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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 07, 2025

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Headlines:

FY 2026 H-1B Initial Registration Selection Process Completed – U.S. Citizenship and Immigration Services has received enough electronic registrations for unique beneficiaries during the initial registration period to reach the fiscal year 2026 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap).

USCIS Announces Work Permit Procedures for Certain Hong Kong Residents Covered by Deferred Enforced Departure – U.S. Citizenship and Immigration Services announced procedures for certain Hong Kong residents covered by Deferred Enforced Departure to apply for Employment Authorization Documents valid through February 5, 2027.

E-Verify Makes 'Minor Changes' to Form I-9 – E-Verify announced that U.S. Citizenship and Immigration Services has made "minor" changes to Form I-9, Employment Eligibility Verification, to align with statutory language, and the Department of Homeland Security Privacy Notice has been updated.

Venezuela TPS Remains in Effect Following Court Order – Temporary Protected Status for Venezuela will remain in effect and the validity of work permits issued under the Venezuela TPS designations is extended through April 2, 2026, "pending further litigation."

USCIS Updates Policy to Recognize Only Two Sexes: Male and Female – U.S. Citizenship and Immigration Services said that "if a benefit requestor does not indicate his or her sex or indicates a sex different from the sex on his or her birth certificate issued at the time of birth (or issued nearest to the time of birth), there may be delays in adjudication."

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Details:

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FY 2026 H-1B Initial Registration Selection Process Completed

U.S. Citizenship and Immigration Services (USCIS) announced on March 31, 2025, that it has received enough electronic registrations for unique beneficiaries during the initial registration period to reach the fiscal year (FY) 2026 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap). USCIS said it has notified all prospective petitioners with selected beneficiaries that they are eligible to file an H-1B cap-subject petition for those beneficiaries.

An H-1B cap-subject petition must be properly filed at the correct filing location or online at my.uscis.gov and within the filing period indicated on the relevant selection notice, USCIS explained. Petitioners must include a copy of the applicable selection notice with the FY 2026 H-1B cap-subject petition. Petitioners must also submit evidence of the beneficiary's valid passport or travel document used at the time of registration to identify the beneficiary.

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USCIS Announces Work Permit Procedures for Certain Hong Kong Residents Covered by Deferred Enforced Departure

On April 3, 2025, U.S. Citizenship and Immigration Services (USCIS) announced a Federal Register notice establishing procedures for certain Hong Kong residents covered by Deferred Enforced Departure (DED) to apply for Employment Authorization Documents (EADs) that will be valid through February 5, 2027.

The notice automatically extends through February 5, 2027, the validity of current Hong Kong DED-related EADs with an expiration date of February 5, 2023, or February 5, 2025, and a Category Code of A11. Employees may present this EAD as evidence of identity and employment authorization for purposes of Form I-9, Employment Eligibility Verification.

USCIS explained that since DED "is a directive to defer removal of an individual, rather than a specific immigration status like Temporary Protected Status, there is no DED application form required for an individual to be covered by DED. If

an individual covered by DED wants to apply for an EAD, they must file Form I-765. Similarly, if an individual covered by DED wants to apply for advance travel authorization, they must file Form I-131."

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E-Verify Makes 'Minor Changes' to Form I-9

On April 2, 2025, E-Verify announced that U.S. Citizenship and Immigration Services has made "minor" changes to Form I-9, Employment Eligibility Verification, to align with statutory language, and the Department of Homeland Security (DHS) Privacy Notice has been updated. The revised Form I-9 with an edition date of 01/20/25 and an expiration date of 05/31/2027 is available for download. Multiple previous editions remain valid until their respective expiration dates:

- Form I-9 (08/01/23 edition) is valid until 05/31/2027
- Form I-9 (08/01/23 edition) that is valid until 07/31/2026 (employers using this form must update their electronic systems with the 05/31/2027 expiration date by July 31, 2026)

Key updates include:

- Renaming the fourth checkbox in Section 1 to "An alien authorized to work" from "A noncitizen authorized to work"
- Revising the descriptions of two List B documents in the Lists of Acceptable Documents
- Adding statutory language and a revised DHS Privacy Notice to the instructions

E-Verify said that employers should note:

- If an employee attests on Form I-9 as "A noncitizen authorized to work," the employer must select "An alien authorized to work" in E-Verify.
- E-Verify cases will display "An alien authorized to work," while employees and employers may continue to see "A noncitizen authorized to work" on Form I-9, depending on the form edition being used.
- E-Verify+ participants will see the updated 01/20/25 edition date and

05/31/2027 expiration date reflected in Form I-9NG.

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Venezuela TPS Remains in Effect Following Court Order

On April 2, 2025, U.S. Citizenship and Immigration Services (USCIS) announced that Temporary Protected Status (TPS) will remain in effect following a court order. On March 31, 2025, the United States District Court for the Northern District of California ordered postponement of the vacatur, published February 3, 2025, and of the termination, published February 5, 2025, of the 2023 TPS designation for Venezuela.

In light of the order, USCIS said that TPS for Venezuela will remain in effect until the Department of Homeland Security "obtains relief from that order." Further, the validity of work permits with an expiration date of September 10, 2025; April 2, 2025; March 10, 2024; or September 9, 2022, issued under the Venezuela TPS designations is similarly extended through April 2, 2026, "pending further litigation."

USCIS said that employers should refer to the TPS webpage regularly for updates.

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USCIS Updates Policy to Recognize Only Two Sexes: Male and Female

On April 2, 2025, U.S. Citizenship and Immigration Services (USCIS) announced that under a Trump administration executive order, it has updated the USCIS Policy Manual to state that it only recognizes two biological sexes: male and female.

Under this guidance, USCIS considers a person's sex as "that which is generally evidenced on the birth certificate issued at or nearest to the time of birth. If the birth certificate issued at or nearest to the time of birth indicates a sex other than male or female, USCIS will base the determination of sex on secondary evidence."

USCIS said it will not deny benefits solely because the benefit requestor "did not properly indicate his or her sex." However, USCIS noted that it "does not issue documents with a blank sex field," so "if a benefit requestor does not indicate his or her sex or indicates a sex different from the sex on his or her

birth certificate issued at the time of birth (or issued nearest to the time of birth), there may be delays in adjudication."

USCIS said it "may provide notice to benefit requestors if it issues a USCIS document reflecting a sex different than that indicated by the benefit requestor on the request."

This guidance applies to benefit requests pending or filed on or after April 2, 2025, USCIS said, adding that the guidance in the Policy Manual "is controlling and supersedes any related prior guidance."

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Firm in the News

Cyrus Mehta was quoted by *Forbes* in Trump Immigration Policies Increase Peril for International Students. He said, "Even if the visa is revoked and the F-1 status has been terminated in SEVIS, a foreign student can still continue to study and, if placed in deportation proceedings, should challenge the deportation before an immigration judge. If removal proceedings have not commenced, I think a student can also challenge the notice that they have been terminated in SEVIS in federal district court through the Administrative Procedure Act on the grounds that the action was arbitrary, capricious and the student was not given any warning or notice to respond." Mr. Mehta said he believes that if a student is placed in removal, the student may be able to "challenge on First Amendment grounds, but the student may need to do this at the Court of Appeals stage since an immigration judge and the Board of Immigration Appeals may rubber-stamp Rubio's determination."

Mr. Mehta was quoted by *Bloomberg Law* in Trump Tempts Suits in Shutting Public Out of Immigration Rules. He said that there is "plenty of case law" to support arguments that Administrative Procedure Act rules should continue to apply to immigration and border-related regulations.

Mr. Mehta was interviewed by *Dainik Bhaskar* in It Is Not Necessary to Leave the U.S. Even If a Visa Is Revoked . He said that the United States' revoking of some F-1 student visas for protesting "is a foolish decision on the part of the Trump administration. Under the Constitution in the U.S., everyone has the right to freedom of expression and peaceful protest." He said that under the law, a student cannot be forcibly deported before going through a legal process

and if a student receives an email asking them to self-deport, they can challenge that decision in a federal court.

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