



## IMMIGRATION UPDATE - JULY 24, 2023

*Posted on July 24, 2023 by Cyrus Mehta*

### Headlines:

[Revised I-9 Form Expected August 1](#) – Among the updates is a checkbox employers enrolled in E-Verify can use to indicate that they remotely examined identity and employment authorization documents under an alternative procedure authorized by the Department of Homeland Security related to temporary COVID-19 flexibilities.

[USCIS Updates Visa Availability Approach for Managing EB-5 Immigrant Investor Petition Inventory](#) – The new approach involves grouping petitions with filing dates on or before November 30, 2019, by new commercial enterprise within the queue of petitions where the project has been reviewed and there is a visa available or soon available.

[USCIS Updates Policy Manual on Public Charge Inadmissibility Ground](#) – U.S. Citizenship and Immigration Services has incorporated into its Policy Manual information on the categories of adjustment of status applicants to whom the public charge ground of inadmissibility applies.

[DHS Reduces Brunei ESTA Validity Period](#) – The Department of Homeland Security, in consultation with the Department of State, has reduced from two years to one year the Electronic System for Travel Authorization validity period for travel by citizens and nationals of Brunei Darussalam under the Visa Waiver Program to the United States.

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## Revised I-9 Form Expected August 1

On August 1, 2023, U.S. Citizenship and Immigration Services (USCIS) will publish a revised version of Form I-9, Employment Eligibility Verification. Among the updates is a checkbox employers enrolled in E-Verify can use to indicate that they remotely examined identity and employment authorization documents under an alternative procedure authorized by the Department of Homeland Security (DHS) related to temporary COVID-19 flexibilities. Under the alternative procedure, the employer must examine and retain copies of documents and must conduct a live video interaction with the employee.

Employers who were participating in E-Verify and created a case for employees whose documents were examined during COVID-19 flexibilities (March 20, 2020, to July 31, 2023) may choose to use the new alternative procedure starting on August 1, 2023, to satisfy the physical document examination requirement by August 30, 2023. Employers who were not enrolled in E-Verify during the COVID-19 flexibilities must complete an in-person physical examination by August 30, 2023, USCIS said.

In addition to the new checkbox, USCIS said the revised Form I-9:

- Reduces Sections 1 and 2 to a single-sided sheet;
- Is designed to be a fillable form on tablets and mobile devices;
- Moves the Section 1 Preparer/Translator Certification area to a separate, standalone supplement that employers can provide to employees when necessary;
- Moves Section 3, Reverification and Rehire, to a standalone supplement that employers can print if or when rehire occurs or reverification is required;
- Revises the Lists of Acceptable Documents page to include some acceptable receipts as well as guidance and links to information on automatic extensions of employment authorization documentation; and
- Reduces instructions from 15 pages to 8 pages.

The revised Form I-9 (edition date 08/01/23) will be published on [uscis.gov](https://uscis.gov) on August 1, 2023. The related USCIS notice is scheduled to be published in the Federal Register on July 25, 2023. USCIS said employers can use the current Form I-9 (edition date 10/21/19) through October 31, 2023. Starting November 1, 2023, all employers must use the new Form I-9.

### Details:

- USCIS alert (July 21, 2023).  
<https://www.uscis.gov/newsroom/alerts/uscis-to-publish-revised-form-i-9>
- "Introduction of a New Version of Employment Eligibility Verification Form," USCIS Federal Register notice (advance copy, to be published July 25, 2023). <https://public-inspection.federalregister.gov/2023-15667.pdf>
- "Optional Alternative 1 to the Physical Document Examination Associated with Employment Eligibility Verification (Form I-9)," USCIS Federal Register notice (advance copy, to be published July 25, 2023).  
<https://public-inspection.federalregister.gov/2023-15533.pdf>

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## **USCIS Updates Visa Availability Approach for Managing EB-5 Immigrant Investor Petition Inventory**

U.S. Citizenship and Immigration Services (USCIS) announced on July 18, 2023, that it is updating its visa availability approach for managing the inventory of Form I-526, Immigrant Petition by Alien Investor.

The new approach involves grouping petitions with filing dates on or before November 30, 2019, by new commercial enterprise within the queue of petitions where the project has been reviewed and a visa is available or soon will become available. USCIS said that assigning multiple petitions associated with the same new commercial enterprise to the same adjudicator(s) will allow them to process such petitions more efficiently and reduce backlogs.

USCIS said this new approach is "effective July 2023."

### Details:

- USCIS alert (July 18, 2023).  
<https://www.uscis.gov/newsroom/alerts/uscis-updates-visa-availability-approach-for-managing-form-i-526-petition-inventory>
- Update to Visa Availability Approach for Form I-526 (July 18, 2023).  
<https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/update-to-visa-availability-approach-for-form-i-526>

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## USCIS Updates Policy Manual on Public Charge Inadmissibility Ground

U.S. Citizenship and Immigration Services (USCIS) has incorporated information into its Policy Manual on the categories of adjustment of status applicants to whom the public charge ground of inadmissibility applies "to make it easier to identify whether the public charge ground of inadmissibility applies to a specific adjustment of status category."

USCIS said the update is intended to help applicants respond accurately to questions related to the public charge ground of inadmissibility on Form I-485, Application to Register Permanent Residence or Adjust Status, which will provide officers with the information they need to adjudicate the application and, if applicable, make a public charge inadmissibility determination without issuing a Request for Evidence for this information.

### Details:

- USCIS alert (July 20, 2023).  
<https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-manual-to-make-it-easier-to-identify-who-is-subject-to-the-public-charge-ground>

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## DHS Reduces Brunei ESTA Validity Period

Effective July 6, 2023, the Department of Homeland Security (DHS), in consultation with the Department of State, has reduced from two years to one year the Electronic System for Travel Authorization (ESTA) validity period for travel by citizens and nationals of Brunei Darussalam (Brunei) under the Visa Waiver Program (VWP) to the United States.

According to DHS, this reduction is due to the inability of Brunei's government to satisfy several VWP requirements. U.S. Customs and Border Protection's Carrier Liaison Program said this reduction only affects new ESTA applications received after the effective date and is not retroactive.

### Details:

- Brunei ESTA Validity Period, CBP, 88 Fed. Reg. 43051 (July 6, 2023).  
<https://www.govinfo.gov/content/pkg/FR-2023-07-06/pdf/2023-13441.pdf>

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## Firm in the News

**Cyrus Mehta** spoke on *Ethics and Immigration Law* at the Defending Removal Proceedings 2023 conference under the aegis of the Practising Law Institute in New York on July 20, 2023. Craig Dobson was the other panelist, where they covered the following topics: duty of competency, importance of confidentiality, potential conflicts and actual conflicts and Lozada (ineffective assistance of counsel) claims

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