



IMMIGRATION UPDATE - NOVEMBER 13, 2023

Posted on November 13, 2023 by Cyrus Mehta

Headlines:

[Here We Go Again: Federal Government Shutdown Possible After November 17](#) – As many know, before a deadline of September 30, 2023, Congress passed and President Biden signed H.R. 5860, a short-term funding bill to keep the federal government funded for 45 days. A shutdown is still possible after November 17.

[Apple Settles Citizenship Discrimination Allegations With \\$25 Million 'Landmark' Agreement](#) – Under the agreement, Apple must pay up to \$25 million in back pay and civil penalties, which the Department of Justice said was the largest award that it has ever recovered under the antidiscrimination provision of the Immigration and Nationality Act

[DHS Announces Eligible Countries for H-2A and H-2B Programs; Bolivia Added](#) – The Department of Homeland Security, in consultation with the Department of State, announced the lists of countries whose nationals are eligible to participate in the H-2A and H-2B visa programs next year. Each country's designation is valid until November 8, 2024. Bolivia has been added to the list of countries eligible to participate in both programs.

[USCIS to Move Filing Location for Premium Processing Requests Filed With Immigrant Petition for Alien Workers](#) – On November 13, 2023, U.S. Citizenship and Immigration Services (USCIS) will begin transitioning the filing location for Form I-907, Request for Premium Processing, when filed with Form I-140, Immigrant Petition for Alien Workers, from the service centers to the USCIS lockbox.

[December Visa Bulletin Includes Reminder About Expiring Non-Minister](#)

Religious Workers Category – No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight November 16, 2023, unless Congress extends the program.

Potomac Service Center Will No Longer Accept Paper Responses – Starting November 13, 2023, the Potomac Service Center will no longer accept mailed correspondence. To avoid processing delays, U.S. Citizenship and Immigration Services (USCIS) said, applicants and their representatives should instead upload their responses to their USCIS online accounts (for receipt notices that start with IOE-) or mail them to the Texas Service Center.

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Details:

Here We Go Again: Federal Government Shutdown Possible After November 17

As many know, before a deadline of September 30, 2023, Congress passed and President Biden signed H.R. 5860, a short-term funding bill to keep the federal government funded for 45 days. A shutdown is still possible after November 17. Below are highlights of how immigration-related services could be affected.

Many immigrant and nonimmigrant visa applications and petitions would not be severely affected because they are fee-based. "Nonessential" visa processing, such as tourist visas, could be slowed or suspended abroad, however, which could increase backlogs. Consular services located in federal buildings could be affected if those buildings are closed. Applications and petitions that depend on action by the Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) would be affected, including those requiring a Labor Condition Application (e.g., H-1B, H-1B1, EB-3) and PERM employment-based immigrant petitions. Other OFLC functions could also cease during a shutdown, including processing of temporary labor certifications and prevailing wage determinations. Some programs that rely on appropriations could be suspended temporarily, such as the E-Verify program and Conrad 30 J-1 doctors.

A Department of Homeland Security (DHS) fact sheet notes that if there is a shutdown, nearly three in four DHS employees—more than 185,000 people—would be required to continue working through the shutdown without receiving a paycheck during that time. Those working without pay would

include law enforcement officers, analysts, investigators, and disaster response officials. DHS said a shutdown would result in, among other things:

- More than 19,000 unpaid U.S. Border Patrol agents and 25,000 unpaid Office of Field Operations officers, including CBP agents and officers working at more than 300 ports of entry and guarding more than 6,000 miles of border.
- Stopped funding to border communities and interior cities, including funding to cover costs that border and interior communities incur associated with sheltering migrants in their cities. "Recipients may be unable to draw down on a portion of the funds, and no new awards will be made under a shutdown," DHS said.
- Short- and long-term effects on hiring and onboarding, including a pause in processing of nearly 2,500 tentative job offers to DHS candidates for employment.

Contact your [Alliance of Business Immigration Lawyers](#) attorney for help in specific situations.

Details:

- [Procedures Relating to a Lapse in Appropriations](#), DHS (Sept. 22, 2023).
- OMB [Agency Contingency Plans](#).
- [What Happens to Immigration if U.S. Government Shuts Down?](#), Voice of America (Sept. 28, 2023).
- [White House press release](#) (Sept. 30, 2023).
- [Biden statement](#) (Sept. 30, 2023).
- [R. 5860](#) (Sept. 30, 2023).

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Apple Settles Citizenship Discrimination Allegations With \$25 Million 'Landmark' Agreement

On November 9, 2023, the Department of Justice (DOJ) announced a landmark agreement with Apple Inc. (Apple) to resolve allegations that the company illegally discriminated in hiring and recruitment against U.S. citizens and certain non-U.S. citizens whose permission to live in and work in the United States does not expire.

Under the agreement, Apple must pay up to \$25 million in back pay and civil

penalties, which DOJ said was the largest award that it has ever recovered under the antidiscrimination provision of the Immigration and Nationality Act (INA).

The settlement agreement relates to Apple's recruitment for positions falling under the permanent labor certification program (PERM). Specifically, DOJ's investigation found that Apple did not advertise positions it sought to fill through the PERM program on its external job website, even though its standard practice was to post other job positions on that website. It also required all PERM position applicants to mail paper applications even though the company permitted electronic applications for other positions. In some instances, Apple did not consider certain applications for PERM positions from Apple employees if those applications were submitted electronically instead of being mailed in on paper. DOJ said that these "less effective recruitment procedures nearly always resulted in few or no applications to PERM positions from applicants whose permission to work does not expire."

Pursuant to the \$25 million agreement, Apple must pay \$6.75 million in civil penalties and establish an \$18.25 million back pay fund for eligible discrimination victims. The agreement also requires Apple to ensure that its recruitment for PERM positions more closely matches its standard recruitment practices. Under the agreement, Apple must conduct more expansive recruitment for all PERM positions, including posting PERM positions on its external job website, accepting electronic applications, and enabling applicants for PERM positions to be searchable in its applicant tracking system. DOJ said that Apple implemented some of these measures after the agency opened its investigation. Additionally, Apple must train its employees on the INA's antidiscrimination requirements and be subject to departmental monitoring for the three-year period of the agreement.

Details:

- [DOJ press release](#) (Nov. 9, 2023).
- [Settlement Agreement](#) between Apple and DOJ (Nov. 2023).
- [Attachment A](#) – Back Pay Funds Claim Process.

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DHS Announces Eligible Countries for H-2A and H-2B Programs; Bolivia Added

The Department of Homeland Security (DHS), in consultation with the Department of State (DOS), announced the lists of countries whose nationals are eligible to participate in the H-2A and H-2B visa programs in the next year. Each country's designation is valid until November 8, 2024. Bolivia has been added to the list of countries eligible to participate in both programs.

DHS said the notice does not affect the status of H-2 beneficiaries who currently are in the United States unless they apply to extend their stay in H-2 status on the basis of a petition filed on or after the date of publication of the Federal Register notice (November 9, 2023). Similarly, the notice would not affect the eligibility of an H-2 beneficiary to apply for an H-2 visa and/or seek admission to the United States based on an H-2 petition approved prior to the date of publication. It does apply to nonimmigrants changing status in the United States to H-2A or H-2B, DHS said.

Mongolia and the Philippines are eligible to participate in the H-2B program but not the H-2A program. Paraguay is eligible to participate in the H-2A program but not in the H-2B program.

Details:

- [DHS alert](#) (Nov. 8, 2023).
- [DHS notice](#), 88 Fed. Reg. 77343 (Nov. 9, 2023).

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USCIS to Move Filing Location for Premium Processing Requests Filed With Immigrant Petition for Alien Workers

U.S. Citizenship and Immigration Services (USCIS) announced that it will begin transitioning the filing location for Form I-907, Request for Premium Processing, when filed with Form I-140, Immigrant Petition for Alien Workers, from the service centers to the USCIS lockbox on November 13, 2023.

This change does not apply to those who are filing Form I-907 for a currently pending Form I-140 or to those who are filing Form I-140 with an associated application (such as Form I-765, Form I-131, or Form I-485). USCIS said it will soon announce filing location changes for those forms, but for the time being, they should continue to be filed with the service centers.

Starting November 13, 2023, those mailing Form I-140 and Form I-907 together to USCIS should use the addresses listed in the USCIS alert. Starting December 13, 2023, USCIS will reject any Form I-907 filed with Form I-140 that is received at the previous service center address.

Details:

- [DHS alert](#) (Nov. 9, 2023).

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December Visa Bulletin Includes Reminder About Expiring Non-Minister Religious Workers Category

The Department of State's Visa Bulletin for December 2023 includes a reminder that the non-minister special immigrant program expires on November 17, 2023. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight November 16, 2023, unless Congress extends the program. Visas issued before that date are valid only until November 16, 2023, and all individuals seeking admission in the non-minister special immigrant category must be admitted into the United States by November 16, 2023.

The bulletin notes that the SR category is listed as "Unavailable" for all countries for December. If Congress extends the category, the bulletin says, it is likely that it will become available immediately. If extended, the category will be subject to the same final action dates as the other employment fourth preference categories per applicable foreign state of chargeability.

Details:

- [DOS Visa Bulletin](#) for December 2023.

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Potomac Service Center Will No Longer Accept Paper Responses

Starting November 13, 2023, the Potomac Service Center (PSC) will no longer accept mailed correspondence. All mailed correspondence intended for cases processed by the PSC must be mailed to the Texas Service Center (TSC) as of that date, unless otherwise noted.

To avoid processing delays, USCIS said, applicants and their representatives should instead upload their responses to their USCIS online accounts (for receipt notices that start with IOE-) or mail them to the Texas Service Center at:

USCIS Texas Service Center
Attn: Digital RFE
6046 N Belt Line Rd. STE 114
Irving, TX 75038

USCIS strongly encourages use of an USCIS online account and self-service tools to upload responses for all online cases.

Details:

- [USCIS alert](#) (Nov. 6, 2023).

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[Cyrus Mehta](#) was an invited speaker at the AILA Latin America and Caribbean Chapter Conference in Montevideo, Uruguay on November 7, 2023 where he moderated a panel entitled *Challenges to Filing the I-140*. The distinguished co-panelists included Alexis Axelrad, Elaine Freeman and David Ware.

Cyrus Mehta received the [Corporate Immigration Lawyer of the Year](#) award from Who's Who Legal (WWL) on November 9, 2023. He is also a [WWL Global Elite Thought Leader](#).

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