

IMMIGRATION INSIDER

Vol. 18, No. 12 • December 4, 2022

Headlines:

Under Court Order, OFLC to Propose Rescission of H-2B Registration Requirements and Provide Unique H-2B Temporary Registration Numbers – In response to a federal court order, the Department of Labor's (DOL) Office of Foreign Labor Certification plans to rescind H-2B registration requirements and propose conforming edits throughout its H-2B regulations. In the interim, DOL said it will use the Notice of Acceptance, issued when an H-2B application meets regulatory requirements and the employer can begin recruiting U.S. workers, to inform an H-2B employer of DOL's determination of the employer's temporary need for services or labor.

House Scheduled to Vote Next Week on Bill to Phase Out Per-Country Caps – The House of Representatives is scheduled to vote next week on a bill that would phase out per-country limits on employment-based green cards.

CBP Announces New U.S. Bridge Visa Foil – U.S. Customs and Border Protection announced that it has begun issuing a new visa foil with an image of San Francisco's Golden Gate Bridge. The foil has been redesigned to replace the Lincoln visa foil.

USCIS Says Certain Afghan and Ukrainian Parolees Are Immediately Work Authorized – U.S. Citizenship and Immigration Services is providing employment authorization incident to status normally accorded to refugees and a no-fee initial (and replacement of an initial) employment authorization document to Afghan and Ukrainian parolees, based on recently passed laws.

USCIS Announces Expedited Work Authorization Processing, Expanded Fee Exemptions for Afghans – U.S. Citizenship and Immigration Services is extending and expanding previously announced fee exemptions and expedited application processing for certain Afghan nationals through September 30, 2023.

Dept. of Labor Announces Additional Listening Sessions on H-2A Program – The agency has added two more listening sessions.

OFLC Releases FAQs on Prevailing Wage Surveys Under 2022 H-2A Final Rule – The FAQs are intended to assist State Workforce Agencies and others in understanding the prevailing wage survey methodology of the final rule.

USCIS Accepting Only 8/19/22 Edition of N-648, Medical Certification for Disability Exceptions – U.S. Citizenship and Immigration Services is accepting only the 8/19/22 edition of Form N-648, Medical Certification for Disability Exceptions. USCIS revised the form and removed several questions.

Title 42 Policy Blocked Effective December 21 – On November 15, 2022, a U.S. District Court judge blocked the Title 42 policy that has resulted in many migrants being turned away at the southern U.S. border. The same night, the Department of Justice filed a motion to stay the order for five weeks, which the judge granted. The order will be effective December 21, 2022.

Visa Bulletin for December 2022 Includes Many Updates – The Department of State's Visa Bulletin for December 2022 includes a variety of updates. The estimated employment-based annual limit will be 197,000 for FY 2023.

Inspector General Releases Annual Statement on State Dept.'s Major Management and Performance Challenges

– The Office of the Inspector General found that the ConsularOne program, initially launched to modernize and consolidate approximately 90 discrete consular legacy systems into a common technology framework, has experienced deficiencies and delays with profound implications.

USCIS Releases Tips on Avoiding Paper Filing-Related Delays – U.S. Citizenship and Immigration Services has released tips to avoid paper filing-related scanning delays.

State Dept. Announces Diversity Visa Reassignment Procedures for Kabul – All operations are suspended at the U.S. Embassy in Kabul, Afghanistan. Diversity visa (DV) selectees for the 2023 DV program year with a case assigned to U.S. Embassy Kabul should request reassignment to another embassy or consulate that processes DV applications.

Labor Dept. Announces H-2A Visa Program Listening Sessions – In conjunction with the Department of Labor's (DOL) previously announced intention to engage in additional rulemaking on the H-2A visa program for temporary agricultural employment of foreign workers, DOL announced two virtual listening sessions, one for employers and their representatives and another for workers and their advocates.

OFLC Releases Public Disclosure Data, Selected Program Statistics, H-2B Foreign Labor Recruiter List for Q4 of FY 2022 – The Department of Labor's Office of Foreign Labor Certification (OFLC) has released various data and statistics, and the latest H-2B recruiter list.

DHS Releases List of Countries Eligible for H-2A and H-2B Programs, Adds Eswatini – Each country's designation is valid until November 9, 2023.

DHS Continues TPS and Related Documentation for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal – To ensure its continued compliance with several court orders, the Department of Homeland Security is automatically extending the validity of certain temporary protected status (TPS)-related documentation for beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal through June 30, 2024.

E-Verify Issues Reminder to Employers and Program Administrators on Terminating User Accounts – Failure to promptly terminate user access upon separation is a violation of the memorandum of understanding.

CIS Ombudsman Introduces Revised Form for Requesting Case Assistance – The updated Form 7001, which expires on September 30, 2025, includes embedded instructions with questions, expanded and reorganized sections, detailed instructions on supporting documentation, and an option to include multiple employment-based beneficiaries on one case assistance request.

State Dept. Announces Full Resumption of Interviews for All Immigrant Visa Categories in Havana in January 2023 – The U.S. Embassy in Havana, Cuba, will resume full immigrant visa processing beginning on January 4, 2023. U.S. Embassy Georgetown in Guyana will continue to process Cuban immigrant visa applicants scheduled for appointments there through the end of December 2022.

President Accepts Resignation of CBP Commissioner – Chris Magnus was accused of unprofessional behavior by other officials working with him.

ABIL Global: Canada and Italy – A new bilateral agreement has been in force since November 1, 2022, for Italian and Canadian citizens between the ages of 18 and 35.

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Under Court Order, OFLC to Propose Rescission of H-2B Registration Requirements and Provide Unique H-2B Temporary Registration Numbers

In response to a federal court order in *Padilla Construction Company v. Walsh*, the Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) plans to rescind H-2B registration requirements and propose conforming edits throughout its H-2B regulations.

In the interim, DOL said it will use the Notice of Acceptance (NOA), issued when an H-2B application meets regulatory requirements and the employer can begin recruiting U.S. workers, to inform an H-2B employer of DOL's determination of the employer's temporary need for services or labor:

Where an employer is determined to have a temporary need for services or labor, the NOA will provide the employer with a unique temporary need registration number, which may remain active for up to three years and which will be considered as one piece of evidence during [DOL's] adjudication of the employer's temporary need in future application filings. [DOL] will use a Notice of Deficiency to inform an H-2B employer when its temporary need for an application filing is in question, to request additional information, and also to inform an employer of deactivation of its temporary need registration number if the number has expired or if it appears that the employer no longer demonstrates a temporary need.

OFLC said the announcement of its future proposal to rescind H-2B registration requirements will not affect H-2B application filings for the 2023 peak application filing season for the second-half visa cap.

Details:

- OFLC announcement, Dec. 1, 2022. <https://www.dol.gov/agencies/eta/foreign-labor>
- *Padilla Construction Company v. Walsh*, No. 2:18-cv-1214 (C.D. Cal. Nov. 2, 2022). <https://bit.ly/3VOWsRv>

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House Scheduled to Vote Next Week on Bill to Phase Out Per-Country Caps

According to reports, Rep. Steny Hoyer (D-MD) said the House of Representatives is scheduled to vote next week on the Equal Access to Green cards for Legal Employment (EAGLE) Act of 2022 (H.R. 3648), a bill that would phase out per-country limits on employment-based green cards and raise annual limits on family-based green cards.

The bill appears to have substantial bipartisan support, although its prospects in the current session of Congress are uncertain as the lame-duck period draws to a close. Similar legislation passed the Senate unanimously in 2020 through a fast-tracked process but could not be reconciled with the House version.

In addition to eliminating per-country limits, the bill would also:

- Establish nine-year transition rules for employment-based visas such as (1) reserving a percentage of EB-2 (workers with advanced degrees or exceptional ability) and EB-3 (skilled and other workers) visas for individuals not from the two countries with the largest number of recipients of such visas, and (2) allot a number of visas for professional nurses and physical therapists.

Details:

- "The U.S. Visa Will Have a New Image Printed on Its Foil. It Won't Be Lincoln Anymore," Miami Herald (AOL News), Dec. 3, 2022. <https://www.aol.com/news/u-visa-image-printed-foil-165005973.html>

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USCIS Says Certain Afghan and Ukrainian Parolees Are Immediately Work Authorized

Effective November 21, 2022, certain Afghan and Ukrainian parolees are work authorized incident to their parole status based on recently passed laws, U.S. Citizenship and Immigration Services (USCIS) announced. To implement the statutory language, "other benefits available to refugees," USCIS is providing employment authorization incident to status normally accorded to refugees and a no-fee initial (and replacement of an initial) employment authorization document (EAD) to Afghan and Ukrainian parolees so they "receive the same treatment as refugees," the agency said.

This policy applies to the following individuals if their parole has not been terminated:

- Afghan parolees whose unexpired Form I-94, Arrival/Departure Record, contains a class of admission of "OAR." Those who are Afghan parolees covered under section 2502(b), P.L. No. 117-43, who did not receive an "OAR" class of admission on their Form I-94 should email U.S. Customs and Border Protection at oawi94adjustments@cbp.dhs.gov to update their class of admission, if appropriate;
- Ukrainian parolees whose unexpired Form I-94 contains a class of admission of "UHP"; and
- Ukrainian parolees whose unexpired Form I-94 contains a class of admission of "DT" issued between February 24, 2022, and September 30, 2023, and indicates Ukraine as the country of citizenship on the document.

For these parolees, their unexpired Form I-94 is an acceptable receipt they may present to employers to show their identity and employment authorization for the purposes of Form I-9, Employment Eligibility Verification. The receipt satisfies the Form I-9 requirement for 90 days from the date of hire (or in the case of reverification, the date employment authorization expires). After the 90-day period, parolees must present an EAD or unrestricted Social Security card and acceptable List B identity document from the Form I-9 Lists of Acceptable Documents (such as a state-issued driver's license or identification card). Ukrainian and Afghan parolees must still file a Form I-765 to receive a physical EAD.

Effective November 21, 2022, USCIS is also exempting the fee to file Form I-765 for Ukrainian parolees filing for an EAD by mail. Afghan parolees under OAW are already exempt from the fee for an initial paper-filed Form I-765 (and a replacement EAD) through September 30, 2023.

Effective December 5, 2022, USCIS is able to process fee exemptions for online filings of Form I-765 for eligible Ukrainian and Afghan parolees.

Details:

- USCIS alert, Nov. 21, 2022. <https://bit.ly/3APqFYB>
- "Feds Grant Ukrainians, Afghans Immediate Work Authorization," Law360, Nov. 22, 2022. <https://www.law360.com/articles/1552063/feds-grant-ukrainians-afghans-immediate-work-authorization> (registration required)

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USCIS Announces Expedited Work Authorization Processing, Expanded Fee Exemptions for Afghans

U.S. Citizenship and Immigration Services (USCIS) is extending and expanding previously announced fee exemptions and expedited application processing for certain Afghan nationals through September 30, 2023.

Fee exemptions include:

- An initial or replacement Form I-765, Application for Employment Authorization, for Afghan nationals who are applying for work authorization on the basis of parole (eligibility category (c)(11));
- Form I-485, Application to Register Permanent Residence or Adjust Status, to adjust status on the basis of Afghan special immigrant classification, and any associated Form I-601, Application for Waiver of Grounds of Inadmissibility;
- Form I-130, Petition for Alien Relative, filed with USCIS in the United States on behalf of any Afghan national (beneficiary) with a visa immediately available;
- Form I-824, Application for Action on an Approved Application or Petition, for an Afghan holding a Special Immigrant Visa;
- Form I-601, Application for Waiver of Grounds of Inadmissibility, for any Afghan national with an approved Form I-130 with a visa immediately available; and
- USCIS Immigrant Fee (Form I-551) for Afghan nationals.

Expedited processing includes:

- An initial and replacement Form I-765 for those applying for employment authorization on the basis of parole (eligibility category (c)(11));
- Form I-485 for Afghan nationals seeking to adjust status on the basis of Afghan special immigrant classification, and any associated Form I-601;
- Form I-589, Application for Asylum and for Withholding of Removal, filed by certain Afghan parolees as described in § 2502(a) of the Extending Government Funding and Delivering Emergency Assistance Act of 2021;
- Form I-130, filed with USCIS in the United States on behalf of an Afghan national (beneficiary) with a visa immediately available, and any associated Form I-601; and
- Form I-140, Immigrant Petition for Alien Workers, filed with USCIS on behalf of an Afghan national (beneficiary) with a visa immediately available.

Details:

- USCIS alert, Nov. 22, 2022. <https://www.uscis.gov/newsroom/alerts/uscis-extends-and-expands-fee-exemptions-and-expedited-processing-for-afghan-nationals>

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Dept. of Labor Announces Additional Listening Sessions on H-2A Program

The Department of Labor (DOL) previously announced that it intends to engage in additional rulemaking concerning the H-2A visa program for the temporary agricultural employment of foreign workers. DOL initially announced it would conduct two public virtual listening sessions to gather input about possible changes to the H-2A regulations. The agency has added two more listening sessions, one for employers and their representatives and another for workers and their advocates.

DOL said it is "interested in hearing about the experiences of workers and employers," so it encourages "worker and employer representatives to include their members' perspectives in their remarks or to invite workers or employers to share their experiences directly."

Below are the dates, times, and registration links for each of the sessions:

- Employers and Employer Representatives: [Tuesday, December 6, from 1 to 2:30 p.m. ET](#)
- Workers and Advocates: [Wednesday, November 30, from 7 to 8:30 p.m. ET](#) or [Wednesday, December 7, from 7 to 8:30 p.m. ET](#)

Details:

- Office of Foreign Labor Certification announcement.
<https://www.dol.gov/agencies/eta/foreign-labor> (scroll to November 25, 2022)

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OFLC Releases FAQs on Prevailing Wage Surveys Under 2022 H-2A Final Rule

The Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) has released frequently asked questions (FAQs) on prevailing wage surveys under the 2022 H-2A final rule, "Temporary Agricultural Employment of H-2A Nonimmigrants in the United States," published on October 12, 2022, and effective November 14, 2022.

OFLC said the FAQs are intended to assist State Workforce Agencies (SWAs) and others in understanding the prevailing wage survey methodology of the final rule. OFLC said the updated methodology:

- Allows the SWAs to conduct prevailing wage surveys or to leverage surveys conducted by other state agencies, state colleges, or state universities, provided that the survey meets the standards listed in 20 CFR § 655.120(c)(1);
- Permits the SWAs to determine the best data collection period for a particular prevailing wage survey;
- Enables the SWAs to make decisions about prioritizing precision, accuracy, granularity, or other quality factors in the data they use to inform prevailing wage findings, rather than requiring statistical validity;
- Establishes standards to produce prevailing wage findings for crop activities and agricultural activities with few employers and U.S. workers;

- Establishes a regulatory process for the SWAs to submit prevailing wage surveys to OFLC and for OFLC to review, approve, and post prevailing wages on OFLC's Agricultural Online Wage Library (AOWL); and
- Provides that a prevailing wage finding is valid for one year from the date of posting on OFLC's website (i.e., AOWL) or until replaced with an adjusted prevailing wage finding, whichever comes first.

DOL provides additional information about prevailing wage survey methodological requirements in the preamble to the 2022 H-2A final rule. In particular, the agency called attention to pages 61689 through 61701.

Details:

- "Prevailing Wage Surveys," OFLC FAQ, Nov. 21, 2022.
https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2022%20H-2A%20FR_SWA%20FAQs_PW%20surveys%20Nov%2017.pdf
- H-2A final rule, 87 Fed. Reg. 61660 (Oct. 12, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-10-12/pdf/2022-20506.pdf>

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USCIS Accepting Only 8/19/22 Edition of N-648, Medical Certification for Disability Exceptions

As of November 21, 2022, U.S. Citizenship and Immigration Services (USCIS) is accepting only the 8/19/22 edition of Form N-648, Medical Certification for Disability Exceptions. USCIS revised the form and removed several questions, including dates of diagnosis and when the disability or impairment began; description of severity of each disability or impairment; effects on the applicant's daily life; and an explanation of the doctor-patient relationship. Also, telehealth medical examinations are now permitted for Form N-648, among other changes.

USCIS will accept a Form N-648 after a Form N-400 is filed but recommends that applicants submit both forms at the same time.

Details:

- Fact Sheet: Medical Certification for Disability Exceptions, Form N-648, English Language Exemptions, and Accommodations, USCIS.
https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheet_N-648_MedCertForDisabilityExceptions.pdf

Title 42 Policy Blocked Effective December 21

On November 15, 2022, U.S. District Court Judge Emmet Sullivan blocked the Title 42 policy that has resulted in many migrants being turned away at the southern U.S. border. The same night, the Department of Justice filed a motion to stay the order for five weeks, which Judge Sullivan granted. The order will be effective December 21, 2022.

The Trump administration instituted the policy in March 2020, with the stated purpose of preventing the spread of the COVID-19 virus. Title 42 was the subject of litigation, and the Biden administration was prevented from revoking the policy. In vacating Title 42, the court noted that the Centers for Disease Control and Prevention (CDC) recognizes that current public health conditions no longer require continuation of an order to keep migrants out of the United States,

and that plaintiffs would continue to face substantial harm if they were returned to their home countries. In its order vacating the policy, the court included "all orders and decision memos issued by the [CDC] suspending the right to introduce certain persons into the United States." The court also declared the Title 42 policy to be "arbitrary and capricious in violation of the Administrative Procedure Act."

The Department of Homeland Security (DHS) said the delay in implementation of the court's order "will allow the government to prepare for an orderly transition to new policies at the border. But to be clear, under the unopposed motion, Title 42 would remain in place for some period."

Details:

- *Huisha-Huisha v. Mayorkas*, Memorandum Opinion, Nov. 15, 2022.
https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2021cv0100-165
- Unopposed Emergency Motion for Temporary Stay of the Court's November 15, 2022, Order, Nov. 15, 2022.
<https://storage.courtlistener.com/recap/gov.uscourts.dcd.225870/gov.uscourts.dcd.225870.166.0.pdf>
- "Judge Blocks Title 42 Limits at Border," Politico, Nov. 15, 2022.
<https://www.politico.com/news/2022/11/15/immigration-judge-blocks-title-42-limits-00067083>
- "Federal Judge Blocks Title 42 Rule That Allowed Expulsion of Migrants at U.S.-Mexico Border, Puts Order on Hold for 5 Weeks," CNN, Nov. 16, 2022.
<https://www.cnn.com/2022/11/15/politics/title-42-migrants/index.html>
- DHS statement, Nov. 15, 2022. <https://www.dhs.gov/news/2022/11/15/statement-dhs-decision-regarding-title-42>

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Visa Bulletin for December 2022 Includes Many Updates

The Department of State's Visa Bulletin for December 2022 includes a variety of updates:

- The estimated employment-based annual limit will be 197,000 for fiscal year (FY) 2023.
- Establishment of final action dates and application filing dates for China and India will most likely be necessary in the coming months.
- DOS has deemed it necessary to establish a worldwide employment second preference final action and application filing dates effective in December. Except for China and India, all countries are subject to a final action date of 01NOV22 and an application filing date of 01DEC22.
- Fewer additional numbers will be available to India in the employment second preference category than originally estimated when the October and November final action and application filing dates were established. Therefore, further corrective action has been necessary to ensure that the limited supply of visa numbers is allocated by priority date.
- High demand in the employment fourth preference category has necessitated the establishment of a worldwide final action date and application filing date for December.

Except for El Salvador, Guatemala, Honduras, and Mexico, all countries are subject to a final action date of 22JUN22 and an application filing date of 22JUL22.

- Higher than expected demand in the employment fourth preference category for El Salvador, Guatemala, and Honduras may necessitate corrective action.
- The Certain Religious Workers (SR) category is set to expire as of December 16, 2022. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight December 15, 2022. Visas issued prior to that date will be valid only until December 15, 2022, and all individuals seeking admission in the non-minister special immigrant category must be admitted into the United States no later than midnight December 15, 2022. If legislative action extends this category, the December dates will be applied for the entire month. If there is no legislative action extending this category, the category will become "Unavailable" effective December 16, 2022.

Details:

- Visa Bulletin for December 2022. <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-december-2022.html>

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Inspector General Releases Annual Statement on State Dept.'s Major Management and Performance Challenges

The Department of State's (DOS) Office of Inspector General (OIG) released its annual statement on November 18, 2022, on DOS's major management and performance challenges. The latest report noted that OIG's recent review of the Bureau of Consular Affairs' ConsularOne Modernization Program found:

[I]n the 10 years since the program began in 2011, the responsible office had conducted a very limited pilot of just one component of the program—the customer-facing portion of the electronic Consular Report of Birth Abroad—and had continued to miss deployment dates for other components. Initially launched to modernize and consolidate approximately 90 discrete consular legacy systems into a common technology framework, the program has experienced deficiencies and delays with profound implications for the bureau's three fundamental responsibilities: the issuance of passports and other documentation to citizens and nationals, the protection of U.S. border security and facilitation of legitimate travel to the United States, and ensuring the welfare and protection of U.S. citizens abroad.

OIG's review this year found that the program's leadership "was unable to provide a clear, uniform definition of the ConsularOne program, what components it included, and which contracts supported the program, creating confusion for stakeholders." This lack of clarity "hindered leadership's oversight of the modernization effort and the ability to hold staff accountable for their performance."

Details:

- Inspector General Statement on the Department of State's Major Management and Performance Challenges, Fiscal Year 2022, <https://www.stateoig.gov/uploads/report/reportpdf/oigex2302.pdf>

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USCIS Releases Tips on Avoiding Paper Filing-Related Delays

On November 16, 2022, U.S. Citizenship and Immigration Services (USCIS) released tips to avoid paper filing-related scanning delays. USCIS said it scans and uploads many documents into electronic database systems as it moves toward an increasing electronic environment.

Examples of practices to avoid include attaching documents together with staples, paper clips or other methods; folding documents; using insertable tab dividers; submitting multiple copies unless required; and sending original documents unless required, among other tips.

Details:

- USCIS alert, Nov. 16, 2022. <https://www.uscis.gov/newsroom/alerts/recommendations-for-paper-filings-to-avoid-scanning-delays>

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State Dept. Announces Diversity Visa Reassignment Procedures for Kabul

The Department of State announced on November 18, 2022, that all operations are suspended at the U.S. Embassy in Kabul, Afghanistan. Diversity visa (DV) selectees for the 2023 DV program year with a case assigned to U.S. Embassy Kabul should request reassignment to another embassy or consulate that processes DV applications. The selectee must be physically present in the consular district where the embassy or consulate is located at the time of the interview and have permission and the ability to remain in that country for a period sufficient to complete processing of the visa application.

To request reassignment, the DV selectee should e-mail the Kentucky Consular Center (KCC) at KCCDV@state.gov with the subject line "Kabul Reassignment Request." The email should include: (1) full name, (2) date of birth, (3) case number, and (4) name of the embassy or consulate where the selectee would like the case to be reassigned. After KCC reviews the request, the selectee will receive an email confirmation that the reassignment request was successful or, alternatively, requesting more information.

Those who are unable to travel to the embassy or consulate where the appointment has been scheduled may contact another U.S. embassy or consulate that processes DV applications to request a transfer.

Details:

- Diversity Visa Reassignment Procedures for Kabul, Dept. of State, Nov. 18, 2022, <https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-reassignment-procedures-for-kabul.html>
- For more information on visa processing at specific posts, see <https://www.usembassy.gov/> and review the page for the visa section of the relevant U.S. embassy or consulate.
- DV Entrant Status Check, <https://dvprogram.state.gov/>

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Labor Dept. Announces H-2A Visa Program Listening Sessions

In conjunction with the Department of Labor's (DOL) previously announced intention to engage in additional rulemaking on the H-2A visa program for temporary agricultural employment of foreign workers, DOL is offering two virtual listening sessions, one for employers and their representatives and another for workers and their advocates, to gather input about the possible changes to the H-2A regulations.

The sessions are open to the public. The employers/representatives' listening session will be held Tuesday, November 29, 2022, from 3 to 4 p.m. ET. The workers/advocates listening session will be held Wednesday, November 30, 2022, from 7 to 8:30 p.m. ET. Registrants will be emailed a Zoom link one day before the event begins. Questions should be emailed to WHD-Events@dol.gov.

Details:

- DOL announcement, Nov. 17, 2022. <https://www.dol.gov/agencies/eta/foreign-labor>
- Employers/representatives session registration. <https://www.eventbrite.com/e/h-2a-regulations-listening-session-for-employers-registration-454006905877>
- Workers/advocates session registration. <https://www.eventbrite.com/e/h-2a-regulations-listening-session-for-workers-registration-453908441367>

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OFLC Releases Public Disclosure Data, Selected Program Statistics, H-2B Foreign Labor Recruiter List for Q4 of FY 2022

The Department of Labor's Office of Foreign Labor Certification (OFLC) has released:

- A comprehensive set of [public disclosure data](#) through the final quarter of fiscal year (FY) 2022 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. The public disclosure files include all final determinations OFLC issued for these programs during the October 1, 2021 through September 30, 2022 reporting period of fiscal year 2022.
- Selected [program statistics](#) for the second quarter of fiscal year 2022 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.

Details:

- OFLC notices, Nov. 15, 2022. <https://www.dol.gov/agencies/eta/foreign-labor>

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DHS Releases List of Countries Eligible for H-2A and H-2B Programs, Adds Eswatini

The Department of Homeland Security (DHS), in consultation with the Department of State, announced the lists of countries whose nationals are eligible to participate in the H-2A and H-2B visa programs in the next year. Effective November 10, 2022, DHS added the Kingdom of

Eswatini (formerly Swaziland) to the list. Each country's designation is valid until November 9, 2023.

DHS said that U.S. Citizenship and Immigration Services (USCIS) may approve H-2A and H-2B petitions, including those pending as of the date of publication of the Federal Register notice on November 10, 2022, "for nationals of countries not on the lists on a case-by-case basis only if doing so is determined to be in the interest of the United States."

DHS said the notice does not affect the status of H-2 beneficiaries who are currently in the United States unless they apply to extend their stay in H-2 status on the basis of a petition filed on or after the date of publication of the Federal Register notice. Similarly, the notice would not affect the eligibility of an H-2 beneficiary to apply for an H-2 visa and/or seek admission to the United States based on an H-2 petition approved before the date of publication. It does apply to nonimmigrants changing status in the United States to H-2A or H-2B.

Details:

- DHS notice, 87 Fed. Reg. 67930 (Nov. 10, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-11-10/pdf/2022-24539.pdf>
- USCIS alert, Nov. 9, 2022, <https://www.uscis.gov/newsroom/alerts/dhs-announces-countries-eligible-for-h-2a-and-h-2b-visa-programs-0>

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DHS Continues TPS and Related Documentation for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal

To ensure its continued compliance with several court orders, the Department of Homeland Security (DHS) is automatically extending the validity of certain temporary protected status (TPS)-related documentation for beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal from the current expiration date of December 31, 2022, through June 30, 2024. The extension will be announced in a Federal Register notice to be published on November 16, 2022.

DHS explained that beneficiaries under the existing TPS designations for El Salvador, Nicaragua, Honduras, and Nepal; the 2011 designation of Haiti; and the 2013 designation of Sudan will retain their TPS while the court orders remain in effect, provided that their TPS is not withdrawn because of individual ineligibility. They may also apply under the more recent designations of Haiti and Sudan in 2021 and 2022, respectively. If granted TPS, they will retain TPS in accordance with their grants. Other individuals who have been newly granted TPS under the 2021 designation of Haiti and the 2022 designation of Sudan, but who did not have TPS at the time of those designations, are not covered by the notice. Their TPS grants remain valid in accordance with their individual approval notices from U.S. Citizenship and Immigration Services (USCIS).

The notice further provides information on the automatic extension of the validity of TPS-related employment authorization documents (EADs); Notices of Action (Forms I-797); and Arrival/Departure Records (Forms I-94) for beneficiaries under the TPS designations.

Details:

- DHS notice (advance copy), <https://public-inspection.federalregister.gov/2022-24984.pdf>

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E-Verify Issues Reminder to Employers and Program Administrators on Terminating User Accounts

E-Verify recently reminded employers and program administrators that an E-Verify user's access "must be promptly terminated upon separation from your organization." A good practice, E-Verify said, is to review and update existing users whenever staffing changes occur and also on a regular basis.

User accounts should be deleted whenever a user is separated from the organization or the user's role no longer requires access. Failure to promptly terminate user access upon separation is a violation of the memorandum of understanding, E-Verify noted.

E-Verify also notified program administrators that their accounts are associated with their employers: "If you are hired by a new employer, you will need to create a new account. You are prohibited from using your old employer's account to create cases for a new employer."

Details:

- E-Verify reminder, <https://www.e-verify.gov/about-e-verify/whats-new/reminder-terminating-user-accounts-for-e-verify-employers-and-program>

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CIS Ombudsman Introduces Revised Form for Requesting Case Assistance

The Citizenship and Immigration Services (CIS) Ombudsman released an updated Form 7001, Request for Case Assistance.

The updated form, which expires on September 30, 2025, includes embedded instructions with questions, expanded and reorganized sections, detailed instructions on supporting documentation, and an option to include multiple employment-based beneficiaries on one case assistance request.

Details:

- DHS Form 7001, Request for Case Assistance, <https://www.dhs.gov/topic/cis-ombudsman/forms/7001#no-back>

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State Dept. Announces Full Resumption of Interviews for All Immigrant Visa Categories in Havana in January 2023

The Department of State (DOS) announced on November 10, 2022, that the U.S. Embassy in Havana, Cuba, will resume full immigrant visa processing beginning on January 4, 2023. The U.S. Embassy Georgetown in Guyana will continue to process Cuban immigrant visa applicants scheduled for appointments there through the end of December 2022. Immigrant visa applicants whose appointments were originally scheduled in Georgetown will complete case processing there.

Embassy Havana will process diversity visa cases for applicants who reside in Cuba beginning in January 2023. DOS noted that Havana will not be an option on the dropdown menu when diversity visa selectees pick an interview location on the DS-260 immigrant visa application form. They should continue to select Georgetown for the DV-2023 program year. DOS said that

applicants who provide a residential address within Cuba on their DS-260s will have their cases automatically reassigned to Havana, unless they have already been scheduled at Georgetown.

Immigrant visa applicants scheduled for January 2023 appointments in Havana will begin receiving appointment notices on or after November 10, 2022.

Details:

- DOS notice, <https://bit.ly/3Gb0SgU>

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President Biden Accepts Resignation of CBP Commissioner

On November 12, 2022, President Joe Biden accepted the resignation of Chris Magnus, U.S. Customs and Border Protection Commissioner. He had initially refused to step down after Alejandro Mayorkas, Secretary of Homeland Security, reportedly told Mr. Magnus on November 9, 2022, that he must resign or he would be fired. Mr. Magnus's duties and direct reports have been shifted to other people, an unnamed DHS official said.

Mr. Magnus was accused of unprofessional behavior by other officials working with him, an earlier report says. Several Republicans in the House of Representatives, who criticized his handling of border issues, then urged President Biden to call for Mr. Magnus' resignation. Citing the earlier report, the letter also alleged that Mr. Magnus "fails to attend high-level meetings," engages in "constant complaining about his fellow senior officials" in DHS, "was caught sleeping through some of the meetings he actually attended," and "fails to actively participate during internal calls with Secretary Mayorkas regarding border and immigration issues."

Details:

- "Customs and Border Protection Chief Resigns After Refusing Request to Step Down," NBC News, Nov. 12, 2022. <https://www.nbcnews.com/politics/immigration/customs-border-protection-chief-refusing-request-step-dhs-official-say-rcna56826>
- "U.S. Customs and Border Protection Commissioner Resigns," CNN, Nov. 12, 2022. <https://www.cnn.com/2022/11/12/politics/cbp-magnus-resignation-dhs-mayorkas>
- "DHS Secretary to Biden's Top Border Chief: Quit or Be Fired," Politico, Nov. 11, 2022. <https://www.politico.com/news/2022/11/11/dhs-secretary-bidens-top-border-chief-00066496>
- "Exclusive: House Republicans Demand CBP Commissioner Resign," Daily Caller, Nov. 1, 2022. <https://dailycaller.com/2022/11/01/house-republicans-jody-hice-demand-customs-and-border-protection-cbp-commissioner-chris-magnus-resign/>
- "Biden's Top Border Chief Comes Under Internal Fire," Politico, Oct. 17, 2022. <https://www.politico.com/news/2022/10/17/customs-border-protection-chris-magnus-00061963>

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ABIL Global: Canada and Italy

A new bilateral agreement has been in force since November 1, 2022, for Italian and Canadian citizens between the ages of 18 and 35.

The new Agreement aims to promote, among the new Italian and Canadian generations, a better knowledge of culture, society, and languages through travel experiences, work, and life in the other country.

What does the agreement stipulate?

The bilateral youth mobility agreement between Italy and Canada offers professional training opportunities to young Italian and Canadian citizens between the ages of 18 and 35 who are entering the world of work.

For 2023, there will be 2,000 young people per country who will be able to benefit from this agreement. The new agreement replaces the 2006 Memorandum of Understanding between Italy and Canada on "Working Holidays" and expands its scope, with the Italian extension of the work permit to 12 months and the introduction of new categories of participants.

What new categories are now available?

In particular, the agreement includes the following three categories:

- **"Working Holiday,"** for those who intend to travel to the host country and temporarily work during their stay;
- **"Young worker,"** for those who have already obtained an employment contract in the host country, in support of their professional development or pertaining to their previous field of study; and
- **"International internship,"** aimed at students enrolled in a course at a post-secondary level institute of study who have obtained an internship relevant to their field of study in the host country, as a requirement of their academic curriculum. Visa applicants must have a valid travel document with an expiration date of at least three months longer than that of the requested visa.

Interested parties must be between the ages of 18 and 35, inclusive, on the date on which the application is received.

The validity of the visa will be commensurate with the expected duration of the stay, in any case not exceeding 12 months.

Details:

- "Agreement on Youth Mobility Between Italy and Canada," Italian Government, https://www.esteri.it/en/opportunita/scambi_giovanili/accordo-in-materia-di-mobilita-giovanile-tra-litalia-e-il-canada/

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New Publications and Items of Interest

Department of State Q&A. The Department of State released questions and answers before an American Immigration Lawyers Association liaison committee meeting held November 3, 2022. Q&A topics included consular processing, interview waivers, E visas, Foreign Affairs Manual language issues and clarifications, entertainers and artists (B visas), B-1 visas for after-sale servicing of computer software, visa reciprocity for dual nationals, immigrant intent and nonimmigrant visa refusals, Afghan immigrant visas, inadmissibility issues and visa refusals, and other issues. <https://travel.state.gov/content/dam/visas/AILA/AILA-Agenda-11-03-2022.pdf>

Webinar on immigration reform in 2023. eCornell will host a free webinar on Tuesday, December 6, 2022, from 1-2 pm ET about the chances for immigration reform in 2023. Can lessons learned during the last round of reform be applied to future debates? Charles Kamasaki, author of "Immigration Reform: The Corpse That Will Not Die," will discuss this topic with Cornell Law School professor Stephen Yale-Loehr and Wall Street Journal immigration reporter Michelle Hackman. The webinar is co-sponsored by the Cornell Migrations Initiative, the Cornell Law School Immigration Law and Policy Research Program, and Catholic Charities of Tompkins and Tioga Counties. For more information or to register, see <https://ecornell.cornell.edu/keynotes/overview/K120622/>. Those who register will have access to the recording afterwards regardless of whether they attend.

Webinar on immigration planning. WR Immigration attorneys Laura Bloniarz and Audrey Lustgarten will lead a presentation with a global immigration perspective geared for global mobility professionals. "Immigration Planning: Preparing for a Global Recession?" will be held Tuesday, December 13, 2022, at 11 a.m. PT. <https://wolfsdorf.com/immigration-planning-preparing-for-a-global-recession/>

Webinar on 2022 H-2A final rule. On November 17, 2022, the Department of Labor's Office of Foreign Labor Certification (OFLC) hosted a public webinar to educate stakeholders, program users, and others on changes to the H-2A program made by the 2022 H-2A final rule. The presentation provided a detailed overview of how the 2022 H-2A rule will affect filing and processing, including preparations to the FLAG filing system, reviewing changes to ETA Forms 790/790A and 9142A, calculating surety bonds, and additional topics. The webinar was recorded and posted on the OFLC website along with presentation materials for future reference. <https://www.dol.gov/agencies/eta/foreign-labor>

Report on backlogs. The Cato Institute has published a briefing paper, "Processing Backlogs in the U.S. Immigration System: Describing the Scale of the Problem." According to Cato, the paper summarizes basic facts about immigration backlogs, which the paper says comprise roughly 24 million cases across the U.S. government. Backlogs are not isolated within certain portions of the system but are rather a "systemic and growing problem for all four departments responsible for executing U.S. immigration law," the paper says. It also shows that except for visa processing, backlogs have not arisen primarily from COVID-19 shutdowns but instead are "a consequence of inefficient agency processes that have caused wait times and backlogs to grow during the past decade. This also means that the agencies culpable for the problem will have the most important roles to play in fixing it." <https://www.cato.org/briefing-paper/processing-backlogs-us-immigration-system-describing-scale-problem>

E-Verify free webinars. U.S. Citizenship and Immigration Services announced topics for upcoming E-Verify and Form I-9 webinars, including E-Verify for Existing Users, E-Verify for Web Services Users, E-Verify in 30, E-Verify Overview, Employee Rights, Employer Responsibilities, Federal Contractor E-Verify, Form I-9, and myE-Verify. Customized sessions are also available. All webinars are eligible for professional development credits (PDCs) through the Society of Human Resource Management and the Human Resource Certification Institute except for E-Verify in 30 and myE-Verify. For more information or to register, see <https://www.e-verify.gov/about-e-verify/e-verify-webinars>. To arrange a topic, date, and time for a customized webinar, email E-VerifyOutreach@uscis.dhs.gov.

Immigrant and Employee Rights Section free webinars. The Department of Justice's Immigrant and Employee Rights Section is offering free webinars for the public. <https://www.justice.gov/crt/webinars>

Agency Twitter accounts:

- EOIR: @DOJ_EOIR
- ICE: @ICEgov

- Study in the States: @StudyinStates
- USCIS: @USCIS

E-Verify webinar schedule. E-Verify released its calendar of webinars. https://www.e-verify.gov/calendar-field_date_and_time/month

Alliance of Business Immigration Lawyers:

- ABIL is available on Twitter: @ABILImmigration
- Recent ABIL member blogs are at <http://www.abilblog.com/>

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ABIL Member/Firm News

WR Immigration has published several new blog posts: "Immigration Planning: Preparing for a Global Recession?," <https://wolfsdorf.com/immigration-planning-preparing-for-a-global-recession/>; and "EB-5 Project Due Diligence, After the EB-5 Reform and Integrity Act of 2022," <https://wolfsdorf.com/eb-5-project-due-diligence-after-the-eb-5-reform-and-integrity-act-of-2022/>

Klasko Immigration Law Partners, LLP, has released Episode 31 in its Statutes of Liberty podcast series: "H-1B Layoff Information for Employees." With a large wave of layoffs reported in November 2022, many H-1B visa holders worry about what their next steps should be. In this podcast episode, **Anu Nair** speaks with partner **Bill Stock** and senior associate **Maria Mihaylova** to discuss the potential impact of recent layoffs occurring in different industries and how they affect H-1B employees. <https://bit.ly/3EYVivZ>

Charles Kuck (bio: <https://www.abil.com/abil-lawyers/charles-kuck/>) was quoted by *Law360* in "Feds Grant Ukrainians, Afghans Immediate Work Authorization." Mr. Kuck, who helps lead the IMMPact Litigation team representing Ukrainians in a lawsuit, said he was pleased that USCIS changed its policy. However, he said his clients also sought a court order forcing USCIS to repay Ukrainians who had already paid the work permit application fee. "We are exceptionally happy that USCIS finally did almost the right thing [and] we look forward to them doing the complete right thing shortly, or litigation will continue," he said. The litigation had not covered Afghans who fled Afghanistan, but Mr. Kuck said his team intended to revise the case to include Afghans based on a September 2021 congressional measure that entitled Afghans to refugee benefits. <https://www.law360.com/articles/1552063/feds-grant-ukrainians-afghans-immediate-work-authorization> (registration required)

Cyrus Mehta (bio: <https://www.abil.com/abil-lawyers/cyrus-d-mehta/>) was quoted by the *Times of India* in "Laid-Off Indian H-1B Workers Plead for Help as Clock Ticks." He noted that when an H-1B worker is laid off or terminated, they get a 60-day grace period that allows them to remain in the H-1B status to find a new job. "The new employer must file the H-1B within the 60-day period. This 60-day period may not be enough to find a new job. The H-1B worker should negotiate that their employment with the company that is terminating them be extended as long as possible as the 60-day grace period will only trigger when the paid employment is terminated." An Indian worker, he said, is disadvantaged because of green card backlogs caused by per-country limits. Mr. Mehta said that the Biden administration can help by changing the 60-day grace period rule to allow more time for H-1B workers to remain in the United States, but he noted that a rule change would take time. "The administration must also be inclined to do this," he said. <https://timesofindia.indiatimes.com/business/india-business/laid-off-indian-h-1b-workers-plead-for-help-as-clock-ticks/articleshow/95497003.cms>

Mr. Mehta and **Kaitlyn Box** co-authored a new blog posting: "Layoffs Will Hurt Nonimmigrant Workers the Most, Especially Indian Born, But the Biden Administration Can Provide Relief." <http://blog.cyrusmehta.com/2022/11/layoffs-will-hurt-nonimmigrant-workers-the-most-especially-indian-born-but-the-biden-administration-can-provide-relief.html>

Mr. Mehta authored a new blog posting: "Why the AILA Law Journal Is Important."
<http://blog.cyrusmehta.com/2022/11/3907.html>

William Stock (bio: <https://www.abil.com/abil-lawyers/william-stock/>) has authored a new blog post: "I Have an H-1B Visa and Just Got Laid Off. What Do I Need to Know?"
<https://bit.ly/3ix2UOI>

WR Immigration has posted a new webinar: "H-1B Cap Season—How the Current Economic Climate Will Affect This Season." Topics include the current labor and recruiting environment; key H-1B registration, lottery, and petition filing timelines; understanding current trends; and organization strategies and tips. <https://wolfsdorf.com/webinar-h-1b-cap-season-how-the-current-economic-climate-will-affect-this-season/>

Stephen Yale-Loehr (bio: <https://www.abil.com/abil-lawyers/stephen-yale-loehr/>) was quoted by the *Dallas Morning News* in "Texas AG Ken Paxton's Lawsuits Stymie Biden Agenda on Immigration and Healthcare." He said, "For the time being, it seems like Paxton is as important as the [federal government] in deciding what immigration policy is implemented these days. Every lawsuit seems to end up in a temporary injunction prohibiting the Biden administration from changing immigration policy." <https://www.dallasnews.com/news/politics/2022/12/02/texas-ag-ken-paxtons-lawsuits-stymie-biden-agenda-on-immigration-and-healthcare/> (registration required)

Mr. Yale-Loehr was quoted by the *Wall Street Journal* in "Supreme Court Considers Challenge to Biden Policy Curbing Immigration Arrests." He said, "The stakes are quite high. If the states win here, that means effectively that immigration policy will be run by the federal courts rather than the administration." <https://www.wsj.com/articles/supreme-court-considers-challenge-to-biden-policy-curbing-immigration-arrests-11669692774> (subscription required)

Mr. Yale-Loehr was quoted by *Inside Higher Ed* in "Should Fine Arts and Communications Qualify as STEM Degrees?" Regarding colleges aligning their course outcomes to the Department of Homeland Security's list of qualifying fields and requirements for science, technology, engineering, and mathematics (STEM) degrees, Mr. Yale-Loehr said, "I do not consider this to be gaming the system." Noting that the White House "very vigorously" consulted with numerous government agencies to ensure that additions to the list of STEM-designated degrees were appropriate, he said, "Ultimately Congress should decide how long international students should be able to work after they graduate and whether they should limit it to certain fields or have the same limit applied to all fields. But absent Congress's ability to reform our broken immigration system, it is up to the agencies to decide how to interpret the existing law." Many of the newly added qualifying fields fall within conventional STEM expectations, but others live within the intersection of science and the arts. Mr. Yale-Loehr also noted that efforts to extend or curb work authorization for international students on F-1 visas in STEM fields have a "long and tortured history." Finally, he said, "More and more these days, [the United States] needs STEM workers to help innovate, and offering those degree holders who have serious STEM credentials an opportunity to work in the United States for three years is appropriate. But Congress ultimately should reform our broken immigration system, and as part of that effort they should take up this issue." <https://www.insidehighered.com/news/2022/11/29/fine-arts-communications-degrees-qualify-stem-immigrants>

Mr. Yale-Loehr was quoted by *Roll Call* in "Supreme Court to Hear Argument Over Biden Immigration Priorities." He said, "In the immigration context, courts have traditionally deferred to the executive branch because immigration touches on sovereignty and foreign relations. But if the high court greenlights the state lawsuit against the administration's immigration enforcement priorities, 'it means that the federal government is no longer getting the benefit of the doubt' in this context, he noted. A ruling that sides with the states on that issue, depending on how the justices write the opinion, could usher in a 'major sea change' over how federal agencies

establish internal guidance, he said: "It effectively gives states the power to overrule federal policy on immigration and allow states to challenge anything they want, not just in immigration but in other areas as well. If Congress says that you have to detain certain people who have committed certain criminal violations, but does not give the administration enough money to actually detain them, what is the administration supposed to do? I think it's going to be a real conundrum, both for Congress and for the administration, if the Supreme Court rules in favor of Texas in this case on the merits." <https://rollcall.com/2022/11/28/supreme-court-to-hear-argument-over-biden-immigration-priorities/>

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Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS case processing times online: <https://egov.uscis.gov/processing-times/>

Department of State Visa Bulletin: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

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About ABIL

The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 425 member lawyers and their more than 1,400 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.

The Alliance of Business Immigration Lawyers' website is at <https://www.abil.com/>. ABIL is also on Twitter: @ABILImmigration.

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