



## IMMIGRATION UPDATE - MAY 26, 2022

*Posted on May 26, 2022 by Cyrus Mehta*

### Headlines:

[Additional 35,000 H-2B Visas Available for Second Half of Fiscal Year](#) – The visas are for U.S. employers seeking to employ additional temporary nonagricultural workers on or after April 1, 2022, through September 30, 2022.

[DHS Announces TPS Designation, Registration Process for Afghans](#) – The registration period began on May 20, 2022, and runs through November 20, 2023. USCIS estimates 72,500 individuals currently in the United States may be eligible.

[June Visa Bulletin Includes Updates on 'Other Workers,' China, Diversity Visa Availability](#) – Among other things, the bulletin notes that high number use in the Employment Third Preference "Other Workers" category has necessitated the establishment of a worldwide final action date in June.

[Federal Judge Blocks Effort to End Title 42 Policy at U.S.-Mexico Border](#) – The Department of Justice plans to appeal the decision while enforcing the Title 42 policy pending appeal.

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### **Additional 35,000 H-2B Visas Available for Second Half of Fiscal Year**

The Departments of Homeland Security (DHS) and Labor (DOL) announced a temporary final rule making available an additional 35,000 H-2B temporary nonagricultural worker visas during the second half of fiscal year (FY) 2022. The visas are for U.S. employers seeking to employ additional workers on or after

April 1, 2022, through September 30, 2022.

The supplemental H-2B visa allocation consists of 23,500 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 11,500 visas are reserved for nationals of El Salvador, Guatemala, Honduras, and Haiti, regardless of whether they are returning workers. The semiannual cap of 33,000 visas for the second half of FY 2022 was reached on February 25, 2022.

In support of the temporary final rule, the Office of Foreign Labor Certification (OFLC) posted a new Form ETA-9142-B-CAA-6 and accompanying instructions. The TFR 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. This attestation must be submitted to U.S. Citizenship and Immigration Services along with Form I-129 in support of an H-2B application subject to the H-2B cap by September 30, 2022.

#### Details:

- USCIS news release, May 16, 2022, <https://www.uscis.gov/newsroom/news-releases/dhs-and-dol-announce-a-availability-of-additional-h-2b-visas-for-second-half-of-fiscal-year>
- DHS/DOL temporary final rule, 87 Fed. Reg. 30334 (May 18, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-18/pdf/2022-10631.pdf>
- DOL forms, including Attestation for Employers, <https://www.dol.gov/agencies/eta/foreign-labor/forms>

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### **DHS Announces TPS Designation, Registration Process for Afghans**

The Department of Homeland Security has provided information on how to register for temporary protected status (TPS) under Afghanistan's 18-month designation. The registration period began on May 20, 2022, and runs through November 20, 2023. USCIS estimates 72,500 individuals currently in the United States may be eligible for TPS under the designation of Afghanistan.

To be eligible for TPS under this designation, individuals must demonstrate their continuous residence in the United States since March 15, 2022, and continuous physical presence in the United States since May 20, 2022. Afghan

nationals currently not residing in the United States or who arrived in the United States after March 15, 2022, are not eligible for TPS under this designation.

DHS said that through Operation Allies Welcome, 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.

#### Details:

- Designation of Afghanistan for Temporary Protected Status, DHS (USCIS), 87 Fed. Reg. 30976 (May 20, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10923.pdf>
- USCIS news release, May 19, 2022, <https://www.uscis.gov/newsroom/news-releases/dhs-announces-registrati-on-process-for-temporary-protected-status-for-afghanistan>
- "Secretary Mayorkas Designates Afghanistan for Temporary Protected Status," DHS, Mar. 16, 2022, <https://www.dhs.gov/news/2022/03/16/secretary-mayorkas-designates-af-ghanistan-temporary-protected-status>

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## **June Visa Bulletin Includes Updates on 'Other Workers,' China, Diversity Visa Availability**

The Department of State's Visa Bulletin for June 2022 includes the following information:

1. Establishment of Employment Third Preference "Other Workers" (EW) Final Action Date

High number use in the Employment Third Preference "Other Workers" (EW) category has necessitated the establishment of a worldwide final action date in June to hold number use within the maximum allowed under the FY-2022 annual limit. All countries are subject to a final action date of 08MAY19 except for China-mainland born, which is subject to a 01JUN12 final action date and India, which is subject to a 15JAN12 final action date.

1. Establishment of C5 and T5 Final Action Date and Application Filing Date

## for China-Mainland Born

It has become necessary to establish a final action date and application filing date for C5 and T5 China-mainland born because sufficient demand has materialized as readers were cautioned was a possibility in Item D of the May 2022 Visa Bulletin. China-mainland born C5 and T5 applicants are subject to a 22NOV15 final action date and an application filing date of 15DEC15.

### 1. Availability of Diversity Visas (DV)

Most regions have been set to "Current" for June 2022 in an effort to maximize number use during the DV-2022 program year. However, rank cut-offs could be re-established for any region or country in future months to keep number use within the applicable annual limits.

#### Details:

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

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## **Federal Judge Blocks Effort to End Title 42 Policy at U.S.-Mexico Border**

Shortly before the Centers for Disease Control (CDC) was set to terminate its Trump-era COVID-19 pandemic restriction at the U.S.-Mexico border, known as "Title 42," a federal judge in Louisiana blocked its termination temporarily with a nationwide preliminary injunction. The judge found that several dozen Republican-led states were likely to prevail on their claims against terminating the policy based on the Administrative Procedure Act, and noted that termination would negatively affect plaintiff states and the Department of Homeland Security. He concluded that the policy should continue while the states' lawsuit proceeds.

The Department of Justice plans to appeal the decision while enforcing the Title 42 policy pending appeal.

#### Details:

- State of Louisiana v. CDC, <https://s3.documentcloud.org/documents/22026721/title-42-preliminary-i>

[njunction.pdf](#)

- "Federal Judge Blocks Biden Administration From Lifting Title 42 for Now," CNN, May 20, 2022, <https://www.cnn.com/2022/05/20/politics/title-42-biden-us-mexico-border/index.html>

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### Firm in the News

**Cyrus Mehta** was an invited speaker at the 2022 Upper Midwest Immigration Law Conference on May 20, 2022, where he spoke on common ethics complaints against immigration attorneys and how to avoid them. The conference was sponsored by the AILA Minnesota/Dakotas Chapter and The Advocates for Human Rights.

**David Isaacson** was an invited speaker at an AILA Webinar on May 19, 2022, *Waivers in Removal Proceedings: Beyond the Basics*, where he spoke on the implications of the Supreme Court's decision in *Pereida v. Wilkinson*.

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