



IMMIGRATION UPDATE - JULY 05, 2023

Posted on July 5, 2023 by Cyrus Mehta

Headlines:

[Three-Day Filing Window Opens July 3 for H-2B Applications With October 1 Start Dates](#) – The three-day filing window to submit an H-2B *Application for Temporary Employment Certification* requesting a work start date of October 1, 2023, **will open on July 3, 2023, and close on July 5, 2023.**

[OFLC To Provide Additional Info on New 2023 H-2A Hourly AEWs for Non-Range Occupations Using OEWS](#) – OFLC soon will provide information about Occupational Employment and Statistics Survey-based AEWs for (1) the field and livestock workers (combined) category in Alaska, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands, and (2) job opportunities outside of that category throughout the United States and its territories.

[USCIS Seeks Comments on 'E-Verify NextGen'](#) – The internet-based project "will permit employees to create their own secure account, resolve E-Verify tentative non-confirmations (also referred to as "mismatches") in advance and directly with the government, instead of through their employer, and then receive an electronic verification response that they can use and update with subsequent employers."

[Updated Wage Data Published for Northern Marianas](#) – OFLC has approved the 2023 Commonwealth of Northern Mariana Islands (CNMI) Prevailing Wage Study survey for 417 occupations and will issue updated CW-1 prevailing wages using these data from July 1, 2023, through June 30, 2024. The updated wage table includes prevailing wage data for 848 occupations.

[CIS Ombudsman Releases Annual Report for 2023](#) – Among other topics, the CIS Ombudsman reviewed requests for evidence (RFEs) in L-1 intracompany transferee petitions, specifically looking at RFEs issued for extension petitions

for the L-1A and L-1B nonimmigrant categories.

[EOIR To Relocate Chicago Immigration Court's Main Location](#) – The Chicago Immigration Court's main location at 525 West Van Buren Street will close for relocation on July 13, 2023. During the closure, scheduled detained and non-detained hearings will take place at the Chicago Immigration Court's satellite location.

[ABIL Global: Türkiye](#) – This article discusses anticipated changes to the processing of montaj-AMS visas for Türkiye.

Firm in the News

Details:

[Back to Top](#)

Three-Day Filing Window Opens July 3 for H-2B Applications With October 1 Start Dates

The Department of Labor's Office of Foreign Labor Certification (OFLC) reminded employers and other interested stakeholders that the three-day filing window to submit an H-2B *Application for Temporary Employment Certification* (Form ETA-9142B and appendices) requesting a work start date of October 1, 2023, **will open on July 3, 2023, at 12 a.m. ET and close on July 5, 2023, at 11:59 p.m. ET.** October 1, 2023, is the first day of the semiannual visa allotment for the first half of fiscal year 2024. Applications will be denied if they are filed before July 3.

OFLC said that after the three-day filing window has closed, the agency will randomly order applications for assignment to analysts for review and processing. OFLC provided filing tips:

- Only one application per job opportunity should be filed to prevent duplicate filings and delayed processing.
- If "yes" is selected for "Board, Lodging, or Other Facilities" under section F.d.5, Form ETA-9142B, and deductions other than those required by law may be made from the worker's pay, details should be included about the deductions and amounts to cover the reasonable cost of board, lodging, and other facilities in section F.d.6.
- The employer must submit with its application a copy of the job order being submitted concurrently to the State Workforce Agency (SWA)

...serving the area of intended employment. The job order submitted must be a copy of the actual job order or a completed job order form used by the SWA for posting in its job clearance systems.

- Original signatures and dates on Appendix B must be current.

Details:

- "Office of Foreign Labor Certification Reminds Employers and Stakeholders of the H-2B Application Filing Timelines for October 1, 2023, Start Dates of Work," OFLC (June 30, 2023).

<https://www.dol.gov/agencies/eta/foreign-labor>

[Back to Top](#)

OFLC To Provide Additional Info on New 2023 H-2A Hourly AEWRs for Non-Range Occupations Using OEWS

A Federal Register notice published on June 16, 2023, by the Department of Labor's Employment and Training Administration (ETA) updated the Adverse Effect Wage Rates (AEWRs) under the H-2A temporary agricultural employment program that apply to a limited set of H-2A job opportunities for which the AEWR is determined using the Bureau of Labor Statistics Occupational Employment and Statistics Survey (OEWS). The notice provided OEWS-based AEWRs for (1) the field and livestock workers (combined) category in Alaska, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands, and (2) job opportunities outside of that category throughout the United States and its territories.

ETA said it will publish a separate notice in December 2023 providing updated AEWRs for this category in the 49 states for which the Department of Agriculture's Farm Labor Survey provides data. Updated information will be posted on OFLC's [AEWR page](#) on the Foreign Labor Application Gateway in July, OFLC said.

Details:

- "Office of Foreign Labor Certification Provides Additional Information on New 2023 H-2A Hourly Adverse Effect Wage Rates (AEWR) for Non-Range Occupations Using the Occupational Employment and Statistics Survey (OEWS)," OFLC (June 30, 2023).

<https://www.dol.gov/agencies/eta/foreign-labor>

[Back to Top](#)

USCIS Seeks Comments on 'E-Verify NextGen'

U.S. Citizenship and Immigration Services (USCIS) seeks comments by August 28, 2023, on "E-Verify NextGen" (I-9NG), a new online "demonstration project" intended to further integrate the Form I-9, Employment Eligibility Verification, process with the E-Verify electronic work eligibility confirmation process "to create a more secure and less burdensome employment eligibility verification process overall for employees and employers." This internet-based project "will permit employees to create their own secure account, resolve E-Verify tentative non-confirmations (also referred to as "mismatches") in advance and directly with the government, instead of through their employer, and then receive an electronic verification response that they can use and update with subsequent employers," USCIS said.

The goal of E-Verify NextGen is "to streamline the employment eligibility verification and confirmation process for employers and employees" by:

- Resolving E-Verify mismatches and electronically issuing an employment authorized result to individuals who E-Verify finds to be work authorized;
- Allowing employees to receive notification of and resolve E-Verify mismatches directly with the government without requiring the employer to be an intermediary; and
- Removing the employer's primary role in the mismatch resolution process. While employers would be informed about their employee's mismatch, this process removes employers as the intermediary to communicate a mismatch to the employee. Affected employees are instead notified directly and provided the instructions required to resolve the mismatch.

Details:

- USCIS notice, 88 Fed. Reg. 42093 (June 29, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-06-29/pdf/2023-13786.pdf>

[Back to Top](#)

Updated Wage Data Published for Northern Marianas

The Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC)

said it has received the 2023 Commonwealth of Northern Mariana Islands (CNMI) Prevailing Wage Study survey from the governor of the CNMI for the CW-1 program. OFLC has approved the survey for 417 occupations and will issue updated CW-1 prevailing wages using these data from July 1, 2023, through June 30, 2024. The updated wage table includes prevailing wage data for 848 occupations.

The Northern Mariana Islands U.S. Workforce Act of 2018 requires DOL to use or make available an occupational wage survey conducted by the CNMI governor. DOL said it must determine whether the survey meets the statistical standards for determining prevailing wages on an annual basis. Wages that meet the regulatory standards are used as prevailing wages under the CW-1 program. The agency explained that the absence of an approved wage in the governor's survey for a given occupation, the prevailing wage is the occupation's Occupational Employment and Wage Statistics (OEWS) mean wage in Guam. Where there is no Guam OEWS mean wage available, the prevailing wage is the national mean wage, adjusted for purposes of the CW-1 visa program, DOL noted.

Details:

- OFLC Updated CW-1 Wage Table (July 1, 2023).
https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/DOL-OFLC_CW1_Wage_Table_2023.pdf

[Back to Top](#)

CIS Ombudsman Releases Annual Report for 2023

The Office of the Citizenship and Immigration Services (CIS) Ombudsman's Annual Report for 2023 examines the effects of backlogs and additional challenges facing the agency. It recommends actions USCIS can take to address the human consequences and detrimental effects on the agency of backlogs.

Among other topics, the CIS Ombudsman reviewed requests for evidence (RFEs) in L-1 intracompany transferee petitions, specifically looking at RFEs issued for extension petitions for the L-1A and L-1B nonimmigrant categories. The report notes that the CIS Ombudsman has received stakeholder reports of overly broad and burdensome RFEs, duplicative RFEs, inconsistent adjudications, lack of deference to previous decisions, and a misunderstanding

of the standard of proof.

To improve the quality of RFEs in L-1 petitions, the CIS Ombudsman recommends that USCIS take steps to:

- Develop and provide training that ensures adjudicators understand how to apply the preponderance of evidence legal standard to the evidence typically presented in each type of case;
- Develop and provide annual training to ensure that adjudicators know how to comply with applicable regulations for L-1 extension cases;
- Streamline the L-1 extension petition adjudication for cases involving the same facts with no material changes (such as the same petitioner/beneficiary/job);
- Update RFE templates and systems to ensure that they are current, understandable, and concise; and
- Establish a robust quality assurance program for RFEs.

Details:

- CIS Ombudsman's Annual Report 2023 (June 30, 2023).
https://www.dhs.gov/sites/default/files/2023-06/2023%20Annual%20Report%20to%20Congress_0.pdf

[Back to Top](#)

EOIR To Relocate Chicago Immigration Court's Main Location

The Chicago Immigration Court's main location at 525 West Van Buren Street will close for relocation on July 13, 2023. During the closure, scheduled detained and non-detained hearings will take place at the Chicago Immigration Court's satellite location at 536 South Clark Street, Suite 340. The satellite location will also remain open to accept Chicago Immigration Court filings and answer phone calls. The new Chicago Immigration Court's main location will reopen on Monday, July 24, 2023, at 8:30 a.m. for all court business, EOIR said. Affected hearings will be rescheduled and parties will be notified by EOIR.

The new location is: Chicago Immigration Court, 55 East Monroe Street, Suite 1500, Chicago, IL 60603. Hours of operation will be 8:30 a.m. to 4 p.m. Monday through Friday. The telephone number is 312-697-5800.

Details:

- EOIR notice (June 29, 2023). <https://rb.gy/ktupp>

[Back to Top](#)

ABIL Global: Türkiye

This article discusses anticipated changes to the processing of montaj-AMS visas for Türkiye.

Montaj-AMS Visa Highlights

An Assembly and Maintenance Service (AMS, or *montaj*) visa is a very practical work authorization category for technical workers coming to Türkiye for short-term work. Under Turkish immigration regulations, an employee of a foreign company may engage in assembly and maintenance service work for the benefit of a receiving Turkish entity without the need for a work permit for up to 90 days per year.

Appropriate employees include technicians or other technical workers. This category is not suitable for executives or non-technical managers. Employees holding this type of visa must continue being paid outside Türkiye by the foreign entity that sent them. The visa allows the employees to work only in the locale(s) and for the Turkish company that issued the support letter for the visa. If multiple clients or worksites are anticipated, the host letters must reflect this and be issued from each host.

An AMS visa may apply to many categories of "products," including assembly, maintenance, and service (or training) for software, computer hardware, complex machinery, energy equipment, and construction and manufacturing equipment. However, in practice there is significant variation in interpretation at different consular posts. Many non-Organisation for Economic Co-operation and Development (OECD) posts have quite strict interpretations of the business circumstances that qualify to issue this visa. Often the interpretation of the "product" being provided to the Turkish host company may come directly from the foreign employer of the visa applicant. In these cases, extensive additional corporate documents may be needed.

An AMS visa can be issued for a maximum validity of 12 months with a duration of stay of 90 days. The consular posts most often issue 6- or 12-month validity multiple entry AMS visas, although some posts may not grant multiple entry visas or grant visas for a validity of less than 12 months as a matter of

discretion. Particularly, many non-OECD-located Turkish consular posts in practice tend to issue single-entry AMS visas with 30-, 60-, or 90-day durations of stay.

Proposed Changes

In September 2022, the Ministry of Labour (MoL) created an application link on its website in preparation for online adjudication of these exemptions under the Law on International Workforce No. 6735 (and subsequent regulations). As announced on September 30, 2022, AMS and other activities listed in the statute as exempt from a work permit requirement may apply for that exemption via the new online system, which is then used to obtain an AMS visa at the consulate or a work permit exemption domestically in certain conditions. Applicants abroad requesting an exemption via the Turkish consular post must use the online system after appearing at the consular post. If the application is accepted, the consular post issues a reference number, which the applicant uses to complete the online application. Applicants in Türkiye on valid residence permits may file their exemption applications using the online system with information requested regarding their residence permits.

The online exemption system is not yet being used extensively for visa applicants because many consular posts are not yet familiar with the system. The online system appears to be a way for the MoL to have more authority in designating which applicants should be eligible for an exemption, regardless of the location of the consular post.

The new work permit exemption online system lists many statutory exemption activities that have been recognized by the MoL, even before the current version of the law. The list of qualifying activities includes certain internships and certain activities in the arts, sciences, media, tourism, education, and sports sectors, each with defined maximum periods of time. The statute also specifies the maximum validity for each qualifying activity. For instance, student internships have maximum ranges of 4 to 12 months. Tour operators are restricted to a period of 8 months. AMS-montaj activities remain limited to 90 days.

For a complete list of work permit exemption categories, see the MoL webpage: <https://www.csgeb.gov.tr/media/89896/ingilizce-tablo.pdf>

[Back to Top](#)

