



News & Types: Immigration Monthly Updates

# Business Immigration Monthly - March 2023

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Practices: Immigration

## **USCIS Completes Fiscal Year 2024 H-1B Quota Lottery**

The U.S. Citizenship and Immigration Services (“USCIS”) has completed the Fiscal Year (“FY”) 2024 H-1B Quota Random Selection Process (aka “H-1B Quota Lottery”).

Each year, the USCIS is statutorily authorized to approve 65,000 regular H-1B quota petitions (minus 6,800 which are set aside for H-1B1 petitions for individuals from Chile and Singapore) and an additional 20,000 petitions for individuals who have earned a U.S. Master’s or higher degree. This year, from March 1st to 17th, the USCIS accepted electronic registrations from employers that wanted to apply for FY2024 H-1B quota subject petitions for their current and prospective employees who are subject to the H-1B quota. As in past years, the USCIS received significantly more registrations than the statutorily available numbers. Therefore, the USCIS conducted two random selection processes for the regular H-1B quota and then for the U.S. Master’s Degree exemption. Employers that had registrations selected were notified through their myUSCIS accounts with the status of these registrations changing from Submitted to Selected. The status of registration not selected will continue as Submitted in myUSCIS until the USCIS has determined that it has approved enough petitions to meet the statutorily available numbers. The USCIS will then change these registrations to Not Selected in myUSCIS.

Last year, the USCIS selected significantly more registrations in order to ensure that all of the statutorily available numbers were used based upon the first selection process. It is assumed that the USCIS also selected a comparable number this year so that the USCIS will not have to complete more selection processes in the upcoming months in order to ensure that all of the statutorily available numbers are used.

For selected registrations, employers will have 90 days in which to file the H-1B quota petition with the USCIS. The selection form will notify the employer at which USCIS Service Center the quota petition has to be filed. The employer has to include the selection form with the quota petition filing.

When an FY2024 H-1B quota petition is approved, the earliest date on which it can become valid is October 1, 2023. Employees may only enter the United States up to 10 days prior to October 1st in order to commence employment on (or after) October 1st. Employees currently maintaining F-1 status and have been approved for F-1 Optional Practical Training (“OPT”) which expires prior to October 1st may qualify for H-1B Cap Gap relief.

If your company has questions about H-1B Cap Gap relief eligibility and when it expires, please contact a Masuda Funai Immigration Attorney.

If an employee was not selected in this year's quota lottery, the next H-1B quota registration process should become available in early March 2024. During the Masuda Funai Annual Immigration Seminar on February 23rd, the Masuda Funai Immigration Attorneys discussed many of the limited options that may be available to employees who were not selected in this year's H-1B quota lottery. If your company has questions about the applicability of these limited options, please contact a Masuda Funai Immigration Attorney.

### **Premium Processing For F-1 OPT and STEM OPT Employment**

Starting April 3, 2023, USCIS will accept a Premium Processing request (Form I-907) filed with an application for employment authorization (Form I-765) by an F-1 student who is applying for OPT or an OPT extension based upon completion of a degree in a science, technology, engineering or mathematics field ("STEM OPT"). Premium Processing is available to F-1 students who are applying for pre-completion OPT, initial post-completion OPT or STEM OPT. The Premium Processing fee is \$1,500 in addition to the EAD fee of \$410 and USCIS is to review the application within 30 calendar days.

### **197,000 Green Cards available for the employment-based classifications in FY2023**

For FY 2023 which ends September 30, 2023, the government anticipates having 197,000 immigrant visas (or "Green Cards") available for the employment-based classification. This is an increase of 57,000 from the 140,000 annual limit. The additional 57,000 immigrant visas are remaining family-based immigrant visas not used in FY2022. Both USCIS and Consular Posts are taking "multiple, proactive steps" on the processing permanent residency applications to help ensure the 197,000 employment-based Green Cards will be issued before September 30, 2023. Please note that both the principal and dependent applicants count against the available numbers.

Employment-based Green Cards are allocated to the five employment classifications with the first three classifications each receiving 28.6% of the total immigrant visas available. The first three classifications include individuals of extraordinary ability, outstanding researchers and professors, and multinational managers and executives ("EB1"); advanced degree professionals, individuals of exceptional ability and national interest waivers ("EB2"); and professionals, skilled workers and other workers ("EB3"). For FY2023, approximately 56,342 visas would for each of the first three classifications. If the allocated number in the EB1 classification will not all be used, the unused visa numbers become available in the EB2 classification. Likewise, if the allocated number in the EB2 classification will not all be used, the unused visa numbers become available in the EB3 classification. The two remaining classifications for religious workers and special immigrants ("EB4") and employment creation ("EB5") each receive 7.1% of the total immigrant visas available. For FY2023, approximately 13,987 visas each would for the EB4 and EB5 classifications. If the allocated number in the EB4 and EB5 classifications will not all be used, the unused visa numbers become available in the EB1 classification. Under the immigration law, no country may receive more than 7% of the overall immigrant visas. To place this in perspective for Green Card applicants, and particularly for nationals from countries where a high demand exists, no one country may receive more than 13,790 employment-based Green Cards during FY2023 and Green Card allocation is per individual applicant.

Priority date cutoffs for both family and employment-based Green Card allocation are reported monthly in the Department of State's ("DOS") Visa Bulletin. Unlike during the past two years, it is not anticipated that there will be any additional employment-based immigrant visa numbers in FY2024 because it is assumed that the USCIS and the consulates will use all of the available family-based immigrant visas in FY2023. Therefore, priority cut off dates may be established in more of the employment-based immigrant visa categories if demand continues to be strong and the available numbers are reduced back to normal levels. Additionally, for categories that currently have priority date cutoffs, it is assumed that they will not significantly advance in the future if demand continues to be strong in these categories.

### **April Visa Bulletin Update – More Categories Retrogress**

The DOS recently issued the April 2023 Visa Bulletin. The Visa Bulletin contained some expected (and some unexpected) changes in the priority date cutoffs.

Notable changes in the family-based classifications include the establishment of a cutoff date for spouses and children of Permanent Residents who are being sponsored for a Green Card. The cutoff date means that a Green Card will not be issued unless the sponsoring immigration petition (Form I-130) was filed with USCIS before the cutoff date. A cutoff date of September 18, 2020 was established for all countries except Mexico. For spouses and children born in Mexico who are being sponsored by a Permanent Resident, the cutoff date is November 1, 2018.

The cutoff date for spouses and children of Permanent Residents who are being sponsored for a Green Card, however, creates an opportunity for spouses and unmarried children under age 21 to apply for a V visa at a Consular Post or, if present in the USA, to apply for the V classification through USCIS. The V visa or classification permits the individual to travel to or remain in the United States for up to two years and apply for employment authorization. For a child, the authorization ends when turning age 21. Unique to the V visa and status is that the grounds of inadmissibility for illegal entry, valid documents or unlawful presence do not apply.

### **Notable changes in the employment-based classifications include the following:**

- Nationals of El Salvador, Guatemala and Honduras have been included in the All Chargeability or "Rest of the World" rather than having separate chargeability.
- The employment second preference ("EB2") final action priority date for All Chargeability or "Rest of the World", Mexico and the Philippines has retrogressed from November 1, 2022, in March 2023, to July 1, 2022 due to high demand. For nationals of India in the EB2 classification, the retrogression continues from October 8, 2011, to January 1, 2011. For nationals of China in the EB2 classification, the final action date cutoff remains on June 8, 2019.
- In the employment third preference ("EB3") final action priority date there was no change from March 2023 with the exception China which advanced 3 months from August 1, 2018, to November 1, 2018.
- In the employment fourth preference ("EB4") classification which includes but is not limited to Religious workers, Afghan or Iraqi translators and Special Immigrant Juveniles a world-wide cutoff of September 1, 2018, was established.

The DOS and USCIS continue to see high demand for Green Cards, and it is anticipated that priority date advancement will be slow (if at all) for the remainder of FY2023 which ends September 30th. Additional information about Employment-Based Green Card Priority Date Retrogression is contained in the Masuda Funai's February 17, 2023 Immigration Client Advisory.

### **USCIS Facilitates Green Card Renewal Processing as Delays Continue**

In the 2022 Annual Report to Congress, the USCIS Ombudsman noted the “massive snowball” effect of USCIS processing delays. Particularly hard hit are lawful permanent residents seeking to renew their 10-year Green Cards as processing times continue to exceed 20 months. During FY2021, USCIS received 804,279 applications for Green Card renewals/replacements and had 725,418 applications to still process as of December 31, 2021.

A Green Card holder needs documentation of permanent resident status for employment, international travel, and in some states to renew a Driver's License or state ID. To alleviate some of the issues for permanent residents while the Green Card renewal application is pending, the USCIS began extending the Green Card validity by 24 months for these applicants. This 24-month extension is noted in the I-90 Receipt Notice, which can be presented with the Green Card to an employer as part of the Form I-9 process, to an airline for a return flight to the United States, or to U.S. Customs and Border Protection (“CBP”) when seeking to enter the United States.

If the renewal application remain pending after 24 months since the Green Card has expired, a permanent resident can obtain separate documentation of permanent residency requesting an “ADIT” (“Alien Documentation, Identification and Telecommunication”) stamp or an “I-551 stamp”. Obtaining the ADIT stamp from USCIS has been challenging as the processing could only be completed in person at a USCIS Office through an appointment scheduled by the USCIS Contact Center. However, USCIS now has changed its process so that it can issue an ADIT stamp without a visit to a USCIS Office. To obtain the ADIT stamp, the permanent resident still needs to call the USCIS Contact Center to make the request. If in-person processing of the ADIT stamp is not needed, USCIS will send to the permanent resident a Form I-94 with ADIT stamp, DHS seal, and a printed photo of the lawful permanent resident obtained from USCIS systems. Delivery of this ADIT stamp may arrive via UPS or FedEx or express mail.

### **Final Rule Issued Delaying REAL ID Requirement**

The Department of Homeland Security (DHS) has again delayed the implementation of the REAL ID requirements until May 7, 2025. The law was previously set to become effective on May 3, 2023. States will now have additional time to ensure residents have driver's licenses and identification cards that meet the security standards established by the REAL ID Act.

The REAL ID Act prohibits federal agencies, including the Transportation Security Administration (TSA), from accepting driver's licenses and identification cards that do not meet these federal standards. It establishes minimum security standards for state-issued driver's licenses and identification cards including incorporating anti-counterfeiting technology, preventing insider fraud, and using documentary evidence and record checks to ensure a person is who they claim to be.

The extension was deemed to be necessary to address the lingering impacts of the COVID-19 pandemic on the ability to obtain a REAL ID driver's license or identification card. Due to backlogs created by the pandemic, REAL ID progress over the past two years has been significantly hindered. Many of these agencies took various steps in response to the pandemic including automatically extending the expiration dates of driver's licenses and identification cards and shifting operations to appointment only.

Beginning May 7, 2025, every traveler 18 and older will need a REAL ID-compliant driver's license or identification card, state-issued enhanced driver's license, or another TSA-acceptable form of identification for domestic air travel.