



IMMIGRATION UPDATE - FEBRUARY 13, 2023

Posted on February 13, 2023 by Cyrus Mehta

Headlines:

[State Dept. Plans Pilot to Allow Visa Renewals in United States for H and L Workers](#) – The Department of State plans to launch a pilot program later this year to allow visa renewals in the United States for H and L nonimmigrant workers.

[41K+ Individuals Denied Visas Under Trump-Era Travel Ban Can Reapply Without Paying a Fee, Court Says](#) – A district court has ordered the U.S. government to provide relief to approximately 41,000 nonimmigrant visa applicants who were denied a waiver during the Trump administration's travel ban under Presidential Proclamation 9645 and who have not subsequently been granted a visa.

[Biden Administration Expects Title 42 Will End in May](#) – The Biden administration told the Supreme Court that "bsent other relevant developments, the end of the public health emergency will (among other consequences) terminate the Title 42 orders and moot this case." The Department of Health and Human Services is planning for the expiration of the PHE for COVID-19 "at the end of the day on May 11, 2023."

[SAVE To Enable New Initial Verification Response](#) – Systematic Alien Verification for Entitlements (SAVE) plans to enable a new initial verification response, "Unable to Create Case," on February 20, 2023. SAVE will provide this response when a user tries to submit a duplicate case via a web browser.

[ETA Updates Allowable Charges and Reimbursements for H-2A and H-2B Workers](#) – The Department of Labor's Employment and Training Administration has announced the annual updated dollar amount per day that H-2A employers may charge certain workers for providing meals, and the maximum and

minimum rate per day at which H-2A and H-2B workers must be reimbursed for travel-related subsistence expenses.

[USCIS Issues Documentation Reminder for Permanent Residence/Adjustment Applications](#) – U.S. Citizenship and Immigration Services issued a reminder to applicants to file all required initial evidence and supporting documentation listed under the Checklist of Required Initial Evidence heading when they file Form I-485, Application to Register Permanent Residence or Adjust Status.

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State Dept. Plans Pilot to Allow Visa Renewals in United States for H and L Workers

According to reports, the Department of State (DOS) plans to launch a pilot program later this year to allow visa renewals in the United States for H and L nonimmigrant workers who currently must leave the country to renew their visas at consular offices abroad. The program could expand eventually. Practitioners say such a policy, which was in place until 2004, would help to relieve backlogs and lengthy wait times abroad, and reduce the burden on consular offices and visa holders. The program is expected to benefit tens of thousands of foreign tech professionals in the United States on H-1B visas, among others.

The timeframe for the pilot program remains unclear. It appears that new regulations would not be required, but a new consular division in Washington, DC, would be needed. "That's not a small endeavor," said Julie Stuftt, Deputy Assistant Secretary for Visa Services in the Bureau of Consular Affairs.

Details:

- "State Department Plans Pilot for Domestic Visa Renewal," Bloomberg Law, Feb. 9, 2023.
<https://news.bloomberglaw.com/daily-labor-report/state-department-plan-s-pilot-for-domestic-visa-renewal-this-year>
- "Techies May Soon Be Able To Get Their Renewed H-1B Visas Stamped While Still in the United States," Economic Times, Feb. 11, 2023.
<https://economictimes.indiatimes.com/nri/migrate/techies-may-soon-be-able-to-get-their-h-1b-visas-renewed-while-still-in-the-united->

states/articleshow/97791419.cms

- "U.S. Planning to Resume 'Domestic Visa Revalidation' on Pilot Basis to Benefit H-1B Visa Holders," Outlook India, Feb. 11, 2023.
<https://www.outlookindia.com/business/us-planning-to-resume-domestic-visa-revalidation-on-pilot-basis-to-benefit-h-1b-visa-holders-news-261059>

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41K+ Individuals Denied Visas Under Trump-Era Travel Ban Can Reapply Without Paying a Fee, Court Says

A district court has ordered the U.S. government to provide relief to approximately 41,000 nonimmigrant visa applicants who were denied a waiver during the Trump administration's travel ban under Presidential Proclamation 9645 and who have not subsequently been granted a visa.

The court said that the government will notify these 41,000+ individuals directly through the Consular Electronic Application Center and indirectly through the Department of State's website, and will advise them that they may reapply for a nonimmigrant visa without paying a second fee.

The government may set a reasonable time limit for them to reapply, the court said. No refunds will be provided to any individuals who may have already reapplied and paid a second fee.

The government will file by February 17, 2023: (1) a proposed schedule for providing notice; (2) proposed language for the notice; and (3) whether updated materials will be required, and if so, the relevant statutory or regulatory citation for any such materials.

The cases, filed in the U.S. District Court for the Northern District of California, include *Emami v. Nielsen* (case no. 3:18-cv-01587) and *Pars Equality Center v. Pompeo* (case no. 3:18-cv-07818).

Details:

- "Over 41K Visa Seekers Denied By Travel Ban Can Try Again," Law360, Feb. 10, 2023.
<https://www.law360.com/articles/1575187/over-41k-visa-seekers-denied-by-travel-ban-can-try-again> (registration required)
- *Emami v. Nielsen*.

<https://www.courtlistener.com/docket/6533642/emami-v-nielsen/>

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Biden Administration Expects Title 42 Will End in May

In a recent filing with the Supreme Court in *Arizona v. Mayorkas*, the Biden administration told the Court that "bsent other relevant developments, the end of the public health emergency will (among other consequences) terminate the Title 42 orders and moot this case." The Department of Health and Human Services (HHS) is planning for the expiration of the PHE for COVID-19 "at the end of the day on May 11, 2023."

A "Statement of Administration Policy" from the Executive Office of the President said that "the end of the public health emergency will end the Title 42 policy at the border. While the Administration has attempted to terminate the Title 42 policy and continues to support an orderly lifting of those restrictions, Title 42 remains in place because of orders issued by the Supreme Court and a district court in Louisiana." The statement argued against ending the PHE earlier and against proposed legislation, such as H.R. 382, aimed at lifting Title 42 immediately. "The number of migrants crossing the border has been cut in half, approximately, since the Administration put in place a plan in early January to deter irregular migration from Venezuela, Cuba, Nicaragua, and Haiti. The Administration supports an orderly, predictable wind-down of Title 42, with sufficient time to put alternative policies in place. But if H.R. 382 becomes law and the Title 42 restrictions end precipitously, Congress will effectively be requiring the Administration to allow thousands of migrants per day into the country immediately without the necessary policies in place," the statement noted.

Details:

- Brief for the Federal Respondents, *Arizona v. Mayorkas*, Feb. 2023.
https://www.supremecourt.gov/DocketPDF/22/22-592/254246/20230207174850185_22-592bsUnitedStates.pdf
- Fact Sheet: COVID-19 Public Health Emergency Transition Roadmap," HHS, Feb. 9, 2023.
<https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html>
- Statement of Administration Policy, Jan. 30, 2023.

<https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>

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SAVE To Enable New Initial Verification Response

Systematic Alien Verification for Entitlements (SAVE) plans to enable a new initial verification response, "Unable to Create Case," on February 20, 2023. SAVE will provide this response when a user tries to submit a duplicate case via a web browser.

Instead of creating a duplicate case, the Unable to Create Case response will provide the number for the original case. The user can then use the Case Search function to locate and track the original case. As noted above, SAVE said this implementation applies to the web browser access method. For Web Services (system-to-system connection) agencies, SAVE is continuing to implement a Duplicate Case error code.

SAVE said a case is considered duplicate only if the original case is still open and the following data elements are identical to those in the original case:

- User submitting the case
- Applicant's name, date of birth, and immigration enumerator
- Benefit(s) for which the case is submitted
- Any additional information requests (for example, grant date)

Details:

- SAVE Verification Process.
<https://www.uscis.gov/save/about-save/save-verification-process>

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ETA Updates Allowable Charges and Reimbursements for H-2A and H-2B Workers

The Department of Labor's Employment and Training Administration has announced the annual updated dollar amount per day (\$15.46) that H-2A employers may charge workers (other than workers in herding or production of livestock on the range occupations) for providing meals, and the maximum (\$59, with documentation of actual expenses) and minimum (\$15.46) rate per day at which H-2A and H-2B workers must be reimbursed for travel-related

subsistence expenses.

The notice includes a reminder of the continuing obligation of H-2A and H-2B employers to pay certain lodging and travel-related expenses that workers incur while traveling to and from H-2A and H-2B employment.

Details:

- ETA notice, 88 Fed. Reg. 8478 (Feb. 9, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-02-09/pdf/2023-02755.pdf>
- Meal Charges and Travel Subsistence, ETA, Feb. 9, 2023.
<https://www.dol.gov/agencies/eta/foreign-labor/wages/meals-travel-subsistence>

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USCIS Issues Documentation Reminder for Permanent Residence/Adjustment Applications

U.S. Citizenship and Immigration Services (USCIS) issued a reminder to applicants on February 10, 2023, to file all required initial evidence and supporting documentation listed under the Checklist of Required Initial Evidence heading when they file Form I-485, Application to Register Permanent Residence or Adjust Status. "Submitting all required initial evidence and supporting documentation at the same time you file Form I-485 may eliminate the need for us to issue a Request for Evidence (RFE) to obtain additional evidence and documentation. This may also help avoid adjudication delays if we decide that you do not need to be interviewed," USCIS said.

In particular, USCIS emphasized submitting Form I-693, Report of Medical Examination and Vaccination Record, when filing the Form I-485. "We generally consider a completed Form I-693 to remain valid for two years after the date the civil surgeon signed Form I-693. Additionally, from Dec. 9, 2021 until March 31, 2023, we are temporarily waiving the requirement that the civil surgeon's signature be dated no more than 60 days before you file your Form I-485," the agency said.

USCIS published a new edition of Form I-485 (edition date 12/23/22) on December 23, 2022. Earlier versions will be rejected.

Details:

- USCIS alert, Feb. 10, 2023.
<https://www.uscis.gov/newsroom/alerts/reminder-to-submit-all-required-initial-evidence-and-supporting-documentation-including-form-i-693>
- Checklist of Required Initial Evidence for Form I-485.
<https://www.uscis.gov/forms/filing-guidance/checklist-of-required-initial-evidence-for-form-i-485-for-informational-purposes-only>

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