



IMMIGRATION UPDATE - APRIL 17, 2023

Posted on April 17, 2023 by Cyrus Mehta

Headlines:

[Employers May File H-2B Petitions for Late Second Half of FY 2023](#) – U.S.

Citizenship and Immigration Services has begun accepting petitions for workers for the late second half of fiscal year 2023—those requesting employment start dates from May 15, 2023, to September 30, 2023—under the H-2B supplemental cap temporary final rule.

[OFLC Reconsiders Denials Based on Question H.10-B 'Acceptable Alternate Occupation Title' on ETA-9089](#) – The Department of Labor's Office of Foreign Labor Certification has stopped issuing denials for this issue for pending applications and "will not deny for this reason for any application submitted on or before May 30, 2023."

[Visa Bulletin for May Predicts Further Retrogressions in Some Employment-Based Categories](#) – The Department of State's Visa Bulletin for May 2023 includes a variety of updates.

[ICE Announces Online Change-of-Address Form for Noncitizens](#) – The new form gives noncitizens the option to update their address online in addition to the existing options of doing so by phone or in person at a field office. It will be deployed "in a rolling release with full availability anticipated in the coming weeks," U.S. Immigration and Customs Enforcement said.

[Biden Administration Plans to Expand Health Care Coverage to DACA Recipients](#) – The Department of Health and Human Services will issue a proposed rule soon to expand the definition of "lawful presence" to include recipients of Deferred Action for Childhood Arrivals (DACA). The proposed rule would mean that DACA recipients would be eligible for Medicaid and the Affordable Care Act's insurance exchanges.

Details:[Back to Top](#)**Employers May File H-2B Petitions for Late Second Half of FY 2023**

On April 13, 2023, U.S. Citizenship and Immigration Services (USCIS) began accepting petitions for workers for the late second half of fiscal year (FY) 2023—those requesting employment start dates from May 15, 2023, to September 30, 2023—under the H-2B supplemental cap temporary final rule. USCIS said the 10,000 visas available under this allocation are limited to returning workers who were issued H-2B visas or held H-2B status in FYs 2020, 2021, or 2022, regardless of country of nationality. These supplemental visas are available "only to U.S. businesses that are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H-2B workers requested in their petition, as attested by the employer on a new attestation form," USCIS noted.

The temporary final rule published in December 2022 increased the numerical limit (cap) on H-2B nonimmigrant visas by up to 64,716 additional visas for all of FY 2023. Of the 64,716 additional visas, 44,716 are available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in one of the last three fiscal years). The remaining 20,000 visas are set aside for nationals of El Salvador, Guatemala, Honduras, and Haiti, who are exempt from the returning worker requirement. As of April 10, 2023, USCIS had received petitions requesting 11,537 workers under the 20,000 visas set aside for nationals of those countries.

USCIS said that petitions requesting supplemental allocations under the rule must be filed at the California Service Center. Such petitions filed "at any location other than the California Service Center will be rejected and the filing fees will be returned."

Details:

- USCIS alert (Apr. 10, 2023).
<https://www.uscis.gov/newsroom/alerts/employers-may-file-h-2b-petitions-for-fy-2023-late-second-half-returning-workers>
- Temporary final rule, 87 Fed. Reg. 76816 (Dec. 15, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-12-15/pdf/2022-27236.pdf>

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OFLC Reconsiders Denials Based on Question H.10-B 'Acceptable Alternate Occupation Title' on ETA-9089

The Department of Labor's Office of Foreign Labor Certification (OFLC) *posted an announcement on April 14, 2023, regarding recent permanent labor certification applications that were denied where the employer did not explicitly answer the question in field H.10-B of Form ETA-9089, Application for Permanent Employment Certification.*

OFLC said it has "thoroughly reviewed" past and current permanent labor certification (PERM) applications with respect to how question H.10-B on the Form ETA-9089 has been completed. As a result of this review, OFLC concluded that some employers have not consistently answered the question accurately by providing acceptable alternate job titles. Rather, they include statements such as "see H.14 - Special Skills." OFLC has recently denied such applications for being incomplete.

OFLC evaluated these denials and determined that while they are "appropriate," it has stopped issuing denials for this issue for pending applications and "will not deny for this reason for any application submitted on or before May 30, 2023, by which point OFLC expects to be accepting the updated version of Form ETA-9089 in the Foreign Labor Application Gateway system. Further, OFLC will overturn denials based solely on this issue."

OFLC said it recognizes that "as it transitions to the updated version of Form ETA-9089, which will incorporate Form ETA-9141 into PERM applications, there may be questions about whether employers should alter how they complete Form ETA-9141 as a result of this announcement. OFLC is considering that issue and will issue guidance in the near future if we determine that such guidance is necessary."

Details:

- OFLC announcement (scroll to April 14, 2023).
<https://www.dol.gov/agencies/eta/foreign-labor>

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Visa Bulletin for May Predicts Further Retrogressions in Some Employment-Based Categories

The Department of State's Visa Bulletin for May 2023 includes a variety of updates:

- Retrogression is likely in the final action dates for China and India in EB-1 visa number availability in the coming months.
- EB-2 final action dates for the Rest of World, Mexico, and Philippines categories have retrogressed further to 15FEB22 due to higher-than-expected demand, following retrogression in April.
- The India EB-2 and EB-5 final action dates will retrogress "as early as next month" to keep visa issuances within their annual per-country limits. "Every effort will be made in October to return the final action dates to at least the final action dates announced for April," the bulletin says.
- The EB-3 final action date of 01JUN22 is effective in May for the Rest of World, Mexico, and Philippines.
- "urther corrective action" is likely in the final action dates for the EB-3 "Other Workers" category for the Rest of World, Mexico, and Philippines in the coming months.

Details:

- of State Visa Bulletin for May 2023.
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-may-2023.html>

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ICE Announces Online Change-of-Address Form for Noncitizens

U.S. Immigration and Customs Enforcement (ICE) announced a new online change-of-address form for noncitizens. The new form gives noncitizens the option to update their address online in addition to the existing options of doing so by phone or in person at a field office. It will be deployed "in a rolling release with full availability anticipated in the coming weeks," ICE said.

After successfully entering a valid mailing address, if the noncitizen is currently in removal proceedings, the interactive online form will show the noncitizen information on how to also change their address with the immigration court as required. Noncitizens who are eligible for but have not yet received a Notice to

Appear, meaning those who were released on conditional parole with an alternative to detention, may be prompted to state whether they want to receive their Notice to Appear by mail or in person by scheduling an appointment at an Enforcement and Removal field office.

The new online form "will enable noncitizens to comply with their immigration obligations more easily and improve the accuracy of address information reported to ICE by utilizing address autofill to ensure U.S. Postal Service standardization," ICE said.

Details:

- ICE news release (Apr. 6, 2023).
<https://www.ice.gov/news/releases/ice-announces-online-tool-noncitizens-provide-change-address>

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Biden Administration Plans to Expand Health Care Coverage to DACA Recipients

On April 13, 2023, the White House announced that the Department of Health and Human Services (HHS) will issue a proposed rule soon to expand the definition of "lawful presence" to include recipients of Deferred Action for Childhood Arrivals (DACA), known as "Dreamers." According to reports, the proposed rule would mean that DACA recipients would be eligible for Medicaid and the Affordable Care Act's insurance exchanges.

About a third of DACA recipients do not have access to health insurance, according to HHS Secretary Xavier Becerra. There are approximately 580,000 current DACA recipients.

Details:

- "Biden Announces Plan to Expand Health Care Coverage for DACA Recipients," ABC News (Apr. 13, 2023).
<https://abcnews.go.com/Politics/biden-announces-plan-expand-health-care-coverage-daca/story?id=98561711>
- Tweet and video, President Biden (Apr. 13, 2023).
<https://twitter.com/POTUS/status/1646514773042032640>

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