



News & Types: Immigration Monthly Updates

Business Immigration Monthly - August 2023

8/22/2023

By: Julie T. Emerick, Derek W. Strain

Practices: Immigration

USCIS TO END AUTOMATIC 540-DAY EXTENSION PERIOD OF CERTAIN EADS

U.S. Citizenship and Immigration Services (USCIS) recently indicated that it will not continue the 540-day automatic extension of Employment Authorization Documents (“EAD”) renewals for certain eligible applicants. The temporary rule, in effect since May 4, 2022, was aimed at alleviating hardships to workers and employers due to growing processing times for EAD renewals.

Those EAD renewal applicants eligible for the 540-day automatic extension who file their applications with USCIS before October 26, 2023 will continue to benefit from the 540 days of continued employment authorization if a decision on their EAD application is not issued sooner. Eligible EAD renewal applicants who file their applications with USCIS on or after October 27, 2023 will be allocated the usual 180-day automatic extension of their EAD. EAD renewal applicants impacted include Refugees, Asylees, some TPS applicants, spouses of E-1 Treaty Trader, E-2 Treaty Investors, E-3 Australian Workers, L-1 Intracompany Transferees and certain H-1B Specialty Occupation Workers, and individuals who have applied for an EAD as part of adjustment of status to Permanent Resident.

Individuals admitted in the E-1S, E-2S, E-3S and L-2S classes of admission are authorized to work incident to that status until the expiration date of their Form I-94, without an EAD. These individuals may apply for an EAD if so desired.

USCIS envisions it will be able to process the EAD renewal applications within the 180 days. For Form I-9 employment verification purposes, the receipt notice for the Form I-765 EAD renewal for the eligible categories should refer to the 180-day automatic extension to meet regulatory requirements to document employment authorization.

SEPTEMBER VISA BULLETIN UPDATE

The DOS recently issued the September 2023 Visa Bulletin for the last month of the U.S. government’s 2023 fiscal year (FY2023). Notable changes in the employment-based classifications include the following:

- In the employment-based second preference (EB-2) for All Chargeability (or Rest of the World), Mexico, and the Philippines, the final action priority date advanced from April 1, 2022 to July 1, 2022.
- For nationals of China in the EB-3 preference, the final action date cutoff advanced three months to September 1, 2019.

- For nationals of India, there was no advancement or retrogression of priority dates signaling that the Immigrant Visa quota for Indian nationals has been met for FY2023.

USCIS has indicated that new adjustment of status filers must use the “Final Action Date” chart in the September Visa Bulletin. A new allotment of Immigrant Visas/Green Cards becomes available at the start of the U.S. government’s next fiscal year (FY2024) on October 1, 2023.

Selectees of the Diversity Visa program (a/k/a DV Lottery) for DV-2023 are reminded that they must either be approved for permanent residency in the United States (Adjustment of Status) or receive the immigrant visa from a consular post before September 30, 2023.

FY2024 DV Lottery (DV-2024) selectees are able to apply for adjustment of status or attend their immigrant visa interview starting October 1, 2023. 22,185,619 individuals from designated countries registered for the DV-2024 program. The Department of State (DOS), through the Kentucky Consular Center (KCC), selected approximately 143,000 applicants for the 54,850 Diversity Visa Green Cards available in DV-2024. Countries with more than 3,000 DV-2024 wins include: Uzbekistan (5,555), Russia (5,514), Egypt (5,509), Sudan (5,435), Algeria (5,142), Iran (5,077), Afghanistan (4,536), Kyrgyzstan (4,464), Ukraine (4,286), Morocco (4,250), Armenia (3,869), Nepal (3,863), Kenya (3,760), Turkey (3,684), Tajikistan (3,580), Cameroon (3,485), Yemen (3,485), Georgia (3,194), and Ethiopia (3,034). Countries having one lucky single win include: Antigua and Barbuda, Christmas Island (Australia), French Polynesia (France), Maldives, Malta, Monaco, Aruba (Netherlands), Curacao (Netherlands), Sint Maarten (Netherlands), and Northern Ireland.

SUPREME COURT WATCH – UPDATE ON OPT/STEM OPT LITIGATION

Defending the OPT and STEM OPT employment authorization programs for F-1 foreign students, the National Association of Manufacturers, U.S. Chamber of Commerce and Information Technology Industry Council told the U.S. Supreme Court in their request to deny the petition for certiorari in the case of *Washington Alliance of Technology Workers v. DHS, et al*, that “[p]ractical training programs like OPT have existed at least since 1947 – that is, they predate the 1952 enactment of the Immigration and Nationality Act (INA) – and these programs and their authorizing regulations have been maintained through every upheaval in the immigration laws in the intervening decades. For three-quarters of a century, practical training has rested on sound legal footing.”

The Plaintiffs, Washington Alliance of Technology Workers, challenge the Obama Administration’s expansion in 2016 of the STEM OPT program from 17 months to 24 months. In 2008, the George W. Bush Administration created the STEM OPT program permitting an additional 17 months of work authorization for F-1 Students who graduated from STEM programs and worked for E-Verify employers. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the decision by the District Court upholding the legality of the STEM OPT program.

Four out of the nine U.S. Supreme Court Justices must vote to grant a *writ of certiorari* for the case to be heard.

Additional information about whether the U.S. Supreme Court agrees to consider the appeal will be contained in future Masuda Funai newsletters when they become available.

H-1B QUOTA REGISTRATION UPDATE

After conducting a second round of selections in the FY2024 H-1B quota lottery to reach the FY2024 H-1B quota numerical allocations of 65,000 for the regular H-1B quota with an additional 20,000 for individuals who have earned a U.S. Master’s or higher degree, USCIS announced that they have now randomly selected from the remaining FY2024 registrations properly submitted, a sufficient number of registrations projected as needed to reach the H-1B quota numerical allocations. They have notified all prospective petitioners with selected registrations from this round of selection that they are eligible to file an H-1B cap-subject petition for the beneficiary named in the applicable selected registration.

This chart shows the registration and selection numbers for fiscal years 2021-2024 (as of 07/31/2023).

Cap Fiscal Year	Total Registrations	Eligible Registrations*	Eligible Registrations for Beneficiaries with No Other Eligible Registrations	Eligible Registrations for Beneficiaries with Multiple Eligible Registrations	Selections**
2021	274,237	269,424	241,299	28,125	124,415
2022	308,613	301,447	211,304	90,143	131,924
2023	483,927	474,421	309,241	165,180	127,600
2024	780,884	758,994	350,103	408,891	188,400

**The count of eligible registrations excludes duplicate registrations, those deleted by the prospective employer prior to the close of the registration period, and those with failed payments.*

*** The number of initial selections for FY 2024 – 110,791 – was smaller in than in prior years primarily due to (a) establishing a higher anticipated petition filing rate by selected registrants based on prior years; and (b) higher projected Department of State approvals of H-1B1 visas, which count against the H-1B cap.*

Following selection in the registration lottery, an H-1B cap-subject petition must be properly submitted to the correct service center within the filing period indicated on the relevant registration selection notice. The period for filing the H-1B cap-subject petition is 90 days and must be submitted as a paper filing including a printed copy of the applicable registration selection notice with the FY2024 H-1B cap-subject petition. Registration selection only pertains to eligibility to file an H-1B cap-subject petition and petitioners must still establish eligibility for petition approval based on existing statutory and regulatory requirements.