



IMMIGRATION UPDATE - MARCH 21, 2022

Posted on March 21, 2022 by Cyrus Mehta

Headlines:

[DHS to End COVID-19 Temporary Policy for I-9 List B Documents on May 1](#) – The Department of Homeland Security announced that beginning May 1, 2022, it is ending the COVID-19 temporary policy for List B identity documents. As of that date, employers will no longer be able to accept expired List B documents.

[USCIS Urges Eligible Individuals to Consider Applying for Adjustment in the E-2 Category Based on April Visa Bulletin Date for Filing for India](#) – U.S. Citizenship and Immigration Services encourages noncitizens who have approved immigrant visa petitions in the EB-2 category chargeable to India and a priority date earlier than September 1, 2014, to consider applying for adjustment of status in April.

[State Dept. Warns About Upcoming Availability of Employment Third Preference "Other Workers" Numbers](#) – High number use in the employment third preference "Other Workers" (EW) category may necessitate the establishment of a worldwide final action date as early as June.

[USCIS Prepares to Resume Public Services on June 4](#) – U.S. Citizenship and Immigration Services announced on March 15, 2022, that it is preparing some domestic offices to reopen and resume non-emergency public services on or after June 4, 2022.

[DHS Designates Afghanistan for Temporary Protected Status](#) – The Department of Homeland Security announced the designation of Afghanistan for temporary protected status for 18 months, effective on the publication date of a forthcoming Federal Register notice. Only those who were already residing in the United States as of March 15, 2022, and who meet all other requirements, including undergoing security and background checks, will be eligible.

[USCIS Issues Asylum-Based EAD Update Following Decision re *Rosario Class Action*](#) – Those who applied for initial employment authorization documents (EADs) based on a pending asylum application may be eligible to have their EADs processed within 30 days. If certain conditions apply, USCIS said it may consider such applicants *Rosario* class members.

[USCIS Updates Guidance on Employment Authorization for E and L Nonimmigrant Spouses](#) – U.S. Citizenship and Immigration Services is updating guidance to address the documentation that certain E and L nonimmigrant spouses may use as evidence of employment authorization based on their nonimmigrant status.

[CBP Announces Electronic I-94 Issuance at Land Ports of Entry](#) – For land arrivals, CBP is no longer issuing paper forms to nonimmigrants upon arrival except in limited circumstances and upon nonimmigrant request if feasible.

[Attorney General Announces New FOIA Policy at EOIR, Other Agencies](#) – Among other changes, the Department of Justice's Executive Office for Immigration Review will no longer require individuals to file Freedom of Information Act requests to obtain official copies of their own records of immigration court proceedings.

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DHS to End COVID-19 Temporary Policy for I-9 List B Documents on May 1

The Department of Homeland Security (DHS) announced that beginning May 1, 2022, it is ending the COVID-19 temporary policy for List B identity documents. As of that date, employers will no longer be able to accept expired List B documents.

If an employee presented an expired List B document between May 1, 2020, and April 30, 2022, employers must update their I-9 employment authorization verification forms by July 31, 2022. DHS provided the following table with details:

Details:

- E-Verify notice, Mar. 17, 2022,

<https://www.e-verify.gov/about-e-verify/whats-new/dhs-to-end-covid-19-temporary-policy-for-expired-list-b-identity-documents>

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USCIS Urges Eligible Individuals to Consider Applying for Adjustment in the E-2 Category Based on April Visa Bulletin Date for Filing for India

The Department of State's Visa Bulletin for April 2022 advances the date for filing applications for an immigrant visa or adjustment of status in the EB-2 category for India from September 1, 2013, to September 1, 2014. U.S. Citizenship and Immigration Services (USCIS) encourages noncitizens who have approved immigrant visa petitions in the EB-2 category chargeable to India and a priority date earlier than September 1, 2014, to consider applying for adjustment of status in April.

USCIS noted that applicants should include Form I-693, Report of Medical Examination and Vaccination Record, with Form I-485, Application to Register Permanent Residence or Adjust Status, to save time. Concurrently filing these two forms is not required, "but filing both forms at the same time may eliminate the need for USCIS to issue a Request for Evidence to obtain your Form I-693. This may also help avoid adjudication delays if we decide that you do not need to be interviewed," USCIS said.

USCIS continues to encourage eligible applicants to consider requesting to transfer the underlying basis of their pending adjustment of status applications in the EB-3 category to the EB-1 or EB-2 category if they meet the following criteria: a visa is unavailable to them in the EB-3 category; they have a pending or approved I-140, Immigrant Petition for Alien Workers; and a visa is available in the EB-1 or EB-2 category.

Details:

- USCIS alert, Mar. 17, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-urges-eligible-individuals-to-consider-applying-for-adjustment-of-status-in-the-eb-2-category>
- Visa Bulletin for April 2022, Dept. of State, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-april-2022.html>

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State Dept. Warns About Upcoming Availability of Employment Third Preference "Other Workers" Numbers

The Department of State (DOS) notes in its Visa Bulletin for April 2022 that high number use in the employment third preference "Other Workers" (EW) category may necessitate the establishment of a worldwide final action date as early as June to hold number use within the maximum allowed under the fiscal year 2022 annual limit. "This situation will be continually monitored, and any necessary adjustments will be made accordingly," DOS said.

Details:

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

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USCIS Prepares to Resume Public Services on June 4

U.S. Citizenship and Immigration Services (USCIS) announced on March 15, 2022, that it is preparing some domestic offices to reopen and resume non-emergency public services on or after June 4, 2022. USCIS said it is following the Centers for Disease Control and Prevention's guidelines.

While certain offices are temporarily closed, USCIS continues to provide limited emergency in-person services. As services begin to reopen, offices will reduce the number of appointments and interviews "to ensure social distancing, allow time for cleaning and reduce waiting room occupancy." USCIS said, "If you are feeling sick, please do not go to your appointment. Follow the instructions on your appointment notice to reschedule your appointment for when you are healthy. There is no penalty for rescheduling your appointment if you are sick."

Details:

- USCIS alert, Mar. 15, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-preparing-to-resume-public-services-on-june-4>

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DHS Designates Afghanistan for Temporary Protected Status

On March 16, 2022, the Department of Homeland Security (DHS) announced the designation of Afghanistan for temporary protected status (TPS) for 18 months, effective on the publication date of a forthcoming Federal Register notice. Only those who were already residing in the United States as of March 15, 2022, and who meet all other requirements, including undergoing security and background checks, will be eligible for TPS. Under the designation, TPS will also provide "additional protections and assurances to trusted partners and vulnerable Afghans who supported the U.S. military, diplomatic, and humanitarian missions in Afghanistan over the last 20 years," DHS Secretary Alejandro Mayorkas said.

Through Operation Allies Welcome, DHS said, most Afghan nationals who arrived as part of the evacuation effort were paroled into the United States on a case-by-case basis, for humanitarian reasons, for a period of two years and received work authorization. These individuals may also be eligible for TPS, the agency noted.

Details:

- DHS press release, Mar. 16, 2022, <https://www.dhs.gov/news/2022/03/16/secretary-mayorkas-designates-afghanistan-temporary-protected-status>

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USCIS Issues Asylum-Based EAD Update Following Decision re *Rosario* Class Action

U.S. Citizenship and Immigration Services (USCIS) announced on March 17, 2022, that those who applied for initial employment authorization documents (EADs) based on a pending asylum application may be eligible to have their EADs processed within 30 days, based on a February 7, 2022, court decision in *Asylumworks v. Mayorkas*. If certain conditions apply, USCIS said it may consider such applicants *Rosario* class members (referring to *Rosario v. USCIS*, 365 F. Supp. 3d 1156 (W.D. Wash. 2018)).

Details:

- USCIS notice, <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settle>

[ment-notices-and-agreements/rosario-class-action](#)

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USCIS Updates Guidance on Employment Authorization for E and L Nonimmigrant Spouses

U.S. Citizenship and Immigration Services (USCIS) announced on March 18, 2022, that it is updating guidance to address the documentation that certain E and L nonimmigrant spouses may use as evidence of employment authorization based on their nonimmigrant status. USCIS noted:

- On November 12, 2021, USCIS issued a policy announcement to clarify that it would consider E and L spouses to be employment-authorized based on their valid E or L nonimmigrant status. Since the November 2021 announcement, the Department of Homeland Security added new Class of Admission (COA) codes to distinguish between E and L spouses and children.
- As of January 30, 2022, USCIS and U.S. Customs and Border Protection (CBP) began issuing Forms I-94 with the following new COA codes for certain E and L spouses: E-1S, E-2S, E-3S, and L-2S. An unexpired Form I-94 reflecting one of these new codes is acceptable as evidence of employment authorization for spouses under List C of Form I-9.
- An E or L spouse age 21 or over who has an unexpired Form I-94 that USCIS issued before January 30, 2022, will receive a notice from USCIS beginning on or about April 1, 2022. This notice, along with an unexpired Form I-94 reflecting E-1, E-2, E-3, E-3D, E-3R, or L-2 nonimmigrant status, will serve as evidence of employment authorization. An E or L spouse who is under 21, or has not received the notice by April 30, can email E-L-married-U21@uscis.dhs.gov to request a notice.
- USCIS will only send notices to individuals identified as qualifying spouses based on a Form I-539 approved by USCIS. Individuals who received their Form I-94 from CBP should visit cbp.gov.

Details:

- USCIS alert, Mar. 18, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-empl>

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CBP Announces Electronic I-94 Issuance at Land Ports of Entry

U.S. Customs and Border Protection (CBP) is now issuing the Form I-94 (Arrival/Departure Record) electronically at land ports of entry. The Form I-94 documents nonimmigrants' status in the United States, the approved length of stay, and departure information.

CBP has automated the Form I-94 process for most nonimmigrants arriving by air and sea. However, CBP previously issued paper Form I-94s to nonimmigrants arriving by land. For land arrivals, CBP is no longer issuing paper forms to nonimmigrants upon arrival except in limited circumstances and upon nonimmigrant request if feasible, CBP said, noting that nonimmigrants can access the Form I-94 online or via mobile application.

Details:

- CBP notice, 87 Fed. Reg. 15446 (Mar. 18, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-03-18/pdf/2022-05758.pdf>

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Attorney General Announces New FOIA Policy at EOIR, Other Agencies

As part of efforts to strengthen public access to government documents, Attorney General Merrick Garland announced in a memorandum that the Department of Justice's Executive Office for Immigration Review (EOIR) will no longer require individuals to file Freedom of Information Act (FOIA) requests to obtain official copies of their own records of immigration court proceedings.

Attorney General Garland said he encourages all agencies "to examine whether they have similar or other categories of records that they could make more readily accessible without requiring individuals to file FOIA requests." In addition, he said that records should be posted online "quickly and systematically, agency FOIA websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible." The memo also calls for efficiency and timeliness in responding to FOIA requests "in a spirit of cooperation," and calls on agency heads to review

backlogs and provide training on FOIA. In general, the memo notes nine exemptions from fulfilling a FOIA request (e.g., national security, personal privacy, privileged records, law enforcement interests, and others) but notes that the burden is on the agency to sustain a decision to withhold records, and that agencies may not withhold information "based merely on speculative or abstract fears or fears of embarrassment."

The memo notes that FOIA.gov continues to serve as the federal government's central website for FOIA administration.

Details:

- "Attorney General Merrick B. Garland Issues New FOIA Guidelines to Favor Disclosure and Transparency," Dept. of Justice, Mar. 15, 2022, <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and>

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