



IMMIGRATION UPDATE - APRIL 11, 2022

Posted on April 11, 2022 by Cyrus Mehta

Headlines:

['Jumpstart Act' to Recapture Unused Visas Introduced in House](#) – The bill would recapture approximately 400,000 family- and employment-based visas, create an accelerated path to adjustment of status for those already in the United States, and provide additional funds to USCIS to improve visa processing.

[OFLC Reminds Employers Filing Form ETA-9142B to Submit Their Initiated Cases Before April 28](#) – H-2B submissions made after 6 p.m. ET on April 28, 2022, must be started and submitted in the new form module. Any initiated H-2B cases submitted prior to that date and time will be deleted and a new application using the upgraded module will need to be created.

[EADs Extended for Certain Syria and Somalia TPS Beneficiaries](#) – USCIS is issuing individual notices to certain Syrian and Somali temporary protected status beneficiaries whose applications to renew their employment authorization documents remain pending.

[South Sudan TPS Extended, Redesignated for 18 Months](#) – USCIS announced the extension and redesignation of South Sudan for temporary protected status (TPS) for 18 months, from May 3, 2022, through November 3, 2023.

[District Court Vacates Final Rule on Non-Range H-2A Adverse Effect Wage Rate Methodology](#) – In *United Farm Workers v. DOL*, the district court vacated a 2020 final rule, "Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States," remanding it to the Department of Labor for further rulemaking consistent with the court's order.

[USCIS Implements 'Risk-Based' Approach for Conditional Permanent Resident Interviews](#) – Effective immediately, new criteria will guide USCIS officers on

when to waive interviews for conditional permanent residents who filed a Form I-751, Petition to Remove Conditions on Residence.

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'Jumpstart Act' to Recapture Unused Visas Introduced in House

On April 4, 2022, Rep. Zoe Lofgren (CA-19) introduced H.R. 7374, the "Jumpstart our Legal Immigration System Act," a bill that would recapture approximately 400,000 family- and employment-based visas, create an accelerated path to adjustment of status for those already in the United States, and provide additional funds to U.S. Citizenship and Immigration Services (USCIS) to improve visa processing. Much of the bill was included in the House-passed version of the Build Back Better Act.

According to a statement from Rep. Lofgren, the legislation would:

- Amend the Immigration and Nationality Act to prevent the future loss of unused employment-based visas by ensuring that they roll over to the family-based categories.
- Recapture unused immigrant visas from 1992 through 2021, including approximately 222,000 unused family-sponsored visas and approximately 157,000 employment-based visas.
- Allow an estimated 40,000 individuals who were selected for, but did not receive, diversity visas to reapply for such visas. These individuals were unable to finalize the process or enter the United States due to various executive orders or COVID-related office closures and restrictions.
- Allow individuals who are in the United States and eligible for adjustment to legal permanent resident (LPR) status except for the lack of an available visa number to apply for adjustment upon paying a fee. "This will allow individuals to receive work authorization while they wait for a visa number to become available and will prevent dependent children from 'aging out' of eligibility for LPR status," Rep. Lofgren's statement noted.
- Allow immigrants who are in the United States to receive an exemption from the immigrant visa numerical limits and adjust their status to permanent residence if their immigrant visa petition has been approved for two years and they pay a supplemental fee.

Details:

- Rep. Lofgren's statement, Apr. 4, 2022, <https://lofgren.house.gov/media/press-releases/lofgren-introduces-jumps-tart-our-legal-immigration-system-act>
- Section-by-section summary, <https://lofgren.house.gov/sites/lofgren.house.gov/files/4.3.22%20-%20Jumpstart%20our%20Legal%20Immigration%20System%20Act%20SxS.pdf>
- Full text of bill, <https://lofgren.house.gov/sites/lofgren.house.gov/files/4.3.22%20-%20Jumpstart%20our%20Legal%20Immigration%20System%20Act%20Full%20Text.pdf>

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OFLC Reminds Employers Filing Form ETA-9142B to Submit Their Initiated Cases Before April 28

The Department of Labor's Office of Foreign Labor Certification (OFLC) reminded employers that the Foreign Labor Application Gateway (FLAG) will be upgrading the H-2B form "fill and submit" module, which OFLC said is expected to reduce lag time in completing form fields, document uploads, and appendices. All other FLAG H-2B functionality will be available to filers in the upgraded fill and submit module.

H-2B submissions made after 6 p.m. ET on April 28, 2022, must be started and submitted in the new form module, OFLC said. Any initiated H-2B cases submitted prior to that date and time will be deleted and a new application using the upgraded module will need to be created.

Details:

- OFLC notice, Apr. 5, 2022, <https://www.dol.gov/agencies/eta/foreign-labor>

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EADs Extended for Certain Syria and Somalia TPS Beneficiaries

U.S. Citizenship and Immigration Services (USCIS) is issuing individual notices to certain Syrian and Somalian temporary protected status (TPS) beneficiaries whose applications to renew Form I-766, Employment Authorization Document

(EAD), remain pending.

Syria

The notices further extend the validity of certain Syrian TPS beneficiaries' EADs through September 24, 2022. Their current EADs bear an A12 or C19 category and an expiration date of March 31, 2021; September 30, 2019; or March 31, 2018.

For Form I-9, Employment Eligibility Verification, a TPS Syria beneficiary may present an EAD with a Category Code of A12 or C19 and an expiration date of March 31, 2021; September 30, 2019; or March 31, 2018, along with an individual notice mailed by USCIS that automatically extends their EAD through September 24, 2022. In these cases, employers should enter September 24, 2022, as the new expiration date of the automatically extended EAD in Section 2 under List A. Employers must reverify these employees on Form I-9 before they start work on September 25, 2022.

Once a new employee has completed the I-9 verification, employers should create a case in E-Verify for the employee. The employer should enter the EAD document number in E-Verify that was entered on the I-9 form, as well as the automatically extended date of September 24, 2022. Employers must reverify these employees on the I-9 form before they start work on September 25, 2022.

Somalia

The notices further extend the validity of certain Somalian TPS beneficiaries' EADs through September 12, 2022. Their current EADs bear an A12 or C19 category and a September 17, 2021, expiration end date, which was previously automatically extended.

For affected Syrians and Somalians, USCIS noted that Systematic Alien Verification for Entitlements (SAVE) can verify the EAD extension provided by the individual notice. In some instances, SAVE user agencies may need to institute additional verification to do so, USCIS said.

Details:

- USCIS release (Syria), Apr. 5, 2022, <https://www.uscis.gov/save/whats-new/uscis-issues-notices-extending-certain-syria-tps-eads-through-sept-24-2022>

- USCIS release (Somalia), Mar. 18, 2022, <https://www.uscis.gov/save/whats-new/uscis-to-issue-individual-notices-extending-certain-somalia-tps-eads-through-sept-12-2022>
- TPS Syria webpage, USCIS, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-syria>
- TPS Somalia webpage, USCIS, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-somalia>

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South Sudan TPS Extended, Redesignated for 18 Months

U.S. Citizenship and Immigration Services (USCIS) announced the extension and redesignation of South Sudan for temporary protected status (TPS) for 18 months, from May 3, 2022, through November 3, 2023.

Those who currently have TPS under South Sudan's designation and would like to keep their TPS must re-register during the 60-day re-registration period ending May 3, 2022. Those who are filing an initial application for TPS under South Sudan's redesignation, effective May 3, 2022, must register during the 18-month registration period ending November 3, 2023.

USCIS encourages beneficiaries and applicants to register as soon as possible.

Details

- TPS South Sudan webpage, USCIS, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-south-sudan>

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District Court Vacates Final Rule on Non-Range H-2A Adverse Effect Wage Rate Methodology

In *United Farm Workers v. DOL*, on April 4, 2022, a federal district court vacated a 2020 final rule, "Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States," remanding it to the Department of Labor for further rulemaking

consistent with the court's order.

The court noted that DOL said it considers actual, current wage data to be the best source of information for determining prevailing wages, when an appropriate source is available, and that using another methodology "increases the likelihood of permitting employers to pay wages that are not reflective of market wages, which undermines the Department's mandate to prevent an adverse effect on the wages of workers in the United States similarly employed." Consistent with those statements, a 2021 proposed rule would use the FLS to establish AEWRs for most H-2A jobs, while using Occupational Employment and Wage Statistics data for occupations where FLS data is unavailable. The 2021 proposed rule also recognizes that employers must pay the wage for the highest-paid occupation performed by an H-2A worker when their role covers multiple occupation classifications, the court noted.

Among other things, the court concluded that the final rule was arbitrary and capricious because it failed to protect U.S. workers against adverse effects to their wages and working conditions.

Details

- *United Farm Workers v. DOL*,
<https://www.courthousenews.com/wp-content/uploads/2022/04/United-Farm-v-DOL-Final-Ruling.pdf>

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USCIS Implements 'Risk-Based' Approach for Conditional Permanent Resident Interviews

U.S. Citizenship and Immigration Services (USCIS) announced on April 7, 2022, that it is adopting a "risk-based" approach when waiving interviews for certain conditional permanent residents (CPR) who have filed a petition to remove the conditions on their permanent resident status.

Effective immediately, new criteria will guide USCIS officers on when to waive interviews for CPRs who filed a Form I-751, Petition to Remove Conditions on Residence. This update replaces previous agency guidance that required all CPRs to undergo an interview if they obtained CPR status via consular processing, the agency said.

Details

- USCIS release, Apr. 7, 2022,
<https://www.uscis.gov/newsroom/news-releases/uscis-implements-risk-based-approach-for-conditional-permanent-resident-interviews>

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