



## IMMIGRATION UPDATE - JANUARY 06, 2025

Posted on January 6, 2025 by Cyrus Mehta

### Headlines:

**[OFLC Reminds Employers About H-2B Application Filing Timelines for 2025 Peak Filing Season](#)** – The filing window to submit an H-2B Application for Temporary Employment Certification (Form ETA-9142B and appendices) requesting work start dates of April 1, 2025, or later, opened on January 1, 2025.

**[VWP Designated Countries List To Be Updated on Website, No Longer Announced in Federal Register](#)** – The Department of Homeland Security published a final rule that updates the agency's practice for notifying the public of countries designated for participation in the Visa Waiver Program.

**[DHS Raises CBP Civil Monetary Penalties](#)** – The final rule includes a table listing the former and new penalties for various U.S. Customs and Border Protection-related violations.

**[Court Rejects Employer's Challenge to DOL Determination Letter re Posting Required Notices](#)** – In *Broadgate v. Su*, the U.S. Court of Appeals for the Sixth Circuit rejected an appeal of an order in which the Department of Labor had issued a determination letter finding that the company had willfully violated the Immigration and Nationality Act by not posting notices required by the H-1B program, among other violations.

**[Practice Alert Released on Garcia Perez v. USCIS Litigation](#)** – Four asylum seekers had challenged the policies and practices of U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review that prevented asylum seekers from obtaining work authorization while their asylum claims were pending.

### Details:

## **OFLC Reminds Employers About H-2B Application Filing Timelines for 2025 Peak Filing Season**

On December 30, 2024, the Department of Labor's Office of Foreign Labor Certification (OFLC) [reminded employers and other stakeholders](#) that the filing window to submit an H-2B Application for Temporary Employment Certification (Form ETA-9142B and appendices) requesting work start dates of April 1, 2025, or later, opened on January 1, 2025. OFLC said that H-2B applications requesting an April 1, 2025, work start date will be denied if they were filed before that date.

The agency noted:

- OFLC will randomly order for processing all H-2B applications requesting a work start date of April 1, 2025, that were filed during the initial three calendar days (January 1-3, 2025) using the [randomization procedures](#) published in the Federal Register.
- If OFLC identifies multiple applications that appear to have been filed for the same job opportunity, OFLC will issue a Notice of Deficiency. If multiple filings were submitted during the three-day filing window, all of those applications will receive a Notice of Deficiency asking the employer to demonstrate that the job opportunities are not the same. Employers that fail to establish a bona fide need for each application will receive a non-acceptance denial.

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## **VWP Designated Countries List To Be Updated on Website, No Longer Announced in Federal Register**

The Department of Homeland Security (DHS) published a [final rule](#) on December 27, 2024, that updates the agency's practice for notifying the public of countries designated for participation in the Visa Waiver Program (VWP). The VWP's list currently includes [42 countries](#).

The final rule:

- Amends the definition of "designated country" by referring to countries that the Secretary of Homeland Security has designated for VWP participation and noting that a list of such countries is available on the public-facing [DHS VWP website](#).

- Does not alter which countries have been designated for the VWP or the criteria for initial and continued designation as a program country.

DHS will no longer publish a separate technical amendment in the Federal Register for each new country designation. DHS said the changes will allow the agency "to update designations more efficiently and expeditiously."

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### **DHS Raises CBP Civil Monetary Penalties**

The Department of Homeland Security (DHS) has [raised](#) civil monetary penalties for various violations. The new penalty amounts, adjusted for inflation, are effective for penalties assessed after January 2, 2025, whose associated violations occurred after November 2, 2015.

The final rule includes a table listing the former and new penalties for various U.S. Customs and Border Protection-related violations. For example, the penalty for "bringing to the United States aliens without required documentation" has been raised from \$6,913 to \$7,093.

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### **Court Rejects Employer's Challenge to DOL Determination Letter re Posting Required Notices**

In *Broadgate v. Su*, the U.S. Court of Appeals for the Sixth Circuit [rejected](#) an appeal of an order in which the Department of Labor (DOL) had issued a determination letter finding that the company had willfully violated the Immigration and Nationality Act by not paying required wages to H-1B employees and not posting required notices, among other violations. The letter barred Broadgate from participating in the H-1B program for two years, required Broadgate to pay back wages of more than \$31,000, and assessed a "civil penalty" of about \$68,000.

Broadgate sought review before an Administrative Law Judge, challenging only the determination that Broadgate had willfully failed to post certain workplace notices. Later, on remand before an Administrative Law Judge (ALJ), Broadgate made a new argument: that DOL's Wage and Hour Division "had exceeded its authority by investigating violations (failure to post required notices) that had not been alleged in the employee's original complaint (which alleged

nonpayment of required wages)." The ALJ rejected that argument and affirmed the DOL's imposition of fines and penalties. The Review Board affirmed, as did the district court. This appeal followed. The Sixth Circuit affirmed the lower courts' decisions and rejected Broadgate's arguments, upholding DOL's actions.

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### **Practice Alert Released on *Garcia Perez v. USCIS* Litigation**

The Northwest Immigrant Rights Project and the National Immigration Litigation Alliance released a [practice alert](#) on the final settlement agreement in *Garcia Perez v. USCIS*, effective September 26, 2024. The alert notes that in that case, four asylum seekers challenged the policies and practices of U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR) that prevented asylum seekers from obtaining work authorization while their asylum claims were pending.

The alert provides information about the terms of the settlement agreement and policy changes that USCIS and [EOIR](#) implemented after the lawsuit was filed. EOIR said it would publish guidance on its website reflecting the updated policies.

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