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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - DECEMBER 12, 2022

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Headlines:

USCIS Announces 'Important' H-2B Supplemental Cap Petition Filing Updates Before Publication of Temporary Final Rule – In response to a federal court order, the Department of Labor's (DOL) Office of Foreign Labor Certification plans to rescind H-2B registration requirements and propose conforming edits throughout its H-2B regulations. In the interim, DOL said it will use the Notice of Acceptance, issued when an H-2B application meets regulatory requirements and the employer can begin recruiting U.S. workers, to inform an H-2B employer of DOL's determination of the employer's temporary need for services or labor.

Green Cards Automatically Extended for Naturalization Applicants Who File on 12/12/22 or Later, USCIS Says –U.S. Citizenship and Immigration Services (USCIS) is automatically extending the validity of Permanent Resident Cards (green cards) for lawful permanent residents (LPRs) who applied for naturalization on December 12, 2022, or later. USCIS said it will update the language on Form N-400 receipt notices to extend green cards for up to 24 months for these applicants. LPRs who filed for naturalization before December 12 will not receive this extension.

Registration Process Begins for Ethiopia TPS; DHS Provides Relief for F-1 Nonimmigrant Ethiopian Students – The Department of Homeland Security announced several measures to provide relief for Ethiopians in the United States.

DHS Extends and Redesignates TPS for Haiti for 18 Months – The Department of Homeland Security (DHS) announced the extension of temporary protected status (TPS) for Haiti through August 3, 2024. DHS also redesignated Haiti for TPS, allowing eligible Haitian nationals residing in the United States as of

November 6, 2022, to apply for TPS through August 3, 2024.

DOL Publishes More FAQs on 2022 H-2A Final Rule – The FAQs' topics include wage and pay obligations and prevailing wages. Examples and tips for employers are included.

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USCIS Announces 'Important' H-2B Supplemental Cap Petition Filing Updates Before Publication of Temporary Final Rule

On December 8, 2022, U.S. Citizenship and Immigration Services (USCIS) announced "important" filing updates for petitioners who will be requesting additional H-2B workers for fiscal year 2023 under the upcoming temporary final rule. USCIS said it was announcing these updates to assist petitioners who wish to begin preparing their petitions before publication of a rule in the Federal Register.

Highlights of the announcement include:

Centralized Filing Location

Petitioners requesting additional H-2B workers under the upcoming rule must file their petitions at the California Service Center. Petitions filed under the supplemental allocations in this rule at any location other than the California Service Center will be rejected and the filing fees will be returned. This change does not affect the filing locations for petitions filed under the permanent H-2B regulations, whether they are cap-subject or cap-exempt.

Temporary Suspension of Premium Processing

Immediately upon publication of the upcoming rule, USCIS is temporarily suspending premium processing for H-2B supplemental cap petitions until January 3, 2023. Until premium processing resumes for H-2B supplemental cap petitions, USCIS said it will reject any Form I-907 concurrently filed with a Form I-129 filed under the supplemental allocations in the upcoming rule. USCIS has warned employers not to "file a request to upgrade to premium processing until you have received a receipt notice and can submit your request with the receipt number for your H-2B petition. If you request an upgrade to premium processing and have not provided this information, we will reject your Form

I-907 and return the filing fee."

Premium processing remains available for all other H-2B petitions.

Details:

- "USCIS Announces Important Filing Information for Upcoming FY 2023 H-2B Supplemental Cap Petitions," USCIS Alert, Dec. 8, 2022. https://bit.ly/3URJt0u
- "DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for Fiscal Year 2023," USCIS Alert, Oct. 12, 2022. https://bit.ly/3FQFu09

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Green Cards Automatically Extended for Naturalization Applicants Who File on 12/12/22 or Later, USCIS Says

U.S. Citizenship and Immigration Services (USCIS) said it is automatically extending the validity of Permanent Resident Cards (green cards) for lawful permanent residents (LPRs) who applied for naturalization on December 12, 2022, or later.

USCIS will update the language on Form N-400 receipt notices to extend green cards for up to 24 months for these applicants. The receipt notice can be presented with the expired green card as evidence of continued status as well as for identity and employment authorization under List A of Employment Eligibility Verification (Form I-9) if presented before the expiration of the 24-month extension period, the agency said.

LPRs who filed for naturalization before December 12, 2022, will not receive a Form N-400 receipt notice with the extension. If their green card expires, they must still file Form I-90 or receive an ADIT stamp in their passport to maintain valid evidence of their LPR status. LPRs who lose their green card still must file Form I-90, even if they have applied for naturalization and received the automatic extension under the updated policy. USCIS said this is because noncitizens must carry within their personal possession proof of registration, such as the green card and any evidence of extensions, "or may be subject to criminal prosecution under INA 264(e)." Applicants who require an ADIT stamp may request an appointment at a USCIS Field Office from the USCIS Contact Center.

Details:

- "USCIS Updates Policy to Automatically Extend Green Cards for Naturalization Applicants," USCIS Alert, Dec. 9, 2022. https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-to-automatically-extend-green-cards-for-naturalization-applicants
- "Extension of Permanent Resident Card for Naturalization Applicants," USCIS Policy Alert, PA-2022-26, Dec. 9, 2022. https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221209-ExtendingPRC.pdf
- USCIS Policy Manual, https://www.uscis.gov/policy-manual

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Registration Process Begins for Ethiopia TPS; DHS Provides Relief for F-1 Nonimmigrant Ethiopian Students

The Department of Homeland Security (DHS) announced several measures to provide relief for Ethiopians in the United States:

Registration Process for Ethiopia TPS Begins

In October, DHS announced the 18-month designation of Ethiopia for temporary protected status (TPS). The registration process begins on December 12, 2022, and runs through June 12, 2024. U.S. Citizenship and Immigration Services (USCIS) estimates that about 26,700 individuals may be eligible for TPS under Ethiopia's designation.

To be eligible for TPS under Ethiopia's designation, individuals must demonstrate their continuous residence in the United States since October 20, 2022, and continuous physical presence in the United States since December 12, 2022. Individuals arriving in the United States after October 20, 2022, are not eligible for TPS under this designation and may be subject to removal if they have no other authorization to be in the United States, DHS said.

Relief Provided for F-1 Nonimmigrant Ethiopian Students

Effective December 12, 2022, through June 12, 2024, DHS is suspending certain regulatory requirements for F-1 nonimmigrant students whose country of citizenship is Ethiopia, regardless of country of birth (or individuals having no nationality who last habitually resided in Ethiopia), who are experiencing severe

economic hardship as a direct result of the current crisis in Ethiopia.

DHS said these students may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status. DHS said it will deem such an F-1 nonimmigrant student to be engaged in a "full course of study" for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in the notice.

Details:

- "DHS Announces Registration Process for Temporary Protected Status for Ethiopia," USCIS News Release, Dec. 9, 2022. https://www.uscis.gov/newsroom/news-releases/dhs-announces-registration-process-for-temporary-protected-status-for-ethiopia
- "Designation of Ethiopia for Temporary Protected Status," USCIS, 87 Fed. Reg. 76074 (Dec. 12, 2022) (advance copy). https://www.govinfo.gov/content/pkg/FR-2022-12-12/pdf/2022-26880.pdf
- "DHS Designates Ethiopia for Temporary Protected Status for 18 Months," DHS Press Release, Oct. 21, 2022. https://www.dhs.gov/news/2022/10/21/dhs-designates-ethiopia-temporary-protected-status-18-months
- "Employment Authorization for Ethiopian F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Ethiopia," DHS notice. 87 Fed. Reg. 76068 (Dec. 12, 2022) (advance copy). https://www.govinfo.gov/content/pkg/FR-2022-12-12/pdf/2022-26874.pdf

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DHS Extends and Redesignates TPS for Haiti for 18 Months

The Department of Homeland Security (DHS) announced the extension of temporary protected status (TPS) for Haiti for an additional 18 months, from February 4, 2023, through August 3, 2024. DHS also redesignated Haiti for TPS, allowing Haitian nationals residing in the United States as of November 6, 2022, to apply for TPS through August 3, 2024, so long as they meet all eligibility requirements.

A soon-to-be-published Federal Register notice will explain the eligibility criteria, timelines, and procedures necessary for current beneficiaries to re-register and renew their employment authorization documents (EADs) and for new applicants to submit an initial application under the redesignation and apply for an EAD, DHS said.

DHS noted that "Haitians entering the United States after November 6, 2022, are not eligible for TPS and, like other individuals without a legal basis to remain in the United States, will be subject to removal."

Details:

- "Secretary Mayorkas Extends and Redesignates Temporary Protected Status for Haiti for 18 Months," DHS Press Release, Dec. 5, 2022. https://www.dhs.gov/news/2022/12/05/secretary-mayorkas-extends-and-redesignates-temporary-protected-status-haiti-18
- USCIS Temporary Protected Status page, updated Dec. 5, 2022. https://www.uscis.gov/humanitarian/temporary-protected-status

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DOL Publishes More FAQs on 2022 H-2A Final Rule

On December 7, 2022, the Department of Labor's Office of Foreign Labor Certification (OFLC) issued its third round of frequently asked questions related to the 2022 H-2A final rule published in October, "Temporary Agricultural Employment of H-2A Nonimmigrants in the United States."

The FAQs' topics include wage and pay obligations and prevailing wages. Examples and tips for employers are included. One tip notes that if an employer signs work contracts before the State Workforce Agency (SWA) and the OFLC National Processing Center (NPC) accept the job order for recruitment and the SWA or NPC subsequently directs the employer to modify the wage rate listed on the job order, the employer must also modify its work contracts to reflect the approved wage rate.

Details:

- FAQ, "Round 3: Job Offers, Assurances, and Obligations—Wages," OFLC, Dec. 7, 2022. https://bit.ly/3FajmMw

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