



IMMIGRATION UPDATE - NOVEMBER 21, 2022

Posted on November 21, 2022 by Cyrus Mehta

Headlines:

[Title 42 Policy Blocked Effective December 21](#) – On November 15, 2022, a U.S. District Court judge blocked the Title 42 policy that has resulted in many migrants being turned away at the southern U.S. border. The same night, the Department of Justice filed a motion to stay the order for five weeks, which the judge granted. The order will be effective December 21, 2022.

[Visa Bulletin for December 2022 Includes Many Updates](#) – The Department of State's Visa Bulletin for December 2022 includes a variety of updates. The estimated employment-based annual limit will be 197,000 for FY 2023.

[Inspector General Releases Annual Statement on State Dept.'s Major Management and Performance Challenges](#) – The Office of the Inspector General found that the ConsularOne program, initially launched to modernize and consolidate approximately 90 discrete consular legacy systems into a common technology framework, has experienced deficiencies and delays with profound implications.

[USCIS Releases Tips on Avoiding Paper Filing-Related Delays](#) – U.S. Citizenship and Immigration Services has released tips to avoid paper filing-related scanning delays.

[State Dept. Announces Diversity Visa Reassignment Procedures for Kabul](#) – All operations are suspended at the U.S. Embassy in Kabul, Afghanistan. Diversity visa (DV) selectees for the 2023 DV program year with a case assigned to U.S. Embassy Kabul should request reassignment to another embassy or consulate that processes DV applications.

[Labor Dept. Announces H-2A Visa Program Listening Sessions](#) – **In conjunction with the Department of Labor's (DOL) previously announced intention to**

engage in additional rulemaking on the H-2A visa program for temporary agricultural employment of foreign workers, DOL announced two virtual listening sessions, one for employers and their representatives and another for workers and their advocates.

[OFLC Releases Public Disclosure Data, Selected Program Statistics, H-2B Foreign Labor Recruiter List for Q4 of FY 2022](#) – The Department of Labor's Office of Foreign Labor Certification (OFLC) has released various data and statistics, and the latest H-2B recruiter list.

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Title 42 Policy Blocked Effective December 21

On November 15, 2022, U.S. District Court Judge Emmet Sullivan blocked the Title 42 policy that has resulted in many migrants being turned away at the southern U.S. border. The same night, the Department of Justice filed a motion to stay the order for five weeks, which Judge Sullivan granted. The order will be effective December 21, 2022.

The Trump administration instituted the policy in March 2020, with the stated purpose of preventing the spread of the COVID-19 virus. Title 42 was the subject of litigation, and the Biden administration was prevented from revoking the policy. In vacating Title 42, the court noted that the Centers for Disease Control and Prevention (CDC) recognizes that current public health conditions no longer require continuation of an order to keep migrants out of the United States, and that plaintiffs would continue to face substantial harm if they were returned to their home countries. In its order vacating the policy, the court included "all orders and decision memos issued by the suspending the right to introduce certain persons into the United States." The court also declared the Title 42 policy to be "arbitrary and capricious in violation of the Administrative Procedure Act."

The Department of Homeland Security (DHS) said the delay in implementation of the court's order "will allow the government to prepare for an orderly transition to new policies at the border. But to be clear, under the unopposed motion, Title 42 would remain in place for some period."

[Details:](#)

- *Huisha-Huisha v. Mayorkas*, Memorandum Opinion, Nov. 15, 2022.
https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2021cv0100-165
- Unopposed Emergency Motion for Temporary Stay of the Court's November 15, 2022, Order, Nov. 15, 2022.
<https://storage.courtlistener.com/recap/gov.uscourts.dcd.225870/gov.uscourts.dcd.225870.166.0.pdf>
- "Judge Blocks Title 42 Limits at Border," Politico, Nov. 15, 2022.
<https://www.politico.com/news/2022/11/15/immigration-judge-blocks-title-42-limits-00067083>
- "Federal Judge Blocks Title 42 Rule That Allowed Expulsion of Migrants at U.S.-Mexico Border, Puts Order on Hold for 5 Weeks," CNN, Nov. 16, 2022.
<https://www.cnn.com/2022/11/15/politics/title-42-migrants/index.html>
- DHS statement, Nov. 15, 2022.
<https://www.dhs.gov/news/2022/11/15/statement-dhs-decision-regarding-title-42>

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Visa Bulletin for December 2022 Includes Many Updates

The Department of State's Visa Bulletin for December 2022 includes a variety of updates:

- The estimated employment-based annual limit will be 197,000 for fiscal year (FY) 2023.
- Establishment of final action dates and application filing dates for China and India will most likely be necessary in the coming months.
- DOS has deemed it necessary to establish a worldwide employment second preference final action and application filing dates effective in December. Except for China and India, all countries are subject to a final action date of 01NOV22 and an application filing date of 01DEC22.
- Fewer additional numbers will be available to India in the employment second preference category than originally estimated when the October and November final action and application filing dates were established. Therefore, further corrective action has been necessary to ensure that the limited supply of visa numbers is allocated by priority date.
- High demand in the employment fourth preference category has necessitated the establishment of a worldwide final action date and

application filing date for December. Except for El Salvador, Guatemala, Honduras, and Mexico, all countries are subject to a final action date of 22JUN22 and an application filing date of 22JUL22.

- Higher than expected demand in the employment fourth preference category for El Salvador, Guatemala, and Honduras may necessitate corrective action.
- The Certain Religious Workers (SR) category is set to expire as of December 16, 2022. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight December 15, 2022. Visas issued prior to that date will be valid only until December 15, 2022, and all individuals seeking admission in the non-minister special immigrant category must be admitted into the United States no later than midnight December 15, 2022. If legislative action extends this category, the December dates will be applied for the entire month. If there is no legislative action extending this category, the category will become "Unavailable" effective December 16, 2022.

Details:

- Visa Bulletin for December 2022.
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-december-2022.html>

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Inspector General Releases Annual Statement on State Dept.'s Major Management and Performance Challenges

The Department of State's (DOS) Office of Inspector General (OIG) released its annual statement on November 18, 2022, on DOS's major management and performance challenges. The latest report noted that OIG's recent review of the Bureau of Consular Affairs' ConsularOne Modernization Program found:

In the 10 years since the program began in 2011, the responsible office had conducted a very limited pilot of just one component of the program—the customer-facing portion of the electronic Consular Report of Birth Abroad—and had continued to miss deployment dates for other components. Initially launched to modernize and consolidate approximately 90 discrete consular legacy systems into a common technology framework, the program has

experienced deficiencies and delays with profound implications for the bureau's three fundamental responsibilities: the issuance of passports and other documentation to citizens and nationals, the protection of U.S. border security and facilitation of legitimate travel to the United States, and ensuring the welfare and protection of U.S. citizens abroad.

OIG's review this year found that the program's leadership "was unable to provide a clear, uniform definition of the ConsularOne program, what components it included, and which contracts supported the program, creating confusion for stakeholders." This lack of clarity "hindered leadership's oversight of the modernization effort and the ability to hold staff accountable for their performance."

Details:

- Inspector General Statement on the Department of State's Major Management and Performance Challenges, Fiscal Year 2022, <https://www.stateoig.gov/uploads/report/reportpdf/igex2302.pdf>

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USCIS Releases Tips on Avoiding Paper Filing-Related Delays

On November 16, 2022, U.S. Citizenship and Immigration Services (USCIS) released tips to avoid paper filing-related scanning delays. USCIS said it scans and uploads many documents into electronic database systems as it moves toward an increasing electronic environment.

Examples of practices to avoid include attaching documents together with staples, paper clips or other methods; folding documents; using insertable tab dividers; submitting multiple copies unless required; and sending original documents unless required, among other tips.

Details:

- USCIS alert, Nov. 16, 2022. <https://www.uscis.gov/newsroom/alerts/recommendations-for-paper-filings-to-avoid-scanning-delays>

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State Dept. Announces Diversity Visa Reassignment Procedures for Kabul

The Department of State announced on November 18, 2022, that all operations are suspended at the U.S. Embassy in Kabul, Afghanistan. Diversity visa (DV) selectees for the 2023 DV program year with a case assigned to U.S. Embassy Kabul should request reassignment to another embassy or consulate that processes DV applications. The selectee must be physically present in the consular district where the embassy or consulate is located at the time of the interview and have permission and the ability to remain in that country for a period sufficient to complete processing of the visa application.

To request reassignment, the DV selectee should e-mail the Kentucky Consular Center (KCC) at KCCDV@state.gov with the subject line "Kabul Reassignment Request." The email should include: (1) full name, (2) date of birth, (3) case number, and (4) name of the embassy or consulate where the selectee would like the case to be reassigned. After KCC reviews the request, the selectee will receive an email confirmation that the reassignment request was successful or, alternatively, requesting more information.

Those who are unable to travel to the embassy or consulate where the appointment has been scheduled may contact another U.S. embassy or consulate that processes DV applications to request a transfer.

Details:

- Diversity Visa Reassignment Procedures for Kabul, Dept. of State, Nov. 18, 2022, <https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-reassignment-procedures-for-kabul.html>
- For more information on visa processing at specific posts, see <https://www.usembassy.gov/> and review the page for the visa section of the relevant U.S. embassy or consulate.
- DV Entrant Status Check, <https://dvprogram.state.gov/>

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Labor Dept. Announces H-2A Visa Program Listening Sessions

In conjunction with the Department of Labor's (DOL) previously announced intention to engage in additional rulemaking on the H-2A visa program for temporary agricultural employment of foreign workers, DOL

is offering two virtual listening sessions, one for employers and their representatives and another for workers and their advocates, to gather input about the possible changes to the H-2A regulations.

The sessions are open to the public. The employers/representatives' listening session will be held Tuesday, November 29, 2022, from 3 to 4 p.m. ET. The workers/advocates listening session will be held Wednesday, November 30, 2022, from 7 to 8:30 p.m. ET. Registrants will be emailed a Zoom link one day before the event begins. Questions should be emailed to WHD-Events@dol.gov.

Details:

- DOL announcement, Nov. 17, 2022.
<https://www.dol.gov/agencies/eta/foreign-labor>
- Employers/representatives session registration.
<https://www.eventbrite.com/e/h-2a-regulations-listening-session-for-employers-registration-454006905877>
- Workers/advocates session registration.
<https://www.eventbrite.com/e/h-2a-regulations-listening-session-for-workers-registration-453908441367>

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OFLC Releases Public Disclosure Data, Selected Program Statistics, H-2B Foreign Labor Recruiter List for Q4 of FY 2022

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

- A comprehensive set of [public disclosure data](#) through the final quarter of fiscal year (FY) 2022 drawn from employer applications requesting prevailing wage determinations and labor certifications for the PERM, LCA (H-1B, H-1B1, E-3), H-2A, H-2B, CW-1, and Prevailing Wage programs. The public disclosure files include all final determinations OFLC issued for these programs during the October 1, 2021 through September 30, 2022 reporting period of fiscal year 2022.
- Selected [program statistics](#) for the second quarter of fiscal year 2022 for the PERM, LCA (H-1B, H-1B1, E-3), H-2A, H-2B, CW-1, and Prevailing Wage programs.

- An [updated list](#) of the names of foreign labor recruiters for the H-2B program.

Details:

- OFLC notices, Nov. 15, 2022.
<https://www.dol.gov/agencies/eta/foreign-labor>

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