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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - NOVEMBER 14, 2022

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Headlines:

DHS Releases List of Countries Eligible for H-2A and H-2B Programs, Adds Eswatini – Each country's designation is valid until November 9, 2023.

DHS Continues TPS and Related Documentation for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal – To ensure its continued compliance with several court orders, the Department of Homeland Security is automatically extending the validity of certain temporary protected status (TPS)-related documentation for beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal through June 30, 2024.

E-Verify Issues Reminder to Employers and Program Administrators on Terminating User Accounts – Failure to promptly terminate user access upon separation is a violation of the memorandum of understanding.

CIS Ombudsman Introduces Revised Form for Requesting Case Assistance – The updated Form 7001, which expires on September 30, 2025, includes embedded instructions with questions, expanded and reorganized sections, detailed instructions on supporting documentation, and an option to include multiple employment-based beneficiaries on one case assistance request.

State Dept. Announces Full Resumption of Interviews for All Immigrant Visa Categories in Havana in January 2023 – The U.S. Embassy in Havana, Cuba, will resume full immigrant visa processing beginning on January 4, 2023. U.S. Embassy Georgetown in Guyana will continue to process Cuban immigrant visa applicants scheduled for appointments there through the end of December 2022.

President Accepts Resignation of CBP Commissioner – Chris Magnus was

accused of unprofessional behavior by other officials working with him.

Details:

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DHS Releases List of Countries Eligible for H-2A and H-2B Programs, Adds Eswatini

The Department of Homeland Security (DHS), in consultation with the Department of State, announced the lists of countries whose nationals are eligible to participate in the H-2A and H-2B visa programs in the next year. Effective November 10, 2022, DHS added the Kingdom of Eswatini (formerly Swaziland) to the list. Each country's designation is valid until November 9, 2023.

DHS said that U.S. Citizenship and Immigration Services (USCIS) may approve H-2A and H-2B petitions, including those pending as of the date of publication of the Federal Register notice on November 10, 2022, "for nationals of countries not on the lists on a case-by-case basis only if doing so is determined to be in the interest of the United States."

DHS said the notice does not affect the status of H-2 beneficiaries who are currently in the United States unless they apply to extend their stay in H-2 status on the basis of a petition filed on or after the date of publication of the Federal Register notice. Similarly, the notice would not affect the eligibility of an H-2 beneficiary to apply for an H-2 visa and/or seek admission to the United States based on an H-2 petition approved before the date of publication. It does apply to nonimmigrants changing status in the United States to H-2A or H-2B.

Details:

- DHS notice, 87 Fed. Reg. 67930 (Nov. 10, 2022). https://www.govinfo.gov/content/pkg/FR-2022-11-10/pdf/2022-24539.pdf
- USCIS alert, Nov. 9, 2022, https://www.uscis.gov/newsroom/alerts/dhs-announces-countries-eligible-for-h-2a-and-h-2b-visa-programs-0

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DHS Continues TPS and Related Documentation for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal

To ensure its continued compliance with several court orders, the Department of Homeland Security (DHS) is automatically extending the validity of certain temporary protected status (TPS)-related documentation for beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal from the current expiration date of December 31, 2022, through June 30, 2024. The extension will be announced in a Federal Register notice to be published on November 16, 2022.

DHS explained that beneficiaries under the existing TPS designations for El Salvador, Nicaragua, Honduras, and Nepal; the 2011 designation of Haiti; and the 2013 designation of Sudan will retain their TPS while the court orders remain in effect, provided that their TPS is not withdrawn because of individual ineligibility. They may also apply under the more recent designations of Haiti and Sudan in 2021 and 2022, respectively. If granted TPS, they will retain TPS in accordance with their grants. Other individuals who have been newly granted TPS under the 2021 designation of Haiti and the 2022 designation of Sudan, but who did not have TPS at the time of those designations, are not covered by the notice. Their TPS grants remain valid in accordance with their individual approval notices from U.S. Citizenship and Immigration Services (USCIS).

The notice further provides information on the automatic extension of the validity of TPS-related employment authorization documents (EADs); Notices of Action (Forms I-797); and Arrival/Departure Records (Forms I-94) for beneficiaries under the TPS designations.

Details:

- DHS notice (advance copy), https://public-inspection.federalregister.gov/2022-24984.pdf

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E-Verify Issues Reminder to Employers and Program Administrators on Terminating User Accounts

E-Verify recently reminded employers and program administrators that an E-Verify user's access "must be promptly terminated upon separation from your organization." A good practice, E-Verify said, is to review and update

existing users whenever staffing changes occur and also on a regular basis.

User accounts should be deleted whenever a user is separated from the organization or the user's role no longer requires access. Failure to promptly terminate user access upon separation is a violation of the memorandum of understanding, E-Verify noted.

E-Verify also notified program administrators that their accounts are associated with their employers: "If you are hired by a new employer, you will need to create a new account. You are prohibited from using your old employer's account to create cases for a new employer."

Details:

- E-Verify reminder, https://www.e-verify.gov/about-e-verify/whats-new/reminder-terminating-user-accounts-for-e-verify-employers-and-program

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CIS Ombudsman Introduces Revised Form for Requesting Case Assistance

The Citizenship and Immigration Services (CIS) Ombudsman released an updated Form 7001, Request for Case Assistance.

The updated form, which expires on September 30, 2025, includes embedded instructions with questions, expanded and reorganized sections, detailed instructions on supporting documentation, and an option to include multiple employment-based beneficiaries on one case assistance request.

Details:

- DHS Form 7001, Request for Case Assistance, https://www.dhs.gov/topic/cis-ombudsman/forms/7001#no-back

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State Dept. Announces Full Resumption of Interviews for All Immigrant Visa Categories in Havana in January 2023

The Department of State (DOS) announced on November 10, 2022, that the U.S. Embassy in Havana, Cuba, will resume full immigrant visa processing beginning on January 4, 2023. The U.S. Embassy Georgetown in Guyana will continue to

process Cuban immigrant visa applicants scheduled for appointments there through the end of December 2022. Immigrant visa applicants whose appointments were originally scheduled in Georgetown will complete case processing there.

Embassy Havana will process diversity visa cases for applicants who reside in Cuba beginning in January 2023. DOS noted that Havana will not be an option on the dropdown menu when diversity visa selectees pick an interview location on the DS-260 immigrant visa application form. They should continue to select Georgetown for the DV-2023 program year. DOS said that applicants who provide a residential address within Cuba on their DS-260s will have their cases automatically reassigned to Havana, unless they have already been scheduled at Georgetown.

Immigrant visa applicants scheduled for January 2023 appointments in Havana will begin receiving appointment notices on or after November 10, 2022.

Details:

- DOS notice, https://bit.ly/3Gb0SgU

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President Biden Accepts Resignation of CBP Commissioner

On November 12, 2022, President Joe Biden accepted the resignation of Chris Magnus, U.S. Customs and Border Protection Commissioner. He had initially refused to step down after Alejandro Mayorkas, Secretary of Homeland Security, reportedly told Mr. Magnus on November 9, 2022, that he must resign or he would be fired. Mr. Magnus's duties and direct reports have been shifted to other people, an unnamed DHS official said.

Mr. Magnus was accused of unprofessional behavior by other officials working with him, an earlier report says. Several Republicans in the House of Representatives, who criticized his handling of border issues, then urged President Biden to call for Mr. Magnus' resignation. Citing the earlier report, the letter also alleged that Mr. Magnus "fails to attend high-level meetings," engages in "constant complaining about his fellow senior officials" in DHS, "was caught sleeping through some of the meetings he actually attended," and "fails to actively participate during internal calls with Secretary Mayorkas regarding border and immigration issues."

Details:

- "Customs and Border Protection Chief Resigns After Refusing Request to Step Down," NBC News, Nov. 12, 2022. https://www.nbcnews.com/politics/immigration/customs-border-protection-chief-refusing-request-step-dhs-official-say-rcna56826
- S. Customs and Border Protection Commissioner Resigns," CNN, Nov. 12, 2022. https://www.cnn.com/2022/11/12/politics/cbp-magnus-resignation-dhs-mayorkas
- "DHS Secretary to Biden's Top Border Chief: Quit or Be Fired," Politico, Nov. 11, 2022. https://www.politico.com/news/2022/11/11/dhs-secretary-bidens-top-border-chief-00066496
- "Exclusive: House Republicans Demand CBP Commissioner Resign," Daily Caller, Nov. 1, 2022. https://dailycaller.com/2022/11/01/house-republicans-jody-hice-demand-customs-and-border-protection-cbp-commissioner-chris-magnus-resign/
- "Biden's Top Border Chief Comes Under Internal Fire," Politico, Oct. 17, 2022. https://www.politico.com/news/2022/10/17/customs-border-protection-chris-magnus-00061963

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