



## IMMIGRATION UPDATE - NOVEMBER 18, 2024

*Posted on November 18, 2024 by Cyrus Mehta*

### Headlines:

[DOL Proposes to Amend H-2B Regulations for Employer-Provided Wage Surveys](#) – The Department of Labor proposes to amend the regulations consistent with recent federal litigation by clarifying existing requirements for employer-provided surveys for the H-2B program. DOL also proposes to add new requirements and eliminate Form ETA-9165.

[DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for FY 2025](#) – The Department of Homeland Security, in consultation with the Department of Labor, expects to make available an additional 64,716 H-2B temporary nonagricultural worker visas for fiscal year 2025, on top of the congressionally mandated 66,000 H-2B visas that are available each fiscal year.

[OFLC Releases Data From Employers and H-2B Foreign Labor Recruiter List](#) – The Department of Labor's Office of Foreign Labor Certification has released data and selected program statistics for the fourth quarter of fiscal year 2024, along with the foreign labor recruiters list for the H-2B program.

[USCIS Updates Guidance on Advance Parole in Extensive FAQ for DACA Recipients](#) – U.S. Citizenship and Immigration Services has updated its extensive list of frequently asked questions and answers on Deferred Action for Childhood Arrivals and the use of advance parole.

[DOJ Reaches Agreement With Staffing Company to Resolve Immigration-Related Discrimination Claim](#) – The agreement resolves the Department of Justice's determination that Express Employment Professionals "discriminated against a worker because of her immigration status by refusing to continue to honor her valid document that showed her permission to work in the United States."

[DOS Releases Visa Bulletin for December](#) – The bulletin includes information on final action dates for employment-based visa preference cases, dates for filing of employment-based visa applications, diversity visa (DV) updates for December, and DV category rank cut-offs for January 2025, among other things.

[DOS Brings Exchange Program Alumni Entrepreneurs to United States for Creative Economy Residency](#) – This year's Institute included artists and their community partners from Iraq, Mexico, Nigeria, Türkiye, and Ukraine for an intensive two-week exchange program in the United States.

[Immigration Medical Exam Documentation Valid Indefinitely for Certain Afghan Nationals](#) – U.S. Citizenship and Immigration Services has updated guidance to reflect that immigration medical examination documentation for certain Afghan nationals who arrived in the United States during Operation Allies Welcome is valid indefinitely.

[President-Elect Trump Names Future Officials for DHS and Border](#) – President-elect Donald Trump has named several future cabinet and administration officials, including Kristi Noem as Secretary of Homeland Security and Thomas Homan as "Border Czar."

Firm in the News

#### **Details:**

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### **DOL Proposes to Amend H-2B Regulations for Employer-Provided Wage Surveys**

The Department of Labor (DOL) [proposes](#) to amend its regulations for employer-provided wage surveys for the H-2B temporary labor certification program. The regulations were published in 2015 in the Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program Final Rule.

DOL proposes to amend the regulations consistent with recent federal litigation by clarifying existing requirements for employer-provided surveys for the H-2B program. DOL also proposes to add new requirements and eliminate Form ETA-9165, Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OEWS Survey.

Comments are due by January 17, 2025.

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## **DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for FY 2025**

On November 15, 2024, the Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL), [announced](#) that it expects to make available an additional 64,716 H-2B temporary nonagricultural worker visas for fiscal year 2025, on top of the congressionally mandated 66,000 H-2B visas that are available each fiscal year, as it has done in years past.

"The supplemental visa allocation will help address the need for seasonal and temporary workers in areas where too few U.S. workers are available, willing and qualified to do the temporary work and address the labor needs of American businesses," including in hospitality and tourism, landscaping, seafood processing, and other industries, DOL said.

The H-2B supplemental rule would include an allocation of 20,000 visas for workers from Guatemala, El Salvador, Honduras, Haiti, Colombia, Ecuador, and Costa Rica, and a separate allocation of 44,716 supplemental visas for returning workers who received an H-2B visa, or were otherwise granted H-2B status, during one of the last three fiscal years. "The regulation would allocate the supplemental visas for returning workers between the first half and second half of the fiscal year to account for the need for additional seasonal and other temporary workers over the course of the year, with a portion of the second half allocation reserved to meet the demand for workers during the peak summer season," DOL said.

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## **OFLC Releases Data From Employers and H-2B Foreign Labor Recruiter List**

The Department of Labor's Office of Foreign Labor Certification (OFLC) has released data and selected program statistics for the fourth quarter of fiscal year 2024, along with the foreign labor recruiters list for the H-2B program. The releases include:

- A comprehensive set of [public disclosure data](#) drawn from employer applications requesting prevailing wage determinations and labor certifications for the PERM, LCA (H-1B, H-1B1, E-3), H-2A, H-2B, CW-1, and Prevailing Wage programs. OFLC noted that it recently implemented the revised form ETA-9089. As a result, there will be two distinct PERM disclosure data files. These files will each have their

own record layout documents. The public disclosure files include all final determinations OFLC issued for these programs during the October 1, 2023, through September 30, 2024, reporting period.

- [Selected program statistics](#) for the fourth quarter of fiscal year 2024 for the PERM, LCA (H-1B, H-1B1, E-3), H-2A, H-2B, CW-1, and Prevailing Wage programs.
- An updated [list of the names of foreign labor recruiters for the H-2B program](#), and related [frequently asked questions](#). The list contains the name and location of persons or entities identified on Appendix C of the Form ETA-9142B that were hired by, or working for, the recruiter that employers have indicated they engaged, or planned to engage, in the recruitment of prospective H-2B workers to perform the work described on their H-2B application. The H-2B Foreign Labor Recruiter List includes only those names and locations associated with H-2B applications that were processed or issued a final decision during the October 1, 2023, through September 30, 2024.

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## **USCIS Updates Guidance on Advance Parole in Extensive FAQ for DACA Recipients**

U.S. Citizenship and Immigration Services (USCIS) has updated its extensive list of [frequently asked questions and answers \(FAQ\)](#) on Deferred Action for Childhood Arrivals (DACA) and the use of advance parole. Generally, USCIS said, it will issue an advance parole document if the DACA recipient wants to travel outside the United States for:

- Humanitarian purposes, including to obtain medical treatment, attend funeral services for a family member, or visit an ailing relative;
- Educational purposes, such as semester abroad programs and academic research. Travel for educational purposes means travel affiliated with an institution that provides education as its primary purpose. A DACA recipient does not need to be enrolled in the institution with which the program is affiliated but must be enrolled in the program they will be traveling with; or
- Employment purposes, such as overseas assignments, interviews, conferences, trainings, consular appointments for an employer-sponsored nonimmigrant visa, or meetings with clients overseas.

Travel for vacation is not a valid basis for advance parole, USCIS said.

The FAQ also includes a summary of DACA-related court decisions, and examples of documents to submit to demonstrate that the applicant meets the threshold criteria for DACA.

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## **DOJ Reaches Agreement With Staffing Company to Resolve Immigration-Related Discrimination Claim**

On November 15, 2024, the Department of Justice (DOJ) [announced](#) that it has reached a [settlement agreement](#) with Key Fortune, Inc., doing business as Express Employment Professionals (Express), a staffing company in Rancho Cucamonga, California. The agreement resolves DOJ's determination that Express "discriminated against a worker because of her immigration status by refusing to continue to honor her valid document that showed her permission to work in the United States." DOJ said the agreement also resolves the agency's determination "that Express refused to place her on an assignment until she presented a specific document showing her future permission to work."

Under the terms of the settlement, Express will pay a civil penalty of \$2,200 to the United States and pay the worker backpay of \$1,748.45 plus interest, less any tax withholding required by law. The agreement also requires the company to train its personnel on the anti-discrimination requirements, review its employment policies, and be subject to departmental monitoring.

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## **DOS Releases Visa Bulletin for December**

The Department of State (DOS) has released the [Visa Bulletin for December 2024](#).

The bulletin includes information on final action dates for employment-based visa preference cases, dates for filing of employment-based visa applications, diversity visa (DV) updates for December, and DV category rank cut-offs for January 2025, among other things.

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## **DOS Brings Exchange Program Alumni Entrepreneurs to United States for Creative Economy Residency**

On November 15, 2024, the Department of State (DOS) [announced](#) that as part of its [Global Music Diplomacy Initiative](#), which "elevates music as a platform for promoting peace and democracy," DOS hosted the OneBeat Institute's "Resilient Futures" residency from October 27 to November 7, 2024. This year's Institute included [five teams of OneBeat alumni and their community partners](#) from Iraq, Mexico, Nigeria, Türkiye, and Ukraine for an intensive two-week exchange program in the United States. "Through project-specific mentorship and strategic support, these creative leaders refined their vision, developed curricula, crafted business and multi-year plans —advancing their capacity to enrich the creative economies in their home countries," DOS said.

The visiting exchange program alumni included composers, curators, musicians, graffiti artists, and filmmakers. They began with a weeklong residency in upstate New York, where they "presented unique entrepreneurial music and civic projects, engaged in organizational and creative exercises, and met with guest artists and advisors." The program continued in New York City, where they "deepened their collaboration by engaging in peer-to-peer learning and receiving professional mentorship from U.S.-based leaders across business, arts, culture, technology, and education sectors."

Launched in 2012, OneBeat began as an annual U.S.-based residency and tour program, bringing together early-career musicians from around the world to collaboratively create, perform original music, and develop innovative strategies for arts-driven civic and social engagement. Over the past 12 years, OneBeat has expanded from a single annual residency into a dynamic array of year-round initiatives, including global residencies and tours, a virtual residency, an artist-industry incubation program, a podcast, and an alumni micro-grant accelerator program.

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## **Immigration Medical Exam Documentation Valid Indefinitely for Certain Afghan Nationals**

U.S. Citizenship and Immigration Services (USCIS) [announced](#) in a [policy alert](#) that it has updated guidance in its [Policy Manual](#) to reflect that immigration medical examination documentation for certain Afghan nationals who arrived

in the United States during Operation Allies Welcome (OAW) is valid indefinitely. USCIS said this means that those who arrived in the United States during OAW and meet certain conditions will not have to repeat an immigration medical examination when they apply to adjust their status to lawful permanent residence.

This updated guidance is effective as of November 13, 2024, and applies to any Form I-485, Application to Register Permanent Residence or Adjust Status, that is pending or filed on or after that date.

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### **President-Elect Trump Names Future Officials for DHS and Border**

President-elect Donald Trump has named several future cabinet and administration officials, including, among others, [Secretary of Homeland Security: Kristi Noem](#) and ["Border Czar" Thomas Homan](#). He also nominated [Sen. Marco Rubio](#) (R-Fla.) for Secretary of State. As of press time, the Secretary of Labor had not yet been nominated.

Ms. Noem, who is governor of South Dakota, is expected to be vetted by the Senate as part of the nomination process. Mr. Homan is a former acting director of U.S. Immigration and Customs Enforcement under the previous Trump administration. His duties and his relationship to DHS are unclear, since "border czar" does not appear to be a cabinet position. Mr. Trump said on his Truth Social platform that Mr. Homan will be "in charge of our Nation's Borders ("The Border Czar"), including, but not limited to, the Southern Border, the Northern Border, all Maritime, and Aviation Security." It is possible he may serve in an advisory role. Mr. Rubio is expected to leave his Senate seat if confirmed as Secretary of State.

### **Firm in the News**

[Cyrus Mehta](#) spoke at the AILA 2024 Latin American and Caribbean Chapter Conference in Panama City on November 15, 2024 on Complex Issues in Seeking Adjustment and/or Consular Processing. The co-panelists were Ron Klasko, David Grunblatt and Tammy Fox-Isicoff.

**Mr. Mehta** was quoted by *Bloomberg Law* in [Parole Program for U.S. Citizens' Spouses Found Unlawful](#). Even if an appeal of a federal judge's decision to strike down the Biden administration's "parole in place" program for

undocumented spouses of U.S. citizens were filed, it would likely be quickly withdrawn by the new administration, he said: "It puts the final nail in the coffin with regards to parole-in-place."

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