



IMMIGRATION UPDATE - OCTOBER 17, 2022

Posted on October 17, 2022 by Cyrus Mehta

Headlines:

[Employers Should Continue to Use Current I-9 Form Even After Oct. 31 Expiration, DHS Says; ICE Announces I-9 Flexibility Extension](#) – The Department of Homeland Security will publish a Federal Register notice to announce the new I-9 form when it becomes available. U.S. Immigration and Customs Enforcement announced an extension until July 31, 2023, of the Form I-9 flexibilities first announced in March 2020.

[DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for FY 2023; Worker Protection Taskforce Announced](#) – The H-2B supplemental includes an allocation of 20,000 visas for workers from Haiti, Honduras, Guatemala, and El Salvador. The remaining 44,716 supplemental visas will be available for returning workers who received an H-2B visa, or were otherwise granted H-2B status, during one of the last three fiscal years.

[DHS Announces New 'Migration Enforcement Process' for Venezuelans](#) – Among other things, the new process will bring up to 24,000 qualifying Venezuelans into the United States and provide them with work authorization. Those who cross the border between ports of entry without authorization will be ineligible.

[DOL Publishes Final Rule Revising Temporary Labor Certification Regulations](#) – After consideration of comments received in response to the proposed rule, the Department separated the proposals into two rulemaking activities. This first rule encompasses all of the proposed rule except the adverse effect wage rate (AEWR) methodology. The second will address changes to the AEWR methodology.

[USCIS Issues Policy Guidance on EB-5 Reform and Integrity Act of 2022](#) – U.S.

Citizenship and Immigration Services issued policy guidance related to an EB-5 rule that a federal court vacated on June 22, 2021.

[CBP Publishes Final Rule on Media Representatives From China Seeking to Enter the United States](#) – The rule removes a maximum 90-day period of stay for certain representatives of foreign information media from China and allows the Secretary of Homeland Security to determine the maximum period of stay, up to one year.

[CBP Imposes Arrival Restrictions on Flights Carrying Uganda Travelers](#) – Until further notice, U.S. Customs and Border Protection has directed all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Uganda to arrive at one of five U.S. airports implementing enhanced public health measures.

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Employers Should Continue to Use Current I-9 Form Even After Oct. 31 Expiration, DHS Says; ICE Announces I-9 Flexibility Extension

The Department of Homeland Security (DHS) alerted employers on October 11, 2022, that they should continue using the current Form I-9, Employment Eligibility Verification, even after its October 31, 2022, expiration and "until further notice." DHS said it will publish a Federal Register notice to announce the new I-9 form when it becomes available.

Also, U.S. Immigration and Customs Enforcement announced an extension until July 31, 2023, of the Form I-9 flexibilities first announced in March 2020. The flexibilities include DHS's deferral of physical presence requirements applicable to employers and workplaces operating remotely.

Details:

- E-Verify alert, Oct. 11, 2022, <https://bit.ly/3S3W4ML>
- "ICE Announces Extension to I-9 Compliance Flexibility," Oct. 11, 2022, <https://www.ice.gov/news/releases/ice-announces-extension-i-9-compliance-flexibility-3>

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DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for FY 2023; Worker Protection Taskforce Announced

The Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL), plans to issue a regulation to make available to employers an additional 64,716 H-2B temporary nonagricultural worker visas for fiscal year 2023, on top of the 66,000 H-2B visas that are normally available each fiscal year.

The H-2B supplemental includes an allocation of 20,000 visas for workers from Haiti, Honduras, Guatemala, and El Salvador. The remaining 44,716 supplemental visas will be available for returning workers who received an H-2B visa, or were otherwise granted H-2B status, during one of the last three fiscal years. DHS said the regulation will allocate these remaining supplemental visas for returning workers between the first half and second half of the fiscal year to account for the need for additional seasonal workers, with a portion of the second half allocation reserved to meet the demand for workers during the peak summer season.

DHS and DOL also announced the creation of a new White House-convened Worker Protection Taskforce. DHS explained that the Taskforce will focus on: (1) threats to H-2B program integrity; (2) H-2B workers' fundamental vulnerabilities, including their limited ability to leave abusive employment without jeopardizing their immigration status; and (3) the impermissible use of the program to avoid hiring U.S. workers. DHS and DOL will assess a variety of policy options and will provide an opportunity for relevant stakeholders to offer input. In the coming months, DHS also plans to issue a notice of proposed rulemaking relating to the H-2 programs. The proposed rule will incorporate policies that strengthen protections for H-2 workers, the agency said.

Details:

- DHS release, Oct. 12, 2022.
<https://www.dhs.gov/news/2022/10/12/dhs-supplement-h-2b-cap-nearly-65000-additional-visas-fiscal-year-2023>

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DHS Announces New 'Migration Enforcement Process' for Venezuelans

On October 12, 2022, the Department of Homeland Security (DHS) announced

joint actions with Mexico to reduce the number of people arriving at the Southwest border and "create a more orderly and safe process for people fleeing the humanitarian and economic crisis in Venezuela." The actions include a new process to bring up to 24,000 qualifying Venezuelans into the United States and provide them with work authorization. Those who cross the border between ports of entry without authorization will be ineligible. DHS also said it would not implement this process "without Mexico keeping in place its independent but parallel effort to accept the return of Venezuelan nationals who bypass this process and attempt to enter irregularly."

To be eligible, Venezuelans must:

- Have a supporter in the United States who will provide financial and other support;
- Pass biometric and biographic national security and public safety screening and vetting; and
- Complete vaccinations and other public health requirements.

Venezuelans are ineligible if they:

- Have been ordered removed from the United States in the previous five years;
- Have crossed without authorization between ports of entry after October 12, 2022;
- Have irregularly entered Mexico or Panama after the date of the announcement, or are a permanent resident or dual national of any country other than Venezuela, or currently hold refugee status in any country; or
- Have not completed vaccinations and other public health requirements.

DHS said additional information would be made available "in the coming days" on U.S. Citizenship and Immigration Services' "Process for Venezuelans" page. Some Venezuelans who were already en route to the United States reportedly said the new policy leaves them in limbo and favors those who are well-off or well-connected. Some are on foot and sold everything they had to make the trek. An estimated 180,000 Venezuelans have entered the United States via the border with Mexico so far this year.

[Details:](#)

- DHS release, Oct. 12, 2022.
<https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans>
- Process for Venezuelans, USCIS. <https://www.uscis.gov/venezuela>
- "Venezuelan Migrants in Shock and Limbo After New U.S. Immigration Plan," CNN, Oct. 15, 2022.
<https://www.cnn.com/2022/10/15/americas/venezuelan-migrants-title-42-expansion-intl/index.html>

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DOL Publishes Final Rule Revising Temporary Labor Certification Regulations

The Department of Labor (DOL) published a final rule on October 12, 2022, that revises its regulations governing the certification of employment of nonimmigrant workers in temporary agricultural employment and the enforcement of obligations applicable to employers of H-2A workers and similarly employed workers in the United States.

After consideration of comments received in response to the proposed rule, the Department separated the proposals into two rules. This first rule encompasses almost all of the proposed rule except the adverse effect wage rate (AEWR) methodology. The second will address changes to the AEWR methodology.

The final rule addresses minimum standards and conditions of employment that employers must offer to workers; expands DOL's authority to use enforcement tools, such as program debarment for substantial violations of program requirements; modernizes the process by which the Department receives and processes employers' job orders and applications for temporary agricultural labor certifications, including the recruitment of U.S. workers; and revises the standards and procedures for determining the prevailing wage rate.

Details:

- Final Rule, Dept. of Labor, 87 Fed. Reg. 61660 (Oct. 12, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-10-12/pdf/2022-20506.pdf>
- Office of Foreign Labor Certification (OFLC) notice, Oct. 12, 2022.
<https://www.dol.gov/agencies/eta/foreign-labor>
- OFLC Round 1 FAQs, Oct. 12, 2022,

https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2022%20H-2A%20FR_FAQs%20Round%201_Implementation.pdf

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USCIS Issues Policy Guidance on EB-5 Reform and Integrity Act of 2022

U.S. Citizenship and Immigration Services (USCIS) issued policy guidance related to an EB-5 immigrant investor rule that a federal court vacated on June 22, 2021. Highlights include:

- Removing the vacated provisions of the EB-5 rule;
- Adding that an applicant may file Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with or subsequent to a Form I-526, Immigrant Petition by Standalone Investor, if an immigrant visa is immediately available;
- Revising the investment amounts and targeted employment area designation process; and
- Updating the name of Form I-526 throughout volumes 7 and 8 of the USCIS Policy Manual from "Immigrant Petition by Alien Entrepreneur" to "Immigrant Petition by Standalone Investor" and adding references to Form I-526E, Immigrant Petition by a Regional Center Investor.

Details:

USCIS release, Oct. 11, 2022.

<https://www.uscis.gov/newsroom/alerts/uscis-issues-policy-guidance-on-the-eb-5-reform-and-integrity-act-of-2022-0>

EB-5 Q&A: EB-5 Reform and Integrity Act of 2022. <https://bit.ly/3yIGShf>

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CBP Publishes Final Rule on Media Representatives From China Seeking to Enter the United States

U.S. Customs and Border Protection (CBP) published a final rule on October 13, 2022, that removes a maximum 90-day period of stay for certain representatives of foreign information media from China and allows the Secretary of Homeland Security to determine the maximum period of stay, up to one year.

The final rule applies to foreign nationals who seek to enter the United States in "I" nonimmigrant status as representatives of foreign information media, and who present a passport issued by the People's Republic of China (PRC), with the exception of Hong Kong Special Administrative Region (SAR) or Macau SAR passport holders.

Details:

- CBP Final Rule, 87 Fed. Reg. 61959 (Oct. 13, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-10-13/pdf/2022-21898.pdf>

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CBP Imposes Arrival Restrictions on Flights Carrying Uganda Travelers

Until further notice, U.S. Customs and Border Protection (CBP) has directed all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Uganda to arrive at one of five U.S. airports implementing enhanced public health measures. The airports include JFK, Newark Liberty, Washington-Dulles, Hartsfield-Jackson Atlanta, and Chicago O'Hare.

CBP considers a person to have recently traveled from Uganda if that person departed from, or was otherwise present within, Uganda within 21 days of the date of the person's entry or attempted entry into the United States. The announcement excludes crews and flights carrying only cargo (no passengers or non-crew).

Details:

- CBP announcement, 87 Fed. Reg. 61488 (Oct. 12, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-10-12/pdf/2022-22264.pdf>

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