

IMMIGRATION INSIDER

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Headlines:

USCIS Issues Proposed Rule to Raise Fees and Fund Asylum Program With New \$600 Employer Petition Fee – The Department of Homeland Security also proposes to fund the asylum program with a controversial new Asylum Program Fee of \$600 to be paid by employers.

DHS Implements New Processes for Cubans, Haitians, and Nicaraguans and Eliminates Cap for Venezuelans – The Department of Homeland Security (DHS) announced a new process for qualifying Cubans, Haitians, and Nicaraguans with U.S.-based supporters to travel by air to and temporarily reside in the United States. Such individuals may also apply for work authorization. DHS also eliminated the numerical cap for a similar process for Venezuelans announced previously.

OFLC Completes Random Assignments of H-2B Applications for Second Half of FY 2023 Visa Cap – The Department of Labor's Office of Foreign Labor Certification has completed the process to randomly assign all H-2B applications submitted during the initial three-day filing window, January 1-3, 2023, requesting an April 1, 2023, work start date for the second half of the fiscal year 2023 H-2B statutory visa cap.

Omnibus Spending Legislation Includes Several Immigration-Related Provisions – Included is \$800 million in competitive grants under a new U.S. Customs and Border Protection "Shelter and Services" program for state and local governments and nonprofits dealing with an influx of migrants.

U.S. Embassy in Havana Resumes Full Immigrant Visa Processing – On January 4, 2023, the U.S. Embassy in Havana resumed full immigrant visa processing, including all visa categories. The embassy also announced that the United States is expanding consular operations in Havana and restarting the Cuban Family Reunification Parole Program.

Supreme Court Extends Temporary Stay of 'Title 42' – The Court plans to consider in late February 2023 whether the 19 states objecting to Title 42 have legal standing to do so.

Visa Bulletin for January 2023 Reports on Availability in the Employment First Category for China and India, Unavailability of Religious Workers Category – Effective in January, employment first preference final action and application filing dates for China and India are established to hold number use within the maximum allowed under the fiscal year 2023 annual limit.

TPS for Yemen Extended, Redesignated – The Department of Homeland Security extended and redesignated Yemen for temporary protected status in a Federal Register notice published on January 3, 2023.

CDC Announces New COVID-19 Testing Requirement for Air Passengers From China – Effective January 5, 2023, the Centers for Disease Control and Prevention is requiring a pre-departure negative COVID-19 test, or documentation of recovery within the last 90 days, for air passengers boarding flights to the United States originating from the People's Republic of China and the Special Administrative Regions of Hong Kong and Macau.

DHS, DOJ Further Delay Effective Date of Asylum Security Bars Rule – The rule would make noncitizens ineligible for asylum if, among other things, they were physically present in a country in which a communicable disease was prevalent or epidemic, and the Secretary of Homeland Security and the

Attorney General determined that their physical presence in the United States would cause a risk to public health.

DOL Publishes Round 4 FAQs on H-2A Application Filing and Processing Under Final Rule – Topics include how to file, timing considerations, multiple worksites, National Processing Center processing, amendment requests, and withdrawal requests.

DHS Public Charge Ground of Inadmissibility Final Rule Effective December 23 – For public charge inadmissibility determinations, the Department of Homeland Security will not consider receipt of noncash benefits (for example, the Supplemental Nutrition Assistance Program, public housing, school lunch programs) other than long-term institutionalization at government expense.

E-Verify Restores Employers' Ability to Upload Multiple Hiring Sites Simultaneously – E-Verify has restored the ability of employers, employer agents, and corporate administrators to upload multiple hiring sites simultaneously.

USCIS Provides List of Options for Nonimmigrant Workers Following Termination of Employment – U.S. Citizenship and Immigration Services provided a compilation of options that may be available to nonimmigrant workers seeking to remain in the United States in a period of authorized stay following termination of employment.

USCIS Seeks Comments on EB-5 Regional Center Forms for Investors – U.S. Citizenship and Immigration Services seeks comments until January 23, 2023, on two forms associated with the EB-5 Regional Center (RC) program.

USCIS Increases H-2B Nonimmigrant Visa Availability – A new rule increases the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for fiscal year 2023.

DHS Issues Update on Southwest Border Security and Preparedness Under Court-Ordered Lifting of 'Title 42'; Termination of 'Remain in Mexico' Program Paused – The Department of Homeland Security issued an update on southwest border security and preparedness in anticipation of a court-ordered lifting of Title 42 by December 21, 2022, which was upheld on appeal. In other news, a federal judge paused the termination of the Migrant Protection Protocols, informally known as the "Remain in Mexico" program.

OFLC Publishes New 2023 H-2A Hourly Adverse Effect Wage Rates for Non-Range Occupations and for Herding or Production of Livestock on the Range – In two notices, the Department of Labor's Employment and Training Administration announced new Adverse Effect Wage Rates under the H-2A program for (1) agricultural labor or services other than the herding or production of livestock on the range, and (2) occupations involving herding or production of livestock on the range.

Guangzhou Immigrant Visa Unit Closes Until Further Notice; Limited Services Announced at Other U.S. Embassies and Consulates in China – The Immigrant Visa Unit at the U.S. Consulate Guangzhou announced that beginning December 19, 2022, it is closed for regular visa services until further notice. The U.S. embassy in Beijing and the U.S. consulate in Shanghai are providing passport and emergency citizen services only. The U.S. consulates in Wuhan, Shenyang, and Guangzhou are only providing emergency consular services until further notice.

USCIS Announces Trial for Naturalization Test Updates – The trial is tentatively scheduled for a five-month period in 2023. The purpose of the trial is to test a civics component with updated format and content and a newly developed English-speaking component "that could become standard."

USCIS Announces 'Important' H-2B Supplemental Cap Petition Filing Updates Before Publication of Temporary Final Rule – 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.

Green Cards Automatically Extended for Naturalization Applicants Who File on 12/12/22 or Later, USCIS Says – U.S. Citizenship and Immigration Services (USCIS) is automatically extending the validity of Permanent Resident Cards (green cards) for lawful permanent residents (LPRs) who applied for naturalization on December 12, 2022, or later. USCIS said it will update the language on Form N-400

receipt notices to extend green cards for up to 24 months for these applicants. LPRs who filed for naturalization before December 12 will not receive this extension.

Registration Process Begins for Ethiopia TPS; DHS Provides Relief for F-1 Nonimmigrant Ethiopian Students – The Department of Homeland Security announced several measures to provide relief for Ethiopians in the United States.

DHS Extends and Redesignates TPS for Haiti for 18 Months – The Department of Homeland Security (DHS) announced the extension of temporary protected status (TPS) for Haiti through August 3, 2024. DHS also redesignated Haiti for TPS, allowing eligible Haitian nationals residing in the United States as of November 6, 2022, to apply for TPS through August 3, 2024.

DOL Publishes More FAQs on 2022 H-2A Final Rule – The FAQs' topics include wage and pay obligations and prevailing wages. Examples and tips for employers are included.

ABIL Global: Mexico – Mexico has introduced a new online process for the multi-purpose immigration form.

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USCIS Issues Proposed Rule to Raise Fees and Fund Asylum Program With New \$600 Employer Petition Fee

U.S. Citizenship and Immigration Services (USCIS) published a proposed rule on January 4, 2023, to raise fees. The Department of Homeland Security (DHS) also proposes to fund the asylum program with a controversial new Asylum Program Fee of \$600 to be paid by employers who file either a Form I-129, Petition for a Nonimmigrant Worker, or Form I-140, Immigrant Petition for Alien Worker. DHS said it has determined "that the Asylum Program Fee is an effective way to shift some costs to requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers." This new \$600 fee would be in addition to processing fees for those petitions.

USCIS said it "cannot maintain adequate service levels with the effects of the budget cuts and its current level of spending without lasting impacts on operations." The proposed rule states that if USCIS fees are not adjusted, "USCIS processing times and backlogs will not improve."

The proposed changes include, among others, incorporating biometrics costs into the main benefit fee and removing the separate biometrics fee; requiring separate filing fees for Form I-485, Application to Register Permanent Residence or Adjust Status, and associated Form I-131, Application for Travel Document (advance parole), and Form I-765, Application for Employment Authorization; establishing separate fees for Form I-129 by nonimmigrant classification; revising the premium processing timeframe interpretation from calendar days to business days; and creating lower fees for forms filed online.

The proposed fee hikes include, among others:

- **Application for Employment Authorization – Online**, from current \$410 to new \$555
- **Application for Employment Authorization – Paper**, from current \$410 to new \$650
- **Application for Employment Authorization – Online and Paper** (with biometric services), from current \$495 to new \$650

- **H-1B Pre-Registration Fee**, from current \$10 to proposed \$215
- **I-129 Petition for a Nonimmigrant Worker: H-1 Classifications**, from current \$460 to proposed \$780
- **I-129 Petition for L Nonimmigrant Worker**, from current \$460 to proposed \$1,385
- **I-129 Petition for O Nonimmigrant Worker**, from current \$460 to proposed \$1,055
- **I-140 Immigrant Petition for Alien Worker**, from current \$700 to proposed \$715
- **H-2A Petition – Named Beneficiaries**, from current \$460 to proposed \$1,090
- **H-2A Petition – Unnamed Beneficiaries**, from current \$460 to proposed \$530
- **H-2B Petition – Named Beneficiaries**, from current \$460 to proposed \$1,080
- **H-2B Petition – Unnamed Beneficiaries**, from current \$460 to proposed \$580
- **I-526 Immigrant Petition by Standalone Investor**, from current \$3,675 to proposed \$11,160
- **Immigrant Petition by Regional Center Investor**, from current \$3,675 to proposed \$11,160
- **Application for Regional Center Designation**, from current \$17,795 to proposed \$47,695
- **I-485 Application to Register Permanent Residence or Adjust Status (with biometric services)**, from current \$1,225 to proposed \$1,540

Comments on the proposed rule are due by March 6, 2023. USCIS will hold a public engagement session on January 11, 2023, from 2 to 3:30 p.m. ET. For more information or to register, see <https://www.uscis.gov/outreach/upcoming-national-engagements/uscis-virtual-listening-session-on-proposed-rule-to-adjust-certain-immigration-fees>.

Details:

- Proposed rule, 88 Fed. Reg. 402 (Jan. 4, 2023). <https://www.govinfo.gov/content/pkg/FR-2023-01-04/pdf/2022-27066.pdf>
- USCIS news release, Jan. 3, 2023. <https://www.uscis.gov/newsroom/news-releases/uscis-issues-proposed-rule-to-adjust-certain-immigration-and-naturalization-fees>
- Proposed Fee Rule Frequently Asked Questions, USCIS, <https://www.uscis.gov/proposed-fee-rule-frequently-asked-questions>

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DHS Implements New Processes for Cubans, Haitians, and Nicaraguans and Eliminates Cap for Venezuelans

The Department of Homeland Security (DHS) announced a new process, effective January 6, 2023, for certain qualifying Cubans, Haitians, and Nicaraguans with U.S.-based supporters to travel by air to and temporarily reside in the United States. Such individuals may also apply for work authorization. DHS also eliminated the numerical cap for a similar process for Venezuelans announced previously.

Under the new process, qualifying nationals of Cuba, Haiti, and Nicaragua who are outside the United States and lack U.S. entry documents can be considered, on a case-by-case basis, for advance authorization to travel to the United States and seek a temporary period of humanitarian parole for up to two years if they:

- Have a supporter in the United States who will provide financial and other support;
- Undergo and clear "robust security vetting";

- Meet other eligibility criteria; and
- Warrant a favorable exercise of discretion.

DHS said it "strongly encourages Cubans, Haitians, Nicaraguans, and Venezuelans seeking entry in the U.S. who do not have and are not eligible for a visa to instead seek entry via this process, as this will be the safest and most effective way to pursue a temporary stay in the United States. Individuals complete the process electronically and should not approach the border to access this process."

U.S.-based individuals may submit Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, on behalf of named nationals of Cuba, Haiti, or Nicaragua. Neither the U.S. supporter nor the beneficiary must pay the U.S. government a fee for the Form I-134A or participation in this process, DHS said.

Implementation of changes to the parole process for Cubans, Haitians, Nicaraguans, and Venezuelans, effective January 6, 2023, is expected to be announced in notices to be published in the Federal Register on January 9, 2023. DHS began using the Form I-134A for these processes on January 6, 2023.

Details:

- USCIS alert, Jan. 6, 2023. <https://www.uscis.gov/newsroom/alerts/dhs-implements-new-processes-for-cubans-haitians-and-nicaraguans-and-eliminates-cap-for-venezuelans>
- "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans" page, USCIS. <https://www.uscis.gov/CHNV>
- Form I-134A, Online Request to be a Supporter and Declaration of Financial Support. <https://www.uscis.gov/i-134a>
- "Implementation of changes to the parole process for [Venezuelans](#), [Haitians](#), [Nicaraguans](#), and [Cubans](#), DHS, Jan. 9, 2023 (advance copies).

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OFLC Completes Random Assignments of H-2B Applications for Second Half of FY 2023 Visa Cap

The Department of Labor's Office of Foreign Labor Certification (OFLC) has completed the process to randomly assign all H-2B applications submitted during the initial three-day filing window, January 1-3, 2023, requesting an April 1, 2023, work start date for the second half of the fiscal year 2023 H-2B statutory visa cap.

OFLC received a total of 8,693 H-2B applications requesting 142,796 worker positions during this filing period (between January 1-3, 2023). This was an increase from 2022, when it received a total of 7,875 H-2B applications covering 136,555 worker positions. The agency said it will provide written notification to employers (and the employer's authorized attorney or agent) with their H-2B Assignment Group. On January 9, 2023, OFLC will also publish on its website the list of the H-2B applications assigned to each Assignment Group.

Details:

- OFLC Conducts Randomization Process on H-2B Applications Submitted Requesting an April 1, 2023, Work Start Date," OFLC, Jan. 4, 2023. <https://www.dol.gov/agencies/eta/foreign-labor>

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Omnibus Spending Legislation Includes Several Immigration-Related Provisions

The Consolidated Appropriations Act, 2023 (H.R. 2617, Public Law No. 117-328, Dec. 29, 2022) includes various immigration-related provisions, such as \$800 million in competitive grants under a new U.S. Customs and Border Protection "Shelter and Services" program for state and local governments and nonprofits dealing with an influx of migrants, to help cover the costs of supportive services to migrants, like shelter, transportation, food, first aid, and COVID-19 testing; an extension of the Special Immigrant Visa program, which primarily benefits Afghans, through 2024; millions of dollars in enhancements to border security technology and enforcement; \$133 million to meet the refugee admissions goal of 125,000 for fiscal year 2023; and a new grant program to provide "humanitarian assistance that bolsters the operational capabilities of the U.S. Border Patrol."

Details:

- Text of H.R. 2617.
<https://www.appropriations.senate.gov/imo/media/doc/JRQ121922.PDF>
- Explanatory statements and bill summaries.
<https://www.appropriations.senate.gov/news/majority/chairman-patrick-leahy-d-vt-releases-fiscal-year-2023-omnibus-appropriations-bill>
- Department of Homeland Security explanatory statement.
<https://www.appropriations.senate.gov/imo/media/doc/Division%20F%20-%20Homeland%20Statement%20FY23.pdf>
- "Federal Spending Bill to Include \$800 Million in Grants for Cities Dealing With Migrant Crisis," Politico, Dec. 20, 2022. <https://www.politico.com/news/2022/12/20/omnibus-spending-bill-migrants-00074785>
- "Congress Reaches Deal to Save U.S. Visa Program for War Interpreters," Stars and Stripes, Dec. 20, 2022. <https://www.stripes.com/theaters/us/2022-12-20/siv-afghan-ndaa-8486433.html>

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U.S. Embassy in Havana Resumes Full Immigrant Visa Processing

On January 4, 2023, the U.S. Embassy in Havana resumed full immigrant visa processing, including all visa categories. The embassy also announced that the United States is expanding consular operations in Havana and restarting the Cuban Family Reunification Parole Program.

Since 2017, the U.S. Embassy in Georgetown, Guyana, was serving as the primary processing location for Cuban immigrant visa applicants while the U.S. Embassy in Havana was closed due to unexplained health-related incidents.

Details:

- Press Release, U.S. Embassy, Havana, Cuba, Dec. 30, 2022.
<https://cu.usembassy.gov/resumption-of-visa-services/>

- "U.S. Embassy in Cuba Reopening Visa and Consular Services," NBC News, Jan. 4, 2023. <https://www.nbcnews.com/news/latino/us-embassy-cuba-reopening-visa-consular-services-rcna64217>

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On December 19, 2022, Supreme Court Chief Justice John Roberts ordered Title 42, which allows the immediate expulsion of many migrants because of COVID-19 concerns, to temporarily remain in effect to allow the full Supreme Court time to consider the issue. On December 27, 2022, the Supreme Court extended Title 42. The Court plans to consider in late February 2023 whether the 19 states objecting to Title 42's termination have legal standing to do so.

The Court's December 27 opinion noted that its review on certiorari "is limited to the question of intervention. While the underlying merits of the District Court's summary judgment order [terminating Title 42] are pertinent to that analysis, the Court does not grant review of those merits, which have not yet been addressed by the Court of Appeals."

The court's three liberal justices objected, as did Justice Neil Gorsuch, who wrote, "The current border crisis is not a COVID crisis. And courts should not be in the business of perpetuating administrative edicts designed for one emergency only because elected officials have failed to address a different emergency. We are a court of law, not policymakers of last resort."

Karine Jean-Pierre, the White House press secretary, said that although the Biden administration will comply with the Supreme Court's action, "Title 42 is a public health measure, not an immigration enforcement measure, and it should not be extended indefinitely."

Details:

- "Supreme Court Says Trump-Era Border Restriction Will Remain in Effect While Legal Challenges Play Out," CNN, Dec. 27, 2022. <https://www.cnn.com/2022/12/27/politics/supreme-court-title-42/index.html>
- "Supreme Court Leaves in Place Title 42 Border Policy for Now," Washington Post, Dec. 27, 2022. <https://www.washingtonpost.com/politics/2022/12/27/title-42-supreme-court-decision/> (subscription required)
- Arizona v. Mayorkas, order issued Dec. 27, 2022. https://www.supremecourt.gov/opinions/22pdf/22a544_n758.pdf
- Arizona v. Mayorkas, order issued Dec. 19, 2022. https://www.supremecourt.gov/orders/courtorders/121922zr_g314.pdf
- Federal respondents' opposition to application for a stay pending certiorari, Dec. 20, 2022. https://www.supremecourt.gov/DocketPDF/22/22A544/250530/20221220190658873_22A544%20Govt%20opp%20to%20Ariz%20stay%20final%20corrected.pdf
- Application for a stay, submitted to Chief Justice Roberts Dec. 19, 2022. https://www.supremecourt.gov/DocketPDF/22/22A544/250328/20221219140309326_Title%2042%20-%20Emergency%20Application%20for%20Stay%20File%20Version.pdf

- Reply of applicant Arizona, et al. filed, Dec. 21, 2022.
[https://www.supremecourt.gov/DocketPDF/22/22A544/250553/20221221084240400 Title%2042%20-%20Emergency%20Stay%20Reply%20File%20Version%20Final%20.pdf](https://www.supremecourt.gov/DocketPDF/22/22A544/250553/20221221084240400_Title%2042%20-%20Emergency%20Stay%20Reply%20File%20Version%20Final%20.pdf)

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Visa Bulletin for January 2023 Reports on Availability in the Employment First Category for China and India, Unavailability of Religious Workers Category

The Department of State's (DOS) Visa Bulletin for January includes an update on visa availability in the employment first category for China and India. The bulletin states that it has become necessary to establish employment first preference final action and application filing dates for China and India, effective in January, to hold number use within the maximum allowed under the fiscal year 2023 annual limit. Applicants from China and India are subject to a final action date of 01FEB22 and an application filing date of 01JUN22.

"This situation will be continually monitored, and any necessary adjustments will be made accordingly," the bulletin states.

Details:

- Department of State's Visa Bulletin for January 2023.
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-january-2023.html>

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TPS for Yemen Extended, Redesignated

The Department of Homeland Security (DHS) extended and redesignated Yemen for temporary protected status (TPS) in a Federal Register notice published on January 3, 2023.

DHS is extending TPS for Yemen for 18 months, beginning on March 4, 2023, through September 3, 2024. Existing Yemen TPS beneficiaries who wish to extend their status and apply for renewal of their work authorization must re-register during the 60-day re-registration period, which begins on the date of publication.

DHS is also redesignating Yemen for TPS, which allows additional Yemeni nationals, and individuals having no nationality who last habitually resided in Yemen, who have been continuously residing in the United States since December 29, 2022, to apply for TPS for the first time and apply for work authorization during the initial registration period, which begins on the date of publication and will remain in effect through September 3, 2024. Initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since March 4, 2023, the effective date of the redesignation.

DHS noted that individuals who have a Yemen TPS application (Form I-821) and/or Application for Employment Authorization (Form I-765) that was still pending as of the date of publication of the notice do not need to file either application again. If USCIS approves an individual's pending Form I-821, the agency will grant the individual TPS through September 3, 2024. Similarly, if USCIS approves a pending TPS-related Form I-765, it will issue the individual a new EAD that will be valid through the same date.

Details:

- Federal Register notice (advance copy). <https://bit.ly/3CeQ12N>

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CDC Announces New COVID-19 Testing Requirement for Air Passengers From China

Effective January 5, 2023, the Centers for Disease Control and Prevention (CDC) is requiring a pre-departure negative COVID-19 test, or documentation of recovery within the last 90 days, for air passengers boarding flights to the United States originating from the People's Republic of China (PRC) and the Special Administrative Regions of Hong Kong and Macau.

CDC said it is announcing this step "to slow the spread of COVID-19 in the United States during the surge in COVID-19 cases in the PRC given the lack of adequate and transparent epidemiological and viral genomic sequence data being reported from the PRC. These data are critical to monitor the case surge effectively and decrease the chance for entry of a novel variant of concern. CDC will continue to monitor the situation and adjust our approach as necessary."

CDC made the decision following China's announcement that it is dropping quarantine requirements for inbound international arrivals and resuming outbound travel for Chinese citizens. According to reports, a regional health chief in Hong Kong said that almost half of air passengers arriving on December 26, 2022, in Italy's Milan airport from China tested positive for COVID-19. Although some countries in addition to the United States have imposed restrictions, such as Japan, Spain, and Italy, so far others are not changing their entry requirements, such as France and Great Britain, although the latter is reportedly considering the issue. India imposed similar restrictions on travelers from Japan, South Korea, and Thailand, in addition to China.

Details:

- CDC Press Release, Dec. 28, 2022. <https://www.cdc.gov/media/releases/2022/p1228-COVID-china.html>
- "China Health Alert: Negative COVID-1 Test Requirement for Air Passengers Entering the United States," Dec. 28, 2022. <https://travel.state.gov/content/travel/en/traveladvisories/ea/China-Negative-COVID-19-Test-Requirement-for-Air-Passengers-Entering-the-United-States.html>
- "Chinese Tourists Are Ready to Travel Abroad Again. Here's Why Some Countries Are Hesitant," CNN, Dec. 30, 2022. <https://www.cnn.com/travel/article/china-covid-travel-restrictions-intl-hnk/index.html>
- "China to Scrap Quarantine for Inbound Travelers in Major Step Toward Reopening," CNN, Dec. 26, 2022. <https://www.cnn.com/2022/12/26/business/china-travel-covid-quarantine/index.html>

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DHS, DOJ Further Delay Effective Date of Asylum Security Bars Rule

The Departments of Homeland Security and Justice have further extended until December 31, 2024, the effective date of a final rule that clarifies that the "danger to the security of the United States" standard in the statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and makes certain other changes. The effective date of the final rule, originally published on December 23, 2020, has been extended several times. The rule would make noncitizens ineligible for asylum if, among other things, they were physically present in a country in which a communicable disease was prevalent or epidemic, and the Secretary of Homeland Security and the Attorney General determined that

their physical presence in the United States would cause a risk to public health.

Comments may be submitted by February 27, 2023, by following the instructions in the interim final rule published on December 28, 2022.

Details:

- DHS/DOJ Interim Final Rule, 87 Fed. Reg. 79789 (Dec. 28, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-12-28/pdf/2022-28121.pdf>

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DOL Publishes Round 4 FAQs on H-2A Application Filing and Processing Under Final Rule

The Department of Labor's Office of Foreign Labor Certification (OFLC) has issued a set of frequently asked questions (FAQs), "Round 4: H-2A Application Filing and Processing," associated with the publication of the final rule, "Temporary Agricultural Employment of H-2A Nonimmigrants in the United States."

Topics include how to file, timing considerations, multiple worksites, National Processing Center processing, amendment requests, and withdrawal requests.

Details:

- "Round 4: H-2A Application Filing and Processing," OFLC FAQ, Dec. 30, 2022.
https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Round%2004_2022%20H-2A%20FAQs_H-2A%20App%20Filing%20and%20Processing.pdf

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DHS Public Charge Ground of Inadmissibility Final Rule Effective December 23

On December 23, 2022, the Department of Homeland Security's (DHS) Public Charge Ground of Inadmissibility final rule went into effect. The previously announced final rule "provides clarity and consistency for noncitizens on how DHS will administer the public charge ground of inadmissibility. This final rule restores the historical understanding of a 'public charge' that had been in place for decades before the previous administration began to consider supplemental public health benefits such as Medicaid and nutritional assistance as part of the public charge inadmissibility determination," DHS said.

When making a public charge inadmissibility determination under the final rule, DHS said it will consider an applicant's "age; health; family status; assets, resources, and financial status; education and skills"; a sufficient "Affidavit of Support Under Section 213A of the INA (when one is required)"; and prior or current receipt of "Supplemental Security Income (SSI); cash assistance for income maintenance under Temporary Assistance for Needy Families (TANF); State, Tribal, territorial, or local cash benefit programs for income maintenance (often called 'General Assistance'); or long-term institutionalization at government expense."

For public charge inadmissibility determinations, DHS will not consider receipt of noncash benefits (for example, the Supplemental Nutrition Assistance Program, public housing, school lunch programs) other than long-term institutionalization at government expense.

Applicants must file the updated 12/23/22 edition of I-485, Application to Register Permanent Residence or Adjust Status. Earlier versions will be rejected, U.S. Citizenship and Immigration Services (USCIS) said.

Details:

- USCIS alert, Dec. 19, 2022. <https://www.uscis.gov/newsroom/alerts/dhss-public-charge-final-rule-goes-into-effect-on-dec-23>
- Public Charge Ground of Inadmissibility, DHS Final Rule, 87 Fed. Reg. 55472 (Sept. 9, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-09-09/pdf/2022-18867.pdf>
- USCIS Policy Manual update, Part G—Public Charge Ground of Inadmissibility. <https://www.uscis.gov/policy-manual/volume-8-part-g>
- Updated Form I-485, Application to Register Permanent Residence or Adjust Status (12/23/22 edition). <https://www.uscis.gov/i-485>
- Public Charge Resources, USCIS. <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>
- Clarifying the 2022 Public Charge Final Rule (infographic). https://www.uscis.gov/sites/default/files/document/flyers/PublicChargeFinalRule2022_Infographic_V4_508.pdf

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E-Verify Restores Employers' Ability to Upload Multiple Hiring Sites Simultaneously

E-Verify has restored the ability of employers, employer agents, and corporate administrators to upload multiple hiring sites simultaneously. E-Verify said this feature increases efficiency for companies with multiple hiring sites by providing an alternative to manual entry and is available for all access methods when adding hiring sites.

An account may have an unlimited number of hiring sites, but no more than 1,000 hiring sites may be uploaded at a time. Users can add multiple hiring sites by uploading a CSV file during initial enrollment or within the company profile post-enrollment. Companies must upload a valid CSV file that follows the requirements listed on the "View CSV Guidelines" page. E-Verify provides a CSV template and a link to the "View CSV Guidelines" page during the bulk upload process.

Questions may be emailed to E-Verify@uscis.dhs.gov.

Details:

- E-Verify notice. <https://bit.ly/3VjhFm4>

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USCIS Provides List of Options for Nonimmigrant Workers Following Termination of Employment

On December 19, 2022, U.S. Citizenship and Immigration Services (USCIS) provided a compilation of options that may be available to nonimmigrant workers seeking to remain in the United States in a period of authorized stay following termination of employment.

The compilation includes details on:

- A discretionary 60-day grace period that allows workers in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, or TN classifications (and their dependents) to be considered as having maintained status following the cessation of employment for up to 60 consecutive calendar days or until the end of the authorized validity period, whichever is shorter.
- Portability to a new employer, allowing workers currently in H-1B status to begin working for a new employer as soon as the employer properly files a new H-1B petition with USCIS, without waiting for the petition to be approved. Also, a worker with an adjustment of status application (Form I-485) that has been pending for at least 180 days with an underlying valid immigrant visa petition (Form I-140) has the ability to transfer the underlying immigrant visa petition to a new offer of employment in the same or similar occupational classification with the same or a new employer (commonly known as "porting").

Other options include change of status, change of status and employer, adjustment of status, period of authorized stay with a "compelling circumstances" employment authorization document, expedited adjudication criteria, and departure from the United States and seeking readmission in the same or another classification.

Details:

- USCIS alert, Dec. 19, 2022. <https://www.uscis.gov/newsroom/alerts/options-for-nonimmigrant-workers-following-termination-of-employment>

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USCIS Seeks Comments on EB-5 Regional Center Forms for Investors

U.S. Citizenship and Immigration Services (USCIS) seeks comments until January 23, 2023, on two forms associated with the EB-5 Regional Center (RC) program.

USCIS explained that on March 15, 2022, President Biden signed the EB-5 Reform and Integrity Act of 2022, which immediately repealed the former RC program statute. The law also reauthorized a "substantially reformed" RC program, effective May 14, 2022. USCIS said that although it will continue to provide similar services for the newly reformed RC program as it did under the former RC program, the newly authorized program "has a different legal framework and requirements from the previously authorized program." Consequently, USCIS concluded that Form I-526, Immigrant Petition by Alien Entrepreneur, associated with the EB-5 program, would not gather sufficient information to adjudicate investor petitions under the new program.

Accordingly, USCIS split the former Form I-526, Immigrant Petition by Alien Entrepreneur, into two versions: Form I-526, Immigrant Petition by Standalone Investor, and Form I-526E, Immigrant Petition by Regional Center Investor. USCIS said the two separate forms were intended "to better streamline the adjudication process for Standalone Investors and Regional Center Investors; specifically, Form I-526 will be used by a Standalone Investor and Form I-526E will be used by an investor pooling their investment with one or more qualified immigrants" under the new RC program to petition for status as an immigrant to the United States. USCIS began accepting the new Forms I-526 and I-526E on July 12, 2022. USCIS said it will continue to adjudicate all Forms I-526 filed before March 15, 2022 (the date of enactment of the EB-5 Reform and Integrity Act of 2022), according to the applicable eligibility requirements at the time the petition was filed.

On June 24, 2022, in *Behring v. Mayorkas*, the U.S. District Court for the Northern District of California preliminarily enjoined USCIS from "treating as deauthorized the previously designated regional centers" including "processing new I-526 petitions from immigrants investing through previously authorized regional centers...just as the agency would do for a newly approved regional center." On September 1, 2022, the U.S. District Court in *Behring* approved a settlement between the parties. Under the terms of the settlement, previously designated RCs did not lose their designations as a result of the EB-5 Reform and Integrity Act of 2022. USCIS said that as it is working to implement the settlement, if it determines changes to the Forms I-526 and I-526E are necessary, it will "pursue such changes through either this form revision process or other appropriate mechanism."

Details:

- USCIS 30-day notice. 87 Fed. Reg. 78990 (Dec. 23, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-12-23/pdf/2022-27973.pdf>
- I-526, Immigrant Petition by Standalone Investor. <https://www.uscis.gov/i-526>
- I-526E, Immigrant Petition by Regional Center Investor. <https://www.uscis.gov/i-526e>

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USCIS Increases H-2B Nonimmigrant Visa Availability

In a temporary final rule published on December 15, 2022, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has increased the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for fiscal year (FY) 2023. To "assist U.S. businesses that need workers to begin work on different start dates," the Departments of Homeland Security (DHS) and Labor (DOL) will distribute the supplemental visas in several allocations, including two separate allocations in the second half of FY 2023.

Of the total 64,716 visas made available, 20,000 visas are reserved for nationals of Guatemala, El Salvador, Honduras, or Haiti. All 64,716 visas are available only to "those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form." In addition to making the additional 64,716 visas available under the FY 2023 time-limited authority, DHS is exercising its general H-2B regulatory authority to provide temporary portability flexibility again by allowing H-2B workers who are already in the United States to begin work immediately after an H-2B petition (supported by a valid temporary labor certification) is received by U.S. Citizenship and Immigration Services (USCIS) and before it is approved.

DHS will not accept any H-2B petitions under provisions related to the FY 2023 supplemental numerical allocations after September 15, 2023, and will not approve any such H-2B petitions after September 30, 2023. Provisions related to portability are only available to petitioners and H-2B nonimmigrant workers starting work by January 24, 2024.

USCIS previously announced that petitioners requesting additional H-2B workers under the rule must file their petitions at the California Service Center. This change does not affect the filing locations for petitions filed under the permanent H-2B regulations, whether they are cap-subject or cap-exempt. USCIS also announced that it is temporarily suspending premium processing for H-2B supplemental cap petitions until January 3, 2023. Premium processing remains available for all other H-2B petitions.

DHS and DOL are accepting written public comments on the temporary final rule and related new information collection (Form ETA-9142B-CAA-7) by February 13, 2023. Instructions on submitting comments are included in the temporary final rule.

Details:

- Temporary final rule, DOL/DHS, 87 Fed. Reg. 76816 (Dec. 15, 2022). <https://bit.ly/3WtMRQz>
- "DHS and DOL Announce Availability of Additional H-2B Visas for Fiscal Year 2023," USCIS News Release, Dec. 12, 2022. <https://www.uscis.gov/newsroom/news-releases/dhs-and-dol-announce-availability-of-additional-h-2b-visas-for-fiscal-year-2023>
- "USCIS Announces Important Filing Information for Upcoming FY 2023 H-2B Supplemental Cap Petitions," USCIS Alert, Dec. 8, 2022. <https://bit.ly/3URJtOu>
- "DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for Fiscal Year 2023," USCIS Alert, Oct. 12, 2022. <https://bit.ly/3FQFu09>

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DHS Issues Update on Southwest Border Security and Preparedness Under Court-Ordered Lifting of 'Title 42'; Termination of 'Remain in Mexico' Program Paused

The Department of Homeland Security (DHS) issued an update on December 13, 2022, on southwest border security and preparedness in anticipation of a court-ordered lifting of Title 42 by December 21, 2022, which was upheld by the D.C. Circuit Court of Appeals in a ruling on December 16, 2022. Title 42 prevented many migrants from seeking asylum in the United States because of COVID-19 concerns and required them to wait in Mexico. DHS said the update "reviews the DHS-led whole-of-government framework guiding preparations for and management of increased encounters of noncitizens at our Southwest Border following the lifting of the Title 42 public health order."

In November, a district court issued the ruling that required the lifting of the Title 42 public health order effective December 21, 2022. DHS said that individuals who cross the border into the United States without legal authorization will be processed for removal and, if unable to establish a legal basis to remain in the United States, promptly removed. DHS said it anticipates that "migration levels will increase as smugglers seek to take advantage of and profit from vulnerable migrants once the Title 42 public health order is lifted. This will likely include spreading false information about what the end of Title 42 will mean." Reports from some shelters and border areas such as El Paso, Texas, indicate that a recent influx of migrants has been overwhelming local resources.

In other news, a federal judge in Texas paused the termination of the Migrant Protection Protocols, informally known as the "Remain in Mexico" program, which requires some non-Mexican citizens who entered the United States to wait in Mexico during their immigration proceedings, instead of allowing them into, or detaining them in, the United States. A DHS official said the Biden administration disagreed with that decision and was determining "next steps."

Details:

- "U.S. Court Rejects Maintaining COVID-19 Asylum Restrictions," Associated Press, Dec. 17, 2022. <https://apnews.com/article/texas-donald-trump-immigration-missouri-amarillo-e6f9ce07b955bdc962118a798129f319>
- "Federal Judge Says Biden Can't Yet End Trump-Era 'Remain in Mexico' Immigration Policy," CNN, Dec. 16, 2022. <https://www.cnn.com/2022/12/15/politics/remain-in-mexico-immigration/index.html>
- Texas v. Biden ("Remain in Mexico" ruling), Dec. 15, 2022. <https://www.documentcloud.org/documents/23462906-ruling-on-remain-in-mexico-program>

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OFLC Publishes New 2023 H-2A Hourly Adverse Effect Wage Rates for Non-Range Occupations and for Herding or Production of Livestock on the Range

In two notices, the Department of Labor's Employment and Training Administration (ETA) announced the new Adverse Effect Wage Rates (AEWRs) under the H-2A program for (1) agricultural labor or services other than the herding or production of livestock on the range, and (2) occupations involving herding or production of livestock on the range.

Details:

- Notice announcing 2023 hourly AEWRs for non-range occupations, 87 Fed. Reg. 77142 (Dec. 16, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27332.pdf>
- Notice announcing 2023 AEWRs for herding or production of livestock on the range, 87 Fed. Reg. 77141 (Dec. 16, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27333.pdf>
- AEWRs by state (page), ETA. <https://www.dol.gov/agencies/eta/foreign-labor/wages/adverse-effect-wage-rates>
- AEWRs by state (map), ETA. <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/AEWR-Map-2023.pdf>

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Guangzhou Immigrant Visa Unit Closes Until Further Notice; Limited Services Announced at Other U.S. Embassies and Consulates in China

The Immigrant Visa Unit of the U.S. consulate in Guangzhou, China, announced that beginning December 19, 2022, it is closed for regular visa services until further notice due to limited resources. The unit will notify the public once it is able to resume normal immigrant visa (IV) operations and will communicate with IV applicants to reschedule their canceled appointments.

A web form is available at <https://china.usembassy-china.org.cn/visas/immigrant-visas/immigrant-visa-unit-question/> to submit questions, although response times are expected to be delayed.

The U.S. Mission in China also announced that due to the surge of COVID-19 infections across

China, the U.S. embassy in Beijing and the U.S. consulate in Shanghai are providing passport and emergency citizen services only. The U.S. consulates in Wuhan, Shenyang, and Guangzhou are only providing emergency consular services until further notice.

Details:

- "Alert: Update From U.S. Mission China Consular Services for December 15, 2022," Dec. 16, 2022. <https://china.usembassy-china.org.cn/alert-update-from-u-s-mission-china-consular-services-for-december-15-2022/>
- "Alert: Reduction in Non-Emergency Consular Operations at U.S. Consulate Shenyang and U.S. Consulate Wuhan," Dec. 13, 2022. <https://china.usembassy-china.org.cn/alert-reduction-in-non-emergency-consular-operations-at-u-s-consulate-shenyang-and-u-s-consulate-wuhan/>

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USCIS Announces Trial for Naturalization Test Updates

The Department of Homeland Security announced that U.S. Citizenship and Immigration Services (USCIS) intends to conduct a trial for updates to the current naturalization test. The trial is tentatively scheduled for a five-month period in 2023.

The purpose of the trial is to test a civics component with updated format and content and a newly developed English-speaking component "that could become standard." The naturalization test has four components: reading, writing, civics, and ability to speak English. Currently, the reading and writing portions of the naturalization test are standard.

In response to President Biden's executive order 14012, which included a directive to review the naturalization process, USCIS subject-matter experts reviewed the naturalization test and recommended redesigning the speaking and civics portions to improve standards. The proposed revisions are also "consistent with the feedback that USCIS has received from multiple external stakeholder groups," the agency said.

USCIS will conduct the trial with the help of volunteer community-based organizations (CBOs) that work with immigrant English-language learners and lawful permanent residents preparing for naturalization. USCIS will seek approximately 1,500 individuals enrolled in adult education classes to take the trial test. The agency will conduct national engagements for interested CBOs and will then publish a request for volunteer CBOs.

Details:

- "USCIS News Release, Dec. 14, 2022. <https://www.uscis.gov/newsroom/news-releases/uscis-announces-trial-for-updates-to-the-naturalization-test>

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USCIS Announces 'Important' H-2B Supplemental Cap Petition Filing Updates Before Publication of Temporary Final Rule

On December 8, 2022, U.S. Citizenship and Immigration Services (USCIS) announced "important" filing updates for petitioners who will be requesting additional H-2B workers for fiscal year 2023 under the upcoming temporary final rule. USCIS said it was announcing these updates to assist petitioners who wish to begin preparing their petitions before publication of a rule in the Federal Register.

Highlights of the announcement include:

Centralized Filing Location

Petitioners requesting additional H-2B workers under the upcoming rule must file their petitions at the California Service Center. Petitions filed under the supplemental allocations in this rule at any location other than the California Service Center will be rejected and the filing fees will be returned. This change does not affect the filing locations for petitions filed under the permanent H-2B regulations, whether they are cap-subject or cap-exempt.

Temporary Suspension of Premium Processing

Immediately upon publication of the upcoming rule, USCIS is temporarily suspending premium processing for H-2B supplemental cap petitions until January 3, 2023. Until premium processing resumes for H-2B supplemental cap petitions, USCIS said it will reject any Form I-907 concurrently filed with a Form I-129 filed under the supplemental allocations in the upcoming rule. USCIS has warned employers not to "file a request to upgrade to premium processing until you have received a receipt notice and can submit your request with the receipt number for your H-2B petition. If you request an upgrade to premium processing and have not provided this information, we will reject your Form I-907 and return the filing fee."

Premium processing remains available for all other H-2B petitions.

Details:

- "USCIS Announces Important Filing Information for Upcoming FY 2023 H-2B Supplemental Cap Petitions," USCIS Alert, Dec. 8, 2022. <https://bit.ly/3URJt0u>
- "DHS to Supplement H-2B Cap With Nearly 65,000 Additional Visas for Fiscal Year 2023," USCIS Alert, Oct. 12, 2022. <https://bit.ly/3FQFu09>

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Green Cards Automatically Extended for Naturalization Applicants Who File on 12/12/22 or Later, USCIS Says

U.S. Citizenship and Immigration Services (USCIS) said it is automatically extending the validity of Permanent Resident Cards (green cards) for lawful permanent residents (LPRs) who applied for naturalization on December 12, 2022, or later.

USCIS will update the language on Form N-400 receipt notices to extend green cards for up to 24 months for these applicants. The receipt notice can be presented with the expired green card as evidence of continued status as well as for identity and employment authorization under List A of Employment Eligibility Verification (Form I-9) if presented before the expiration of the 24-month extension period, the agency said.

LPRs who filed for naturalization before December 12, 2022, will not receive a Form N-400 receipt notice with the extension. If their green card expires, they must still file Form I-90 or receive an ADIT stamp in their passport to maintain valid evidence of their LPR status. LPRs who lose their green card still must file Form I-90, even if they have applied for naturalization and received the automatic extension under the updated policy. USCIS said this is because noncitizens must carry within their personal possession proof of registration, such as the green card and any evidence of extensions, "or may be subject to criminal prosecution under INA 264(e)." Applicants who require an ADIT stamp may request an appointment at a USCIS Field Office from the [USCIS Contact Center](#).

Details:

- "USCIS Updates Policy to Automatically Extend Green Cards for Naturalization Applicants," USCIS Alert, Dec. 9, 2022. <https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-to-automatically-extend-green-cards-for-naturalization-applicants>
- "Extension of Permanent Resident Card for Naturalization Applicants," USCIS Policy Alert, PA-2022-26, Dec. 9, 2022. <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221209-ExtendingPRC.pdf>
- USCIS Policy Manual, <https://www.uscis.gov/policy-manual>

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Registration Process Begins for Ethiopia TPS; DHS Provides Relief for F-1 Nonimmigrant Ethiopian Students

The Department of Homeland Security (DHS) announced several measures to provide relief for Ethiopians in the United States:

Registration Process for Ethiopia TPS Begins

In October, DHS announced the 18-month designation of Ethiopia for temporary protected status (TPS). The registration process began on December 12, 2022, and runs through June 12, 2024. U.S. Citizenship and Immigration Services (USCIS) estimates that about 26,700 individuals may be eligible for TPS under Ethiopia's designation.

To be eligible for TPS under Ethiopia's designation, individuals must demonstrate their continuous residence in the United States since October 20, 2022, and continuous physical presence in the United States since December 12, 2022. Individuals arriving in the United States after October 20, 2022, are not eligible for TPS under this designation and may be subject to removal if they have no other authorization to be in the United States, DHS said.

Relief Provided for F-1 Nonimmigrant Ethiopian Students

Effective December 12, 2022, through June 12, 2024, DHS is suspending certain regulatory requirements for F-1 nonimmigrant students whose country of citizenship is Ethiopia, regardless of country of birth (or individuals having no nationality who last habitually resided in Ethiopia), who are experiencing severe economic hardship as a direct result of the current crisis in Ethiopia.

DHS said these students may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status. DHS said it will deem such an F-1 nonimmigrant student to be engaged in a "full course of study" for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in the notice.

Details:

- "DHS Announces Registration Process for Temporary Protected Status for Ethiopia," USCIS News Release, Dec. 9, 2022. <https://www.uscis.gov/newsroom/news-releases/dhs-announces-registration-process-for-temporary-protected-status-for-ethiopia>

- "Designation of Ethiopia for Temporary Protected Status," USCIS, 87 Fed. Reg. 76074 (Dec. 12, 2022) (advance copy). <https://www.govinfo.gov/content/pkg/FR-2022-12-12/pdf/2022-26880.pdf>
- "DHS Designates Ethiopia for Temporary Protected Status for 18 Months," DHS Press Release, Oct. 21, 2022. <https://www.dhs.gov/news/2022/10/21/dhs-designates-ethiopia-temporary-protected-status-18-months>
- "Employment Authorization for Ethiopian F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Ethiopia," DHS notice. 87 Fed. Reg. 76068 (Dec. 12, 2022) (advance copy). <https://www.govinfo.gov/content/pkg/FR-2022-12-12/pdf/2022-26874.pdf>

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DHS Extends and Redesignates TPS for Haiti for 18 Months

The Department of Homeland Security (DHS) announced the extension of temporary protected status (TPS) for Haiti for an additional 18 months, from February 4, 2023, through August 3, 2024. DHS also redesignated Haiti for TPS, allowing Haitian nationals residing in the United States as of November 6, 2022, to apply for TPS through August 3, 2024, so long as they meet all eligibility requirements.

A Federal Register notice will explain the eligibility criteria, timelines, and procedures necessary for current beneficiaries to re-register and renew their employment authorization documents (EADs) and for new applicants to submit an initial application under the redesignation and apply for an EAD, DHS said.

DHS noted that "Haitians entering the United States after November 6, 2022, are not eligible for TPS and, like other individuals without a legal basis to remain in the United States, will be subject to removal."

Details:

- "Secretary Mayorkas Extends and Redesignates Temporary Protected Status for Haiti for 18 Months," DHS Press Release, Dec. 5, 2022. <https://www.dhs.gov/news/2022/12/05/secretary-mayorkas-extends-and-redesignates-temporary-protected-status-haiti-18>
- USCIS Temporary Protected Status page, updated Dec. 5, 2022. <https://www.uscis.gov/humanitarian/temporary-protected-status>

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DOL Publishes More FAQs on 2022 H-2A Final Rule

On December 7, 2022, the Department of Labor's Office of Foreign Labor Certification (OFLC) issued its third round of frequently asked questions related to the 2022 H-2A final rule published in October, "Temporary Agricultural Employment of H-2A Nonimmigrants in the United States."

The FAQs' topics include wage and pay obligations and prevailing wages. Examples and tips for employers are included. One tip notes that if an employer signs work contracts before the State Workforce Agency (SWA) and the OFLC National Processing Center (NPC) accept the job order for recruitment and the SWA or NPC subsequently directs the employer to modify the wage rate listed on the job order, the employer must also modify its work contracts to reflect the

approved wage rate.

Details:

- FAQ, "Round 3: Job Offers, Assurances, and Obligations—Wages," OFLC, Dec. 7, 2022. <https://bit.ly/3FajmMw>

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ABIL Global: Mexico

Mexico has introduced a new online process for the multi-purpose immigration form.

Due to recent adjustments implemented by the immigration authorities (National Immigration institute), the FMM form (multi-purpose immigration form that was usually delivered by airlines to travelers to Mexican national territory or handed out at any port of entry) will no longer be delivered. Only the usual entry stamp will be stamped in the traveler's passport indicating the date of entry and the maximum number of days of authorized stay.

Foreigners who require an FMM form to carry out an immigration procedure may scan a QR code at the port of entry. Once the QR code has been scanned and the foreigner has entered the corresponding website, he or she must create an account and provide the requested data and documents to obtain an Electronic Migratory Multiple Form.

Upon entering Mexican territory, the foreigner must clearly state the purpose of the trip to the immigration authorities and show the corresponding documentation. Otherwise, the immigration officer may register an incorrect immigration status that would prevent the foreigner from continuing with the immigration process.

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New Publications and Items of Interest

Compensation for third-country nationals in Afghanistan. Brown University's Watson Institute published a report, "Uncompensated Allies: How Contracting Companies and U.S. Government Agencies Failed Third-Country Nationals in Afghanistan." The report examines labor abuses during the war in Afghanistan, focusing on how the United States is denying legally required compensation to foreign workers in war zones. The U.S. government leaned heavily on contractors to do its essential work during the war in Afghanistan. In 2020, approximately 65% of wartime contractors were citizens of Afghanistan or a third-party country such as Nepal. The paper states that the U.S. military and Department of Labor have done little to enforce the U.S. Defense Base Act, which calls for the provision of compensation to all workers, regardless of their nationality, injured under U.S. contracts, and for the provision of financial compensation to their kin in case of death. <https://watson.brown.edu/costsofwar/papers/2022/MigrantWorkers>

H-2B checklist for employers on recruitment report content. The Department of Labor's Employment and Training Administration released "H-2B Program: Pre-Final Determination Recruitment Report Content Checklist and Best Practices Guide." The checklist provides best-practice tips and guidance to assist employers in preparing and submitting "clear and complete" recruitment reports to enable final determinations of H-2B applications for temporary employment certification. <https://bit.ly/3v0e41k>

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

Many ABIL members were recognized by EB-5 Investors Magazine's Top 25 awards:

Top 25 Immigration Attorneys (<https://www.eb5investors.com/magazine/article/eb5-top25-winners-immigration-attorneys>):

Joseph Barnett – WR Immigration

Nicolai Hinrichsen – Miller Mayer

John Meyer – Foster LLP

Anusree Nair – Klasko Immigration Law Partners

Kristal Ozmun – Miller Mayer

Top 10 Attorneys in Specialized Fields (<https://www.eb5investors.com/magazine/article/eb5-top25-winners-specialized-fields>):

Charles Foster – Foster LLP

Ronald Klasko – Klasko Immigration Law Partners

Bernard Wolfsdorf – WR Immigration

Stephen Yale-Loehr – Miller Mayer

Top 5 Litigation Attorneys (<https://www.eb5investors.com/magazine/article/eb5-top25-winners-litigation-attorneys>):

Ira Kurzban – Kurzban Kurzban Tetzeli & Pratt

Daniel Lundy – Klasko Immigration Law Partners

Charles Kuck (bio: <https://www.abil.com/abil-lawyers/charles-kuck/>) spoke about the Title 42 case pending at the U.S. Supreme Court on Georgia Public Broadcasting News's "Political Rewind" on January 5, 2023. <https://www.gpb.org/news/2023/01/05/political-rewind-kemp-wont-support-early-democratic-primary-mccarthy-fight-be>

Mr. Kuck released a video, "Immigration Wants Your Money!!," concerning new proposed fee increases. <https://www.linkedin.com/video/live/urn:li:ugcPost:7016465693705465856/>

Cyrus Mehta (bio: <https://www.abil.com/abil-lawyers/cyrus-d-mehta/>) and **Jessica Paszko** co-authored a new blog post: "2022 in Perspective From The Insightful Immigration Blog." <http://blog.cyrusmehta.com/2022/12/2022-in-perspective-from-the-insightful-immigration-blog.html>

Mr. Mehta and **Kaitlyn Box** have co-authored several new blog posts: "United States v. Hansen: Supreme Court Once Again Agrees to Hear Constitutionality of a Smuggling Statute That Could Impact Immigration Lawyers," <http://blog.cyrusmehta.com/2022/12/united-states-v-hansen-supreme-court-once-again-agrees-to-hear-constitutionality-of-a-smuggling-statute-that-could-impact-immigration-lawyers.html>; and "Immigration Enforcement and Prosecutorial Discretion Go Hand in Hand: Will the Supreme Court Upset the Balance?" <http://blog.cyrusmehta.com/2022/12/immigration-enforcement-and-prosecutorial-discretion-go-hand-in-hand-will-the-supreme-court-upset-this-balance.html>

Seyfarth Shaw published "New Year, New Fees? Proposed USCIS Fee Increases." <https://www.seyfarth.com/news-insights/new-year-new-fees-proposed-uscis-fee-increases.html>

WR Immigration has published "End of the Year Recap." This article looks back at all that happened in 2022, including some of the biggest webinars, awards, and news from WR Immigration. <https://wolfsdorf.com/wr-immigration-end-of-the-year-recap/>

Charlie Oppenheim, formerly the Department of State's Chief of Immigrant Visa Control and Reporting, has joined **WR Immigration** as Director of Visa Consulting Services and will lead WR's Government Relations Group. For more than two decades, Mr. Oppenheim was responsible for the monthly and annual use of visa number allocations. In that capacity, he regularly provided analysis and assessment of the impact of proposed legislation on visa availability and workload impact for overseas posts. The WR Immigration announcement is at <https://wolfsdorf.com/former-dos-chief-of-immigrant-visa-control-charlie-oppenheim-joins-wr-immigration-as-director-of-visa-consulting/> The first "Chatting with Charlie" webinar, "Demystifying the Immigrant Visa Backlogs and Looking at the Crystal Ball," will be held Thursday, December 15, 2022, at 11 a.m. PT. For more information, see "New Publications and Items of Interest," above.

Stephen Yale-Loehr (bio: <https://www.abil.com/abil-lawyers/stephen-yale-loehr/>) was quoted by *CBS News* in "U.S. Proposes Hiking Fees for Work-Related Immigration Applications to Fund Asylum Program." Mr. Yale-Loehr said, "The USCIS needs more money to help dig itself out of a massive backlog and to modernize its technology. But it might not legally be able to force employers to pay for asylum-related costs. Employers might sue to block some of the new fee increases if they don't seem justified."

Mr. Yale-Loehr was quoted by *Law360* in "Top Immigration Cases to Watch in 2023." Mr. Yale-Loehr said, "The immigration courts are certainly overwhelmed. They have 1.9 million cases pending and many of these cases involve important issues, like whether someone will be persecuted or killed if they go back home. It's like trying to decide death penalty cases in a traffic court setting." Regarding the growing number of mandamus cases in federal court challenging delayed applications, visas, and work permits, he noted, "I think we're going to see some tension there between people saying, 'I've got to sue because I've been waiting for two years,' and whether federal courts will go along with that or not." <https://www.law360.com/immigration/articles/1553281/top-immigration-cases-to-watch-in-2023> (registration required)

Mr. Yale-Loehr was quoted by *MarketWatch* in " 'We Need More People,' Says Fed's Powell, But What Does That Mean for Immigration Reform?" Commenting on remarks by Federal Reserve chief Jerome Powell that recent lower immigration has factored into the U.S. labor shortage and questions about whether such remarks could lead to progress on immigration

legislation next year, Mr. Yale-Loehr said that Mr. Powell's remarks could be seen as part of a slow process that eventually results in long-awaited fixes to the U.S. immigration system. "To me, it's like water dripping on a rock. A single drop of water, whether it's from Fed Chairman Powell or somebody else, won't make a difference by itself. But if enough drips of water from other people and other studies consistently show that immigration can help our labor shortages and improve our economy, then I hope that will move the needle so that Congress will seriously take up immigration reform in 2023."

Mr. Yale-Loehr said the issues that already have been "percolating in Congress" would be on his immediate wish list for 2023. "That would include helping the Dreamers [beneficiaries of Deferred Action for Childhood Arrivals (DACA)] to be able to achieve some kind of permanent status and reforming our border-security measures so that we can admit those people who really do need or will qualify for asylum, but otherwise deport people after a hearing if they don't qualify under immigration laws. Third, I think we do need modernization in our agriculture industry, and there is a bill proposed by Sen. Bennet [D-CO] that would do that, and fourth, I think that Congress should pass the Afghan Adjustment Act to allow people who came from Afghanistan a permanent path to citizenship." He noted that the Biden administration can act on its own on some immigration issues.

He also suggested that grassroots efforts eventually might end up spurring U.S. lawmakers to do more. "A lot of change happens from the ground up, rather than the top down—if you think about civil rights legislation in the 60s, the Environmental Protection Act of 1970, the antiwar efforts—it was because people really protested the existing framework that they forced Congress to make changes in those areas. And so too, I think that if more Americans stood up and said, 'We need immigration reform,' I think that that would help persuade Congress to actually put pen to paper and make some significant changes."

<https://www.marketwatch.com/story/we-need-more-people-says-feds-powell-but-what-does-that-mean-for-immigration-reform-11671724198>

Mr. Yale-Loehr was quoted by *Law360* in "Top Immigration Cases of 2022: Year in Review." Among other cases, the article notes that in June 2022, the Supreme Court placed new limits on the federal judiciary's power to control the executive branch's immigration policy when it erased an order requiring immigration courts to hold bond hearings for immigrants who were detained for more than six months. In *Garland v. Aleman Gonzalez*, the article notes, the justices ruled 6 to 3 that INA § 1252(f)(1) bars every federal court, except the high court, from interfering on a class-wide basis with how the executive branch carries out certain immigration enforcement functions. That holding will make it harder for legal challengers to get more than individual relief, even if the policy they are contesting applies broadly, said Mr. Yale-Loehr. "As Justice Sotomayor wrote in her dissent, the decision 'risks depriving many vulnerable noncitizens of any meaningful opportunity to protect their rights.'" <https://www.law360.com/articles/1553280/top-immigration-cases-of-2022-year-in-review> (registration required)

Mr. Yale-Loehr was quoted in several media outlets on Title 42 issues:

- "Title 42 to Remain in Place for Now as Chief Justice John Roberts Temporarily Freezes Order Meant to End It," CNN, Dec. 19, 2022. Mr. Yale-Loehr said, "This is a longstanding problem. More people are fleeing persecution, gang violence, failed states and climate change than ever before. Even without Title 42, we would have more people than ever before trying to enter the United States. Title 42 is not an effective way to manage our borders. Instead, we need to both enact immigration reform in the United States and work with other countries so that people don't feel so desperate to leave in the first place."
- "Chief Justice Roberts Pauses Lifting of Title 42, Keeping Migrant Policy in Place for Now," USA Today, Dec. 19, 2022. Mr. Yale-Loehr said, "People worry that terminating

Title 42...will mean more people will try to enter the United States from Mexico. But those pressures existed before the Trump administration implemented Title 42. Climate change, poverty, gang violence, and failed states all contribute to people's desperation to move."

Mr. Yale-Loehr and **Jacob Hamburger** co-authored an op-ed, "On Immigration, Do Feds or States Rule?," published by *New York Daily News*. <https://www.nydailynews.com/opinion/ny-oped-immigration-federalism-20221219-haoe6hs6ajedbo2joe5nz6itxq-story.html>

Mr. Yale-Loehr co-led a research project reported in "Multi-Stakeholder Perspectives on Digital Tools for U.S. Asylum Applicants Seeking Healthcare and Legal Information," published by the Association for Computing Machinery's Digital Library. Through semi-structured interviews with 24 asylum applicants currently in the United States and 13 healthcare and legal professionals working with asylum applicants and other immigrants, the study identified four key challenges and barriers to using currently available digital tools: information uncertainty, accessibility, emotional barriers, and contextual sensitivity. The findings highlight the importance of considering multiple stakeholders' perspectives when designing tools for immigrants. The report provides targeted design recommendations to create digital tools for asylum seekers and the stakeholders who support them. Research funding came from the Cornell Migrations initiative supported by The Andrew W. Mellon Foundation; Cornell's Office of Academic Integration; and the Cornell Immigration Law and Policy Program, which is partly funded by the Charles Koch Foundation. The report is at <https://dl.acm.org/doi/10.1145/3555642>

A related article, "Better Digital Tools Could Help Immigrants Access Benefits," published by the *Cornell Chronicle*, notes that fear of tracking hinders immigrants in accessing online resources and benefits. The article discusses the study's recommendation to mitigate those concerns: websites, apps, social media, and other digital tools disseminating information to immigrants should collect the minimum personal data necessary and clearly state privacy policies. The research that **Mr. Yale-Loehr** co-led resulted in development of a website to help immigrants understand their eligibility for certain public benefits, [Rights 4 Health](https://news.cornell.edu/stories/2022/12/better-digital-tools-could-help-immigrants-access-benefits). The article is at <https://news.cornell.edu/stories/2022/12/better-digital-tools-could-help-immigrants-access-benefits>

Mr. Yale-Loehr was quoted by the *New York Times* in "Government Appeals Border Ruling, But Says It's Ready to End Expulsions." The article discusses the Biden administration's appeal of a court order directing it to repeal a pandemic-era policy known as Title 42 that has allowed the rapid expulsion of migrants at the U.S. border with Mexico, even though an administration official said the government still planned to end the expulsion policy soon. The article notes that some legal scholars said the appeal suggested that the government was not abandoning Title 42 altogether or conceding that the policy was illegal. Mr. Yale-Loehr said, "They want to be able to use Title 42 if they choose to do so in the future." <https://www.nytimes.com/2022/12/07/us/biden-title-42-appeal.html> (subscription required)

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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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