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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - AUGUST 12, 2024

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Headlines:

Visa Bulletin Reports on Availability of Employment-Based Visas in September – The Department of State's Visa Office has released the Visa Bulletin for September 2024.

USCIS Completes Second Random Selection for Regular Cap From Previously Submitted FY 2025 H-1B Cap Registrations – U.S. Citizenship and Immigration Services has completed its second random selection to reach the FY 2025 H-1B regular cap numerical allocation.

DC Circuit Court Upholds H-4 Spousal Work Authorization – The D.C. Circuit upheld the authority of the Department of Homeland Security to grant work authorization to spouses of certain H-1B workers.

DOS Releases FY 2025 Diversity Visa Results – The Kentucky Consular Center in Williamsburg, Kentucky, has registered and notified the selectees who are eligible to participate.

E-Verify Employers Should Not Create a Case for Re-Paroled Ukrainian Employees, USCIS Says; Additional Guidance Released – U.S. Citizenship and Immigration Services issued an update to its policy on Ukrainian employees with parole.

Parole Process Paused for Cubans, Haitians, Nicaraguans, and Venezuelans – The Department of Homeland Security has temporarily paused the issuance of advance travel authorizations for new Cuban, Haitian, Nicaraguan, and Venezuelan beneficiaries while it reviews the supporter application process.

USCIS Provides Fact Sheet on STEM Petition Trends in EB-2 and O-1A Categories – U.S. Citizenship and Immigration Services has provided a fact

sheet on science, technology, engineering, and mathematics (STEM) petition trends in the EB-2 and O-1A categories in fiscal years 2018 to 2023.

California Service Center Moves to New Address – U.S. Citizenship and Immigration Services announced that on August 12, 2024, the California Service Center will move to a new address.

OFLC Announces Upcoming Final Decommission of Permanent Online System – The legacy Permanent (PERM) Online System, which provides public access to permanent labor certification applications and final determinations, will be fully decommissioned on December 1, 2024.

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Visa Bulletin Reports on Availability of Employment-Based Visas in September

The Department of State's Visa Office has released the Visa Bulletin for September 2024. The bulletin notes that:

- There has been a steady increase in demand for employment-based visas. As a result, most employment-based preference category limits for fiscal year (FY) 2024 are expected to be reached during September, if not sooner. If at any time an annual limit is reached, the relevant preference category would become immediately "unavailable," and no further applications falling within that preference category would be approved through the end of the fiscal year.
- In September, the EB-3 final action dates for Rest of World, Mexico, and the Philippines, as well as the essential worker (EW) final action dates for Rest of World and Mexico, will retrogress. The bulletin says that the issuance totals in these categories are rapidly approaching the annual limit for FY 2024. "It is anticipated that the final action dates will advance in October 2024; however, date movement will depend on worldwide demand for EB-3 and EW visas and the estimated FY 2025 category limit," the bulletin states.

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USCIS Completes Second Random Selection for Regular Cap From Previously

Submitted FY 2025 H-1B Cap Registrations

U.S. Citizenship and Immigration Services (USCIS) announced on August 5, 2024, that it has completed its second random selection to reach the fiscal year (FY) 2025 H-1B regular cap numerical allocation.

As background, following its initial selections in March 2024, U.S. Citizenship and Immigration Services (USCIS) announced that it would need to select additional registrations for unique beneficiaries to reach the FY 2025 regular cap numerical allocation.

USCIS said it did not conduct a second selection for the advanced degree exemption (master's cap) because "enough masters cap registrations had already been selected and sufficient petitions were received based on these registrations as projected to meet the master's cap numerical allocation."

USCIS said it selected 114,017 beneficiaries, resulting in 120,603 selected registrations in the initial selection for the FY 2025 H-1B cap. The agency selected 13,607 beneficiaries in the second selection for the FY 2025 H-1B regular cap, resulting in 14,534 selected registrations.

Details:

- USCIS notice (Aug. 5, 2024).
- FY 2025 H-1B Cap Registration Process Update, USCIS (Aug. 5, 2024).

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DC Circuit Court Upholds H-4 Spousal Work Authorization

On August 2, 2024, a D.C. Circuit Court ruling in *Save Jobs USA v. DHS* upheld the authority of the Department of Homeland Security (DHS) to grant work authorization to H-4 spouses of certain H-1B workers.

Save Jobs USA had challenged DHS's authority to issue a rule that allows certain visa holders to work in the United States. The court said it had already interpreted the relevant provisions of the immigration statute to answer a similar question in favor of DHS. "Because Save Jobs USA has not meaningfully distinguished this case from that binding precedent, we affirm the district court's grant of summary judgment," the court said.

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DOS Releases FY 2025 Diversity Visa Results

The Department of State's Visa Bulletin for September includes results from the diversity visa (DV) lottery for fiscal year (FY) 2025 (October 1, 2024, to September 30, 2025). The Kentucky Consular Center in Williamsburg, Kentucky, has registered and notified the approximately 131,060 selectees who are eligible to participate. Entrants registered for the DV-2025 program were selected at random from 19,927,656 qualified entries received. The country with the most registrants selected is Algeria, with 5,526.

The bulletin notes that those selected "will need to act on their immigrant visa applications quickly. Applicants should follow the instructions in their notification letter and must fully complete all required steps." Many more were selected than can receive visas (55,000) to account for factors such as some selectees not completing their cases or being found ineligible for a visa.

Dates for the DV-2026 program registration period will be publicized in the coming months, the bulletin notes.

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E-Verify Employers Should Not Create a Case for Re-Paroled Ukrainian Employees, USCIS Says; Additional Guidance Released

U.S. Citizenship and Immigration Services (USCIS) issued an update to its policy on Ukrainian employees with parole, stating that E-Verify employers should not create a case in E-Verify for re-paroled employees unless they are newly hired.

USCIS had announced previously that beginning February 27, 2024, certain Ukrainian citizens and their immediate family members displaced by the Russian invasion and paroled into the United States can request an extension of parole (re-parole) for up to two additional years.

USCIS said that parolees who are approved by USCIS for re-parole should print a copy of their electronic Form I-94, Arrival/Departure Record, from the CBP I-94 website. An unexpired Form I-94 that shows a class of admission of "UHP" and a most recent date of entry on or before September 30, 2024, is an acceptable document that temporarily shows identity and employment authorization for up to 90 days, USCIS said: "These employees should provide a printed Form I-94 if they are newly hired employees or during reverification on Form I-9."

USCIS also released a reminder with additional details about which Ukrainian parolees and immediate family members are employment-authorized incident to parole.

Details:

- E-Verify notice (Aug. 6, 2024).

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Parole Process Paused for Cubans, Haitians, Nicaraguans, and Venezuelans

The Department of Homeland Security (DHS) has temporarily paused the issuance of advance travel authorizations (ATAs) for new Cuban, Haitian, Nicaraguan, and Venezuelan beneficiaries while it reviews the supporter application process.

U.S. Citizenship and Immigration Services (USCIS) said it continues to accept Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, but no requests will be confirmed until the review of the supporter application process is complete. "Beneficiaries who have already received an ATA should check their myUSCIS account for updates before making travel arrangements and prior to travel. Individuals with a valid ATA are permitted to travel. ATA processing will restart as soon as possible once this thorough review concludes," USCIS said.

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USCIS Provides Fact Sheet on STEM Petition Trends in EB-2 and O-1A Categories

U.S. Citizenship and Immigration Services (USCIS) has provided a fact sheet on science, technology, engineering, and mathematics (STEM) petition trends in the EB-2 and O-1A categories in fiscal years 2018 to 2023. The fact sheet highlights data trends in these categories during fiscal years (FYs) 2022 and 2023 compared with fiscal years before a policy guidance change in January 2022. The trends include an increase in receipts of EB-2 petitions from FY 2022 to FY 2023 and increases in National Interest Waiver use and O-1A petition receipts, USCIS said.

In January 2022, USCIS updated its policy guidance to clarify how certain professionals in STEM fields can demonstrate eligibility for (a) the National Interest Waiver (NIW) in an employment-based immigrant status (EB-2), and (b)

nonimmigrant status for individuals of extraordinary ability (O-1A).

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California Service Center Moves to New Address

U.S. Citizenship and Immigration Services (USCIS) announced that on August 12, 2024, the California Service Center is moving to a new address:

California Service Center
2642 Michelle Drive
Tustin, CA 92780

USCIS said applicants should refer to form filing address pages on uscis.gov to find the specific address information, including suite numbers, they should use depending on which form they are submitting.

Details:

- USCIS notice (Aug. 7, 2024).

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OFLC Announces Upcoming Final Decommission of Permanent Online System

The Department of Labor's Office of Foreign Labor Certification (OFLC) alerted employers and other interested stakeholders that the legacy Permanent (PERM) Online System, which provides public access to permanent labor certification applications and final determinations, will be fully decommissioned on December 1, 2024. The Foreign Labor Application Gateway (FLAG) System replaces the legacy Permanent Online System. OFLC said:

On December 1, 2024, the legacy Permanent Online System will no longer be accessible to account holders and the general public will be redirected to the FLAG System. Stakeholders who require documents from their Permanent Online System accounts are strongly encouraged to access and download those documents well in advance of December 1, 2024. Permanent Online System account holders who need to upload documents or request a specific case action on an application submitted in the Permanent Online System (e.g., request reconsideration, withdraw applications, etc.) should complete action in the system by November 30, 2024, at 7 PM EST.

Applications still pending in the Permanent Online System after November 30,

2024, will continue to be processed by OFLC. Starting December 1, 2024, stakeholders who need to submit a response to the Department, upload documents, or request a specific case action on an application that was submitted in the Permanent Online System must do so by email, sent to the PLC Help Desk at PLC.Help@dol.gov. Documents should be submitted as PDF attachments and named with the case number assigned and title of the attachment. After November 30, 2024, stakeholders with applications pending in the Permanent Online System will not be able to upload documents directly. Employers and their attorney/agents should continue to check their email for correspondence and notifications related to these pending applications.

Details:

- OFLC notice (scroll to Aug. 7, 2024).

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