



IMMIGRATION UPDATE - MAY 02, 2022

Posted on May 2, 2022 by Cyrus Mehta

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[ICE Announces Extension of I-9 Flexibilities to October 31, 2022](#) – The extension relates to deferral of the physical presence requirements of the employment eligibility verification process for certain employees.

[USCIS Stops Applying Certain EAD Provisions for Asylum Applicants](#) – In response to a decision in *Asylumworks v. Mayorkas*, U.S. Citizenship and Immigration Services has stopped applying two rules.

[OFLC Announces New Submission Process for H-2B Applications for Temporary Employment Certification](#) – H-2B submissions must be initiated and submitted in a new form module.

[DHS Reminds Public That Emergency Response Areas Are 'Protected' for Immigration Enforcement Purposes](#) – "Protected areas" include "evacuation routes, sites used for sheltering or the distribution of emergency supplies, food or water, or registration sites for disaster-related assistance or the reunification of families and loved ones."

[DHS Provides Details on 'Uniting for Ukraine' Process](#) – Under the new process, available immediately, the Department of Homeland Security will offer certain Ukrainian citizens and their immediate family members recently displaced by Russia's invasion of Ukraine an opportunity to travel to the United States to seek humanitarian parole for up to two years. Qualifications include passing biometric and biographic vetting, having sufficient financial support in the United States, and meeting other eligibility requirements listed in the notice.

[Federal Court Temporarily Blocks Early Title 42 Termination Actions, Schedules Hearing; Mayorkas Issues Memo on Security and Preparedness](#) – A federal court in Louisiana issued a temporary restraining order to block early

implementation of termination of Title 42. A 20-page memo from DHS Secretary Mayorkas includes details on the "whole-of-government plan" to prepare for and manage an anticipated increase in noncitizens at the southwest border when Title 42 is terminated, as well as background on the current situation.

[ABIL Global: Canada](#) – Canada has launched a new stream of immigration for Ukrainians.

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ICE Announces Extension of I-9 Flexibilities to October 31, 2022

On April 25, 2022, U.S. Immigration and Customs Enforcement (ICE) announced an extension of Form I-9 flexibilities until October 31, 2022. The extension relates to deferral of the physical presence requirements of the employment eligibility verification process for certain employees, first announced on March 20, 2020, and updated periodically.

The requirement that employers inspect employees' Form I-9 identity and employment eligibility documentation in person applies only to those employees "who physically report to work at a company location on any regular, consistent, or predictable basis," ICE said. Employees working exclusively remotely who were hired on or after April 1, 2021, are temporarily exempt from the physical inspection requirements.

Details:

- ICE announcement, <https://www.ice.gov/news/releases/ice-announces-extension-i-9-compliance-flexibility-3>

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USCIS Stops Applying Certain EAD Provisions for Asylum Applicants

In response to a decision in *Asylumworks v. Mayorkas*, U.S. Citizenship and Immigration Services (USCIS) announced that effective February 8, 2022, the agency has stopped applying two rules:

- The "Removal of 30-Day Processing Provision for Asylum Applicant-

Related Form I-765 Employment Authorization Applications" rule (also known as the "Timeline Repeal Rule"); and

- The "Asylum Application, Interview, and Employment Authorization for Applicants" rule (also known as the "Asylum EAD rule").

USCIS is applying the provisions governing asylum applications, interviews, and employment authorization eligibility in the (c)(8) category (based on pending asylum applications) that were in place before the above final rules took effect in August 2020. USCIS said that these changes apply to adjudications of Form I-765, Application for Employment Authorization, and Form I-589, Application for Asylum and for Withholding of Removal, that were pending with USCIS as of February 8, 2022, and to these forms that were received on or after that date.

Among other things, now that the Timeline Repeal Rule, which removed the 30-day timeline for deciding initial (c)(8) category employment authorization applications, has been vacated, generally USCIS must adjudicate initial Form I-765s based on pending asylum applications within 30 days, the agency acknowledged.

Selected highlights of the USCIS announcement include:

- Until USCIS publishes revised forms, applicants should continue to use the current Forms I-765 and I-589 (dated 08/25/20). USCIS said that if an applicant submits responses to questions on these forms based on the vacated rules, it will not consider them when it decides the application.
- Instead of having to wait 365 days to file a Form I-765 based on a pending asylum application, applicants may file 150 days after filing an asylum application. "You are not eligible to receive an Employment Authorization Document (EAD) until your asylum application has been pending for a total of 180 days," USCIS said.
- USCIS instructed those who are requesting either initial or renewal employment authorization based on a pending asylum application not to submit the \$85 biometric services fee with the Form I-765, because it is no longer required. "If you submit the \$85 biometric services fee, we may reject your application for overpayment," USCIS said. Also, applicants no longer need to appear for a biometric services appointment (Application Support Center (ASC) appointment) specifically related to the Form I-765. However, applicants must appear for biometric services appointments related to an asylum application (Form I-589) or any other applications

filed.

- Applicants are no longer barred from receiving work authorization based on an asylum application if they entered or attempted to enter the United States between ports of entry. Therefore, applicants do not need to answer Questions 30b.–g. on Form I-765. "We no longer consider responses to these questions—which ask about the way you entered the United States and whether you were inspected, admitted, or paroled—when we adjudicate your Form I-765 based on the (c)(8) category," USCIS said.
- Asylum seekers who file asylum applications after the 1-year filing deadline are no longer barred from receiving an EAD based on a pending asylum application.

Details:

- USCIS announcement, Apr. 28, 2022, <https://bit.ly/3Fhv5IZ>

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OFLC Announces New Submission Process for H-2B Applications for Temporary Employment Certification

The Department of Labor's Office of Foreign Labor Certification (OFLC) announced on April 28, 2022, that the Foreign Labor Application Gateway (FLAG) is implementing technical changes to H-2B filing for the Form ETA-9142B (H-2B Application for Temporary Employment Certification) submission process. OFLC said that FLAG has upgraded the H-2B form fill and submit module, "which 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 must be initiated and submitted in the new form module. Any initiated H-2B cases submitted before 6 p.m. ET on April 28, 2022, will be deleted and a new application using the upgraded module will need to be created, OFLC said.

Details:

- OFLC announcement, Apr. 28, 2022, <https://www.dol.gov/agencies/eta/foreign-labor>

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DHS Reminds Public That Emergency Response Areas Are 'Protected' for Immigration Enforcement Purposes

Following recent wildfires in the Southwest and Midwest of the United States, the Department of Homeland Security (DHS) issued a press release on April 28, 2022, to remind the public that sites that provide emergency response and relief are considered "protected areas." DHS said this means that "to the fullest extent possible," U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) "do not conduct immigration enforcement activities at protected areas such as along evacuation routes, sites used for sheltering or the distribution of emergency supplies, food or water, or registration sites for disaster-related assistance or the reunification of families and loved ones."

DHS noted that at the request of the Federal Emergency Management Agency (FEMA) or local and state authorities, ICE and CBP may help conduct search and rescue, air traffic de-confliction, and public safety missions. ICE and CBP provide emergency assistance to individuals regardless of their immigration status, DHS said. "DHS officials do not and will not pose as individuals providing emergency-related information as part of any enforcement activities."

DHS said it is aware that some survivors may fear applying for FEMA assistance due to their immigration status. "If you or a member of your household applies for FEMA assistance, FEMA does not collect information regarding your immigration status and does not proactively provide your personal information to ICE or CBP for immigration enforcement. However, in rare circumstances, based on a specific request, ICE or CBP could request this information if you are a current threat to national security or public safety because you pose an articulable risk of death, violence, or physical harm to any person," DHS said.

DHS said it "is committed to ensuring that every individual who seeks shelter, aid, or other assistance as a result of the wildfires is able to do so regardless of their immigration status."

Details:

- DHS news release, Apr. 28, 2022, <https://www.dhs.gov/news/2022/04/28/dhs-statement-safety-and-enforce>

[ment-following-recent-wildfires-southwest-and](#)

- DHS Fact Sheet: Citizenship Status and Eligibility for Disaster Assistance FAQ, <https://bit.ly/3vUNSFx>
- DHS forms for disaster assistance, <https://www.disasterassistance.gov/get-assistance/forms>
- USCIS information on special humanitarian situations, <https://www.uscis.gov/humanitarian/special-situations>

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DHS Provides Details on 'Uniting for Ukraine' Process

On April 27, 2022, the Department of Homeland Security (DHS) issued a notice providing details on the new "Uniting for Ukraine" process. Under the new process, available since April 25, 2022, DHS will offer certain Ukrainian citizens and their immediate family members recently displaced by Russia's invasion of Ukraine an opportunity to travel to the United States to seek humanitarian parole for up to two years. Qualifications include passing biometric and biographic vetting, having sufficient financial support in the United States, and meeting other eligibility requirements listed in the DHS notice.

DHS noted that as of April 10, 2022, nearly 12 million people had fled their homes as a result of the war in Ukraine, including seven million displaced inside Ukraine. DHS noted that this was due to ongoing violence and resulting widespread electricity outages, a lack of water and food, infrastructure and residential building damage, medical supply issues, hospital shortages, and ongoing displacement and fatalities of civilians.

Details:

- DHS notice, 87 Fed. Reg. 25040 (Apr. 27, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-04-27/pdf/2022-09087.pdf>

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Federal Court Temporarily Blocks Early Title 42 Termination Actions, Schedules Hearing; Mayorkas Issues Memo on Security and Preparedness

On April 26, 2022, Alejandro Mayorkas, Secretary of the Department of Homeland Security (DHS), issued a memorandum on the Biden administration's plan to manage increased encounters of noncitizens at the U.S. border with

Mexico. The increase is expected once Title 42 of the U.S. Code is lifted, effective May 23, 2022. However, a federal court in Louisiana issued a temporary restraining order on April 27, 2022, to block early implementation of termination of Title 42. The Biden administration, which the court noted had acknowledged some changes in policy in preparation for Title 42 termination, said it would comply with the order. A court hearing is scheduled for May 13, 2022, to consider plaintiff states' request for a preliminary injunction against terminating Title 42. Plaintiff states argue that the Title 42 termination order was not issued in compliance with the Administrative Procedure Act.

Title 42 of the U.S. Code is a public health law that relates to the expulsion of noncitizens due to public health concerns, in this case the prevention of the spread of COVID-19. Under a Centers for Disease Control and Prevention order, the Mayorkas memo notes, a "significant percentage of all noncitizens encountered" at the southwest border are currently expelled. The Mayorkas memo says that once the order is lifted, all noncitizens will be processed under Title 8. Under Title 8, noncitizens without a viable asylum claim or unable to establish a legal basis to remain in the United States are removed to their home countries.

The 20-page Mayorkas memo includes details on the "whole-of-government plan" to prepare for and manage the anticipated increase in noncitizens at the southwest border, as well as background on the current situation.

Details:

- Mayorkas memorandum, Apr. 26, 2022, https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-south-west-border-security-preparedness.pdf
- "Biden to Comply With Forthcoming Order to Keep Covid Border Restrictions in Place," Politico, Apr. 26, 2022, <https://www.politico.com/news/2022/04/26/biden-to-comply-with-forthcoming-order-to-keep-title-42-in-place-00027904>
- Temporary Restraining Order, *State of Arizona v. CDC*, Apr. 27, 2022, https://storage.courtlistener.com/recap/gov.uscourts.lawd.188754/gov.uscourts.lawd.188754.37.0_3.pdf

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ABIL Global: Canada

Canada has launched a new stream of immigration for Ukrainians.

The Canada-Ukraine Authorization for Emergency Travel (CUAET) allows Ukrainian nationals to apply for a Canadian visa without most of the usual requirements (free of charge, exempt from completing an immigration medical exam overseas, the option to apply for an open work permit, exempt from Canada's COVID-19 vaccination requirements) excepting biometrics in certain cases and ArriveCAN. Announced on March 17, 2022, the CUAET is particularly interesting for Ukrainians as compared to other visas available because it allows them to obtain an open work permit and/or study permit free of charge, and they can be authorized to stay in Canada up to three years instead of the standard six months. For non-complex cases, the aim is to approve such visa applications within 14 days of receipt. No sponsor in Canada is required, no ties to home country are to be considered, and there are no financial requirements.

To apply for CUAET, Ukrainians need to apply for a Temporary Resident Visa and an Open Work Permit by mentioning in their application that it is made through CUAET to highlight the urgency of the demand to the visa officers. Once the application is submitted, Ukrainians need to take biometrics only if they are aged 18 to 60. Then they normally would need to submit their passport for placement of Canadian Visa (although Canadian authorities now emit counterfoil-less visas if the applicant is in one of six departure countries: Poland, Germany, Slovakia, Hungary, Austria, or Romania).

On April 28, 2022, Canada received 163,747 applications and approved 56,633, and 19,628 Ukrainians arrived in Canada. As there is no limit on the number of CUAET applications of CUAET, it is a popular and successful program, according to reports.

Details:

- Canada-Ukraine Authorization for Emergency Travel (updated Apr. 22, 2022), Government of Canada, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures/cuaet.html>
- Ukraine Immigration Measures: Key Figures (updated Apr. 29, 2022), Government of Canada, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures/cuaet.html>

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