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January/February Immigration Updates Employers Need to Know

H-1B Fiscal Year (FY) 2022 Cap

The U.S. Citizenship and Immigration Services (USCIS) recently [announced](#) that it will accept electronic registrations for H-1B cap subject petitions for the 2022 fiscal year from March 9 through March 25, 2021. Employers should prepare for the electronic registration process by identifying current employees or potential new hires that they wish to sponsor (e.g. individuals on F-1 or TN). The [electronic registration process](#) was implemented last year, and all employers seeking to file H-1B petitions during the cap are required to electronically register for each worker for whom they want to sponsor.

No changes to the electronic registration process are expected as a plan to replace the random selection of H-1B visa registrations with a wage-based allocation system has been delayed. The USCIS will apply the current regulations and utilize random selection for the upcoming H-1B registration.

If the USCIS receives enough registrations by March 25, it will randomly select registrations and send selection notifications by March 31.

Travel Ban Expansion and Revocation

On January 25, 2021, President Joe Biden issued a [proclamation](#) extending the suspension of admission of noncitizens of the United States who were physically present within the Schengen Area, United Kingdom (excluding overseas territories outside of Europe), Ireland, Brazil, and South Africa during the 14-day period preceding their entry or attempted entry into the U.S. Despite the restrictions, the proclamations do contain [exceptions](#) for certain categories of immigrants and nonimmigrants.

On the same day, President Biden revoked [Executive Order 13780 of March 6, 2017](#); [Proclamation 9645 of September 24, 2017](#); [Proclamation 9723 of April 10, 2018](#); and [Proclamation 9983 of January 31, 2020](#) which prevented admission of individuals from

primarily Muslim and African countries. Embassies and consulates were directed to begin issuing visas to applicants previously impacted by these bans.

[COVID testing](#) continues to be required for all individuals travelling to the U.S. via air.

Change in Documentation to Extend Green Card Validity

Beginning January 2021, the USCIS will no longer use the stickers issued to lawful permanent residents (LPRs) to extend the validity of their Permanent Residence Cards (also known as Green Cards or PRCs). Instead, USCIS will issue LPRs a revised Form I-797, Notice of Action, as a receipt notice for filing a Form I-90, Application to Replace Permanent Resident Card, when their Green Cards expire or are about to expire.

Together, the Green Card and revised Form I-797 will extend the Green Card's validity for 12 months from the date on the front of the Green Card and will serve as temporary proof of the LPR's status. This change ensures that LPRs will have documentation of identity, employment authorization, and authorization to return to the U.S. following temporary travel abroad.

Applicants who have not been issued a notice for a biometrics appointment and who are in possession of their Green Card will no longer be required to visit an application support center to obtain temporary evidence of their LPR status. Applicants who have already been scheduled for a biometrics appointment will not receive a revised Form I-797 and will be issued an extension sticker at their biometrics appointment. Applicants who now file a Form I-90 should receive the revised Form I-797 in the mail approximately 7 to 10 days after the USCIS accepts their Form I-90 application.

For Form I-9 purposes, employees may present their expired Green Card together with the revised Form I-797 as an acceptable List A document that establishes identity and employment authorization. When completing a Form I-9, employers should enter the expired Green Card number in the document number field and, in the expiration date field, enter the date that is 12 months from the "card expires" date on the expired Green Card. In the additional information box, employers should write "PRC Ext" and the Form I-

90 receipt number from the revised Form I-797. USCIS' [announcement](#) states employers may not reverify LPRs who present this document combination.

H-2A and H-2B Countries Announced

The list of nationalities eligible to apply for H-2A and H-2B visas, effective January 19, 2021 to January 18, 2022, have been announced. Notably, the Philippines was added as being eligible for H-2B. See the list of eligible countries [here](#), subject to possible additions.

H-2A visas are issued for temporary agricultural jobs, and H-2B visas are issued for temporary nonagricultural jobs. Temporary is defined as a period of up to one year. This change does not affect the status of H-2 beneficiaries who currently are in the U.S. Beneficiaries of a new petition for, extension of, or change of status to an H-2 will need to be a national of a listed country. However, it is possible for H-2 petitions for nationals of countries not on the list to be approved on a case-by-case basis if the USCIS determines in its discretion that such approval is in the interest of the U.S.

I-9 Requirement Flexibility Extension

As [reported](#) previously, employers with **no** employees at a worksite will not be required to review the employee's identity and employment authorization documents in the employee's physical presence. Instead, employers may inspect the Section 2 documents remotely (e.g., over video link, fax, email, etc.). **I-9 compliance flexibility has been extended until March 31, 2021.**

The employer still must obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2. Employers using remote verification must retain written documentation of their remote onboarding and telework policy for each employee.

Once an employer resumes normal operations, all employees who were onboarded using remote verification, must report within **three business days** for in-person verification of identity and employment eligibility documentation. Once the documents have been physically inspected, the employer should add "documents

physically examined” and “COVID-19” with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.

USCIS Extends Flexibility for Responses

The USCIS recently announced it was extending the response due date for notices, requests and decisions if the issuance date is between March 1, 2020, and March 31, 2021, inclusive. USCIS will consider a response to the following if received within 60 calendar days after the due date set in the request, notice, or decision:

- 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
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant
- Filing date requirements for Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)
- Filing date requirements for Form I-290B, Notice of Appeal or Motion.

In addition, USCIS will consider a Form N-336 Request for a Hearing on a Decision in Naturalization Proceedings or Form I-290B Notice of Appeal or Motion received up to 60 calendar days from the date of the decision.

If you have questions relating to these topics, please contact [Peggy Shukairy](#), [Alicia Visse-Kroger](#), [Katie Collier](#), [Emily Tanji](#) in Frost Brown Todd's [Labor and Employment Practice Group](#)

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