

# IMMIGRATION INSIDER

Vol. 18, No. 6 ▪ June 5, 2022

## Headlines:

**Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022** – U.S. Citizenship and Immigration Services has received enough petitions to reach the cap for the additional 23,500 visas made available for returning workers only, under the recently announced H-2B supplemental cap temporary final rule.

**USCIS Releases New Forms for EB-5 Immigrant Investor Program** – U.S. Citizenship and Immigration Services has released two new forms under the EB-5 Reform and Integrity Act of 2022.

**SEVIS Update: COVID-19 Guidance Extended for Nonimmigrant Students** – U.S. Immigration and Customs Enforcement's March 2020 guidance continues for the 2022-23 academic year only for nonimmigrant students who were actively enrolled at a U.S. school on March 9, 2020, and have continuously complied with the terms of their nonimmigrant status. Students who enrolled after March 9, 2020, must adhere to the Student and Exchange Visitor Program's existing regulations regarding online learning.

**CBP Expands Biometric Facial Recognition Technology at U.S. International Airports** – Travelers arriving at an international airport in the United States will pause for a photo at the primary inspection point. U.S. travelers and foreign nationals who are not required to provide biometrics and wish to opt out of the new biometric process can notify a CBP officer as they approach the primary inspection point.

**Public Charge Resources Webpage Updated** – Among other updates, a question-and-answer section addresses concerns and misconceptions about the public charge ground of inadmissibility.

**Investors File Lawsuit Against DHS To Stop EB-5 Regional Center Decertifications** – A group of investment and capital firms filed a lawsuit against the Department of Homeland Security, arguing that when U.S. Citizenship and Immigration Services decertified existing EB-5 regional centers, it violated the Administrative Procedure Act and misinterpreted the EB-5 Reform and Integrity Act of 2022.

**USCIS To Implement Premium Processing for Certain Previously Filed EB-1 and EB-2 Form I-140 Petitions** – U.S. Citizenship and Immigration Services is implementing premium processing for certain petitioners who have a pending Form I-140, Immigrant Petition for Alien Workers, under the EB-1 and EB-2 classifications.

**DOL Clarifies Method of Contacting AFL-CIO Required Under Rule Increasing Number of H-2B Visas Available in Second Half of FY 2022** – Examples of how to contact the AFL-CIO, as provided in a temporary final rule, include emailing or mailing the job order, along with a request for assistance to recruit workers, to the appropriate AFL-CIO office.

**DOL Issues Guidance on Employment of H-2B Workers in Unapproved Job Classifications** – The memo provides information on the "harms inflicted on the U.S. and H-2B workforce" by such employment and provides "guidance on the sanctions and remedies" that the Wage and Hour Division may implement.

**Additional 35,000 H-2B Visas Available for Second Half of Fiscal Year** – The visas are for U.S. employers seeking to employ additional temporary nonagricultural workers on or after April 1, 2022, through September 30, 2022.

**DHS Announces TPS Designation, Registration Process for Afghans** – The registration period began on May 20, 2022, and runs through November 20, 2023. USCIS estimates 72,500 individuals currently in the United States may be eligible.

**June Visa Bulletin Includes Updates on 'Other Workers,' China, Diversity Visa Availability** – Among other things, the bulletin notes that high number use in the Employment Third Preference "Other Workers" category has necessitated the establishment of a worldwide final action date in June.

**Federal Judge Blocks Effort to End Title 42 Policy at U.S.-Mexico Border** – The Department of Justice plans to appeal the decision while enforcing the Title 42 policy pending appeal.

**New Forms, New Program Requirements Announced for Entities Seeking Regional Center Designation Under EB-5 Immigrant Investor Program** – USCIS published two new forms for regional center designation under the EB-5 Immigrant Investor Program. USCIS said that all entities seeking regional center designation must submit these forms in compliance with new program requirements, which began May 14, 2022, and are effective through September 30, 2027. The agency held a related listening session and released a Q&A, and members of Congress sent a letter to the Department of Homeland Security.

**Foreign Labor Certification Updates** – The Department of Labor's Office of Foreign Labor Certification announced updates to public disclosure data and selected program statistics; the H-2B Foreign Labor Recruiter List; and tips and assistance for stakeholders filing applications for prevailing wage determinations.

**USCIS Corrects Eligibility Date on South Sudan TPS-Based EADs** – USCIS corrected "September 17, 2021" to "May 2, 2022" as the eligibility date that should be showing on South Sudan temporary protected status-based employment authorization documents (EADs) to receive an automatic 180-day EAD extension through November 1, 2022.

**New Lockbox Filing Location Updates Webpage** – USCIS launched a new webpage with lockbox filing location updates.

**State Dept. Updates Visa Reciprocity Schedule for Kenya** – On May 9, 2022, the Department of State updated the visa reciprocity schedule for Kenya for several nonimmigrant visa categories.

**USCIS Increases Automatic Work Permit Extension Period for Certain Applicants** – USCIS announced a temporary final rule, effective May 4, 2022, that increases to up to 540 days the automatic extension period for work authorization and Employment Authorization Documents (EADs) available to certain EAD renewal applicants. The rule is expected to affect approximately 87,000 workers who have filed for renewal of their work authorization and whose 180-day automatic extension periods have expired or are about to expire.

**State Dept. Appeals Four Court Orders on Diversity Visa Adjudications and Processing** – The Department of State released a statement summarizing four court orders regarding the reservation of numbers for and/or adjudication of DV-2020 and DV-2021 diversity visas, and announcing that it is appealing the orders "because the Department believes the courts misinterpreted the law."

**Case Processing Info Changes Announced** – Users can now immediately find processing time information for their particular type of case rather than seeing an aggregate of all related case types.

**CBP Urges Travelers to Apply for I-94 Online Before Arriving at U.S. Land Borders** – To reduce wait times, U.S. Customs and Border Protection is urging travelers who require a Form I-94, Arrival/Departure Record, to apply and prepay online before arriving at a U.S. land border.

**ABIL Global: Schengen Area** – This article discusses how to calculate the 90/180-days allowance for non-European Union nationals traveling to Schengen countries, and the new Electronic Entry System.

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New Publications and Items of Interest  
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### Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022

U.S. Citizenship and Immigration Services (USCIS) announced on May 31, 2022, that it has received enough petitions to reach the cap for the additional 23,500 visas made available for returning workers only, under the recently announced H-2B supplemental cap temporary final rule, which increased by up to 35,000 the cap for additional H-2B nonimmigrant visas through the end of fiscal year (FY) 2022.

The random selection, completed on May 27, included all H-2B cap-subject petitions filed under the H-2B returning worker allotment that were received between May 19 and May 25. Petitions accepted for processing will have a receipt date of May 31, 2022.

USCIS said that petitioners whose workers were not selected for the 23,500 returning worker allotment "are encouraged to refile for workers from El Salvador, Guatemala, Honduras and Haiti while visas for that allotment remain available." The final date for filing petitions for nationals of those countries who are exempt from the returning worker requirement is September 15, 2022, or when the cap is reached, whichever occurs first.

The agency will continue to accept H-2B petitions for workers filing under the El Salvador, Guatemala, Honduras, and Haiti allotment, as well as those that are exempt from the congressionally mandated cap. This includes petitions for:

- Current H-2B workers in the United States petitioning to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.

#### Details:

- "Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022," USCIS alert, May 31, 2022, <https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022>
- "Temporary Increase in H-2B Nonimmigrant Visas for FY 2022," USCIS, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/temporary-increase-in-h-2b-nonimmigrant-visas-for-fy-2022>
- "DHS and DOL Announce Availability of Additional H-2B Visas for Second Half of Fiscal Year," USCIS news release, May 16, 2022, <https://www.uscis.gov/newsroom/news-releases/dhs-and-dol-announce-availability-of-additional-h-2b-visas-for-second-half-of-fiscal-year>

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## **USCIS Releases New Forms for EB-5 Immigrant Investor Program**

U.S. Citizenship and Immigration Services (USCIS) has released two new forms under the EB-5 Reform and Integrity Act of 2022. The new forms are:

- Form I-956F, Application for Approval of an Investment in a Commercial Enterprise
- Form I-956G, Regional Center Annual Statement

USCIS explained that Form I-956F can only be filed by an approved regional center. Form I-956F is similar in some respects to an "exemplar" submission on Form I-924 under the previous program; however, Form I-956F is required by statute for regional centers to apply for approval of each particular investment offering through an associated new commercial enterprise. Form I-956G takes the place of Form I-924A from the previous program but incorporates the increased statutory reporting requirements.

The next series of forms to be released are Form I-526, Immigrant Petition by Standalone Investor, and Form I-526E, Immigrant Petition by Regional Center Investor. USCIS will notify stakeholders once these forms are available.

Effective June 2, 2022, Forms I-956F and I-956G must be submitted in compliance with new program requirements. The filing fee is \$17,795 for Form I-956F and \$3,035 for Form I-956G.

### Details:

- USCIS alert, June 2, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-releases-new-forms-for-immigrant-investor-program>

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## **SEVIS Update: COVID-19 Guidance Extended for Nonimmigrant Students**

U.S. Immigration and Customs Enforcement (ICE) released guidance regarding distance learning to all Student and Exchange Visitor Information System (SEVIS) users to clarify that its March 2020 guidance continues for the 2022-23 academic year only for nonimmigrant students who were actively enrolled at a U.S. school on March 9, 2020, and have continuously complied with the terms of their nonimmigrant status. Students who enrolled after March 9, 2020, must adhere to the Student and Exchange Visitor Program's existing regulations regarding online learning.

The March 2020 guidance "enables schools and students to engage in distance learning in excess of regulatory limits due to the continuing public health concerns created by COVID-19," ICE said.

### Details:

- "Broadcast Message: ICE Clarifies Continuation of March 2020 Guidance for the 2022-23 Academic Year," ICE, May 31, 2022, <https://www.ice.gov/doclib/sevis/pdf/bcm2205-03.pdf>

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## **CBP Expands Biometric Facial Recognition Technology at U.S. International Airports**

U.S. Customs and Border Protection (CBP) has expanded biometric facial comparison technology at all international airports across the United States under the "Simplified Arrival" process. CBP said that this expansion complements biometric boarding at select departure locations.

Travelers arriving at an international airport will pause for a photo at the primary inspection point. A CBP officer will review and query the travel document, which will retrieve the traveler's passport or visa photo from government holdings and compare it to the new photo. CBP said the process "takes a few seconds and is more than 98% accurate."

CBP said that U.S. travelers and foreign nationals who are not required to provide biometrics and wish to opt out of the new biometric process can notify a CBP officer as they approach the primary inspection point. These travelers must present a valid travel document for inspection by a CBP officer and will be processed consistent with existing requirements for admission into the United States.

CBP explained that "Simplified Arrival" is an enhanced international arrival process that uses facial biometrics to automate the manual document checks required for admission into the United States. The process fulfills a Congressional mandate to biometrically record the entry and exit of non-U.S. citizens. Foreign travelers who have traveled to the United States previously "may no longer need to provide fingerprints, as their identity will be confirmed through the touchless facial biometric process." CBP said that more than 171 million travelers have participated in the biometric facial comparison process at air, land, and sea ports of entry.

### Details:

- CBP media release, June 2, 2022, <https://bit.ly/3mi8K52>

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## **Public Charge Resources Webpage Updated**

U.S. Citizenship and Immigration Services (USCIS) has updated its public charge resources webpage "with more information to help reduce undue fear and confusion among immigrants and their families, including U.S. citizens and their children, that may prevent them from obtaining access to critical government services available to them."

A question-and-answer section addresses concerns and misconceptions about the public charge ground of inadmissibility. For example, USCIS does not consider vaccines or public benefits specifically related to the COVID-19 pandemic when making public charge determinations. "We encourage everyone, including noncitizens, to seek necessary medical care, including treatment or preventive services for COVID-19. Noncitizens may seek pandemic-related benefits and services (including food assistance, housing programs, and others) for which they are eligible—without fear of negative consequences to their immigration status."

The updated content also "clarifies that relatively few noncitizens in the United States are both subject to the public charge ground of inadmissibility and eligible for the public benefits considered under the 1999 Interim Field Guidance, including Supplemental Security Income, Temporary Assistance for Needy Families, and programs (including Medicaid) supporting noncitizens who are institutionalized for long-term care at government expense," USCIS said.

#### Details:

- USCIS alert, June 3, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-updates-public-charge-resources-webpage-to-provide-information-on-the-public-charge-ground-of>

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### **Investors File Lawsuit Against DHS To Stop EB-5 Regional Center Decertifications**

A group of investment and capital firms filed a lawsuit on May 24, 2022, against the Department of Homeland Security, arguing that when U.S. Citizenship and Immigration Services (USCIS) decertified existing EB-5 regional centers, it violated the Administrative Procedure Act and misinterpreted the EB-5 Reform and Integrity Act of 2022, which was signed into law following a lapse in authorization for the EB-5 Regional Center Program. Plaintiffs say that by categorically decertifying more than 600 existing EB-5 regional centers and requiring them to recertify, USCIS "eviscerated" the program and determined that a wholly new regional center program was created rather than following congressional intent to reauthorize the program with a few changes and allow existing regional centers to continue their work.

Alleging that USCIS's action was "unlawful for a host of reasons," plaintiffs said the agency's action meant that "all existing regional centers, which already have billions of dollars in invested capital, ongoing development projects, and investors awaiting adjudication of their visa petitions, must effectively pause all revenue-generating operations (while still maintaining regulatory obligations to existing investors) indefinitely until USCIS approves their new applications. At current processing rates, it will take well over a decade for more than 600 programs to become redesignated."

Plaintiffs are represented by H. Ronald Klasko and Daniel B. Lundy, of Klasko Immigration Law Partners LLP, and Paul W. Hughes, Andrew A. Lyons-Berg, and Alex C. Boota, of McDermott Will & Emery LLP.

This is the second lawsuit challenging USCIS's claim that all regional centers must be redesignated. A preliminary injunction hearing in *Behring Regional Center LLC v. Mayorkas*, No. 3-22-cv-02487-VC (N.D. Cal.), will be held June 2.

#### Details:

- EB5 Capital v. DHS, May 24, 2022, <https://bit.ly/3NKIjlz>
- "DHS 'Decimated' EB-5 Visa Capital Firms, Investors Say," Law360, May 24, 2022, <https://www.law360.com/articles/1496566/dhs-decimated-eb-5-visa-capital-firms-investors-say> (registration required)

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### **USCIS Implements Premium Processing for Certain Previously Filed EB-1 and EB-2 Form I-140 Petitions**

U.S. Citizenship and Immigration Services (USCIS) is implementing premium processing for certain petitioners who have a pending Form I-140, Immigrant Petition for Alien Workers, under the EB-1 and EB-2 classifications. This expansion of premium processing applies only to certain previously filed Form I-140 petitions under an E13 multinational executive and manager classification or E21 classification as a member of professions with advanced degrees or exceptional ability seeking a national interest waiver (NIW), USCIS said. Petitioners who wish to



request a premium processing upgrade must file Form I-907, Request for Premium Processing Service.

USCIS said the expansion will occur in phases:

- Beginning June 1, 2022, USCIS is accepting Form I-907 requests for E13 multinational executive and manager petitions received on or before January 1, 2021.
- Beginning July 1, 2022, USCIS will accept Form I-907 requests for E21 NIW petitions received on or before June 1, 2021, and E13 multinational executive and manager petitions received on or before March 1, 2021.
- USCIS will continue working toward premium processing availability of additional Form I-140 petitions, Form I-539, and Form I-765 in fiscal year 2022.

USCIS said it will reject premium processing requests for these Form I-140 classifications that were filed before their start date of June 1, 2022, or July 1, 2022. USCIS will not accept new (initial) Forms I-140 with a premium processing request.

For the month of June, USCIS will accept both the 09/30/20 and the 05/31/22 editions of Form I-907. Starting July 1, the agency will reject the older 09/30/20 edition of Form I-907.

Details:

- USCIS alert, May 24, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-to-implement-premium-processing-for-certain-previously-filed-e-1-and-e-2-form-i-140>

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## **DOL Clarifies Method of Contacting AFL-CIO Required Under Rule Increasing Number of H-2B Visas Available in Second Half of FY 2022**

A temporary final rule issued by the Department of Labor (DOL) on May 18, 2022, included additional recruitment requirements for certain employers. One such requirement is that where the occupation or industry is traditionally or customarily unionized, "the employer must contact (by mail, email or other effective means) the nearest American Federation of Labor and Congress of Industrial Organizations [AFL-CIO] office covering the area of intended employment and provide written notice of the job opportunity, by providing a copy of the job order placed ... and request assistance in recruiting qualified U.S. workers for the job."

Examples of such contact provided in the rule include emailing or mailing the job order, along with a request for assistance to recruit workers, to the appropriate AFL-CIO office. To aid employers who must conduct this additional recruitment step, one effective means of contacting the nearest AFL-CIO office covering the area of intended employment is to email the job order and request for assistance to [H-2B@aficio.org](mailto:H-2B@aficio.org) or contacting the national AFL-CIO by mail at:

AFL-CIO  
Attn: H-2B  
815 Black Lives Matter Plaza, NW  
Washington, DC 20005

DOL said that when received, the agency will distribute these materials to the most appropriate local AFL-CIO office serving the area of intended employment for that job opportunity. DOL said employers "are encouraged to contact the AFL-CIO using the email or mailing address above,

though contact directly with the AFL-CIO office covering the area of intended employment is also acceptable. Employers are reminded to retain documentation of contact with the AFL-CIO as required."

Details:

- DOL announcement, May 27, 2022, <https://www.dol.gov/agencies/eta/foreign-labor>
- Temporary final rule, 87 Fed. Reg. 30334 (May 18, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-18/pdf/2022-10631.pdf>

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### **DOL Issues Guidance on Employment of H-2B Workers in Unapproved Job Classifications**

The Department of Labor's Wage and Hour Division (WHD) released a bulletin to the field regarding employment of H-2B workers in unapproved job classifications (i.e., a job classification not listed on the Application for Temporary Employment Certification (TEC), Form ETA-9142B). The memo notes that such employment violates the requirement that employers may not place H-2B workers in positions not listed on the TEC application.

The memo provides information on the "harms inflicted on the U.S. and H-2B workforce" by such employment and provides "guidance on the sanctions and remedies" that the WHD may implement.

Details:

- "Employment of H-2B Workers in a Job Classification Not Listed on the TEC Application (Form ETA-9142B) in the H-2B Visa Program," DOL/WHD Field Assistance Bulletin No. 2022-3, Apr. 13, 2022, <https://www.dol.gov/sites/dolgov/files/WHD/fab/2022-3.pdf>

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### **Additional 35,000 H-2B Visas Available for Second Half of Fiscal Year**

The Departments of Homeland Security (DHS) and Labor (DOL) announced a temporary final rule making available an additional 35,000 H-2B temporary nonagricultural worker visas during the second half of fiscal year (FY) 2022. The visas are for U.S. employers seeking to employ additional workers on or after April 1, 2022, through September 30, 2022.

The supplemental H-2B visa allocation consists of 23,500 visas available to returning workers who received an H-2B visa or were otherwise granted H-2B status during one of the last three fiscal years. The remaining 11,500 visas are reserved for nationals of El Salvador, Guatemala, Honduras, and Haiti, regardless of whether they are returning workers. The semiannual cap of 33,000 visas for the second half of FY 2022 was reached on February 25, 2022.

In support of the temporary final rule, the Office of Foreign Labor Certification (OFLC) posted a new Form ETA-9142-B-CAA-6 and accompanying instructions. The TFR requires an employer to attest, among other things, to the fact that it is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested under the cap increase. This attestation must be submitted to U.S. Citizenship and Immigration Services along with Form I-129 in support of an H-2B application subject to the H-2B cap by September 30, 2022.



#### Details:

- USCIS news release, May 16, 2022, <https://www.uscis.gov/newsroom/news-releases/dhs-and-dol-announce-availability-of-additional-h-2b-visas-for-second-half-of-fiscal-year>
- DHS/DOL temporary final rule, 87 Fed. Reg. 30334 (May 18, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-18/pdf/2022-10631.pdf>
- DOL forms, including Attestation for Employers, <https://www.dol.gov/agencies/eta/foreign-labor/forms>

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### **DHS Announces TPS Designation, Registration Process for Afghans**

The Department of Homeland Security has provided information on how to register for temporary protected status (TPS) under Afghanistan's 18-month designation. The registration period began on May 20, 2022, and runs through November 20, 2023. USCIS estimates 72,500 individuals currently in the United States may be eligible for TPS under the designation of Afghanistan.

To be eligible for TPS under this designation, individuals must demonstrate their continuous residence in the United States since March 15, 2022, and continuous physical presence in the United States since May 20, 2022. Afghan nationals currently not residing in the United States or who arrived in the United States after March 15, 2022, are not eligible for TPS under this designation.

DHS said that through Operation Allies Welcome, most Afghan nationals who arrived as part of the evacuation effort were paroled into the United States on a case-by-case basis for humanitarian reasons for a period of two years and received work authorization. These individuals may also be eligible for TPS.

#### Details:

- Designation of Afghanistan for Temporary Protected Status, DHS (USCIS), 87 Fed. Reg. 30976 (May 20, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10923.pdf>
- USCIS news release, May 19, 2022, <https://www.uscis.gov/newsroom/news-releases/dhs-announces-registration-process-for-temporary-protected-status-for-afghanistan>
- "Secretary Mayorkas Designates Afghanistan for Temporary Protected Status," DHS, Mar. 16, 2022, <https://www.dhs.gov/news/2022/03/16/secretary-mayorkas-designates-afghanistan-temporary-protected-status>

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## June Visa Bulletin Includes Updates on 'Other Workers,' China, Diversity Visa Availability

The Department of State's Visa Bulletin for June 2022 includes the following information:

### D. Establishment of Employment Third Preference "Other Workers" (EW) Final Action Date

High number use in the Employment Third Preference "Other Workers" (EW) category has necessitated the establishment of a worldwide final action date in June to hold number use within the maximum allowed under the FY-2022 annual limit. All countries are subject to a final action date of 08MAY19 except for China-mainland born, which is subject to a 01JUN12 final action date and India, which is subject to a 15JAN12 final action date.

### E. Establishment of C5 and T5 Final Action Date and Application Filing Date for China-Mainland Born

It has become necessary to establish a final action date and application filing date for C5 and T5 China-mainland born because sufficient demand has materialized as readers were cautioned was a possibility in Item D of the May 2022 Visa Bulletin. China-mainland born C5 and T5 applicants are subject to a 22NOV15 final action date and an application filing date of 15DEC15.

### F. Availability of Diversity Visas (DV)

Most regions have been set to "Current" for June 2022 in an effort to maximize number use during the DV-2022 program year. However, rank cut-offs could be re-established for any region or country in future months to keep number use within the applicable annual limits.

### Details:

- Dept. of State Visa Bulletin for June 2022, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-june-2022.html>

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## Federal Judge Blocks Effort to End Title 42 Policy at U.S.-Mexico Border

Shortly before the Centers for Disease Control (CDC) was set to terminate its Trump-era COVID-19 pandemic restriction at the U.S.-Mexico border, known as "Title 42," a federal judge in Louisiana blocked its termination temporarily with a nationwide preliminary injunction. The judge found that several dozen Republican-led states were likely to prevail on their claims against terminating the policy based on the Administrative Procedure Act, and noted that termination would negatively affect plaintiff states and the Department of Homeland Security. He concluded that the policy should continue while the states' lawsuit proceeds.

The Department of Justice plans to appeal the decision while enforcing the Title 42 policy pending appeal.

### Details:

- State of Louisiana v. CDC, <https://s3.documentcloud.org/documents/22026721/title-42-preliminary-injunction.pdf>
- "Federal Judge Blocks Biden Administration From Lifting Title 42 for Now," CNN, May 20, 2022, <https://www.cnn.com/2022/05/20/politics/title-42-biden-us-mexico-border/index.html>

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## **New Forms, New Program Requirements Announced for Entities Seeking Regional Center Designation Under EB-5 Immigrant Investor Program**

U.S. Citizenship and Immigration Services (USCIS) published two new forms for regional center designation under the EB-5 Immigrant Investor Program: Form I-956, Application for Regional Center Designation, and Form I-956H, Bona Fides of Persons Involved with Regional Center Program. USCIS said that all entities seeking regional center designation must submit these forms in compliance with new program requirements, which began May 14, 2022, and are effective through September 30, 2027.

Below are highlights of related news:

- USCIS said it will **continue to adjudicate Form I-829**, Petition by Investor to Remove Conditions on Permanent Resident Status, and will **adjudicate Form I-829 petitions associated with Form I-526**, Immigrant Petition by Alien Entrepreneur, filed before March 15, 2022, under the applicable eligibility requirements in place before enactment of the EB-5 Reform and Integrity Act of 2022.
- USCIS said it also has **resumed processing of regional center-based Form I-526, Immigrant Petition by Alien Entrepreneur, filed on or before the sunset of the previous regional center program** on June 30, 2021. The agency will adjudicate all Form I-526 petitions filed before March 15, 2022, according to the applicable eligibility requirements at the time such petitions were filed (that is, the eligibility requirements in place before the enactment of the new law). USCIS will continue to process Form I-526 petitions under the "visa availability approach," "prioritizing those Form I-526 petitions for investors with an available visa or a visa that will be available soon." USCIS will continue to reject all Form I-526 petitions received on or after July 1, 2021, when the petition indicates that the petitioner's investment is associated with a regional center.
- The **filing fee for the I-956 is \$17,795**. (No, that's not a typo.) There is no filing fee for the I-956H, but a biometric services fee of \$85 per person is required. Filing and biometric service fees are final and nonrefundable, regardless of any action USCIS takes on the application, or if the applicant withdraws the request. USCIS will reject the form if the applicant submits an incorrect fee.
- The agency **released a related Q&A and held a "Listening Session"** on April 29, 2022, that received negative reviews.
- **Four senior members of Congress sent a letter** on May 9, 2022, to the Department of Homeland Security (DHS). Among other things, the letter calls for DHS to confirm compliance with the new integrity measures required under the EB-5 Reform and Integrity Act of 2022 "without the need for a full-scale redesignation of existing regional centers." The letter recommends a "transition" to avoid administrative burdens for the agency and "unnecessary complications to designated regional centers who have

remained in good standing with USCIS and complied with the rules even during the program's lapse." The letter says, "Current guidance on the USCIS website requiring new regional center designations for every existing regional center is confusing and causing great concern in the EB-5 stakeholder community. We believe that there should be stakeholder engagement and then guidance on the implementation of the program." The letter notes that an interpretation requiring new regional center designations would "result in all existing investors without approved conditional permanent residency facing denial." The letter was signed by Rep. Jerrold Nadler (D-NY) and Sens. Chuck Schumer (D-NY), John Cornyn (R-TX), and Lindsey Graham (R-SC).

#### Details:

- USCIS alert, <https://www.uscis.gov/newsroom/alerts/two-new-forms-published-for-regional-center-designation>
- USCIS alerts, EB-5 Immigrant Investor Program, <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>
- USCIS Q&A (EB-5 Questions and Answers, updated April 2022), <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers-updated-april-2022>
- EB-5 Reform and Integrity Act of 2022 (H.R. 2471, Consolidated Appropriations Act, 2022), <https://www.congress.gov/bill/117th-congress/house-bill/2471/>
- USCIS EB-5 Reform and Integrity Act of 2022 Listening Session, <https://www.uscis.gov/outreach/notes-from-previous-engagements/uscis-eb-5-reform-and-integrity-act-of-2022-listening-session>
- Listening Session remarks by Ur Jaddou, USCIS Director, Apr. 29, 2022, [https://www.uscis.gov/sites/default/files/document/outreach-engagements/EB-5\\_Reform\\_and\\_Integrity\\_Act\\_of\\_2022\\_Listening\\_Session.pdf](https://www.uscis.gov/sites/default/files/document/outreach-engagements/EB-5_Reform_and_Integrity_Act_of_2022_Listening_Session.pdf)
- Form I-956, Application for Regional Center Designation, <https://www.uscis.gov/i-956>
- Form I-956H, Bona Fides of Persons Involved with Regional Center Program, <https://www.uscis.gov/i-956>
- "USCIS Drops Bombshell EB-5 Q&A Hours Before One-Sided, Overwhelmingly Negative "Listening Session," Investment Migration Insider, May 3, 2022, <https://www.imidaily.com/program-updates/uscis-drops-bombshell-eb-5-qa-hours-before-one-sided-overwhelmingly-negative-listening-session/>

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## **Foreign Labor Certification Updates**

The Department of Labor's Office of Foreign Labor Certification (OFLC) announced updates to public disclosure data and selected program statistics; the H-2B Foreign Labor Recruiter List; and tips and assistance for stakeholders filing applications for prevailing wage determinations. Below are highlights.

**Public disclosure data and selected program statistics for Q2 of fiscal year (FY) 2022.** The OFLC released a comprehensive set of public disclosure data through the second quarter of FY

2022. The OFLC drew the data from employer applications requesting prevailing wage determinations and labor certifications for the PERM, Labor Condition Application (LCA) (H-1B, H-1B1, E-3), H-2A, H-2B, CW-1, and Prevailing Wage programs. The files include all final determinations OFLC issued for these programs during the October 1, 2021, through March 31, 2022, reporting period of FY 2022. OFLC also released selected program statistics for Q2 of FY 2022 for the same programs. <https://www.dol.gov/agencies/eta/foreign-labor/performance>

**H-2B Foreign Labor Recruiter List for Q2 of FY 2022.** The OFLC published an updated list of foreign labor recruiters for the H-2B program. The list contains the name and location of persons or entities identified on Appendix C of the Form ETA-9142B that were hired by, or working for, the recruiter that employers have indicated they engaged, or planned to engage, in the recruitment of prospective H-2B workers to perform the work described on their H-2B application. The H-2B Foreign Labor Recruiter List includes only those names and locations associated with H-2B applications that were processed or issued a final decision during the October 1, 2021 through March 31, 2022. <https://www.dol.gov/agencies/eta/foreign-labor/recruiter-list> (Foreign Labor Recruiter List); <https://www.dol.gov/agencies/eta/foreign-labor/faqs/print> (FAQs)

**Tips and assistance for stakeholders filing applications for prevailing wage determinations.** The OFLC hosted a webinar on April 19, 2022, providing tips and assistance for stakeholders on the process of filing Form ETA-9141, Application for Prevailing Wage Determination, for the PERM and LCA programs. The recording and presentation materials are linked via the Prevailing Wage Information and Resources page (scroll down to Webinars). <https://www.dol.gov/agencies/eta/foreign-labor/wages>

Details:

- OFLC announcements, <https://www.dol.gov/agencies/eta/foreign-labor>

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## **USCIS Corrects Eligibility Date on South Sudan TPS-Based EADs**

U.S. Citizenship and Immigration Services (USCIS) issued a correction on May 10, 2022, to its notice on the extension and redesignation of South Sudan for temporary protected status (TPS), which was published on March 3, 2022. Under the "General Employment-Related Information for TPS Applicants and Their Employers" section of the original notice, USCIS corrected "September 17, 2021" to "May 2, 2022" as the eligibility date that should be showing on South Sudan TPS-based employment authorization documents (EADs) to receive an automatic 180-day EAD extension through November 1, 2022.

Details:

- USCIS notice/correction, 87 Fed. Reg. 28030 (May 10, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-10/pdf/2022-10018.pdf>

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## **New Lockbox Filing Location Updates Webpage**

U.S. Citizenship and Immigration Services (USCIS) launched a new webpage with lockbox filing location updates. For example, the webpage notes that:

- On May 2, 2022, USCIS updated the filing locations for applicants filing [Form I-821, Application for Temporary Protected Status](#), under the designation for [Ukraine](#).

- On May 9, 2022, USCIS added the filing locations for certain applicants filing [Form I-765, Application for Employment Authorization](#), under eligibility category (c)(14) (a noncitizen granted deferred action).
- On May 15, 2022, USCIS added the filing locations for applicants filing [Form I-956, Application for Regional Center Designation](#), and [Form I-956H, Bona Fides of Persons Involved with Regional Center Program](#), to request designation as a regional center.

Details:

- USCIS Lockbox Filing Location Updates, updated May 10, 2022, <https://www.uscis.gov/forms/forms-updates/lockbox-filing-location-updates>

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## **State Dept. Updates Visa Reciprocity Schedule for Kenya**

On May 9, 2022, the Department of State updated the visa reciprocity schedule for Kenya for several nonimmigrant visa categories.

Details:

- Reciprocity: What's New?, Dept. of State, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/reciprocity-whats-new.html>
- Kenya Reciprocity Schedule, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Kenya.html>

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## **USCIS Increases Automatic Work Permit Extension Period for Certain Applicants**

U.S. Citizenship and Immigration Services (USCIS) announced a temporary final rule, effective May 4, 2022, that increases to up to 540 days the automatic extension period for work authorization and Employment Authorization Documents (EADs) available to certain EAD renewal applicants.

USCIS said the increased extension period "will help avoid gaps in employment for noncitizens with pending EAD renewal applications and stabilize the continuity of operations for U.S. employers." The rule is expected to affect approximately 87,000 workers who have filed for renewal of their work authorization and whose 180-day automatic extension periods have expired or are about to expire.

USCIS released the following details:

- The TFR, which only applies to those EAD categories currently eligible for an automatic 180-day extension, will temporarily provide up to 360 days of additional automatic extension time (for a total of 540 days) to eligible applicants with a timely filed Form I-765 renewal application pending during the 18-month period after publication of the temporary final rule "while USCIS continues to work through pending caseloads that were exacerbated by the COVID-19 pandemic," USCIS said. Beginning October 27, 2023, automatic extensions of employment authorization and EAD validity will revert to the up-to-180-day period for eligible applicants who timely file Form I-765 renewal applications.



- Noncitizens with a pending EAD renewal application whose 180-day automatic extension has lapsed and whose EAD has expired will be granted an additional period of employment authorization and EAD validity, beginning on May 4, 2022 and lasting up to 540 days from the expiration date of their EAD, such that they may resume employment if they are still within the up to 540-day automatic extension period and are otherwise eligible. Noncitizens with a pending renewal application still covered under the 180-day automatic extension will be granted an additional up to 360-day extension, for a total of up to 540 days past the expiration of the current EAD. Noncitizens with a pending renewal application and valid EAD on May 4, 2022, or who timely file an EAD renewal application before October 27, 2023, will be granted an automatic extension of up to 540 days if their EAD expires before the renewal application is processed.
- The automatic extension generally will end upon notification of a final decision on the renewal application or the end of the up-to-540-day period (i.e., up to 540 days after the expiration date on the applicant's facially expired EAD), whichever comes earlier.
- Certain noncitizens who are in the United States may file a Form I-765, Application for Employment Authorization, with USCIS to request employment authorization and an EAD. Other noncitizens whose immigration status authorizes them to work in the United States without restrictions may also use Form I-765 to apply for an EAD that shows such authorization.
- Systematic Alien Verification for Entitlements (SAVE) will generally verify employment authorization or this EAD auto-extension as part of initial verification. Additional verification may be required in limited instances such as when the applicant's data provided by the user agency does not match federal immigration records.

#### Details:

- USCIS news release, May 3, 2022, <https://www.uscis.gov/newsroom/news-releases/uscis-increases-automatic-extension-period-of-work-permits-for-certain-applicants>
- "DHS Publishes Rule Temporarily Increasing Automatic Extension Period of Employment Authorization and/or EADs for Certain Individuals" (includes information on documentation benefit applicants will have whose work authorization and/or EADs are extended up to 540 days), USCIS (SAVE), May 4, 2022, <https://www.uscis.gov/save/whats-new/dhs-publishes-rule-temporarily-increasing-automatic-extension-period-of-employment-authorization>
- "Automatic Employment Authorization Document (EAD) Extension," USCIS, updated May 4, 2022, <https://www.uscis.gov/eadautoextend>
- USCIS temporary final rule, 87 Fed. Reg. 26614 (May 4, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-04/pdf/2022-09539.pdf>
- "USCIS Issues New Rule on Employment Authorization," Forbes, <https://www.forbes.com/sites/stuartanderson/2022/05/03/uscis-issues-new-rule-on-employment-authorization/?sh=9f27ebd10b13>

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## **State Dept. Appeals Four Court Orders on Diversity Visa Adjudications and Processing**

The Department of State (DOS) released a statement summarizing four court orders regarding the reservation of numbers for and/or adjudication of DV-2020 and DV-2021 diversity visas, and announcing that it is appealing the orders "because the Department believes the courts misinterpreted the law."

DOS explained that while the appeal is pending, the courts have granted stays with respect to adjudicating visas from prior years, meaning that "the Department is not required to adjudicate visas from prior years until the appeals court issues its decision." DOS explained that the courts, however, required the Department to complete the systems modifications necessary to process DV cases from prior years, which DOS said it will do in compliance with the orders.

DOS said it will publish additional public guidance regarding these cases "should it be necessary to do so."

### Details:

- DOS news release, May 3, 2022, <https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-2020-and-2021-updates.html>

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## **Case Processing Info Changes Announced**

U.S. Citizenship and Immigration Services (USCIS) announced changes to case processing information available online. Users can now immediately find processing time information for their particular type of case rather than seeing an aggregate of all related case types. Additional changes include:

- Adding drop-down options for form categories to help narrow results to the processing times that are relevant to a case;
- Adding a case inquiry tool where the user can insert their receipt date and get an immediate answer on whether they should contact USCIS with questions about their particular case; if so, benefit requestors will be provided a link to submit a case inquiry online;
- Displaying a single 80<sup>th</sup>-percentile processing time (rather than a range) to simplify the information provided and improve the ability of users to estimate how long it is likely to take USCIS to process a benefit request; and
- Revising, streamlining, and adding more content to the processing times webpages, including a new FAQ page.

### Details:

- USCIS news release, May 5, 2022, <https://www.uscis.gov/newsroom/news-releases/uscis-simplifying-improving-communication-of-case-processing-data>

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## CBP Urges Travelers to Apply for I-94 Online Before Arriving at U.S. Land Borders

To reduce wait times, U.S. Customs and Border Protection (CBP) is urging travelers who require a Form I-94, Arrival/Departure Record, to apply and prepay online before arriving at a U.S. land border.

An I-94 is needed by all visitors except U.S. citizens, returning residents, those with immigrant visas, and most Canadian citizens visiting or in transit. Travelers are issued an I-94 during the admission process at the port of entry.

### Details:

- CBP release, Apr. 29, 2022, <https://bit.ly/3w9aMZX>
- Travel information, CBP, <https://www.cbp.gov/travel>
- Advisories and wait times, CBP, <https://www.cbp.gov/travel/advisories-wait-times>

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## ABIL Global: Schengen Area

This article discusses how to calculate the 90/180-days allowance for non-European Union nationals traveling to Schengen countries, and the new Electronic Entry System.

### How to Count Your 90 Days

Non-European Union (EU) visitors can stay in the Schengen countries for maximum of 90 days in any 180-day period, but the calculation is not easy.

The Schengen area currently includes 26 EU countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

The scannable QR code below leads to EU Migration and Home Affairs, which includes visa policy information and lists of countries whose citizens must have a visa or are exempt from visa requirements when crossing Schengen external borders.



*Third-country nationals (e.g., those who are not citizens of the EU and Iceland, Norway, Liechtenstein, or Switzerland), irrespective of being visa-required or exempt, who intend to travel to the Schengen area for a short trip for business or tourism can stay for a maximum of 90 days in any 180-day period. A few terms and rules apply:*

**Date of entry:** The first day of stay on the territory of the Schengen Member State

**Date of exit:** The last day of stay in the Schengen Area

This applies only to short-term visitors. Periods of stay authorized under a residence permit or a long-stay visa are not taken into account in the calculation of the duration of stay on the territory of the Member States.

Reference to "any 180-day period" implies the application of a **"moving" 180-day reference period**, looking backwards at each day of the stay (be it at the entry or at the day of an actual check), into the last 180-day period, to verify if the 90-days/180-day-period requirement continues to be fulfilled.

As noted above, calculation is often not easy. The EU has created an online calculator.

## **New Entry/Exit System**

The new Entry/Exit System (EES), to be operational in 2022, will automatically identify those who overstay their periods of admission. It will collect identity information and the date and place of entry and exit. The EES will apply to non-EU nationals, visa-required and visa-exempt travelers in the Schengen area. It will replace manual stamping of passports.

Details:

- "How to Count Your Schengen 90 Days," Medium, <https://medium.com/studiomazzeschi/how-to-count-your-schengen-90-days-ee96f5d25326>
- Entry/Exit System (EES), Migration and Home Affairs, European Commission, [https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/smart-borders/entry-exit-system\\_en](https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/smart-borders/entry-exit-system_en)

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## **New Publications and Items of Interest**

USCIS public engagement on Afghanistan TPS. U.S. Citizenship and Immigration Services (USCIS) will hold a public engagement on temporary protected status for Afghanistan on Thursday, June 16, 2022, from 2-3 p.m. ET. USCIS will provide an overview of the TPS designation and hold a question-and-answer session. To register, visit the [USCIS registration page](#), enter your email address and select "Submit," then select "Subscriber Preferences," "Questions," complete the questions, and select "Submit" again.

Employment authorization document (EAD) extension calculator. U.S. Citizenship and Immigration Services has launched an EAD Automatic Extension Calculator. The calculator will "calculate the new EAD expiration date for eligible employees" affected by an automatic extension for certain renewal applicants from up to 180 days to up to 540 days. <https://www.uscis.gov/i-9-central/form-i-9-resources/employment-authorization-document-ead-automatic-extension-calculator>

National Visa Center Public Inquiry telephone line suspended. The National Visa Center (NVC) has suspended its public inquiry telephone line. The suspension "will not impede any essential functions of NVC," the Department of State said. The announcement includes tips for interacting with NVC. <https://travel.state.gov/content/travel/en/News/visas-news/nvc-public-inquiry-telephone-line-suspension.html>

"Eligible to Naturalize" factsheets. U.S. Citizenship and Immigration Services has released fact sheets providing information on the "eligible to naturalize" population, including select

characteristics of people with lawful permanent resident status in several areas.

<https://www.uscis.gov/news/all-news/fact-sheets> (scroll to May 16, 2022)

Readout on backlog reduction. U.S. Citizenship and Immigration Services held a virtual public engagement on May 18, 2022, with nearly 2,000 stakeholders nationwide on the agency's efforts to reduce backlogs and improve processing times. USCIS updated participants on the agency's recently announced initiatives to use all available regulatory, policy, and operational tools to reduce backlogs and processing times, including the expansion of premium processing, providing timely access to employment authorization documents, and further reducing the agency's pending caseload. <https://www.uscis.gov/newsroom/news-releases/readout-of-national-public-engagement-on-backlog-reduction>

Effects of long visa processing delays on tourism and business travelers. On May 9, 2022, Bloomberg Law published "Tourism Industry Rebound Hampered by Long Visa Processing Delays." The article notes that international travel to the United States is not expected to return to pre-pandemic levels until 2024 at the earliest, in large part because of long visa wait times in some of the largest markets for international travel to the United States. For example, the article notes, as of May 2022 inbound travelers can expect to wait 702 days in Guadalajara, Mexico; 354 days in Sao Paulo, Brazil; and 643 days in Bogota, Colombia. International visitors "typically make up about half of business and tourist travel to the Miami area," two-thirds of which is from South American countries. Securing visas through the Department of State "has become a major hurdle for international tourists and business travelers, foreign workers, and immigrants seeking family-based green cards," the article states. <https://news.bloomberglaw.com/daily-labor-report/tourism-industry-rebound-hampered-by-long-visa-processing-delays>

Ukrainian-language "Uniting for Ukraine" information. U.S. Citizenship and Immigration Services provided information in Ukrainian on the "Uniting for Ukraine" program, under which the Department of Homeland Security (DHS) will offer certain Ukrainian citizens and their immediate family members recently displaced by Russia's invasion of Ukraine an opportunity to travel to the United States to seek humanitarian parole for up to two years. Qualifications include passing biometric and biographic vetting, having sufficient financial support in the United States, and meeting other eligibility requirements. <https://www.uscis.gov/newsroom/alerts/uscis-nadae-informaciyu-schodo-ednannya-zaradi-ukraini> (Ukrainian); <https://www.uscis.gov/newsroom/alerts/uscis-provides-information-on-uniting-for-ukraine> (English)

Agency Twitter accounts:

- EOIR: @DOJ\_EOIR
- ICE: @ICEgov
- Study in the States: @StudyinStates
- USCIS: @USCIS

Immigrant and employee rights webinars. The Department of Justice's Immigrant and Employee Rights Section (IER), of the Civil Rights Division, is offering a number of free webinars for workers, employers, and advocates. For more information, see <https://www.justice.gov/crt/webinars>.

E-Verify webinar schedule. E-Verify has released its calendar of webinars at [https://www.e-verify.gov/calendar-field\\_date\\_and\\_time/month](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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**H. Ronald Klasko**, of **Klasko Immigration Law Partners, LLP**, will speak on the EB-5 panel at the Investment Migration Forum, sponsored by the Investment Migration Council. Global leaders in investment migration from more than 40 countries will be speaking and attending the forum to be held June 6-9, 2022, in Brussels, Belgium. <https://investmentmigration.org/forum/>

**Robert Loughran** (bio: <https://www.abil.com/abil-lawyers/robert-f-loughran/>) announced:

- Partner **José Pérez** and Attorney **Melissa Cantu** will present in a **Foster** webinar, "Basics of Family-Based Immigration," on Wednesday, June 15, 2022. The webinar will provide HR professionals with a basic understanding of family-based immigration. HR professionals can expect to learn about family-based visas, and issues facing U.S. citizens and lawful permanent residents who wish to reunite with their families. <https://attendee.gotowebinar.com/register/4939537719342625549>
- **Mr. Pérez** will speak on a panel, "Foreign/Mexican Investments in the Texas Business Markets," at the U.S.-Mexico Real Estate Investment Summit on Thursday, June 9, 2022. REBS Dallas will bring together executives representing real estate funds, institutional investors, developers, real estate brokers, consultants, attorneys, and academics, as well as government officials and other representatives of the business and financial communities of Texas and Mexico. <https://rebs.mx/>

**IMM**act Immigration Litigation, created by **Kuck Baxter Immigration LLC** and **Siskind Susser PC**, announced the first addition to its group of law firms since the joint venture's founding in 2020: Wasden Bless & Forney. IMMact, created with the goal of pooling resources to pursue mass immigration-related litigation, has filed 23 federal cases so far, including challenging various Department of State visa bans, a Department of Labor regulation, various cases relating to delays in processing of immigration benefits, and others. Mr. Kuck said, "We are excited and honored to have this amazing team of immigration litigators join the IMMact Litigation team. Their individual and combined experience in federal court and deep knowledge of government litigation tactics allows IMMact to offer our clients an unprecedented depth of skill and capacity." <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:9d777bd7-c05d-3683-bef3-a4e153846658#pageNum=1> (press release); <https://www.immactlitigation.com/> (IMMact website)

Guest author **Prof. Stacy Caplow** has authored a new blog post for **Cyrus D. Mehta & Partners PLLC**, "The Pathos of Patel v. Garland." <http://blog.cyrusmehta.com/2022/05/the-pathos-of-patel-v-garland.html>

**Cyrus Mehta** (bio: <https://www.abil.com/abil-lawyers/cyrus-d-mehta/>) has accepted the position of Editor-in-Chief (EIC) of the American Immigration Lawyers Association's *Law Journal*, following the previous EIC's departure on June 30, 2022. Mr. Mehta's blog is at <http://blog.cyrusmehta.com/>.

**Mr. Mehta** and **Jessica Paszco** co-authored a new blog post, "H-1B Extension Beyond Six Years Will Not Be Granted If Priority Date Is Current and Green Card is Not Applied for Within One Year." <http://blog.cyrusmehta.com/2022/05/h-1b-extension-beyond-six-years-will-not-be-granted-if-priority-date-is-current-and-green-card-is-not-applied-for-within-one-year.html>

**Mr. Mehta** and **Kaitlyn Box** co-authored several new blog posts: "Ethical Considerations When ICE Moves to Dismiss Removal Proceedings Under the Doyle Prosecutorial Discretion Memo," <http://blog.cyrusmehta.com/2022/05/ethical-considerations-when-ice-moves-to-dismiss-removal-proceedings-under-the-doyle-prosecutorial-discretion-memo.html>, and , "Helping Afghans and Ukrainians Progress from Parole to Temporary Protected Status to Permanent Residence."



<http://blog.cyrusmehta.com/2022/05/helping-afghans-and-ukrainians-can-progress-from-parole-to-temporary-protected-status-to-permanent-residence.html>

**WR Immigration** announced two nominations for Chambers and Partners' North American Diversity & Inclusion Awards. **Bernard Wolfsdorf** is nominated for Pro Bono Lawyer of the Year and WR Immigration is nominated for Pro Bono Outstanding Firm. The awards ceremony will be held June 9, 2022, in Los Angeles, California. <https://wolfsdorf.com/chambers-diversity-inclusion-awards-north-america-2022/>

**Stephen Yale-Loehr** (bio: <https://www.abil.com/abil-lawyers/stephen-yale-loehr/>) was quoted by *law.com* in "Immigration Lawyers Welcome Clarity and Lessening of Bias Wrought by Court Notification Statute on Hochul's Desk." A measure, passed by the New York legislature and awaiting Gov. Hochul's signature, is structured so that courts would give standard required language about the risk of immigration consequences resulting from a guilty plea to everyone—the court wouldn't first find out whether a defendant is a noncitizen. "So there's no discrimination in that sense," Mr. Yale-Loehr said. He noted that immigration law and criminal law are complicated, and that advising people about the intersection of them makes it even more complicated. "Many times people erroneously think that it's only if they plead guilty to a felony crime that they might be deportable, but in many cases under federal immigration law, pleading guilty to a misdemeanor can also make you deportable," he said. <https://bit.ly/3NZ5g3v>

**Mr. Yale-Loehr** was quoted by *Spectrum News* in "Lawmakers Call for Investigation Into Office Handling Asylum Cases for New England States." He explained that some outside factors may have played a part in the Boston U.S. Citizenship and Immigration Service office's low approval rate. "There are a lot of reasons, [including] high turnover of officers [and] pressure to decide cases quickly ... if [officers] see the same kind of case over and over again, you sort of feel like you know that type of case without really probing into the individual facts of the case. ... There's a lot of disparity in all of the USCIS asylum offices and it got worse during the Trump administration. There was pressure from headquarters to make it harder to win approval. So approval rates across the country went down. They just seem to have gone down more in Boston than in some of the other USCIS asylum offices." <https://spectrumnews1.com/ma/worcester/politics/2022/06/01/lawmakers-call-for-investigation-into-office-handling-asylum-cases-for-new-england-states>

**Mr. Yale-Loehr** was quoted by the *Washington Examiner* in "Biden's Options Limited on Title 42 COVID-19 Migration Rule After Court Ruling." Mr. Yale-Loehr said the Biden administration has three options in deciding what to do after a federal district court issued an order barring the administration from terminating its Title 42 policy of barring most people from entering the United States at the U.S.-Mexico border: it could appeal to the U.S. Court of Appeals for the Fifth Circuit, start the rulemaking process and ask for public comment on terminating Title 42, or give up and keep the measure in place. Since the White House has already said it will appeal, that process will play out over the course of several months, leaving Title 42 effectively in place for the foreseeable future. Mr. Yale-Loehr said the decision not to seek an immediate stay may have boiled down to practical reasons. "I suspect the reason is that it is very hard to win an emergency stay," he said. <https://www.washingtonexaminer.com/news/white-house/bidens-options-limited-on-title-42-covid-19-migration-rule-after-court-ruling>

**Mr. Yale-Loehr** was quoted by Univision in "The Four Cases in the Hands of the Supreme Court That Will Impact Hundreds of Thousands of Immigrants." In one case, he said, "Two lower courts have held that, in certain cases, immigrants have [a] right" to request a bond hearing after six months in detention. "But the conservative majority on the Supreme Court may disagree with those rulings," he said. The arguments, presented by defense attorneys for immigrants and the U.S. government, will decide whether foreigners who have been detained for more than six months "have the right to a bail hearing to be released," he noted. In another case, he said, the plaintiff "is arguing that, to avoid a due process violation, he and certain other

immigrants should be entitled to a bond hearing after six months in detention. However, in 2021 the Supreme Court ruled 6-3 that immigrants who return to the United States illegally after being deported must be held without bond while they await a second deportation hearing." Mr. Yale-Loehr further said that "both cases are important, in part due to the large backlog of cases in the immigration courts. More than 1.7 million immigrants have cases pending with the [Executive Office for Immigration Review] (EOIR). It can take years to get a decision. If immigrants have to be detained all that time, the monetary and social costs will be immense."

<https://www.univision.com/noticias/inmigracion/estos-son-los-cuatro-casos-de-inmigracion-pendientes-corte-suprema> (Spanish with English translation available)

**Mr. Yale-Loehr** was quoted by Univision in "Supreme Court Ruling Leaves Immigrants With Errors in Their Paperwork on the Brink of Deportation." Mr. Yale-Loehr said that the Supreme Court's decision "means that thousands of immigrants each year will no longer be able to go to federal court to correct factual errors by immigration judges. Given how much is at stake in deportation proceedings, Congress should provide funding for attorneys to represent immigrants in all deportation proceedings in the same way that attorneys are automatically provided to everyone charged with a crime." <https://www.univision.com/noticias/inmigracion/fallo-corte-suprema-deja-inmigrantes-al-borde-de-deportacion-las-claves> (Spanish, with English translation available)

**Mr. Yale-Loehr** was quoted by Law360 in "High Court Raises Stakes of Immigration Court Decisions." He said that noncitizens without legal representation are more likely to be affected by the Supreme Court's ruling because they don't have the help of legal professionals trained to watch out for potential errors by immigration adjudicators. He said legal aid programs can help address the disadvantages facing noncitizens who lack access to counsel, and encouraged immigration advocates to push for federal, state, and local governments to fund such programs. "We need to make sure that every immigrant has good representation in immigration court. Given the many errors the immigration bureaucracy makes, many people will be denied their day in court because of this decision," he said. <https://www.law360.com/immigration/articles/1493704/high-court-raises-stakes-of-immigration-court-decisions> (registration required)

**Mr. Yale-Loehr** was quoted by the Associated Press in "Video Spreads False Claims About Immigrants." Regarding claims that immigrants living in the United States without authorization commit a high number of crimes, he said, "Almost every reputable report that I have seen has found that immigrants commit crimes at a lower rate than native born U.S. citizens." Mr. Yale-Loehr cited a 2020 study published in *Proceedings of the National Academy of Sciences*, a peer-reviewed journal. Using data from the Texas Department of Public Safety, the study found that immigrants living in the U.S. without authorization have "substantially lower crime rates than native-born citizens and legal immigrants across a range of felony offenses." Regarding an estimate of the number of immigrants who could be living in the United States without authorization, Mr. Yale-Loehr said, "Their numbers of 21 million are just wildly off base. They are double what reputable research organizations have found." He pointed to the Pew Research Center, which estimated that 10.5 million immigrants were living in the U.S. without authorization as of 2017. Regarding claims by conservative activist Candace Owens, citing a 2011 Center for Immigration Studies (CIS) report, that immigrants living in the United States use public benefits at a high rate and that 80% never go off welfare, Mr. Yale-Loehr noted that a 2002 Brookings Institution report states that use of welfare by legal permanent residents has declined by a faster rate than use of such benefits by citizens. "The CIS report doesn't distinguish between legal and illegal immigrants," he noted. "Neither report states that 80% of undocumented immigrants never go off welfare. The bottom line: These two reports fail to support Candace Owens' claim." <https://apnews.com/article/fact-check-charlie-kirk-candace-owens-immigration-688231079873>

**Mr. Yale-Loehr** was quoted by *Time* in "Why Judges Are Basically in Charge of U.S. Immigration Policy Now." He said, "This is a manifestation of our broken immigration system. Today, almost every executive action on immigration is being challenged in the courts." He also noted that judges having so much power to determine immigration policy also puts the U.S. judicial system in a delicate spot, since federal judges are often wary of being drawn into issues of national sovereignty or of impinging on the executive branch's authority to conduct foreign policy. But these days, they often have no choice. "Courts are loath to weigh in," he said. Another reason for the recent explosion of court challenges was the pace at which the Trump administration moved on immigration issues, the article notes. That "unprecedented pace" led to an unprecedented wave of new lawsuits. "That really accelerated the legal challenges," Mr. Yale-Loehr said. And now, he said, "Conservative states are suing every chance they get to challenge everything that the Biden administration is doing on immigration."  
<https://time.com/6172684/judges-us-immigration-policy/>

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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

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