

IMMIGRATION INSIDER

Vol. 20, No. 1 ▪ January 7, 2024

INSIDE THIS ISSUE

[USCIS Issues Guidance on 'Ability to Pay' Requirement When Adjustment Applicants Change Employers](#) – U.S. Citizenship and Immigration Services issued policy guidance, effective immediately, on how it analyzes an employer's ability to pay the proffered wage for immigrant petitions in certain first, second, and third preference employment-based immigrant visa classifications, including instances when the sponsored worker changes employers.

[DOJ Sues Texas Over State Migration Bill](#) – The Department of Justice sued the state of Texas over a bill that would create new state crimes tied to federal prohibitions on unlawful entry and reentry by noncitizens into the United States.

[DOS Issues 'Bright Forecast' for Worldwide Visa Operations](#) – The Department of State said its visa processing capacity "has recovered faster than projected" and announced a "bright forecast" for worldwide visa operations in 2024.

[ABIL Global: Canada](#) – The Canadian government is targeting skilled workers and French-speaking candidates in a new category-based selection process.

[DHS Increases Premium Processing Fees](#) – On February 26, 2024, the Department of Homeland Security will increase premium processing fees charged by U.S. Citizenship and Immigration Services.

[U.S. and Mexico Release Joint Communiqué Following Visit to Discuss Migration Management](#) – On December 27, 2023, a U.S. delegation visited Mexican President Andrés Manuel López Obrador and others to discuss migration management.

[DOS Proposes Supplemental Questionnaire for Passport Applications](#) – The Department of State seeks public comment on a proposed supplemental questionnaire to an existing passport application that would solicit information relating to the respondent's identity.

[State Dept. Announces Pilot Program to Resume Domestic H-1B Nonimmigrant Visa Renewals](#) – The pilot program will accept applications from January 29 to April 1, 2024.

[OFLC Reminds Employers About Deadlines for Peak H-2B Filing Season](#) – The federal Department of Labor announced that from January 2-4, 2024, it will accept H-2B applications for temporary nonprofessional workers requesting a start date of April 1, 2024, or later.

[USCIS Updates Policy Guidance for International Students](#) – U.S. Citizenship and Immigration Services issued policy guidance regarding the F and M student nonimmigrant classifications, including the agency's role in adjudicating related applications for employment authorization, change of status, extension of stay, and reinstatement of status.

[State Dept. Expands Consular Authority for Nonimmigrant Visa Interview Waivers](#) – The Department of State has determined that several categories of interview waivers are in the national interest. As of January 1, 2024, consular officers will have discretion to waive the in-person interview for those categories.

[State Dept. Advises on Passport Processing](#) – Passport processing times have returned to the agency's pre-pandemic norm, the Department of State said. Passport applications will be processed within 6 to 8 weeks for routine service and 2 to 3 weeks for expedited service. Processing times do not include mailing.

[**Detained Workers Are Employees Due Minimum Wage in Private Facility Contracted With ICE, Supreme Court of Washington Finds**](#) – Detained workers at the private detention center were "employees" and therefore were due at least the minimum wage, the Supreme Court of Washington held.

[**USCIS Reaches FY 2024 H-1B Cap**](#) – U.S. Citizenship and Immigration Services has received a sufficient number of petitions needed to reach the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa U.S. advanced degree exemption, known as the master's cap, for fiscal year 2024.

[**DHS Publishes Federal Register Notice Reiterating Extensions of TPS Re-Registration Periods for Several Countries**](#) – The Department of Homeland Security published a Federal Register notice reiterating extensions of the periods to re-register for Temporary Protected Status under the existing designations of El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan.

[**District Court Rules in College's Favor in EB-1 Case**](#) – In *Scripps College v. Jaddou*, a U.S. District Court in Nebraska held that U.S. Citizenship and Immigration Services improperly denied the plaintiff's I-140 immigration petition when it found that the beneficiary of the petition did not qualify for an employment-based first preference visa as an "outstanding professor or researcher."

[**ETA Seeks Information on STEM and Non-STEM Occupations in PERM Schedule A**](#) – The Department of Labor's Employment and Training Administration is seeking information from the public to potentially consider revisions to Schedule A of the permanent labor certification process to include occupations in Science, Technology, Engineering and Mathematics (STEM), including Artificial Intelligence-related occupations, and non-STEM occupations, for which there may be an insufficient number of ready, willing, able, and qualified U.S. workers.

[**ETA Announces Adverse Effect Wage Rates for H-2A Workers in 2024**](#) – The Employment and Training Administration has announced Adverse Effect Wage Rates for H-2A workers in 2024, for range (herding or production of livestock) and non-range (agricultural labor or services other than the herding or production of livestock) occupations.

[**January Visa Bulletin Released; Religious Workers Category Extended**](#) – The Department of State's Visa Bulletin for January 2024 notes that a stopgap funding bill recently passed by Congress extended the employment fourth preference Certain Religious Workers (SR) category until February 2, 2024.

[**USCIS Changes Filing Location for Form I-907 Filed for Pending Form I-140**](#) – U.S. Citizenship and Immigration Services has begun transitioning the filing location for Form I-907, Request for Premium Processing, when filed for a pending Form I-140, Immigrant Petition for Alien Workers, from the service centers to appropriate USCIS lockboxes.

[**OFLC Announces Annual Determination of H-2A Labor Supply States for U.S. Worker Recruitment**](#) – The Department of Labor's Office of Foreign Labor Certification (OFLC) Administrator has determined that current requirements for labor supply states will remain in effect, with one modification: OFLC will no longer recognize North Carolina and Texas as traditional labor supply states for the state of Michigan.

[**USCIS Releases Employment-Based Adjustment of Status FAQs**](#) – U.S. Citizenship and Immigration Services released frequently asked questions about employment-based adjustment of status.

[**State Dept. Issues Final Rule to Eliminate Informal Evaluations of Immigrant Visa Applicants' Family Members**](#) – Effective January 8, 2024, the Department of State is amending its immigrant visa regulations by removing the section allowing a consular officer to conduct an informal evaluation of the family members of an immigrant visa applicant to identify potential grounds of ineligibility.

ALSO IN THIS ISSUE

[New Publications and Items of Interest](#)

[ABIL Member/Firm News](#)

[Government Agency Links](#)

[About ABIL](#)

USCIS Issues Guidance on 'Ability to Pay' Requirement When Adjustment Applicants Change Employers

On January 5, 2024, U.S. Citizenship and Immigration Services issued policy guidance, effective immediately, on how it analyzes an employer's ability to pay the proffered wage for immigrant petitions in certain first, second, and third preference employment-based immigrant visa classifications, including instances when the sponsored worker changes employers.

The guidance notes that generally, employers seeking to classify prospective or current employees under the first, second, and third preference employment-based immigrant visa classifications that require a job offer "must demonstrate their continuing ability to pay the proffered wage to the beneficiary as of the priority date of the immigrant petition until the beneficiary obtains lawful permanent residence."

The updated guidance, which applies to petitions filed on or after January 5, 2024, explains that when the beneficiary of a Form I-140, Immigrant Petition for Alien Workers, moves (or "ports") to a new employer while the Form I-140 is pending, USCIS determines whether the petitioner meets the ability to pay requirements "only by reviewing the facts in existence from the priority date until the filing of the Form I-140."

Details:

- USCIS [alert](#) (Jan. 5, 2024).
- USCIS [Policy Alert](#), PA-2024-01 (Jan. 5, 2024).

[Back to Top](#)

DOJ Sues Texas Over State Migration Bill

The Department of Justice (DOJ) sued the state of Texas on January 3, 2024, regarding a new Texas law known as Senate Bill 4 (SB4). The bill would create, effective March 5, 2024, new state crimes tied to federal prohibitions on unlawful entry and reentry by noncitizens into the United States and would authorize state judges to order the removal of certain noncitizens. It would allow Texas law enforcement officers to arrest those suspected of being in the United States without authorization.

Noting that "Texas cannot run its own immigration system," the DOJ's complaint states that in addition to violating the U.S. Constitution, which tasks the federal government with regulating immigration and controlling the international borders, SB4 also would "intrude on the federal government's exclusive authority to regulate the entry and removal of noncitizens, frustrate the United States' immigration operations and proceedings, and interfere with U.S. foreign relations."

On the same day the suit was filed, Gov. Abbott [posted](#), "Biden sued me today because I signed a law making it illegal for an illegal immigrant to enter or attempt to enter Texas directly from a foreign nation. I like my chances. Texas is the only government in America trying to stop illegal immigration."

Several civil rights groups, including the American Civil Liberties Union and the Texas Civil Rights Project, filed a separate lawsuit in December 2023 challenging the constitutionality of SB4.

Details:

- [U.S. v. Texas](#), Case No. 1:24-cv-00008 (Jan. 3, 2024).

- Justice Department Sues Texas Over State Law Allowing Police to Arrest Migrants Who Cross the Border Illegally, NBC News (Jan. 3, 2024).
- [Civil Rights Groups File Federal Lawsuit Against New Texas Immigration Law SB4](#), CBS Texas (Dec. 19, 2023).

[Back to Top](#)

DOS Issues 'Bright Forecast' for Worldwide Visa Operations

On January 2, 2024, the Department of State (DOS) announced a "bright forecast" for worldwide visa operations. DOS said its visa processing capacity "has recovered faster than projected. We issued more nonimmigrant visas (NIVs) worldwide in 2023 than in any year since 2015."

DOS said it remains focused on "reducing wait times for visitor visa applicants who require an in-person interview, particularly in countries where demand remains at unprecedented levels." Its goal is for more than 90 percent of its overseas posts to have visitor visa interview wait times under 90 days in 2024.

DOS noted that its 230 U.S. embassies and consulates issued more than 10.4 million visas globally in fiscal year 2023. The agency attributed its progress in part to improved efficiency through interview waivers in several key visa categories, including for many students and temporary workers. Additionally, DOS said, applicants renewing nonimmigrant visas in the same classification within 48 months of the prior visa's expiration date can apply without an in-person interview in their countries of nationality or residence. "This continues to be one of our best tools to reduce interview appointment wait times while continuing to make rigorous national security decisions in every case," DOS said.

In 2023, DOS said, it (1) prioritized student and academic exchange visitor visa interviews to facilitate study at U.S. universities and colleges; (2) processed seasonal agricultural and nonagricultural worker visas, issuing a "record-breaking 442,000 visas to H-2A and H-2B temporary workers in 2023, with nearly 90 percent going to qualified workers from Mexico, El Salvador, Guatemala, and Honduras"; (3) issued a "record-breaking 365,000 nonimmigrant visas to airline and shipping crewmembers"; and (4) issued 590,000 nonimmigrant and immigrant visas, "the most ever," to high-skilled workers and executives in a range of sectors, including emerging technology and health care. "Among those, we issued nearly double the number of EB-3 [green cards] in FY 2023 than in FY 2019, the last full year before the pandemic." DOS also issued all the available diversity green card lottery visas during the DV-2023 program year.

Details:

- DOS [Worldwide Visa Operations: Update](#) (Jan. 2, 2024).

[Back to Top](#)

DHS Increases Premium Processing Fees

On February 26, 2024, the Department of Homeland Security will increase premium processing fees charged by U.S. Citizenship and Immigration Services (USCIS):

- From \$1,500 to \$1,685, for Form I-129, Petition for a Nonimmigrant Worker, for H-2B and R-1 nonimmigrant status, and Form I-765, Application for Employment Authorization, for certain F-1 students

- From \$1,750 to \$1,965, for Form I-539, Application to Extend/Change Nonimmigrant Status, for F-1, F-2, M-1, M-2, J-1, J-2, E-1, E-2, E-3, L-2, H-4, O-3, P-4, and R-2 nonimmigrant status
- From \$2,500 to \$2,805, for Form I-140, Immigrant Petition for Alien Workers, for employment-based classifications E11, E12, E21 (non-NIW), E31, E32, EW3, and recently available E13 and E21 (NIW)

A table in the final rule shows that overall, of those eligible for premium processing in fiscal years 2018 through 2022, 57 percent chose to submit a premium processing request:

TABLE 5—PERCENTAGE OF PREMIUM PROCESSING REQUESTS, FY 2018 THROUGH FY 2022

	5-year annual average of Forms submitted with Form I-907	5-year annual average of total receipts by Form	Percentage of Form I-907 receipts
Form I-129	321,038	563,406	57
Form I-140	42,842	80,326	53
Total	363,880	643,732	57

Source: USCIS Analysis.

If USCIS receives a Form I-907 postmarked on or after February 26, 2024, with the incorrect filing fee, it will reject the Form I-907 and return the filing fee. For filings sent by commercial courier (such as UPS, FedEx, and DHL), the postmark date is the date reflected on the courier receipt, USCIS said.

Details:

- USCIS [alert](#) (Dec. 27, 2023).
- USCIS [final rule](#), 88 Fed. Reg. 89539 (Dec. 28, 2023).

[Back to Top](#)

U.S. and Mexico Release Joint Communique Following Visit to Discuss Migration Management

On December 27, 2023, a U.S. delegation visited Mexican President Andrés Manuel López Obrador and others to discuss migration management. The U.S. delegation was led by Secretary of State Antony Blinken, Secretary of Homeland Security Alejandro Mayorkas, and White House Homeland Security Advisor Elizabeth Sherwood-Randall.

The two countries reaffirmed their existing commitments on fostering "orderly, humane, and regular migration," including reinforcing their partnership to address the root causes of migration, and the two countries' initiative for Cubans, Haitians, Nicaraguans, and Venezuelans. The communique emphasized ongoing cooperation, "to include enhanced efforts to disrupt human smuggling, trafficking, and criminal networks, and continuing the work to promote legal instead of irregular migration pathways." Both delegations also agreed on the importance of maintaining and facilitating bilateral trade at the U.S.-Mexico border.

Mexican President López Obrador stressed the need to continue investing in ambitious development programs throughout the hemisphere. The delegations also discussed "the benefit of regularizing the situation of long-term undocumented Hispanic migrants and DACA recipients, who are a vital part of the U.S. economy and society."

The two delegations agreed to meet again in Washington in January 2024.

Details:

- [Joint Communiqué](#) (Dec. 28, 2023).

[Back to Top](#)

DOS Proposes Supplemental Questionnaire for Passport Applications

The Department of State (DOS) has published a 60-day notice seeking public comment on a proposed supplemental questionnaire to an existing passport application that would solicit information relating to the respondent's identity, including family and birth circumstances, that is needed before passport issuance. If such information on Form DS-5513 is needed, a passport agency will mail the form to the applicant for completion and return, or the applicant can download and complete a fillable PDF version.

DOS will accept comments until February 26, 2024.

Details:

- DOS [notice](#), 88 Fed. Reg. 89002 (Dec. 26, 2023).

[Back to Top](#)

State Dept. Announces Pilot Program to Resume Domestic H-1B Nonimmigrant Visa Renewals

On December 21, 2023, the Department of State (DOS) announced a pilot program to resume domestic visa renewal for qualified H-1B nonimmigrant visa applicants who meet certain requirements. The pilot program will accept applications from January 29 to April 1, 2024.

Participation in the pilot is limited to individuals who have previously submitted fingerprints in connection with an application for a prior non-diplomatic nonimmigrant H-1B visa, are eligible for a waiver of the in-person interview requirement, and meet other applicable requirements. DOS said the goal of the pilot is "to test the Department's technical and operational ability to resume domestic visa renewals for specific nonimmigrant classifications and to assess the efficacy of this program in reducing worldwide visa wait times by shifting certain workloads from overseas posts to the United States."

Applicants who meet the requirements can participate during the application window by applying [online](#). Written comments and related materials must be received by midnight April 15, 2024.

Details:

- DOS [notice](#), 88 Fed. Reg. 88467 (Dec. 21, 2023).

[Back to Top](#)

OFLC Reminds Employers About Deadlines for Peak H-2B Filing Season

On December 22, 2023, the Department of Labor's Office of Foreign Labor Certification (OFLC) reminded employers that the filing window to submit an H-2B Application for Temporary Employment Certification (Form ETA-9142B and appendices) requesting work start dates of April 1, 2024, or later opened on January 2, 2024.

OFLC said it will randomly order for processing all H-2B applications requesting a work start date of April 1, 2024, that were filed during the initial three calendar days (January 2-4, 2024). OFLC warned:

If OFLC identifies multiple applications that appear to have been filed for the same job opportunity, OFLC will issue a Notice of Deficiency. If multiple filings are submitted during the three-day filing window, all applications will receive a Notice of Deficiency requesting that the employer demonstrate that the job opportunities are not the same. Employers that fail to establish a bona fide need for each application will receive a non-acceptance denial for each application.

Details:

- OFLC [announcement](#) (Dec. 22, 2023).

[Back to Top](#)

USCIS Updates Policy Guidance for International Students

On December 20, 2023, U.S. Citizenship and Immigration Services (USCIS) issued policy guidance regarding F and M nonimmigrant students, including the agency's role in adjudicating applications for employment authorization, change of status, extension of stay, and reinstatement of status for these students and their dependents in the United States. USCIS said it "expects that this will provide welcome clarity to international students and U.S. educational institutions on a wealth of topics, including eligibility requirements, school transfers, practical training, and on- and off-campus employment."

For example, USCIS said, the guidance clarifies that F and M students must have a foreign residence that they do not intend to abandon, but such a student may be the beneficiary of a permanent labor certification application or immigrant visa petition and may still be able to demonstrate an intent to depart after a temporary period of stay.

In addition, the guidance specifies how an F student seeking an extension of optional practical training based on a degree in a science, technology, engineering, or mathematics field may be employed by a startup company, as long as the employer adheres to the training plan requirements, remains in good standing with E-Verify, and provides compensation commensurate to that provided to similarly situated U.S. workers, among other requirements.

Details:

- USCIS [alert](#) (Dec. 20, 2023).
- USCIS [policy alert](#), PA-2023-34 (Dec. 20, 2023).

[Back to Top](#)

State Dept. Expands Consular Authority for Nonimmigrant Visa Interview Waivers

On December 21, 2023, the Department of State (DOS) announced that it had consulted with the Department Homeland Security and determined that several categories of interview waivers are in the national interest. As of January 1, 2024, consular officers have discretion to waive the in-person interview for:

- First time H-2 visa applicants (temporary agricultural and nonagricultural workers) and
- Other nonimmigrant visa applicants applying for any nonimmigrant visa classification who:
 - Were previously issued a nonimmigrant visa in any classification, unless the only prior issued visa was a B visa; and

- Are applying within 48 months of their most recent nonimmigrant visa's expiration date.

Consular officers may still require in-person interviews on a case-by-case basis or because of local conditions. DOS encourages applicants to check embassy and consulate websites.

Details:

- DOS [notice](#) (Dec. 21, 2023).

[Back to Top](#)

State Dept. Advises on Passport Processing

On December 18, 2023, the Department of State (DOS) announced that passport [processing times](#) have returned to the agency's pre-pandemic norm. As of December 18, 2023, DOS said, passport applications will be processed within 6 to 8 weeks for routine service and 2 to 3 weeks for expedited service, which costs an additional \$60. Processing times begin when DOS receives an application at a passport agency or center and do not include mailing times.

DOS said that this year, demand for passports was "unprecedented." Between October 2022 and September 2023, the agency issued more than 24 million passport books and cards, the highest number in U.S. history.

Details:

- DOS [notice](#) (Dec. 18, 2023).

[Back to Top](#)

Detained Workers Are Employees Due Minimum Wage in Private Facility Contracted With ICE, Supreme Court of Washington Finds

The main question in this case before the Supreme Court of the State of Washington concerned a challenge to the detained-worker pay practices of the GEO Group Inc., which owns and operates the Northwest ICE Processing Center (NWIPC), a private immigration detention center in Tacoma, Washington, under a contract with the federal government. The plaintiffs objected to GEO's practice of paying civil immigration detainees less than Washington state's minimum wage. Plaintiffs asked the court to determine whether Washington's Minimum Wage Act (MWA) applies to detained workers in a privately owned and operated detention facility. The court concluded that it does.

GEO contracts with U.S. Immigration and Customs Enforcement (ICE) to confine up to 1,575 noncitizen, noncriminal adults in administrative civil custody as they await review and determination of their immigration status. Under the ICE contract, GEO developed and manages a Voluntary Work Program, the purpose of which is to provide detainees opportunities to work and earn money while confined. The NWIPC detainees "were not to be used to perform" the "core obligations" that, under the ICE contract, were the responsibilities and duties of GEO. However, GEO relied on the detained workers to perform "substantially the core work required of GEO under the contract." GEO paid its detained workers \$1 per day to perform these essential tasks.

The State of Washington and a class of NWIPC detainees sued GEO in September 2017. They alleged that GEO's practice of paying detainees less than Washington's minimum wage to work in the detention center violated Washington's MWA.

The Supreme Court of Washington found that the detained workers at the private detention center were "employees" within the meaning of the MWA. The plaintiffs argued that an exemption indicates that the Washington legislature contemplated the MWA's application to individuals in detention or custody who are permitted to work. They argued that the exemption unambiguously applies only to individuals detained in public, government-run institutions. Therefore, they said, the exemption does not apply to the detained workers at the privately owned and operated facility. The Supreme Court of Washington agreed.

Details:

- [Nwauzor v. The GEO Group, Inc.](#), No. 101786-3 (Dec. 21, 2023).
- "CEO Group Must Pay Minimum Wage to Immigrant Detainees, Court Rules," Reuters (Dec. 22, 2023).

[Back to Top](#)

USCIS Reaches FY 2024 H-1B Cap

U.S. Citizenship and Immigration Services (USCIS) announced on December 13, 2023, that it has received a sufficient number of petitions needed to reach the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa U.S. advanced degree exemption, known as the master's cap, for fiscal year (FY) 2024.

USCIS said it will send non-selection notices to registrants through their online accounts. When the agency finishes sending the non-selection notifications, the status for properly submitted registrations that USCIS did not select for the FY 2024 H-1B numerical allocations will show:

- Not Selected: Not selected—not eligible to file an H-1B cap petition based on this registration.

USCIS said it will continue to accept and process petitions that are otherwise exempt from the cap. Petitions filed for current H-1B workers who have been counted previously against the cap, and who still retain their cap number, are exempt from the FY 2024 H-1B cap. USCIS will continue to accept and process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States;
- Change the terms of employment for current H-1B workers;
- Allow current H-1B workers to change employers; and
- Allow current H-1B workers to work concurrently in additional H-1B positions.

Details:

- [USCIS alert](#) (Dec. 13, 2023).

[Back to Top](#)

DHS Publishes Federal Register Notice Reiterating Extensions of TPS Re-Registration Periods for Several Countries

The Department of Homeland Security (DHS) published a Federal Register notice on December 13, 2023, reiterating extensions of the periods to re-register for Temporary Protected Status (TPS) under the existing designations of El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. As previously

announced, the re-registration period for each country is changing from 60 days to the full length of each country's current TPS designation extension. The re-registration extensions are solely for TPS beneficiaries who properly filed for TPS during a previous registration period.

The 18-month re-registration periods for these current TPS beneficiaries, which are currently open, are extended to the following dates:

- **El Salvador**, through March 9, 2025
- **Haiti**, through August 3, 2024
- **Honduras**, through July 5, 2025
- **Nepal**, through June 24, 2025
- **Nicaragua**, through July 5, 2025
- **Sudan**, through April 19, 2025

DHS said that limiting the re-registration period to 60 days "for these particular beneficiaries might place a burden on applicants who cannot timely file, but who otherwise would be eligible to re-register for TPS. In particular, ongoing litigation resulted in overlapping periods of TPS validity that were announced in several Federal Register notices, which may confuse some current beneficiaries. This notice allows beneficiaries of these countries who have not been required to re-register for TPS for the past few years due to litigation to re-register through the entire designation extension period."

Details:

- [DHS news release](#) (Dec. 13, 2023).
- U.S. Citizenship and Immigration Services [notice](#), 88 Fed. Reg. 86665 (Dec. 14, 2023).

[Back to Top](#)

District Court Rules in College's Favor in EB-1 Case

In *Scripps College v. Jaddou*, a U.S. District Court in Nebraska held that U.S. Citizenship and Immigration Services (USCIS) improperly denied the plaintiff's I-140 immigration petition when it found that the beneficiary of the petition did not qualify for an employment-based first preference visa as an "outstanding professor or researcher." The court ruled in favor of the plaintiff, Scripps College.

Scripps argued that USCIS's denial of its I-140 petition must be reversed because USCIS made internally inconsistent findings, imposed novel evidentiary requirements, disregarded relevant factors, and was not supported by substantial evidence.

Citing various decisions, the court noted that agency action must be upheld on review unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." An agency decision is arbitrary and capricious if the agency acted outside "the bounds of reasoned decision-making, relied on factors which Congress has not intended it to consider, provided an explanation that runs counter to the evidence, or makes a decision that is so implausible that it could not be ascribed to a difference in view or the product of agency expertise," the court noted.

Among other things, the court found that USCIS had made inconsistent findings based on the evidence, and made findings that were controverted by the evidence. Further, the court said, the "unexplained internal inconsistencies" reflected that USCIS failed to articulate a satisfactory explanation for its action, including "a rational connection between the facts found and the choice made." USCIS also "imposed novel evidentiary requirements in its denial" of Scripps' I-140 petition, the court said. Concluding that USCIS's decision "was arbitrary and capricious, an abuse of discretion, and contrary to the law," the

court granted Scripps' motion for summary judgment and denied USCIS's motion for summary judgment.

Details:

- [Scripps College v. Jaddou](#) (Dec. 12, 2023).

[Back to Top](#)

ETA Seeks Information on STEM and Non-STEM Occupations in PERM Schedule A

The Department of Labor's Employment and Training Administration (ETA) is seeking information from the public to potentially consider revisions to Schedule A of the permanent labor certification process to include occupations in Science, Technology, Engineering and Mathematics (STEM), including Artificial Intelligence-related occupations, and non-STEM occupations, for which there may be an insufficient number of ready, willing, able, and qualified U.S. workers.

ETA said its request for information (RFI) will provide the public an opportunity to address whether and why STEM occupations should be added to Schedule A, offer information on which occupations should be considered as falling under the umbrella of STEM, and request data, studies, and related information that should be considered to establish a reliable, objective, and transparent methodology for identifying STEM or non-STEM occupations with a significant shortage of workers that should be added to or removed from Schedule A. "To the extent possible and wherever appropriate, responses to this RFI should indicate the question number(s) and include specific information, data, statistical models and metrics, and any resources relied on in reaching conclusions for its claims, rather than relying on general observations," ETA said.

Details:

- PERM Schedule A Request for Information, [announcement](#), Dept. of Labor (Dec. 15, 2023).
- [Request for Information](#) (advance copy), Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A to Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations.

[Back to Top](#)

ETA Announces Adverse Effect Wage Rates for H-2A Workers in 2024

The Department of Labor's (DOL) Employment and Training Administration (ETA) has announced Adverse Effect Wage Rates (AEWRs) for H-2A agricultural workers in 2024, for range (herding or production of livestock) and non-range (agricultural labor or services other than the herding or production of livestock) occupations. The monthly AEWR for range occupations in calendar year 2024 is \$1,986.76. The non-range AEWR varies by state, and ranges from \$14.53 to \$19.25 per hour.

The AEWRs are for the employment of temporary or seasonal nonimmigrant foreign workers. AEWRs are the minimum wage rates DOL has determined must be offered, advertised in recruitment, and paid by employers to H-2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States who are similarly employed will not be adversely affected.

Details:

- Federal Register [notice](#) (range occupations), 88 Fed. Reg. 86679 (Dec. 14, 2023).
- Federal Register [notice](#) (non-range occupations), 88 Fed. Reg. 86677 (Dec. 14, 2023).

[Back to Top](#)

January Visa Bulletin Released; Religious Workers Category Extended

The Department of State's Visa Bulletin for January 2024 notes that H.R. 6363, a stopgap funding bill signed on November 16, 2023, extended the employment fourth preference Certain Religious Workers (SR) category until February 2, 2024. The bulletin notes that no SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight February 1, 2024. Visas issued before that date will be valid only until February 1, 2024, and all individuals seeking admission in the non-minister special immigrant category must be admitted into the United States by midnight February 1, 2024.

The SR category is subject to the same final action dates as the other employment fourth preference categories per applicable foreign state of chargeability, the bulletin states.

Details:

- [Visa Bulletin](#) for January 2024.

[Back to Top](#)

USCIS Changes Filing Location for Form I-907 Filed for Pending Form I-140

U.S. Citizenship and Immigration Services (USCIS) announced that as of December 15, 2023, it has begun transitioning the filing location for Form I-907, Request for Premium Processing, when filed for a pending Form I-140, Immigrant Petition for Alien Workers, from the service centers to appropriate USCIS lockboxes.

USCIS noted that this change does not apply to those filing Form I-140 concurrently with an associated application (such as Form I-485, I-765, or Form I-131). The agency said it will soon announce a filing location change for these forms, but as of now, such forms should be filed with the service centers as listed on the [Direct Filing Addresses for Form I-140, Immigrant Petition for Alien Worker](#) page.

USCIS will reject any Form I-907 filed with Form I-140 that is received at the previous service center address.

Details:

- [USCIS alert](#), including new lockbox addresses (Dec. 13, 2023).
- [USCIS Tips for Filing Forms by Mail](#) (last reviewed/updated Dec. 13, 2023).

[Back to Top](#)

OFLC Announces Annual Determination of H-2A Labor Supply States for U.S. Worker Recruitment

The Department of Labor's Office of Foreign Labor Certification (OFLC) Administrator has determined that current requirements for labor supply states (LSS) will remain in effect, with one modification: OFLC

will no longer recognize North Carolina and Texas as traditional labor supply states for the state of Michigan.

DOS said that this LSS determination was effective December 7, 2023, for employers who have not commenced recruitment after receiving a Notice of Acceptance. The determination will remain valid until the OFLC Administrator publishes a new determination on the OFLC website.

OFLC explained that a 2022 H-2A Final Rule implemented a new process for the OFLC Administrator's LSS determinations. LSS are additional states in which an employer's job order will be circulated and, if appropriate, where additional recruitment may be required. Earlier this year, the OFLC Administrator solicited public input about LSS and related recruitment mechanisms. Determinations include particular areas of the United States in which a significant number of qualified workers have been identified and who, if recruited through additional positive employer recruitment activities, would be willing to make themselves available for work in the state.

Details:

- OFLC [announcement](#) (Dec. 7, 2023).

[Back to Top](#)

USCIS Releases Employment-Based Adjustment of Status FAQs

On December 8, 2023, U.S. Citizenship and Immigration Services (USCIS) released [frequently asked questions \(FAQs\)](#) about employment-based (EB) adjustment of status.

USCIS noted that the EB annual limit for fiscal year (FY) 2024 will be higher than was typical before the pandemic, but lower than it was in FYs 2021-2023. USCIS said it is dedicated to using as many available [employment-based visas](#) as possible in FY 2024, which ends on September 30, 2024.

Details:

- USCIS [FAQs](#) (Dec. 8, 2023).

[Back to Top](#)

State Dept. Issues Final Rule to Eliminate Informal Evaluations of Immigrant Visa Applicants' Family Members

Effective January 8, 2024, the Department of State (DOS) is amending its immigrant visa regulations by removing the section allowing a consular officer to conduct an informal evaluation of the family members of an immigrant visa applicant to identify potential grounds of ineligibility.

DOS explained that the existing regulation was promulgated in 1952, when a consular officer could more readily assess a family member's potential qualification for a visa without a formal visa application. "Assessing eligibility for an immigrant visa is now a more complex task and not one which can be accomplished accurately with an informal evaluation," DOS said.

Details:

- DOS [Final Rule](#), 88 Fed. Reg. 85109 (Dec. 7, 2023).

[Back to Top](#)

ABIL Global: Canada

The Canadian government is targeting skilled workers and French-speaking candidates in a new category-based selection process.

In a marked departure from its points-based immigration program selection system, the Honourable Sean Fraser, then-Minister of Immigration, Refugees and Citizenship, announced on May 31, 2023, [the launch of a new measure](#) of category-based selection for Canada's Express Entry management system to respond to Canada's changing economic and labor market needs, with an additional focus on Francophone immigration. This measure allows Immigration, Refugees and Citizenship Canada (IRCC) to issue invitations to apply to candidates who hold specific skills, training, or language abilities. For 2023, category-based selection invitations will target candidates who have a strong French language proficiency or work experience in the fields of health care; science, technology, engineering, and mathematics (STEM) professions; trades, such as carpenters, plumbers, and contractors; transport; agriculture; and agri-food. As of January 2024, this list of categories is subject to change.

Express Entry is the system used by IRCC to manage skilled workers seeking to become Canadian Permanent Residents through the Federal Skilled Worker Program, the Federal Skilled Trades Program, the Canadian Experience Class, and a portion of the Provincial Nominee Program. Candidates are ranked according to a Comprehensive Ranking System (CRS), which is a points-based system that ranks candidates based on factors such as their education, language skills, work experience, and age. IRCC then periodically invites applicants with the highest scores to apply for permanent residence.

Among other category-based draws that began on June 28, 2023, [IRCC issued invitations to apply in the following categories](#):

- On July 12, 2023, IRCC issued 3,800 invitations to apply to candidates with French language proficiency with a minimum CRS score of 375.
- On September 28, 2023, IRCC held a targeted draw in the agriculture and agri-food occupations, inviting 600 applicants with a minimum CRS score of 354.
- On October 26, 2023, IRCC issued 3,600 invitations to apply to candidates in health care occupations with a minimum CRS score of 431.

In 2023, before the first targeted draw, the lowest CRS score was recorded at 481 points for candidates in an all-program draw.

Following the announcement and the beginning of targeted draws, the CRS cut-off decreased significantly for Express Entry candidates within the five targeted categories. However, since the first targeted draw at the end of June 2023, the lowest invitations for an all-program draw were issued to candidates with a minimum CRS score of 496. Thus, the CRS cut-off score has increased for profiles not included in the list of targeted occupations. In addition, the introduction of category-based selection has significantly diminished the number of invitations sent out to Express Entry profiles in the all-program draws.

[The Canadian Government seeks to welcome](#) 110,770 and 117,500 skilled workers in 2024 and 2025, respectively, through the Federal Skilled Worker Program, the Federal Skilled Trades Program, and the Canadian Experience Class. The Provincial Nominee Program will account for an additional 110,000 Canadian permanent residents in 2024, and 120,000 in 2025.

[Back to Top](#)

New Publications and Items of Interest

IER/HSI fact sheet on electronic completion of Form I-9. The Department of Justice's (DOJ) Immigrant and Employee Rights Section (IER) has issued a fact sheet with the Department of Homeland Security's Immigration and Customs Enforcement, Homeland Security Investigations. The fact sheet, [How to Avoid Unlawful Discrimination and Other Form I-9 Violations When Using Commercial or Proprietary Programs to Electronically Complete the Form I-9 or Participate in E-Verify](#), discusses how employers can avoid violating the law when using such programs to complete the Form I-9 or E-Verify process. DOJ noted that several settlements "have involved employers that IER determined had committed discrimination related to their use of commercial or proprietary electronic Form I-9 programs." [These settlements](#) "required employers to pay civil penalties, rehire workers with back pay, undergo training and monitoring, and change their employment eligibility verification practices to avoid future discrimination involving commercial or proprietary Form I-9 programs," DOJ said, adding that "[u]nderstanding common mistakes that contribute to discrimination can help an employer when considering whether to use a commercial or proprietary program for completing the Form I-9 or participating in E-Verify."

IER On-Demand Trainings. The Immigrant and Employee Rights (IER) Section of the Department of Justice's Civil Rights Division is offering an on-demand [training](#) for employers on avoiding unlawful immigration-related employment discrimination. IER also provides an Employer Hotline at 1-800-255-8155.

Immigration agency X (formerly 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](#).

Alliance of Business Immigration Lawyers:

- ABIL is available on X (formerly Twitter): @ABILImmigration

[Back to Top](#)

ABIL Member/Firm News

Several ABIL members spoke at the Practising Law Institute's [56th Annual Immigration and Naturalization Institute](#) conference on November 28-29, 2023:

- USCIS Update and Processing Trends – Practical Tips: [Marketa Lindt](#)
- Permanent Labor Certification Program (PERM) – Current Adjudication Trends: [Vincent Lau](#), [Bob White](#) (Masada Funai).
- Ethical Issues for the Immigration Practitioner: [Cyrus Mehta](#)
- Supreme Court Update and Analysis: Immigration: [Ira Kurzban](#) (Kurzban Kurzban Tetzeli and Pratt P.A.)

[Klasko Immigration Law Partners](#) announced new leadership changes at the firm. Starting January 1, 2024, the following leadership positions will be effective:

- [H. Ronald Klasko](#), Chairman. Mr. Klasko will continue to concentrate on the firm's strategic growth and vision.

- [William \(Bill\) Stock](#), Managing Partner. Mr. Stock will continue to enhance the firm's operations across all office locations.
- [Elise Fialkowski](#), Corporate Team Co-Chair
- [Michele Madera](#), Corporate Team Co-Chair. Together, Ms. Fialkowski and Ms. Madera will lead the Corporate Immigration Practice, strengthening existing client relationships and offerings for new clients.
- [Timothy \(Tim\) D'Arduini](#), Partner-In-Charge of DC Office. Mr. D'Arduini will lead the opening of the firm's new office and expand its footprint into the D.C. metro area. He will be an essential part of the firm's growth in the Mid-Atlantic region, and will play a key role in sustaining and enhancing the firm's national and international capabilities. He also brings extensive compliance experience that will enhance the firm's established worksite compliance practice area.

[Mr. Mehta](#) and [Kaitlyn Box](#) have co-authored a new blog post: [Personal Conflicts of Interest Arising Out of the Israel-Hamas War](#).

[Mr. Mehta](#) and [Jessica Paszko](#) have co-authored several new blog posts: [2023 In Perspective From The Insightful Immigration Blog](#) and [Scripps v. Jaddou Offers Nuanced Interpretation of Final Merits Determination in Reversal of EB-1B Denial for Outstanding Researcher](#).

[WR Immigration](#) has posted several new blog entries: [USCIS Increases H-1B Premium Processing Fee to \\$2,805, Alongside Fee Increases for Other Case Types](#); [What Happened With the Form I-9? End-of-Year Recap](#); and [Department of State Announces H-1B Visa Renewal Pilot Program in the U.S.](#)

[WR Immigration](#) presented [Chatting with Charlie: January 2024 Visa Bulletin Update](#) on December 19, 2023. The presentation included a sneak peak of what's in store for 2024 and an evaluation of the January 2024 Visa Bulletin.

[Stephen Yale-Loehr](#) was quoted by *the Austin American-Statesman* in [Texas Democrats in Congress Say SB4 is Unconstitutional. Here's What They're Doing About It](#) [available by subscription]. "They did it in Arizona," Mr. Yale-Loehr said, referring to a 2012 Supreme Court case in which the Obama administration challenged a similar Arizona law. "[The Arizona law] was unconstitutional. It violated the federal government's obligation to control immigration."

[Mr. Yale-Loehr](#) was quoted by *Newsday* in [Migrant Crisis: Politics Diminishes Likely Resolution, Analysts Say](#) [available by subscription].

[Mr. Yale-Loehr](#) was quoted by *Agence France-Presse* in [The Photo Intended to Prove That \[Ukrainian President Volodymyr\] Zelensky Received American Citizenship is a Digitally Forged Document](#) (in Polish, with English translation available). He said, "A real naturalization certificate contains the person's signature next to their photo. The certificate in the photo does not contain this. The alleged certificate also does not contain Zelensky's signature at the top, but it should." Mr. Yale-Loehr also noted that obtaining U.S. citizenship is a long process: "No person can simply obtain a certificate of naturalization. He must first go through the green card process, which means he must qualify for a green card based on asylum or sponsorship by an employer or close family member. This can take years. Even after receiving a green card, he has to wait 3-5 years before he can apply for naturalization." In addition, Mr. Yale-Loehr said, he must have been physically present in the United States for at least three months immediately before applying for naturalization. "Zelensky did not meet these requirements," he noted.

[Mr. Yale-Loehr](#) co-authored an op-ed in the *Seattle Times*, [Outdated Green Card Laws Hurt Workers From India](#).

[Mr. Yale-Loehr's](#) white paper, [Immigration Reform: A Path Forward](#), was featured in an eCornell podcast discussion, [Three Ways to Reform Immigration Now](#).

Mr. Yale-Loehr was quoted by *Bloomberg Law* in [Biden's Immigration Agenda Faces Uncertain Fate in U.S. Courts](#). He said, "Federal courts are becoming the arbiters of immigration policy. That makes it very difficult for any administration to manage immigration because no matter what they try to do administratively, someone will sue them in federal court."

Mr. Yale-Loehr was quoted by *NY1.com* in [U.S. Senators Search for Border Policy Deal, as Experts Downplay Potential Short-Term Impact on NY's Migrant Influx](#). He warned that detaining and quickly expelling migrants before asylum screenings would not solve the influx problem for cities like New York, which is grappling with a surge of migrants. "Probably not, because the crisis is larger than any one piece of legislation." Mr. Yale-Loehr likened the proposed policy changes in Congress to a bandage over a gaping wound and said broader reforms are needed. He suggested that Congress consider ideas like making more work visas available. "We need to have a balanced approach. Yes, we need to have deterrence so that only those people who deserve to be in the United States can come. But we also need to find more legal pathways for people to enter legally in the United States, so that they are not tempted to enter illegally," he said.

Mr. Yale-Loehr was quoted by *CBS News* in [Texas Immigration Law Known as SB4, Allowing State to Arrest Migrants, Signed by Gov. Greg Abbott](#). He called SB4 "unprecedented," noting that the Texas law is more sweeping in nature than SB 1070, a controversial 2010 Arizona law that penalized unauthorized immigrants in various ways, including by empowering state police to stop those believed to be in the country unlawfully. The U.S. Supreme Court partially struck down that Arizona law in 2012, concluding that states could not undermine federal immigration law. "It's by far the most anti-immigrant bill that I have seen," Mr. Yale-Loehr said of SB4.

Mr. Yale-Loehr was quoted by the *Cornell Chronicle* in [Research Team Led by Dr. Gunisha Kaur Wins 2023 National Academy of Medicine Catalyst Prize](#). The article discusses Dr. Kaur's winning research project, [Digital Solutions to Reduce Maternal Morbidity and Mortality in Refugee Women](#), which aims to clinically train and validate a digital refugee health system. Dr. Kaur collaborated with Mr. Yale-Loehr and another professor on the project. "Many refugees and asylum seekers worry that if they seek medical help while pregnant, they might be deported," Mr. Yale-Loehr said. "This new research builds on prior work Dr. Kaur and I did dispelling that concern. Our website [Rights4Health](#) informs immigrants about their eligibility for public benefits."

A new podcast by the Bipartisan Policy Center featured discussion of a white paper, [Immigration Reform: A Path Forward](#), co-authored by **Mr. Yale-Loehr**. He and his co-authors discussed their ideas for reforms to border management and asylum policy, worker visa programs, and DREAMer protections. While large, comprehensive immigration reform is unlikely to move forward in Congress soon, certain targeted reforms are both urgently needed and potentially achievable, they say.

[Back to Top](#)

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>

[Back to Top](#)

About ABIL

The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 400 member lawyers and their more than 1,000 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.

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

Disclaimer/Reminder

This email does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.

Copyright © 2024 Alliance of Business Immigration Lawyers. All rights reserved.

[Back to Top](#)