



IMMIGRATION UPDATE - JUNE 27, 2022

Posted on June 27, 2022 by Cyrus Mehta

Headlines:

[District Court Orders USCIS to Process New Investor Petitions in Previously Authorized EB-5 Regional Centers](#) – The court ruled that the agency "is enjoined from treating the existing regional centers as deauthorized while this litigation is pending (or until the agency engages in a reasoned decision-making process regarding how to treat these centers under the Integrity Act)."

[Three-Day H-2B Application Filing Window Opens July 3](#) – The filing window to submit an H-2B Application for Temporary Employment Certification requesting a work start date of October 1, 2022, will open on July 3, 2022, at 12 a.m. (midnight) ET and close on July 5, 2022, at 11:59 p.m. ET.

[USCIS Issues Policy Alert on Effect of Returning to United States During 3- or 10-Year Period After Departure or Removal](#) – A noncitizen who again seeks admission more than 3 or 10 years after the relevant departure or removal is not inadmissible under INA § 212(a)(9)(B) even if the noncitizen returned to the United States, with or without authorization, during the statutory 3- or 10-year period, USCIS said.

[Amendment to Salvage Unused Immigrant Visa Numbers Advances in House](#) – The amendment, whose chances are uncertain, would recapture unused, expired family- and employment-based immigrant visa numbers lost for various reasons since 1992. The amendment would also provide visa relief for immigrants banned from traveling to the United States during the Trump administration.

[E-Verify Releases New Case Processing Features](#) – E-Verify released several new features "to increase awareness of existing duplicate cases and reduce overall case processing time," and to provide "a more robust case query function."

[Tribal Card Acceptable for Entry Into United States](#) – U.S. Citizenship and Immigration Services announced a 30-day public comment period relating to proposed revisions to Form I-907, Request for Premium Processing Service.

Details:

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District Court Orders USCIS to Process New Investor Petitions in Previously Authorized EB-5 Regional Centers

On June 24, 2022, a U.S. district court in California ordered U.S. Citizenship and Immigration Services (USCIS) to process new I-526 (Immigrant Petition by Alien Entrepreneur) petitions from immigrants investing through previously authorized EB-5 regional centers. The EB-5 Reform and Integrity Act, part of omnibus spending legislation, took effect on March 15, 2022. It reauthorized and made changes to the regional center program following its expiration. The court's decision in *Behring Regional Center LLC v. Mayorkas* followed USCIS's determination that all prior regional centers needed to seek reauthorization after the program was reinstated.

Concluding that USCIS "acted based on an erroneous conclusion about what the Integrity Act requires," the court ruled that the agency "is enjoined from treating the existing regional centers as deauthorized while this litigation is pending (or until the agency engages in a reasoned decision-making process regarding how to treat these centers under the Integrity Act)."

Details:

- EB-5 Immigrant Investor Program, USCIS, <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>

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Three-Day H-2B Application Filing Window Opens July 3

The Department of Labor's Office of Foreign Labor Certification (OFLC) reminded employers and other interested stakeholders that the three-day filing window to submit an H-2B Application for Temporary Employment Certification (Form ETA-9142B and appendices) requesting a work start date of October 1, 2022, will open on July 3, 2022, at 12 a.m. (midnight) ET and close on July 5,

2022, at 11:59 p.m. ET.

OFLC noted that the three-day period is the earliest an employer may file an application for October 1, 2022, work start date, which is the first day of the semi-annual visa allotment for the first half of fiscal year 2022. H-2B applications requesting an October 1, 2022, work start date will be denied if they are filed before July 3, 2022, at 12 a.m. ET, OFLC said.

OFLC said it "will randomly order for assignment to analysts for review and processing all H-2B applications requesting a work start date of October 1, 2022, that are filed during the three-day filing window."

Details:

- "H-2B Application Filing Timelines for 2022 Peak Filing Season," OFLC announcement (includes filing tips), June 24, 2022, <https://www.dol.gov/agencies/eta/foreign-labor>

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USCIS Issues Policy Alert on Effect of Returning to United States During 3- or 10-Year Period After Departure or Removal

U.S. Citizenship and Immigration Services (USCIS) issued a policy alert on June 24, 2022, on inadmissibility under § 212(a)(9)(B) of the Immigration and Nationality Act (INA), specifically, the effect of returning to the United States during the statutory 3- or 10-year period after departure or removal (if applicable). Under the policy guidance, a noncitizen who again seeks admission more than 3 or 10 years after the relevant departure or removal "is not inadmissible under INA § 212(a)(9)(B) even if the noncitizen returned to the United States, with or without authorization, during the statutory 3-year or 10-year period." A noncitizen's location during the statutory 3- or 10-year period and the noncitizen's manner of return to the United States during the statutory period are "irrelevant" for purposes of determining inadmissibility under INA § 212(a)(9)(B), USCIS said.

The alert also notes that some noncitizens may be able to file a motion to reopen their previously denied applications with USCIS using Form I-290B, Notice of Appeal or Motion.

Details:

- USCIS Policy Alert (PA-2022-15), June 24, 2022, <https://bit.ly/3OoB1TV>

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Amendment to Salvage Unused Immigrant Visa Numbers Advances in House

The House of Representatives' Appropriations Committee passed an amendment, introduced by Rep. Grace Meng (D-NY), to Department of Homeland Security (DHS) appropriations for fiscal year 2023 that would recapture unused, expired family- and employment-based immigrant visa numbers lost for various reasons since 1992. The amendment would also provide visa relief for immigrants banned from traveling to the United States during the Trump administration.

Several previous attempts in Congress to restore unused visa numbers have been unsuccessful. It is unclear whether this amendment will ultimately succeed.

Details:

- "Amendment to the Homeland Security Appropriations Bill Offered by Ms. Meng of New York," <https://aboutbgov.com/3EM>
- "Decades' Worth of Unused Immigrant Visas Salvaged in House Bill," Bloomberg Government, June 24, 2022, <https://bit.ly/3xOTCBE>

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E-Verify Releases New Case Processing Features

On June 21, 2022, E-Verify released several new features "to increase awareness of existing duplicate cases and reduce overall case processing time." E-Verify also redesigned the "Search Cases" page to provide "a more robust case query function."

Among other things, the duplicate case lookback period was expanded from 30 days to 365 days.

Details:

- E-Verify New Features and Updates, June 2022, <https://www.e-verify.gov/june-2022>

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Tribal Card Acceptable for Entry Into United States

Effective June 24, 2022, U.S. Customs and Border Protection (CBP) has designated an approved Native American tribal card issued by the Kickapoo Traditional Tribe of Texas to U.S. citizen tribal members as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Kickapoo Traditional Tribe of Texas members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Details:

- CBP notice, 87 Fed. Reg. 37879 (June 24, 2022),
<https://www.govinfo.gov/content/pkg/FR-2022-06-24/pdf/2022-13537.pdf>

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