



March Immigration Updates Employers Need to Know

H-1B Fiscal Year (FY) 2023 Cap Electronic Registration Starts March 1, 2022

Mar 11, 2022

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USCIS started accepting electronic registrations on March 1 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. If USCIS receives enough registrations by March 18, the agency will randomly select registrations and send selection notifications by March 31.

If your company is interested in registering any foreign nationals in the upcoming registration period, please contact FBT's [immigration team](#) as soon as possible.

The U.S. Department of Homeland Security designates Ukraine for Temporary Protected Status (TPS)

In response to the humanitarian crisis in Ukraine, on March 3, the U.S. Department of Homeland Security [designated](#) Ukraine for Temporary Protected Status (TPS). TPS, which will be authorized for 18 months, will provide legal protections for Ukrainian citizens who have continuously resided in the U.S. since March 1, 2022 or earlier. Eligible individuals will be protected from deportation and will be authorized to work.

According to DHS, Ukraine's 18-month designation will go into effect on the publication date of a forthcoming *Federal Register* notice, which will provide instructions for applying for TPS and employment authorization. TPS applicants must meet all eligibility requirements and undergo security and background checks.

U.S. Citizenship and Immigration Services encourages more green card applications

USCIS has [announced](#) there are “an exceptionally high number of employment-based visas available this fiscal year” and is encouraging eligible individuals to apply.

Due to a variety of factors, most notably the impact of COVID-19 on the processing of immigrant visas worldwide, last years allotment of employment-based immigrant visas was not exhausted, thus increasing the number of green cards that can be approved in the current fiscal year. USCIS emphasizes that the available supply of immigrant visas in the first and second preference employment-based categories (EB-1 and EB-2), which includes multinational managers and executives, extraordinary ability aliens, and advanced degree professionals, currently exceeds demand.

To avoid underutilization, USCIS recommends eligible individuals consider applying for green cards in the EB-1 or EB-2 categories. Further, USCIS recommends individuals with pending adjustment of status applications in the EB-3 category who also have a pending or approved I-140 immigration petition under the EB-2 category submit a request for USCIS to transfer (“upgrade”) the underlying basis of the pending adjustment application to the EB-2 category. For more information on transferring the underlying basis of a pending adjustment application, see the hyperlink above.

CBP Issues I-94s With Work-Authorized Designation for L and E Dependent Spouses

Following USCIS’ policy guidance issued in [November 2021](#) announcing that certain H-4, E and L dependent spouses have employment authorization incident to their valid E or L nonimmigrant status, U.S. Customs and Border Protection (CBP) has since updated their [electronic admission system](#) to designate E and L dependent spouses on their I-94 admission records. The updated system will distinguish E and L dependent spouses by adding an “S” for spouse and E and L dependent child(ren) by adding a “Y” for youth. For example, the updated status designations for L and E dependents are:

- L2 dependent spouse – L2S
- L2 dependent child – L2Y

- E1 dependent spouse – E1S
- E1 dependent child – E1Y
- E2 dependent spouse – E2S
- E2 dependent child – E2Y
- E3 dependent spouse – E3S
- E3 dependent child – E3Y

For E and L dependent spouses already in the U.S. prior to January 31, 2022, and who wish to work, they will still need to apply for Employment Authorization Document (EADs). Alternatively, these E and L dependent spouses may depart the U.S. and return with their valid E or L dependent visas to obtain new I-94s with the work-authorized designations in lieu of applying for EADs.

I-94s containing the new designations for E or L dependent spouses will be acceptable as evidence of employment authorization under List C of the Form I-9. For L and E dependent spouses who do not wish to work in the United States, the previously issued I-94s will continue to serve as evidence of their lawful status.

The U.S. House Passes America COMPETES Act of 2022

On February 4, the U.S. House of Representatives passed the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength (COMPETES) Act of 2022 ([H.R. 4521](#)). The bill is intended to boost U.S. research, development, and manufacturing of semiconductors, increase scientific research funding, and improve science, technology, engineering, and mathematics (STEM) education and training.

Among the provisions, the America COMPETES Act contains immigration reforms, including:

- Creation of a new visa category (the W visa) to admit nonimmigrant entrepreneurs and employees in a start-up entity with at least \$250,000 in qualifying investment or at least \$100,000 in qualifying government awards or grant. The bill also contains a subsequent pathway to permanent residence should the investment meet certain criteria.

- Excluding foreign nationals who have earned a doctoral degree in a STEM field from per country numerical limitation. This amendment significantly decreases the waiting time for certain foreign STEM Ph.D. graduates who is pursuing to become a permanent resident in the U.S.

The recently passed House bill touches on certain areas covered by the U.S. Senate-passed United States Competition and Innovation Act (USICA) while containing significant differences with its counterpart, which may be difficult to resolve through House-Senate negotiations.

USCIS Seeks Comments on Proposed New Forms I-129 For Various Nonimmigrant Visa Classifications

Following consideration of comments received during an earlier 60-day notice period and revisions to the proposed Forms I-129 for various nonimmigrant visa classifications, USCIS is now [seeking additional comments](#) over a 30-day period to end March 17, 2022.

Currently, the Form I-129 is 36 pages and covers various nonimmigrant visa classifications. Petitioners complete and submit only the pages relevant to the nonimmigrant visa classification they seek to obtain for their beneficiaries. For example, for H-1B petitions, petitioners will generally only complete and submit 13 of the 36 pages.

If the new forms are implemented, USCIS will separate the Form I-129 into four individual forms covering the E, H-3, TN, L, O, P, Q, and R nonimmigrant visa classifications.

USCIS Seeks Comments on Proposed Changes to Public Charge Ground of Inadmissibility

USCIS issued a [notice of proposed rulemaking](#) regarding the public charge ground of inadmissibility, providing “[fair and humane treatment](#)” of foreign nationals in contrast to the 2019 public charge rule that was ultimately vacated.

Per the Immigration and Nationality Act (INA), non-exempt foreign nationals seeking adjustment of status or a visa are inadmissible if they are “likely at any time to become a public charge.” Under the

proposed rule, this phrase would be defined as “likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.” The following would not be considered: noncash benefits (e.g., SNAP), Stafford Act disaster assistance, pandemic assistance, benefits received via a tax credit or deduction; or Social Security, government pensions, or other earned benefits.

The public may submit comments on or before April 25, 2022.

For more information, please contact [Michelle Xu](#), [Matt Hoyt](#), [David Janklow](#), or any attorney with Frost Brown Todd’s [Immigration](#) practice group.

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