



News & Types: Immigration Monthly Updates

Business Immigration Monthly - February 2023

2/22/2023

By: Julie T. Emerick, Hirokazu Kishinami

Practices: Immigration

H-1B Quota Registration Opens in One Week

The H-1B quota registration for FY2024 (October 1, 2023 to September 30, 2024) will open on March 1st and will remain open for only a little more than 2 weeks.

Similar to previous years, the USCIS in FY2024 will be authorized to approve 65,000 initial regular H-1B quota petitions. The USCIS will also be authorized to approve an additional 20,000 initial H-1B quota petitions for individuals who have earned a U.S. advanced degree (a.k.a U.S. advanced degree exception).

Last year, the USCIS announced that it received more than 483,927 H-1B quota registrations which was an approximately 60% increase over the previous year. Additionally, the USCIS indicated that approximately 31% of the registrations (150,000) were filed requesting the U.S. advanced degree exception. Because more than 85,000 H-1B quota registrations were submitted, the USCIS conducted random selection processes of the registration submitted. Employers with registrations selected were then allowed to submit H-1B quota petitions during a 90-day window on behalf of the individuals identified in the selected registrations. Unlike in previous years, the USCIS selected last year a significantly higher number of registrations (127,600) to ensure that it would not have to conduct multiple selection processes to meet the quota numerical allocations. It is assumed that the USCIS will again this year select a higher number of registrations so that it does not have to conduct multiple selection processes.

Because the H-1B quota registration filing period will only be open for approximately 2 weeks, we would encourage all employers who have not already forwarded their quota registration information to our office to do so immediately. If the employers are not able to timely submit the registrations, the next quota registration period will not open for one year, in March 2024.

USCIS Continues to Expand Premium Processing

The United States Citizenship and Immigration Service (USCIS) continues to expand the availability of its Premium Processing service to include I-140 petitions for EB-1 and EB-2 classifications. Premium Processing allows applicants for certain types of petitions to receive expedited processing of their cases within a guaranteed period of time for an additional fee. This expansion applies both to initial petitions, as well as previously filed petitions, under the multinational executive or manager category (EB-1C) and under the category for persons with advanced degrees seeking a National Interest Waiver (EB-2). The fee for the USCIS

Premium Processing service for these categories is \$2,500 and USCIS guarantees that it will complete its initial review of the petition within 45 calendar days (not 15 calendar days as with other Premium Processing categories).

In March, USCIS indicated that it plans to expand the availability of Premium Processing to certain F-1 students with pending applications for Optional Practical Training (OPT) or STEM OPT employment authorization. In April, the USCIS indicated that it plans to expand the service to initial applications in these categories.

USCIS also stated a goal of making Premium Processing available to certain individuals filing Form I-539 Application to Change/Extend Nonimmigrant Status in F-1 student and J-1 exchange visitor categories. Beginning in May, certain individuals with pending applications will be able to request Premium Processing and, in June, certain individuals will be able to submit initial applications with Premium Processing requests. The USCIS did not provide information yet about what types of Form I-539 Applications will be eligible for Premium Processing in the F-1 student and J-1 exchange visitor categories.

USCIS re-confirmed that it will adhere the legislative requirement that the program not result in increased processing times for cases filed without Premium Processing.

USCIS Extends COVID-Related Flexibilities

The USCIS recently announced that it was once again extending its Covid-19-related flexibilities to March 23, 2023. These flexibilities allow for responses to certain requests to be considered timely filed if submitted within 60 days after the listed deadline on the request.

This extension applies to requests received between March 1, 2020, and March 23, 2023, and includes the following:

- Requests for Evidence;
- Continuations to Request Evidence (N-14);
- Notices of Intent to Deny;
- Notices of Intent to Revoke;
- Notices of Intent to Rescind;
- Notices of Intent to Terminate regional centers;
- Notices of Intent to Withdraw Temporary Protected Status; and
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant.

The notice also states Forms I-290B, Notice of Appeal or Motion to Reconsider, and N-336, Request for a Hearing on a Decision in Naturalization Proceedings, are included in the extension if filed within 90 days of a decision issued between November 1, 2021, and March 23, 2023.

Finally, the announcement indicates that USCIS anticipates that this will likely be the last extension of this policy. This is also consistent with the current administration's recent announcement that federal government accommodations for the pandemic will end in May. The notice also reminds stakeholders that the flexibilities

regarding electronic signatures became a permanent policy in July 2022 and will not be affected when the other pandemic flexibilities sunset.

Department of State Announces Welcome Corps Initiative

The U.S. State Department (DOS) announced the creation of a pilot program that will allow groups of private citizens to financially sponsor refugees from around the world.

The “Welcome Corps” program will allow groups of US citizens and lawful permanent residents to apply to sponsor persons found to be refugees by the Department of Homeland Security (DHS) and who have been approved for resettlement in the United States through the US Refugee Admissions Program. The program follows other recent programs allowing private sponsorship of people from Ukraine, Venezuela, Cuba, Nicaragua, and Haiti.

Persons interested in participating are required to form a “Private Sponsor Group” (PSG) of at least five US citizens or lawful permanent residents over age 18 and submit an application through the Welcome Corps online portal. The PSGs commit to provide initial housing for 90 days and cash in the amount of \$2,275 for each sponsored refugee. As part of the application, the PSGs must pass background checks and submit a plan detailing how they plan to assist the newcomers.

Once an application is approved, the Welcome Corps team will inform the PSG when a refugee has been identified for the group to welcome.

CBP Launches Travel Compliance Page

U.S. Customs and Border Protection (CBP) has added a tab to its website for travelers visiting the United States. In addition to obtaining their I-94 and Travel History, some foreign nationals who have arrived under the Visa Waiver program will be able to access their travel compliance and view “How Much Longer May I Remain in the U.S.?” ESTA permits persons who are enrolled in the visa waiver program to visit the United States for business or pleasure and remain for up to 90 days per visit.

After entering the traveler’s passport information, the site reports the number of days a traveler has left to depart the United States. At many ports of entry, CBP no longer places an admission stamp in a traveler’s passport or annotates how long the traveler may remain in the United States. The aim is for the traveler to visit the CBP website or use the CBP One Mobile Application.. The “View Compliance” page on the CBP website will be helpful to ESTA travelers to track the number of days remaining for their period of admission. The site will also report the number of days a traveler has overstayed or remained longer than permitted. CBP indicates the compliance check is merely a tool to assist travelers, and “not an official record for legal purposes.”

Travel compliance information at this time is limited to ESTA travelers and is not available to travelers who use a visa to enter the United States. The travel compliance also does not reflect any changes in immigration status or extensions granted by USCIS.

Update on I-9 Investigations

A recent decision from the Office of the Chief Administrative Hearing Officer (OCAHO) serves as a reminder to employers of the importance of properly completing and maintaining the Form I-9 Employment Eligibility Verification.

Federal law requires that every employer who recruits, refers for a fee, or hires an individual for employment in the United States must complete Form I-9. The immigration law and associated regulations set a monetary range for employer sanctions penalties for Form I-9 paperwork violations. When determining the penalties, the government considers five factors: the size of the business, the employer's good faith compliance efforts, the seriousness of the violation, whether the I-9 was for an unauthorized worker, and whether the employer had a history of prior violations. Regarding the size of the business, an employer having less than 100 employees is eligible for leniency.

In the recent decision, an Administrative Law Judge noted that participation in E-Verify has no impact on a determination of good faith compliance with the I-9 requirements. An improperly completed Form I-9 has less weight on the seriousness scale, but the failure to prepare the Form I-9 at all is considered "one of the most serious violations because it completely subverts the purpose of the employment verification requirements." A Form I-9 prepared for an authorized worker, including a worker who provides a false Social Security Number, is an aggregating factor for penalty assessment. An employer having prior I-9 violations is subject to a higher penalty range. Form I-9 paperwork violations continue until corrected, or the employer is no longer required to maintain the Form I-9. In the decision, an employer was assessed penalties for Form I-9 paperwork violations and knowingly continuing to employ two workers who lacked employment authorization.

On January 30, 2023, civil monetary penalty rates for I-9 violations were increased to the following:

Paperwork Violations –

Fines for Form I-9 paperwork violations range from \$272 to \$2,701 per violation.

Civil Penalties for Unlawful Employment Practices -

1st Offense	2nd Offense	Subsequent Offenses
Not less than \$676 and not more than \$5,404 for each unauthorized worker	Not less than \$5,016 and not more than \$12,537 for each unauthorized worker	Not less than \$7,523 and not more than \$25,076 for each unauthorized worker

There are also potential criminal penalties for engaging in what is determined to be a pattern or practice of knowingly hiring or continuing to employment unauthorized workers.

Due to the potential for significant penalties, employers should routinely review their Forms I-9 to ensure compliance with the program.