CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - JULY 17, 2024

Posted on July 17, 2024 by Cyrus Mehta

Headlines:

TPS Extended and Redesignated for Yemen; Work Authorization for F-1 Nonimmigrant Students From Yemen Announced – The Department of Homeland Security announced that the designation of Yemen for Temporary Protected Status (TPS) has been extended and redesignated for 18 months, ending on March 3, 2026. DHS also announced work authorization relief for F-1 students from Yemen.

Visa Bulletin: No Further Retrogression in EB-3 Category for August – The bulletin notes that although retrogression has not been necessary for August in the EB-3 category, it will likely be necessary to either retrogress the final action date or make the category "Unavailable" in September.

DHS Proposes Expansion of Hefty Fees on H-1B and L-1 Visas Under 9-11 Response and Biometric Entry-Exit Requirements – The proposed regulatory changes would require covered employers to submit the 9-11 Biometric Fee for all extension-of-stay petitions, regardless of whether a Fraud Fee applies, so as to include extension-of-stay petitions that do not involve a change of employer. The 9-11 Biometric Fee would continue to apply unchanged to petitions seeking an initial grant of status.

USCIS Seeks Comments on Revisions to Application for Employment Authorization – Comments are due by August 12, 2024.

OFLC Releases Technical Notes on How It Will Apply the 2018 Standard Occupational Classification to Wages – The Department of Labor's Office of Foreign Labor Certification (OFLC) released technical notes that explain how OFLC will apply the 2018 Standard Occupational Classification structure to Occupational Employment and Wage Statistics wages for the July 2024 through

June 2025 wage year.

Details:

Back to Top

TPS Extended and Redesignated for Yemen; Work Authorization for F-1 Nonimmigrant Students From Yemen Announced

The Department of Homeland Security (DHS) announced that the designation of Yemen for Temporary Protected Status (TPS) has been extended and redesignated for 18 months, beginning on September 4, 2024, and ending on March 3, 2026. DHS also announced work authorization relief for F-1 students from Yemen. Below are highlights of DHS's actions.

TPS Extension and Redesignation for Yemen

This extension and redesignation allows Yemeni nationals (and individuals having no nationality who last habitually resided in Yemen) who have been continuously residing in the United States since July 2, 2024, and who have been continuously physically present in the United States since September 4, 2024, to apply or re-register for TPS, the notice states.

The 60-day re-registration period for existing beneficiaries began on July 10, 2024, and runs through September 9, 2024. U.S. Citizenship and Immigration Services encouraged re-registrants to timely re-register during the re-registration period and not wait until their Employment Authorization Documents (EADs) expire because delaying re-registration could result in gaps in their employment authorization documentation.

The redesignation of Yemen for TPS allows an estimated 1,700 Yemeni nationals (and individuals having no nationality who last habitually resided in Yemen) who have been continuously residing in the United States since July 2, 2024, to file initial applications for TPS if they are otherwise eligible, the notice states. The extension of TPS for Yemen allows approximately 2,300 current beneficiaries to retain TPS through March 3, 2026, if they continue to meet TPS eligibility requirements.

Work Authorization Relief for F-1 Nonimmigrant Students From Yemen

DHS is also suspending certain regulatory requirements for F-1 nonimmigrant students from Yemen who are experiencing severe economic hardship as a

direct result of the current crisis in Yemen. These students may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant status. This action covers eligible F-1 nonimmigrant students from Yemen beginning on September 4, 2024, and ending on March 3, 2026.

An F-1 nonimmigrant student must file Form I-765, Application for Employment Authorization, with U.S. Citizenship and Immigration Services to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current crisis in Yemen.

Details:

- DHS notice of TPS extension and redesignation for Yemen, 89 Fed. Reg. 56765 (July 10, 2024).
- DHS notice of work authorization relief for Yemeni F-1 nonimmigrant students, 89 Fed. Reg. 56759 (July 10, 2024).
- DHS news release on Yemeni TPS (July 8, 2024).

Back to Top

Visa Bulletin: No Further Retrogression in EB-3 Category for August

The Department of State's Visa Bulletin for August 2024 shows no further retrogression in the EB-3 visa category following retrogression in July. However, the August bulletin notes:

As readers were informed in Item D of the July 2024 *Visa Bulletin*, demand and number use has remained high in the EB-3 visa category. Although retrogression has not been necessary for August, it will likely be necessary to either retrogress the final action date or make the category "Unavailable" in September. This situation will be continually monitored, and any necessary adjustments will be made accordingly.

Back to Top

DHS Proposes Expansion of Hefty Fees on H-1B and L-1 Visas Under 9-11

Response and Biometric Entry-Exit Requirements

The Department of Homeland Security (DHS) has proposed to amend and clarify regulations concerning the 9-11 Response and Biometric Entry-Exit fee for H-1B and L-1 visas. The proposed regulatory changes would require covered employers to "submit the 9-11 Biometric Fee for all extension-of-stay petitions, regardless of whether a Fraud Fee applies, so as to include extension-of-stay petitions that do not involve a change of employer. The 9-11 Biometric Fee would continue to apply unchanged to petitions seeking an initial grant of status."

Reaction. Commenting on the proposed rule on July 8, 2024, the American Immigration Lawyers Association (AILA) noted that "DHS is proposing to significantly change its interpretation regarding when the 9 11 Biometric Fee, implemented under Public Law 114-113 for H-1B and L-1 visas, is required. This law created an additional fee of $4,000 for H-1B petitions and $4,500 for L-1 petitions when H-1B or L-1 workers comprise more than 50% of the petitioner's U.S. workforce (Covered Employers). This fee is in addition to the other filing fees associated with these petitions." In 2019, AILA explained, "in response to the DHS proposed revisions to the USCIS fee schedule that was ultimately enjoined, AILA urged DHS not to adopt the same statutory interpretation it proposes now, citing, among other reasons, the significant harm it would cause for certain U.S. employers, and that it was contrary to the plain language and intent of the statute." In its comment, AILA delineated the reasons for its disagreement with the current proposal, which would require covered employers to pay the 9-11 Biometric Fee "not only for initial benefit requests with which all employers must include the Fraud Fee but also for requests by the same Covered Employer to extend the same worker's H-1B or L-1 status, even though in the latter scenario the Fraud Fee is not required."

Details:

- DHS proposed rule (U.S. Customs and Border Protection), 89 Fed. Reg. 48339 (June 6, 2024).
- AILA comment (July 8, 2024).

Back to Top

USCIS Seeks Comments on Revisions to Application for Employment Authorization

U.S. Citizenship and Immigration Services (USCIS) seeks additional comments on its revisions to Form I-765, Application for Employment Authorization. Comments are due by August 12, 2024.

The notice states that instead of going to a Social Security Office, an applicant for work authorization can now apply for a Social Security Number (SSN) and Social Security card using Form I-765. If the relevant data elements are filled out, USCIS will send the applicant's information to the Social Security Administration (SSA) upon approval of the employment authorization request. If the applicant already has an SSN and requested a Social Security card on Form I-765, SSA will issue a replacement SSN card.

Details:

- USCIS 30-day notice, 89 Fed. Reg. 57159 (July 12, 2024).

Back to Top

OFLC Releases Technical Notes on How It Will Apply the 2018 Standard Occupational Classification to Wages

The Department of Labor's Office of Foreign Labor Certification (OFLC) released technical notes that explain how OFLC will apply the 2018 Standard Occupational Classification (SOC) structure to Occupational Employment and Wage Statistics (OEWS) wages for the July 2024 through June 2025 wage year.

OFLC said that OEWS has aggregated certain 2018 SOC detailed occupations into a single broad occupation. OFLC will apply the single broad occupation wage estimate to each of the 2018 SOC detailed occupations. OEWS has published a list of OEWS occupations and definitions that include 2018 SOC detailed occupations that have been aggregated; a link to the list is included in the technical notes.

OFLC also explained that in certain instances, the 2018 SOC codes "may be aggregated, may not have wage estimates due to OEWS data limitations, may not have American Competitiveness and Workforce Improvement Act (ACWIA) Higher Education wage estimates due to OEWS data limitations, or may not have Job Zone data due to the Occupational Information Network (O*NET) data

limitations." The technical notes include examples of such instances.

Back to Top