



# IMMIGRATION UPDATE - SEPTEMBER 05, 2024

*Posted on September 5, 2024 by Cyrus Mehta*

## Headlines:

### [USCIS Updates Guidance on OPT and Other Issues for F/M Nonimmigrant Students](#)

– U.S. Citizenship and Immigration Services (USCIS) has updated its guidance on when students may be eligible for optional practical training extensions for STEM fields. USCIS also provided clarifying guidance for F and M nonimmigrant students about online study, school transfers, the grace period, and study abroad.

### [DHS Announces New Work Authorization Category for T Nonimmigrants](#)

– The Department of Homeland Security has established a new C40 category "for individuals with a pending Form I-914, Application for T Nonimmigrant Status, whose application is determined to be bona fide and meets the prima facie standard, and who apply and are approved for employment authorization."

### [Texas District Court Temporarily Stops "Keeping Families Together"](#)

[Parole-in-Place Program, But Applications Continue](#) – U.S. Citizenship and Immigration Services will continue to collect applications although parole grants under the program are paused.

### [Biden Administration to Resume Program for Migrants From Cuba, Haiti, Nicaragua, and Venezuela; Fraud Investigations Continue](#)

– According to [reports](#), the Biden administration plans to resume a program that allows would-be migrants from Cuba, Haiti, Nicaragua, and Venezuela to apply from their home countries for entry into the United States. The 18-month-old program was paused due to fraud concerns.

[Annual Limit Reached in Several Employment-Based Categories](#) – The annual limits will reset with the start of the new fiscal year on October 1, 2024.

### [OFLC Announces Delay in Transition Schedule for H-2A Applications and](#)

**[Job Orders Under 2024 Farmworker Protection Final Rule](#)** – A District Court in Georgia issued a preliminary injunction in *Kansas v. U.S. Department of Labor*, prohibiting the Department of Labor from enforcing the Farmworker Protection Rule in certain states and with respect to certain entities.

**[USCIS to Open International Field Office in Quito, Ecuador](#)** – With a field office in Ecuador, to be located in the U.S. Embassy, U.S. Citizenship and Immigration Services "will be able to provide immigration expertise to U.S. embassy and regional partners in support of the Oficinas de Movilidad Segura, or Safe Mobility Offices, in Ecuador."

**[DOS Releases Notice to \*Emami\* Class Members](#)** – The Department of State released a notice on August 27, 2024, with instructions to class members in the consolidated cases *Emami v. Mayorkas* and *Pars Equality Center v. Blinken*.

#### **Details:**

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### **USCIS Updates Guidance on OPT and Other Issues for F/M Nonimmigrant Students**

U.S. Citizenship and Immigration Services (USCIS) has [updated its guidance](#) on when students may be eligible for optional practical training (OPT) extensions for science, technology, engineering, and mathematics (STEM) fields. USCIS also provided clarifying guidance for F and M nonimmigrant students about online study, school transfers, the grace period, and study abroad.

USCIS said its [Policy Manual update](#):

- Clarifies that students may count one class or three credits (or the equivalent) per academic session (or the equivalent) toward a full course of study if they take the class online or through distance learning not requiring physical attendance for any purpose integral to completion of the class.
- Explains that students may transfer between Student and Exchange Visitor Program (SEVP)-certified schools at the same educational level or move between educational levels.
- Explains that during the 60-day grace period following an authorized period of post-completion of OPT, students may change their education level, transfer to another SEVP-certified school, or file an application or

petition with USCIS to change to another nonimmigrant or immigrant status.

- Clarifies that students may be eligible for post-completion OPT after completion of an associate's, bachelor's, master's, or doctoral degree program.
- Corrects the period during which students may apply for STEM OPT extensions and makes other technical corrections.
- Clarifies that a student enrolled in a SEVP-certified school during a study abroad program may remain active in the Student and Exchange Visitor Information System if the study abroad program lasts less than five months, but that the student will need a new [Form I-20, Certificate of Eligibility for Nonimmigrant Student Status](#), if the program lasts longer than five months.

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## **DHS Announces New Work Authorization Category for T Nonimmigrants**

Effective August 28, 2024, the Department of Homeland Security (DHS) has established a [new C40 category](#) "for individuals with a pending Form I-914, Application for T Nonimmigrant Status, whose application is determined to be bona fide and meets the prima facie standard, and who apply and are approved for employment authorization." The principal T nonimmigrant applicant and family members may now receive an EAD with category C40. Previously, the C14 category (deferred action) was used when providing work authorization to T-1 applicants. DHS explained that T nonimmigrant status is for certain noncitizens who are or have been victims of a severe form of trafficking in persons.

Once T-1 nonimmigrant status is granted, DHS explained, those individuals will receive an EAD with category A16. T-2, T-3, T-4, T-5, or T-6 nonimmigrants will receive an EAD with category C25.

The Systematic Alien Verification for Entitlements (SAVE) database will provide an Initial Verification response of Temporary Employment Authorized for an EAD with category C40 if the applicant has no other status, DHS said. "SAVE may provide a different initial verification response if an applicant has an additional immigration status. In those situations, agencies should request

additional verification to receive all the applicant's immigration statuses."

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## **Texas District Court Temporarily Stops "Keeping Families Together" Parole-in-Place Program, But Applications Continue**

A [Texas District Court](#) has [temporarily stopped](#) the Biden administration's "Keeping Families Together" parole-in-place program. The program, which started August 19, 2024, allows noncitizen spouses and noncitizen stepchildren of U.S. citizens, if otherwise eligible, to apply for lawful permanent residence without leaving the United States. U.S. Citizenship and Immigration Services (USCIS) will continue to collect applications although parole grants under the program are paused.

On August 23, 2024, the state of Texas, along with [15 other states](#), filed a [complaint](#) in the U.S. District Court for the Eastern District of Texas, Tyler Division, calling the program "unlawful" and arguing that it "incentivizes illegal immigration and will irreparably harm the Plaintiff States." The District Court agreed, issuing an administrative stay. The court said it "has undertaken a first-blush review of the merits of plaintiffs' standing and cause of action in light of the evidence submitted with their motion for a TRO and a stay. The claims are substantial and warrant closer consideration than the court has been able to afford to date." In particular, the court said, its conclusion was based on the need to analyze (1) whether parole "into" the United States includes entry by those who are already in the United States, "as opposed to at or beyond the border," and (2) the relevant rule's possible misapprehension of the legal standard in focusing on significant public benefit from "this process" rather than whether a specific person's lawful presence in the country would have public, as opposed to private, benefit that is significant. The court said its review was a "screening" and did not express any ultimate conclusions about the success or likely success of the government's claims. The court noted that its stay applied to granting parole under the program but not to accepting applications.

As noted above, USCIS said it would continue to accept applications but not grant parole under the program while the stay is in place. USCIS also [noted](#) that the district court's stay "does not affect any applications that were approved before the administrative stay order was issued at 6:46 p.m. Eastern Time on

Aug. 26, 2024." The court set forth a detailed "expedited schedule" for further court filings up to October 10, 2024, with extensions possible through mid-October, followed by "an expedited hearing on preliminary relief and summary judgment, and if necessary a consolidated bench trial."

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### **Biden Administration to Resume Program for Migrants From Cuba, Haiti, Nicaragua, and Venezuela; Fraud Investigations Continue**

According to [reports](#), the Biden administration plans to resume a program that allows would-be migrants from Cuba, Haiti, Nicaragua, and Venezuela to apply from their home countries for entry into the United States. The 18-month-old program was paused due to fraud concerns. Reportedly, "[thousands of suspect applications](#)" from sponsors of the migrants will still need to be reviewed by U.S. Citizenship and Immigration Services' Fraud Detection and National Security Directorate.

According to [NBC News](#), an internal Department of Homeland Security (DHS) report "found that almost 101,000 sponsor applications for migrants from Cuba, Haiti, Nicaragua, Venezuela and Ukraine were filed by 3,218 so-called serial sponsors." DHS found "thousands of instances of would-be sponsors' using the same street addresses, internet protocol addresses or phone numbers. Almost 600 applications were flagged, for example, because they all appeared to use the address of the same commercial warehouse in Orlando, Florida. The authors also found repeated uses of the same Social Security numbers, including numbers belonging to dead people."

Homeland Security Investigations, a division of U.S. Immigration and Customs Enforcement, is assisting in investigating any potential instances of criminal fraud.

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### **Annual Limit Reached in Several Employment-Based Categories**

On August 27, 2024, the Department of State (DOS) announced the issuance of all available visas in the employment-based [first preference \(EB-1\)](#) and [fourth preference \(EB-4\)](#) immigrant visa preference categories for fiscal year (FY) 2024. On August 16, 2024, DOS announced the issuance of all available visas in the employment-based [EB-3 and EW \(Other Workers\)](#) and [EB-5 unreserved](#)

categories.

Regarding the EB-1 category, DOS said, "Maximizing these visas facilitates legitimate travel for individuals with extraordinary ability garnered national or international acclaim, outstanding professors and researchers, and multinational executives and managers." Regarding the EB-4 category, DOS said that maximizing such visas "facilitates legitimate travel for a wide variety of special immigrants, including religious workers, special immigrant juveniles, certain U.S. government employees, certain international organization retirees, and certain international broadcasting employees, among others."

The annual limits will reset with the start of the new fiscal year on October 1, 2024, DOS noted. "At that point, embassies and consulates may resume issuing immigrant visas in these categories to qualified applicants." USCIS may also resume approving applications for Adjustment of Status to Lawful Permanent Resident (Form I-485) in these categories to qualified applicants starting October 1, 2024.

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### **OFLC Announces Delay in Transition Schedule for H-2A Applications and Job Orders Under 2024 Farmworker Protection Final Rule**

On August 26, 2024, a District Court in Georgia issued a preliminary injunction in *Kansas v. U.S. Department of Labor*, prohibiting the Department of Labor (DOL) from enforcing the [Farmworker Protection Rule](#) in certain states and with respect to certain entities. The states are Georgia, Kansas, South Carolina, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas, and Virginia, and the entities are Miles Berry Farm and members of the Georgia Fruit and Vegetable Growers Association.

[DOL said](#) it is carefully reviewing the *Kansas* order and assessing various options to comply. For now, the Office of Foreign Labor Certification (OFLC) will delay until further notice updates to its FLAG system to implement revised H-2A job order and application forms associated with the rule, originally scheduled to begin at 7 p.m. ET on August 28, 2024.

OFLC will continue to receive and process H-2A job orders and applications in accordance with [20 CFR part 655, subpart B](#) in effect as of the calendar day

before the effective date as stated in the rule. OFLC said it will provide additional public notice regarding a revised transition schedule as soon as possible.

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### **USCIS to Open International Field Office in Quito, Ecuador**

On August 30, 2024, U.S. Citizenship and Immigration Services (USCIS) [announced the opening of an international field office in Quito, Ecuador](#), on September 10, 2024. The Quito Field Office, to be located in the U.S. Embassy in Ecuador, "will focus on increasing refugee processing capacity, consistent with USCIS commitments under the U.S. Refugee Admissions Program, and helping reunite individuals with their family members already in the United States."

With a field office in Ecuador, USCIS "will be able to provide immigration expertise to U.S. embassy and regional partners in support of the [Oficinas de Movilidad Segura](#), or Safe Mobility Offices, in Ecuador."

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### **DOS Releases Notice to *Emami* Class Members**

The Department of State (DOS) released a notice on August 27, 2024, with instructions to class members in the consolidated cases *Emami v. Mayorkas* and *Pars Equality Center v. Blinken*. The notice explains that a U.S. District Court in California certified a class 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 towards any immigrant or nonimmigrant visa at any U.S. embassy or consulate."

Class members include an estimated 24,560 nationals of Iran, Libya, North Korea, Somalia, Syria, Venezuela, or Yemen, who are otherwise eligible and were denied a visa under Presidential Proclamation 9645 between December 8, 2017, and January 20, 2021, and did not receive a waiver under that proclamation.

Class-wide relief was available starting August 12, 2024. The notice is available in [English](#), [Arabic](#), and [Farsi](#).

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