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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - AUGUST 05, 2024

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Headlines:

USCIS Will Conduct Second Random Selection for Regular Cap From Previously Submitted FY 2025 H-1B Cap Registrations – U.S. Citizenship and Immigration Services will select additional registrations for unique beneficiaries to reach the FY 2025 regular cap numerical allocation. USCIS will make the selections from previously submitted electronic registrations using a random selection process.

I-9 Expiration Date Extended – U.S. Citizenship and Immigration Services has extended the expiration date of Form I-9, Employment Eligibility Verification, to 05/31/2027.

USCIS Releases Stats on O-1A Visas, National Interest Waivers, and EB-2 Receipts Since 2022 Guidance – U.S. Citizenship and Immigration Services has reported movement in the numbers of O-1A and EB-2 visa applications and approvals since Biden administration guidance was released in early 2022, along with an overall increase in applications for national interest waivers, although the approval rate for the latter declined. The approval rate for both O-1A and EB-2 applications remained at 90 percent or above in fiscal years 2018 through 2023.

DOS Issues Notice of Class-Wide Relief in *Emami* Litigation – The Department of State announced class-wide relief to begin August 12, 2024, following litigation, "to allow certain visa applicants who were refused visas under Presidential Proclamation 9645…to receive a one-time, non-transferable fee credit to submit a new visa application and (for eligible class members) to have the option to get a prioritized visa appointment."

CIS Ombudsman Expands Nationwide Reach With Regional

Representatives – The Citizenship and Immigration Services Ombudsman has expanded its reach across the United States with four regional representatives based in Los Angeles (Western), Dallas (Central), Boston (Northeast), and Orlando (Southeast).

ABIL Global: France – A new law to control immigration entered into force on January 26, 2024. France also announced procedures related to the Olympic and Paralympic Games in Paris and other cities this summer, and France is on notice for failure to transpose a European Union directive relating to the European Blue Card.

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USCIS Will Conduct Second Random Selection for Regular Cap From Previously Submitted FY 2025 H-1B Cap Registrations

Following its initial selections in March 2024, U.S. Citizenship and Immigration Services (USCIS) announced that it will need to select additional registrations for unique beneficiaries to reach the FY 2025 regular cap numerical allocation. USCIS will make the selections from previously submitted electronic registrations using a random selection process.

USCIS said it will notify prospective petitioners with selected registrations that they are eligible to file an H-1B cap-subject petition for the beneficiary. Those with selected registrations will have their USCIS online accounts updated to include a selection notice, which includes details of when and where to file.

USCIS will not conduct a second selection for the advanced degree exemption (master's cap) because a sufficient number of master's cap registrations were already selected and petitions received are projected to meet the FY 2025 master's cap numerical allocation. The second round of selection for the regular cap will include previously submitted registrations that indicated eligibility for the master's cap along with those that indicated only eligibility for the regular cap.

Details:

- USCIS notice (July 30, 2024).

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I-9 Expiration Date Extended

U.S. Citizenship and Immigration Services (USCIS) has extended the expiration date of Form I-9, Employment Eligibility Verification, to 05/31/2027.

Employers must use the Form I-9 with the edition date of 08/1/23, which may have an expiration date of either 07/31/2026 or 05/31/2027. Either form may be used until its respective expiration date, USCIS said. However, downloads from the Form I-9 download page will only include the new 05/31/2027 expiration date.

USCIS said that employers "are encouraged to update their electronic Forms I-9 systems to use the 05/31/2027, expiration date as soon as possible and must do so no later than July 31, 2026, the expiration date on the previously issued Form I-9."

Details:

- USCIS notice (Aug. 2, 2024).

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USCIS Releases Stats on O-1A Visas, National Interest Waivers, and EB-2 Receipts Since 2022 Guidance

U.S. Citizenship and Immigration Services (USCIS) has reported movement in the numbers of O-1A and EB-2 visa applications and approvals since Biden administration guidance was released in early 2022, along with an overall increase in applications for national interest waivers, although the approval rate for the latter declined. The approval rate for both O-1A and EB-2 applications remained at 90 percent or above in fiscal years (FYs) 2018 through 2023. Below are highlights.

O-1A Visas: Applications and Approvals Increased

According to reports, after the Biden administration announced new guidance in January 2022, there were significant increases in applications and approvals for high-skilled visas, including O-1A visas for individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures, or television industry).

The 2022 guidance provided "examples of evidence that may satisfy the O-1A evidentiary criteria and discusse considerations that are relevant to evaluating such evidence, with a focus on the highly technical nature of STEM fields and the complexity of the evidence often submitted."

U.S. Citizenship and Immigration Services (USCIS) reported that from FY 2021 to FY 2022, total receipts of Forms I-129 for O-1A petitioners increased 29 percent, from 7,710 to 9,970. They continued to increase slightly from 9,970 in FY 2022 to 10,010 in FY 2023. Approvals followed a similar trend by increasing by 25 percent from FY 2021 to FY 2022, from 7,320 to 9,120. They continued to increase slightly from 9,120 in FY 2022 to 9,490 in FY 2023. The approval rate remained stable at 90 percent or above in FYs 2018 through 2023.

EB-2 Receipts Increased; Approvals Increased, Then Decreased

There were also increases in EB-2 receipts, although approvals declined after increasing. USCIS reported that from FY 2021 to FY 2022, total receipts of Forms I-140 with and without waivers (combined) increased by 20 percent, from 70,600 to 84,470. Receipts continued to increase by another 10 percent from FY 2022 to FY 2023. Approvals increased by 60 percent from 57,810 in FY 2021 to 92,280 in FY 2022 but decreased about 12 percent from 92,280 in FY 2022 to 81,380 in FY 2023. The approval rate remained at 90 percent or above in FYs 2018 through 2023.

USCIS also noted that total EB-2 receipts in STEM job categories decreased by almost 13 percent, from 61,790 in FY 2022 to 53,960 in FY 2023. Receipts in non-STEM job categories increased by 28 percent during that time. Increasing numbers of EB-2 petitioners are requesting national interest waivers.

Details:

- STEM-Related Petition Trends: EB-2 and O-1A Categories FY 2018-FY 2023, USCIS (N.D.)
- O-1A Visas, National Interest Waivers Rise After Immigration Guidance, Forbes (July 30, 2024).

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DOS Issues Notice of Class-Wide Relief in *Emami* Litigation

The Department of State (DOS) announced class-wide relief to begin August 12, 2024, following litigation in the consolidated cases *Emam v. Mayorkas* and *Pars Equality Center v. Blinken*, "to allow certain visa applicants who were refused visas under Presidential Proclamation 9645...to receive a one-time, non-transferable fee credit to submit a new visa application and (for eligible class members) to have the option to get a prioritized visa appointment." The fee credit may be used once toward any immigrant or nonimmigrant visa at any U.S. embassy or consulate, DOS said.

Class members include eligible nationals of Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen who were denied a visa under Presidential Proclamation 9645 between December 8, 2017, and January 20, 2021, and did not receive a waiver under Presidential Proclamation 9645. The notice includes details on eligibility and how to apply.

Details:

- DOS notice (Aug. 2, 2024).

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CIS Ombudsman Expands Nationwide Reach With Regional Representatives

The Citizenship and Immigration Services (CIS) Ombudsman has expanded its reach across the United States with four regional representatives based in Los Angeles (Western), Dallas (Central), Boston (Northeast), and Orlando (Southeast).

According to a statement from the CIS Ombudsman's office, the regional representatives will:

- Engage with local immigration stakeholders to build relationships and hear about their experiences with U.S. Citizenship and Immigration Services (USCIS);
- Help identify issues that may only be occurring in specific areas or USCIS offices;
- Share feedback from local stakeholders with the CIS Ombudsman's headquarters team to inform the recommendations it sends to USCIS to improve the agency's policies and processes; and

- Provide an overview of the CIS Ombudsman's case assistance services and clarify the process to the public.

The CIS Ombudsman said its public engagement team will continue to meet with stakeholders throughout the country, focusing on national and international organizations and employers, foreign embassies and consulates, and headquarters-level components of other federal departments and agencies.

Details:

- CIS Ombudsman statement (Aug. 2, 2024).

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ABIL Global: France

A new law to control immigration entered into force on January 26, 2024. France also announced procedures related to the Olympic and Paralympic Games in Paris and other cities this summer, and France is on notice for failure to transpose a European Union directive relating to the European Blue Card.

The new law's legislative journey and the media debate around it have been very intense over several months. Important measures like massive regularization of undocumented workers in short-staffed professions have finally been rejected by the Senate.

The legislative process has been lively: after the adoption by the Senate of a text presenting several setbacks for foreigners' rights, a motion for prior rejection was adopted by the National Assembly. Finally, Deputies from the majority, the right wing, and the far right wing agreed on the final text, including several measures already identified as unconstitutional.

The Constitutional Council, in its decision of January 25, censored 35 articles of the law. The Constitutional Council has deemed the following measures unconstitutional:

- *Migration quotas*. The law planned the establishment of "quotas" to cap for the next three years the number of foreigners admitted to the country. Because this measure was considered unconstitutional by the

Constitutional Council, quotas will not be implemented.
- *Family reunification*. The conditions for family reunification will remain the same. The extension of the duration of residence in France for more than 24 months has been deemed unconstitutional as well as the other new measures regarding family reunification.

With regard to aspects relating more to private life, the following measures deemed unconstitutional have been excluded:

- Tightening of the conditions to be met by a foreigner married to a French national to be issued with a temporary residence permit bearing the title "private and family life" for a period of one year;
- Tightening of the conditions for issuing a residence permit for reasons of study; and
- Full right issuance of a long-stay visa to British nationals who own a secondary home in France.

Legislative Changes

Measures under this new law that directly impact professional immigration include:

Talent Passport Residence Permits

"Talent Passport" residence permits change their name to "Talent" residence permits, in a simplification effort.

The following three Talent Passport residence permits all merge to a single "Talent—Qualified employee" residence permit: (1) Talent—Passport Qualified employee, (2) Talent Passport employee of an innovative company, and (3) Talent Passport intra-company. This simplification does not modify the initial conditions required for each status, but the minimum salary thresholds could change since the article refers to "*a salary threshold set by decree in the Council of State,*" which has not yet been published.

The following three Talent Passport residence permits will all merge into a single "Talent—Project Bearer" residence permit: (1) Talent Passport—Business Creation, (2) Talent Passport innovative economic project, and (3) Talent Passport economic investment.

The new law also creates a "Talent—medical and pharmacy professions" residence permit for doctors, midwives, dental surgeons, and pharmacists.

Regularization of Undocumented Workers in Short-Staffed Professions

The law gives prefects discretion to regularize an undocumented worker who has lived in France for at least three years; worked at least 12 months, consecutive or not, over the last 24 months; and has a job in a short-staffed profession in a specific area. This will allow the issuance of a residence permit bearing the title "temporary worker" or "employee" for a period of one year. The worker can apply without the employer's approval.

Olympic Games 2024

The Olympic Games are taking place in Paris and other cities (Marseille, Toulouse, Lille). They began July 26 and will run until August 11, 2024. The Paralympic Games will take place from August 28 to September 8, 2024.

Among measures for foreigners is the possibility for foreign students to participate in private security activities. The work time performed in these activities will not be considered in the calculation of the ancillary work time allowed for foreign students, which is 60 percent of the annual work time (i.e., around 964 hours per year).

Also, according to the French Ministry and consulates in the United States, a simplified process has been implemented for travelers for whom an accreditation request is submitted to the Olympic or Paralympic Committee, such as members of the Olympic and Paralympic Committees, athletes, accompanying persons, media, and official guests.

They can appear in any visa center to apply for a visa without an appointment; a time slot is dedicated to them every morning. They only need to provide their passport, proof of accreditation, and photos. Fingerprinting takes place as well. There are no visa fees to be paid and no visa form to be filled out before submission of the application.

Absence of Transposition of EU Blue Card Directive

On January 25, 2024, the European Commission announced adoption of a set of decisions concerning delays in the transposition of European Union (EU) Directives. France is on notice for failure to transpose the directive of October 20, 2021, relating to the European Blue Card.

States had until November 18, 2023, to adapt their internal laws to EU Directives. In France, the law of January 26, 2024 (which includes several articles

related to the work of foreigners) did not include any modification of the Foreigners Code (CESEDA) for European Blue Card status.

French authorities had two months to respond and complete the transposition. Failing this, the Commission could issue a reasoned opinion and, in the absence of a response, bring the matter before the EU Court of Justice. As of early August, there was no update regarding the transposition of the EU Blue Card Directive into French law, and the Commission had not yet issued its opinion.

The Foreigners Code (CESEDA) includes several provisions relating to the multi-year "talent, European blue card" residence card, but those are not in line with the Directive: the possibility for the foreigner to present an employment contract or a job offer of at least six months (currently 12 months); duration of the residence permit set at a minimum of 24 months (currently one year); and possible mobility to another Member State after 12 months of legal residence in the first Member State (instead of 18).

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