



IMMIGRATION UPDATE - FEBRUARY 06, 2023

Posted on February 6, 2023 by Cyrus Mehta

Headlines:

[USCIS Reaches Cap for H-2B Additional Returning Worker Visas for First Half of FY 2023](#) – U.S. Citizenship and Immigration Services has received enough petitions to reach the cap for the additional 18,216 H-2B visas made available for returning workers for the first half of fiscal year 2023 with start dates on or before March 31, 2023.

[Green Cards and Employment Authorization Documents Redesigned](#) – U.S. Citizenship and Immigration Services has begun issuing newly designed permanent resident cards (green cards) and employment authorization documents. Unless otherwise noted, current cards remain valid until their expiration dates.

[USCIS Clarifies Physical Presence Guidance for Asylees and Refugees Applying for Adjustment of Status](#) – U.S. Citizenship and Immigration Services has clarified that an asylee or refugee must have been physically present in the United States for one year when USCIS adjudicates the Form I-485, Application to Register Permanent Residence or Adjust Status, rather than when the adjustment of status application is filed.

[DOJ Raises Penalties Against Employers for Immigration-Related Violations](#) – Penalty ranges have been increased for the unlawful employment of immigrants, certain immigration-related paperwork violations, and unfair employment practices.

[CBP Proposes Additional Passenger Travel Document Requirements for Air Carriers](#) – U.S. Customs and Border Protection (CBP) proposes to amend its regulations to incorporate additional commercial air carrier requirements that would enable CBP to determine, before an aircraft's departure from the United

States or from a foreign port or place, whether each passenger is traveling with valid, authentic travel documents before the passenger boards the aircraft.

[ABIL Global: France](#) – There is a new draft immigration bill under review. The remuneration thresholds have been updated after an increase in the minimum wage. ETIAS is provisionally targeted to deploy in November 2023. Management of the employer tax has been transferred.

Firm in the News

Details:

[Back to Top](#)

USCIS Reaches Cap for H-2B Additional Returning Worker Visas for First Half of FY 2023

U.S. Citizenship and Immigration Services (USCIS) announced that it has received enough petitions to reach the cap for the additional 18,216 H-2B visas made available for returning workers for the first half of fiscal year (FY) 2023 with start dates on or before March 31, 2023, under a recently announced H-2B supplemental cap temporary final rule. The agency continues to accept petitions for H-2B nonimmigrant workers for the additional 20,000 visas allotted for nationals of Haiti, El Salvador, Guatemala, and Honduras.

USCIS said it recently began accepting H-2B petitions under the December 15, 2022, temporary final rule that increased the cap by up to 64,716 additional H-2B nonimmigrant visas for FY 2023. Of the 64,716 additional visas, 44,716 were available only for returning workers. The remaining 20,000 visas are set aside for nationals of Haiti, El Salvador, Guatemala, and Honduras, who are exempt from the returning worker requirement.

Petitioners whose workers were not accepted for the 18,216 returning-worker allotment are encouraged to file under the Haiti, El Salvador, Guatemala, and Honduras allotment while visas remain available, USCIS said. As of January 26, 2023, USCIS had received petitions requesting 4,260 workers under the 20,000 visas set aside for those nationals.

USCIS said it will also continue to accept H-2B petitions for those who are exempt from the congressionally mandated cap. This includes petitions for:

- Current H-2B workers in the United States petitioning to extend their stay

and, if applicable, change the terms of their employment or change their employers;

- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of Northern Mariana Islands and/or Guam (until December 31, 2029).

Details:

- "Cap Reached for Additional Returning Worker H-2B Visas for the First Half of FY 2023," USCIS, Jan. 31, 2023. <https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-first-half-of-fy-2023>
- "FY 2024 H-1B Cap Initial Registration Opens on March 1, USCIS, Jan. 27, 2023. <https://rb.gy/tzicqo>
- "H-1B Registration Process," USCIS. <https://rb.gy/yayggp>
- "DHS and DOL Announce Availability of Additional H-2B Visas for Fiscal Year 2023," Dec. 12, 2022. <https://www.uscis.gov/newsroom/news-releases/dhs-and-dol-announce-a-availability-of-additional-h-2b-visas-for-fiscal-year-2023>

[Back to Top](#)

Green Cards and Employment Authorization Documents Redesigned

U.S. Citizenship and Immigration Services (USCIS) announced on January 30, 2023, that it has begun issuing newly designed permanent resident cards (green cards) and employment authorization documents (EADs). Current cards remain valid until their expiration dates (unless otherwise noted, such as through an automatic extension of a green card or EAD as indicated on a Form I-797, Notice of Action, or in a Federal Register notice).

Security-related changes include "improved detailed artwork; tactile printing that is better integrated with the artwork; enhanced optically variable ink; highly secure holographic images on the front and back of the cards; a layer-reveal feature with a partial window on the back photo box; and data fields displayed in different places than on previous versions," USCIS said.

USCIS noted that some green cards and EADs issued after January 30, 2023, may still display the existing design format because USCIS will continue using

existing cardstock until current supplies are depleted. Both versions of the cards are acceptable for Form I-9, Employment Eligibility Verification; E-Verify; and Systematic Alien Verification for Entitlements (SAVE), USCIS said. Some older green cards do not have an expiration date. "These older Green Cards without an expiration date generally remain valid; however, USCIS encourages applicants with these older cards to consider applying for a replacement card to prevent fraud or tampering should the card ever get lost or stolen," the agency said.

Details:

- "USCIS Redesigns Green Card and Employment Authorization Document," Jan. 30, 2023.

<https://www.uscis.gov/newsroom/news-releases/uscis-redesigns-green-card-and-employment-authorization-document>

[Back to Top](#)

USCIS Clarifies Physical Presence Guidance for Asylees and Refugees Applying for Adjustment of Status

U.S. Citizenship and Immigration Services (USCIS) has clarified that an asylee or refugee must have been physically present in the United States for one year when USCIS adjudicates the Form I-485, Application to Register Permanent Residence or Adjust Status, rather than when the adjustment of status application is filed. This applies to all Form I-485 and Form N-400, Application for Naturalization, applications that were pending on February 2, 2023, and those filed on or after that date.

The guidance update also clarifies that asylee and refugee adjustment of status applicants previously admitted in J-1 or J-2 nonimmigrant status and otherwise subject to the two-year foreign residence requirement under Immigration and Nationality Act (INA) § 212(e) do not need to meet that two-year requirement (or obtain a waiver) to adjust their status under INA § 209.

Details:

- "USCIS Clarifies Physical Presence Guidance for Asylees and Refugees Applying for Adjustment of Status," Feb. 2, 2023.

<https://www.uscis.gov/newsroom/alerts/uscis-clarifies-physical-presence-guidance-for-asylees-and-refugees-applying-for-adjustment-of>

[Back to Top](#)

DOJ Raises Penalties Against Employers for Immigration-Related Violations

The Department of Justice (DOJ) issued a final rule adjusting for inflation several immigration-related civil monetary penalties against employers assessed or enforced by DOJ components. Penalty ranges have been increased for the unlawful employment of immigrants, certain immigration-related paperwork violations, and unfair employment practices.

Details:

- "Civil Monetary Penalties Inflation Adjustments for 2023," DOJ Final Rule, 88 Fed. Reg. 5776 (Jan. 30, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-01-30/pdf/2023-01704.pdf>

[Back to Top](#)

CBP Proposes Additional Passenger Travel Document Requirements for Air Carriers

U.S. Customs and Border Protection (CBP) proposes to amend its regulations to incorporate additional commercial air carrier requirements that would enable CBP to determine, before an aircraft's departure from the United States or from a foreign port or place, whether each passenger is traveling with valid, authentic travel documents before the passenger boards the aircraft. The proposed regulations would also require commercial air carriers to transmit additional data elements through CBP's Advance Passenger Information System (APIS) for all commercial aircraft passengers arriving, or intending to arrive, in the United States, "to support border operations and national security and safety."

Details:

- CBP proposed rule, 88 Fed. Reg. 7016 (Feb. 2, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-02-02/pdf/2023-02139.pdf>

[Back to Top](#)

ABIL Global: France

There is a new draft immigration bill under review. The remuneration thresholds

have been updated after an increase in the minimum wage. ETIAS is provisionally targeted to deploy in November 2023. Management of the employer tax has been transferred.

Immigration Bill

A draft immigration bill was submitted to the French Council of State on December 20, 2022, and is under review. It will be presented to the Council of Ministers before being examined by the Senate and then by the National Assembly, in first reading. This will be the thirtieth immigration law since 1980.

Among the measures that directly concern professional immigration are:

- The creation of an "occupations in shortage" residence permit for sectors lacking sufficient numbers of workers. This permit would be available to any foreigner in illegal status "who has carried out a salaried professional activity appearing in the list of occupations in shortage for at least eight months out of the last twenty-four months and who has lived in France for at least three years."
- The creation of a "Talent—medical and pharmacy professions" status, which would apply to doctors, midwives, dental surgeons, and pharmacists.
- The merger of the Talent Passport—Business Creation, innovative economic project, and economic investment permits into a single status, "Talent project bearer."

Update of Salary Thresholds for Certain Statuses After Increase in Minimum Wage

Following the increase in the minimum wage on January 1, 2023, the minimum salary threshold to be eligible for "qualified employee Talent Passport" status is now 3,418.56 euros gross per month, and that of the "Employee on assignment Talent Passport" increases to 3,076.71 euros. The threshold of the European Blue Card Talent Passport is unchanged, at 4,486.37 euros gross per month.

ETIAS (European Travel Information and Authorization System)

The European Commission announced the deployment of ETIAS for November 2023, but this is only a provisional date.

Travelers not subject to a Schengen visa requirement must request prior authorization online before traveling to countries in the Schengen area. This

system is comparable to the Electronic System for Travel Authorization in the United States.

Transfer of Employer Tax Management from OFII to DGFIP

An employer tax is due when a third-country national worker enters the French labor market, whether it is an initial entry or a change of status. For contracts or secondments of more than 12 months, it is 55% of the amount of the gross monthly salary of the employee, within the limit of 2.5 times SMIC, i.e., 2,350 euros at most.

As of January 1, 2023, the General Directorate of Public Finances (DGFIP) is responsible for managing and collecting the tax payable by employers of foreign labor provided for in Article L. 436-10 of the CESEDA and managed by the French Office for Immigration and Integration (OFII) until that date.

This tax will now be declared and paid annually and in arrears. Thus, the tax will be due for hires made during a year, and will be declared and paid in support of the Value-Added Tax (VAT) return the following year. The first steps for the tax due for 2023 will take place in February 2024.

To help companies calculate the amount of employer tax due to report on the VAT form, a calculation aid sheet will be available on the [DGFIP website](#).

[Back to Top](#)

Firm in the News

Cyrus Mehta served as the Chair of the Practising Law Institute's Basic Immigration Law 2023 program on February 2, 2023. This program covered business, family, naturalization, and related areas and featured prominent immigration practitioners and government officials.

<https://www.pli.edu/programs/B/basic-immigration-law>

Mr. Mehta served as the Chair of the Practising Law Institute's program, "Asylum, Special Immigrant Juvenile Status, Crime Victim, and Other Immigration Relief," on February 3, 2023.

<https://www.pli.edu/programs/A/asylum-special-immigrant-juvenile-status-crime-victim-and-other-immigration-relief>

Mr. Mehta was quoted by the *Times of India* in "In U.S. Layoffs, More Poignant Stories and Helplines Emerge," on layoffs of H-1B workers in the United States.

<https://timesofindia.indiatimes.com/business/india-business/in-us-layoffs-more>

[-poignant-stories-and-helplines-emerge/articleshow/97429374.cms](#)

David Isaacson was an invited speaker at the Practising Law Institute's program, "Asylum, Special Immigrant Juvenile Status, Crime Victim, and Other Immigration Relief," on February 3, 2023 where he spoke on adjustment of status relief in removal proceedings, waivers and prosecutorial discretion.

[Back to Top](#)