



IMMIGRATION UPDATE - OCTOBER 31, 2022

Posted on October 31, 2022 by Cyrus Mehta

Headlines:

[Worldwide Visa Operations Recovering Faster Than Expected, State Dept. Announces](#) – The agency expects to reach pre-pandemic processing levels this year.

[USCIS Extends Certain COVID-19-Related Flexibilities Through January 23, 2023](#) – Under the flexibilities, U.S. Citizenship and Immigration Services considers a response received within 60 calendar days after the due date set forth in certain requests or notices before taking any action, if the request or notice was issued between March 1, 2020, and January 24, 2023.

[OFLC Releases Round 2 FAQ on Job Order Filing and Processing Under H-2A Final Rule](#) – Among other things, the FAQ notes that unless a specific exemption applies, employers and their authorized attorneys or agents must submit H-2A job orders using the electronic method designated by the Office of Foreign Labor Certification Administrator.

[Duplicate Copies of Form I-129 No Longer Required](#) – U.S. Citizenship and Immigration Services no longer requires petitioners to submit duplicate copies of the Form I-129 Petition for a Nonimmigrant Worker, or of the supporting documentation, unless the agency specifically asks for it.

[USCIS Clarifies CW-1 Policy on Temporary Departure Requirement](#) – U.S. Citizenship and Immigration Services clarified its policy on implementing the requirement that Commonwealth of the Northern Mariana Islands (CNMI) workers leave the United States for at least 30 days after two renewals of their CNMI-Only Transitional Worker (CW-1) visa classification.

[EOIR Announces 32 New Immigration Judges](#) – The Executive Office for

Immigration Review announced the appointment of 32 immigration judges to courts in California, Florida, Georgia, Illinois, Maryland, New York, Tennessee, Texas, and Virginia.

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Worldwide Visa Operations Recovering Faster Than Expected, State Dept. Announces

On October 21, 2022, the Department of State (DOS) announced that worldwide visa operations are recovering faster than expected from COVID-19-pandemic-related effects. As a result, the agency has doubled hiring of U.S. Foreign Service personnel and said it expects to reach pre-pandemic processing levels this year.

The COVID-19 pandemic "forced profound reductions in DOS's visa processing capacity" in two main ways, the agency explained. First, restrictions on travel to the United States, and local restrictions on public places like overseas consular waiting rooms, curbed the ability to see visa applicants. Second, as revenue from the application fees that fund visa processing operations was cut nearly in half, more than 300 overseas consular officer positions went unfilled in 2020 and 2021, further reducing the number of visa applications that could be processed.

DOS said that 96 percent of U.S. embassies and consulates are again interviewing visa applicants. Nonimmigrant visa applications are being processed at 94 percent of pre-pandemic monthly averages, and immigrant visa application processing is at 130 percent. In the past 12 months (through September 30, 2022), DOS processed 8 million nonimmigrant visas, well above its best-case projections. DOS also noted that the agency set records for student and academic exchange visitor visas. Consular sections worldwide adjudicated more student visas in July 2022 than in any other month since 2016, with nearly 180,000 F, M, and academic J visas processed, DOS said. In addition, the agency issued 54,334 diversity visas (DVs) during the DV-2022 program year—the highest number of DVs issued in 25 years, and all available DV numbers were exhausted when that total was combined with the domestic adjustments of status approved by USCIS under the DV program.

Details:

- DOS update, Oct. 21, 2022, <https://bit.ly/3sJ1z9g>

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USCIS Extends Certain COVID-19-Related Flexibilities Through January 23, 2023

U.S. Citizenship and Immigration Services (USCIS) announced that it is extending certain COVID-19-related flexibilities through January 24, 2023, to assist applicants, petitioners, and requestors. Under these flexibilities, USCIS considers a response received within 60 calendar days after the due date set forth in the following requests or notices before taking any action, if the request or notice was issued between March 1, 2020, and January 24, 2023:

- Requests for Evidence
- Continuations to Request Evidence (N-14)
- Notices of Intent to Deny, Revoke, Rescind, Terminate (regional centers), or Withdraw Temporary Protected Status
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant

In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or a Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if:

- The form was filed up to 90 calendar days from the issuance of a decision USCIS made; and
- USCIS made that decision between November 1, 2021, and January 24, 2023.

Reproduced-signature flexibility announced in March 2020 became permanent policy on July 25, 2022.

Details:

- USCIS alert, Oct. 24, 2022.
<https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities-0>

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OFLC Releases Round 2 FAQ on Job Order Filing and Processing Under H-2A Final Rule

On October 25, 2022, the Department of Labor's Office of Foreign Labor Certification (OFLC) issued a set of frequently asked questions (FAQs), "Round 2: Job Order Filing and Processing," associated with the publication of the final rule, *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*.

The FAQ notes:

- Employers and their authorized attorneys or agents must submit H-2A job orders (H-2A Agricultural Clearance Order, Form ETA-790/790A) using the electronic method designated by the OFLC Administrator, unless a specific exemption applies. Currently, the [Foreign Labor Application Gateway \(FLAG\) System](#) is the OFLC Administrator's designated electronic filing method, the FAQ states. Only employers that the OFLC Administrator authorizes to file by mail due to lack of internet access, or authorizes to file using a reasonable accommodation due to a disability, would be permitted to file using those other means.
- How-to content, including videos posted on YouTube, is available in the "Support" area of the FLAG homepage to guide users through such system features as creating an account, logging in, and creating and joining a network. In joint-employer situations, the FAQ states, only one job order should be submitted for the job opportunity, with each employer identified in the job order, as explained in the Form ETA-790A General Instructions.
- Employers and their authorized attorneys or agents must submit completed job orders (i.e., Forms ETA-790 and ETA-790A) to the National Processing Center no more than 75 calendar days and no fewer than 60 calendar days before the employer's first date of need, except in emergency situations that satisfy certain criteria.

The FAQ also includes details on signatures, timeframes, housing inspections, wage rates, collective bargaining, State Workforce Agency processing, and withdrawal requests.

Details:

- OFLC Round 2 FAQ. <https://bit.ly/3DJNIFY>

- H-2A Final Rule, Wage & Hour Division, 87 Fed. Reg. 61660 (Oct. 12, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-10-12/pdf/2022-20506.pdf>

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Duplicate Copies of Form I-129 No Longer Required

U.S. Citizenship and Immigration Services (USCIS) no longer requires petitioners to submit duplicate copies of Form I-129, Petition for a Nonimmigrant Worker, or of the supporting documentation, unless the agency specifically asks for it.

"Due to enhanced electronic scanning capabilities and data-sharing with the U.S. Department of State, duplicate copies are no longer needed to avoid delays in consular processing," USCIS said.

Details:

- USCIS alert, <https://www.uscis.gov/i-129>

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USCIS Clarifies CW-1 Policy on Temporary Departure Requirement

On October 27, 2022, U.S. Citizenship and Immigration Services (USCIS) clarified its implementation of the requirement that Commonwealth of the Northern Mariana Islands (CNMI) workers leave the United States for at least 30 days after two renewals of their CNMI-Only Transitional Worker (CW-1) visa classification.

Effective immediately, USCIS said, the only CW-1 petitions that USCIS will classify as consecutive petitions for purposes of the temporary departure requirement are approved CW-1 petitions that have a starting validity date on or after June 18, 2020. Any extension of CW-1 status granted on or after June 18, 2020, will be considered a consecutive petition if the extension has a starting validity date on or after that date (and not backdated before that date).

USCIS provided an example. If USCIS approved a petition on July 1, 2020, but the petition was backdated to grant status from October 1, 2019, the agency would consider that petition approved as of the earlier validity date of October 1, 2019. Therefore, this petition would not apply toward the temporary departure requirement.

Details:

- USCIS alert, <https://www.uscis.gov/newsroom/alerts/uscis-will-only-consider-cw-1-petitions-approved-and-with-starting-validity-on-or-after-june-18-2020>
- USCIS Policy Update on CW-1 Departure Requirement, <https://www.uscis.gov/news/alerts/uscis-policy-update-on-cw-1-departure-requirement>

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EOIR Announces 32 New Immigration Judges

On October 26, 2022, the Department of Justice's Executive Office for Immigration Review announced the appointment of 32 immigration judges (IJs) to courts in California, Florida, Georgia, Illinois, Maryland, New York, Tennessee, Texas, and Virginia.

Individuals interested in applying for an IJ position can [sign up for job alerts](#).

Details:

- USCIS release, Oct. 19, 2022. <https://bit.ly/3MWvZ1g>

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