



IMMIGRATION UPDATE - SEPTEMBER 18, 2023

Posted on September 18, 2023 by Cyrus Mehta

Headlines:

[October 2023 Visa Bulletin is Published](#) – The October 2023 Visa Bulletin shows no significant movement, with instructions to use Chart B.

[USCIS Updates Policy Guidance for Extraordinary Ability and Outstanding Professor or Researcher EB-1 Immigrant Visa Classifications](#) – U.S.

Citizenship and Immigration Services announced on September 12, 2023, that it is updating the USCIS Policy Manual to clarify the types of evidence the agency will evaluate to determine eligibility.

[Judge Hanen Rejects Revised Version of DACA](#) -- While expressing sympathy for DACA, Judge Hanen declared the Biden Administration's revised version of the program illegal.

[Proposed DOL Rule Aimed at Bolstering Temporary Farm Workers' Protection](#) – U.S. Department of Labor proposed a new rule intended to strengthen protections for H-2A farm workers.

[House Democrats Ask Biden to Help Immigrants and Asylum-Seekers through Executive Action](#) – Over 100 House Democrats issued a letter to President Biden and DHS Secretary Alejandro Mayorkas asking for executive action to be taken to support immigrants and asylum-seekers in getting work authorization.

[Certain TPS Beneficiaries Are Now Eligible for 540-day Extension of Work Authorization](#) -- USCIS announced those who have TPS (or a pending application) are eligible to extend their EADs for up to 540 days past their expiration date.

Details:

October 2023 Visa Bulletin is Published

On September 15, 2023, the Department of State released the October 2023 Visa Bulletin, indicating which green card applications are eligible to move forward based on their initial filing date. For employment-based filings, USCIS has directed the public to use “Chart B,” the Dates for Filing chart in the October Visa Bulletin.

The Visa Bulletin affects those born in countries where there are more green card applications filed than green cards available for the fiscal year. Those born in India and China are subject to backlogs and have to wait for their priority date to become current so that they may file an Adjustment of Status, the final stage in the green card application.

The EB-1 category is “current” for all countries except for India and China. Indian nationals with priority dates of July 1, 2019, and earlier are eligible to move forward. Chinese nationals with priority dates of August 1, 2022, can move forward with their applications.

EB-2 Indian nationals with priority dates of May 15, 2012, and EB-2 Chinese nationals with priority dates of January 1, 2020, can move forward.

In the EB-3 category, Indian nationals with priority dates of August 1, 2012, and Chinese nationals with priority dates of September 1, 2020, are eligible to file their Adjustment of Status applications for their green cards.

Details:

- [Department of State October 2023 Visa Bulletin](#)
- [USCIS Visa Bulletin Guidance](#)

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USCIS Updates Policy Guidance for Extraordinary Ability and Outstanding Professor or Researcher EB-1 Immigrant Visa Classifications

U.S. Citizenship and Immigration Services (USCIS) announced on September 12, 2023, that it is updating the USCIS Policy Manual to clarify the types of evidence the agency will evaluate to determine eligibility for extraordinary ability and outstanding professor or researcher EB-1 immigrant visa classifications.

An extraordinary ability EB-1 immigrant visa classification does not require a

job offer, and it is filed by a person who has extraordinary ability in the sciences, arts, education, business, or athletics, which has been demonstrated by sustained national or international acclaim, and whose achievements have been recognized in the field through extensive documentation.

An outstanding professor or researcher EB-1 immigrant visa classification is filed by a U.S. employer on behalf of a professor or researcher who is internationally recognized as outstanding in a specific academic area to work in a tenured or tenure-track position or a comparable position to conduct research.

USCIS explained that the new clarifying guidance enumerates and describes the evidence, or qualified comparable evidence, that meets the relevant evidentiary criteria for these petitions. Additionally, USCIS clarified the totality of the circumstances approach used by officers to evaluate the relevant evidentiary criteria, as well as outlined a list of positive factors that officers should consider when adjudicating these matters. While the examples of relevant evidence and factors have a focus on science, technology, engineering, or mathematics (STEM) fields, USCIS states that the list of examples is non-exhaustive and that while the listed factors are more relevant to STEM fields, the guidance applies to all extraordinary ability persons and outstanding professors or researchers.

Details:

- [USCIS alert](#) (September 12, 2023).
- [Policy Manual, Volume 6, Part F, Chapter 2 – Extraordinary Ability](#)(Current as of September 12, 2023)
- [Policy Manual, Volume 6, Part F, Chapter 3 – Outstanding Professor or Researcher](#)(Current as of September 12, 2023)

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Judge Hanen Rejects Revised Version of DACA

On Wednesday, September 13, 2023, U.S. District Court Judge Andrew Hanen declared the Biden Administration's revised version of the Deferred Action for Childhood Arrivals (DACA) program illegal. While expressing sympathy for DACA, Judge Hanen agreed with Texas and eight other states that the program

is beyond the authority of the Executive Branch.

The DACA program was created and initiated by the Obama Administration in 2012. The program protects eligible youth immigrants from removal and provides them with employment authorization. Judge Hanen's decision keeps in place an injunction barring the government from accepting new applications but allows the program to continue for existing recipients during the ongoing legal review. The case is expected to reach the Supreme Court.

Details:

- [AILA News Alert](#), September 14, 2023
- [Federal judge again declares that DACA is illegal with issue likely to be decided by Supreme Court](#), Associated Press (September 13, 2023)

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Proposed DOL Rule Aimed at Bolstering Temporary Farm Workers' Protection

On September 12, 2023, the U.S. Department of Labor (DOL) proposed a new rule intended to strengthen protections for H-2A farm workers.

The rule intends to add protections for H-2A farm workers including self-advocacy, protection against retaliation, enhanced transparency of foreign labor recruitment, and increased enforcement.

In the DOL release, acting Secretary Julie Su says, "Farm workers are vital to our farmers, our food supply and our communities. This proposed rule would strengthen protections for H-2A farm workers who are particularly vulnerable to labor abuses, empower them to advocate for fair treatment and ensure that their employment does not depress labor standards and undercut domestic farm workers. The administration is committed to protecting all workers, and this proposal would significantly advance that effort."

The release outlines five specific parts of the proposed rule and how they will be implemented:

- **More protections for work self-advocacy.** The rule would expand and clarify existing anti-retaliation protections and expand workers' rights to invite guests like labor organizations to employer-provided housing. The release also lists requirements for employers to prevent coercion and transparency for employees' rights to organize freely.

- **Clarifying when a termination is “for cause”.** The rule will clarify what is required of an employer when terminating an employee “for cause” and establish six conditions when this termination can happen.
- **More transparency in foreign labor recruitment.** The rule is intended to protect agricultural workers from predatory recruitment practices and would require employers to provide a copy of the agreement with agents and recruiters in the H-2A recruitment process, regardless of whether the agent or recruiter is U.S.-based or abroad.
- **Predictable wages.** New wage rates will apply immediately upon their publication in the Federal Register, instead of weeks later. In addition, employers who do not provide adequate notice to workers if there is a delay in their start date will be required to pay workers the rate for each day the work is delayed up to 14 days.
- **Access to safe transportation.** Long and crowded travel to and from worksites is commonplace and has raised safety concerns. The proposed rule would require seat belts in transport vehicles and prohibit employer-provided vehicles unless each occupant is wearing a seat belt.
- **Enhancing enforcement.** Debarment would be faster for any business that violates H-2A program rules with the proposed rule and would make it easier for the system to discontinue recruitment for employers who continue to fail to meet program requirements. It would also forbid employers from confiscating workers’ passports, visas, or other government IDs.

There will be a [60-day notice-and-comment period](#) after the proposed rule is published in the Federal Register before the department considers all comments and publishes the final rule.

Details:

- [News Release](#), U.S. Department of Labor (September 12, 2023)

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House Democrats Ask Biden to Help Immigrants and Asylum-Seekers through Executive Action

On September 10, 2023, over 100 House Democrats, led by Representative Jerry Nadler (D-NY) and Representative Pramila Jayapal (D-WA) issued a letter to

President Biden and Department of Homeland Security (DHS) Secretary Alejandro Mayorkas asking for executive action to be taken to support immigrants and asylum-seekers in getting work authorization.

The letter requests the Biden Administration use “all the tools available to provide stability to undocumented individuals and recently arrived asylum seekers, seeking to work lawfully, support their families, and contribute to the economy.”

The letter suggests three paths to ease the burdens on asylum seekers in obtaining work authorization.

- **Relieving Delays for EADs.** Asylum seekers face significant regulatory and processing delays in obtaining employment authorization documents (EADs). Immigration courts present long delays to even apply. After that, there is a regulatory waiting period of 150 days for asylum seekers to apply for work authorization, and another 30 days to receive their EADs. During this time, refugees are forced to rely on underfunded community groups to provide housing, food, and health services, while many asylum seekers have the skills and desire to work and provide for their families independently.
- **Humanitarian parole.** The letter suggests the Biden Administration to consider using humanitarian parole on a case-by-case basis, which has been used by both parties since the 1950s for urgent humanitarian reasons.
- **Provisional waiver.** Finally, the democrats urge the administration to reduce the backlog in the provisional waiver program, which has been a successful program to reunite families designed to streamline the family-based immigration visa process. Backlogs have grown significantly, with the current wait time reaching 43 months (over 3 ½ years) as of this past April.
- **Streamline cancellation of removal.** Many eligible noncitizens residing in the U.S. only are aware of this program once they are in removal proceedings. The House Democrats urge the Biden Administration to use rulemaking to implement a process to proactively request a case review to access this relief.

The letter addresses that Congress is unlikely to pass any legislative immigration relief plans, but Biden can still make meaningful reforms through

other authorities like executive action and rulemaking.

Details:

- [House Letter to Biden](#), Representatives Nadler and Pramila (September 10, 2023)
- [103 House Democrats join calls for Biden to open up the immigration playbook](#), The Hill (September. 11, 2023)

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Certain TPS Beneficiaries Are Now Eligible for 540-day Extension of Work Authorization

On September 8, 2023, USCIS announced that individuals who have TPS (or a pending application) are now eligible to extend their Employment Authorization Document (EAD) for up to 540 days past their EAD card expiration date. For I-9 purposes, the TPS beneficiary can present their expired EAD card and their I-765 Receipt Notice showing that they timely filed an EAD renewal application before October 26, 2023.

TPS (“Temporary Protected Status”) is a designation that allows nationals from specific countries to stay in the United States for up to 18 months while their home country has a temporary emergency condition.

Details:

- [USCIS Clarifies Certain TPS Beneficiaries Eligible for 540 Day Extension](#), last updated September 8, 2023
- USCIS I-9 Guidance for TPS Automatic EAD Extensions, last updated September 8, 2023

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