



News & Types: Immigration Monthly Updates

Business Immigration Monthly - December 2023

12/20/2023

By: Julie T. Emerick, Derek W. Strain

Practices: Immigration

DEPARTMENT OF STATE PLANS TO RESUME IN-COUNTRY NONIMMIGRANT VISA RENEWALS IN CERTAIN CASES

In July 2004, the Department of State (DOS) ended in-country nonimmigrant visa renewal processing of non-diplomatic visa applications due to the Enhanced Border Security and Visa Entry Reform Act of 2002 which implemented a biometrics requirement for visa processing for national security reasons after the September 11, 2001 terrorist attacks. The law required U.S. Embassies or Consular Posts to issue machine-readable, tamper-resistant visas having biometric identifiers. Biometric identifiers are captured by full fingerprinting and photographing of the visa applicant, and then are embedded into the visa. U.S. Customs and Border Protection (CBP) confirms a traveler's biometric identifiers as part of the admission process to the United States. The biometrics requirement applies to visa applicants over the age 14 and under the age 79.

The DOS did not have resources to collect the biometric identifiers within the United States, thus ended the in-country visa renewal program. As technology has evolved and visa appointments at some U.S. Embassies or Consular Posts continue to be limited, the DOS is considering the resumption of in-country visa renewal processing. Before fully re-implementing in-country visa renewal processing, the DOS has determined that it needs to conduct a pilot program to assess challenges and determine the best approach for re-implementing the program.

When Does the Pilot Program Become Effective and Which Visa Classification is Eligible?

Under a pilot program in effect from January 29, 2024 to April 1, 2024, the DOS will accept certain visa renewal applications in the **H-1B classification only (this does not include H-1B1, H-2, H-3, or H-4 visa applications)**. The DOS anticipates that all visa processing will be completed by May 1, 2024. If the DOS requests the H-1B visa renewal applicant to provide additional documentation, it must be received by April 15, 2024. The DOS is allocating a specific number of slots for visa applications per week, as discussed below, to limit the number to be processed during this pilot program.

Which H-1B Nonimmigrants are Eligible for the H-1B In-Country Visa Renewal Pilot Program?

Only H-1B nonimmigrants who meet these specific requirements are eligible:

- You must have either an H-1B visa issued between January 1, 2020 and April 1, 2023 by Mission Canada (a U.S. Embassy or Consular Post in Canada); or an H-1B visa which was issued between February 1, 2021 and September 30, 2021 by Mission India (a U.S. Embassy or Consular Post in India);
- You are not required to pay a reciprocity fee (additional fee based upon the country which issued your passport);
- You would be eligible for a waiver of the in-person interview requirements at a U.S. Embassy or U.S. Consular Post, which include having never been refused a visa unless such refusal was overcome or waived, have no apparent ineligibility or potential ineligibility, and are applying within 48 months of the expiration of their H-1B visa);
- You previously had your biometrics (full fingerprinting/ten fingerprints) collected by the U.S. Embassy or U.S. Consular Post as part of your last H-1B visa issuance;
- Your H-1B visa is not annotated “clearance received”;
- You do not require an inadmissibility waiver for the visa processing;
- You have an approved, unexpired H-1B petition and are maintaining the H-1B status (continue to work for the employer who sponsored the H-1B classification);
- You were last admitted to the United States in H-1B status (have a CBP issued I-94 record in H-1B status) and presently reside in the United States;
- Your period of authorized admission in H-1B status has not expired (meaning you have an unexpired I-94 or I-797 in H-1B status); and
- You intend to apply to reenter the United States in H-1B status after a temporary period abroad.

When May the H-1B Nonimmigrant Apply for the H-1B In-Country Visa Renewal Pilot Program?

Starting January 29, 2024, eligible applicants may apply on-line at <https://travel.state.gov/content/travel/en/us-visas/employment/domestic-renewal.html>.

A total of 4,000 application slots will be available each week, equally divided between H-1B visa renewal applicants who obtained their last H-1B visa from Mission Canada (2,000 slots) and Mission India (2,000 slots). If the allocation for the week has been met, a new set of application slots will be released on February 5, 2024, February 12, 2024, February 19, 2024 and February 26, 2024. The application period for this pilot program will close when all application slots have been allocated or on April 1, 2024, whichever occurs first.

What is the H-1B In-Country Visa Renewal Pilot Program Process?

From the DOS domestic visa application renewal online site, the applicant will select either Mission Canada or Mission India, depending upon where his/her last H-1B visa was issued. Then, the applicant will answer questions to determine if he/she is eligible for the H-1B in-country visa renewal processing under this pilot program. If qualified for the in-country visa renewal processing, the individual will see instructions to complete his/her DS-160 visa application, pay the \$205.00 application fee using a major debit or credit card, and the address to send in his/her passport and supporting documents. We encourage applicants to send their passports and supporting documents by Federal Express or UPS so that they can track and confirm receipt by DOS.

How Long will the Processing Time be?

If the DOS determines the H-1B visa may be issued, the processing is estimated to take six to eight weeks and applicants may check on the status of their applications at <https://ceac.state.gov/CEACStatTracker/Status.aspx?App=NIV>. Expedited H-1B visa renewal processing is not available under this pilot program.

What if the Application is Denied?

If the visa application is denied, it may be possible to submit a new H-1B visa application at a U.S. Embassy or Consular Post where the applicant has a residence or is physically present.

For assistance with the domestic nonimmigrant visa renewal process through this DOS pilot program, please contact an immigration attorney in the Masuda Funai Immigration Group.

FY2024 H-1B CAP OFFICIALLY REACHED

On December 13, 2023, U.S. Citizenship and Immigration Services (USCIS) announced that the H-1B quota for FY2024 (October 1, 2023 to September 30, 2024) was met. USCIS received 780,884 total registrations for the FY2024 H-1B quota and conducted two selections, one in March 2023 and a second selection in July 2023. Since the FY2024 H-1B quota has been met, there will not be a third random selection of H-1B registrations. USCIS is in the process of updating its online system to officially designate the registrations not selected as “Not Selected.”

The registration period for the FY2025 H-1B quota lottery is anticipated to occur in early March 2024. As reported in our [October 2023 Business Immigration Monthly](#), USCIS has proposed modifications to the H-1B quota registration system in order to prevent abuse and level the playing field with a beneficiary-centric process. Written comments on the proposed modifications are due on or before December 22, 2023. More than 1,000 comments have been received to date. The Office of Management and Budget (OMB) must approve the final regulation before it may be implemented.

Employers are encouraged to contact our firm in early February 2024 for additional information about the FY2025 H-1B quota lottery and registration process.

DOL SOLICITS FEEDBACK ABOUT POSSIBLE EXPANSION OF THE SCHEDULE A EXEMPTION FROM PERM PROCESS

The U.S. Department of Labor’s (DOL) Office of Foreign Labor Certification (OFLC) is soliciting feedback from stakeholders about a possible expansion of the Schedule A exemption from the PERM labor certification process. The pre-rule/request for information (RFI) is in response to the Biden Administration’s Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence (AI EO) issued on November 1, 2023.

The Schedule A list was created by the Immigration and Nationality Act (INA) of 1965 to help the United States overcome labor shortages in occupations where there are not sufficient domestic workers who are able, willing, qualified and available to fill the occupations. The Secretary of the DOL has complete discretion in determining which occupations should be included on Schedule A. Between the 1960s and 1991, the DOL used detailed

data to keep the Schedule A occupations list up to date. However, since 1991, the DOL has not updated the list. Schedule A Group 1 has only included 2 occupations since 1991, namely registered nurses and physical therapists. If an occupation is contained on the Schedule A list, the employer can bypass the OFLC's PERM process to evidence that there are no able, willing, qualified and available U.S. workers for the offered position and file a Form I-140 Immigration Petition for Alien Worker directly with the USCIS.

Through the RFI, the OFLC is soliciting feedback from stakeholders about how to develop data-driven methods and new procedures to determine shortage occupations to include on the Schedule A list. Stakeholders will be given 60 days to provide feedback. After the OFLC reviews the RFI comments, it may then release a proposed regulation soliciting additional feedback. After the OFLC reviews this feedback, it may then issue a final regulation which may implement a new Schedule A procedure and potentially list new Schedule A shortage occupations. Therefore, due to this extensive process, it is not anticipated that the Schedule A list will be modified in the short term. However, if the OFLC modifies the Schedule A process to allow for modifications to Schedule A by notice through the Federal Register (instead of this extension process), it may be easier and quicker in the future to modify the Schedule A list to keep current with the emergence of new shortage occupations.

Additional information about changes to the Schedule A list will be contained in future Masuda Funai Business Immigration Monthly Updates when they become available.

JANUARY 2024 VISA BULLETIN UPDATE

The U.S. Department of State (DOS) recently issued the January 2024 Visa Bulletin with some welcome movement from last month's Bulletin.

Who Becomes Eligible to be Approved for Permanent Resident Status ("Green Card") or Have Their Immigrant Visa Interview Scheduled at a U.S. Consular Post?

For employment-based immigration the following foreign nationals who have applied for adjustment of status (AOS) and have submitted all the required documentation, including the Medical Examination (Form I-693), become eligible to have USCIS complete the processing of their application in January 2024. Also, the following foreign nationals who will complete the Immigrant Visa processing at a U.S. Consular Post abroad and who have submitted all the required documentation become eligible to have their interview scheduled in January 2024.

First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China are current.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) whose priority date is before July 1, 2022 – an advancement from February 15, 2022.

- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) whose priority date is before September 1, 2020 – an advancement from January 1, 2017.

Second Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before November 1, 2022 – an advancement from July 15, 2022.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before January 1, 2020 – an advancement from October 22, 2019.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before March 1, 2012 – an advancement from January 1, 2012.

Third Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before August 1, 2022 – an advancement from December 1, 2021.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before September 1, 2020 – an advancement from January 22, 2020.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before June 1, 2012 – a one month advancement from May 1, 2012 in this category.

Who May Apply for Adjustment of Status (AOS) During January 2024?

On a positive note, USCIS has agreed to continue to allow individuals eligible in the family-based and employment-based categories to apply for permanent resident status in the United States through an AOS under the “Dates of Filing Chart” (instead of the Final Action Date chart).

For employment-based immigration this allows the following foreign nationals to apply for an AOS in January 2024:

First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China are current.

- China-born persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) who filed their Immigrant Petition (Form I-140) before January 1, 2023 – an advancement from August 1, 2022.
- India-born persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) who filed their Immigrant Petition (Form I-140) before January 1, 2021 – and advancement from July 1, 2019.

Second Preference

- Persons born in any country other than India or China who are eligible for the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) and who filed their Immigrant Petition (Form I-140), or their employer filed a PERM Labor Certification before February 15, 2023 – an advancement from January 1, 2023.
- China-born persons who are eligible for the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) and who filed their Immigrant Petition (Form I-140), or their employer filed a PERM Labor Certification before June 1, 2020 – an advancement from January 1, 2020.
- India-born persons who are eligible for the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) and who filed their Immigrant Petition (Form I-140), or their employer filed a PERM Labor Certification before May 15, 2012. There was no advancement in this category.

Third Preference

- Persons born in any country other than India, China or the Philippines who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before February 1, 2023. There was no advancement in this category.
- China-born persons who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before July 1, 2021 – an advancement from September 1, 2020.
- India-born persons who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before August 1, 2012. There was no advancement in this category.
- Philippines-born persons who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before January 1, 2023. There was no advancement in this category.

The DOS, which manages the Visa Bulletin, notes its intention to keep visa issuance within quarterly limits in accordance with the provisions of the Immigration and Nationality Act.

CHANGE OF ADDRESS FILINGS

All non-U.S. citizens (which includes permanent residents) are required to file an official change of address with USCIS within 10 days of the address change. This change of address is different from a change of address filed with the U.S. Postal Service to receive mail.

Individuals may file notify USCIS of their address change by:

1. Updating the information in their MyUSCIS Account by logging into <https://myaccount.uscis.gov/>.
2. Filing the Change of Address online at <https://egov.uscis.gov/coa/displayCOAForm.do>.
3. Mailing a completed Form AR-11, *Alien's Change of Address Card* to the address noted in the form.
4. Individuals who have applied for benefits under the Violence Against Women Act (VAWA), filed a Form I-751 to remove the conditions on their Permanent Resident status based upon domestic violence, or have applied for T status as a victim of human trafficking or U status as a victim of criminal activity are advised to follow the guidance on the USCIS website to notify the government of their address change.

A properly completed change of address form is needed for each non-citizen. A U.S. citizen who has sponsored a foreign national may also update their contact information in their MyUSCIS Account by logging into <https://myaccount.uscis.gov/>.

Failure to file the change of address may contribute to an immigration notice or document not being received. Also, the U.S. government has the right to impose a fine or other penalties, including commencement of removal proceedings if the change of address is not submitted.

USCIS ISSUES POLICY GUIDANCE ON FAMILY BASED PETITIONS TO REMOVE CONDITIONS ON RESIDENCE

USCIS issued new policy guidance for its Policy Manual regarding eligibility, filing, and adjudication for Form I-751, Petition to Remove Conditions on Residence. Under the Immigration Marriage Fraud Amendments of 1986 (IMFA), a noncitizen who obtains permanent resident ("green card") status based on a marriage that began less than 2 years before obtaining that status, receives "conditional permanent resident (or CPR) status" for 2 years.

To remove the conditions on permanent resident status, and obtain a 10-year green card, CPRs must file a Petition to Remove Conditions on Residence (Form I-751) within the 90-day period preceding the 2-year anniversary of obtaining CPR status. Failure to file the petition within the 90-day period will result in termination of CPR status.

When separation, divorce, or domestic abuse occur during the marriage, the I-751 petition continues to be legally required. Therefore, USCIS has issued updated guidance which is found within the USCIS Policy Manual and covers joint petitions, individual filing requests, and waivers. The update clarifies what noncitizens must do to change the basis of filing in cases of waivers based on battery or extreme cruelty.

The guidance also clarifies that if a noncitizen's CPR status is terminated for failing to timely file the Form I-751, they may still be eligible to adjust permanent resident status on a new basis, even if USCIS issues a

notice of termination of CPR status before the noncitizen files the Form I-485, Application to Register Permanent Residence or Adjust Status.

HOLIDAY CHEER

While we will not disclose any client relationships, we can provide some insight on U.S. immigration matters for a “jolly old elf” who is scheduled to arrive in the United States sometime during the evening on December 24th. This traveler is able to enter the United States without a visa, under the ESTA Visa Waiver Program which allows him to remain in the United States for up to 90 days – giving him ample time for his visit and post-holiday beach vacation. You may think that all the deliveries he makes is skilled labor or U.S. employment; however, it is considered a business activity as his principal place of business (workshop) and where profits accrue is outside the United States. While cookies and milk may be consumed during his whirlwind visit, such gratuitous and priceless delicious treats are not income. Due to great technology, our friend is willing to share his travel route here.

Happy Holidays from Masuda Funai!