



IMMIGRATION UPDATE - MAY 15, 2023

Posted on May 15, 2023 by Cyrus Mehta

Headlines:

[As Title 42 Expires, Biden Administration Releases Final Rule on Asylum Ineligibility, Fact Sheet on 'Additional Sweeping Measures'](#); Challenges Ensur – The Departments of Homeland Security (DHS) and Justice released a final rule, "Circumvention of Lawful Pathways," effective May 11, 2023. DHS and the Department of State also released a related fact sheet.

[June Visa Bulletin Reports India Employment-Based Retrogressions](#) – The Department of State's Visa Bulletin for June 2023 reports a retrogression for the India EB-5 category and a likely retrogression soon for the India EB-3 category.

[OFLC Postpones Date for Submitting Revised PERM and CW-1 Forms in FLAG](#) – The Department of Labor's Office of Foreign Labor Certification is postponing to June 1, 2023, the date for filers to begin submitting the new, revised applications for permanent employment certification and CW-1 applications for temporary employment certification in the Foreign Labor Application Gateway system.

[CBP No Longer Requires Proof of Vaccination for Air Travelers](#) – As has been recently reported, U.S. Customs and Border Patrol's Carrier Liaison Program announced that the COVID-19 vaccination requirement for noncitizen nonimmigrant air travelers was terminated as of May 12, 2023.

[CDC Updates COVID-19 Vaccination Requirements for Civil Surgeons](#) – On May 12, 2023, the Centers for Disease Control and Prevention updated guidance on COVID-19 vaccination requirements for civil surgeons.

[CIS Ombudsman Releases Tips on Avoiding Delays for F-1 Students Seeking OPT](#) – The Office of the Citizenship and Immigration Services Ombudsman released tips on how F-1 students seeking Optional Practical Training can avoid

delays in processing the Form I-765, Application for Employment Authorization.

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As Title 42 Expires, Biden Administration Releases Final Rule on Asylum Ineligibility, Fact Sheet on 'Additional Sweeping Measures'; Challenges Ensur

The Departments of Homeland Security (DHS) and Justice (DOJ) released a final rule on May 10, 2023, "Circumvention of Lawful Pathways," which was effective May 11, 2023, and is scheduled to be published May 16, 2023. DHS and the Department of State (DOS) also released a related fact sheet.

DHS/DOJ Final Rule

The rule introduces a rebuttable presumption of asylum ineligibility for "certain noncitizens who neither avail themselves of a lawful, safe, and orderly pathway to the United States nor seek asylum or other protection in a country through which they travel." The rule "will apply only to those who enter during a limited, specified date range at the southwest land border or adjacent coastal borders." Specifically, the rule applies to noncitizens who enter the United States without authorization from Mexico at the southwest land border or adjacent coastal borders on or after the date of termination of the Title 42 public health order, May 11, 2023, and before a specified date 24 months from the rule's effective date. However, the rule will continue to apply to such noncitizens who entered the United States during the 24-month timeframe in their Title 8 proceedings and in any subsequent asylum applications, except for those applications filed after the two-year period by those who entered the United States as minors and who apply as principal applicants, the rule states.

The Departments are requesting comments on whether applicability of the rebuttable presumption should be extended to noncitizens who enter the United States without documents sufficient for lawful admission during the same temporary time period at a maritime border.

DHS/DOS Fact Sheet

The DHS/DOS fact sheet, released May 10, 2023, announces "additional sweeping measures" to manage the border as part of the "comprehensive, multi-agency, multi-country plan to prepare for the return to processing migrants under Title 8 authorities." The measures include:

- Opening the first regional processing centers to direct individuals to lawful pathways, with eventual plans to open about 100 such centers in key locations in the Western Hemisphere;
- Deploying additional troops to support the Border Patrol at the southwest border;
- Surging additional resources to manage increased encounters;
- Expanding access to the CBPOne app and transitioning to a new appointment scheduling system;
- Implementing the final rule noted above; and
- Ramping up efforts to counter misinformation disseminated by smugglers.

In related news, a federal judge granted Florida's request for a temporary restraining order blocking the Biden administration's plan to release certain migrants on parole. Also, the American Civil Liberties Union and immigration groups sued to block the new asylum limits.

Details:

- "Circumvention of Lawful Pathways," joint DHS-DOJ final rule (advance copy). <https://public-inspection.federalregister.gov/2023-10146.pdf>
- "Department of State and Department of Homeland Security Announce Additional Sweeping Measures to Humanely Manage Border through Deterrence, Enforcement, and Diplomacy," DHS fact sheet. <https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border>
- "Federal Judge Blocks Biden Move to Release Migrants on 'Parole' Ahead of Title 42 End," The Hill (May 12, 2023). <https://thehill.com/regulation/court-battles/4001528-federal-judge-blocks-biden-move-to-release-migrants-on-parole/>
- *Florida v. Mayorkas*, temporary restraining order (May 11, 2023). <https://storage.courtlistener.com/recap/gov.uscourts.flnd.464923/gov.uscourts.flnd.464923.10.0.pdf>
- "ACLU Sues to Block New Asylum Restrictions," The Hill (May 12, 2023). <https://thehill.com/homenews/administration/4001833-aclu-sues-to-block-new-asylum-restrictions/>

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June Visa Bulletin Reports India Employment-Based Retrogressions

The Department of State's (DOS) Visa Bulletin for June 2023 reports a retrogression for the India EB-5 category and a likely retrogression soon for the India EB-3 category:

Steady number use and high demand in the EB-3 category for India will most likely necessitate retrogression of the EB-3 final action date for India as early as next month to hold number use within the maximum allowed under the FY 2023 annual limit. This situation will be continually monitored, and any necessary adjustments will be made accordingly.

As readers were informed was possible in Item F of the May 2023 Visa Bulletin, it has become necessary to retrogress the EB-5 final action date for India effective in June. India's number use in the family and employment preference categories for FY 2023 is subject to prorating under INA § 202(e). Number use has been consistently robust throughout the fiscal year in the family and employment preference categories, and it has been determined that India is approaching its prorated limit for EB-5 numbers. Thus, applicants from India are subject to a final action date of 01APR17. This situation will be continually monitored, and any necessary adjustments will be made accordingly.

Details:

- DOS Visa Bulletin for June 2023.
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-june-2023.html>

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OFLC Postpones Date for Submitting Revised PERM and CW-1 Forms in FLAG

The Department of Labor's Office of Foreign Labor Certification (OFLC) is postponing to June 1, 2023, the date for filers to begin submitting the new, revised applications for permanent employment certification and CW-1 applications for temporary employment certification in the Foreign Labor Application Gateway (FLAG) system. Applicants should continue to use the current PERM and CW-1 forms until June 1, OFLC said.

OFLC said it will no longer accept any new applications submitted via the legacy

PERM Online System after May 31, 2023, at 6:59 pm ET. OFLC will no longer accept the previous version of Form ETA-9089 or Forms ETA-9141C/9142C, and their related forms, after May 31, 2023, either electronically or submitted by mail.

Details:

- OFLC announcement. <https://www.dol.gov/agencies/eta/foreign-labor> (scroll to May 11, 2023).

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CBP No Longer Requires Proof of Vaccination for Air Travelers

As has been recently reported, U.S. Customs and Border Patrol's (CBP) Carrier Liaison Program announced on May 11, 2023, that under a Presidential Proclamation, the COVID-19 vaccination requirement for noncitizen nonimmigrant air travelers was terminated as of May 12, 2023.

The rescission took effect for flights departing to the United States from a foreign country on or after 12:01 am ET on May 12, 2023. Noncitizen nonimmigrant air passengers no longer must show proof of being fully vaccinated with an accepted COVID-19 vaccine to board a flight to the United States, CBP said.

Details:

- "Rescinding Requirement for Proof of Covid-19 Vaccination for All Airline or Other Aircraft Passengers Arriving into the United States From any Foreign Country," CBP (May 11, 2023).
<https://www.aila.org/infonet/cbp-no-longer-requires-proof-covid-19-vaccination>
- "A Proclamation on Revoking the Air Travel COVID-19 Vaccination Requirement," White House (May 9, 2023).
<https://www.whitehouse.gov/briefing-room/presidential-actions/2023/05/09/a-proclamation-on-revoking-the-air-travel-covid-19-vaccination-requirement/>

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CDC Updates COVID-19 Vaccination Requirements for Civil Surgeons

On May 12, 2023, the Centers for Disease Control and Prevention (CDC) updated guidance on its Immigrant, Refugee, and Migrant Health webpage on COVID-19 vaccination requirements for civil surgeons:

- The applicant must receive one dose of the COVID-19 vaccine if a dose is due at the time of the exam according to current CDC guidance. Additional doses are no longer required, and applicants do not have to postpone completion of the exam to complete the primary series of the COVID-19 vaccine.
- Applicants who have completed any approved primary COVID-19 series before the exam require no additional COVID-19 doses for immigration. Those who have not yet done so should receive a bivalent vaccine.
- Applicants who have received one or more doses but have not completed the primary series and are not yet due for the next dose in the series at the time of the exam should use the "Insufficient time interval between doses" blanket waiver.

Details:

- COVID-19 Vaccination Requirement, CDC (May 12, 2023).
<https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/vaccinations.html#covid-19-vaccination>

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CIS Ombudsman Releases Tips on Avoiding Delays for F-1 Students Seeking OPT

The Office of the Citizenship and Immigration Services (CIS) Ombudsman released tips on how F-1 students seeking Optional Practical Training (OPT) can avoid delays in processing the Form I-765, Application for Employment Authorization. The tips include:

- Check USCIS' website for updates before you submit Form I-765.
- Make sure Form I-20, Certification of Eligibility for Nonimmigrant Student Status, is signed, dated, and endorsed for employment authorization.
- Apply online.
- Submit Form I-765 within 30 days or 60 days of the Date Issued by the Designated School Official on the Form I-20.

- Submit a properly completed Form I-20 together with Form I-765 at the same time.
- Update your mailing address with both USCIS and the U.S. Postal Service (USPS)

Details:

- "How F-1 Students Seeking Optional Practical Training Can Avoid Form I-765 Delays," CIS Ombudsman.
<https://www.dhs.gov/sites/default/files/2023-05/How%20F-1%20Students%20Seeking%20OPT%20Can%20Avoid%20Form%20I-765%20Delays.pdf>

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