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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - MAY 05, 2026

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Headlines:

Cap Reached for Second Allocation of Returning Worker H-2B Visas for FY 2026 – U.S. Citizenship and Immigration Services has received enough petitions to reach the cap for the additional 27,736 H-2B visas made available for the second allocation of returning workers for Fiscal Year 2026 with employment start dates from April 1 to April 30, 2026.

Work Authorization Revocation, Other Consequences Announced for Unpaid Asylum Fees Under DHS Interim Final Rule – Effective May 29, 2026, a Department of Homeland Security interim final rule will implement fees, requirements, and consequences for nonpayment of asylum-related fees under the H.R. 1 Reconciliation Act of 2025.

DOS Instructs Officers to Reject Nonimmigrant Visa Applicants Who Claim Fear of Returning to Home Countries; Appeals Court Rejects Trump Admin's 'Invasion' Proclamation Banning Asylum Claims at Border – The Department of State has instructed officers at diplomatic and consular posts to ask two questions of nonimmigrant visa applicants and refuse visa issuance if an applicant answers "yes" to either of the questions. Also, a U.S. Court of Appeals ruled that President Trump's Proclamation 10888 and related guidance are unlawful for banning asylum claims at the border.

OFLC Announces Accommodations for Employers Affected by Typhoon in Northern Marianas – the Department of Labor's Office of Foreign Labor Certification announced accommodations for employers and their representatives affected by Typhoon Sinlaku in the Commonwealth of the Northern Mariana Islands.

DOL Seeks Comments on Extension and Revision of CW-1 Application for

Temporary Employment Certification for Northern Marianas Workers – The Department of Labor seeks comments on an extension and revision of the CW-1 Application for Temporary Employment Certification for workers in the Commonwealth of the Northern Mariana Islands.

Details:

Cap Reached for Second Allocation of Returning Worker H-2B Visas for FY 2026

U.S. Citizenship and Immigration Services (USCIS) announced on April 29, 2026, that it has received enough petitions to reach the cap for the additional 27,736 H-2B visas made available for the second allocation of returning workers for Fiscal Year (FY) 2026 with employment start dates from April 1 to April 30, 2026, under the H-2B supplemental cap temporary final rule. April 21, 2026, was the final receipt date for petitions requesting supplemental H-2B visas under the second allocation. The additional H-2B visas are intended to support U.S. businesses with seasonal or temporary workforce needs, including those in critical sectors of the U.S. economy, USCIS said.

On January 30, 2026, the Departments of Homeland Security (DHS) and Labor jointly announced the FY 2026 temporary final rule, increasing the cap on H-2B nonimmigrant visas by up to 64,716 additional visas. "These supplemental visas are available only to U.S. businesses that are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested in their petition, as attested by the employer on a new attestation form," USCIS noted.

Additional information on the FY 2026 supplemental visas is available on USCIS's Temporary Increase in H-2B Nonimmigrant Visas for FY 2026 page.

Back to Top

Work Authorization Revocation, Other Consequences Announced for Unpaid Asylum Fees Under DHS Interim Final Rule

Effective May 29, 2026, a Department of Homeland Security (DHS) interim final rule published on April 29, 2026, will implement fees, requirements, and consequences for nonpayment of asylum-related fees under the H.R. 1 Reconciliation Act of 2025 ("One Big Beautiful Bill Act").

On July 22, 2025, USCIS published a Federal Register notice implementing a

filing fee for Form I-589, Application for Asylum and for Withholding of Removal, and an Annual Asylum Fee (AAF) to be paid each calendar year an asylum application remains pending. The interim final rule establishes that if the AAF is not paid within 30 days of notification, USCIS will reject the applicant's pending asylum application. If the applicant does not have legal status in the United States, USCIS will also initiate removal.

If USCIS rejects the asylum application, the following additional consequences will apply:

- USCIS will deny any pending Form I-765, Application for Employment Authorization, based on the asylum application; and
- Those who were approved to work based on the pending application will lose work authorization immediately.

The rule also implements additional requirements outlined in H.R. 1:

- Form I-589 filing fee: USCIS will now keep the filing fee for Form I-589 if the agency rejects the form as improperly filed.
- Temporary Protected Status (TPS) employment authorization: USCIS is updating regulations limiting the employment authorization period for those under TPS to one year or the remaining TPS designation period, whichever is shorter.
- Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, filing fee: The rule establishes a minimum $24 fee to file Form I-102, in addition to other required fees.

The interim final rule is effective May 29, 2026. USCIS said it will reject any Form I-102 without the proper filing fee if it is postmarked on or after May 29, 2026. Additionally, USCIS will reject pending Form I-589 asylum applications for those who fail to pay the AAF effective May 29, 2026.

DHS will receive public comments submitted by June 29, 2026.

Back to Top

DOS Instructs Officers to Reject Nonimmigrant Visa Applicants Who Claim Fear of Returning to Home Countries; Appeals Court Rejects Trump Admin's 'Invasion' Proclamation Banning Asylum Claims at Border

According to reports, the Department of State (DOS) has sent a cable to

diplomatic and consular posts instructing officers to ask two questions of nonimmigrant visa applicants and to refuse visa issuance if an applicant answers "yes" to either of the questions:

1. Have you experienced harm or mistreatment in your country of nationality or last habitual residence?
2. Do you fear harm or mistreatment in returning to your country of nationality or permanent residence?

The questions are elements of asylum determinations. The cable states that "n applicant's fear of returning to his or her country of nationality or permanent residence calls into question an applicant's intended purpose of travel and immigrant intent at the time of visa application."

Also, the U.S. Court of Appeals for the District of Columbia Circuit ruled on April 24, 2026, that President Trump's Proclamation 10888 and related guidance, which state that "the current situation at the southern border qualifies as an invasion" and that, therefore, asylum claims at the border will be rejected, "are unlawful insofar as they circumvent Congress's carefully crafted removal procedures and cast aside federal laws that afford individuals the opportunity to apply and be considered for a grant of asylum or withholding of removal."

Back to Top

OFLC Announces Accommodations for Employers Affected by Typhoon in Northern Marianas

On April 21, 2026, the Department of Labor's Office of Foreign Labor Certification (OFLC) released guidance on accommodations for employers and their representatives affected by Typhoon Sinlaku in the Commonwealth of the Northern Mariana Islands.

OFLC's Frequently Asked Questions (FAQ) states that OFLC "recognizes that Typhoon Sinlaku may have a significant impact on businesses and understands that some employers and/or their authorized attorneys or agents may not be able to timely respond to OFLC requests for information and other correspondence regarding the processing of applications or comply with applicable deadlines. Accordingly, OFLC will grant extensions of time and deadlines for employers and/or their authorized attorneys or agents affected by Typhoon Sinlaku, including for delays caused by Typhoon Sinlaku and those

that occurred as a result of businesses preparing to adjust their normal operations due to Typhoon Sinlaku."

The FAQ also states that the agency will continue to contact employers and their authorized attorneys or agents primarily using email and will use U.S. mail where email addresses are not available. OFLC reminded employers to routinely check their email for information related to their OFLC applications. Employers affected by internet and power outages may contact OFLC using the phone numbers listed in the FAQ, which includes additional details about accommodations related to issues such as the prevailing wage, H-2B, CW-1, and PERM programs; effects of worksite relocations for H-1B, H-1B1, and E-3 workers; and methods of contact.

Back to Top

DOL Seeks Comments on Extension and Revision of CW-1 Application for Temporary Employment Certification for Northern Marianas Workers

On April 30, 2026, the Department of Labor (DOL) published a notice requesting comments on an extension and revision of the CW-1 Application for Temporary Employment Certification for workers in the Commonwealth of the Northern Mariana Islands.

DOL said the notice was "made necessary by a statutory requirement for a CW–1 temporary labor certification. More specifically, proposes to extend the Form ETA-9142C, Application for Temporary Employment Certification and appendices, and Form ETA-9141C, Application for Prevailing Wage Determination, to carry out responsibilities created for under the Northern Mariana Islands U.S. Workforce Act of 2018."

Comments are due by June 1, 2026.

Back to Top