



## IMMIGRATION UPDATE - APRIL 24, 2023

*Posted on April 24, 2023 by Cyrus Mehta*

### Headlines:

Form ETA-9089 Case Creation, Submission Available Soon in FLAG, OFLC Says – The Department of Labor's Office of Foreign Labor Certification will begin accepting the revised Form ETA-9089, Application for Permanent Employment Certification, in the Foreign Labor Application Gateway (FLAG) system on May 16, 2023. Filers may begin creating and staging applications on April 24, 2023.

USCIS Extends Temporary Suspension of Biometrics for Certain Form I-539 Applicants – U.S. Citizenship and Immigration Services announced that it has extended through September 30, 2023, the temporary suspension of the biometrics submission requirement for certain applicants filing Form I-539, Application to Extend/Change Nonimmigrant Status, requesting an extension of stay in or change of status to H-4, L-2, or E nonimmigrant status.

Sen. Menendez's Plan for Managing Western Hemisphere Migration Emphasizes Executive Actions, Proposes Expansion of Visa Access to Address U.S. Labor Shortages – The Menendez Plan, which includes measures to address U.S. labor shortages and expand access to H-2 visas, emphasizes executive actions President Biden could take to circumvent gridlock in Congress.

### Details:

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### **Form ETA-9089 Case Creation, Submission Available Soon in FLAG, OFLC Says**

The Department of Labor's Office of Labor Certification (OFLC) announced on April 21, 2023, that it will begin accepting the revised Form ETA-9089, Application for Permanent Employment Certification, in the Foreign Labor

Application Gateway (FLAG) system on May 16, 2023. Filers may begin creating and staging applications on April 24, 2023.

As a result of the transition to the revised version of the form and the transition to FLAG, OFLC will no longer accept any new applications submitted via the legacy PERM Online System after May 15, 2023, at 6:59 pm ET. OFLC also will no longer accept the previous version of Form ETA-9089 after May 15, 2023, either electronically or by mail.

OFLC said it will make recordings of several webinars on this topic available shortly.

#### Details:

- "Office of Foreign Labor Certifications Announces Form ETA-9089 Case Creation and Case Submission in Foreign Labor Application Gateway," OFLC (Apr. 21, 2023). <https://www.dol.gov/agencies/eta/foreign-labor>

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## **USCIS Extends Temporary Suspension of Biometrics for Certain Form I-539 Applicants**

U.S. Citizenship and Immigration Services (USCIS) announced on April 19, 2023, that it has extended through September 30, 2023, the temporary suspension of the biometrics submission requirement for certain applicants filing Form I-539, Application to Extend/Change Nonimmigrant Status, requesting an extension of stay in or change of status to H-4, L-2, or E nonimmigrant status. The previously announced suspension was in place until May 17, 2023.

USCIS said it will allow adjudications for the specified categories to proceed based on biographic information and related background checks, without capturing fingerprints and a photograph. However, the agency said it retains discretion, on a case-by-case basis, to require biometrics for any applicant.

Form I-539 applicants meeting the biometrics suspension criteria are not required to submit the \$85 biometric services fee for Form I-539 during the suspension period. USCIS will return a biometric services fee if submitted separately from the base fee but will reject paper Form I-539 applications if the applicant meets the above criteria and submits a single payment covering both the filing fee and the \$85 biometrics services fee.

USCIS said it plans to establish a permanent biometrics exemption for all Form I-539 applicants in the coming months.

Details:

- USCIS alert (Apr. 19, 2023).  
<https://www.uscis.gov/newsroom/alerts/uscis-extends-temporary-suspension-of-biometrics-submission-for-certain-form-i-539-applicants>

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### **Sen. Menendez's Plan for Managing Western Hemisphere Migration Emphasizes Executive Actions, Proposes Expansion of Visa Access to Address U.S. Labor Shortages**

On April 18, 2023, Sen. Robert Menendez (D-N.J.) released recommendations for managing migration and refugees in the Western Hemisphere. The Menendez Plan, which includes measures to address U.S. labor shortages and expand access to H-2 visas, emphasizes executive actions President Biden could take to circumvent gridlock in Congress.

Sen. Menendez said the United States' current approach "is enforcement-driven, reactive, and overly focused on punitive policies to deter migrants once they arrive at our borders; however, the region's challenges require a comprehensive U.S. approach that recognizes individual country conditions that drive irregular migration." He proposed a four-pillar strategy:

1. Create new legal pathways and expand existing pathways to reduce pressure at the southwestern border. Sen. Menendez proposes various measures, such as creating a parole program for individuals who can fill positions facing a labor shortage as determined by the governors of U.S. states, both for people migrating to the United States and undocumented individuals already in the country; working with Congress to make new visas available to address U.S. labor shortages; expanding access to H-2 visas in Latin America and the Caribbean and enhancing labor protections in the United States, along with employer outreach related to these visas.
2. Increase resources at the border to process asylum seekers and remove people without legal claims to stay in the United States.
3. Expand humanitarian assistance and develop financing to better integrate migrants and refugees in countries across the Americas.

4. Elevate efforts to counter transnational criminal organizations involved in human trafficking and smuggling.

Details:

- Menendez Plan press release (Apr. 18, 2023).  
<https://www.menendez.senate.gov/newsroom/press/menendez-unveils-new-plan-to-secure-our-borders-by-managing-migration-in-the-americas>
- Menendez Plan.  
[https://www.menendez.senate.gov/imo/media/doc/the\\_menendez\\_plan.pdf](https://www.menendez.senate.gov/imo/media/doc/the_menendez_plan.pdf)
- "Sen. Menendez Unveils Plan for Immigration Overhaul," NBC News (Apr. 18, 2023).  
<https://www.nbcnews.com/politics/congress/sen-bob-menendez-unveils-plan-immigration-overhaul-rcna80150>

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