



IMMIGRATION UPDATE - JANUARY 03, 2023

Posted on January 3, 2023 by Cyrus Mehta

Headlines:

[Supreme Court Extends Temporary Stay of 'Title 42'](#) – The Court plans to consider in late February 2023 whether the 19 states objecting to Title 42 have legal standing to do so.

[Visa Bulletin for January 2023 Reports on Availability in the Employment First Category for China and India, Unavailability of Religious Workers Category](#) – Effective in January, employment first preference final action and application filing dates for China and India are established to hold number use within the maximum allowed under the fiscal year 2023 annual limit.

[TPS for Yemen To Be Extended, Redesignated](#) – The Department of Homeland Security plans to extend and redesignate Yemen for temporary protected status in a Federal Register notice expected to be published on January 3, 2023.

[CDC Announces New COVID-19 Testing Requirement for Air Passengers From China](#) – Effective January 5, 2023, the Centers for Disease Control and Prevention will require a pre-departure negative COVID-19 test, or documentation of recovery within the last 90 days, for air passengers boarding flights to the United States originating from the People's Republic of China and the Special Administrative Regions of Hong Kong and Macau.

[DHS, DOJ Further Delay Effective Date of Asylum Security Bars Rule](#) – The rule would make noncitizens ineligible for asylum if, among other things, they were physically present in a country in which a communicable disease was prevalent or epidemic, and the Secretary of Homeland Security and the Attorney General determined that their physical presence in the United States would cause a risk to public health.

[DOL Publishes Round 4 FAQs on H-2A Application Filing and Processing Under](#)

[Final Rule](#) – Topics include how to file, timing considerations, multiple worksites, National Processing Center processing, amendment requests, and withdrawal requests.

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Supreme Court Extends Temporary Stay of 'Title 42'

On December 19, 2022, Supreme Court Chief Justice John Roberts ordered Title 42, which allows the immediate expulsion of many migrants because of COVID-19 concerns, to temporarily remain in effect to allow the full Supreme Court time to consider the issue. On December 27, 2022, the Supreme Court extended Title 42. The Court plans to consider in late February 2023 whether the 19 states objecting to Title 42's termination have legal standing to do so.

The Court's December 27 opinion noted that its review on certiorari "is limited to the question of intervention. While the underlying merits of the District Court's summary judgment order are pertinent to that analysis, the Court does not grant review of those merits, which have not yet been addressed by the Court of Appeals."

The court's three liberal justices objected, as did Justice Neil Gorsuch, who wrote, "The current border crisis is not a COVID crisis. And courts should not be in the business of perpetuating administrative edicts designed for one emergency only because elected officials have failed to address a different emergency. We are a court of law, not policymakers of last resort."

Karine Jean-Pierre, the White House press secretary, said that although the Biden administration will comply with the Supreme Court's action, "Title 42 is a public health measure, not an immigration enforcement measure, and it should not be extended indefinitely."

Details:

- "Supreme Court Says Trump-Era Border Restriction Will Remain in Effect While Legal Challenges Play Out," CNN, Dec. 27, 2022.
<https://www.cnn.com/2022/12/27/politics/supreme-court-title-42/index.html>
- "Supreme Court Leaves in Place Title 42 Border Policy for Now," Washington Post, Dec. 27, 2022.

<https://www.washingtonpost.com/politics/2022/12/27/title-42-supreme-court-decision/> (subscription required)

- Arizona v. Mayorkas, order issued Dec. 27, 2022.
https://www.supremecourt.gov/opinions/22pdf/22a544_n758.pdf
- Arizona v. Mayorkas, order issued Dec. 19, 2022.
https://www.supremecourt.gov/orders/courtorders/121922zr_g314.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
- 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
- Reply of applicant Arizona, et al. filed, Dec. 21, 2022.
https://www.supremecourt.gov/DocketPDF/22/22A544/250553/20221221084240400_Title%2042%20-%20Emergency%20Stay%20Reply%20File%20Version%20Final%202.pdf

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Visa Bulletin for January 2023 Reports on Availability in the Employment First Category for China and India, Unavailability of Religious Workers Category

The Department of State's (DOS) Visa Bulletin for January includes an update on visa availability in the employment first category for China and India. The bulletin states that it has become necessary to establish employment first preference final action and application filing dates for China and India, effective in January, to hold number use within the maximum allowed under the fiscal year 2023 annual limit. Applicants from China and India are subject to a final action date of 01FEB22 and an application filing date of 01JUN22.

"This situation will be continually monitored, and any necessary adjustments will be made accordingly," the bulletin states.

Details:

- Department of State's Visa Bulletin for January 2023.
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/202>

[3/visa-bulletin-for-january-2023.html](#)

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TPS for Yemen To Be Extended, Redesignated

The Department of Homeland Security (DHS) plans to extend and redesignate Yemen for temporary protected status (TPS) in a Federal Register notice expected to be published on January 3, 2023.

DHS is extending TPS for Yemen for 18 months, beginning on March 4, 2023, through September 3, 2024. Existing Yemen TPS beneficiaries who wish to extend their status and apply for renewal of their work authorization must re-register during the 60-day re-registration period, which begins on the date of publication.

DHS is also redesignating Yemen for TPS, which allows additional Yemeni nationals, and individuals having no nationality who last habitually resided in Yemen, who have been continuously residing in the United States since December 29, 2022, to apply for TPS for the first time and apply for work authorization during the initial registration period, which begins on the date of publication and will remain in effect through September 3, 2024. Initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since March 4, 2023, the effective date of the redesignation.

DHS noted that individuals who have a Yemen TPS application (Form I-821) and/or Application for Employment Authorization (Form I-765) that was still pending as of the date of publication of the notice do not need to file either application again. If USCIS approves an individual's pending Form I-821, the agency will grant the individual TPS through September 3, 2024. Similarly, if USCIS approves a pending TPS-related Form I-765, it will issue the individual a new EAD that will be valid through the same date.

Details:

- Federal Register notice (advance copy). <https://bit.ly/3CeQ12N>

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CDC Announces New COVID-19 Testing Requirement for Air Passengers From China

Effective January 5, 2023, the Centers for Disease Control and Prevention (CDC) will require a pre-departure negative COVID-19 test, or documentation of recovery within the last 90 days, for air passengers boarding flights to the United States originating from the People's Republic of China (PRC) and the Special Administrative Regions of Hong Kong and Macau.

CDC said it is announcing this step "to slow the spread of COVID-19 in the United States during the surge in COVID-19 cases in the PRC given the lack of adequate and transparent epidemiological and viral genomic sequence data being reported from the PRC. These data are critical to monitor the case surge effectively and decrease the chance for entry of a novel variant of concern. CDC will continue to monitor the situation and adjust our approach as necessary."

CDC made the decision following China's announcement that it is dropping quarantine requirements for inbound international arrivals and resuming outbound travel for Chinese citizens. According to reports, a regional health chief in Hong Kong said that almost half of air passengers arriving on December 26, 2022, in Italy's Milan airport from China tested positive for COVID-19. Although some countries in addition to the United States have imposed restrictions, such as Japan, Spain, and Italy, so far others are not changing their entry requirements, such as France and Great Britain, although the latter is reportedly considering the issue. India imposed similar restrictions on travelers from Japan, South Korea, and Thailand, in addition to China.

Details:

- CDC Press Release, Dec. 28, 2022.
<https://www.cdc.gov/media/releases/2022/p1228-COVID-china.html>
- "China Health Alert: Negative COVID-1 Test Requirement for Air Passengers Entering the United States," Dec. 28, 2022.
<https://travel.state.gov/content/travel/en/traveladvisories/ea/China-Negative-COVID-19-Test-Requirement-for-Air-Passengers-Entering-the-United-States.html>
- "Chinese Tourists Are Ready to Travel Abroad Again. Here's Why Some Countries Are Hesitant," CNN, Dec. 30, 2022.
<https://www.cnn.com/travel/article/china-covid-travel-restrictions-intl-hnk/index.html>

- "China to Scrap Quarantine for Inbound Travelers in Major Step Toward Reopening," CNN, Dec. 26, 2022.

<https://www.cnn.com/2022/12/26/business/china-travel-covid-quarantine/index.html>

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DHS, DOJ Further Delay Effective Date of Asylum Security Bars Rule

The Departments of Homeland Security and Justice have further extended until December 31, 2024, the effective date of a final rule that clarifies that the "danger to the security of the United States" standard in the statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and makes certain other changes. The effective date of the final rule, originally published on December 23, 2020, has been extended several times. The rule would make noncitizens ineligible for asylum if, among other things, they were physically present in a country in which a communicable disease was prevalent or epidemic, and the Secretary of Homeland Security and the Attorney General determined that their physical presence in the United States would cause a risk to public health.

Comments may be submitted by February 27, 2023, by following the instructions in the interim final rule published on December 28, 2022.

Details:

- DHS/DOJ Interim Final Rule, 87 Fed. Reg. 79789 (Dec. 28, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-12-28/pdf/2022-28121.pdf>

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DOL Publishes Round 4 FAQs on H-2A Application Filing and Processing Under Final Rule

The Department of Labor's Office of Foreign Labor Certification (OFLC) has issued a set of frequently asked questions (FAQs), "Round 4: H-2A Application Filing and Processing," associated with the publication of the final rule, *"Temporary Agricultural Employment of H-2A Nonimmigrants in the United States."*

Topics include how to file, timing considerations, multiple worksites, National Processing Center processing, amendment requests, and withdrawal requests.

Details:

- "Round 4: H-2A Application Filing and Processing," OFLC FAQ, Dec. 30, 2022.
https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Round%2004_2022%20H-2A%20FAQs_H-2A%20App%20Filing%20and%20Processing.pdf

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