



## IMMIGRATION UPDATE - FEBRUARY 22, 2023

*Posted on February 22, 2023 by Cyrus Mehta*

### Headlines:

#### [March Visa Bulletin Includes Updates on Visa Availability in Coming Months](#) –

The Department of State's Visa Bulletin for March 2023 includes updates on visa availability in various categories, including possible retrogressions in the coming months.

#### [E-Verify Recommends Timeframes to Resolve Certain Social Security](#)

[Mismatches; Deadline is September 29, 2023](#) – E-Verify recommends that employees with E-Verify Social Security Administration (SSA) Tentative Nonconfirmation mismatch cases falling within certain timeframes to visit their local SSA offices within preferred date ranges, and that all affected employees must visit SSA to resolve their mismatch by September 29, 2023.

#### [Ninth Circuit Agrees to Rehear Temporary Protected Status Case](#) –

The U.S. Court of Appeals for the Ninth Circuit has agreed to rehear a case, *Ramos v. Mayorkas*, filed by temporary protected status (TPS) recipients and their children, thus granting at least a temporary reprieve to an estimated 300,000 affected TPS recipients.

#### [Fourth Circuit Affirms Denial of Employer's Petition for Multinational](#)

[Executive/Manager](#) – The court noted that to establish whether an employee works or has worked in a managerial or executive role, the sponsoring employer must submit a detailed list of the job-related tasks the putative beneficiary performs or has performed; general or vague descriptions are insufficient.

#### [United States, Mexico Sign MOU on Temporary Foreign Workers](#) –

The United States and Mexico have signed a memorandum of understanding "to strengthen protections for workers participating in temporary foreign worker

programs," the Department of Labor reported.

[Chief Administrative Hearing Officer Requests Amicus Briefs on Immigration-Related Document Fraud](#) – The Justice Department has invited interested members of the public to file amicus curiae briefs on the question of whether the knowing use of a forged, counterfeit, altered, or falsely made document to obtain employment and complete the Form I-9 employment eligibility verification form constitutes a "continuing violation" for the duration of employment.

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### **Details:**

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## **March Visa Bulletin Includes Updates on Visa Availability in Coming Months**

The Department of State's Visa Bulletin for March 2023 includes updates on visa availability in various categories, including possible retrogressions in the coming months:

- Visa availability in the EB-2 preference category for all countries (including China and India): Higher than expected number use, mostly due to continued new filings by applicants from all countries with priority dates earlier than the established final action dates, will necessitate corrective action in the coming months to hold number use within the maximum allowed under the fiscal year 2023 annual limit.
- Visa availability in the EB-3 preference category: Increased demand in the Employment Third category may necessitate the establishment of a worldwide final action date (including Mexico and Philippines) in the coming months.
- Further retrogression in the EB-4 preference category: Number use and demand in this category have continued to increase, which necessitates further retrogression of final action dates and application filing dates.
- Retrogression of the EB-5 preference category final action date for India: For March, the final action date for the EB-5 Unreserved category for India is set at 01JUN18.

The bulletin also notes that the National Visa Center has provided [totals of applicants](#) registered in the various numerically limited categories for

processing at overseas posts.

#### Details:

- March 2023 Visa Bulletin, Department of State.  
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-march-2023.html>

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### **E-Verify Recommends Timeframes to Resolve Certain Social Security Mismatches; Deadline is September 29, 2023**

E-Verify notified employers on February 15, 2023, that it recommends that employees with E-Verify Social Security Administration (SSA) Tentative Nonconfirmation mismatch cases falling within certain timeframes to visit their local SSA offices within preferred date ranges:

E-Verify said these timeframes are "recommended," and that all affected employees must visit SSA to resolve their mismatch by September 29, 2023, or their cases will receive a Final Nonconfirmation.

#### Details:

- "Social Security Administration Resumes E-Verify Operations,"  
<https://www.e-verify.gov/social-security-administration-resumes-e-verify-operations>

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### **Ninth Circuit Agrees to Rehear Temporary Protected Status Case**

The U.S. Court of Appeals for the Ninth Circuit has agreed to rehear a case, *Ramos v. Mayorkas*, filed by temporary protected status (TPS) recipients and their children, thus granting at least a temporary reprieve to an estimated 300,000 affected TPS recipients.

A statement by the American Civil Liberties Union of Southern California (ACLU SoCal) explained that beneficiaries of TPS and their U.S. citizen children brought the suit in 2018 after former President Trump revoked TPS for individuals from El Salvador, Haiti, Nicaragua, and Sudan, and later for Nepal and Honduras. Although the Biden administration has since redesignated TPS for Haiti and

Sudan, the administration has not extended the same protections for the other four countries, ACLU SoCal noted.

#### Details:

- "Hundreds of Thousands of TPS Holders Continue to be Protected," ACLU SoCal press release, Feb. 10, 2023.  
<https://www.aclusocal.org/en/press-releases/statements-civil-rights-group-s-and-tps-holders-ninth-circuit-decision-rehear-case>
- *Ramos v. Mayorkas*, order filed Feb. 10, 2023.  
[https://www.aclusocal.org/sites/default/files/2023-02-10\\_9th\\_cir\\_en\\_banc.pdf](https://www.aclusocal.org/sites/default/files/2023-02-10_9th_cir_en_banc.pdf)

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### **Fourth Circuit Affirms Denial of Employer's Petition for Multinational Executive/Manager**

Elizur International Inc., a company that produces ornamental glass products, filed an employment-based green card petition in 2018 seeking to permanently employ Chuncheng Ren, a Chinese citizen, in the United States as a multinational executive or manager. U.S. Citizenship and Immigration Services (USCIS) denied Elizur's petition. Rather than file an administrative appeal, Elizur and Mr. Ren sued in federal court and lost. On February 14, 2023, the U.S. Court of Appeals for the Fourth Circuit affirmed the denial.

The court noted that to establish whether an employee works or has worked in a managerial or executive role, the petitioner (sponsoring employer) must submit a detailed list of the job-related tasks the individual performs or has performed; general or vague descriptions are insufficient. But a thorough job description is not enough, the court said. The description must also reveal that the beneficiary's duties have been or will be *primarily* managerial or executive in nature. Mere assertions, as in the case here, that the beneficiary "provided managerial and executive leadership to the marketing/product development functions" and "implemented new business acquisition initiatives," for example, are insufficient. The court noted that the company's submission was "filled with fluffy descriptions devoid of any real substance. Indeed, it largely reads more like a collection of one-liners useful for resume drafting than a meaningful description of the duties that Ren actually performed."

The court also found that the agency's request for supplemental evidence about the employee's "specific daily duties" and the "percentage of time spent on each duty" was appropriate. "A petitioner's failure to furnish evidence of specific day-to-day duties forms a common component of both agency denials of Form I-140 petitions and courts' review of those denials," the court noted.

This case provides a reminder to employers that the benefits of an I-140 permanent residence petition for a multinational executive or manager are distinct from the benefits of an L-1A temporary nonimmigrant visa for a multinational executive or manager. This includes the fact that for the benefits of I-140 permanent residence, an employer must establish that the beneficiary also held a manager or executive-level position abroad, whereas this is not a criterion for the L-1A status/visa.

#### Details:

- *Ren v. USCIS*,  
<https://cases.justia.com/federal/appellate-courts/ca4/21-1661/21-1661-2023-02-14.pdf?ts=1676404915>

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### **United States, Mexico Sign MOU on Temporary Foreign Workers**

The United States and Mexico have signed a memorandum of understanding (MOU) "to strengthen protections for workers participating in temporary foreign worker programs," the Department of Labor reported.

The MOU includes a variety of measures, including promoting fair recruitment and compliance with laws, rules, and regulations; prohibiting discrimination; fostering and enhancing accountability, labor rights, and transparency, including through improving workers' awareness about H-2 programs' structures and application processes and their rights; jointly planning and executing pre-training and post-arrival training on labor and employment antidiscrimination laws and regulations for officials and consular officers; and exploring forms of collaboration for Mexico's new platform on labor mobility.

The MOU calls for quarterly meetings of the relevant government agencies "to monitor the enforcement of employment laws, rules, and regulations that apply to temporary foreign workers, including through oversight and enforcement of labor laws, to hold employers and their agents accountable for violations and

through efforts to connect workers who experienced harm or exploitation to assistance and care in the United States and in Mexico."

#### Details:

- S., Mexico Sign Memorandum to Protect Temporary Foreign Workers," Dept. of Labor news release, Jan. 18, 2023.  
<https://www.dol.gov/newsroom/releases/ilab/ilab20230118>
- S.-Mexico MOU.  
<https://www.dol.gov/sites/dolgov/files/ILAB/MoU-on-Labor-Mobility-and-Protection-English.pdf>

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### **Chief Administrative Hearing Officer Requests Amicus Briefs on Immigration-Related Document Fraud**

The Department of Justice's Chief Administrative Hearing Officer (CAHO) for immigration-related cases has invited interested members of the public to file amicus curiae briefs on this question:

Does a violation of 8 U.S.C. § 1324c(a)(2) for the knowing use of a forged, counterfeit, altered, or falsely made document in order to obtain employment and complete the employment eligibility verification Form I-9 constitute a "continuing violation" for the duration of employment at the employer to whom the document was presented? Or, does the knowing use occur only at the time the document is presented to obtain employment and complete the employment eligibility verification Form I-9?

#### Details:

- Amicus Invitation No. 23-15-02, Office of the Chief Administrative Hearing Officer, 15, 2022.  
<https://www.justice.gov/eoir/page/file/1568616/download>

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### **Firm in the News**

**Cyrus Mehta** was an invited speaker at the AILA New York Chapter H-1B 101 CLE on February 16, 2023 where he spoke about ethical issues arising in H-1B practice.

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