



IMMIGRATION UPDATE - NOVEMBER 06, 2023

Posted on November 6, 2023 by Cyrus Mehta

Headlines:

[Executive Order on Artificial Intelligence Includes Immigration-Related Provisions](#) – On October 30, 2023, President Biden issued "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence." Section 5 of the order, "Promoting Innovation and Competition," includes various immigration-related provisions.

[DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for FY 2024](#) – On November 3, 2023, the Department of Homeland Security, in consultation with the Department of Labor, announced that it will make available an additional 64,716 H-2B temporary nonagricultural worker visas for fiscal year (FY) 2024 via a temporary final rule. This is on top of the congressionally mandated 66,000 H-2B visas that are available each fiscal year.

[ABIL Global: Austria](#) – In a groundbreaking judgment, the Vienna Administrative Court recently held that descendants of former concentration camp inmates and forced laborers who were nationals of successor states of the Austrian-Hungarian Empire (e.g., Hungary, Czechoslovakia, Poland, Romania, Yugoslavia), were deported to Austria during WWII, and remained in Austria after the liberation of concentration camps on Austrian territory in spring 1945, if only for a period of a few months, are entitled to Austrian citizenship in privileged ancestry proceedings if there are indicators that they tried to establish a center of vital interests (or main domicile) in post-war Austria.

Details:

[Executive Order on Artificial Intelligence Includes Immigration-Related](#)

Provisions

On October 30, 2023, President Biden issued "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence." Section 5 of the order, "Promoting Innovation and Competition," includes various immigration-related provisions. For example, the order:

- Calls for the Secretaries of State and Homeland Security to streamline processing times of visa petitions and applications, including by ensuring timely availability of visa appointments, for noncitizens who seek to travel to the United States to work on, study, or conduct research in artificial intelligence (AI) or other critical and emerging technologies; and facilitate continued availability of visa appointments in sufficient volume for applicants with expertise in AI or other critical and emerging technologies;
- Calls for the Secretary of State to consider initiating a rulemaking to establish new criteria to designate countries and skills on the Department of State's exchange visitor skills list as it relates to the 2-year foreign residence requirement for certain J-1 nonimmigrants, including those skills that are critical to the United States;
- Calls for the Secretary of State to consider implementing a domestic visa renewal program to facilitate the ability of qualified applicants, including highly skilled talent in AI and critical and emerging technologies, to continue their work in the United States without unnecessary interruption;
- Calls for the Secretary of State to establish a program to identify and attract top talent in AI and other critical and emerging technologies at universities, research institutions, and the private sector overseas, and to establish and increase connections with that talent to educate them on opportunities and resources for research and employment in the United States, including overseas educational components to inform top STEM talent of nonimmigrant and immigrant visa options and potential expedited adjudication of their visa petitions and applications;
- Calls for the Secretary of Homeland Security to review and initiate any policy changes the Secretary determines necessary and appropriate to clarify and modernize immigration pathways for experts in AI and other critical and emerging technologies, including O-1A and EB-1 noncitizens of extraordinary ability; EB-2 advanced-degree holders and noncitizens of exceptional ability; and startup founders in AI and other critical and

- emerging technologies, using the International Entrepreneur Rule; and
- Calls for the Secretary of Homeland Security to continue its rulemaking process to modernize the H-1B program and enhance its integrity and usage, including by experts in AI and other critical and emerging technologies, and consider a rulemaking to enhance the process for noncitizens, including experts in AI and other critical and emerging technologies and their spouses, dependents, and children, to adjust their status to lawful permanent resident.

Details:

- [Executive Order](#) (Oct. 30, 2023).
- [White House statement](#) (Oct. 31, 2023).
- [Making AI Work for the American People](#) (talent search portal and other links).

[Back to Top](#)**DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for FY 2024**

On November 3, 2023, the Department of Homeland Security (DHS), in consultation with the Department of Labor, announced that it will make available an additional 64,716 H-2B temporary nonagricultural worker visas for fiscal year (FY) 2024 via a temporary final rule. This is on top of the congressionally mandated 66,000 H-2B visas that are available each fiscal year. DHS said the supplemental visa allocation "will help address the need for seasonal or other temporary workers in areas where too few U.S. workers are available."

The H-2B supplemental is expected to include an allocation of 20,000 visas to workers from Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, and Honduras, DHS said. In addition, 44,716 supplemental visas will be available to returning workers who received an H-2B visa, or were otherwise granted H-2B status, during one of the last three fiscal years. "The regulation would allocate these supplemental visas for returning workers between the first half and second half of the fiscal year to account for the need for additional seasonal and other temporary workers over the course of the year, with a portion of the second half allocation reserved to meet the demand for workers during the peak summer season," DHS said.

Details:

- [DHS news release](#) (Nov. 3, 2023).

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ABIL Global: Austria

In a groundbreaking judgment, the Vienna Administrative Court recently held that descendants of former concentration camp inmates and forced laborers who were nationals of successor states of the Austrian-Hungarian Empire (e.g., Hungary, Czechoslovakia, Poland, Romania, Yugoslavia), were deported to Austria during WWII, and remained in Austria after the liberation of concentration camps on Austrian territory in spring 1945, if only for a period of a few months, are entitled to Austrian citizenship in privileged ancestry proceedings if there are indicators that they tried to establish a center of vital interests (or main domicile) in post-war Austria.

In September 2020 and May 2022, the Austrian Citizenship Act was amended to allow Holocaust survivors, as well as descendants of Holocaust victims and survivors, to acquire Austrian citizenship in fast-track ancestry proceedings, without being required to have resided in Austria or to relinquish their current citizenship(s).

Applicants must show that their ancestors were Austrian and that they:

- Were citizens of a successor state of the Austro-Hungarian Empire or stateless, had their main domicile in Austria, within the post-WWI borders set forth in the Treaty of St. Germain, after January 31, 1933, and before May 15, 1955, and moved abroad "voluntarily" (meaning not as a result of deportation) because they feared or had suffered persecution at the hands of the Nazis or because they were part of the Austrian resistance movement against the Nazi regime;
- Had their main domicile outside of Austria between January 30, 1933, and May 9, 1945, and were unable to return to Austria (or move to Austria for the very first time) because of fear of Nazi persecution; or
- Were citizens of a successor state of the Austro-Hungarian Empire or stateless, had their main domicile in Austria, and were deported abroad from Austria.

Since May 2022, Austrian citizenship is also available for descendants of

Holocaust victims whose ancestors were Austrian, were citizens of a successor state of the Austro-Hungarian Empire or stateless, and were killed by agents of the Nazi regime in Austria or abroad.

There are still several gaps in the legislative framework, however, one of which has until recently concerned descendants of Austrians, citizens of successor states of the Austro-Hungarian Empire or stateless persons who were deported to and imprisoned in concentration and forced labor camps on Austrian territory. Citizenship authorities and administrative courts have taken the view that such imprisonment would not create a main domicile within the meaning of the Citizenship Act.

In a recent case, the Vienna Administrative Court rejected this argument and held that descendants of former concentration camp inmates and forced laborers who were nationals of successor states of the Austrian-Hungarian Empire, were deported to Austria during WWII, and remained in Austria after the liberation of the camps in spring 1945, if only for a period of a few months, are entitled to Austrian citizenship in privileged ancestry proceedings if there are indicators that they tried to establish a main domicile in post-war Austria. In its judgment, the court for the first time acknowledged the continuing effects of Nazi persecution even after the end of WWII due to widespread Nazi sentiment in Austria's population until 1950 and beyond, and the right to Austrian citizenship for descendants of tens of thousands of former concentration camp inmates and forced laborers who were deported to Austria and, following liberation by Allied troops in spring 1945, were prevented from establishing a main domicile in Austria, at least for a few months, and were forced to leave post-war Austria before August 15, 1955.

Details:

- For more information, see <http://www.verwaltungsgericht.wien.gv.at/Content.Node/rechtsprechung/152-099-8601-2022.pdf> (in German).

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