degrees of exceptional ability) employment-based green card categories than there are adjustment of status applications pending with USCIS.

USCIS provided the following advice:

If you are eligible, please consider applying in the first or second employment-based preference categories. If you have a pending adjustment of status application based in the third employment-based preference category but also have a pending or approved petition and an available visa in the second employment-based preference category, we strongly encourage you to request that USCIS "transfer the underlying basis" of your pending application to the

second employment-based preference category.

Details:

- Alert, Green Card for Employment-Based Immigrants (includes information about "transfer of underlying basis"), <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-employment-based-immigrants>

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### **State Dept. Issues Final Rule Allowing Certain Fee Exemptions**

The Department of State (DOS) issued a final rule on January 19, 2022, amending its regulation governing immigrant visa (IV) fees to allow an exemption from such fees for certain applicants previously denied an immigrant visa pursuant to certain Presidential Proclamations issued by the previous administration and associated technical corrections.

Specifically, the final rule applies to those who were denied an IV on or between December 8, 2017, and January 19, 2020, due to Presidential Proclamations 9645 and 9983. The final rule explains that any IV applicants denied under those proclamations, assuming no material change in circumstances, may now be eligible for a visa, and that DOS is exempting this defined category of IV applicants from payment of IV fees if they apply again for an immigrant visa.

If other refusal grounds in addition to the proclamations have not been overcome, the applicant would be required to pay the IV fees if they wish to apply again for an immigrant visa. Such applicants would need to have received a letter from a consular officer informing of a determination that the refusal on other grounds has been overcome, DOS explained.

Details:

- Final rule, 87 Fed. Reg. 2703 (Jan. 19, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-01-19/pdf/2022-00829.pdf>

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### **State Dept. Announces F/M/J Nonimmigrant Visa Processing Posts Outside of Moscow for Applicants Resident in Russia**

The Department of State (DOS) announced on January 21, 2022, that due to

"severely limited consular operations in Moscow," DOS has designated multiple posts for processing certain nonimmigrant visa applications from persons resident in Russia. Russia-based student visa applicants (F and M categories), academic exchange J visitors (student, professor, research scholar, short-term scholar, and specialist J visa categories), and participants in U.S. government-funded exchange visitor programs may apply at Mission Kazakhstan and the U.S. embassies in Belgrade and Yerevan.

DOS encourages applicants to check each post's website for the latest information on services and appointment availability at that specific post.

The agency noted that this designation does not prevent Russia-based F, M, and J applicants from applying at other posts where they are physically present. This designation also does not exempt travelers from the Centers for Disease Control and Prevention's (CDC) requirement that all air travelers to the United States be vaccinated against COVID-19 with a World Health Organization emergency use-listed vaccine, DOS said.

#### Details:

- "Announcement of F/M/J Processing Posts for Applicants Resident in Russia," State Dept., Jan. 21, 2022, <https://travel.state.gov/content/travel/en/News/visas-news/announcement-of-F-M-J-processing-posts-for-applicants-resident-in-russia.html>

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### **USCIS Requests Comments on New Form I-129H1**

U.S. Citizenship and Immigration Services (USCIS) issued a notice requesting comments by February 18, 2022, on a new Form I-129H1. USCIS made edits to the I-129H1 form and Instructions in response to previous comments. USCIS also removed form items and instructional language associated with a final rule published on January 8, 2021.

The notice is part of agency efforts to separate Form I-129, Petition for a Nonimmigrant Worker, into individual forms. USCIS explained that the I-129H1 form is intended to standardize requests for H-1B and H-1B1 nonimmigrant workers.

#### Details:

- To register, visit [https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new?topic\\_id=USDHSCIS\\_530](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](mailto:public.engagement@uscis.dhs.gov) or see <https://www.uscis.gov/outreach/contact-public-engagement>

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