



IMMIGRATION UPDATE - DECEMBER 04, 2023

Posted on December 4, 2023 by Cyrus Mehta

Headlines:

[Three Important Cases Pending Before U.S. Supreme Court](#) – Three important cases are pending before the U.S. Supreme Court. According to observers, at stake are the legitimacy of the current U.S. immigration court system and a longstanding precedent decision.

[DOS Proposes Updates to Au Pair Exchange Visitor Program](#) – The Department of State proposes to amend the Exchange Visitor Program regulations governing the au pair category to "clarify and modernize" the program.

[ICE Launches Online Portal for Noncitizens in Removal Proceedings](#) – U.S. Immigration and Customs Enforcement (ICE) has launched the ICE Portal, a public-facing website that centralizes communications between noncitizens who have been placed in removal proceedings and the federal government.

[CBP Will Temporarily Close Arizona Border Crossing](#) – Beginning Monday, December 4, 2023, U.S. Customs and Border Protection's Office of Field Operations will temporarily suspend operations at the Lukeville, Arizona, port of entry.

[ABIL Global: Spain](#) – Spain has partially implemented European Union Directive 2021/1883 concerning the conditions of entry and residence for highly qualified employment of third-country nationals.

Firm in the News

Details:

Three Important Cases Pending Before U.S. Supreme Court

Three important cases are pending before the U.S. Supreme Court. According to observers, at stake are the legitimacy of the current U.S. immigration court system and the longstanding precedent decision, [Chevron v. Natural Resources Defense Council](#), and its standard for deference to federal administrative agency decisions. The cases include:

- [Securities and Exchange Commission v. Jarkesy](#), which involves two questions: (1) whether the SEC's choice of enforcement proceedings violates the nondelegation doctrine, and (2) whether the for-cause removal of administrative law judges (ALJs) violates the U.S. Constitution. Both issues are important for immigration lawyers. For example, observers note, a ruling in favor of Mr. Jarkesy could result in a finding that immigration judges do not have the authority to adjudicate the cases they are assigned. Oral argument in *Jarkesy* was held on November 29, 2023.
- [Relentless, Inc. v. Department of Commerce](#) and [Loper Bright Enterprises v. Raimondo](#), which include more expansive challenges to administrative law. Among other issues, the Supreme Court will consider whether to limit or overrule the Court's 1984 precedent decision in [Chevron v. Natural Resources Defense Council](#). Overruling *Chevron* would have an impact on federal court challenges to agency decisions from U.S. Citizenship and Immigration Services, the Department of Labor, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection. Oral argument in *Relentless* and *Loper* will be held in January.

Details:

- "[Potential Game-Changer Cases for Immigration Law at SCOTUS](#)," *thinkImmigration* (Nov. 29, 2023).

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DOS Proposes Updates to Au Pair Exchange Visitor Program

The Department of State (DOS) has issued a proposed rule to amend the Exchange Visitor Program regulations governing the au pair category to "clarify and modernize" the program. Among other things, the proposed rule would restructure the child care and educational components, replace the EduCare

program with a part-time option, enhance au pair and host family orientation requirements, formalize standard operating procedures for rematching au pairs with new host families, and propose new requirements to strengthen au pair protections.

DOS said it encourages public comment on the proposed rule, particularly on restructuring the au pair program and calculating weekly compensation. DOS initially said it would accept public comments on the proposed rule until December 29, 2023, but then extended the deadline to January 28, 2024.

Details:

- DOS [notice of proposed rulemaking](#), 88 Fed. Reg. 74071 (Oct. 30, 2023).
- DOS [extension of comment period](#), 88 Fed. Reg. 83511 (Nov. 30, 2023).

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ICE Launches Online Portal for Noncitizens in Removal Proceedings

On November 30, 2023, U.S. Immigration and Customs Enforcement (ICE) launched the [ICE Portal](#), a public-facing website that centralizes communications between noncitizens who have been placed in removal proceedings and the federal government. On the portal, noncitizens can schedule appointments, update their addresses, and check hearing information in a consolidated location.

Specifically, the portal incorporates previous online capabilities like ICE's Appointment Scheduler and change-of-address tool, and allows noncitizens to look up information regarding upcoming immigration court hearings before the Executive Office for Immigration Review. It also includes information on finding a lawyer, including links to pro bono legal service providers and other resources; working in the United States; and finding social support.

Details:

- [ICE statement](#) (Nov. 30, 2023).

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CBP Will Temporarily Close Arizona Border Crossing

U.S. Customs and Border Protection (CBP) announced that beginning Monday,

December 4, 2023, CBP's Office of Field Operations will temporarily suspend operations in Lukeville, Arizona. Both northbound and southbound pedestrian and vehicle traffic at the Lukeville port of entry will be suspended until further notice. Travelers can cross into or out of the United States through either the Nogales Port of Entry in Nogales, Arizona, or the San Luis Port of Entry in San Luis, Arizona.

CBP said the temporary closure was in response to "increased levels of migrant encounters at the Southwest Border, fueled by smugglers peddling disinformation to prey on vulnerable individuals, CBP is surging all available resources to expeditiously and safely process migrants. CBP will continue to prioritize our border security mission as necessary in response to this evolving situation."

Details:

- [CBP statement](#) (Dec. 1, 2023).
- [CBP Border Wait Times](#).

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ABIL Global: Spain

Spain has partially implemented European Union (EU) Directive 2021/1883 concerning the conditions of entry and residence for highly qualified employment of third-country nationals.

This implementation is being carried out through amendments to Spain's Entrepreneurs Act 14/2013, establishing two schemes for highly qualified professionals (HQP) within the Large Companies Unit. The most substantial features are:

National Residence Permit for Highly Qualified Professionals

This category already exists, but the permit's requirements have been updated to include individuals with qualifications equivalent to at least level 1 of the Spanish Qualifications Framework or with professional experience of at least three years comparable to the required qualification. The labor market test does not apply.

The permit validity aligns with the employment contract duration plus an additional three months, with a maximum period of three years.

Residence Permit for Highly Qualified Professionals—EU Blue Card

This category is for third-country nationals with higher education qualifications of at least three years (equivalent to level 2 of the Spanish Qualifications Framework or level 6 of the European Qualifications Framework) or at least five years of relevant professional experience. For Information and communications technology managers and professionals, the required experience is reduced to three years within seven years before applying for an EU Blue Card. The labor market test does not apply.

The salary threshold ranges between 1.0 and 1.6 times the average gross annual salary, with a possibility of applying at 80 percent of the threshold under specific circumstances.

The permit validity aligns with the employment contract duration plus an additional three months, with a maximum period of three years.

Holders of an EU Blue Card from another Member State can stay up to 90 days in any 180-day period in Spain without authorization. To stay longer, they must apply for the EU Blue Card in Spain, with a streamlined process allowing them to start working upon application submission.

Dependents of EU Blue Card holders can apply for a residence permit in Spain unless they hold international protection status in Spain.

The implementation provides pathways for highly qualified professionals to work and reside in Spain, with adjustments made to existing permits and the introduction of the EU Blue Card system to facilitate mobility within the EU for qualified workers.

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[Cyrus Mehta](#) is an invited speaker at the 22nd Annual AILA New York Chapter Immigration Law Symposium on December 3, 2023 where he will speak on complex maintenance of status issues in business immigration. The co-panelists are Rosanna Fox, Jeff Joseph, Anastasia Tonello and Lucy Cheung.

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