



IMMIGRATION UPDATE - JANUARY 08, 2024

Posted on January 8, 2024 by Cyrus Mehta

Headlines:

[USCIS Issues Guidance on 'Ability to Pay' Requirement When Adjustment Applicants Change Employers](#) – U.S. Citizenship and Immigration Services issued policy guidance, effective immediately, on how it analyzes an employer's ability to pay the proffered wage for immigrant petitions in certain first, second, and third preference employment-based immigrant visa classifications, including instances when the sponsored worker changes employers.

[DOJ Sues Texas Over State Migration Bill](#) – The Department of Justice sued the state of Texas over a bill that would create new state crimes tied to federal prohibitions on unlawful entry and reentry by noncitizens into the United States.

[DOS Issues 'Bright Forecast' for Worldwide Visa Operations](#) – The Department of State said its visa processing capacity "has recovered faster than projected" and announced a "bright forecast" for worldwide visa operations in 2024.

[ABIL Global: Canada](#) – The Canadian government is targeting skilled workers and French-speaking candidates in a new category-based selection process.

Details:

USCIS Issues Guidance on 'Ability to Pay' Requirement When Adjustment Applicants Change Employers

On January 5, 2024, U.S. Citizenship and Immigration Services issued policy guidance, effective immediately, on how it analyzes an employer's ability to pay the proffered wage for immigrant petitions in certain first, second, and third preference employment-based immigrant visa classifications, including

instances when the sponsored worker changes employers.

The guidance notes that generally, employers seeking to classify prospective or current employees under the first, second, and third preference employment-based immigrant visa classifications that require a job offer "must demonstrate their continuing ability to pay the proffered wage to the beneficiary as of the priority date of the immigrant petition until the beneficiary obtains lawful permanent residence."

The updated guidance, which applies to petitions filed on or after January 5, 2024, explains that when the beneficiary of a Form I-140, Immigrant Petition for Alien Workers, moves (or "ports") to a new employer while the Form I-140 is pending, USCIS determines whether the petitioner meets the ability to pay requirements "only by reviewing the facts in existence from the priority date until the filing of the Form I-140."

Details:

- USCIS [alert](#) (Jan. 5, 2024).
- USCIS [Policy Alert](#), PA-2024-01 (Jan. 5, 2024).

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DOJ Sues Texas Over State Migration Bill

The Department of Justice (DOJ) sued the state of Texas on January 3, 2024, regarding a new Texas law known as Senate Bill 4 (SB4). The bill would create, effective March 5, 2024, new state crimes tied to federal prohibitions on unlawful entry and reentry by noncitizens into the United States and would authorize state judges to order the removal of certain noncitizens. It would allow Texas law enforcement officers to arrest those suspected of being in the United States without authorization.

Noting that "Texas cannot run its own immigration system," the DOJ's complaint states that in addition to violating the U.S. Constitution, which tasks the federal government with regulating immigration and controlling the international borders, SB4 also would "intrude on the federal government's exclusive authority to regulate the entry and removal of noncitizens, frustrate the United States' immigration operations and proceedings, and interfere with U.S. foreign relations."

On the same day the suit was filed, Gov. Abbott [posted](#), "Biden sued me today because I signed a law making it illegal for an illegal immigrant to enter or attempt to enter Texas directly from a foreign nation. I like my chances. Texas is the only government in America trying to stop illegal immigration."

Several civil rights groups, including the American Civil Liberties Union and the Texas Civil Rights Project, filed a separate lawsuit in December 2023 challenging the constitutionality of SB4.

Details:

- [S. v. Texas](#), Case No. 1:24-cv-00008 (Jan. 3, 2024).
- Justice Department Sues Texas Over State Law Allowing Police to Arrest Migrants Who Cross the Border Illegally, NBC News (Jan. 3, 2024).
- [Civil Rights Groups File Federal Lawsuit Against New Texas Immigration Law SB4](#), CBS Texas (Dec. 19, 2023).

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DOS Issues 'Bright Forecast' for Worldwide Visa Operations

On January 2, 2024, the Department of State (DOS) announced a "bright forecast" for worldwide visa operations. DOS said its visa processing capacity "has recovered faster than projected. We issued more nonimmigrant visas (NIVs) worldwide in 2023 than in any year since 2015."

DOS said it remains focused on "reducing wait times for visitor visa applicants who require an in-person interview, particularly in countries where demand remains at unprecedented levels." Its goal is for more than 90 percent of its overseas posts to have visitor visa interview wait times under 90 days in 2024.

DOS noted that its 230 U.S. embassies and consulates issued more than 10.4 million visas globally in fiscal year 2023. The agency attributed its progress in part to improved efficiency through interview waivers in several key visa categories, including for many students and temporary workers. Additionally, DOS said, applicants renewing nonimmigrant visas in the same classification within 48 months of the prior visa's expiration date can apply without an in-person interview in their countries of nationality or residence. "This continues to be one of our best tools to reduce interview appointment wait times while continuing to make rigorous national security decisions in every case," DOS said.

In 2023, DOS said, it (1) prioritized student and academic exchange visitor visa interviews to facilitate study at U.S. universities and colleges; (2) processed seasonal agricultural and nonagricultural worker visas, issuing a "record-breaking 442,000 visas to H-2A and H-2B temporary workers in 2023, with nearly 90 percent going to qualified workers from Mexico, El Salvador, Guatemala, and Honduras"; (3) issued a "record-breaking 365,000 nonimmigrant visas to airline and shipping crewmembers"; and (4) issued 590,000 nonimmigrant and immigrant visas, "the most ever," to high-skilled workers and executives in a range of sectors, including emerging technology and health care. "Among those, we issued nearly double the number of EB-3 in FY 2023 than in FY 2019, the last full year before the pandemic." DOS also issued all the available diversity green card lottery visas during the DV-2023 program year.

Details:

- DOS [Worldwide Visa Operations: Update](#) (Jan. 2, 2024).

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ABIL Global: Canada

The Canadian government is targeting skilled workers and French-speaking candidates in a new category-based selection process.

In a marked departure from its points-based immigration program selection system, the Honourable Sean Fraser, then-Minister of Immigration, Refugees and Citizenship, announced on May 31, 2023, [the launch of a new measure](#) of category-based selection for Canada's Express Entry management system to respond to Canada's changing economic and labor market needs, with an additional focus on Francophone immigration. This measure allows Immigration, Refugees and Citizenship Canada (IRCC) to issue invitations to apply to candidates who hold specific skills, training, or language abilities. For 2023, category-based selection invitations will target candidates who have a strong French language proficiency or work experience in the fields of health care; science, technology, engineering, and mathematics (STEM) professions; trades, such as carpenters, plumbers, and contractors; transport; agriculture; and agri-food. As of January 2024, this list of categories is subject to change.

Express Entry is the system used by IRCC to manage skilled workers seeking to

become Canadian Permanent Residents through the Federal Skilled Worker Program, the Federal Skilled Trades Program, the Canadian Experience Class, and a portion of the Provincial Nominee Program. Candidates are ranked according to a Comprehensive Ranking System (CRS), which is a points-based system that ranks candidates based on factors such as their education, language skills, work experience, and age. IRCC then periodically invites applicants with the highest scores to apply for permanent residence.

Among other category-based draws that began on June 28, 2023, [IRCC issued invitations to apply in the following categories](#):

- On July 12, 2023, IRCC issued 3,800 invitations to apply to candidates with French language proficiency with a minimum CRS score of 375.
- On September 28, 2023, IRCC held a targeted draw in the agriculture and agri-food occupations, inviting 600 applicants with a minimum CRS score of 354.
- On October 26, 2023, IRCC issued 3,600 invitations to apply to candidates in health care occupations with a minimum CRS score of 431.

In 2023, before the first targeted draw, the lowest CRS score was recorded at 481 points for candidates in an all-program draw.

Following the announcement and the beginning of targeted draws, the CRS cut-off decreased significantly for Express Entry candidates within the five targeted categories. However, since the first targeted draw at the end of June 2023, the lowest invitations for an all-program draw were issued to candidates with a minimum CRS score of 496. Thus, the CRS cut-off score has increased for profiles not included in the list of targeted occupations. In addition, the introduction of category-based selection has significantly diminished the number of invitations sent out to Express Entry profiles in the all-program draws.

[The Canadian Government seeks to welcome](#) 110,770 and 117,500 skilled workers in 2024 and 2025, respectively, through the Federal Skilled Worker Program, the Federal Skilled Trades Program, and the Canadian Experience Class. The Provincial Nominee Program will account for an additional 110,000 Canadian permanent residents in 2024, and 120,000 in 2025.

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