



IMMIGRATION UPDATE - JANUARY 17, 2023

Posted on January 17, 2023 by Cyrus Mehta

Headlines:

DHS Streamlines Deferred Action Process for Immigrant Workers Participating in Labor Enforcement Investigations – The Department of Homeland Security (DHS) announced on January 13, 2023, that noncitizen workers who are victims of or witnesses to a violation of labor rights can now access a streamlined and expedited deferred action request process.

Premium Processing To Expand for EB-1 and EB-2 Form I-140 Petitions and Certain Students and Exchange Visitors – U.S. Citizenship and Immigration Services is implementing the final phase of the premium processing expansion for Form I-140, Immigrant Petition for Alien Workers, under the EB-1 and EB-2 classifications. Also, in March and April, USCIS plans to expand premium processing to certain F-1 students and exchange visitors.

DHS Extends and Redesignates Somalia for TPS for 18 Months –DHS is extending temporary protected status (TPS) for Somalia for an additional 18 months, from March 18, 2023, through September 17, 2024. DHS also redesignated Somalia for TPS, allowing Somali nationals residing in the United States as of January 11, 2023, to apply.

Scheduling System for 'Safe, Orderly and Humane Border Processing' Goes Live –DHS announced that the new scheduling function in the CBP One™ mobile application is now live. Non-U.S. citizens located in Central or Northern Mexico who seek to travel to the United States may use U.S. Customs and Border Protection's app to submit information in advance and schedule an appointment to present themselves at certain southwest border land ports of entry.

Agencies Raise Penalties for Document Fraud and Employer Violations of the

D-1, H-1B, H-2A, and H-2B Visa Programs – As required by the Inflation Adjustment Act, the Departments of Homeland Security and Labor have raised the amount of certain penalties.

Supreme Court Declines to Resurrect Trump-Era Public Charge Rule – On January 10, 2023, the Supreme Court declined to review a case, *Cook County, Illinois v. Mayorkas*, that sought to revive the Trump-era public charge rule.

[DHS Makes Two Corrections to Proposed Fee Rule](#) – DHS corrected two typos in fee amounts in the published version of its proposed fee rule.

Details:

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DHS Streamlines Deferred Action Process for Immigrant Workers Participating in Labor Enforcement Investigations

The Department of Homeland Security (DHS) announced on January 13, 2023, that noncitizen workers who are victims of or witnesses to the violation of labor rights can now access a streamlined and expedited deferred action request process. DHS explained that deferred action "protects noncitizen workers from threats of immigration-related retaliation from the exploitive employers." Effective immediately, DHS said, the process "will improve DHS's longstanding practice of using its discretionary authority to consider labor and employment agency-related requests for deferred action on a case-by-case basis."

A centralized intake process "will allow DHS to efficiently review these time-sensitive requests, provide additional security to eligible workers on a case-by-case basis, and more robustly support the mission of labor agencies," DHS said. Noncitizens can submit such requests to U.S. Citizenship and Immigration Services (USCIS) through a central intake point established to support labor agency investigative and enforcement efforts. In addition to satisfying individual criteria to facilitate case-by-case determinations, requests for deferred action submitted through this centralized process must include a letter from a federal, state, or local labor agency asking DHS to consider exercising its discretion on behalf of workers employed by companies identified by the agency as having labor disputes related to laws that fall under its jurisdiction.

DHS said that for a deferred action request from a noncitizen who is in removal

proceedings or has a final order of removal, upon reviewing the submission for completeness, USCIS will forward it to U.S. Immigration and Customs Enforcement (ICE) to make a final determination on a case-by-case basis. USCIS will consider all other deferred action requests on a case-by-case basis, and will consider all related employment authorization applications, including those related to deferred action requests decided by ICE.

Discretionary grants of deferred action under this process "will typically last for a period of two years, subject to termination at any time," DHS said. Individuals granted deferred action may be eligible for employment authorization, which requires that they demonstrate an economic necessity for employment. They may also be eligible for subsequent grants of deferred action if a labor agency has a continuing investigative or enforcement interest in the matter identified in their original letter supporting DHS's use of prosecutorial discretion, the agency said.

Workers can visit [DHS.gov](https://www.dhs.gov) for additional information in English and Spanish and to submit requests.

Details:

- DHS press release, Jan. 13, 2023. <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>
- "DHS Support of the Enforcement of Labor and Employment Laws," Jan. 13, 2023. <https://www.dhs.gov/enforcement-labor-and-employment-laws>

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Premium Processing To Expand for EB-1 and EB-2 Form I-140 Petitions and Certain Students and Exchange Visitors

U.S. Citizenship and Immigration Services (USCIS) announced on January 12, 2023, that it is implementing the final phase of the premium processing expansion for Form I-140, Immigrant Petition for Alien Workers, under the EB-1 and EB-2 classifications.

Also, in March, USCIS will expand premium processing to certain F-1 students seeking Optional Practical Training (OPT) and F-1 students seeking STEM OPT extensions who have a pending Form I-765, Application for Employment Authorization. In April, USCIS will expand premium processing to F-1 students

seeking OPT and F-1 students seeking STEM OPT extensions who are filing an initial Form I-765.

Petitioners who wish to request premium processing must file Form I-907, Request for Premium Processing Service. Beginning January 30, 2023, USCIS will accept Form I-907 requests for:

- All pending E13 multinational executive and manager petitions and E21 National Interest Waiver (NIW) petitions; and
- All initial E13 multinational executive and manager petitions and E21 NIW petitions.

USCIS said it will announce specific dates for each F-1 student group in February. USCIS anticipates expanding premium processing in May for certain student and exchange visitors with pending Form I-539 applications to extend or change nonimmigrant status, and in June for certain student and exchange visitors who are filing initial Form I-539 applications.

Details:

- USCIS alert, Jan. 12, 2023.
<https://www.uscis.gov/newsroom/alerts/uscis-announces-final-phase-of-premium-processing-expansion-for-eb-1-and-eb-2-form-i-140-petitions>

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DHS Extends and Redesignates Somalia for TPS for 18 Months

The Department of Homeland Security (DHS) announced the extension of temporary protected status (TPS) for Somalia for an additional 18 months, from March 18, 2023, through September 17, 2024. DHS also redesignated Somalia for TPS, allowing Somali nationals residing in the United States as of January 11, 2023, to apply for TPS, so long as they meet all eligibility requirements. The extension and redesignation of Somalia for TPS are "due to ongoing armed conflict and extraordinary and temporary conditions that prevent Somali nationals from safely returning," DHS said.

The extension of TPS for Somalia allows approximately 430 current beneficiaries to retain TPS through September 17, 2024, if they continue to meet TPS eligibility requirements, DHS said. The redesignation of Somalia for TPS allows an estimated 2,200 additional Somali nationals (or individuals having

no nationality who last habitually resided in Somalia) who have been continuously residing in the United States since January 11, 2023, to file initial applications to obtain TPS if they are otherwise eligible.

DHS plans to publish a Federal Register notice shortly that will include additional details.

Details:

- DHS press release, Jan. 12, 2023.
<https://www.dhs.gov/news/2023/01/12/secretary-mayorkas-extends-and-re-designates-somalia-temporary-protected-status-18>

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Scheduling System for 'Safe, Orderly and Humane Border Processing' Goes Live

On January 12, 2023, the Department of Homeland Security (DHS) announced that the new scheduling function in the [CBP One](#)[™] mobile application is now live. Non-U.S. citizens located in Central or Northern Mexico who seek to travel to the United States may use U.S. Customs and Border Protection's app to submit information in advance and schedule an appointment to present themselves at certain southwest border land ports of entry (POEs).

Due to court orders requiring DHS to continue implementing the Centers for Disease Control and Prevention's Title 42 public health order, only noncitizens who can be considered for a humanitarian exception may use CBP One, DHS said. Under this order, CBP is authorized to except individuals on a case-by-case basis, based on the totality of circumstances, including humanitarian interest considerations. Noncitizens using CBP One must attest that they believe they meet certain identified vulnerability criteria and be prepared to substantiate this claim upon presentation at a POE, DHS said.

Noncitizens who seek an exception to Title 42 will be able to use the app to submit certain biographic and biometric information to CBP and schedule an appointment up to 14 days in advance at eight POEs:

- Arizona: Nogales
- Texas: Brownsville, Eagle Pass, Hidalgo, Laredo, and El Paso
- California: Calexico and San Ysidro

Once the Title 42 order eventually lifts, DHS said, individuals will be able to use

the CBP One application for scheduling an appointment to present themselves for inspection and to initiate a protection claim instead of coming directly to a POE to wait.

Details:

- DHS press release, Jan. 12, 2023.
<https://www.dhs.gov/news/2023/01/12/dhs-scheduling-system-safe-orderly-and-humane-border-processing-goes-live-cbp-onetm>

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Agencies Raise Penalties for Document Fraud and Employer Violations of the D-1, H-1B, H-2A, and H-2B Visa Programs

The Departments of Homeland Security (DHS) and Labor (DOL) have raised the amount of certain penalties for inflation, required by the Inflation Adjustment Act. DHS has raised penalties for document fraud, and penalties assessed against employers by U.S. Immigration and Customs Enforcement and U.S. Customs and Border Patrol for certain violations, and DOL has raised penalties for employer violations of the D-1, H-1B, H-2A, and H-2B visa programs.

Details:

- "Civil Monetary Penalty Adjustments for Inflation," DHS, 88 Fed. Reg. 2175 (Jan. 13, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-01-13/pdf/2023-00626.pdf>
- "Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023," DOL, 88 Fed. Reg. 2210 (Jan. 13, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-01-13/pdf/2023-00271.pdf>

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Supreme Court Declines to Resurrect Trump-Era Public Charge Rule

After the Trump administration's 2019 public charge rule was invalidated nationwide following a court battle and the Biden administration's dropping of its defense of the rule, Texas and 13 other states attempted to intervene and bring back the rule through litigation. The Biden administration also issued a new public charge rule, which those states challenged. On January 10, 2023, the Supreme Court declined to review the case, *Cook County, Illinois v. Mayorkas*.

Texas filed a new lawsuit on January 5, 2023, once again challenging invalidation of the 2019 rule and the Biden administration's new rule, so it appears that the legal battles are not over.

Details:

- "Trump-Era Public Charge Lawsuit Comes to an End," Illinois Coalition for Immigrant and Refugee Rights, Jan. 10, 2023.

<https://www.icirr.org/News/Trump-era-public-charge-lawsuit-comes-to-an-end>

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DHS Makes Two Corrections to Proposed Fee Rule

The Department of Homeland Security (DHS) published two corrections to its proposed rule to raise fees for certain immigration and naturalization benefit requests. For Form I-129CW and I-129, Petition for a CNMI Nonimmigrant Worker (with biometric services fee), the proposed fee is \$1,015 (rather than \$1,055). For Form I-765, Application for Employment Authorization – Online (with biometric services), the proposed fee is \$555 (rather than \$650).

DHS explained that the typographical errors were corrected in the advance copy posted for public inspection but that printing was too far along to correct them in the official publication in the Federal Register on January 4, 2023.

Details:

- Correction notice, DHS, 88 Fed. Reg. 1173 (Jan. 9, 2023).

<https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00274.pdf>

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