



IMMIGRATION UPDATE - DECEMBER 26, 2023

Posted on December 26, 2023 by Cyrus Mehta

Headlines:

[State Dept. Announces Pilot Program to Resume Domestic H-1B](#)

[Nonimmigrant Visa Renewals](#) – The pilot program will accept applications from January 29 to April 1, 2024.

[OFLC Reminds Employers About Deadlines for Peak H-2A Filing Season](#) –

The federal Department of Labor announced that from January 2-4, 2024, it will accept H-2B *applications for temporary nonprofessional workers* requesting a start date of April 1, 2024, or later.

[USCIS Updates Policy Guidance for International Students](#) – U.S. Citizenship and Immigration Services issued policy guidance regarding the F and M student nonimmigrant classifications, including the agency's role in adjudicating related applications for employment authorization, change of status, extension of stay, and reinstatement of status.

[State Dept. Expands Consular Authority for Nonimmigrant Visa Interview](#)

[Waivers](#) – The Department of State has determined that several categories of interview waivers are in the national interest. As of January 1, 2024, consular officers will have discretion to waive the in-person interview for those categories.

[State Dept. Advises on Passport Processing](#) – Passport processing times have returned to the agency's pre-pandemic norm, the Department of State said.

Passport applications will be processed within 6 to 8 weeks for routine service and 2 to 3 weeks for expedited service. Processing times do not include mailing.

[Detained Workers Are Employees Due Minimum Wage in Private Facility](#)

[Contracted With ICE, Supreme Court of Washington Finds](#) – Detained

workers at the private detention center were "employees" and therefore were due at least the minimum wage, the Supreme Court of Washington held.

Details:

State Dept. Announces Pilot Program to Resume Domestic H-1B Nonimmigrant Visa Renewals

On December 21, 2023, the Department of State (DOS) announced a pilot program to resume domestic visa renewal for qualified H-1B nonimmigrant visa applicants who meet certain requirements. The pilot program will accept applications from January 29 to April 1, 2024.

Participation in the pilot is limited to individuals who have previously submitted fingerprints in connection with an application for a prior non-diplomatic nonimmigrant H-1B visa, are eligible for a waiver of the in-person interview requirement, and meet other applicable requirements. DOS said the goal of the pilot is "to test the Department's technical and operational ability to resume domestic visa renewals for specific nonimmigrant classifications and to assess the efficacy of this program in reducing worldwide visa wait times by shifting certain workloads from overseas posts to the United States."

Applicants who meet the requirements can participate during the application window by applying [online](#). Written comments and related materials must be received by midnight April 15, 2024.

Details:

- DOS [notice](#), 88 Fed. Reg. 88467 (Dec. 21, 2023).

[Back to Top](#)

OFLC Reminds Employers About Deadlines for Peak H-2A Filing Season

On December 22, 2023, the Department of Labor's Office of Foreign Labor Certification (OFLC) reminded employers that the filing window to submit an H-2B *Application for Temporary Employment Certification* (Form ETA-9142B and appendices) requesting work start dates of April 1, 2024, or later **will open on January 2, 2024**.

OFLC said it will randomly order for processing all H-2B applications requesting a work start date of April 1, 2024, that are filed during the initial three calendar

days (January 2-4, 2024). OFLC warned:

If OFLC identifies multiple applications that appear to have been filed for the same job opportunity, OFLC will issue a Notice of Deficiency. If multiple filings are submitted during the three-day filing window, all applications will receive a Notice of Deficiency requesting that the employer demonstrate that the job opportunities are not the same. Employers that fail to establish a bona fide need for each application will receive a non-acceptance denial for each application.

Details:

- OFLC [announcement](#) (Dec. 22, 2023).

[Back to Top](#)

USCIS Updates Policy Guidance for International Students

On December 20, 2023, U.S. Citizenship and Immigration Services (USCIS) issued policy guidance regarding F and M nonimmigrant students, including the agency's role in adjudicating applications for employment authorization, change of status, extension of stay, and reinstatement of status for these students and their dependents in the United States. USCIS said it "expects that this will provide welcome clarity to international students and U.S. educational institutions on a wealth of topics, including eligibility requirements, school transfers, practical training, and on- and off-campus employment."

For example, USCIS said, the guidance clarifies that F and M students must have a foreign residence that they do not intend to abandon, but such a student may be the beneficiary of a permanent labor certification application or immigrant visa petition and may still be able to demonstrate an intent to depart after a temporary period of stay.

In addition, the guidance specifies how an F student seeking an extension of optional practical training based on a degree in a science, technology, engineering, or mathematics field may be employed by a startup company, as long as the employer adheres to the training plan requirements, remains in good standing with E-Verify, and provides compensation commensurate to that provided to similarly situated U.S. workers, among other requirements.

Details:

- USCIS [alert](#) (Dec. 20, 2023).
- USCIS [policy alert](#), PA-2023-34 (Dec. 20, 2023).

[Back to Top](#)

State Dept. Expands Consular Authority for Nonimmigrant Visa Interview Waivers

On December 21, 2023, the Department of State (DOS) announced that it had consulted with the Department Homeland Security and determined that several categories of interview waivers are in the national interest. As of January 1, 2024, consular officers will have discretion to waive the in-person interview for:

- First time H-2 visa applicants (temporary agricultural and nonagricultural workers) and
- Other nonimmigrant visa applicants applying for any nonimmigrant visa classification who:
 - Were previously issued a nonimmigrant visa in any classification, unless the only prior issued visa was a B visa; and
 - Are applying within 48 months of their most recent nonimmigrant visa's expiration date.

Consular officers may still require in-person interviews on a case-by-case basis or because of local conditions. DOS encourages applicants to check embassy and consulate websites.

Details:

- DOS [notice](#) (Dec. 21, 2023).

[Back to Top](#)

State Dept. Advises on Passport Processing

On December 18, 2023, the Department of State (DOS) announced that passport [processing times](#) have returned to the agency's pre-pandemic norm. As of December 18, 2023, DOS said, passport applications will be processed within 6 to 8 weeks for routine service and 2 to 3 weeks for expedited service, which costs an additional \$60. Processing times begin when DOS receives an

application at a passport agency or center and do not include mailing times.

DOS said that this year, demand for passports was "unprecedented." Between October 2022 and September 2023, the agency issued more than 24 million passport books and cards, the highest number in U.S. history.

Details:

- DOS [notice](#) (Dec. 18, 2023).

[Back to Top](#)

Detained Workers Are Employees Due Minimum Wage in Private Facility Contracted With ICE, Supreme Court of Washington Finds

The main question in this case before the Supreme Court of the State of Washington concerned a challenge to the detained-worker pay practices of the GEO Group Inc., which owns and operates the Northwest ICE Processing Center (NWIPC), a private immigration detention center in Tacoma, Washington, under a contract with the federal government. The plaintiffs objected to GEO's practice of paying civil immigration detainees less than Washington state's minimum wage. Plaintiffs asked the court to determine whether Washington's Minimum Wage Act (MWA) applies to detained workers in a privately owned and operated detention facility. The court concluded that it does.

GEO contracts with U.S. Immigration and Customs Enforcement (ICE) to confine up to 1,575 noncitizen, noncriminal adults in administrative civil custody as they await review and determination of their immigration status. Under the ICE contract, GEO developed and manages a Voluntary Work Program, the purpose of which is to provide detainees opportunities to work and earn money while confined. The NWIPC detainees "were not to be used to perform" the "core obligations" that, under the ICE contract, were the responsibilities and duties of GEO. However, GEO relied on the detained workers to perform "substantially the core work required of GEO under the contract." GEO paid its detained workers \$1 per day to perform these essential tasks.

The State of Washington and a class of NWIPC detainees sued GEO in September 2017. They alleged that GEO's practice of paying detainees less than Washington's minimum wage to work in the detention center violated Washington's MWA.

The Supreme Court of Washington found that the detained workers at the private detention center were "employees" within the meaning of the MWA. The plaintiffs argued that an exemption indicates that the Washington legislature contemplated the MWA's application to individuals in detention or custody who are permitted to work. They argued that the exemption unambiguously applies only to individuals detained in public, government-run institutions. Therefore, they said, the exemption does not apply to the detained workers at the privately owned and operated facility. The Supreme Court of Washington agreed.

Details:

- [Nwauzor v. The GEO Group, Inc.](#), No. 101786-3 (Dec. 21, 2023).
- "CEO Group Must Pay Minimum Wage to Immigrant Detainees, Court Rules," Reuters (Dec. 22, 2023).

[Back to Top](#)