



February Immigration Updates

Employers Need to Know

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H-1B Fiscal Year (FY) 2023 Cap Electronic Registration

USCIS recently [announced](#) that it will begin accepting electronic registrations on March 1, 2022 for H-1B cap subject petitions for the 2023 fiscal year. The electronic registration process was implemented in 2020, 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. The registration period will run through March 18, 2022.

Employers may use their existing USCIS registrant account for this year's registration. If an employer does not have an account, new USCIS registrant accounts can be created starting on February 21.

If USCIS receives enough registrations by March 18, the agency will randomly select registrations and send selection notifications by March 31.

To prepare for the registration period, USCIS is offering a webinar on [February 24](#) to provide updates on the H-1B electronic registration process and address any questions. If your company is interested in registering any foreign nationals in the upcoming registration period, please contact FBT's [Immigration team](#).

DHS Adds 22 New Fields of Study to the STEM Optional Practical Training Program

On January 21, the U.S. Department of Homeland Security (DHS) announced that 22 new qualifying fields of study were being added to the STEM Optional Practical Training (OPT) program's Designated Degree Program List to enhance the contributions of nonimmigrant students studying in the fields of science, technology, engineering, and mathematics (STEM), and further support the growth of the U.S. economy and innovation.

The STEM OPT program permits F-1 students earning bachelor's, master's, or doctoral degrees in designated STEM disciplines to remain in the U.S. for up to 36 months to work in their field of study after graduation. The newly added disciplines include evolving fields of study, such as general data science, general data analytics, and business analytics. This announcement demonstrates the current administration's increased efforts to retain U.S. educated, STEM foreign talent in the U.S.

The full list of newly added fields of study includes bioenergy, general forestry, forest resources production and management, human-centered technology design, cloud computing, anthrozoology, climate science, earth systems science, economics and computer science, environmental geosciences, geobiology, geography and environmental studies, mathematical economics, mathematics and atmospheric and oceanic science, general data science, general data analytics, business analytics, data visualization, financial analytics, other data analytics, industrial and organizational psychology, and social sciences, research methodology, and quantitative methods.

USCIS Provides Examples of Comparable Evidence to Assist STEM-Based O-1A Petitions

On January 21, USCIS issued policy guidance clarifying how it evaluates evidence to determine eligibility for O-1A nonimmigrants of extraordinary ability, with a focus on persons in STEM fields. As with the update above, this policy update also demonstrates the current administration's effort to attract and retain international STEM talent.

The policy allows petitioners to submit comparable evidence to establish a beneficiary's eligibility if one of the listed criteria is not easily applicable to the beneficiary's job or profession. For example, if the publication of scholarly articles is not readily applicable to a beneficiary who works in an industry rather than academia, the beneficiary's presentation of work at a major trade show may be accepted as comparable evidence. The updated guidance should further open doors to the highly achieved beneficiaries who work in

industries other than the traditional O-1A professions such as academic researchers and scholars.

USCIS Issues Clarifying Guidance on O-1 Nonimmigrants in Arts vs. Motion Picture and Television

On January 13, U.S. Citizenship and Immigration Services (USCIS) issued policy guidance clarifying how USCIS evaluates whether a beneficiary seeking O-1B classification is a person of extraordinary ability in the arts or as a person of extraordinary achievement in motion picture or television industry. The O-1 nonimmigrant category is for individuals possessing extraordinary ability in science, education, business, or athletics (often referred to as O-1A); arts (often referred to as O-1B (Arts)); or with a demonstrated record of extraordinary achievements in the motion picture or television industry (often referred to as O-1B (MPTV)).

This clarifying policy guidance, which is effective immediately, provides helpful adjudication tips for USCIS officers reviewing petitions which may have elements of both O-1B (Arts) and O-1B (MPTV) such as actors, directors, or set designers. When determining which eligibility requirements to apply, the guidance indicates that officers should evaluate if the beneficiary will perform services for motion picture or television productions or if the beneficiary's work or appearance on an MPTV production is only incidental to their non-MPTV work as an artist.

The guidance further recognizes that the motion picture or television industry has grown to encompass online content or other new forms of media, such as web series, commercials, and streaming movies. These program formats correspond to more traditional motion picture and television productions and thus, generally fall within the O-1B (MPTV).

USCIS Updates Guidance on National Interest Waivers (NIW)

In response to President Joe Biden's [Executive Order 14012](#), Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, USCIS recently [announced](#) updated guidance on adjudicating National Interest

Waiver requests.

Generally, when an employer wants to sponsor a foreign national for permanent residence, it must obtain a permanent labor certification from the Department of Labor and prove that there are no U.S. workers able, willing, qualified, and available to fill the position. However, a foreign national may request a National Interest Waiver if it is in the interest of the U.S. to waive the permanent labor certification requirement. Foreign nationals requesting a National Interest Waiver must have an advanced degree, or exceptional ability, and prove the following three prongs:

- The proposed endeavor has both substantial merit and national importance.
- The foreign national is well-positioned to advance the proposed endeavor; and
- It would be beneficial to the United States to waive the permanent labor certification requirement.

USCIS updated the [Policy Manual](#) to provide clarification to foreign nationals as to the types of evidence that they can submit to satisfy the three prongs, specifically for persons with advanced degrees in science, technology, engineering, or mathematics (STEM) fields and entrepreneurs.

USCIS 5-Year Electronic Filing Plan Released to Public

Pursuant to section 4103 of the Emergency Stopgap USCIS Stabilization Act, DHS Secretary Mayorkas was tasked with creating a 5-year plan to accomplish the following:

- Establish electronic filing procedures for all applications and petitions for immigration benefits;
- Accept electronic payment of fees at all filing locations;
- Issue correspondence, including decisions, requests for evidence, and notices of intent to deny, to immigration benefit requesters electronically; and
- Improve processing times for all immigration and naturalization benefit requests.

The 5-year plan was provided to Congress in September 2021 and [recently released](#) to the public.

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

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