



IMMIGRATION UPDATE - MARCH 20, 2023

Posted on March 20, 2023 by Cyrus Mehta

Headlines:

[USCIS Issues Policy Alert on Evidence for Employers' Ability to Pay Proffered Wage](#) – U.S. Citizenship and Immigration Services has updated its guidance to discuss in more detail various types of evidence and explain how it reviews all evidence relevant to the employer's financial strength and the significance of its business activities.

[LPRs May Receive Temporary Evidence of Status by Mail, USCIS Says](#) – Certain lawful permanent residents may receive temporary evidence of their status by mail rather than physically visiting a field office to receive an Alien Documentation, Identification and Telecommunication (ADIT) stamp (also known as an I-551 stamp).

[Biometrics Requirement Removed for Regional Center Investor Petitioners](#) – As of March 15, 2023, U.S. Citizenship and Immigration Services has removed the biometrics submission requirement and related \$85 fee for petitioners filing Form I-526E, Immigrant Petition by Regional Center Investor.

[DHS Announces Extension for Certain Paroled Ukrainians](#) – The Department of Homeland Security will consider, on a case-by-case basis, an estimated 25,000 Ukrainian nationals and immediate family members who were paroled into the United States at a land border before the Uniting for Ukraine program began, for a one-year extension of their parole period and employment authorization, if applicable.

[USCIS Lockbox to Relocate From Phoenix to Tempe, Arizona](#) – U.S. Citizenship and Immigration Services said it will forward to Tempe any applications, petitions, or requests received via courier delivery services at Phoenix between March 31 and April 28. After April 28, the agency will not accept courier delivery

services at the previous address.

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USCIS Issues Policy Alert on Evidence for Employers' Ability to Pay Proffered Wage

U.S. Citizenship and Immigration Services (USCIS) issued a policy alert on March 15, 2023, on employers' ability to pay the proffered wage to prospective beneficiaries of certain I-140 immigrant petitions. This is important in many employment-related green card petitions. USCIS said it is updating its guidance to discuss in more detail various types of evidence and explain how it reviews all evidence relevant to the employer's financial strength and the significance of its business activities. Among other things, the new guidance explains that an employer must submit one of three forms of initial required evidence, but may also include other types of relevant evidence.

USCIS explained that employers must submit annual reports, federal tax returns, or audited financial statements for each available year from the case's priority date. If the employer has 100 or more workers, it may instead include a financial officer statement attesting to the petitioner's ability to pay the proffered wage. An employer may also submit additional evidence, the agency said, such as profit and loss statements, bank account records, or personnel records. USCIS noted that many employers satisfy the ability to pay requirement by also submitting payroll records demonstrating that, during the relevant time period, they have been paying the employee at least the proffered wage indicated on the Immigrant Petition for Alien Workers (Form I-140).

Details:

- USCIS policy alert, PA-2023-08 (Mar. 15, 2023).
<https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230315-AbilityToPay.pdf>

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LPRs May Receive Temporary Evidence of Status by Mail, USCIS Says

U.S. Citizenship and Immigration Services (USCIS) announced on March 16, 2023, that certain lawful permanent residents (LPRs) may receive temporary evidence of their status by mail rather than physically visiting a field office to receive an Alien Documentation, Identification and Telecommunication (ADIT) stamp (also known as an I-551 stamp).

USCIS said LPRs are entitled to evidence of status and may require temporary evidence of their status in the form of an ADIT stamp if:

- They do not have their green card; or
- Their Form I-90, Application to Replace Permanent Resident Card (green card), Form I-751, Petition to Remove Conditions on Residence, or Form N-400, Application for Naturalization, is still pending adjudication and their green card and extension notice have expired.

This alternate Form I-94 with an ADIT stamp is an acceptable List A receipt for Form I-9 and E-Verify purposes, USCIS said. Some lawful permanent residents will still need to appear in person at a USCIS field office to receive temporary evidence of their status, including those who have urgent needs, do not have a useable photo in USCIS systems, or whose address or identity cannot be confirmed.

When an LPR calls the USCIS Contact Center (800-375-5283 or 800-767-1833) to request temporary evidence of status, an immigration services officer will verify their identity, physical mailing address, and whether that address can receive UPS or FedEx express mail. The officer will then either create an in-person appointment if needed or submit a request to the field office to initiate the creation of the temporary evidence. If an in-person appointment is not needed, a USCIS field office will review the request for temporary evidence and mail the applicant a Form I-94 with ADIT stamp, Department of Homeland Security (DHS) seal, and a printed photo of the LPR obtained from USCIS systems.

Details:

- USCIS alert (Mar. 16, 2023).
<https://www.uscis.gov/newsroom/alerts/uscis-announces-additional-mail-delivery-process-for-receiving-adit-stamp>
- USCIS notice (Mar. 16, 2023).

<https://www.uscis.gov/i-9-central/form-i-9-related-news/temporary-lawful-permanent-residents-lpr-status-documentation>

- I-94 webpage, U.S. Customs and Border Protection.
<https://i94.cbp.dhs.gov/I94/#/home>

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Biometrics Requirement Removed for Regional Center Investor Petitioners

As of March 15, 2023, U.S. Citizenship and Immigration Services (USCIS) has removed the biometrics submission requirement and related \$85 fee for petitioners filing Form I-526E, Immigrant Petition by Regional Center Investor. USCIS said it may still request the submission of biometrics from a Form I-526E petitioner as necessary. The agency said it will refund biometrics fees paid by about 980 petitioners since the form's release in 2022. Petitioners do not need to contact USCIS to request a refund.

Effective May 15, 2023, USCIS will accept only the 03/15/23 edition of Form I-526E. Until then, petitioners can submit either the new edition or the previous edition of Form I-526E (dated 06/01/22). The previous edition still contains instructions about the biometrics submission requirement that are no longer accurate.

Details:

- USCIS alert (Mar. 15, 2023).
<https://www.uscis.gov/newsroom/alerts/uscis-removes-biometrics-requirement-for-form-i-526e-petitioners>

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DHS Announces Extension for Certain Paroled Ukrainians

The Department of Homeland Security (DHS) will consider, on a case-by-case basis, a one-year extension of parolee status for the estimated 25,000 Ukrainian nationals and immediate family members who were paroled into the United States at a land border before the Uniting for Ukraine program began.

Specifically, individuals paroled into the United States at a port of entry between February 24, 2022, and April 25, 2022, will be considered for the one-year extension. DHS said it is considering these individuals, on a case-by-case

basis, for the one-year extension to align with the two-year parole period provided under Uniting for Ukraine. DHS estimates that it will take approximately four weeks to consider and vet all the individuals in the group. The agency will review cases based on the date of parole.

Details:

- "Certain Ukrainians Eligible to Extend Their Stays in the U.S.," Roll Call (Mar. 13, 2023).
<https://rollcall.com/2023/03/13/certain-ukrainians-eligible-to-extend-their-stays-in-the-us/>

- "DHS Announced Extension for Certain Ukrainians Paroled into the United States Following Russia's Invasion," American Immigration Lawyers Association (Mar. 10, 2023).
<https://www.aila.org/infonet/dhs-announced-extension-for-certain-ukrainians>

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USCIS Lockbox for Courier Services to Relocate From Phoenix to Tempe, Arizona

U.S. Citizenship and Immigration Services (USCIS) announced that on March 31, applicants and petitioners filing at the Phoenix, Arizona, lockbox will see a new filing location for courier delivery services such as UPS, FedEx, and DHL. USCIS will move its Phoenix lockbox to Tempe for courier delivery services. When using the U.S. Postal Service, the filing location will remain the same.

USCIS said it will forward to Tempe any applications, petitions, or requests received via courier delivery services at Phoenix between March 31 and April 28. After April 28, the agency will not accept courier delivery services at the previous address.

Details:

- USCIS alert (Mar. 17, 2023).
<https://www.uscis.gov/newsroom/alerts/uscis-relocates-lockbox-from-phoenix-to-tempe-arizona-for-courier-delivery-services>

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Firm in the News

Cyrus Mehta was quoted by the *Times of India* in "USCIS New Guidelines on Employer's Ability to Pay May Help Startups Retain Talent." Mr. Mehta said, "The new 'Ability to Pay' (ATP) guidance may help employers who may not have sufficient net income or be able to show that the difference between the net current assets exceed the next current liabilities in their tax returns. The guidance allows for an analysis of 'other factors' to demonstrate the employer's ability to pay especially when companies operate at a loss for a period to improve their business position in the long run." Mr. Mehta added that the new guidance "might thus help startups to demonstrate their ability to pay by submitting other evidence including bank statements, personnel records, credit lines, gross sales and revenues as well as media accounts about the company and its overall reputation." <https://bit.ly/42mo7xe>

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