



IMMIGRATION UPDATE - AUGUST 22, 2022

Posted on August 22, 2022 by Cyrus Mehta

Headlines:

[DHS Proposes to Allow for Alternatives to Physical Document Examination for I-9 Verification](#) – The proposed rule would create a framework under which the Secretary of Homeland Security could authorize alternative options for document examination procedures for some or all employers.

[Reports: Visa Delays and Unprecedented Wait Times Cause Problems for Workers, Employers](#) – Visa delays, backlogs, and unprecedented wait times at U.S. embassies and consulates are causing disruptions for workers and companies, particularly those employing workers in temporary statuses who need to renew their visas outside the United States.

[USCIS Clarifies Eligibility Determinations for L-1 Nonimmigrant Managers, Executives, and Specialized Knowledge Workers](#) – U.S. Citizenship and Immigration Services issued a policy alert to clarify how the agency determines eligibility for L-1 nonimmigrants seeking classification as managers or executives (L-1A) and specialized knowledge workers (L-1B).

[OFLC Releases Public Disclosure Data, Statistics, Foreign Labor Recruiter List and FAQ](#) – The Department of Labor's Office of Foreign Labor Certification has released new information.

Details:

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DHS Proposes to Allow for Alternatives to Physical Document Examination for I-9 Verification

On August 18, 2022, the Department of Homeland Security (DHS) proposed a rule to allow for alternative document verification procedures for Form I-9,

Employment Eligibility Verification. The proposed rule would create a framework under which the Secretary of Homeland Security could authorize alternative options for document examination procedures for some or all employers.

According to the notice of proposed rulemaking (NPRM), such procedures could be implemented as part of a pilot program; upon the Secretary's determination that such procedures offer an equivalent level of security; or as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services under the Public Health Service Act, or a national emergency declared by the President under the National Emergencies Act.

The NPRM notes that in light of advances in technology and remote work arrangements, the Department of Homeland Security (DHS) is exploring alternative options, including making permanent some of the COVID-19 pandemic-related flexibilities to examine employees' identity and employment authorization documents for the Form I-9. The rule would not create such alternatives but would instead formalize the authority for the DHS Secretary "to extend flexibilities, provide alternative options, or conduct a pilot program to further evaluate an alternative procedure option (in addition to the procedures set forth in regulations) for some or all employers, regardless of whether their employees physically report to work at a company location." DHS said it would introduce any such alternative procedure in a future Federal Register notice.

Details:

- 87 Fed. Reg. 50786 (Aug. 18, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-08-18/pdf/2022-17737.pdf>

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Reports: Visa Delays and Unprecedented Wait Times Cause Problems for Workers, Employers

According to reports, visa delays, backlogs, and unprecedented wait times at U.S. embassies and consulates are causing disruptions for workers and companies, particularly those employing workers in temporary statuses who need to renew their visas outside the United States.

For example, excluding student and visitor visas, wait times for visas in Istanbul, Turkey, exceed 16 months; in New Delhi, India, wait times hover at nine months

for the thousands of highly skilled temporary workers coming to the United States on H-1B and L-1 visas. Business visa processing in Chile can take up to three years.

The delays are thought to be at least partly the result of increased travel demand related to the COVID-19 pandemic, staffing issues at embassies and consulates, and a two-year shutdown of processing guestworker visas by the Trump administration. Some business groups and immigration attorneys advocate measures such as allowing remote interviews or permitting those with expiring visas to renew in the United States rather than requiring them to leave the country as a way of relieving backlogs. Reportedly, the Department of State (DOS) is considering such options. Meanwhile, DOS said it has doubled hiring of consular staff in fiscal year (FY) 2022 over FY 2021, and noted that "early all U.S. embassies and consulates have resumed full visa services."

Details:

- "Visa Bottlenecks Are Creating Headaches for Employers, Workers," Aug. 16, 2022, <https://news.bloomberglaw.com/daily-labor-report/visa-bottlenecks-are-creating-headaches-for-employers-workers>
- "U.S. Visa Processing Delays Called Worst Since 9/11," Voice of America, Aug. 3, 2022, <https://www.voanews.com/a/us-visa-processing-delays-called-worst-since-9-11-/6685941.html>

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USCIS Clarifies Eligibility Determinations for L-1 Nonimmigrant Managers, Executives, and Specialized Knowledge Workers

On August 16, 2022, U.S. Citizenship and Immigration Services (USCIS) issued a policy alert to clarify how the agency determines eligibility for L-1 nonimmigrants seeking classification as managers or executives (L-1A) and specialized knowledge workers (L-1B).

The update does not make changes to existing policy or create new policy. The update consolidates and updates guidance previously included in the Adjudicator's Field Manual, Chapter 32, as well as related appendices and policy memoranda.

Details:

- USCIS Policy Alert (Aug. 16, 2022), <https://bit.ly/3pB8Wy9>
- Part L—Intracompany Transferees, USCIS Policy Manual, <https://www.uscis.gov/policy-manual/volume-2-part-l>

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OFLC Releases Public Disclosure Data, Statistics, Foreign Labor Recruiter List and FAQ

The Department of Labor's Office of Foreign Labor Certification has released:

- Public disclosure data and selected program statistics for Q3 of fiscal year (FY) 2022. <https://www.dol.gov/agencies/eta/foreign-labor/performance>
- H-2B Foreign Labor Recruiter List for Q3 of FY 2022. <https://www.dol.gov/agencies/eta/foreign-labor/recruiter-list>
- FAQ on the Foreign Labor Recruiter List. https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Round-16_Foreign_Labor_Recruiter.pdf

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