

## IMMIGRATION INSIDER

Vol. 20, No. 2 • February 4, 2024

### INSIDE THIS ISSUE

[USCIS Announces Registration Period, Instructions, and Updates for FY 2025 H-1B Cap Season](#) – U.S. Citizenship and Immigration Services announced that the initial registration period for the fiscal year 2025 H-1B cap season will open at noon ET on March 6, 2024, and run through noon ET on March 22, 2024.

[USCIS Issues Final Rule With New Filing Fees](#) – U.S. Citizenship and Immigration Services published a final rule, effective April 1, 2024, to adjust certain immigration and naturalization benefit request fees. The final rule includes fee increases for various categories.

[USCIS Releases Additional Details About Organizational Accounts](#) – U.S. Citizenship and Immigration Services unveiled additional details about its launch of organizational accounts in February 2024, in time for the fiscal year 2025 H-1B cap season.

[USCIS May Excuse Untimely Filed Extension of Stay and Change of Status Requests Under 'Extraordinary Circumstances'](#) – U.S. Citizenship and Immigration Services updated its policy guidance to provide that USCIS, "in our discretion and under certain conditions, may excuse a nonimmigrant's failure to timely file an extension of stay or change of status request if the delay was due to extraordinary circumstances beyond the control of the applicant or petitioner."

[DHS Announces 'Streamlined and Expedited' Deferred Action Process for Noncitizen Workers Who Are Victims of, or Witness, Violations of Labor Rights](#) – Noncitizen workers who are victims of, or witnesses to, violations of labor rights can now access a "streamlined and expedited deferred action request process." The Department of Homeland Security explained that deferred action "protects noncitizen workers from threats of immigration-related retaliation from the exploitive employers."

[DHS Extends and Redesignates Syria for TPS, Announces Student Relief](#) – The Department of Homeland Security is extending and redesignating Syria for Temporary Protected Status. DHS also announced Special Student Relief for F-1 nonimmigrant students whose country of citizenship is Syria.

[USCIS Announces New Process for Paying for Certain Benefit Requests by Mail or Remotely](#) – U.S. Citizenship and Immigration Services announced a new process for most applicants, petitioners, and requestors, and their attorneys and accredited representatives, to pay for certain benefit request forms by mail or remotely instead of in person at a field office.

[DOS Provides Guidance, FAQs on Domestic Renewal of H-1B Visas for Certain Applicants](#) – The Department of State has released guidance and frequently asked questions on its new pilot program to resume domestic visa renewals for qualified H-1B nonimmigrant visa applicants who meet certain requirements. The pilot program will accept applications from January 29, 2024, through April 1, 2024, or when all 20,000 application slots are filled, whichever comes first.

[CBP Publishes Interim Final Rule Requiring Electronic Travel Authorization Before Traveling to Guam or CNMI and Establishing a New Travel Authorization Program](#) – A new U.S. Customs and Border Protection interim final rule, effective September 30, 2024, requires persons intending to travel to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program to submit Form I-736 electronically before traveling and receive an electronic travel authorization before embarking on a carrier for travel to Guam or the CNMI. The rule also establishes the CNMI Economic Vitality & Security Travel Authorization Program.

[DOL Seeks OMB Approval, Comments on O\\*NET Data Collection Program](#) – The Department of Labor has submitted the O\*NET Data Collection Program to the Office of Management and Budget for review and approval. DOL seeks comments on O\*NET by February 16, 2024.

[U.S., Mexican Officials Meet in Washington, DC, to Continue Migration Talks](#) – Top officials from the United States and Mexico met in Washington, DC, on January 19, 2024, to continue their discussion and cooperation on efforts to reduce the flow of migrants heading to the United States from Mexico.

[USCIS to Launch Organizational Accounts, Enabling ‘Online Collaboration’ and Submission of H-1B Registrations](#) – U.S. Citizenship and Immigration Services plans to launch organizational accounts for non-cap filings and the fiscal year 2025 H-1B cap season.

[Cap Reached for Additional Returning Worker H-2B Visas for First Half of FY 2024](#) – U.S. Citizenship and Immigration Services has received enough petitions to reach the cap for the additional 20,716 H-2B visas made available for returning workers for the first half of fiscal year 2024 with start dates on or before March 31, 2024.

[February Visa Bulletin Notes Expiration of EB-4 Religious Workers Category](#) – The Department of State’s Visa Bulletin for February 2024 noted that absent legislative action, the non-minister special immigrant program was set to expire on February 2, 2024.

[USCIS Data Show Increase in O-1A and NIW EB-2 Approvals for STEM Activities](#) – According to a newly released report, U.S. Citizenship and Immigration Services data show a sizable overall increase in O-1A petition approvals for individuals engaged in science, technology, engineering, and mathematics (STEM) activities and in National Interest Waiver EB-2 petition approvals for individuals engaged in STEM activities.

[CBP Updates Website, Provides Trusted Traveler Processing Times](#) – In an effort to reduce unscheduled visits to Trusted Traveler Program Enrollment Centers, U.S. Customs and Border Protection has expanded the TTP-related topics on its public website portal.

[DOL Increases Civil Monetary Penalties for Certain Immigration-Related Employer Violations](#) – Effective January 15, 2024, as part of annual inflation adjustments, the Department of Labor (DOL) is increasing D-1, H-1B, H-2A, and H-2B civil monetary penalties it assesses or enforces for employer violations.

[ABIL Global: The Netherlands](#) – This article discusses the principle of single nationality in Dutch law and the proportionality test, and how they work in practice.

## ALSO IN THIS ISSUE

[New Publications and Items of Interest](#)

[ABIL Member/Firm News](#)

[Government Agency Links](#)

[About ABIL](#)

## USCIS Announces Registration Period, Instructions, and Updates for FY 2025 H-1B Cap Season

U.S. Citizenship and Immigration Services (USCIS) has announced that the initial registration period for the fiscal year 2025 H-1B cap season will open at noon ET on March 6, 2024, and run through noon ET on March 22, 2024. During that period, prospective petitioners and their representatives, if applicable, must use a USCIS online account to register each beneficiary electronically and pay the associated registration fee.

The final rule makes several changes. For example:

- Instead of selecting by registration, USCIS will select registrations by unique beneficiary. Each unique beneficiary who has a registration submitted on their behalf will be entered into the selection process once, regardless of how many registrations are submitted on their behalf.
- Start date flexibility will be provided for certain H-1B cap-subject petitions. Filing will be permitted with requested start dates that are after October 1 of the relevant fiscal year.
- Registrations must include the beneficiary's valid passport information or valid travel document information, and a beneficiary is prohibited from being registered under more than one passport or travel document. USCIS said the modification to allow for a valid travel document "is intended to narrowly accommodate stateless individuals, refugees, and others who are unable to obtain valid passports, and is directly in response to public comments."

### Details:

- [USCIS final rule](#), 89 Fed. Reg. 7456 (Feb. 2, 2024).

[Back to Top](#)

## USCIS Issues Final Rule With New Filing Fees

U.S. Citizenship and Immigration Services (USCIS) published a final rule, effective April 1, 2024, to adjust certain immigration and naturalization benefit request fees. The final rule includes fee increases for various categories, such as:

- I-129 H-1B (named beneficiaries), from \$460 to \$1,080
- I-129 H-1B (named beneficiaries, small employers and nonprofits), from \$460 to \$540
- I-129 L Nonimmigrant Workers, from \$460 to \$1,385
- I-129 L Nonimmigrant Workers (small employers and nonprofits), from \$460 to \$695
- I-526/526E Immigrant Petition by Standalone Regional Center, from \$3,675 to \$11,160

Among other things, the final rule also:

- Imposes a new Asylum Program Fee to be paid by employers who file either a Form I-129, Petition for a Nonimmigrant Worker, Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, or Form I-140, Immigrant Petition for Alien Worker. The fee will be \$0 for nonprofits; \$300 for small employers (defined as firms or individuals having 25 or fewer full-time employees); and \$600 for all other filers of Forms I-129 and I-140.
- Allows for half-price Employment Authorization Document applications for adjustment of status applicants and a reduced fee for adjustment of status applicants under the age of 14 in certain situations; and

- Implements a standard \$50 discount for most online filers. The discount does not apply "in limited circumstances, such as when the form fee is already provided at a substantial discount or USCIS is prohibited by law from charging a full cost recovery level fee."

**Details:**

- [USCIS final rule](#), 89 Fed. Reg. 6194 (Jan. 31, 2024).
- [USCIS FAQ](#) on fee rule (Jan. 31, 2024). The FAQ includes a full list of the revised forms effective April 1, 2024, along with the new fees. USCIS said it will accept prior editions of most forms during a grace period from April 1, 2024, through June 3, 2024. During the grace period, USCIS will accept both previous and new editions of certain forms, filed with the correct fee.

[Back to Top](#)

## **USCIS Releases Additional Details About Organizational Accounts**

During a public engagement session, U.S. Citizenship and Immigration Services (USCIS) unveiled additional details about its launch of organizational accounts in February 2024, in time for non-cap filings and the fiscal year 2025 H-1B cap season. USCIS [noted](#):

- A company can designate representatives who will have the authority to review, sign on behalf of the company, and pay (if necessary) the filing fees associated with submissions. Those designated individuals will be deemed as the "Administrators" for the company and will need to either create their own USCIS accounts or leverage their existing ones if they have served as company representatives for H-1B cap registration purposes.
- For companies, Administrators will have a wide range of account management capabilities, from creating working Groups, inviting other Administrators, Legal Representative Teams, or regular working Group Members to collaborate on projects within the created corporate Group. Administrators are also the only account holders authorized to review, sign, and submit filings on behalf of the organization.

The Alliance of Business Immigration Lawyers (ABIL) recommends that companies contact their ABIL attorney for advice and help with the new platform.

**Details:**

- USCIS [news release](#) (Jan. 12, 2024).

[Back to Top](#)

## **USCIS May Excuse Untimely Filed Extension of Stay and Change of Status Requests Under 'Extraordinary Circumstances'**

On January 24, 2024, U.S. Citizenship and Immigration Services (USCIS) updated its policy guidance to provide that USCIS, "in our discretion and under certain conditions, may excuse a nonimmigrant's failure to timely file an extension of stay or change of status request if the delay was due to extraordinary circumstances beyond the control of the applicant or petitioner."

USCIS said that extraordinary circumstances may include, for example, work slowdowns or stoppages involving a strike, lockout, or other labor dispute, or the inability to obtain a certified labor condition

application or temporary labor certification due to a lapse in government funding supporting those certifications.

**Details:**

- [USCIS alert](#) (Jan. 24, 2024).

[Back to Top](#)

## **DHS Announces 'Streamlined and Expedited' Deferred Action Process for Noncitizen Workers Who Are Victims of, or Witness, Violations of Labor Rights**

On January 13, 2024, the Department of Homeland Security (DHS) announced that noncitizen workers who are victims of, or witnesses to, violations of labor rights can now access a "streamlined and expedited deferred action request process." DHS explained that deferred action "protects noncitizen workers from threats of immigration-related retaliation from ... exploitive employers."

DHS said that in addition to providing new guidance to labor agencies regarding processes to seek deferred action for certain workers, DHS will also provide for a single intake point for deferred action requests from noncitizen workers that are supported by labor enforcement agencies. In addition to satisfying individual criteria to facilitate case-by-case determinations, DHS said, requests for deferred action submitted through this centralized process "must include a letter (a Statement of Interest) from a federal, state, or local labor agency asking DHS to consider exercising its discretion on behalf of workers employed by companies identified by the agency as having labor disputes related to laws that fall under its jurisdiction."

Discretionary grants of deferred action under this process will typically last for two years, DHS said. Those granted deferred action may be eligible for work authorization if they can demonstrate an economic necessity for employment. They may also be eligible for subsequent grants of deferred action "if a labor agency has a continuing investigative or enforcement interest in the matter identified in their original letter supporting DHS use of prosecutorial discretion," DHS said.

**Details:**

- [DHS Support of the Enforcement of Labor and Employment Laws](#) (Jan. 17, 2024).
- [DHS press release](#) (Jan. 13, 2024).

[Back to Top](#)

## **DHS Extends and Redesignates Syria for TPS, Announces Student Relief**

The Department of Homeland Security (DHS) is extending and redesignating Syria for Temporary Protected Status (TPS).

DHS also announced Special Student Relief for F-1 nonimmigrant students from Syria. DHS said this will enable eligible students to request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain F-1 status through the TPS designation period.

Below are highlights of the extension and redesignation.

*Extension.* TPS will be extended for Syria for 18 months, beginning on April 1, 2024, and ending on September 30, 2025. DHS said this extension allows existing TPS beneficiaries to retain TPS through

September 30, 2025, if they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through September 30, 2025, must re-register during the 60-day re-registration period, which will begin on the date the notice is published in the Federal Register (expected to be January 29, 2024), and run for 60 days.

*Redesignation.* DHS is also redesignating Syria for TPS. The agency explained that the redesignation allows additional Syrian nationals (and individuals having no nationality who last habitually resided in Syria) who have been continuously residing in the United States since January 25, 2024, to apply for TPS for the first time during the initial registration period, which will begin on the date the notice is published in the Federal Register (expected to be January 29, 2024), and will remain in effect through September 30, 2025. In addition to demonstrating continuous residence in the United States since January 25, 2024, and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since April 1, 2024.

DHS said, "It is important for re-registrants to timely re-register during the re-registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying reregistration could result in gaps in their employment authorization documentation."

**Details:**

- [DHS notice](#) (Syrian TPS) (advance copy).
- [USCIS news release](#) (Syrian TPS) (Jan. 26, 2024).
- [ICE notice](#) (Special Student Relief for Syrians) (advance copy).

[Back to Top](#)

## **USCIS Announces New Process for Paying for Certain Benefit Requests by Mail or Remotely**

On January 26, 2024, U.S. Citizenship and Immigration Services (USCIS) announced a new process for most applicants, petitioners, requestors, and their attorneys and accredited representatives to pay for certain benefit request forms by mail or remotely instead of in person at a field office. Under the new process, applicants may mail either a check or [Form G-1450, Authorization for Credit Card Transactions](#), to the field office with their benefit request.

In addition, USCIS said, attorneys and accredited representatives now can process payments for [EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer](#), through a link in the email they receive or via text from the USCIS Contact Center. Once such a payment has been processed, attorneys and accredited representatives must mail their client's EOIR-29; their EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals; and their Pay.gov receipt to the field office.

An exception to the new process is emergency advance parole (EAP) requests, USCIS said. Applicants submitting [Form I-131, Application for Travel Document](#), with an EAP request must still make an appointment with the USCIS Contact Center, apply in person with their package (completed form and supporting documentation), and pay the application fee (if applicable) by credit card with Form G-1450 or check at the field office.

**Details:**

- [USCIS alert](#) (Jan. 26, 2024).

[Back to Top](#)

## [DOS Provides Guidance, FAQs on Domestic Renewal of H-1B Visas for Certain Applicants](#)

The Department of State (DOS) has released guidance and frequently asked questions on its new pilot program to resume domestic visa renewals for qualified H-1B nonimmigrant visa applicants who meet certain requirements. The pilot program will accept applications from January 29, 2024, through April 1, 2024, or when all 20,000 application slots are filled, whichever comes first.

DOS said it will make available a maximum of 20,000 application slots during this pilot program. Approximately 2,000 per week will be for applicants whose most recent H-1B visa was issued by U.S. Mission Canada with an issuance date of January 1, 2020, through April 1, 2023, and approximately 2,000 per week will be for applicants whose most recent H-1B visa was issued by U.S. Mission India with an issuance date of February 1, 2021, through September 30, 2021.

Participation in the pilot program is voluntary. DOS said that individuals who do not meet the requirements for participation in the pilot program, or those who choose not to participate in the pilot program, may continue to apply for visa renewal at a U.S. embassy or consulate overseas.

### **Details:**

- [DOS guidance/FAQs](#).

[Back to Top](#)

## [CBP Publishes Interim Final Rule Requiring Electronic Travel Authorization Before Traveling to Guam or CNMI and Establishing a New Travel Authorization Program](#)

A new U.S. Customs and Border Protection (CBP) interim final rule, effective September 30, 2024, requires persons intending to travel to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program (G-CNMI VWP) to submit Form I-736 electronically before traveling and receive an electronic travel authorization before embarking on a carrier for travel to Guam or the CNMI. The rule also establishes the CNMI Economic Vitality & Security Travel Authorization Program (EVS-TAP) as a restricted sub-program of the G-CNMI VWP.

CBP said that the CNMI EVS-TAP is being established based on consultations between the United States and the CNMI under the Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. Once implemented, EVS-TAP will allow prescreened nationals of the People's Republic of China to travel to the CNMI without a visa under specified conditions.

Comments must be received by March 18, 2024, using the method set forth in the interim final rule.

### **Details:**

- CBP [interim final rule](#), 89 Fed. Reg. 3299 (Jan. 18, 2024).

[Back to Top](#)

## [DOL Seeks OMB Approval, Comments on O\\*NET Data Collection Program](#)

The Department of Labor (DOL) has submitted the O\*NET Data Collection Program to the Office of Management and Budget (OMB) for review and approval.



DOL said that O\*NET is "an ongoing effort to collect and maintain current information on the detailed characteristics of occupations and skills for more than 900 occupations. The resulting database provides the most comprehensive standardized source of occupational and skills information in the nation."

OMB will consider all written comments that the agency receives by February 16, 2024.

**Details:**

- DOL [O\\*NET OMB notice](#), 89 Fed. Reg. 2985 (Jan. 17, 2024).

[Back to Top](#)

## **U.S., Mexican Officials Meet in Washington, DC, to Continue Migration Talks**

Top officials from the United States and Mexico met in Washington, DC, on January 19, 2024, to continue their discussion and cooperation on efforts to reduce the flow of migrants heading to the United States from Mexico, which has fallen since the start of 2024, due in part to Mexico's resumption of enforcement efforts that had been paused. According to reports, the discussion included a variety of topics, and no major announcements resulted.

After a visit by U.S. officials to Mexico in late December, the two countries issued a joint communique reaffirming their mutual commitment to "orderly, humane and regular migration." Topics discussed included addressing the root causes of migration; initiatives for Cubans, Haitians, Nicaraguans, and Venezuelans; enhanced efforts to disrupt human smuggling and trafficking; and promoting legal migration pathways. Also discussed were bilateral trade and the benefit of regularizing the situation of long-term undocumented Hispanic migrants and Deferred Action for Childhood Arrivals recipients. The new meeting in January was a continuation of those discussions.

**Details:**

- [Top U.S., Mexican Officials in Washington for Migration Talks](#), Voice of America (Jan. 19, 2024).
- [Briefing](#), Department of State (Jan. 18, 2024).
- [Mexico-U.S. Joint Communique](#) (Dec. 28, 2023).

[Back to Top](#)

## **USCIS to Launch Organizational Accounts, Enabling 'Online Collaboration' and Submission of H-1B Registrations**

U.S. Citizenship and Immigration Services (USCIS) plans to launch organizational accounts for non-cap filings and the fiscal year (FY) 2025 H-1B cap season. Organizational accounts "will allow multiple individuals within an organization, such as a company or other business entity, and their legal representatives to collaborate on and prepare H-1B registrations, [Form I-129, Petition for a Nonimmigrant Worker](#), and associated [Form I-907, Request for Premium Processing Service](#)," USCIS said. The agency also plans to introduce online filing for I-129 H-1B petitions and H-1B I-907 premium processing service.

USCIS expects to launch the organizational accounts in February 2024, with online filing of Forms I-129 and I-907 following shortly thereafter. USCIS will transition the paper filing location for Forms I-129 and I-907 from service centers to the USCIS lockbox.



**Details:**

- USCIS [news release](#) (Jan. 12, 2024).

[Back to Top](#)

### Cap Reached for Additional Returning Worker H-2B Visas for First Half of FY 2024

On January 12, 2023, U.S. Citizenship and Immigration Services (USCIS) announced that it has received enough petitions to reach the cap for the additional 20,716 H-2B visas made available for returning workers for the first half of fiscal year 2024 with start dates on or before March 31, 2024, under the [H-2B supplemental cap temporary final rule](#). USCIS said January 9, 2024, was the final receipt date for petitions requesting supplemental H-2B visas under the FY 2024 first half returning worker allocation.

USCIS said it is still accepting petitions for H-2B nonimmigrant workers with start dates on or before March 31, 2024, for the additional 20,000 visas allotted for nationals of El Salvador, Guatemala, Honduras, Haiti, Colombia, Ecuador, and Costa Rica (country-specific allocation), as well as those who are exempt from the congressionally mandated cap.

USCIS encouraged petitioners with start dates on or before March 31, 2024, whose workers were not accepted for the 20,716 returning worker allocation, to file under the country-specific allocation while visas remain available. As of January 12, 2024, USCIS said it has received petitions requesting 4,500 workers under the 20,000 visas set aside for nationals of El Salvador, Guatemala, Honduras, Haiti, Colombia, Ecuador, and Costa Rica.

**Details:**

- USCIS [alert](#) (Jan. 12, 2024).

[Back to Top](#)

### February Visa Bulletin Notes Expiration of EB-4 Religious Workers Category

The Department of State's Visa Bulletin for February 2024 noted that absent legislative action, the non-minister special immigrant program was set to expire on February 2, 2024. 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 were valid only until February 1, 2024, and all individuals seeking admission in the non-minister special immigrant category must have been admitted into the United States no later than midnight February 1, 2024, the bulletin said.

The bulletin noted that if there were no legislative action extending the category beyond February 2, 2023, "the category will immediately become 'Unavailable' as of February 2, 2023. In the event there is legislative action extending the category beyond February 2, the published dates will continue to be in effect for the remainder of February."

**Details:**

- [Visa Bulletin](#), Dept. of State (Feb. 2024).

[Back to Top](#)

## USCIS Data Show Increase in O-1A and NIW EB-2 Approvals for STEM Activities

According to a newly released report, U.S. Citizenship and Immigration Services (USCIS) data show a sizable overall increase in O-1A petition approvals for individuals engaged in science, technology, engineering, and mathematics (STEM) activities and in National Interest Waiver (NIW) EB-2 petition approvals for individuals engaged in STEM activities, compared to fiscal year 2021, before USCIS issued new policy guidance in January 2022. USCIS noted:

- From FY 2021 to FY 2022, total receipts of Form I-140, Immigrant Petition for Alien Workers, with and without waivers (combined) increased by 20 percent, from 70,600 to 84,470. Receipts continued to increase by another 10 percent from FY 2022 to FY 2023. Approvals increased by 60 percent from 57,810 in FY 2021 to 92,280 in FY 2022, but decreased about 12 percent from 92,280 in FY 2022 to 81,380 in FY 2023. The approval rate remained at 90 percent or above throughout FY 2018–FY 2023. Total EB-2 receipts in STEM job categories decreased by almost 13 percent, from 61,790 in FY 2022 to 53,960 in FY 2023. Receipts in non-STEM job categories increased by 28 percent during that time.
- An increasing number of EB-2 petitioners are requesting NIWs, USCIS said. The number of petitions with NIW requests almost doubled, from 21,990 in FY 2022 to 39,810 in FY 2023; the number of petitions without NIW requests dropped from 62,490 to 53,200.
- From FY 2021 to FY 2022, total receipts of Form I-129 for O-1A petitioners increased 29 percent, from 7,710 to 9,970. They continued to increase slightly from 9,970 in FY 2022 to 10,010 in FY 2023 (see Figure 4). Approvals followed a similar trend by increasing by 25 percent from FY 2021 to FY 2022, from 7,320 to 9,120. They continued to increase slightly from 9,120 in FY 2022 to 9,490 in FY 2023. The approval rate remained stable at 90 percent or above throughout FY 2018–FY 2023.
- From FY 2021 to FY 2022, total approvals of STEM-related O-1A Form I-129 petitions increased 29 percent, from 3,550 to 4,570. From FY 2022 to FY 2023, approvals remained almost the same, from 4,570 to 4,560. Approvals of non-STEM-related petitions followed a similar trend increasing 21 percent, from 3,410 in FY 2021 to 4,140 in FY 2022. Approvals increased slightly from 4,140 in FY 2022 to 4,380 in FY 2023.

The January 2022 policy guidance clarified how certain professionals in STEM fields can demonstrate eligibility for (a) the NIW in employment-based immigrant status (EB-2), along with the significance of letters from governmental and quasi-governmental entities, and (b) nonimmigrant status for individuals of extraordinary ability (O-1A).

### Details:

- [STEM-Related Petition Trends: EB-2 and O-1A Categories FY 2018-FY 2023](#), USCIS (N.D.).
- USCIS [Policy Alert](#), PA-2022-03 (Jan. 21, 2022).

[Back to Top](#)

## CBP Updates Website, Provides Trusted Traveler Processing Times

In an effort to reduce unscheduled visits to Trusted Traveler Program (TTP) Enrollment Centers, U.S. Customs and Border Protection (CBP) has expanded the TTP-related topics on its public website [portal](#) to include the ability to select the option "update documents in my account."

CBP also noted that processing times vary by applicant, but on average applicants can expect these [timeframes](#):

- Global Entry: 4–6 months
- NEXUS: 12–14 months
- SENTRI: 10–12 months
- FAST: 1–2 weeks

CBP said applicants should check the Trusted Traveler Program [website](#) periodically for updates or the status of their applications. Additionally, CBP noted that those who submit renewal applications before their membership expires can continue to use the benefits after the membership expiration date.

[Back to Top](#)

## **DOL Increases Civil Monetary Penalties for Certain Immigration-Related Employer Violations**

Effective January 15, 2024, as part of annual inflation adjustments, the Department of Labor (DOL) is increasing D-1, H-1B, H-2A, and H-2B civil monetary penalties it assesses or enforces for employer violations.

To compute the 2024 annual adjustment, DOL multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.03241, and rounded to the nearest dollar.

### **Details:**

- DOL [final rule](#), 89 Fed. Reg. 1810 (Jan. 11, 2024).

[Back to Top](#)

## **ABIL Global: The Netherlands**

*This article discusses the principle of single nationality in Dutch law and the proportionality test, and how they work in practice.*

One solid principle of Dutch nationality law is that dual nationality must be avoided. As a result of the Tjebbes ruling by the European Union (EU) Court of Justice, this principle is mitigated by a proportionality test for cases of automatic loss of Dutch nationality. A provision to this effect was introduced in the Netherlands Nationality Act (NNA) on April 1, 2022.

The most frequent cases of automatic loss of Dutch citizenship result from:

1. Voluntary acquisition of another nationality; or
2. Prolonged stay abroad in the possession of two (or more) nationalities.

There are exemptions. For example, acquiring a second nationality does not lead to loss of Dutch nationality if one is married to a person of the new nationality. Nevertheless, these cases occur frequently, and for many of the affected individuals, it is not so much the fact of losing Dutch nationality but rather the automatic character of the loss that strikes the most. It happens by act of law; a decision by a Dutch authority to revoke the nationality is not necessary. The victim often only finds out that they are not Dutch anymore when they try to renew their Dutch passport.

## The Tjebbes Ruling

As of April 1, 2022, a new provision was included in the NNA following the Tjebbes ruling by the EU Court of Justice of March 12, 2019. Through a new subcategory of the "option procedure," this group of persons can request to regain their Dutch citizenship. The option procedure is, next to naturalization, a way to request Dutch nationality, in particular for persons of Dutch descent and former Dutch nationals. By submitting an option request based on the new provision, a proportionality test can be requested. The test examines whether the loss of Dutch citizenship was in effect disproportionate.

This criterion was applied in the Tjebbes ruling, in which the EU Court mentioned several circumstances that may be weighed in the proportionality test, mainly related to the person's rights of free movement and residence in the EU territory and whether these have been lost due to the loss of nationality.

Nationality law is increasingly influenced by EU law. This has softened somewhat the strictness of the Dutch law in avoiding dual nationality. Former Dutch nationals now have a formal remedy against disproportionality of the loss of their nationality.

In practice, the standard to meet is high. Case law will determine how effective this proportionality test will turn out to be.

[Back to Top](#)

## New Publications and Items of Interest

**DHS session on fee changes.** The Department of Homeland Security will hold a virtual public engagement session on changes to immigration benefit fees made by a [final rule](#). The session will be held at 2 p.m. ET on February 22, 2024. To register, input your email address at [https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new?topic\\_id=USDHSCIS\\_1081](https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new?topic_id=USDHSCIS_1081).

**USCIS webinar on H-1B electronic registration process.** U.S. Citizenship and Immigration Services will present a [webinar](#) on the fiscal year 2025 H-1B electronic registration process on Wednesday, February 21, 2024, from 2 to 3:30 p.m. ET. The webinar will include updates on changes to the process, a step-by-step overview of how to submit an H-1B registration, and a Q&A session.

### 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

**Charles Foster**, of **Foster LLP**, recently discussed federal and state immigration policies at the U.S. southern border on C-SPAN's Washington Journal [broadcast](#).

**Fredrikson's Immigration Group** will host a discussion, [New Developments and Trends in Immigration Law and Preparing for the Upcoming H-1B Lottery Season](#), on Thursday, February 15, 2024, at 12 p.m. CT on preparing for the upcoming H-1B lottery season and new developments and trends in business immigration. Presenters will discuss FY 2025 H-1B cap season preparation, the status of proposed immigration legislation and regulations, and agency processing and adjudication updates.

**Klasko Immigration Law Partners, LLP**, has published a new blog post: [USCIS to Launch Organizational Accounts Mid-February](#).

**Cyrus Mehta** has authored a new blog post: [CSPA Disharmony: USCIS Allows Child's Age To Be Protected Under the Date for Filing While DOS Allows Child's Age To Be Protected Under the Final Action Date](#).

**Mr. Mehta** and **Kaitlyn Box** have authored several new blog posts: [Musings on Brand X As a Force for Good Ahead of the Supreme Court Ruling on Chevron Deference](#) and [USCIS Policy Manual Recognizes Dual Intent for Foreign Students as Expressed in Matter of Hosseinpour](#).

**Angelo Paparelli** has authored a new blog post: [Worrisome Waiting: How Will USCIS "Modernize" the H-1B Visa Program?](#)

**Siskind Susser, P.C.**, announced that "Gen," a generative artificial intelligence project on which colleagues at the firm have been working, is launching on January 16, 2024. A collaboration between [Visalaw.ai](#) and the American Immigration Lawyers Association, Gen is powered by OpenAI's GPT4 large language model. According to Siskind Susser, it has 100,000+ pages of immigration law documents, treatises, and data sets and can answer most immigration law questions, and provide citations and links to the documents it uses to create the answers. Unlike ChatGPT, the answers are derived only from Siskind Susser's law library, and lawyers can check the original source material to ensure the accuracy of the answers provided. Gen also allows lawyers to upload their own documents. Aside from answering questions, Gen will draft petition letters, memos, RFE responses, checklists, questionnaire forms, and many other kinds of documents. It also can summarize and translate documents. To join the waiting list for Gen, go to [www.visalaw.ai](#).

**Siskind Susser, P.C.**, announced that **Jason Susser** was promoted to Partner. Siskind Susser said that Mr. Susser is a leader in managing immigration matters for founders of technology startup companies. He authored the book, "Immigration for Startups: A Guide for Founders," and is an immigration advisor to several of the country's top business schools and startup accelerators. He has become a "go-to immigration lawyer for entrepreneurs in Silicon Valley." Mr. Susser is also an entrepreneur and is a founder of Visalaw Ventures, a technology company spun off from Siskind Susser.

**Stephen Yale-Loehr** was quoted by *PolitiFact* in [Ask PolitiFact: Can Joe Biden 'Shut Down the Border' on His Own?](#) "Closing the border arguably would violate" domestic and international asylum laws," he said.

**Mr. Yale-Loehr** was quoted by the *Los Angeles Times* in [A Decade-Old Scalia Dissent Is Now Driving the Texas-Biden Dispute Over Illegal Immigration](#). Referring to new Texas law SB4, which the article notes "would authorize Texas police and state judges to arrest, detain and deport migrants who are suspected of crossing the border illegally," Mr. Yale-Loehr said, "This is a frontal assault on the federal primacy in immigration enforcement, and it's definitely going to the Supreme Court."

**Mr. Yale-Loehr** was quoted by the *Chicago Tribune* in [No Help: The Federal Immigration Deal Won't Fix the Migrant Crisis in Chicago—and It's Unlikely to Pass Congress Anyway](#). "When migrants enter the United States at the border, they have 'credible fear interviews' lasting up to 10 to 20 minutes with immigration authorities," he said. Mr. Yale-Loehr also noted that proposed legislation recommends raising the bar for asylum eligibility, which means there could be more expedited removals after migrants' credible fear interviews. "That may reduce the number of asylum-seekers in Chicago because they're deemed not even to be eligible to apply for asylum at the border.". He also noted that migrants don't often understand nuanced changes in immigration policy: "People who are fleeing likely don't read the *New York Times*. They are going to come no matter what the law is or how Congress changes."

**Mr. Yale-Loehr** was quoted by the *Economist* in [America's Immigration Policies Are Failing: A New Surge of Migration is Straining a Broken System and Might Cost Joe Biden the Election](#) (available by subscription). The article notes that the immense wait for a court hearing, low chance of detention, and the prospect of work in the United States encourage migrants with a weak claim to cross the border and claim asylum. Prioritizing the most recent arrivals' cases would reduce this incentive, Mr. Yale-Loehr said.

**Mr. Yale-Loehr** was quoted by the *Boston Globe* in [Biden Has Been Giving Millions of Migrants False Hope; Desperate People Have Been Allowed Into the Country While They Apply for the Right to Stay, But Such Permission is Very Difficult to Obtain](#). He said that many migrants may "lose [their case for] asylum, either because they don't have an attorney to represent them or they don't have a strong case on the merits." Coming from countries with difficult political circumstances isn't enough to support an asylum claim, the article notes—asylum is granted based on persecution due to race, religion, nationality, membership in a particular social group, or political opinion. "It's very hard to show that the persecution is well-founded based on one of those five characteristics," he explained. In the meantime, the article suggests, a large number of migrants live in uncertainty. "That's bad for our legal system, it's bad for our economy, and it's also bad for the migrants themselves," Mr. Yale-Loehr said. The article also quotes from a recent paper Mr. Yale-Loehr co-authored that calls for expanding other legal pathways to the United States for migrants beyond asylum. "We cannot cut off all avenues to asylum, but we also cannot continue to accept applications from all who arrive, especially those with highly unlikely claims," the paper says. 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 the *Chronicle of Higher Education* in [Why a Court Challenge to an Obscure Fisheries Regulation Could Upend Student Visa Policy](#) (available by registration). The article discusses a pending Supreme Court case that may have implications for international students and institutions of higher education. He said, "Colleges and universities may think cases involving fisheries regulation have nothing to do with them, but what the Court decides will affect them one way or another." He said the Supreme Court's decision could have an impact on international-student policy in several ways: it could put any current legal challenges on hold until the fisheries cases are decided; it could change the federal government's approach to rulemaking in progress, such as updates to the skilled worker visa program that affect both international students and foreign workers hired by colleges and universities; and if a new standard were applied retroactively, that would allow past policy disputes, like those affecting optional practical training, to be revisited in the courts.

**Mr. Yale-Loehr** was quoted by the *New York Times* in [Lawyer and Son Ensnared Hundreds of Immigrants in Fraud Scheme](#) (available by subscription). The article discusses a case in which, according to prosecutors, a lawyer and his son advised clients seeking green cards to sign petitions under the Violence Against Women Act (VAWA), which enables undocumented immigrants who are victims of abuse to gain lawful permanent residence in the United States. Mr. Yale-Loehr said he had never heard of someone using VAWA to conduct immigration fraud, but such fraud can be hard to root out. "If it sounds too good to be true, it probably is. If someone says, 'I can guarantee you a green card if you just sign here,' that's a sure sign that something is funny."

**Mr. Yale-Loehr** was quoted by *CBS News* in [Biden Administration Has Admitted More Than 1 Million Migrants Into U.S. Under Parole Policy Congress is Considering Restricting](#). If Congress restricts parole, it would curtail a key presidential power, he said. "Every administration, Republican and Democratic, has used parole because in an emergency, like the Mariel boatlift or the Hungarian Revolution, you want to have something that allows you to bring in large groups of people to get them out of harm's way. Every administration wants to have maximum flexibility and anything that the Republicans do to require restrictions on parole will hamper any future administration."

**Mr. Yale-Loehr** was quoted by the *Daily Caller* in [Biden And Abbott Have Set the Stage for One of the Biggest State-Versus-Feds Immigration Fights in More Than a Decade](#). The article discusses Texas's challenge to the role historically played by the federal government in immigration law enforcement and a related complaint filed by the Biden administration in the Supreme Court accusing Texas of overstepping its authority with anti-immigration measures. The Supreme Court previously ruled in favor of the federal government in an Arizona case, but it's not clear whether the same will be true in the Texas case. "The question is now that we've got three different justices on the Supreme Court than were on the court on the Arizona case, will the current Supreme Court rule the same way? I suspect that Texas is hoping that with more conservative justices on the Supreme Court now, they might be able to come out with a different result than Arizona," Mr. Yale-Loehr said.

**Mr. Yale-Loehr** announced a webinar, [Immigration Slavery in America: A True Story of Forced Labor and Liberation](#), to be held Tuesday, February 6, 2024, at 2 p.m. ET. Mr. Yale-Loehr will moderate a discussion with author Saket Soni and panelists about Mr. Soni's book, *The Great Escape*. The book tells the story of a group of immigrants trapped in the largest human trafficking scheme in modern U.S. history. The webinar is co-sponsored by the [Cornell Migrations Initiative](#) and Cornell Law School's [Migration and Human Rights Program](#).

**Mr. Yale-Loehr** co-authored [Is Chevron Dead? Thoughts After Oral Arguments in Relentless, Inc. and Loper Bright Enterprises](#), published by *Think Immigration*.

**Mr. Yale-Loehr** was quoted by *PolitiFact* in Ask PolitiFact: What Branch of Government is 'Really' Responsible for the crisis at the border? He said, "Each of the three branches of government has a role to play in immigration law and policy, and each has failed. The result: a quagmire, where nothing gets resolved and matters get worse every day. Every branch of government is to blame." For example, the courts have ruled both with and against the executive branch under both Republican and Democratic administrations, Mr. Yale-Loehr said. "Thus, people don't know how courts will rule, which reduces predictability. Moreover, litigation takes time, and is not a good way to manage immigration law and policy." <https://www.politifact.com/article/2024/jan/17/ask-politifact-what-branch-of-government-is-really/>

[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