



IMMIGRATION UPDATE - JANUARY 30, 2023

Posted on January 30, 2023 by Cyrus Mehta

Headlines:

[Initial Registration for FY 2024 H-1B Cap Opens March 1](#) – The initial registration period will run through **noon ET on March 17, 2023**.

[Certain Asylum Applicants Can Now Apply for Work Authorization Online](#) – Applicants for employment authorization under category (c)(8), Pending Asylum and Withholding of Removal Applicants and Applicants for Pending Asylum under the ABC Settlement Agreement, can now file Form I-765, Application for Work Authorization, online.

[Green Card Validity Extended for Conditional Permanent Residents With a Pending I-751 or I-829](#) – U.S. Citizenship and Immigration Services is extending the validity of green cards for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, for 48 months beyond the card's expiration date.

[DHS Announces Measures for Haitians in United States: TPS, Special Student Relief](#) – The Department of Homeland Security announced several measures to provide relief for Haitians in the United States, including temporary protected status and special student relief.

[President Biden Extends and Expands DED Eligibility for Certain Hong Kong Residents](#) – President Biden is extending Deferred Enforced Departure (DED) for an additional period of 24 months for residents of Hong Kong presently residing in the United States who were under a grant of DED until February 5, 2023, and is deferring enforced departure for other Hong Kong residents who arrived in the United States after the initial grant of DED, with several exceptions.

[USCIS Extends COVID-19-Related Flexibilities Through March 23](#) – U.S.

Citizenship and Immigration Services is extending certain COVID-19-related flexibilities through March 23, 2023.

[New Settlement Agreement Helps H-4 and L-2 Dependent Spouses](#) –U.S.

Citizenship and Immigration Services has returned to a pre-Trump administration policy of adjudicating Form I-539, Application to Extend/Change Nonimmigrant Status and Form I-765, Application for Employment Authorization for H-4 and L-2 derivatives, along with the underlying Form I-129, Petition for Nonimmigrant Worker, when these forms are filed concurrently.

Details:

Initial Registration for FY 2024 H-1B Cap Opens March 1

U.S. Citizenship and Immigration Services (USCIS) announced that the initial registration period for the fiscal year (FY) 2024 H-1B cap will open at **noon ET on March 1, 2023**, and run through **noon ET on March 17, 2023**.

Prospective H-1B cap-subject petitioners or their representatives must use a myUSCIS online account to register each beneficiary electronically for the selection process and pay the associated \$10 H-1B registration fee for each registration. Prospective petitioners submitting their own registrations (U.S. employers and U.S. agents, collectively known as "registrants") will use a "registrant" account. Registrants can create new accounts beginning at noon ET on **February 21, 2023**. Representatives may add clients to their accounts at any time, but both representatives and registrants must wait until **March 1** to enter beneficiary information and submit the registration with the \$10 fee, USCIS said. Prospective petitioners or their representatives can submit registrations for multiple beneficiaries in a single online session.

USCIS noted that the U.S. Department of the Treasury has approved a temporary increase in the daily credit card transaction limit from \$24,999.99 to \$39,999.99 per day for the FY 2024 H-1B cap season. "This temporary increase is in response to the volume of previous H-1B registrations that exceeded the daily credit card limit," USCIS explained.

USCIS said it plans to notify account holders by March 31.

For FY 2023, USCIS received 483,927 H-1B registrations and initially selected 127,600 registrations projected as needed to reach the FY 2023 numerical

allocations. For FY 2022, USCIS received 308,613 H-1B registrations and initially selected 87,500 registrations. USCIS conducted a second selection in July 2021 of an additional 27,717 registrations due to low filing volume from the initial selection. USCIS also conducted a third selection in November 2021 of an additional 16,753 registrations. This resulted in a total of 131,970 selected registrations for FY 2022. Many people think the number of initial registrants will be higher this year.

Details:

- USCIS alert, Jan. 27, 2023. <https://rb.gy/tzicqo>
- "H-1B Registration Process," USCIS. <https://rb.gy/yayggp>

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Certain Asylum Applicants Can Now Apply for Work Authorization Online

Applicants for employment authorization under category (c)(8), Pending Asylum and Withholding of Removal Applicants and Applicants for Pending Asylum under the ABC Settlement Agreement, can now file Form I-765, Application for Work Authorization, online.

To apply for an Employment Authorization Document (EAD) based on a pending asylum application under the (c)(8) eligibility category, the applicant may file Form I-765 150 days after filing the asylum application. The filing date is the date U.S. Citizenship and Immigration Services (USCIS) receives a properly filed Form I-589, Application for Asylum and Withholding of Removal. The date can be found on the receipt notice.

To file the Form I-765 online, an applicant must first create a USCIS online account. There is no cost to create an account.

Details:

- USCIS alert, Jan. 23, 2023.
<https://www.uscis.gov/newsroom/alerts/asylum-applicants-can-now-file-form-i-765-online>

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Green Card Validity Extended for Conditional Permanent Residents With a Pending I-751 or I-829

U.S. Citizenship and Immigration Services (USCIS) is extending the validity of Permanent Resident Cards (green cards) for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, for four years beyond the card's expiration date. This change started on January 11, 2023, for Form I-829 and on January 25, 2023, for Form I-751. Previously, these forms were valid for two years.

USCIS said it is making this change "to accommodate current processing times for Form I-751 and Form I-829, which have increased over the past year." USCIS has updated the language on Form I-751 and Form I-829 receipt notices to extend the validity of a green card for 48 months for individuals with a newly filed Form I-751 or Form I-829. The agency said it will issue new receipt notices to eligible conditional permanent residents who previously received notices with an extension shorter than 48 months and whose cases are still pending. These receipt notices can be presented with an expired green card as evidence of continued status while the case remains pending with USCIS, the agency said: "By presenting your updated receipt notice with your expired Green Card, you remain authorized to work and travel for 48 months from the expiration date on the front of your expired Green Card."

Details:

- USCIS alert, Jan. 23, 2023.
<https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-for-conditional-permanent-residents-with-a-pending-form-i-751-or>

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DHS Announces Measures for Haitians in United States: TPS, Special Student Relief

The Department of Homeland Security (DHS) announced several measures to provide relief for Haitians in the United States, including temporary protected status (TPS) and special student relief.

Temporary Protected Status

DHS extended the designation of Haiti for TPS for 18 months, from February 4, 2023, through August 3, 2024. DHS also redesignated Haiti for TPS, allowing additional Haitian nationals (and individuals having no nationality who last resided in Haiti) who have been continuously residing in the United States since November 6, 2022, and who have been continuously physically present in the United States since February 4, 2023, to apply for TPS for the first time during the initial registration period.

DHS released information on how to register or re-register for TPS under Haiti's extension and redesignation. The initial registration period began on January 26, 2023, and runs through August 3, 2024.

New applicants for TPS under the redesignation of Haiti must submit Form I-821, Application for Temporary Protected Status, during the initial registration period. Haitian TPS applicants may file Form I-821 online. When filing a TPS application, applicants can also request work authorization by submitting Form I-765, Application for Employment Authorization, either with their Form I-821 or separately at a later date. Applicants may also submit Form I-765 online.

Special Student Relief

Effective February 4, 2023, through August 3, 2024, DHS is suspending certain regulatory requirements for F-1 nonimmigrant students whose country of citizenship is Haiti, regardless of country of birth (or individuals having no nationality who last habitually resided in Haiti), and who "are experiencing severe economic hardship as a direct result of the current crisis in Haiti." Such students may request employment authorization, work an increased number of hours while school is in session, and reduce their courseloads while continuing to maintain their F-1 nonimmigrant student status. DHS said it will deem an F-1 nonimmigrant student granted employment authorization by means of this notice to be engaged in a "full course of study" for the duration of the work authorization, if the nonimmigrant student satisfies the minimum courseload requirement described in the notice.

Details:

- DHS Haiti TPS notice, 88 Fed. Reg. 5022 (Jan. 26, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-01-26/pdf/2023-01586.pdf>
- DHS news release, Jan. 25, 2023.
<https://www.dhs.gov/news/2023/01/25/dhs-announces-registration-proce>

[ss-temporary-protected-status-haiti](#)

- DHS notice announcing Haiti TPS extension and redesignation, Dec. 5, 2022.

<https://www.dhs.gov/news/2022/12/05/secretary-mayorkas-extends-and-redesignates-temporary-protected-status-haiti-18>

- DHS special student relief notice, 88 Fed. Reg. 5016 (Jan. 26, 2023).

<https://www.govinfo.gov/content/pkg/FR-2023-01-26/pdf/2023-01593.pdf>

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President Biden Extends and Expands DED Eligibility for Certain Hong Kong Residents

The White House released a memorandum on January 26, 2023, announcing that President Biden has determined that there are "compelling foreign policy reasons" to extend Deferred Enforced Departure (DED) for an additional period of 24 months for residents of Hong Kong presently residing in the United States who were under a grant of DED until February 5, 2023, and to defer enforced departure for other Hong Kong residents who arrived in the United States after the initial grant of DED, with several exceptions.

Exceptions include, among others, those who returned to Hong Kong or the People's Republic of China, or who have not continuously resided in the United States, after the date of the memorandum.

Details:

- White House memorandum, Jan. 26, 2023. <https://rb.gy/kr9wut>

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USCIS Extends COVID-19-Related Flexibilities Through March 23

U.S. Citizenship and Immigration Services (USCIS) is extending certain COVID-19-related flexibilities through March 23, 2023. Under these flexibilities, USCIS considers a response received within 60 calendar days after the due date for the following requests or notices before taking any action, if the request or notice was issued between March 1, 2020, and March 23, 2023:

- Requests for Evidence
- Continuations to Request Evidence (N-14)

- Notices of Intent to Deny
- Notices of Intent to Revoke
- Notices of Intent to Rescind
- Notices of Intent to Terminate regional centers
- Notices of Intent to Withdraw Temporary Protected Status
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant

In addition, USCIS said it will consider Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if:

- The form was filed up to 90 calendar days from the issuance of a decision USCIS made; and
- USCIS made that decision between November 1, 2021, and March 23, 2023, inclusive.

USCIS said it "anticipates that, barring changes presented by the pandemic, this will be the final extension of these accommodations, and requesters must comply with the response requirements set forth in any request or notice dated after March 23, 2023."

The reproduced signature flexibility announced in March 2020 became permanent policy on July 25, 2022.

Details:

- USCIS alert, Jan. 24, 2023.
<https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities-1>

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New Settlement Agreement Helps H-4 and L-2 Dependent Spouses

The Department of Homeland Security (DHS) reached a settlement agreement in *Edakunni v. Mayorkas* that is good news for H-4 and L-2 dependent spouses. Effective January 25, 2023, U.S. Citizenship and Immigration Services (USCIS) has returned to a pre-Trump administration policy of adjudicating Form I-539, Application to Extend/Change Nonimmigrant Status and Form I-765, Application for Employment Authorization for H-4 and L-2 derivatives, along

with the underlying Form I-129, Petition for Nonimmigrant Worker, when these forms are filed concurrently.

This applies in cases filed using standard or premium processing. If these forms are filed separately, USCIS will not bundle the adjudication of the forms.

Details:

- *Edakunni v. Mayorkas* settlement agreement, https://nfap.com/wp-content/uploads/2023/01/Fully-Executed-Edakunni-SA_Redacted.pdf

"USCIS Settles Lawsuit That Should Help H-1B and L-1 Visa Spouses," Forbes, Jan. 21, 2023.

<https://www.forbes.com/sites/stuartanderson/2023/01/21/uscis-settles-lawsuit-that-should-help-h-1b-and-l-1-visa-spouses/?sh=75dfd209216a>