



December 2022 Immigration Legal Update

USCIS Progress Report FY2022

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U.S. Citizenship and Immigration Services (USCIS) recently released a [progress report](#) to update the public on the status of the agency and its mission. The report focused on USCIS's progress on reducing immigration backlogs, addressing labor shortages, fulfilling the agency's humanitarian mission, and doing all the aforementioned while being fiscally responsible. Notably, in FY 2022, USCIS:

- Naturalized more United States citizens than it has in the past 15 years, welcoming more than one million new citizens to the United States.
- Worked together with the Department of State to issue all available employment-based immigrant visas, double the number issued before the COVID pandemic.
- Issued a rule extending Employment Authorization Documents (EADs) for over 400,000 non-citizens.
- Reduced EAD wait times, ultimately reducing the wait times to a normal level.
- Worked with the Department of Homeland Security and the Department of Labor to make more H-2B visas available for non-agricultural workers.
- Completed thousands of humanitarian-based immigration applications for individuals from Afghanistan.
- Implemented the Uniting for Ukraine process and paroled over 82,000 Ukrainians and their immediate family members into the United States under this process.
- Executed several new TPS designations, redesignations, and extensions, including Afghanistan, Burma, Cameroon, Ethiopia, Haiti, Somalia, Sudan, Syria, Ukraine, Venezuela, and Yemen.

Moving forward into FY 2023, USCIS is committed to continue improving the agency and decreasing backlogs by implementing

premium processing for all Form I-140s and certain Form I-765s for students and exchange visitors, removing the biometric requirement for change and extension of nonimmigrant status, and continuing to simplify common immigration forms.

USCIS Provides Update on Employment Based AOS for FY 2023

USCIS recently released a [FAQ](#) that specifically addresses employment-based adjustment of status applications and highlights that the agency is dedicated to using as many available employment-based immigrant visas as possible in FY 2023.

The FAQ addresses several questions specifically related to adjudication of employment-based AOS and states that the annual limit of employment based green cards is higher than before the COVID pandemic but will be lower than FY 2021 and 2022.

The Department of State estimates that the FY 2023 employment-based limit will be about 197,000, due to around 57,000 unused family-sponsored visa numbers from FY 2022. USCIS will work in conjunction with DOS to ensure as many are used before the fiscal year ends on September 30, 2023. To ensure there are no delays in processing, USCIS continues to encourage adjustment of status applicants to submit Form I-693, Report of Medical Examination and Vaccination Record, with their Form I-485, Application to Register Permanent Residence or Adjust Status.

DHS's Final Rule Fortifying DACA Goes Into Effect

The Department of Homeland Security's (DHS) previously announced final rule codifying Deferred Action for Childhood Arrivals (DACA) went into effect on October 31, 2022. Additional information regarding the final rule can be found [here](#). While in effect, its implementation is currently limited because the U.S. District Court for the Southern District of Texas previously issued an injunction on July 16, 2021, which prohibits DHS from granting *initial* DACA requests and related employment authorization under the final rule. The injunction has been partially stayed, which allows DHS to continue to process DACA *renewal* requests as well as associated applications for employment authorization documents

and advance parole. On October 14, the U.S. District Court for the Southern District of Texas issued an order extending its injunction and partial stay.

U.S. CBP Eliminates Passport Entry Stamps at Several Major Ports of Entry

For nearly 10 years, U.S. Custom and Border Protection (CBP) has been issuing foreign nationals entering the U.S. both electronic I-94 records and ink passport entry stamps. However, at some of the nation's largest airports and land ports of entry, CBP is ending the latter practice and is likely to do so nationwide in the future. Thus, the electronic I-94 records currently issued to foreign nationals at these ports of entry will serve as the only official record evidencing the date of entry, class of admission, and admit until date.

With this change, it is even more important for foreign nationals to promptly retrieve their electronic I-94 records to ensure all the information is correct. With passport entry stamps, foreign nationals could catch errors on the spot and notify the CBP officer in front of them to correct the stamps and the data that populates the electronic I-94 records. This would prevent a trip or an email to a CBP Deferred Inspection Site to request a correction, which is now the only option for many, since electronic I-94s cannot be accessed till after entry.

USCIS eases work authorization restrictions for humanitarian parolees from Afghanistan and Ukraine

Due to ongoing strife, many citizens of Afghanistan and Ukraine have resettled in the United States as refugees or humanitarian parolees. Under DHS regulations and USCIS policy, refugees have been granted work authorization "incident to status," which means they are not required to present an Employment Authorization Document (EAD) to work. Moreover, refugees who apply for an EAD on Form I-765 are not charged a fee. Humanitarian parolees, on the other hand, have been required to pay a fee of \$410 with the I-765 application and have been authorized to work only upon approval of the EAD, which can take several months.

To implement statutory language mandating the provision of benefits for Afghan and Ukrainian parolees equivalent to “other benefits available to refugees,” USCIS has updated its policies for parolees. Afghan and Ukrainian parolees are now authorized to work incident to status without the requirement to first obtain an EAD. Parolees must still file the I-765 application but will not be charged a fee and need not wait for the EAD to begin work.

Per USCIS, the benefit applies to the following groups: Afghan parolees whose unexpired Form I-94, Arrival/Departure Record, contains a class of admission of “OAR”; Ukrainian parolees whose unexpired Form I-94 contains a class of admission of “UHP”; and Ukrainian parolees whose unexpired Form I-94 contains a class of admission of “DT” issued between Feb. 24, 2022, and Sept. 30, 2023, and indicates Ukraine as the country of citizenship on the document.

For more information, please contact any attorney with Frost Brown Todd’s [Immigration](#) practice group.

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