



## IMMIGRATION UPDATE - MAY 08, 2023

*Posted on May 8, 2023 by Cyrus Mehta*

### Headlines:

[Uncertainty Reigns as Title 42 Ends; Mayorkas Announces New Rule, Other Measures](#) – Responding to reports of a potential surge of migrants at the southern U.S. border spurred by reports of the imminent end of Title 42 restrictions, Secretary of Homeland Security Alejandro Mayorkas says the United States is ready.

[ICE Extends Form I-9 Requirement Flexibility](#) – Employers should complete all required physical inspections of identity and employment eligibility documents by August 30, 2023.

[USCIS Is Providing Evidence of Status After Notice of Decisions From IJs and BIA](#) – U.S. Citizenship and Immigration Services is now providing documented evidence of status to certain new asylees and lawful permanent residents after Board of Immigration Appeals and Immigration Judge decisions.

[Work Authorization Extended, Expanded for Hong Kong DED Residents; Student Relief Announced](#) – USCIS is automatically extending the validity of Hong Kong Deferred Enforced Departure-based employment authorization documents for eligible Hong Kong residents through February 5, 2025. Also, U.S. Immigration and Customs Enforcement announced that Hong Kong residents who were in lawful F-1 nonimmigrant student status as of January 26, 2023, may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status.

[COVID-19 Vaccine Requirements Ending for International Travelers to United States](#) – As of May 12, 2023, COVID-19 vaccines will no longer be required for international travelers entering the United States via air, land ports of entry,

and ferry terminals.

[DV Entrants Can Check Status Online as of May 6](#) – As of May 6, 2023, Diversity Visa entrants can check their status online using their unique confirmation number, to see if their entry was selected, the Department of State said.

[E-Verify and SAVE Resume Services After Brief System Outage](#) – Employers are once again able to fully access their E-Verify accounts and process cases, and benefit-granting agencies can access their SAVE accounts.

[ABIL Global: European Union, Belgium](#) – The EU Entry-Exit System has been postponed once again. The right to apply for a "fast track" single permit in Belgium has been extended to several new categories. There are new rules for trainees and volunteers.

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**Details:**

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## **Uncertainty Reigns as Title 42 Ends; Mayorkas Announces New Rule, Other Measures**

Responding to reports of a potential surge of migrants at the southern U.S. border spurred by reports of the imminent end of the Centers for Disease Control and Prevention's Title 42 restrictions on May 11, 2023, Secretary of Homeland Security Alejandro Mayorkas says the United States is ready. Planned actions include a rule to deter smugglers that Mr. Mayorkas says will be finalized and implemented by May 11, and efforts to derail misinformation about open borders peddled by smugglers. "The border is not open, it has not been open and it will not be open subsequent to May 11," he said.

Also, Mexico has agreed to continue accepting Venezuelan, Haitian, Cuban, and Nicaraguan migrants turned away at the U.S. border, and to allow Hondurans, Guatemalans, and Salvadorans with family in the United States to live and work in Mexico. The United States is also opening migration centers in several countries, initially Guatemala and Colombia, to allow would-be migrants to apply for a legal pathway to the United States, Canada, or Spain. The United States and Mexico issued a related joint statement on May 2, 2023.

The Department of Homeland Security has launched an app, [CBP One](#), for

those wishing to apply for a legal pathway to the United States, such as asylum. However, according to reports, there are problems with a lack of access to phones or internet service, technical issues, and difficulties in obtaining appointments. U.S. Customs and Border Protection (CBP) announced that it will implement measures to mitigate those issues, for example, by expanding the number of available appointments and prioritizing those who have been waiting the longest after setting up their profiles in the app.

Observers note that unauthorized border crossings and repeat crossings actually increased while Title 42 restrictions were in place, so its much-touted deterrent effect seems overrated. Many have called for comprehensive immigration reform legislation, although passage is unlikely in the current divided Congress.

#### Details:

- "Mayorkas Says Biden Administration Has Targeted Smugglers and is Ready at the Border," NBC News (May 5, 2023).  
<https://www.nbcnews.com/news/latino/mayorkas-says-biden-administration-ready-title-42-expire-rcna83075>
- U.S., Mexico Agree on Tighter Immigration Policies at Border as Covid Restrictions End," NBC News (May 3, 2023).  
<https://www.nbcnews.com/politics/white-house/us-mexico-agree-tighter-immigration-policies-border-covid-restrictions-rcna82621>
- U.S.-Mexico joint statement (May 2, 2023).  
<https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/>
- Biden Plan Aims to Stem Border Migration as Restrictions End," Associated Press (Apr. 28, 2023).  
<https://apnews.com/article/immigration-border-biden-asylum-75d8c0e67d5521fb48ac04f6bf017a49>
- "CBP Makes Changes to CBP One App," CBP (May 5, 2023).  
<https://www.cbp.gov/newsroom/national-media-release/cbp-makes-changes-cbp-one-app>
- "Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration," DHS (Apr. 27, 2023). <https://bit.ly/3LmW7Sq>

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## **ICE Extends Form I-9 Requirement Flexibility**

U.S. Immigration and Customs Enforcement (ICE) announced on May 4, 2023, that employers will have 30 days to comply with Form I-9, Employment Authorization Verification, requirements after the COVID-19 flexibilities sunset on July 31, 2023. ICE is encouraging employers to plan ahead to complete all required physical inspections of identity and employment eligibility documents by August 30, 2023.

Details:

- ICE news release (May 4, 2023).  
<https://www.ice.gov/news/releases/ice-updates-form-i-9-requirement-flexibility-grant-employers-more-time-comply>

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## **USCIS Is Providing Evidence of Status After Notice of Decisions From IJs and BIA**

U.S. Citizenship and Immigration Services (USCIS) announced on May 4, 2023, that it is now "affirmatively creating and providing documented evidence of their status to certain new asylees and lawful permanent residents upon our receiving notification that an immigration judge or the Board of Immigration Appeals (BIA) has granted status." USCIS said that by providing this evidence, "we can help ensure that new asylees and lawful permanent residents may seek employment, travel, and obtain other benefits they are entitled to," USCIS said.

USCIS also said its field offices may now be able to provide this documentation by mail instead of having asylees and lawful permanent residents schedule an in-person appointment. USCIS began this effort in August 2022 by mailing Form I-94, Arrival/Departure Record, with asylee stamps to certain individuals who have been granted asylum by an IJ or the BIA. USCIS also has been issuing Permanent Resident Cards (green cards) to some lawful permanent residents when the agency is notified that the IJ or BIA has granted adjustment of status.

USCIS still instructs individuals granted asylum and lawful permanent resident status to contact the [USCIS Contact Center](#) to request proof of status because USCIS may not be notified in every case.

### Details:

- USCIS alert (May 4, 2023).

<https://www.uscis.gov/newsroom/alerts/uscis-providing-documents-after-notice-of-immigration-judge-and-bia-decisions-about-immigration>

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## **Work Authorization Extended, Expanded for Hong Kong DED Residents; Student Relief Announced**

On May 3, 2023, U.S. Citizenship and Immigration Services (USCIS) announced the extension and expansion of employment authorization under Deferred Enforced Departure (DED) for eligible Hong Kong residents. Also, U.S. Immigration and Customs Enforcement announced on May 4, 2023, that Hong Kong residents who were in lawful F-1 nonimmigrant student status as of January 26, 2023, may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status. An F-1 nonimmigrant student who receives employment authorization by means of the notice will be deemed to be engaged in a "full course of study" for the duration of the employment authorization if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

The DED notice explains how eligible residents of Hong Kong may apply for Employment Authorization Documents (EADs). Eligible Hong Kong residents covered under DED as of January 26, 2023, may remain in the United States through February 5, 2025, and are eligible to work in the United States.

Specifically, USCIS is automatically extending the validity of Hong Kong DED-based EADs through February 5, 2025, for those who already have an EAD with an A-11 category code on the card and an expiration date of February 5, 2023. These EADs remain valid even though the expiration date on the face of the card has passed. An individual does not need to apply for a new EAD to benefit from this automatic EAD extension. Individuals who want a new DED-based EAD showing an expiration date of February 5, 2025, must file Form I-765, Application for Employment Authorization.

There is no application for DED. Hong Kong residents are covered under DED based on the terms described in the [President's directive](#) issued in January

2023.

USCIS noted that the Department of Homeland Security may provide travel authorization at its discretion to those covered under DED for Hong Kong. Individuals who wish to travel outside of the United States based on DED must file [Form I-131, Application for Travel Document](#), to request advance parole.

Details:

- USCIS alert (May 3, 2023).  
<https://www.uscis.gov/newsroom/news-releases/uscis-extends-and-expands-employment-authorization-for-hong-kong-residents-covered-by-ded>
- USCIS notice, 88 Fed. Reg. 28589 (May 4, 2023).  
<https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09507.pdf>
- DHS notice, 88 Fed. Reg. 28584 (May 4, 2023).  
<https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09512.pdf>

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### **COVID-19 Vaccine Requirements Ending for International Travelers to United States**

As of May 12, 2023, COVID-19 vaccines will no longer be required for international travelers entering the United States via air, land ports of entry, and ferry terminals. The Biden administration said the rescission of these travel restrictions were in alignment with the end of the Public Health Emergency scheduled for May 11, 2023.

Details:

- DHS Statement on the Lifting of Title 19 Requirements (May 2, 2023).  
<https://bit.ly/3B3YqVT>
- White House statement (May 1, 2023). <https://bit.ly/3nsNZYU>
- CDC statement (May 5, 2023). <https://bit.ly/44CqRI4>

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### **DV Entrants Can Check Status Online as of May 6**

As of May 6, 2023, Diversity Visa (DV) entrants can check their status online at [Entrant Status Check](#), using their unique confirmation number, to see if their entry was selected, the Department of State said.

The Department of State (DOS) noted that it accepts DV entries only through the E-DV site, which has instructions (entries are not being accepted now). All entrants must print and retain their online confirmation page after completing their DV entries so they can check their entry status, DOS said: "It is very important for entrants to keep a record of their unique confirmation number until at least September 30, 2024. The confirmation number is the only way to check whether an entry has been selected."

DV-2023 entrants have until September 30, 2023, to check the status of their entries through the website. DV-2024 entrants may enter their confirmation information as of noon (ET) May 6, 2023. The DV-2024 registration period closed on November 8, 2022.

Details:

- DOS Electronic Diversity Visa Program. <https://dvprogram.state.gov/>

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### **E-Verify and SAVE Resume Services After Brief System Outage**

U.S. Citizenship and Immigration Services (USCIS) announced to stakeholders on May 3, 2023, that E-Verify and Systematic Alien Verification for Entitlements (SAVE) service has been restored after a brief system outage. Employers are once again able to fully access their E-Verify accounts and process cases, and benefit-granting agencies can access their SAVE accounts.

USCIS reminded employers that E-Verify cases must be created no later than the third business day after the employee starts work for pay. If the case is being created three or more days past the employee's first day of employment due to the system outage, the employer must select "Technical Problems" as the reason for the delay when creating the case.

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### **ABIL Global: European Union, Belgium**

*The EU Entry-Exit System has been postponed once again. The right to apply for a "fast track" single permit in Belgium has been extended to several new categories. There are new rules for trainees and volunteers.*

### **EU Entry Exit System (EES) Postponed to End of 2023**

The European Union (EU) Entry Exit System (EES), which was initially intended to become operative in 2022 and later in May 2023, is now due to be implemented by the end of 2023. EES is a large-scale IT system to enable the electronic recording of entries and exits of third-country nationals (TCNs) to and from the Schengen Area. The system will replace the current practice of manual stamping of passports.

### **Right to Apply for "Fast-Track" Single Permit in Belgium Extended to New Categories**

As a general rule, third-country (non-European Economic Area and non-Swiss) nationals who want to work in Belgium for longer than 90 days need a single permit. "Fast-track" single permit applications can be filed while a third-country national resides in Belgium. Fast-track applications are those for which no resident labor test is required. Previous restrictive legislation reserved the right to apply in Belgium to a few categories only (short-term foreign nationals, long-term students, long-term researchers).

A new act now allows several other categories of foreigners to apply for a fast-track single permit while residing in Belgium, including family members of single permit holders and foreign nationals with temporary protection status (in practice, Ukrainian nationals). Ukrainian nationals with temporary protection status in Belgium were already entitled to work on the basis of their status, but they can now switch to employee status in-country: their employer can apply for a single permit while the Ukrainian national resides in Belgium.

### **New Rules for Trainees and Volunteers**

Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects, and au pairing was partially implemented. New rules for trainees and volunteers became effective as of January 1, 2023.

#### *Trainees*

Some third-country trainees can invoke a single permit exemption. For example, students who follow a mandatory internship in Belgium as part of their studies in Belgium, Switzerland, or an EEA country are exempt. If no exemption can be invoked, a single permit for long-term employment in



Belgium will be required.

There are some important changes compared to the previous regulations:

- There is no longer an age requirement, which used to be at least 18 and not older than 30;
- The trainee does not need to hold a higher education degree. It is sufficient to pursue a course of study leading to higher education;
- Sufficient means of subsistence are still required, but the guaranteed minimum wage is no longer mentioned as a threshold amount. The integration/benefit income for a single person (at present 1,214.13 euros/month) appears to be the threshold. The payments that will be made to the trainee can be taken into account, as well as the fact that the host entity guarantees sufficient means of subsistence for the trainee.

The maximum duration of the single permit depends on the duration of the underlying work authorization but cannot exceed six months; renewal up to 12 months may be possible, depending on the location of employment. Work authorizations are issued by the region of employment. Belgium has three regions: Brussels, Flanders, and Wallonia. The location of employment determines the applicable rules.

### *Volunteers*

Volunteer work can now be invoked as a legal basis for work-related migration to Belgium. The maximum duration of the single permit depends on the duration of the underlying work authorization but cannot exceed 12 months. Again, the location of employment determines the applicable rules.

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## **Firm in the News**

**Cyrus Mehta** was an invited speaker at the Immigration Law Conference of the Federal Bar Association on May 6, 2023 in Arlington, VA where he spoke on Ethical Representation in Your Humanitarian Case. The participants in this conference included private attorneys, government attorneys and Immigration Judges.

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