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USCIS TO PROPOSE TO ELIMINATE F-1 DURATION OF STATUS (D/S) AND FAVOR HIGHER PAID POSITIONS IN H-1B QUOTA REGISTRATION

The U.S. Citizenship and Immigration Services (USCIS) has sent two proposed regulations to the Office of Management and Budget (OMB) for review.

The first regulation may change how F-1 and J-1 nonimmigrants are admitted to the United States. Currently, F-1 and J-1 nonimmigrants are admitted for the duration of their programs being issued D/S (duration of status) on their Form I-94 records. The proposed regulation may change this process so that F-1 and J-1 nonimmigrants are admitted for a specific period of time (which is assumed it will be up to 4 years). If the F-1 and J-1 nonimmigrant program exceeds the admitted period of time due to the program lasting longer than the admitted period of time and/or the nonimmigrant being recommended/authorized for employment upon completion of the program, the F-1 and J-1 nonimmigrant will have to file for an extension of stay through the USCIS. As part of the extension process, the USCIS will complete a review of the F-1 and J-1 nonimmigrant's maintenance of status to determine the nonimmigrant's compliance with the terms of his/her program. It is also assumed that the regulation will contain a restriction on the number of academic programs that an F-1 and J-1 nonimmigrant may complete in the United States.

The second regulation may change how the USCIS selects registrations in the annual H-1B quota lottery. Each year, the USCIS may approve 65,000 regular H-1B quota petitions and an additional 20,000 H-1B quota petitions for individuals who have earned a U.S. Master's or higher degree. The number of registrations each year greatly exceeds the combined total of 85,000. In the fiscal year 2026 H-1B quota lottery, more than 358,737 registrations were received by the USCIS. Currently, the USCIS does not give preference in the selection process based on any reason, other than whether the individual has earned a U.S. Master's or higher degree. It is assumed that the proposed regulation will change this to provide a preference in the selection process based upon the U.S. Department of Labor's (DOL) Occupational Employment and Wage Statistics (OEWS) prevailing wage level that will be selected by the employer on the H-1B quota petition if the employer's registration is selected in the H-1B quota lottery. There are four OEWS prevailing wage levels in the H-1B process. It is assumed that the higher the prevailing wage level that will be provided as part of the H-1B quota process, the more likely that the registration will be selected in the H-1B quota lottery. Therefore, if

the employer will only be offering a Level 1 entry level OEWS prevailing wage as part of the H-1B quota process, it is unlikely that the registration will be selected in the H-1B quota lottery. Additionally, if the employer will not be using an OEWS prevailing wage but instead will be using a private wage survey as part of the H-1B quota process, this may be classified as a Level 1 OEWS prevailing wage in the registration process, even if the offered wage will be significantly higher than the Level 1 OEWS prevailing wage.

It appeared that OMB completed its review of both regulations during the second week of August. Therefore, it was anticipated that USCIS would release both proposed regulations shortly. However, it appears from the OMB website that both regulations have been returned to OMB for additional review. USCIS will then only be able to release the proposed regulations after OMB completes its review. After the proposed regulations are released, there should be a 60-day comment period. After USCIS reviews the comments, it will then release a final regulation. It is assumed that USCIS will want to implement the new quota registration selection process before the next quota registration period opens in early March.

Additional details of both regulations will be posted on the Masuda Funai website in a Masuda Funai Client Alert when they become available.

WILL MY U.S. CITIZENSHIP BE TAKEN AWAY

While the current Administration is facing legal challenges to their efforts to end the 14th Amendment's guarantee of birthright citizenship; keeping in line with the Inauguration Day Executive Order *Protecting the Meaning and Value of American Citizenship* (E.O. 14160) the Administration has now directed the Department of Justice to prioritize the loss of American citizenship. In 2022, approximately 24.5 million of the immigrants (non-native born) living in the United States were naturalized citizens -- this is 53% of the immigrant population.

Denaturalization of Naturalized Citizens

The Immigration Act of 1990 transferred the powers of naturalization from the Federal Courts to the U.S. Attorney General. In the twenty-seven year period (1990 – 2017) 305 denaturalization cases were filed; this has increased by 600% since 2022. The process of denaturalization begins by USCIS making a recommendation to revoke the naturalized citizenship to the Department of Justice.

The Department of Justice may institute civil proceedings to revoke a person's United States citizenship if an individual either "illegally procured" naturalization or procured naturalization by "concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a).

- Under a criminal indictment for allegation that U.S. citizenship was unlawfully procured. The government needs to bring a cause of action within 10 years of the alleged offense. This is a criminal charge, which in addition to losing U.S. citizenship, has a penalty of imprisonment of up to 25 years.
- Under a civil denaturalization process if the U.S. government discovers the individual was not eligible for naturalization. Generally, the naturalization applicant must have made a material misrepresentation in their application. Historically individuals who did not disclose their membership in the Nazi party during World War II faced denaturalization.

- A veteran or U.S. military service member who obtained U.S. citizenship from their military service on or after November 24, 2023 may be denaturalized if the individual honorably served less than five years and had a dishonorable discharge from service.

A June 11, 2025 memo issued by Assistant Attorney General, Brett A. Shumate to all Civil Division employees of the Department of Justice outlines the priorities for denaturalization of individuals who:

- Pose a potential danger to national security (terrorist, spies, exporter of sensitive goods, technology, or information raising national security concerns).
- Engaged in torture, war crimes, or other human rights violations.
- Further or furthered the unlawful enterprise of criminal gangs, transnational criminal organizations, and drug cartels.
- Committed felonies that were not disclosed during the naturalization process.
- Committed human trafficking, sex offenses, or violent crimes.
- Engaged in various forms of financial fraud against the United States. This includes instances of Medicaid/Medicare fraud or fraud under the COVID-era Paycheck Protection Program ("PPP").
- Engaged in fraud against private individuals, funds, or corporations.
- Acquired naturalization through government corruption, fraud, or material misrepresentations, not otherwise addressed by another priority category.

The application for naturalization itself and the interview process by the USCIS Officer address these issues and, if the applicant fails to respond truthfully, a "material misrepresentation" occurs creating a basis for denaturalization. A misrepresentation is material if it can be shown by clear, unequivocal, and convincing evidence that USCIS would not have approved the application for naturalization if knowing the truth.

Under the new guidance, additional broader considerations for terminating U.S. citizenship include:

- Cases referred by a United States Attorney's Office or in connection with pending criminal charges if those charges do not fit within one of the other priorities.
- Any other cases referred to the Civil Division that the Division determines to be sufficiently important to pursue.

Loss of Citizenship by Native-born Americans

Persons born in the United States may also lose their U.S. citizenship through intentional relinquishment of their U.S. citizenship when:

- Obtaining citizenship in or taking an oath of allegiance to a foreign state on or after their 18th birthday.
- Entering or serving in the armed forces of a foreign state that is engaged in hostilities against the United States or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state.
- Accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state, after attaining the age of eighteen years if acquiring the nationality of such foreign state or serving in a role where an oath, affirmation, or declaration of allegiance is required.
- Committing any act of treason against or conspiring to or attempting by force to overthrow the U.S. government or bearing arms against the United States.

Individuals born in the United States may also voluntarily renounce their U.S. citizenship before a U.S. government official designated by the Attorney General or before a U.S. diplomatic or consular officer.

Loss of U.S. citizenship may also impact the status of family members who derived U.S. citizenship from the citizen who has been denaturalized, as well as U.S. taxation obligations.

TREND WATCH – STRONGER INCENTIVE FOR PREMIUM PROCESSING

As noted in the July issue of the Masuda Funai Business Immigration Monthly, thus far this calendar year, USCIS staffing has downsized by 10%. The number of USCIS filings, however, remains on track with prior years; and consequently, processing times have increased.

To prioritize workflow, USCIS posted on its website a change in processing for employment-based immigrant petitions (Form I-140). Rather than processing "first-in, first-out", USCIS will now process a Form I-140 when the Department of State's (DOS) Visa Bulletin shows that an immigrant visa is available.

If USCIS takes several years to process the Form I-140, there is an increased incentive to file the petition using Premium Processing. Obtaining approval of Form I-140 is essential for several reasons:

- It locks in a priority date and classification for future Green Card processing.
- For noncitizens in the H-1B classification, it creates an opportunity for H-1B authorization beyond the six-year limitation.
- H-4 spouses become eligible to apply for work authorization.
- Noncitizens having an approved I-140 and who hold status in the E-3 (Australian Worker), H-1B (Specialty Occupation Worker), H-1B1 (Chile/Singapore Worker), L-1 (Intracompany Transferee), or O-1 (Worker have Extraordinary Ability/ Outstanding Achievement) classifications who face "compelling circumstances" – such as loss of a job, medical issues, etc. may apply for work authorization.
- Spouses and children of noncitizens who have been granted work authorization under "compelling circumstances" may also apply for work authorization.

For nationals of India there is a wait of twelve years or longer for the employment-based second and third preference categories; for nationals of China the wait is five years or longer.

Depending on the category requested in Form I-140, Premium Processing can take 15 or 45 business days for a processing fee of $2,805. There is no requirement under the immigration rules for the employer to pay the Premium Processing fee.

VISA BOND PILOT PROGRAM ANNOUNCED

We reported in February issue of the Masuda Funai Business Immigration Monthly that the government planned to establish and implement a system to collect visa bonds under the Executive Order 14159 "*Protecting The American People Against Invasion*". During the first Trump Administration, the DOS proposed a visa bond program; however, implementation did not proceed due to the COVID-19 global pandemic. Seven

months after Inauguration Day, the second Trump Administration's Visa Bond Pilot Program becomes effective starting August 20, 2025 through August 5, 2026.

Nationals from countries designated as "high overstay"; countries with deficient screening and vetting processes; or countries offering citizenship without a residency requirement, also known as Citizenship by Investment ("CBI Program"); who are applying for visa to travel to the United States for business or pleasure (B-1/B-2 visa) will be required to post a bond as a condition of visa issuance.

The purpose of the bond is to create an incentive for the noncitizen to depart the United States. The Department of Homeland Security (DHS) calculates the average cost for the full Immigration Enforcement Lifecycle to remove a noncitizen who has over-stayed their visa as $17,121.

Which B-1/B-2 visa applicants are required to post the bond?

Countries designated with "high overstays," meaning nationals from these countries remained in the United States longer than authorized, include:

- Malawi
- Zambia

In the Entry/Exit Overstay Report to Congress for FY-2023, of the 1,655 B-1/B-2 visa visitors from Malawi, 237 individuals overstayed (14.32%); and of the 3,493 B-1/B-2 visa visitors from Zambia, 388 individuals overstayed (11.11%).

While not yet officially designated as being subject to the new Visa Bond Pilot Program, countries with CBI Programs include Antigua and Barbuda, Cambodia Dominica, Egypt, El Salvador, Grenada, Jordan, Malta, Naura, North Macedonia, Portugal, St. Kitts and Nevis, St. Lucia, Samoa, Turkey, and Vanuatu.

Nationals from countries having a Residency by Investment ("RBI Program"), including Cyprus, Greece, Hungary, Italy, Lativa, Portugal, and Spain, should not be subject to the Visa Bond Pilot Program.

The DOS will post additional countries subject to a visa bond on its website with 15 days' notice prior to requiring payment of the bond.

What is amount of the Bond?

For nationals of countries designated with "high overstays", the bond amount to be collected will be $5,000, $10,000 or $15,000 per applicant and the bond obligor must sign an Immigration Bond Form I-352 from the Immigration and Customs Enforcement (ICE). The Consular Officer has authority to determine which bond amount is to be collected. Payment of the bond must be received within 30 days, or the visa application will be denied. Bond funds will be held in a Department of Homeland Security account.

Who can post the Bond?

The Consular Officer will provide instructions and a direct link for payment of the bond and submission of Form I-352 via the Department of the Treasury's online payment platform Pay.gov. A surety company designated by the Treasury Department, an entity, or an individual may post the bond as the obligor. The obligor must confirm the funds posted are not the proceeds of illicit activity.

What are the conditions of travel under the Visa Bond Pilot Program?

Once the bond has been posted and the B-1/B-2 visa issued, the traveler may only arrive and depart the United States at a designated airport. The current designated airports are:

- Boston Logan International Airport (BOS)
- John F. Kennedy International Airport (JFK)
- Washington Dulles International Airport (IAD)

Additionally, the B-1/B-2 visa will be limited to a single-entry and have a 3-month validity. Admission to the United States by Customs and Border Protection (CBP) will be only for a maximum period of 30 days.

When may the bond payment be returned or cancelled?

The bond may be returned or cancelled when:

- The visa application is denied after the bond has been posted.
- The visa holder does not travel to the United States before the expiration of the visa.
- The visa holder is denied admission to the United States by CBP.
- The visa holder departs the United States on or before the date of their authorized stay by CBP.
- If after admission to the United States, the visa holder requests and is approved for an extension of stay or change of their immigration status by USCIS; complies with the terms of their immigration status; and then departs the United States before the date of their authorized stay by USCIS.

The obligor must provide appropriate documentation to the DOS or DHS that the visa holder complied with the terms of their visa for the bond to be cancelled.

What actions cause forfeiture of the bond?

The opportunity to have the bond payment returned is forfeited when:

- The visa holder does not depart the United States on or before the date of their authorized stay by CBP or USCIS.
- USCIS denies the visa holder's request for an extension of stay or change of their immigration status and the individual does not depart the United States within 10 days of the denial.
- The visa holder does not comply with the terms of their immigration status, such as working in the United States without authorization.
- The visa holder applies to adjust out of nonimmigrant status, including claiming asylum or applying for Permanent Resident status.
- The visa holder is taken into custody by ICE.
- The visa holder is deported or removed by the U.S. government or voluntarily departs the United States under an order of Voluntary Departure by the immigration court or Board of Immigration Appeals.

After this pilot program is over, DHS will determine if the program should be expanded for reasons of national security or foreign policy priorities.

SEPTEMBER 2025 VISA BULLETIN UPDATE

The DOS recently issued the final Visa Bulletin for fiscal year 2025. During September, noncitizens in the employment-based classifications as noted below become eligible to concurrently file for an *employment-based* immigrant classification or, if approved for an *employment-based* immigrant classification can apply for permanent resident status through adjustment of status ("AOS"). During September, noncitizens in the employment-based classifications as noted below who have their AOS application pending or who will complete the Immigrant Visa processing at a U.S. Consular Post become eligible to have their AOS application approved or their interview scheduled in September 2025. USCIS advised that is using the "Final Action" date chart to determine eligibility for filing applications for adjustment of status in September.

First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) whose priority date is before **November 15, 2022**, no change since July 2025.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or Workers recognized for their Extraordinary Ability) whose priority date is before **February 15, 2022**, no change since April 2025.

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 **September 1, 2023** – no change since August 2025.
- **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 **December 15, 2020**, no change since July 2025.
- **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 **January 1, 2013**, no change since April 2025.

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 **April 1, 2023**, no change since July 2025.
- **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 **December 1, 2020**, no change since July 2025.
- **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 **May 22, 2013**, an advancement of 30 days.

September is the last month of the government's fiscal year. There normally is little to no priority date movement towards the end of the government's fiscal year. On October 1, 2025, which is the start of fiscal year 2026, at least 140,000 new employment-based Green Cards become available. Therefore, it is assumed that there will be more priority date movement beginning in October after the fiscal year 2026 employment-based Green Cards become available.

For additional information about priority date movement, please see our Client Advisory "Understanding When Your Priority Date is "Current" to File (and Be Approved) for a Green Card".

MFEM NEWS

BOB WHITE TO LEAD PERM PANEL WITH DOL OFFICIALS AT THE AILA FALL CONFERENCE

Bob White, co-chair of the Masuda Funai Immigration Group, will be leading the PERM panel during the American Immigration Lawyers Association's (AILA) Fall Conference being held on September 11 and 12, 2025 in Boston, Massachusetts. Leadership from the U.S. Department of Labor's (DOL) Headquarters may be participating in the panel this year. Mr. White will be discussing current Request for Information (RFI) and denial trends, processing time developments and the future of DOL's various immigration programs. Mr. White is currently the Chair of the AILA DOL Committee.

Masuda Funai Employment, Labor & Benefits Group to Host Annual Seminar

The Masuda Funai Employment, Labor & Benefits Group (ELBG) will be hosting its annual in-person seminar this year on Thursday, September 18th at the Doubletree Hotel in Arlington Heights, Illinois.

This year's topics will include an Employment Law Update with a focus on Illinois, Michigan and California; Employment Law in the Age of AI; Current State of DEI in the Workplace; and Employment Best Practices for a Variety of Issues Currently Being Encountered by Companies.

More information about the Seminar (including how to register) is available at 2025 Annual Complimentary Employment, Labor, & Benefits Seminar | Masuda Funai

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.