



IMMIGRATION UPDATE - JANUARY 31, 2022

Posted on January 31, 2022 by Cyrus Mehta

Headlines:

[FY 2023 H-1B Cap Initial Registration Period Opens March 1](#) – The initial registration period for the fiscal year 2023 H-1B cap will open at noon ET on March 1, 2022, and run through noon ET on March 18, 2022.

[DHS, DOL Announce Availability of Additional H-2B Visas for First Half of Fiscal Year](#) – The Departments of Homeland Security and Labor announced the availability of 20,000 additional H-2B temporary nonagricultural worker visas for the first half of fiscal year (FY) 2022. The visas are for "U.S. employers that are facing irreparable harm without additional workers and seeking to employ additional workers on or before March 31, 2022." The additional H-2B visas became available to employers on January 28, 2022.

[USCIS Updates Guidance on Expedite Requests](#) – U.S. Citizenship and Immigration Services updated its Policy Manual to reflect new guidance, effective immediately, on how the agency determines whether a case warrants expedited treatment.

[CBP Announces New COVID-19 Vaccine Requirement for Non-U.S. Travelers Entering Via Land and Ferry From Canada, Mexico](#) – The new restriction applies to non-U.S. individuals who are traveling for both essential and non-essential reasons. It does not apply to U.S. citizens, lawful permanent residents, or U.S. nationals.

[CBP Expands 'Simplified Arrival' at International Airports in the South](#) – Simplified Arrival uses facial biometrics to automate the manual document checks that are required for admission into the United States.

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FY 2023 H-1B Cap Initial Registration Period Opens March 1

The initial registration period for the fiscal year (FY) 2023 H-1B cap will open at noon ET on March 1, 2022, and run through noon ET on March 18, 2022, U.S. Citizenship and Immigration Services (USCIS) announced. During this period, prospective petitioners and representatives will be able to complete and submit their registrations using the USCIS online H-1B registration system, for foreign workers with an October 1, 2022, start date.

USCIS will assign a confirmation number to each registration submitted for the FY 2023 H-1B cap. USCIS said that this number is used solely to track registrations and cannot be used to track case status in Case Status Online.

USCIS said prospective H-1B cap-subject petitioners or their representatives must use a myUSCIS online account to register each beneficiary electronically for the selection process and pay the associated \$10 H-1B registration fee for each registration submitted on behalf of each beneficiary. Prospective petitioners submitting their own registrations ("registrants"—U.S. employers and U.S. agents) will use a "registrant" account. Registrants will be able to create new accounts beginning at noon ET on February 21, 2022, but must wait until March 1 to enter beneficiary information and submit the registration with fee.

If USCIS receives enough registrations by March 18, it will randomly select registrations and send selection notifications via users' myUSCIS online accounts. The agency said it will notify selected account holders by March 31.

USCIS noted that an H-1B cap-subject petition, including a petition for a beneficiary who is eligible for the advanced degree exemption, may only be filed by a petitioner whose registration for the beneficiary named in the H-1B petition was selected in the H-1B registration process.

Details:

- USCIS alert, Jan. 28, 2022, <https://www.uscis.gov/newsroom/alerts/fy-2023-h-1b-cap-initial-registration-period-opens-on-march-1>

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DHS, DOL Announce Availability of Additional H-2B Visas for First Half of Fiscal Year

The Departments of Homeland Security (DHS) and Labor (DOL) announced the availability of 20,000 additional H-2B temporary nonagricultural worker visas for the first half of fiscal year (FY) 2022. The visas are for "U.S. employers that are facing irreparable harm without additional workers and seeking to employ additional workers on or before March 31, 2022." The additional H-2B visas became available to employers on January 28, 2022.

DHS said that this supplemental cap increase "marks the first time that DHS is making additional H-2B visas available in the first half of the fiscal year."

The supplemental H-2B visa allocation includes 13,500 visas available to returning workers who received an H-2B visa, or were otherwise granted H-2B status, during one of the last three fiscal years. The remaining 6,500 visas, which are exempt from the returning worker requirement, are reserved for nationals of Haiti, El Salvador, Guatemala, and Honduras.

In support of the rule, DOL's Office of Foreign Labor Certification (OFLC) posted a new Form ETA-9142-B-CAA-5 and accompanying instructions. The temporary rule requires an employer to attest, among other things, to the fact that it is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested under the cap increase. The employer must submit the attestation to USCIS along with Form I-129, in support of an H-2B application subject to the H-2B cap before March 31, 2022.

Details:

- Joint temporary final rule, DHS, DOL, 87 Fed. Reg. 4722 (Jan. 28, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01866.pdf>
- DHS release, Jan. 27, 2022, <https://www.dhs.gov/news/01/27/dhs-announces-availability-additional-h-2b-visas-first-half-fiscal-year>
- OFLC announcement, Jan. 28, 2022, <https://www.dol.gov/agencies/eta/foreign-labor>
- New Form ETA-9142-B-CAA-5 (<https://bit.ly/3Heosao>) and General Instructions (<https://bit.ly/3r9XQS7>)
- Cap Count for H-2B Nonimmigrants, USCIS, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h->

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USCIS Updates Guidance on Expedite Requests

U.S. Citizenship and Immigration Services (USCIS) updated its Policy Manual to reflect new guidance, effective immediately, on how the agency determines whether a case warrants expedited treatment. The update:

- Clarifies the criteria and circumstances under which USCIS generally considers expedite requests from nonprofit organizations as determined by the Internal Revenue Service;
- Provides additional examples of when USCIS may consider expedite requests made by federal, state, or local agencies, including labor and employment agencies;
- Adds examples to further illustrate how the expedite criteria relate to emergencies and urgent humanitarian reasons; and
- Explains that some circumstances may affect or delay the agency's ability to expedite an application or petition.

Details:

- USCIS alert, Jan. 25, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-expedite-requests>
- How to Make an Expedite Request, USCIS, <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>

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CBP Announces New COVID-19 Vaccine Requirement for Non-U.S. Travelers Entering Via Land and Ferry From Canada, Mexico

As of January 22, 2022, the Department of Homeland Security (DHS) is requiring non-U.S. individuals seeking to enter the United States via land ports of entry and ferry terminals at the U.S.-Mexico and U.S.-Canada borders to be fully vaccinated for COVID-19 and provide related proof of vaccination. DHS said this was necessary as COVID-19 cases continue to rise nationwide.

The new restriction applies to non-U.S. individuals who are traveling for both essential and non-essential reasons. It does not apply to U.S. citizens, lawful permanent residents, or U.S. nationals.

The Biden administration previously ordered that noncitizen nonimmigrants be vaccinated against COVID-19 before entering the United States by air, except in limited circumstances.

Details:

- "Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals," DHS, updated Jan. 20, 2022, <https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals>
- CBP One Mobile Application (single portal to a variety of CBP services), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>

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CBP Expands 'Simplified Arrival' at International Airports in the South

U.S. Customs and Border Protection (CBP) announced the implementation of Simplified Arrival at six airports in the states of Arkansas, Louisiana, Mississippi, Alabama, and Tennessee: Rogers Municipal Carter Field Airport, Lakefront Airport, Alexandria (Louisiana) International Airport, Gulfport Biloxi International Airport, Birmingham-Shuttlesworth International Airport, and Memphis International Airport.

Simplified Arrival uses facial biometrics to automate the manual document checks that are required for admission into the United States. Facial biometrics fulfill a longstanding congressional mandate to biometrically record the entry and exit of non-U.S. citizens, CBP said. To date, according to CBP, more than 130 million travelers have participated in the biometric facial comparison process at air, land, and sea ports of entry.

The Simplified Arrival process includes comparing a new photo taken on arrival at the primary inspection point to images the traveler has already provided to the government, such as passport and visa photos. Those who have previously traveled to the United States "may no longer need to provide fingerprints as their identity will be confirmed through the touchless facial comparison process," CBP said. Travelers who opt out of the Simplified Arrival process must

present a valid travel document for inspection by a CBP officer.

Details:

- CBP release, Jan. 24, 2022,
<https://www.cbp.gov/newsroom/local-media-release/cbp-expands-simplified-arrival-international-airports-south>

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