



IMMIGRATION UPDATE - NOVEMBER 28, 2022

Posted on November 28, 2022 by Cyrus Mehta

Headlines:

[USCIS Says Certain Afghan and Ukrainian Parolees Are Immediately Work Authorized](#) – U.S. Citizenship and Immigration Services is providing employment authorization incident to status normally accorded to refugees and a no-fee initial (and replacement of an initial) employment authorization document to Afghan and Ukrainian parolees, based on recently passed laws.

[USCIS Announces Expedited Work Authorization Processing, Expanded Fee Exemptions for Afghans](#) – U.S. Citizenship and Immigration Services is extending and expanding previously announced fee exemptions and expedited application processing for certain Afghan nationals through September 30, 2023.

[Dept. of Labor Announces Additional Listening Sessions on H-2A Program](#) – The agency has added two more listening sessions.

[OFLC Releases FAQs on Prevailing Wage Surveys Under 2022 H-2A Final Rule](#) – The FAQs are intended to assist State Workforce Agencies and others in understanding the prevailing wage survey methodology of the final rule.

[USCIS Accepting Only 8/19/22 Edition of N-648, Medical Certification for Disability Exceptions](#) – U.S. Citizenship and Immigration Services is accepting only the 8/19/22 edition of Form N-648, Medical Certification for Disability Exceptions. USCIS revised the form and removed several questions.

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USCIS Says Certain Afghan and Ukrainian Parolees Are Immediately Work Authorized

Effective November 21, 2022, certain Afghan and Ukrainian parolees are work authorized incident to their parole status based on recently passed laws, U.S. Citizenship and Immigration Services (USCIS) announced. To implement the statutory language, "other benefits available to refugees," USCIS is providing employment authorization incident to status normally accorded to refugees and a no-fee initial (and replacement of an initial) employment authorization document (EAD) to Afghan and Ukrainian parolees so they "receive the same treatment as refugees," the agency said.

This policy applies to the following individuals if their parole has not been terminated:

- Afghan parolees whose unexpired Form I-94, Arrival/Departure Record, contains a class of admission of "OAR." Those who are Afghan parolees covered under section 2502(b), P.L. No. 117-43, who did not receive an "OAR" class of admission on their Form I-94 should email U.S. Customs and Border Protection at oawi94adjustments@cbp.dhs.gov to update their class of admission, if appropriate;
- Ukrainian parolees whose unexpired Form I-94 contains a class of admission of "UHP"; and
- Ukrainian parolees whose unexpired Form I-94 contains a class of admission of "DT" issued between February 24, 2022, and September 30, 2023, and indicates Ukraine as the country of citizenship on the document.

For these parolees, their unexpired Form I-94 is an acceptable receipt they may present to employers to show their identity and employment authorization for the purposes of Form I-9, Employment Eligibility Verification. The receipt satisfies the Form I-9 requirement for 90 days from the date of hire (or in the case of reverification, the date employment authorization expires). After the 90-day period, parolees must present an EAD or unrestricted Social Security card and acceptable List B identity document from the Form I-9 Lists of Acceptable Documents (such as a state-issued driver's license or identification card). Ukrainian and Afghan parolees must still file a Form I-765 to receive a physical EAD.

Effective November 21, 2022, USCIS is also exempting the fee to file Form I-765 for Ukrainian parolees filing for an EAD by mail. Afghan parolees under OAW are already exempt from the fee for an initial paper-filed Form I-765 (and a replacement EAD) through September 30, 2023.

Effective December 5, 2022, USCIS will be able to process fee exemptions for online filings of Form I-765 for eligible Ukrainian and Afghan parolees.

Details:

- USCIS alert, Nov. 21, 2022. <https://bit.ly/3APqFYB>
- "Feds Grant Ukrainians, Afghans Immediate Work Authorization," Law360, Nov. 22, 2022.
<https://www.law360.com/articles/1552063/feds-grant-ukrainians-afghans-immediate-work-authorization> (registration required)

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USCIS Announces Expedited Work Authorization Processing, Expanded Fee Exemptions for Afghans

On November 22, 2022, U.S. Citizenship and Immigration Services (USCIS) said it is extending and expanding previously announced fee exemptions and expedited application processing for certain Afghan nationals through September 30, 2023.

Fee exemptions include:

- An initial or replacement Form I-765, Application for Employment Authorization, for Afghan nationals who are applying for work authorization on the basis of parole (eligibility category (c)(11));
- Form I-485, Application to Register Permanent Residence or Adjust Status, to adjust status on the basis of Afghan special immigrant classification, and any associated Form I-601, Application for Waiver of Grounds of Inadmissibility;
- Form I-130, Petition for Alien Relative, filed with USCIS in the United States on behalf of any Afghan national (beneficiary) with a visa immediately available;
- Form I-824, Application for Action on an Approved Application or Petition, for an Afghan holding a Special Immigrant Visa;
- Form I-601, Application for Waiver of Grounds of Inadmissibility, for any

Afghan national with an approved Form I-130 with a visa immediately available; and

- USCIS Immigrant Fee (Form I-551) for Afghan nationals.

Expedited processing includes:

- An initial and replacement Form I-765 for those applying for employment authorization on the basis of parole (eligibility category (c)(11));
- Form I-485 for Afghan nationals seeking to adjust status on the basis of Afghan special immigrant classification, and any associated Form I-601;
- Form I-589, Application for Asylum and for Withholding of Removal, filed by certain Afghan parolees as described in § 2502(a) of the Extending Government Funding and Delivering Emergency Assistance Act of 2021;
- Form I-130, filed with USCIS in the United States on behalf of an Afghan national (beneficiary) with a visa immediately available, and any associated Form I-601; and
- Form I-140, Immigrant Petition for Alien Workers, filed with USCIS on behalf of an Afghan national (beneficiary) with a visa immediately available.

Details:

- USCIS alert, Nov. 22, 2022.
<https://www.uscis.gov/newsroom/alerts/uscis-extends-and-expands-fee-exemptions-and-expedited-processing-for-afghan-nationals>

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Dept. of Labor Announces Additional Listening Sessions on H-2A Program

The Department of Labor (DOL) previously announced that it intends to engage in additional rulemaking concerning the H-2A visa program for the temporary agricultural employment of foreign workers. DOL initially announced it would conduct two public virtual listening sessions to gather input about possible changes to the H-2A regulations. The agency has added two more listening sessions, one for employers and their representatives and another for workers and their advocates.

DOL said it is "interested in hearing about the experiences of workers and employers," so it **encourages "worker and employer representatives to**

include their members' perspectives in their remarks or to invite workers or employers to share their experiences directly."

Below are the dates, times, and registration links for each of the sessions:

- Employers and Employer Representatives: [Tuesday, December 6, from 1 to 2:30 p.m. ET](#)
- Workers and Advocates: [Wednesday, November 30, from 7 to 8:30 p.m. ET](#) or [Wednesday, December 7, from 7 to 8:30 p.m. ET](#)

Details:

- Office of Foreign Labor Certification announcement.
<https://www.dol.gov/agencies/eta/foreign-labor> (scroll to November 25, 2022)

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OFLC Releases FAQs on Prevailing Wage Surveys Under 2022 H-2A Final Rule

The Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) has released frequently asked questions (FAQs) on prevailing wage surveys under the 2022 H-2A final rule, "Temporary Agricultural Employment of H-2A Nonimmigrants in the United States," published on October 12, 2022, and effective November 14, 2022.

OFLC said the FAQs are intended to assist State Workforce Agencies (SWAs) and others in understanding the prevailing wage survey methodology of the final rule. OFLC said the updated methodology:

- Allows the SWAs to conduct prevailing wage surveys or to leverage surveys conducted by other state agencies, state colleges, or state universities, provided that the survey meets the standards listed in 20 CFR § 655.120(c)(1);
- Permits the SWAs to determine the best data collection period for a particular prevailing wage survey;
- Enables the SWAs to make decisions about prioritizing precision, accuracy, granularity, or other quality factors in the data they use to inform prevailing wage findings, rather than requiring statistical validity;
- Establishes standards to produce prevailing wage findings for crop activities and agricultural activities with few employers and U.S. workers;

- Establishes a regulatory process for the SWAs to submit prevailing wage surveys to OFLC and for OFLC to review, approve, and post prevailing wages on OFLC's Agricultural Online Wage Library (AOWL); and
- Provides that a prevailing wage finding is valid for one year from the date of posting on OFLC's website (i.e., AOWL) or until replaced with an adjusted prevailing wage finding, whichever comes first.

DOL provides additional information about prevailing wage survey methodological requirements in the preamble to the 2022 H-2A final rule. In particular, the agency called attention to pages 61689 through 61701.

Details:

- "Prevailing Wage Surveys," OFLC FAQ, Nov. 21, 2022.
https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2022%20H-2A%20FR_SWA%20FAQs_PW%20surveys%20Nov%2017.pdf
- H-2A final rule, 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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USCIS Accepting Only 8/19/22 Edition of N-648, Medical Certification for Disability Exceptions

As of November 21, 2022, U.S. Citizenship and Immigration Services (USCIS) is accepting only the 8/19/22 edition of Form N-648, Medical Certification for Disability Exceptions. USCIS revised the form and removed several questions, including dates of diagnosis and when the disability or impairment began; description of severity of each disability or impairment; effects on the applicant's daily life; and an explanation of the doctor-patient relationship. Also, telehealth medical examinations are now permitted for Form N-648, among other changes.

USCIS will accept a Form N-648 after a Form N-400 is filed but recommends that applicants submit both forms at the same time.

Details:

- Fact Sheet: Medical Certification for Disability Exceptions, Form N-648, English Language Exemptions, and Accommodations, USCIS.
<https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheet>

[N-648_MedCertForDisabilityExceptions.pdf](#)

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Firm in the News

Cyrus Mehta was quoted by the *Times of India* in "Laid-Off Indian H-1B Workers Plead for Help as Clock Ticks." He noted that when an H-1B worker is laid off or terminated, they get a 60-day grace period that allows them to remain in the H-1B status to find a new job. "The new employer must file the H-1B within the 60-day period. This 60-day period may not be enough to find a new job. The H-1B worker should negotiate that their employment with the company that is terminating them be extended as long as possible as the 60-day grace period will only trigger when the paid employment is terminated." An Indian worker, he said, is disadvantaged because of green card backlogs caused by per-country limits. Mr. Mehta said that the Biden administration can help by changing the 60-day grace period rule to allow more time for H-1B workers to remain in the United States, but he noted that a rule change would take time. "The administration must also be inclined to do this," he said.

<https://timesofindia.indiatimes.com/business/india-business/laid-off-indian-h-1b-workers-plead-for-help-as-clock-ticks/articleshow/95497003.cms>

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