CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

# IMMIGRATION UPDATE - DECEMBER 19, 2022

*Posted on December 19, 2022 by Cyrus Mehta*

**Headlines:**

USCIS Increases H-2B Nonimmigrant Visa Availability – A new rule increases the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for fiscal year 2023.

DHS Issues Update on Southwest Border Security and Preparedness Under Court-Ordered Lifting of 'Title 42'; Termination of 'Remain in Mexico' Program Paused – The Department of Homeland Security issued an update on southwest border security and preparedness in anticipation of a court-ordered lifting of Title 42 by December 21, 2022, which was upheld on appeal. In other news, a federal judge paused the termination of the Migrant Protection Protocols, informally known as the "Remain in Mexico" program.

OFLC Publishes New 2023 H-2A Hourly Adverse Effect Wage Rates for Non-Range Occupations and for Herding or Production of Livestock on the Range – In two notices, the Department of Labor's Employment and Training Administration announced new Adverse Effect Wage Rates under the H-2A program for (1) agricultural labor or services other than the herding or production of livestock on the range, and (2) occupations involving herding or production of livestock on the range.

Guangzhou Immigrant Visa Unit Closes Until Further Notice; Limited Services Announced at Other U.S. Embassies and Consulates in China – The Immigrant Visa Unit at the U.S. Consulate Guangzhou announced that beginning December 19, 2022, it will be closed for regular visa services until further notice. The U.S. embassy in Beijing and the U.S. consulate in Shanghai are providing passport and emergency citizen services only. The U.S. consulates in Wuhan, Shenyang, and Guangzhou will only provide emergency consular services until further notice.

USCIS Announces Trial for Naturalization Test Updates – The trial is tentatively scheduled for a five-month period in 2023. The purpose of the trial is to test a civics component with updated format and content and a newly developed English-speaking component "that could become standard."

**Details:**

Back to Top

## USCIS Increases H-2B Nonimmigrant Visa Availability

In a temporary final rule published on December 15, 2022, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has increased the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for fiscal year (FY) 2023. To "assist U.S. businesses that need workers to begin work on different start dates," the Departments of Homeland Security (DHS) and Labor (DOL) will distribute the supplemental visas in several allocations, including two separate allocations in the second half of FY 2023.

Of the total 64,716 visas made available, 20,000 visas are reserved for nationals of Guatemala, El Salvador, Honduras, or Haiti. All 64,716 visas are available only to "those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form." In addition to making the additional 64,716 visas available under the FY 2023 time-limited authority, DHS is exercising its general H–2B regulatory authority to provide temporary portability flexibility again by allowing H–2B workers who are already in the United States to begin work immediately after an H–2B petition (supported by a valid temporary labor certification) is received by U.S. Citizenship and Immigration Services (USCIS) and before it is approved.

DHS will not accept any H-2B petitions under provisions related to the FY 2023 supplemental numerical allocations after September 15, 2023, and will not approve any such H-2B petitions after September 30, 2023. Provisions related to portability are only available to petitioners and H-2B nonimmigrant workers starting work by January 24, 2024.

USCIS previously announced that petitioners requesting additional H-2B workers under the rule must file their petitions at the California Service Center. 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.

USCIS also announced that it is temporarily suspending premium processing for H-2B supplemental cap petitions until January 3, 2023. Premium processing remains available for all other H-2B petitions.

DHS and DOL are accepting written public comments on the temporary final rule and related new information collection (Form ETA-9142B-CAA-7) by February 13, 2023. Instructions on submitting comments are included in the temporary final rule.

Details:

- Temporary final rule, DOL/DHS, 87 Fed. Reg. 76816 (Dec. 15, 2022). https://bit.ly/3WtMRQz
- "DHS and DOL Announce Availability of Additional H-2B Visas for Fiscal Year 2023," USCIS News Release, Dec. 12, 2022. https://www.uscis.gov/newsroom/news-releases/dhs-and-dol-announce-availability-of-additional-h-2b-visas-for-fiscal-year-2023
- "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

Back to Top

## DHS Issues Update on Southwest Border Security and Preparedness Under Court-Ordered Lifting of 'Title 42'; Termination of 'Remain in Mexico' Program Paused

The Department of Homeland Security (DHS) issued an update on December 13, 2022, on southwest border security and preparedness in anticipation of a court-ordered lifting of Title 42 by December 21, 2022, which was upheld by the D.C. Circuit Court of Appeals in a ruling on December 16, 2022. Title 42 prevented many migrants from seeking asylum in the United States because of COVID-19 concerns and required them to wait in Mexico. DHS said the update "reviews the DHS-led whole-of-government framework guiding preparations for and management of increased encounters of noncitizens at our Southwest Border following the lifting of the Title 42 public health order."

In November, a district court issued the ruling that required the lifting of the Title 42 public health order effective December 21, 2022. DHS said that

individuals who cross the border into the United States without legal authorization will be processed for removal and, if unable to establish a legal basis to remain in the United States, promptly removed. DHS said it anticipates that "migration levels will increase as smugglers seek to take advantage of and profit from vulnerable migrants once the Title 42 public health order is lifted. This will likely include spreading false information about what the end of Title 42 will mean." Reports from some shelters and border areas such as El Paso, Texas, indicate that a recent influx of migrants has been overwhelming local resources.

In other news, a federal judge in Texas paused the termination of the Migrant Protection Protocols, informally known as the "Remain in Mexico" program, which requires some non-Mexican citizens who entered the United States to wait in Mexico during their immigration proceedings, instead of allowing them into, or detaining them in, the United States. A DHS official said the Biden administration disagreed with that decision and was determining "next steps."

Details:

- "U.S. Court Rejects Maintaining COVID-19 Asylum Restrictions," Associated Press, Dec. 17, 2022. https://apnews.com/article/texas-donald-trump-immigration-missouri-amarillo-e6f9ce07b955bdc962118a798129f319
- "Federal Judge Says Biden Can't Yet End Trump-Era 'Remain in Mexico' Immigration Policy," CNN, Dec. 16, 2022. https://www.cnn.com/2022/12/15/politics/remain-in-mexico-immigration/index.html
- Texas v. Biden ("Remain in Mexico" ruling), Dec. 15, 2022. https://www.documentcloud.org/documents/23462906-ruling-on-remain-in-mexico-program

Back to Top

## OFLC Publishes New 2023 H-2A Hourly Adverse Effect Wage Rates for Non-Range Occupations and for Herding or Production of Livestock on the Range

In two notices, the Department of Labor's Employment and Training Administration (ETA) announced the new Adverse Effect Wage Rates (AEWRs) under the H-2A program for (1) agricultural labor or services other than the herding or production of livestock on the range, and (2) occupations involving

herding or production of livestock on the range.

Details:

- Notice announcing 2023 hourly AEWRs for non-range occupations, 87 Fed. Reg. 77142 (Dec. 16, 2022). https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27332.pdf
- Notice announcing 2023 AEWRs for herding or production of livestock on the range, 87 Fed. 77141 (Dec. 16, 2022). https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27333.pdf
- AEWRs by state (page), ETA. https://www.dol.gov/agencies/eta/foreign-labor/wages/adverse-effect-wage-rates
- AEWRs by state (map), ETA. https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/AEWR-Map-2023.pdf

Back to Top

## Guangzhou Immigrant Visa Unit Closes Until Further Notice; Limited Services Announced at Other U.S. Embassies and Consulates in China

The Immigrant Visa Unit of the U.S. consulate in Guangzhou, China, announced that beginning December 19, 2022, it will be closed for regular visa services until further notice due to limited resources. The unit will notify the public once it is able to resume normal immigrant visa (IV) operations and will communicate with IV applicants to reschedule their canceled appointments.

A web form is available at https://china.usembassy-china.org.cn/visas/immigrant-visas/immigrant-visa-unit-question/ to submit questions, although response times are expected to be delayed.

The U.S. Mission in China also announced that due to the surge of COVID-19 infections across China, the U.S. embassy in Beijing and the U.S. consulate in Shanghai are providing passport and emergency citizen services only. The U.S. consulates in Wuhan, Shenyang, and Guangzhou will only provide emergency consular services until further notice.

Details:

- "Alert: Update From U.S. Mission China Consular Services for December

15, 2022," Dec. 16, 2022. https://china.usembassy-china.org.cn/alert-update-from-u-s-mission-china-consular-services-for-december-15-2022/

- "Alert: Reduction in Non-Emergency Consular Operations at U.S. Consulate Shenyang and U.S. Consulate Wuhan," Dec. 13, 2022. https://china.usembassy-china.org.cn/alert-reduction-in-non-emergency-consular-operations-at-u-s-consulate-shenyang-and-u-s-consulate-wuhan/

Back to Top

## USCIS Announces Trial for Naturalization Test Updates

The Department of Homeland Security announced that U.S. Citizenship and Immigration Services (USCIS) intends to conduct a trial for updates to the current naturalization test. The trial is tentatively scheduled for a five-month period in 2023.

The purpose of the trial is to test a civics component with updated format and content and a newly developed English-speaking component "that could become standard." The naturalization test has four components: reading, writing, civics, and ability to speak English. Currently, the reading and writing portions of the naturalization test are standard.

In response to President Biden's executive order 14012, which included a directive to review the naturalization process, USCIS subject-matter experts reviewed the naturalization test and recommended redesigning the speaking and civics portions to improve standards. The proposed revisions are also "consistent with the feedback that USCIS has received from multiple external stakeholder groups," the agency said.

USCIS will conduct the trial with the help of volunteer community-based organizations (CBOs) that work with immigrant English-language learners and lawful permanent residents preparing for naturalization. USCIS will seek approximately 1,500 individuals enrolled in adult education classes to take the trial test. The agency will conduct national engagements for interested CBOs and will then publish a request for volunteer CBOs.

Details:

- "USCIS News Release, Dec. 14, 2022. https://www.uscis.gov/newsroom/news-releases/uscis-announces-trial-for

-updates-to-the-naturalization-test

Back to Top