



IMMIGRATION UPDATE - AUGUST 28, 2023

Posted on August 28, 2023 by Cyrus Mehta

Headlines:

[DOJ Sues SpaceX for Discriminating Against Asylees and Refugees in Hiring](#)

– The lawsuit alleges that SpaceX routinely discouraged asylees and refugees from applying and refused to hire or consider them because of their citizenship status.

[USCIS Updates Policy Guidance on CSPA 'Sought to Acquire' Requirement](#) –

U.S. Citizenship and Immigration Services (USCIS) has clarified how it will apply the extraordinary circumstances exception to the "sought to acquire" requirement under the Child Status Protection Act in light of a policy change updating when an immigrant visa becomes available for the purpose of calculating an applicant's CSPA age.

[OFLC Issues Round 4 FAQs for H-1B, H-1B1, and E-3 Programs; Rescinds](#)

[COVID-19 FAQs](#) – The Department of Labor's Office of Foreign Labor Certification (OFLC) has issued Round 4 of its frequently asked questions (FAQs) related to the Labor Condition Application for the H-1B, H-1B1 and E-3 programs. Also, OFLC has rescinded in full all COVID-19 FAQs.

[USCIS Confirms Evidentiary Requirements for Physician National Interest](#)

[Waivers](#) – U.S. Citizenship and Immigration Services has issued policy guidance to confirm the evidentiary requirements for physicians seeking a national interest waiver of the job offer requirement based on work in an underserved area or at a U.S. Department of Veterans Affairs facility.

[USCIS Launches New Online Appointment Request Form](#) –

U.S. Citizenship and Immigration Services announced a new online form for individuals, attorneys, and accredited representatives to request an in-person appointment at their local field office without having to call the USCIS Contact Center.

[OFLC Issues FAQ for Employers on Effects of Hawaii Wildfires](#) – The Department of Labor's Office of Foreign Labor Certification has issued frequently asked questions for employers and their authorized attorneys or agents related to effects of the Hawaii wildfires, including extensions and methods of communication.

Details:

DOJ Sues SpaceX for Discriminating Against Asylees and Refugees in Hiring

The Department of Justice (DOJ) filed a lawsuit on August 24, 2023, against Space Exploration Technologies Corporation (SpaceX) for discriminating against asylees and refugees in hiring. The lawsuit alleges that from at least September 2018 to May 2022, SpaceX routinely discouraged asylees and refugees from applying and refused to hire or consider them because of their citizenship status, in violation of the Immigration and Nationality Act (INA).

DOJ noted that SpaceX "recruits and hires for a variety of positions, including welders, cooks, crane operators, baristas and dishwashers, as well as information technology specialists, software engineers, business analysts, rocket engineers and marketing professionals. The jobs at issue in the lawsuit are not limited to those that require advanced degrees." DOJ alleged that in job postings and public statements over several years, "SpaceX wrongly claimed that under federal regulations known as 'export control laws,' SpaceX could hire only U.S. citizens and lawful permanent residents." DOJ explained that export control laws "impose no such hiring restrictions. Moreover, asylees' and refugees' permission to live and work in the United States does not expire, and they stand on equal footing with U.S. citizens and lawful permanent residents under export control laws."

DOJ said it seeks "fair consideration and back pay for asylees and refugees who were deterred or denied employment at SpaceX due to the alleged discrimination." The agency also seeks civil penalties in an amount to be determined by the court and policy changes. DOJ invites affected people to contact the agency's Civil Rights Division's Immigrant and Employee Rights Section (IER) at IERSpaceXcase@usdoj.gov or 1-888-473-3845.

Details:

- [DOJ press release](#) (Aug. 24, 2023).

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USCIS Updates Policy Guidance on CSPA 'Sought to Acquire' Requirement

U.S. Citizenship and Immigration Services (USCIS) announced on August 24, 2023, that it is updating the [USCIS Policy Manual](#) to clarify how it will apply the extraordinary circumstances exception to the "sought to acquire" requirement under the Child Status Protection Act (CSPA) in light of a February 14, 2023, policy change updating when an immigrant visa becomes available for the purpose of calculating an applicant's CSPA age.

USCIS explained that the CSPA protects certain beneficiaries from losing their eligibility for immigrant visas and adjustment of status because they age during the immigration process and no longer qualify as a child for immigration purposes. To benefit from the CSPA, noncitizens must seek to acquire lawful permanent resident status within 1 year of when an immigrant visa becomes available, USCIS noted. The update:

- Explains that USCIS considers the February 14 policy change to be an extraordinary circumstance that may excuse an applicant's failure to meet the "sought to acquire" requirement;
- Clarifies that the agency may excuse an applicant's failure to meet the requirement if they did not apply to adjust status because they could not calculate their CSPA age under the prior policy or their CSPA age would have been calculated as over 21, but they are now eligible for CSPA age-out protection under the new policy; and
- Clarifies that the agency considers applicants to have met the requirement if their application to adjust their status was pending on February 14 and they applied to adjust status within one year of a visa becoming available based on the Final Action Dates chart under the policy guidance that was in effect when they applied.

USCIS explained that under the policy guidance in effect before February 14, 2023, some noncitizens may not have applied to adjust status because a visa was not available to calculate their CSPA age under the prior policy or their CSPA age would have been calculated to be over 21 years old. If these noncitizens apply to adjust their status under the new policy issued on February 14, USCIS said, they may not be able to meet the one-year "sought to acquire" requirement. "However, noncitizens who do not meet this

requirement may still benefit from the CSPA if they can establish that their failure to meet the requirement was the result of extraordinary circumstances," USCIS noted.

USCIS said it welcomes feedback on this guidance and will consider any comments received in future updates. Comments can be submitted via the [Policy Manual Feedback](#) page.

Details:

- [USCIS alert](#) (Aug. 24, 2023).

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OFLC Issues Round 4 FAQs for H-1B, H-1B1, and E-3 Programs; Rescinds COVID-19 FAQs

The Department of Labor's Office of Foreign Labor Certification (OFLC) has issued Round 4 of its frequently asked questions (FAQs) related to the Labor Condition Application (LCA/ETA Form 9035/9035E) for the H-1B, H-1B1 and E-3 visa programs.

Also, as of August 24, 2023, OFLC has rescinded in full all COVID-19 FAQs, which includes Round 1 (published March 20, 2020); Round 2 (published April 1, 2020); Round 3 (published April 9, 2020); and Round 4 (published June 3, 2020). The processing centers have resumed normal operations. All other FAQs not related to COVID-19 remain in full effect, OFLC said.

Details:

- [OFLC FAQ on H-1B, H-1B1, and E-3 Programs](#) (Aug. 24, 2023).
- [OFLC Rescinds All FAQs Regarding COVID-19](#) (scroll to Aug. 24, 2023).

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USCIS Confirms Evidentiary Requirements for Physician National Interest Waivers

U.S. Citizenship and Immigration Services (USCIS) has issued policy guidance, effective August 16, 2023, to confirm the evidentiary requirements for physicians seeking a national interest waiver of the job offer requirement based on work in an underserved area or at a U.S. Department of Veterans Affairs facility.

The updated guidance confirms that for physician national interest waiver petitions, the required contracts and public health letters must be dated within six months immediately before the petition filing date only for work that the physician has not yet started. The six-month requirement does not apply to work that the physician has already started or has completed before the petition filing date, USCIS said.

Details:

- [USCIS Policy Alert](#) (Aug. 16, 2023).

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USCIS Launches New Online Appointment Request Form

On August 21, 2023, U.S. Citizenship and Immigration Services (USCIS) announced a new online form for individuals, attorneys, and accredited representatives to request an in-person appointment at their local field office without having to call the USCIS Contact Center.

The [online appointment request form](#) allows individuals or legal representatives to request an in-person appointment at a field office, for ADIT stamps, Emergency Advance Parole, Immigration Judge Grants, and more, USCIS said. The USCIS Contact Center will review submitted forms and the availability of in-person appointments at a specific field office. The agency said that individuals "may request a specific date and time for an in-person appointment, but USCIS cannot guarantee that the requested appointment date will be scheduled. USCIS will confirm and schedule the individual for an available in-person appointment date and time."

Details:

- [USCIS alert](#) (Aug. 21, 2023).

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OFLC Issues FAQ for Employers on Effects of Hawaii Wildfires

The Department of Labor's Office of Foreign Labor Certification (OFLC) has issued frequently asked questions (FAQs) for employers and their authorized attorneys or agents related to effects of the Hawaii wildfires, including extensions and methods of communication.

Among other things, the FAQs note that OFLC will continue to contact employers and their authorized attorneys or agents primarily using email and—where email addresses are not available—will use U.S. mail, if available. If an employer is impacted by internet and power outages, employers may contact OFLC using the phone numbers listed in the FAQs. For each of OFLC's programs, the agency said the most effective means of communicating with OFLC is through the established Foreign Labor Application Gateway (FLAG) or the PERM Case Management System. If an employer or its authorized attorney or agent is unable to communicate with OFLC through FLAG or the PERM system, alternative methods of contacting OFLC regarding each of OFLC's programs are provided in the FAQs.

OFLC said it will grant extensions of time and deadlines for affected employers and/or their authorized attorneys or agents, including for delays caused by the wildfires in Hawaii and those resulting from businesses preparing to adjust their normal operations due to the wildfires in Hawaii. OFLC said it may extend deadline flexibility to employers and/or their authorized attorneys or agents who are outside a Federal Emergency Management Agency-designated "major disaster" area but are impacted in such a way as to affect their ability to meet OFLC deadlines. OFLC said it will evaluate such requests on a case-by-case basis.

Details:

- [OFLC FAQ re Hawaii Wildfires](#) (Aug. 18, 2023).

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Firm in the News

Cyrus Mehta is the recipient of Best Lawyer's 2024 "Lawyer of the Year" in Immigration Law in New York City. David Isaacson has also been listed in 2024 Best Lawyers.

Cyrus Mehta was a speaker at an AILA Webinar on August 24, 2023 entitled *Job Changes After the PERM is Approved: Legal and Ethical Considerations for Experienced Practitioners*.

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