February 2023 Immigration Update

Feb 21, 2023

Categories:

Publications

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USCIS Announces FY 2024 H-1B Cap Registration Dates

The H-1B program allows companies in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree or higher in the specific specialty or its equivalent. Congress has set the currently annual H-1B "regular cap" at 65,000, and the "advanced degree exemption," available to beneficiaries who have earned a U.S. master's degree or higher, is set at 20,000. Because a significant number of H-1B cap-subject registrations are submitted each year, U.S. Citizenship and Immigration Services (USCIS) determines which H-1B cap-subject petitions it will accept, review, and adjudicate via a lottery system. For example, in FY 2023, USCIS received 483,927 H-1B registrations and initially selected 127,600 registrations projected as needed to reach the FY 2023 numerical allocations.

Prospective H-1B cap-subject petitioners ("Employers") or their representatives must create and use a myUSCIS online account to register and pay the $10 registration fee for each beneficiary. Employers or their representatives can create new accounts beginning Tuesday, **February 21, 2023**.

Employers or their representatives can register beneficiaries and pay the $10 fee per beneficiary beginning Wednesday, **March 1, 2023,** at 12:00 pm ET. The registration period ends on Friday, **March 17, 2023,** at 12:00 pm ET. Employers or their representatives will be able to submit registrations for multiple beneficiaries in a single online session. Upon the conclusion of the registration period, USCIS will randomly select registrations and then send selection notices via the Employers' or representatives' myUSCIS online accounts. An H-1B cap-subject petition may only be filed by an Employer whose registration for the beneficiary was selected in the H-1B registration process.

Please also note that, on January 4, 2023, USCIS published a Notice of Proposed Rulemaking that, if published in the *Federal Register*

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and made effective, will raise the H-1B registration fee per beneficiary from $10 to $215 for future H-1B cap registration periods. Additional information regarding USCIS' proposed rule can be found here.

USCIS Resumes Bundling Adjudication of H-4 and L-2 Derivatives' Extension and Work Authorization Applications with the Underlying Principal's Petition

On January 19, 2023, USCIS entered into a settlement agreement following the lawsuit by the spouses of H-1B and L-1 nonimmigrant workers in *Edakunni, et al. v. Mayorkas*, No. 21-cv-393-TL (W.D. Wash.). In the settlement, the agency agreed to return to the concurrent adjudication of Form I-539, Application to Change/Extend Status, and Form I-765, Application for Work Authorization, filed by H-4 and L-2 derivatives with the underlying Form I-129 petition when these forms are properly filed together. The settlement went into effect for a two-year period on January 25, 2023, and applies to USCIS' adjudication under both standard processing and premium processing.

The return to concurrent adjudication provides much needed relief to H-4 and L-2 dependents that previously had to endure lengthy processing times for the past several years. In particular, the prolonged adjudication by USCIS has potentially hindered the timely renewal of work authorization and the ability to secure driver's license renewals. This settlement has been compared to a November 2021 settlement that arose from *Shergill, et al. v. Mayorkas*, in which USCIS reversed its policy and authorized automatic work authorization incident to E and L spousal dependent status. Both settlements provide significant relief to nonimmigrant families in the U.S.

U.S. State Department Potentially to Test a Pilot Program Allowing Certain H and L Visa Holders to Renew Visas Without Leaving the U.S.

On February 9, 2023, Bloomberg Law reported that the U.S. Department of State (DOS) plans to launch a pilot program in 2023 allowing for the stateside visa renewal of certain H and L visas. Stateside processing of renewals for various visa categories was discontinued in 2004, except for a few nonimmigrant diplomatic

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visas.

During the COVID-19 global pandemic, visa services across U.S. embassies and consular posts were severely impacted by closures, in-country conditions, and travel restrictions, leading to significant visa backlogs. While DOS has since made significant progress in addressing the backlogs, it has been urged to use stateside visa renewal to help further and reduce situations in which, depending on the location, foreign workers may have to wait months for a visa interview.

It should be noted that implementation of stateside visa renewal will involve setting up a new consular division, requiring significant operational investment and planning. Additionally, the pilot program is likely to be narrow in both scope and time as DOS tests its ability and potential issues within such program. Regardless, this is a promising move by DOS.

USCIS Extends COVID-19 Flexibilities for Responding to Agency Requests for the Final Time

On January 24, USCIS extended previously announced COVID-19 flexibilities for responding to agency requests, such as Requests for Evidence and Notices of Intent to Deny, through March 23, 2023. Applicants, petitioners, and requestors are granted an additional 60 calendar days to respond to any of the following issued between March 1, 2020, and March 23, 2023:

- 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

The announcement notes that "barring any changes presented by the pandemic, this will be the final extension of these accommodations, and requestors must comply with the response

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requirements set forth in any request or notice dated after March 23, 2023."

For more information, please contact the authors of this article or any member of Frost Brown Todd's Immigration Practice.

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