



January Immigration Updates

Employers Need to Know

U.S. Department of State Expands Visa Interview Waivers for Certain Nonimmigrants

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In response to the backlogs at U.S. consulates and embassies, the U.S. Department of State recently [announced](#) that consular officers can begin waiving in-person interviews for certain nonimmigrant visa categories. The waiver applies to temporary workers applying for H-1, H-3, H-4, L, O, P, and Q visas who meet certain requirements. The waiver is within the discretion of the consular officer. To be eligible for a waiver of the in-person interview, the applicant must:

- Have a petition approved by U.S. Citizenship and Immigration Services.
- Apply for a visa in their country of nationality or residence.
- Have previously been approved and issued a visa of any type.
- Never been refused a visa unless the refusal was overcome or waived.
- Have no apparent ineligibility or potential ineligibility.

The third requirement does not apply to first-time visa applicants seeking petition-based H-1, H-3, H-4, L, O, P, and Q visas who are citizens or nationals of a country that participates in the Visa Waiver Program (VWP) and have previously traveled to the United States using an authorization obtained via the Electronic System for Travel Authorization (ESTA).

This waiver is initially in effect until December 31, 2022. Applicants should review the website of the appropriate U.S. embassy or consulate to review guidelines for applying for a visa without an in-person interview.

USCIS Issues Guidance on Expedited EADs for Healthcare Workers

On December 28, 2021, U.S. Citizenship and Immigration Services (USCIS) announced that, effective immediately, healthcare workers with a pending Employment Authorization Document (EAD) renewal application (Form I-765, Application for Employment Authorization) can request expedited processing of their EAD renewal application if their EAD expires in 30 days or less, or has already expired.

To be eligible, the healthcare worker must meet the definition set forth in the U.S. Department of Homeland Security advisory memorandum ("Healthcare / Public Health" section, pages 7-9), which can be found [here](#). When requesting expedited processing, the healthcare worker should be prepared to provide evidence of his or her profession or current employment as a healthcare worker. To request expedited processing, you may call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

Withdrawal of H-1B Wage Based Selection Rule

Last year, the U.S. Department of Homeland Security (DHS) [proposed a rule](#) that would have changed the current H-1B cap randomized [selection process to a selection process that was based on the wage](#) offered to the sponsored foreign national employee.

In response, multiple lawsuits were filed, and federal courts delayed the rule from taking effect until December 31, 2021. The court ultimately vacated the rule on September 15, 2021 and remanded it back to DHS. In light of the ruling, DHS officially [withdrew](#) the vacated rule, and the current H-1B cap randomized selection process remains unchanged.

President Biden Revoked Travel Restrictions Imposed in Response to Omicron

On December 28, 2021, President Joe Biden revoked Presidential Proclamation 10315, which went into effect on November 26, 2021 in response to the Omicron variant and suspended and limited certain immigrants and nonimmigrants from entering the U.S. if they were physically present in certain African countries within the 14-day period preceding their entry or attempted entry into the U.S.

Subsequently, the U.S. Department of State announced that, starting January 1, 2022, it would no longer prevent visa issuance to individuals previously subject to the travel restrictions.

All air travelers to the U.S. must continue to comply with the [latest vaccination and testing requirements](#).

DHS Extends Its COVID-19 Form I-9 Flexibility Policy

As it has done periodically since its COVID-19 Form I-9 flexibility policy was first announced on March 20, 2020, the U.S. Department of Homeland Security (DHS) extended the policy, this time until April 30, 2022.

March 20, 2020 Policy

The original policy that went into effect on March 20, 2020 relaxed the in-person inspection of employees' Form I-9 identity and employment eligibility documentation, but only for employers and workplaces operating exclusively remotely (i.e., no employees physically located at work location). The policy also relaxed documentation requirements, to be evaluated by DHS on a case-by-case basis, for employees subject to COVID-19 quarantine or lockdown protocols.

April 1, 2021 Update

On April 1, 2021, DHS increased the policy's flexibility by implementing updated guidance that focuses on a new hire's specific work situation. If an employee is (1) hired on or after April 1, 2021 and (2) works exclusively in a remote setting due to COVID-19, employers are temporarily exempt from the requirement to complete in-person verification of employees' Form I-9 identity and employment eligibility documentation. Instead, as established in the original policy, they may inspect these Form I-9 documents remotely (e.g., over video link, fax or email) and obtain, inspect, and retain copies of the documents within three business days of hire. Also, employers must continue to provide written documentation of their remote onboarding and telework policy for each employee.

In-Person Verification Following Remote Reverification

When these employees undertake non-remote employment on a regular, consistent, or predictable basis or the COVID-19 Form I-9 flexibility policy ends (whichever is earlier), employers must complete in-person verification within three business days. Employers have the discretion to start the in-person verification process earlier, but it must be done in a consistent and non-discriminatory manner across the workforce.

When completing in-person verification following remote verification, employers should enter "COVID-19" and "documents physically examined" with the date of inspection to the Section 2 Additional Information field on the Form I-9.

Inability to Complete In-Person Verification Following Remote Reverification

DHS acknowledges that there may be instances where employers are unable to timely complete in-person verification following remote verification for employees hired since the start of the COVID-19 Form I-9 flexibility policy on March 20, 2020 (e.g., an employee is no longer employed by the employer). In such cases, DHS advises employers to memorialize the reasons for this inability in a memorandum retained with each affected employee's Form I-9. DHS will evaluate the reasons on a case-by-case basis, in the event of a Form I-9 audit.

USCIS Extends Flexibility for Responding to Agency Requests

As it has regularly done since March 30, 2020, U.S. Citizenship and Immigration Services (USCIS) extended the previously announced flexibilities for responses to the following agency requests:

- 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

If the issuance date on one of these documents is on or between March 1, 2020 and March 26, 2022, USCIS will permit applicants, petitioners, and requestors to have additional time to respond (within 60 calendar days after the response due date). Updated flexibilities apply to Form I-290B, Notice of Appeal or Motion, or a Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, and may be viewed [here](#).

If you have any questions relating to the updates listed above, please contact [Katie Collier](#), [Alicia Visse-Kroger](#), [David Janklow](#) or any attorney in Frost Brown Todd's [Immigration](#) practice group.

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