



# IMMIGRATION UPDATE - DECEMBER 18, 2023

*Posted on December 18, 2023 by Cyrus Mehta*

## Headlines:

**[USCIS Reaches FY 2024 H-1B Cap](#)** – U.S. Citizenship and Immigration Services has received a sufficient number of petitions needed to reach the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa U.S. advanced degree exemption, known as the master's cap, for fiscal year 2024.

**[DHS Publishes Federal Register Notice Reiterating Extensions of TPS Re-Registration Periods for Several Countries](#)** – The Department of Homeland Security published a Federal Register notice reiterating extensions of the periods to re-register for Temporary Protected Status under the existing designations of El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan.

**[District Court Rules in College's Favor in EB-1 Case](#)** – In *Scripps College v. Jaddou*, a U.S. District Court in Nebraska held that U.S. Citizenship and Immigration Services improperly denied the plaintiff's I-140 immigration petition when it found that the beneficiary of the petition did not qualify for an employment-based first preference visa as an "outstanding professor or researcher."

**[ETA Seeks Information on STEM and Non-STEM Occupations in PERM Schedule A](#)** – The Department of Labor's Employment and Training Administration is seeking information from the public to potentially consider revisions to Schedule A of the permanent labor certification process to include occupations in Science, Technology, Engineering and Mathematics (STEM), including Artificial Intelligence-related occupations, and non-STEM occupations, for which there may be an insufficient number of ready, willing, able, and qualified U.S. workers.

**[ETA Announces Adverse Effect Wage Rates for H-2A Workers in 2024](#)** – The Employment and Training Administration has announced Adverse Effect Wage Rates for H-2A workers in 2024, for range (herding or production of livestock) and non-range (agricultural labor or services other than the herding or production of livestock) occupations.

**[January Visa Bulletin Released; Religious Workers Category Extended](#)** – The Department of State's Visa Bulletin for January 2024 notes that a stopgap funding bill recently passed by Congress extended the employment fourth preference Certain Religious Workers (SR) category until February 2, 2024.

**[USCIS Changes Filing Location for Form I-907 Filed for Pending Form I-140](#)** – U.S. Citizenship and Immigration Services has begun transitioning the filing location for Form I-907, Request for Premium Processing, when filed for a pending Form I-140, Immigrant Petition for Alien Workers, from the service centers to appropriate USCIS lockboxes.

### **Details:**

#### **USCIS Reaches FY 2024 H-1B Cap**

U.S. Citizenship and Immigration Services (USCIS) announced on December 13, 2023, that it has received a sufficient number of petitions needed to reach the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa U.S. advanced degree exemption, known as the master's cap, for fiscal year (FY) 2024.

USCIS said it will send non-selection notices to registrants through their online accounts. When the agency finishes sending the non-selection notifications, the status for properly submitted registrations that USCIS did not select for the FY 2024 H-1B numerical allocations will show:

- Not Selected: Not selected—not eligible to file an H-1B cap petition based on this registration.

USCIS said it will continue to accept and process petitions that are otherwise exempt from the cap. Petitions filed for current H-1B workers who have been counted previously against the cap, and who still retain their cap number, are exempt from the FY 2024 H-1B cap. USCIS will continue to accept and process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States;
- Change the terms of employment for current H-1B workers;
- Allow current H-1B workers to change employers; and
- Allow current H-1B workers to work concurrently in additional H-1B positions.

**Details:**

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

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### **DHS Publishes Federal Register Notice Reiterating Extensions of TPS Re-Registration Periods for Several Countries**

The Department of Homeland Security (DHS) published a Federal Register notice on December 13, 2023, reiterating extensions of the periods to re-register for Temporary Protected Status (TPS) under the existing designations of El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. As previously announced, the re-registration period for each country is changing from 60 days to the full length of each country's current TPS designation extension. The re-registration extensions are solely for TPS beneficiaries who properly filed for TPS during a previous registration period.

The 18-month re-registration periods for these current TPS beneficiaries, which are currently open, are extended to the following dates:

- **El Salvador**, through March 9, 2025
- **Haiti**, through August 3, 2024
- **Honduras**, through July 5, 2025
- **Nepal**, through June 24, 2025
- **Nicaragua**, through July 5, 2025
- **Sudan**, through April 19, 2025

DHS said that limiting the re-registration period to 60 days "for these particular beneficiaries might place a burden on applicants who cannot timely file, but who otherwise would be eligible to re-register for TPS. In particular, ongoing litigation resulted in overlapping periods of TPS validity that were announced in several Federal Register notices, which may confuse some current beneficiaries.

This notice allows beneficiaries of these countries who have not been required to re-register for TPS for the past few years due to litigation to re-register through the entire designation extension period."

**Details:**

- [DHS news release](#) (Dec. 13, 2023).
- S. Citizenship and Immigration Services [notice](#), 88 Fed. Reg. 86665 (Dec. 14, 2023).

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**District Court Rules in College's Favor in EB-1 Case**

In *Scripps College v. Jaddou*, a U.S. District Court in Nebraska held that U.S. Citizenship and Immigration Services (USCIS) improperly denied the plaintiff's I-140 immigration petition when it found that the beneficiary of the petition did not qualify for an employment-based first preference visa as an "outstanding professor or researcher." The court ruled in favor of the plaintiff, Scripps College.

Scripps argued that USCIS's denial of its I-140 petition must be reversed because USCIS made internally inconsistent findings, imposed novel evidentiary requirements, disregarded relevant factors, and was not supported by substantial evidence.

Citing various decisions, the court noted that agency action must be upheld on review unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." An agency decision is arbitrary and capricious if the agency acted outside "the bounds of reasoned decision-making, relied on factors which Congress has not intended it to consider, provided an explanation that runs counter to the evidence, or makes a decision that is so implausible that it could not be ascribed to a difference in view or the product of agency expertise," the court noted.

Among other things, the court found that USCIS had made inconsistent findings based on the evidence, and made findings that were controverted by the evidence. Further, the court said, the "unexplained internal inconsistencies" reflected that USCIS failed to articulate a satisfactory explanation for its action, including "a rational connection between the facts found and the choice made." USCIS also "imposed novel evidentiary requirements in its denial" of Scripps'

I-140 petition, the court said. Concluding that USCIS's decision "was arbitrary and capricious, an abuse of discretion, and contrary to the law," the court granted Scripps' motion for summary judgment and denied USCIS's motion for summary judgment.

**Details:**

- [Scripps College v. Jaddou](#) (Dec. 12, 2023).

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**ETA Seeks Information on STEM and Non-STEM Occupations in PERM Schedule A**

The Department of Labor's Employment and Training Administration (ETA) is seeking information from the public to potentially consider revisions to Schedule A of the permanent labor certification process to include occupations in Science, Technology, Engineering and Mathematics (STEM), including Artificial Intelligence-related occupations, and non-STEM occupations, for which there may be an insufficient number of ready, willing, able, and qualified U.S. workers.

ETA said its request for information (RFI) will provide the public an opportunity to address whether and why STEM occupations should be added to Schedule A, offer information on which occupations should be considered as falling under the umbrella of STEM, and request data, studies, and related information that should be considered to establish a reliable, objective, and transparent methodology for identifying STEM or non-STEM occupations with a significant shortage of workers that should be added to or removed from Schedule A. "To the extent possible and wherever appropriate, responses to this RFI should indicate the question number(s) and include specific information, data, statistical models and metrics, and any resources relied on in reaching conclusions for its claims, rather than relying on general observations," ETA said.

**Details:**

- PERM Schedule A Request for Information, [announcement](#), Dept. of Labor (Dec. 15, 2023).
- [Request for Information](#) (advance copy), Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A to Include Consideration of Additional Occupations in Science,

Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations.

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### **ETA Announces Adverse Effect Wage Rates for H-2A Workers in 2024**

The Department of Labor's (DOL) Employment and Training Administration (ETA) has announced Adverse Effect Wage Rates (AEWRs) for H-2A agricultural workers in 2024, for range (herding or production of livestock) and non-range (agricultural labor or services other than the herding or production of livestock) occupations. The monthly AEWR for range occupations in calendar year 2024 is \$1,986.76. The non-range AEWR varies by state, and ranges from \$14.53 to \$19.25 per hour.

The AEWRs are for the employment of temporary or seasonal nonimmigrant foreign workers. AEWRs are the minimum wage rates DOL has determined must be offered, advertised in recruitment, and paid by employers to H-2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States who are similarly employed will not be adversely affected.

#### **Details:**

- Federal Register [notice](#) (range occupations), 88 Fed. Reg. 86679 (Dec. 14, 2023).
- Federal Register [notice](#) (non-range occupations), 88 Fed. Reg. 86677 (Dec. 14, 2023).

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### **January Visa Bulletin Released; Religious Workers Category Extended**

The Department of State's Visa Bulletin for January 2024 notes that H.R. 6363, a stopgap funding bill signed on November 16, 2023, extended the employment fourth preference Certain Religious Workers (SR) category until February 2, 2024. The bulletin notes that no SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight February 1, 2024. Visas issued before that date will be valid only until February 1, 2024, and all individuals seeking admission in the non-minister special immigrant category must be admitted into the United States by midnight February 1, 2024.

The SR category is subject to the same final action dates as the other employment fourth preference categories per applicable foreign state of chargeability, the bulletin states.

**Details:**

- [Visa Bulletin](#) for January 2024.

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**USCIS Changes Filing Location for Form I-907 Filed for Pending Form I-140**

U.S. Citizenship and Immigration Services (USCIS) announced that as of December 15, 2023, it has begun transitioning the filing location for Form I-907, Request for Premium Processing, when filed for a pending Form I-140, Immigrant Petition for Alien Workers, from the service centers to appropriate USCIS lockboxes.

USCIS noted that this change **does not apply** to those filing Form I-140 concurrently with an associated application (such as Form I-485, I-765, or Form I-131). The agency said it will soon announce a filing location change for these forms, but as of now, such forms should be filed with the service centers as listed on the [Direct Filing Addresses for Form I-140, Immigrant Petition for Alien Worker](#) page.

USCIS will reject any Form I-907 filed with Form I-140 that is received at the previous service center address.

**Details:**

- [USCIS alert](#), including new lockbox addresses (Dec. 13, 2023).
- [USCIS Tips for Filing Forms by Mail](#) (last reviewed/updated Dec. 13, 2023).

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