



## IMMIGRATION UPDATE - SEPTEMBER 11, 2023

*Posted on September 11, 2023 by Cyrus Mehta*

### Headlines:

[HHS Creates Data-matching Program with DHS](#) – The Health and Human Services Centers for Medicare and Medicaid Services published a notice of a new data-matching program that will allow government agencies to share personally identifiable information of HHS applicants and enrollees.

[State Department Jettisons 2019 Public Charge Restrictions](#) – The Department of State issued a final rule to discard public charge restrictions made in a 2019 rule.

[USCIS Provides I-9 and E-Verify Guidance for People Impacted by the 2023 Hawaii Wildfire](#) – U.S. Citizenship and Immigration Services issued guidance regarding I-9 and E-Verify compliance requirements for individuals and companies affected by the recent wildfire in Hawaii.

[USCIS Ends Biometrics Fee Suspension for I-539 Applicants](#) – On September 30, 2023, U.S. Citizenship and Immigration Services will end its temporary suspension of biometrics submission for people extending or changing their nonimmigrant status.

[COVID-Era Visa Application Fee Receipts to Expire on September 30](#) – The Department of State announced the end of COVID-era exceptions and will resume a 12-month validity period for fee payments.

[Department of Labor Updates O\\*NET Database](#) – The Department of Labor released a new version of the O\*NET database.

[Bipartisan Congressional Letter Requests Relief for Skilled Visa Holders](#) – Members of Congress recently sent a letter to the Secretaries of State and Homeland Security requesting executive action to provide relief to certain highly skilled workers.

## [State Dept. Conducting Proof of Concept Testing for Digital Visa](#)

**Authorization** – The State Department's Bureau of Consular Affairs announced it is developing and testing a digital visa authorization to replace paper visas.

### **Firm in the News**

#### **Details:**

### **HHS Creates Data-matching Program with DHS**

The Health and Human Services (HHS) Centers for Medicare and Medicaid Services published notice of a data-matching program with the Department of Homeland Security to share data related to applicants' citizenship and immigration status for HHS eligibility determinations. The program will allow these government agencies to share personally identifiable information (PII) of HHS applicants and enrollees to determine the applicant's eligibility for enrollment in health insurance plans established under the Affordable Care Act. The relevant PII that will be shared between these agencies includes name, date of birth, Alien Registration Numbers, I-94 Arrival/Departure Records, SEVIS ID, foreign passport numbers, and other immigration-related information such as the individual's country of birth and details of USCIS employment authorizations. The program is committed to complying with all requirements of the Privacy Act of 1974, including notification to affected individuals and fail-safes to verify findings before taking adverse action such as suspending or terminating the enrollee's HHS benefits.

The comment period for this notice ends on October 6, 2023. This program is expected to begin around October 20, 2023, for an initial term of 18 months, with the possibility for a 1-year renewal in 2025. If an error is discovered in immigration records, a [Privacy Act amendment request may be submitted](#) in writing to USCIS's FOIA/PA Office in Lee's Summit, MO.

#### **Details:**

- [Centers for Medicare & Medicaid Services Notice](#) (Sep. 6, 2023).

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## State Department Jettisons 2019 Public Charge Restrictions

On September 5, 2023, the Department of State issued a final rule to discard the regulatory amendments included in a 2019 rule regarding ineligibility for immigration benefits based on an applicant's likelihood to become a public charge. Before 2019, only public cash assistance for income maintenance or long-term institutionalization at government expense was considered in the public charge inadmissibility assessment. The 2019 rule expanded the public charge test by adding several other factors that would be considered in determining whether an individual is likely to become a public charge. The 2019 rule raised concerns about fear and confusion preventing immigrants, including children, from accessing government services and benefits available to them.

This final rule will take effect on October 5, 2023. By abandoning the 2019 amendments, the DOS will continue to apply the regulatory language and Foreign Affairs Manual guidance in use before 2019.

### Details:

- [DOS Final Rule](#) (Sept. 5, 2023).
- [USCIS Public Charge Resources](#) (July 10, 2023).

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## USCIS Provides I-9 and E-Verify Guidance for People Impacted by the 2023 Hawaii Wildfire

U.S. Citizenship and Immigration Services (USCIS) issued guidance on September 5, 2023, regarding I-9 and E-Verify compliance requirements in light of the 2023 Hawaii wildfires, regarding the potential loss or destruction of affected employees' documentation. All employment eligibility verification requirements remain in effect for areas impacted by the wildfires and there have been no exceptions made for employers seeking to onboard or re-verify affected employees. Individuals whose documentation was lost or damaged should immediately apply for replacement documentation. Employers may accept receipt for the replacement request to complete I-9 verification for the first 90 days of employment. The employee should follow up with the replacement document or other acceptable documentation within 90 days from the first date of employment to complete the verification. Employers

whose I-9 records have been lost or destroyed because of the wildfires must recreate new I-9 forms for current employees, with an annotation stating: "Original Form I-9 destroyed in 2023 Hawaii wildfire; replacement created MM/DD/YYYY."

Employees whose immigration documents or processes are impacted by the wildfires should seek relief through [USCIS' Immigration Relief in Emergencies or Unforeseen Circumstances program](#).

**Details:**

- [USCIS I-9 Related News](#) (Sep. 5, 2023).

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### **USCIS Ends Biometrics Fee Suspension for I-539 Applicants**

The temporary suspension of biometrics submission for I-539 applicants changing to or extending their H-4, L-2, E-1, E-2, E-2C, E-3, or E-3S, and E-3Y nonimmigrant status will expire on September 30, 2023. Notably, in U.S. Citizenship and Immigration Services' (USCIS) [FY 2022 Progress Report](#) issued in December 2022, the Service announced its intent to establish a permanent biometrics exemption for all I-539 applicants "in the months ahead." As fiscal year 2023 comes to a close, USCIS has not yet followed through with these plans. In the absence of further guidance from USCIS, applicants must include the \$85 biometrics fee per applicant for all I-539 and I-539A applications postmarked or submitted electronically after September 30, 2023.

**Details:**

- [USCIS Alert](#) (April 19, 2023).

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### **COVID-Era Visa Application Fee Receipts to Expire on September 30**

Machine-Readable Visa (MRV) fees paid to the Department of State (DOS) in connection with a visa application submitted to a U.S. consulate or embassy abroad are normally valid for up to 12 months from the date of payment. Due

to consulate closures and other processing delays caused by the COVID-19 pandemic, the DOS extended the validity of MRV fees paid on or after March 20, 2020. On September 1, 2023, the DOS announced the end of these COVID-era extensions and will resume the 12-month validity period for all MRV fee payments. Any visa applicant who submitted their MRV fee payment between March 20, 2020, and October 1, 2022, must schedule an appointment or submit an interview waiver application before September 30, 2023. Failure to meet this deadline will result in forfeiture of the fees paid. Interviews scheduled beyond this date will remain valid so long as the appointment is scheduled before the deadline. Importantly, applicants who have been scheduled for an interview to take place after September 30 should not attempt to reschedule their appointments after that date, as this will result in both the loss of the original appointment date and forfeiture of the MRV fee. If the MRV fee expires before the applicant has scheduled an appointment or submitted an interview waiver application, the applicant must submit a new application package in addition to a new MRV fee payment.

**Details:**

- [DOS U.S. Visas News](#) (Sep. 1, 2023).

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### **Department of Labor Updates O\*NET Database**

The Department of Labor, Employment and Training Administration released the O\*NET 28.0 Database and updated its site on September 5, 2023, making [updates to 90 occupation codes](#). Among these updates were revisions to occupation descriptions (including tasks, skills, work activities, etc.); minimum requirements for training, work experience, and education; job zones; and alternate job titles. Significantly, the occupation code [15-1211, Computer Systems Analysts](#) was downgraded from Job Zone Four: Considerable Preparation Needed, to Job Zone Three: Medium Preparation Needed. As a result of this change, practitioners should expect a higher risk for PERM business necessity audits and H-1B specialty occupation requests for additional evidence for positions classified under the Computer Systems Analysts occupation.

The next O\*NET update is expected in November 2023.

**Details:**

- [O\\*NET Resource](#) (Sept. 5, 2023).

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### **Bipartisan Congressional Letter Requests Relief for Skilled Visa Holders**

Congressmen Raja Krishnamoorthi (D-IL) and Larry Bucshon, M.D. (R-IN) recently sent a letter to Secretary of State Antony Blinken and Department of Homeland Security Secretary Alejandro Mayorkas requesting executive action to provide relief to highly skilled workers, allowing the filing of employment-based immigrant visa applications by marking all dates as “current” across all chargeability areas for employment-based green card cases in the October 2023 Visa Bulletin.

The letter, co-signed by a bipartisan group of 56 other members of Congress, outlined the precedent and authority for such action and highlighted the compelling government and economic interests in retaining these highly skilled professionals within the U.S. labor force, particularly during this time of increased opportunities for STEM workers to relocate to Canada. The action would bring relief and security to thousands of foreign nationals and their families by securing their ability to maintain work authorization, get promoted, and launch businesses. Under the current backlogs, these foreign nationals and their families are stuck in limbo waiting for the next step in obtaining their green cards beholden to their current job and employer. According to the letter, if the United States does not address these shortcomings, it is at risk of losing critical talent to countries that have already taken steps to prioritize immigration opportunities for highly skilled workers.

In the press release on Congressman Krishnamoorthi's website, Aman Kapoor, president of Immigration Voice was quoted as saying, "The entire basis for this problem is a discriminatory immigration system that requires Indian nationals to have to wait 200 years for a green card while people from 150 other countries have no wait at all. While this larger problem cannot be fixed without legislation, our organization of over 100,000 members is absolutely thrilled with the bipartisan effort of Congressmen Krishnamoorthi, Bucshon and 56 other members of Congress to call on the Biden Administration to adopt this change."

**Details:**

- [Letter to the Biden Administration](#), Congressman Raja Krishnamoorthi website (July 28, 2023).
- [Press Release](#), Congressman Raja Krishnamoorthi website (July 28, 2023).

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**State Dept. Conducting Proof of Concept Testing for Digital Visa Authorization**

On September 8, 2023, the U.S. Department of State's (DOS) Bureau of Consular Affairs announced it is developing and testing a digital visa authorization (DVA) capability instead of the traditional process of printed visas placed in applicants' passports. The U.S. Embassy in Dublin is conducting proof of concept testing with a small number of K-1 visas. If successful, DOS plans to expand the DVA to other visa classifications and other posts abroad. There was no timeline indicated in this announcement.

U.S. Customs and Border Protection's (CBP) Document Validation program will notify airlines digitally when a traveler has valid travel credentials, including a DVA. DOS will provide more information and updates as they become available.

**Details:**

- [Travel.state.gov Visa News](#), U.S. Department of State (September 8, 2023)[Back to Top](#)

**Firm in the News**

**Cyrus Mehta** was interviewed extensively by Stuart Anderson in Forbes ("Changing Visa Bulletin Could Save Immigrants and H-1B Visa Holders") on why the Dates for Filing in the Visa Bulletin should be advanced to provide much needed relief to immigrants and H01B visa holders caught in the crushing green card backlogs. Mr. Mehta in his interview stated, "The legal immigration system is not befitting a great nation like the United States. It makes no sense for individuals educated at US universities to be forced to leave and contribute their talents elsewhere." Mr. Mehta's full interview can be found at <https://www.forbes.com/sites/stuartanderson/2023/09/06/changing-visa-bulletin-could-save-immigrants-and-h-1b-visa-holders/?sh=5a2c96ce2b62>

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