



## IMMIGRATION UPDATE - OCTOBER 16, 2023

*Posted on October 16, 2023 by Cyrus Mehta*

### Headlines:

#### **USCIS Reaches H-2B Cap for Temporary Nonagricultural Workers for First Half of FY 2024**

– U.S. Citizenship and Immigration Services has received enough petitions to reach the cap on H-2B visas for temporary nonagricultural workers for the first half of fiscal year 2024. October 11, 2023, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2024.

#### **USCIS Provides Guidance on Interpretation of EB-5 Program Changes**

– U.S. Citizenship and Immigration Services (USCIS) provided additional guidance on its interpretation of changes to the EB-5 program made by the EB-5 Reform and Integrity Act of 2022, specifically the required investment timeframe and how USCIS treats investors who are associated with a terminated regional center.

#### **Visa Bulletin for November Includes Reminder About Religious Workers Category Expiration**

– The Department of State's Visa Bulletin for November 2023 includes a reminder that the non-minister special immigrant program expires on November 17, 2023.

#### **Temporary Need Exemption Extended for Certain Guam and CNMI H-2B Workers**

– U.S. Citizenship and Immigration Services issued policy guidance reflecting the extension of the exemption from the temporary need requirement for petitions for temporary nonagricultural H-2B nonimmigrant workers on Guam and in the Commonwealth of the Northern Mariana Islands through December 30, 2024.

#### **DHS Announces Relief for Cameroonian F-1 Nonimmigrant Students**

– Effective December 8, 2023, through June 7, 2025, Cameroonians in lawful F-1 nonimmigrant student status may request employment authorization, work an

increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status.

**USCIS Launches New Online Change-of-Address Tool** – U.S. Citizenship and Immigration Services (USCIS) has launched a new Enterprise Change of Address (E-COA) self-service tool to allow those with pending applications, petitions, or requests to update their addresses with USCIS online.

**Details:**

**USCIS Reaches H-2B Cap for Temporary Nonagricultural Workers for First Half of FY 2024**

U.S. Citizenship and Immigration Services (USCIS) announced on October 13, 2023, that it has received enough petitions to reach the cap on H-2B visas for temporary nonagricultural workers for the first half of fiscal year (FY) 2024. October 11, 2023, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2024.

USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap, including petitions for:

- Current H-2B workers in the United States who extend their stay, change employers, or change the terms and conditions of their employment;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.

**Details:**

- [USCIS alert](#) (Oct. 13, 2023).

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**USCIS Provides Guidance on Interpretation of EB-5 Program Changes**

U.S. Citizenship and Immigration Services (USCIS) provided additional guidance on its interpretation of changes to the EB-5 program made by the EB-5 Reform and Integrity Act of 2022 (RIA), specifically the required investment timeframe and how USCIS treats investors who are associated with a terminated regional

center.

USCIS said that because of the changes made by the RIA, investors filing petitions for classification "no longer need to sustain their investment throughout their conditional residence, which may be many years in the future and dependent on factors outside the investor's control such as visa availability." Instead, USCIS said:

now requires only that the investment must be expected to remain invested for at least two years, provided job creation requirements have been met.

Although the statute does not explicitly specify when the two-year period under INA § 203(b)(5)(A)(i) begins, we interpret the start date as the date the requisite amount of qualifying investment is made. In other words, we will use the date the investment was contributed to the new commercial enterprise and placed at risk in accordance with applicable requirements, including being made available to the job-creating entity. If invested more than two years before filing the I-526 or I-526E petition, the investment should generally still be maintained at the time the I-526 or I-526E is properly filed so we can appropriately evaluate eligibility.

Because the statute does not explicitly specify whether it applies only to post-RIA investors or also to pre-RIA investors, USCIS said it interprets INA § 203(b)(5)(M) to apply to pre-RIA investors associated with a terminated regional center. USCIS "will extend the deadline for pre-RIA investors to respond to a regional center termination notification until the agency adjudicates their Form I-526 petition. If needed, we may issue a Request for Evidence or Notice of Intent to Deny for the investor to establish continued eligibility." USCIS also said it "will extend the deadline for pre-RIA investors to respond to a regional center termination notification until the agency adjudicates their Form I-526 petition. If needed, we may issue a Request for Evidence or Notice of Intent to Deny for the investor to establish continued eligibility."

**Details:**

- [USCIS alert](#) (Oct. 11, 2023).

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## **Visa Bulletin for November Includes Reminder About Religious Workers Category Expiration**

The Department of State's Visa Bulletin for November 2023 includes a reminder that the non-minister special immigrant program expires on November 17, 2023.

The bulletin states that no employment fourth preference Certain Religious Workers (SR) visas may be issued overseas, or final action taken on adjustment of status cases, after November 16, 2023. Visas issued before this date will only be issued with a validity date of November 16, 2023, and all individuals seeking admission as non-minister special immigrants must be admitted into the U.S. by November 16, 2023.

### **Details:**

- [Visa Bulletin](#), Dept. of State (Nov. 2023).

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## **Temporary Need Exemption Extended for Certain Guam and CNMI H-2B Workers**

U.S. Citizenship and Immigration Services (USCIS) issued policy guidance reflecting the extension of the exemption from the temporary need requirement for petitions for temporary nonagricultural H-2B nonimmigrant workers on Guam and in the Commonwealth of the Northern Mariana Islands (CNMI) through December 30, 2024, as provided in the National Defense Authorization Act (NDAA) for fiscal year (FY) 2023.

USCIS explained that the temporary nonagricultural worker (H-2B) nonimmigrant visa classification applies to a noncitizen seeking to perform temporary nonagricultural labor or services in the United States when U.S. workers are not available. Previous NDAA's created and expanded on an exemption from the requirement that nonagricultural labor or services be temporary in nature for petitioners of certain H-2B workers on Guam and in the CNMI.

### **Details:**

- [USCIS Policy Alert](#), PA-2023-28 (Oct. 4, 2023).

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## **DHS Announces Relief for Cameroonian F-1 Nonimmigrant Students**

The Department of Homeland Security (DHS) is suspending certain regulatory requirements for F-1 nonimmigrant students whose country of citizenship is Cameroon, regardless of country of birth (or individuals having no nationality who last habitually resided in Cameroon), and who are experiencing severe economic hardship as a direct result of the current armed conflict and humanitarian crisis in Cameroon.

Effective December 8, 2023, through June 7, 2025, Cameroonians in lawful F-1 nonimmigrant student status may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status. DHS said it will deem such an F-1 nonimmigrant student granted employment authorization to be engaged in a "full course of study" for the duration of the employment authorization if the nonimmigrant student satisfies the minimum course load requirement.

### **Details:**

- [DHS notice](#), 88 Fed. Reg. 69939 (Oct. 10, 2023).

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## **USCIS Launches New Online Change-of-Address Tool**

U.S. Citizenship and Immigration Services (USCIS) has launched a new [Enterprise Change of Address \(E-COA\) self-service tool](#) to allow those with pending applications, petitions, or requests to update their addresses with USCIS online.

USCIS said that with E-COA, most individuals with a [USCIS online account](#) can update their mailing and physical addresses with USCIS for pending applications, petitions, or requests in a single place, eliminating the need to update the address in multiple places; fill out a paper AR-11, Alien's Change of Address Card; call the Contact Center; or visit a USCIS Field or Asylum Office. E-COA will automate address changes for almost all form types. The exceptions are listed at [uscis.gov/addresschange](https://uscis.gov/addresschange).

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