



GLOBAL IMMIGRATION UPDATE – AUGUST 2023

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Feature Article

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Feature Article

ARTIFICIAL INTELLIGENCE IN IMMIGRATION DECISION-MAKING: AN OVERVIEW

This article provides an overview of artificial intelligence (AI) considerations in immigration decision-making in the European Union.

European Union

AI in the EU: General Background

As part of its digital strategy, the European Commission and the European Parliament have been working on how to introduce and regulate AI at various aspects and levels of the European Union (EU). The use of AI in the EU is expected to be regulated by the "AI Act."

The AI Act has not been adopted yet, but an agreement is expected by the end of this year. On June 14, 2023, the European Parliament adopted the "Parliament negotiating position on the AI Act," which will be discussed by the EU Member States at the Council to define the final form of the law.

The AI Act will follow a risk-based approach and *aims to promote the uptake of human-centric and trustworthy artificial intelligence and to ensure a high level of protection of health, safety, fundamental rights, democracy and rule of law and the environment from harmful effects of artificial intelligence systems in the Union while supporting innovation and improving the functioning of the internal market.*

AI and the EU Immigration Scheme

Based on the proposed AI Act and the previous in-depth analysis carried out by the European Parliament, it is clear that the EU foresees introducing AI to the EU immigration scheme.

In addition, the EU has been developing AI software to predict migration flows to better manage them by mitigating risks of tension between migrants and EU citizens. The project is called "ITFLOWS." While many are optimistic about the introduction of this new learning algorithm, some expressed concerns about human rights risks. So far, not much information has been disclosed regarding this project, however.

Details:

- EU AI Act: First Regulation on Artificial Intelligence. European Parliament. [EU AI Act: first regulation on artificial intelligence](#)
- Artificial Intelligence at EU Borders: Overview of Applications and Key

Issues. European Parliament. [Artificial intelligence at EU borders](#)

- ITFLOWS: IT Tools and Methods for Managing Migration Flows.
<https://www.itflows.eu/>

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Country Updates

CANADA

Applications are now open for the new H-1B Specialty Occupation visa holder work permit. Also, restrictions on foreigners' authorized studies have been temporarily removed.

New H-1B Specialty Occupation Visa Holder Work Permit

The government of Canada announced that applications are now open for the [H-1B visa holder work permit](#) that was [announced](#) on June 27, 2023, by the Honourable Sean Fraser, Minister of Immigration, Refugees and Citizenship as part of initiatives related to the Government of Canada's [Tech Talent Strategy](#).

Under this temporary measure, H-1B holders can apply for an [open work permit](#) of a duration of up to three years. If their passport expires in less than three years, their work permit will expire at the same time as their passport. There are no extensions under this initiative.

This policy will remain in effect for one year **or** until Immigration, Refugees and Citizenship Canada (IRCC) receives 10,000 applications. The 10,000 application cap was reached on July 17, 2023.

Who can apply for an H-1B visa holder work permit?

To be eligible under this policy, individuals must:

- Have a valid H-1B specialty occupation visa; and
- Currently live in the United States.

Accompanying family members currently living in the United States may include a spouse, a common-law partner, and/or dependent children. They will be eligible to apply for a work permit or study permit, as needed. If a family member does not qualify under this policy, they may be eligible as a [family member of a highly skilled worker](#).

How do you apply for an H-1B visa holder work permit?

To apply for the H-1B visa holder work permit, the applicant must present a copy of their current H-1B visa, Form I-797/I-797B, Notice of Action, and proof that they currently live in the United States, such as Form I-94, Arrival/Departure Record, a recent utility bill, or an income tax report.

Applications must be submitted through the [IRCC Portal](#) (eApp). The principal applicant must complete an application for each family member they wish to include in their application and can submit them all at once. If the principal applicant has already submitted their application, accompanying family members can apply using their account once the principal applicant has received their port of entry [letter of introduction](#), which is an approval letter stating that the applicant is allowed to work in Canada.

Processing times for these applications are approximately 2 months.

[Biometrics](#) will also be required after the application is submitted.

Restrictions on Foreign Workers' Authorized Studies Temporarily Removed

Mr. Fraser [announced](#) that as of June 27, 2023, the government of Canada is implementing a new temporary measure allowing temporary foreign workers to study full-time or part-time without a study permit, without any restrictions or limits on the length of the study program. Before implementation of this new temporary measure, temporary foreign workers were not permitted to enroll in a study program of six months or longer unless they obtained a valid study permit.

Temporary foreign workers who hold a valid work permit and temporary foreign workers who have submitted an application to renew their work permit on or before June 7, 2023, may benefit from this new temporary measure. The new temporary measure will remain in effect for a temporary period of three years.

Under this new measure, temporary foreign workers may enroll in any study program on a full-time or part-time basis, regardless of the length of the study program, while their work permit remains valid or until this new temporary policy expires. Temporary foreign workers who wish to study beyond the validity of their work permit must apply for a study permit.

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HONG KONG

New schemes have been announced for capital investment entrants and top talent.

Capital Investment Entrant Scheme

The Capital Investment Entrant Scheme (CIES), which had permitted investors to acquire Hong Kong residency by making a passive investment, was suspended by the Hong Kong Special Administrative Region (HKSAR) government in 2015. Before the suspension, the latest version of the CIES in 2010 had removed investing in real estate as a qualifying investment but permitted an applicant who invested HKD 10 million (about USD 1.25M) in authorized financial products in Hong Kong to qualify for residency. This version of the CIES was then suspended on January 15, 2015, but the Immigration Department continued to process applications received on or before the suspension date. As of December 31, 2021, formal approval had been granted to 35,000 applicants to reside in Hong Kong, bringing a total investment amounting to HKD 316.9 billion.

On April 19, 2023, the HKSAR government announced in its 2023/2024 Budget Report that a new CIES will be introduced. The new scheme is expected to generate high demand for financial and related professional services, and to create more employment opportunities in wealth and asset management to facilitate Hong Kong's position as an international wealth and asset management hub. In the new scheme, it is anticipated that new asset categories benefiting the long-term development of Hong Kong in innovation and technology sectors will be included, apart from the traditional financial asset types.

The government is formulating details of the new scheme, which will generally adopt the framework and application criteria of the original CIES, with possible adjustments to the investible areas in Hong Kong, and the new CIES investment threshold will be increased to a multiple of the previous requirement. Apart from financial assets, an applicant will be able to invest in new asset categories benefitting the long-term development of Hong Kong (including the innovation and technology sector), with a view to attracting new capital and talent to Hong Kong, bringing new impetus to the economy and fostering the development of industries in Hong Kong at the same time.

Top Talent Pass Scheme

The Top Talent Pass Scheme (TTPS) was launched on December 28, 2022, to attract highly skilled global talent to enter Hong Kong without employment conditions. Successful applicants can enter Hong Kong for two years without a sponsoring employer and will be permitted to work, change employers, or establish a business in Hong Kong. To extend their stay after the initial two years, the applicant must present documentary evidence that they have secured a professional job and remuneration package at the prevailing market level or joined a business.

To qualify for entry under TTPS, the applicant must meet one of three categories:

Category A: Persons with an annual income of HKD 2.5 million or more or its equivalent in foreign currency in the year preceding the date of application.

Category B: Persons who have obtained a bachelor's degree from one of the world's top 100 universities and who have at least three years of work experience over the past five years immediately preceding the date of application.

Category C: Persons who have obtained a bachelor's degree from one of the world's top 100 universities within the past five years immediately preceding the date of application but have less than three years of work experience, subject to an annual quota of 10,000 to be allotted on a first-come, first-served basis.

This program was launched to attract talent to Hong Kong and is a key priority for Hong Kong to remain competitive as an international financial center because of the wave of emigration on the heels of the Hong Kong government's COVID-19-related restrictions, which have now been lifted, as well as enactment of the National Security Law.

According to Chief Executive John Lee, more than 100,000 applications have been received so far, with 61,000 approved and 10,000 arrivals, with the latest official figure for the first half of the year to be released soon. The scheme was intended to counteract a "brain drain," which saw a net outflow of 60,000 residents in 2022.

In response to a lawmaker's query, Director of Immigration Au Ka-wang said

that nearly 95 percent of applicants for the Top Talent Pass Scheme were from mainland China, with only three percent coming from Canada, Australia, the United States, and Singapore.

Whether the persons with approvals will actually come to Hong Kong and whether these arrivals will be able to meet the needs of companies in Hong Kong to attract global talent who have left or are planning to leave remains to be seen.

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ITALY

Work can start before a foreigner signs the contract of stay. Also, there is a new directive on third-country nationals carrying out highly skilled work, and there is a general shortage of Permit of Stay application kits across Italy.

Work and Contracts of Stay

Under the new regulations introduced in the [Immigration law](#) (Article 6-bis), it is now possible for a foreigner to start working even before signing a contract of stay at the immigration office. Therefore, once a work permit (*nulla osta*) is issued and the foreign employee/assignee has obtained a visa and entered Italy, work can start.

Per the government [website](#), this applies to all cases of entry for subordinate work, including seasonal work. It also applies to all cases under Article 27 (entries outside the immigration quotas) such as Blue Card holders, intra-corporate transfers, and others.

Before this amendment in the law (introduced with the so-called [decreto Cutro](#) (DL 20 March n. 23 converted into law 5 May 2023 n. 50), it was only possible to start working in Italy after (1) the work permit (*nulla osta*) had been issued, (2) the worker had obtained the entry visa and entered the country, and (3) the worker had signed the contract of stay (*contratto di soggiorno*).

New Directive on Third-Country Nationals Carrying Out Highly Skilled Work

The Council of Ministers has approved, in a preliminary examination, a legislative decree to implement [Directive \(EU\) 2021/1883](#) on the conditions of entry and residence of third-country nationals intending to carry out highly

skilled work (European Union Blue Card).

The scope of the directive is to create a more attractive system for third-country-national highly skilled workers by broadening the range of situations or categories to which the directive applies and introducing faster procedures and more flexible and inclusive admission criteria to facilitate easier mobility within the EU.

Key Changes Introduced by the Directive

- The possibility of issuing the EU Blue Card to seasonal workers who meet the requirements for highly skilled work, allowing them to be considered outside the maximum quotas for foreigners admitted for subordinate work in the country.
- Facilitating the entry of managers and specialists in information and communication technology services.
- Promoting innovative entrepreneurship, enabling foreign citizens with the EU Blue Card to engage in self-employment activities alongside their subordinate work.
- More favorable conditions for family reunification and access to the labor market for the family members of the EU Blue Card applicant.

Shortages/Delays of Permit of Stay Application Kits

There is a general shortage of Permit of Stay application kits across Italy and some delays during the various phases of immigration processing. The main issues include:

- In some cities, application receipts (*Ricevute Postali*) are getting more and more difficult to source.
- In many cases, police offices (*Questura*) are having difficulties in scheduling the fingerprint appointments. Many applicants must wait for an invitation to be sent via regular mail to their home address.
- In many cases, fingerprint appointments are being scheduled several months (even 6 to 8 months) after the date of the Permit of Stay application.

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RUSSIA

Amendments have been made regarding the legal status of foreign citizens in the Russian Federation.

The amendments were made to Federal Law No. 115-FL of July 25, 2002, "On the Legal Status of Foreign Citizens in the Russian Federation." For example:

An amendment, effective January 6, 2024, provides for issuance of an indefinite residence permit to a highly qualified specialist (HQS) and family members, upon receipt of which a foreign specialist may continue working in the Russian Federation without having to apply for renewal of the work permit. The condition for obtaining an indefinite residence permit for this category will be residence in the territory of the Russian Federation for at least two years with a residence permit issued on the basis of the status of the HQS. At the same time, during the specified period of employment, the personal income tax must have been accrued and paid.

For members of the HQS family to qualify for an indefinite residence permit, they also must live in the Russian Federation for two years on the basis of a residence permit issued on the basis of the HQS status.

An amendment, effective March 1, 2024, provides for an increase of the minimum salary for HQS status from 167,000 rubles per month (before taxes) to 250,000 rubles per month (before taxes). At the moment, there are no clarifications regarding the HQS with whom contracts are concluded before March 1, 2024—how the increase in the minimum wage will affect their status.

It is always possible to apply for a standard work permit for a foreign employee. A standard work permit is issued for one year on the basis of the corporate work permit, and the minimum salary is equal to the minimum salary for all working individuals in certain regions of the Russian Federation.

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UNITED KINGDOM

Immigration fees are expected to be raised soon. Also, the European Court of Justice has ruled against UK citizens requesting an annulment of Brexit-related EU decisions.

Fees to be Raised Soon

On July 13, 2023, the Prime Minister indicated the government's intention to partly fund public sector pay increases by raising immigration fees. Full details of the increases have not yet been announced, but in a Treasury statement in the House of Commons, the government said the increases could apply to two types of visa fees:

- **UK Visas and Immigration visa application fees.** Fees for work (presumably including Skilled Worker) and visitor visas are set to rise by 15%. Fees for certificates of sponsorship (including for Skilled Worker applications, currently costing £199) are due to rise by 20%, as are other non-work category visa fees including applications submitted inside and outside the UK, applications for settlement (indefinite leave to remain), British citizenship and priority visas; and
- **The Immigration Health Surcharge.** This is a payment toward the National Health Service, and the headline fee for adults is currently £624 per year of the visa. The headline rate is due to increase to £1,035 per year of the visa. The discounted rate (for students, Youth Mobility Scheme applicants and those under 18) is due to increase from £470 to £776 per year of the visa.

As a result, **to avoid the fee increases, you may wish to consider fast-tracking any visa applications you have in the pipeline.** It is not yet known when the higher fees will start.

ECJ Rules Against UK Citizens Requesting Annulment of Brexit-Related EU Decisions

The European Court of Justice (ECJ) has dismissed three cases brought by UK citizens that challenged the loss of their rights as European Union (EU) citizens as a result of Brexit.

In March and April 2022, some UK citizens brought three separate actions for total or partial annulment of the decisions regarding the UK withdrawal from the EU, as it "deprives them of their status as EU citizens and their rights arising therefrom."

The ECJ dismissed the appeal, explaining that "the loss of the status of citizen of the European Union, and consequently the loss of the rights attached to that status, is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, and not of the

withdrawal agreement or the Council's decision approving that agreement."

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Firm in the News

Cyrus Mehta was quoted by *Bloomberg Law* in "Lawmakers Push Biden to Allow Earlier Green Card Applications." He said that it's unclear whether all employment-based immigrants have been deemed eligible for green cards at the start of the fiscal year but noted that the Department of Homeland Security (DHS) "has adopted a flexible interpretation of visa availability before." Filing a green card application would protect visa holders' dependent children from aging out of legal status when they turn 21, Mr. Mehta said. The article notes that in February, the Biden administration "said it would 'freeze' a dependent child's age based on the date a parent applied for permanent residency; previously DHS used the date a visa was deemed officially available." Mr. Mehta said, "This relief can be provided by a stroke of a pen advancing the filing dates and allowing many more people to apply for adjustment of status."

<https://news.bloomberglaw.com/daily-labor-report/lawmakers-push-biden-to-let-immigrants-seek-green-cards-earlier>

Mr. Mehta was quoted by the *Times of India* in "U.S. Appeals Court Upholds Filing of Amended H-1B Applications on Change in Work Location." Mr. Mehta shared his views on why filing H-1B amendments each time a worker moves outside the area of employment—even to a new home worksite—can be painful and burdensome for employers and H-1B workers.

<https://timesofindia.indiatimes.com/nri/us-canada-news/us-appeals-court-upholds-filing-of-amended-h-1b-applications-on-change-in-work-location/articleshow/101542599.cms?from=mdr>

Mr. Mehta and **Kaitlyn Box** were quoted by Forbes in "Immigration Agency Releases Guidance for H-1B Visa Holders." They said, "Recipients of based on compelling circumstances will likely need to look for other solutions if they wish to remain and work in the U.S. on a long-term basis until they obtain permanent resident status." They said that a new employer must file a new labor certification and I-140 petition, and "could recapture" the old priority date. Consular processing might be possible when the priority date is available, the article notes. "A new employer could also file a new H-1B visa petition for the foreign worker alongside the new labor certification and I-140 petition,"

according to Mr. Mehta and Ms. Box.

<https://www.forbes.com/sites/stuartanderson/2023/06/20/immigration-agency-releases-guidance-for-h-1b-visa-holders/?sh=3adcb12651d8>

Mr. Mehta and Ms. Box co-authored "Wage Transparency Laws Add Extra Layer of Complexity to Labor Certification Recruitment," published by *PLI Chronicle*. [https://plus.pli.edu/Details/Details?fq=id:\(378500-ATL5\)](https://plus.pli.edu/Details/Details?fq=id:(378500-ATL5))

Mr. Mehta was quoted extensively in the *Times of India* on the USCIS policy broadening the compelling circumstances parameters for Employment Authorization Documents. He said, for example, that the new compelling circumstances measure "is of a very limited scope and can only be used as a stopgap measure when a loss of a job would derail the foreign worker's life in the U.S. It will allow the concerned individual to remain in the U.S. lawfully and not face the re-entry bars owing to overstay. However, it is not a nonimmigrant visa like the H-1B that allows for an extension of status and the ability to adjust this status to a permanent residence (aka green card)." Mr. Mehta also noted that USCIS relaxed the standard on June 14, 2023, "by allowing persons who have lived in the U.S. with family for a significant amount of time to demonstrate that due to job loss they would be forced to sell their home, pull their children out of school, lose their health insurance and forced to relocate to their home country." He noted other technical issues and compelling circumstances, such as "instances where the individual has maxed out of the six-year H-1B visa limit and cannot extend it, or the company's ownership structure has changed and the individual cannot remain in L-1 status." In such cases, he said, the employer "would need to show that the resultant job loss would negatively impact projects and result in significant monetary loss or other disruption to the employer."

<https://timesofindia.indiatimes.com/nri/us-canada-news/laid-off-workers-in-us-could-benefit-from-broadening-of-compelling-circumstances-norms/articleshow/101068686.cms?from=mdr>

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