



IMMIGRATION UPDATE - DECEMBER 27, 2022

Posted on December 27, 2022 by Cyrus Mehta

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[Chief Justice Roberts Issues Temporary Stay of 'Title 42'; Thousands Wait in Mexico](#) – Chief Justice Roberts of the U.S. Supreme Court ordered a temporary stay of Title 42 to allow the Supreme Court time to consider the issue.

[DHS Public Charge Ground of Inadmissibility Final Rule Effective December 23](#) – For public charge inadmissibility determinations, the Department of Homeland Security **will not** consider receipt of noncash benefits (for example, the Supplemental Nutrition Assistance Program, public housing, school lunch programs) other than long-term institutionalization at government expense.

[E-Verify Restores Employers' Ability to Upload Multiple Hiring Sites Simultaneously](#) – E-Verify has restored the ability of employers, employer agents, and corporate administrators to upload multiple hiring sites simultaneously.

[USCIS Provides List of Options for Nonimmigrant Workers Following Termination of Employment](#) – U.S. Citizenship and Immigration Services provided a compilation of options that may be available to nonimmigrant workers seeking to remain in the United States in a period of authorized stay following termination of employment.

[USCIS Seeks Comments on EB-5 Regional Center Forms for Investors](#) – U.S. Citizenship and Immigration Services seeks comments until January 23, 2023, on two forms associated with the EB-5 Regional Center (RC) program.

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Chief Justice Roberts Issues Temporary Stay of 'Title 42'; Thousands Wait in Mexico

Chief Justice Roberts of the U.S. Supreme Court ordered a temporary stay of Title 42 on December 19, 2022, to allow the Supreme Court time to consider the issue. Justice Roberts' order came after 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 prevents many migrants from seeking asylum in the United States because of COVID-19 concerns and requires them to wait in Mexico. According to reports, thousands of migrants, many from Haiti, who wish to enter the United States are in camps in Mexico. Two Title 42 amendments failed that had slowed down passage of the \$1.7 trillion funding bill that Congress passed and President Biden signed on December 23, 2022. Reportedly, the Biden administration also may be considering humanitarian parole for some Haitians, Nicaraguans, and Cubans, as was provided for Venezuelans recently.

Details:

- "Chief Justice Roberts Briefly Halts Decision Banning Border Expulsions," New York Times, Dec. 19, 2022.
<https://www.nytimes.com/2022/12/19/us/politics/title-42-scotus-immigration-asylum.html> (subscription required)
- Arizona v. Mayorkas, order issued Dec. 19, 2022.
https://www.supremecourt.gov/orders/courtorders/121922zr_g314.pdf
- Application for a stay, submitted to Chief Justice Roberts Dec. 19, 2022.
https://www.supremecourt.gov/DocketPDF/22/22A544/250328/20221219140309326_Title%2042%20-%20Emergency%20Application%20for%20Stay%20File%20Version.pdf
- Federal respondents' opposition to application for a stay pending certiorari, Dec. 20, 2022.
https://www.supremecourt.gov/DocketPDF/22/22A544/250530/20221220190658873_22A544%20Govt%20opp%20to%20Ariz%20stay%20final%20corrected.pdf
- Reply of applicant Arizona, et al. filed, Dec. 21, 2022.
<https://www.supremecourt.gov/DocketPDF/22/22A544/250553/20221221>

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[%20Emergency%20Stay%20Reply%20File%20Version%20Final%202.pdf](#)

- "Senate Passes \$1.7 Trillion Omnibus Spending Bill Without Title 42 Protections," National Review, Dec. 22, 2022.
<https://www.nationalreview.com/news/senate-passes-1-7-trillion-omnibus-spending-bill-without-title-42-protections/>
- "Thousands Wait in Tent Camps in Mexico for a Chance to Cross the Border," NBC News, Dec. 22, 2022.
<https://www.nbcnews.com/news/latino/thousands-wait-tent-camps-mexico-chance-cross-border-rcna63026>
- "U.S. Court Rejects Maintaining COVID-19 Asylum Restrictions," Associated Press, Dec. 17, 2022.
<https://apnews.com/article/texas-donald-trump-immigration-missouri-am-arillo-e6f9ce07b955bdc962118a798129f319>

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DHS Public Charge Ground of Inadmissibility Final Rule Effective December 23

On December 23, 2022, the Department of Homeland Security's (DHS) Public Charge Ground of Inadmissibility final rule went into effect. The previously announced final rule "provides clarity and consistency for noncitizens on how DHS will administer the public charge ground of inadmissibility. This final rule restores the historical understanding of a 'public charge' that had been in place for decades before the previous administration began to consider supplemental public health benefits such as Medicaid and nutritional assistance as part of the public charge inadmissibility determination," DHS said.

When making a public charge inadmissibility determination under the final rule, DHS said it will consider an applicant's "age; health; family status; assets, resources, and financial status; education and skills"; a sufficient "Affidavit of Support Under Section 213A of the INA (when one is required)"; and prior or current receipt of "Supplemental Security Income (SSI); cash assistance for income maintenance under Temporary Assistance for Needy Families (TANF); State, Tribal, territorial, or local cash benefit programs for income maintenance (often called 'General Assistance'); or long-term institutionalization at government expense."

For public charge inadmissibility determinations, DHS **will not** consider receipt

of noncash benefits (for example, the Supplemental Nutrition Assistance Program, public housing, school lunch programs) other than long-term institutionalization at government expense.

Applicants must file the updated 12/23/22 edition of I-485, Application to Register Permanent Residence or Adjust Status. Earlier versions will be rejected, U.S. Citizenship and Immigration Services (USCIS) said.

Details:

- USCIS alert, Dec. 19, 2022.
<https://www.uscis.gov/newsroom/alerts/dhss-public-charge-final-rule-goes-into-effect-on-dec-23>
- Public Charge Ground of Inadmissibility, DHS Final Rule, 87 Fed. Reg. 55472 (Sept. 9, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-09-09/pdf/2022-18867.pdf>
- USCIS Policy Manual update, Part G—Public Charge Ground of Inadmissibility. <https://www.uscis.gov/policy-manual/volume-8-part-g>
- Updated Form I-485, Application to Register Permanent Residence or Adjust Status (12/23/22 edition). <https://www.uscis.gov/i-485>
- Public Charge Resources, USCIS.
<https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>
- Clarifying the 2022 Public Charge Final Rule (infographic).
https://www.uscis.gov/sites/default/files/document/flyers/PublicChargeFinalRule2022_Infographic_V4_508.pdf

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E-Verify Restores Employers' Ability to Upload Multiple Hiring Sites Simultaneously

E-Verify has restored the ability of employers, employer agents, and corporate administrators to upload multiple hiring sites simultaneously. E-Verify said this feature increases efficiency for companies with multiple hiring sites by providing an alternative to manual entry and is available for all access methods when adding hiring sites.

An account may have an unlimited number of hiring sites, but no more than 1,000 hiring sites may be uploaded at a time. Users can add multiple hiring

sites by uploading a CSV file during initial enrollment or within the company profile post-enrollment. Companies must upload a valid CSV file that follows the requirements listed on the "View CSV Guidelines" page. E-Verify provides a CSV template and a link to the "View CSV Guidelines" page during the bulk upload process.

Questions may be emailed to E-Verify@uscis.dhs.gov.

Details:

- E-Verify notice. <https://bit.ly/3VjhFm4>

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USCIS Provides List of Options for Nonimmigrant Workers Following Termination of Employment

On December 19, 2022, U.S. Citizenship and Immigration Services (USCIS) provided a compilation of options that may be available to nonimmigrant workers seeking to remain in the United States in a period of authorized stay following termination of employment.

The compilation includes details on:

- A discretionary 60-day grace period that allows workers in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, or TN classifications (and their dependents) to be considered as having maintained status following the cessation of employment for up to 60 consecutive calendar days or until the end of the authorized validity period, whichever is shorter.
- Portability to a new employer, allowing workers currently in H-1B status to begin working for a new employer as soon as the employer properly files a new H-1B petition with USCIS, without waiting for the petition to be approved. Also, a worker with an adjustment of status application (Form I-485) that has been pending for at least 180 days with an underlying valid immigrant visa petition (Form I-140) has the ability to transfer the underlying immigrant visa petition to a new offer of employment in the same or similar occupational classification with the same or a new employer (commonly known as "porting").

Other options include change of status, change of status and employer, adjustment of status, period of authorized stay with a "compelling

circumstances" employment authorization document, expedited adjudication criteria, and departure from the United States and seeking readmission in the same or another classification.

Details:

- USCIS alert, Dec. 19, 2022.

<https://www.uscis.gov/newsroom/alerts/options-for-nonimmigrant-workers-following-termination-of-employment>

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USCIS Seeks Comments on EB-5 Regional Center Forms for Investors

U.S. Citizenship and Immigration Services (USCIS) seeks comments until January 23, 2023, on two forms associated with the EB-5 Regional Center (RC) program.

USCIS explained that on March 15, 2022, President Biden signed the EB-5 Reform and Integrity Act of 2022, which immediately repealed the former RC program statute. The law also reauthorized a "substantially reformed" RC program, effective May 14, 2022. USCIS said that although it will continue to provide similar services for the newly reformed RC program as it did under the former RC program, the newly authorized program "has a different legal framework and requirements from the previously authorized program." Consequently, USCIS concluded that Form I-526, Immigrant Petition by Alien Entrepreneur, associated with the EB-5 program, would not gather sufficient information to adjudicate investor petitions under the new program.

Accordingly, USCIS split the former Form I-526, Immigrant Petition by Alien Entrepreneur, into two versions: Form I-526, Immigrant Petition by Standalone Investor, and Form I-526E, Immigrant Petition by Regional Center Investor. USCIS said the two separate forms were intended "to better streamline the adjudication process for Standalone Investors and Regional Center Investors; specifically, Form I-526 will be used by a Standalone Investor and Form I-526E will be used by an investor pooling their investment with one or more qualified immigrants" under the new RC program to petition for status as an immigrant to the United States. USCIS began accepting the new Forms I-526 and I-526E on July 12, 2022. USCIS said it will continue to adjudicate all Forms I-526 filed before March 15, 2022 (the date of enactment of the EB-5 Reform and Integrity Act of 2022), according to the applicable eligibility requirements at

the time the petition was filed.

On June 24, 2022, in *Behring v. Mayorkas*, the U.S. District Court for the Northern District of California preliminarily enjoined USCIS from "treating as deauthorized the previously designated regional centers" including "processing new I-526 petitions from immigrants investing through previously authorized regional centers...just as the agency would do for a newly approved regional center." On September 1, 2022, the U.S. District Court in *Behring* approved a settlement between the parties. Under the terms of the settlement, previously designated RCs did not lose their designations as a result of the EB-5 Reform and Integrity Act of 2022. USCIS said that as it is working to implement the settlement, if it determines changes to the Forms I-526 and I-526E are necessary, it will "pursue such changes through either this form revision process or other appropriate mechanism."

Details:

- USCIS 30-day notice. 87 Fed. Reg. 78990 (Dec. 23, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-12-23/pdf/2022-27973.pdf>
- I-526, Immigrant Petition by Standalone Investor.
<https://www.uscis.gov/i-526>
- I-526E, Immigrant Petition by Regional Center Investor.
<https://www.uscis.gov/i-526e>

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