



News & Types: Immigration Monthly Updates

ビジネス移民法ニュース(2023年7月号)(英語版)が発行されました。

7/26/2023

By: ジュリー エメリック, デレク ストレイン

Practices: 移民法

DHS TO ALLOW REMOTE FORM I-9 VERIFICATION FOR QUALIFIED E-VERIFY EMPLOYERS BEGINNING AUGUST 1ST

Beginning August 1, 2023, employers that participate in E-Verify will be able to conduct remote verification of documents presented by employees as part of the I-9 process. E-Verify is the U.S. Citizenship and Immigration Services' (USCIS) web-based employment verification system.[1] On July 25, 2023, Department of Homeland Security (DHS) published a notice in the Federal Register to announce the authorization of an optional alternative procedure to the in-person physical examination of the documentation presented by individuals seeking to establish identity and employment authorization for the purpose of completing the Form I-9, Employment Eligibility Verification (Form I-9).[2]

Only employers currently enrolled and in good standing in the E-Verify system are considered qualified employers, eligible to use this new alternative procedure. Qualified employers who choose to use this alternative procedure must retain a clear and legible copy of all documents presented by the employee seeking to establish identity and employment eligibility for the Form I-9.

Under the alternative procedure: Within three business days of an employee's first day of employment, a qualified employer (or an authorized representative acting on such an employer's behalf, such as a third-party vendor) who chooses to use the alternative procedure must:

1. *Examine copies* (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt to ensure that the documentation presented reasonably appears to be genuine;
2. *Conduct a live video interaction* with the individual presenting the document(s) to ensure that the documentation reasonably appears to be genuine and related to the individual. The employee must first transmit a copy of the document(s) to the employer (per Step 1 above) and then present the same document(s) during the live video interaction;
3. *Indicate on the Form I-9*, by completing the corresponding box, that an alternative procedure was used to examine documentation to complete Section 2 or for reverification, as applicable;
4. *Retain, a clear and legible copy* of the documentation (front and back if the documentation is two-sided); and

5. *In the event of a Form I-9 audit or Federal investigation, make available the clear and legible copies of the identity and employment authorization documentation presented by the employee for document examination in connection with the employment eligibility verification process.*

Additionally, USCIS has announced that the current three-page version of the Form I-9, which states in the upper right corner an expiration date of October 31, 2022, will be updated to a one-page version and available on August 1st. The new version of the Form I-9 will be accessible from the USCIS website for a downloadable paper-version or a fillable form accessible by a computer, tablet or mobile device.[3] The Preparer/Translator Certification from Section 1 of the current Form I-9 will become a separate document. The Re-Verification section in Section 3 of the current Form I-9 will become a separate document.

With the new Form I-9, USCIS plans to update the List of Acceptable Documents to provide better guidance when an employer may accept a receipt for a document and when the validity of some immigration documents, notably the Employment Authorization Card (“EAD”), is automatically renewed. [4] It is also assumed that USCIS will be updating the M-274 I-9 Handbook for Employers[5] and I-9 Central[6], both of which provide written guidance to employers about completing the complex I-9 process.

In light of the numerous major changes to the I-9 process, Masuda Funai will be hosting a Late Breaking Webinar—Substantial I-9 Employment Verification Changes: Remote Verifications, Revised Form and Reverification on August 17, 2023 at 12:00pm (Central). Additional information about the webinar (with a registration link) is available on the Masuda Funai website at link.

USCIS EXPANDS SERVICES IN MYUSCIS ACCOUNTS

In an effort to facilitate online user services, U.S. Citizenship and Immigration Services (USCIS) has rolled out a new feature on their website ([myUSCIS](#)), which includes the ability for electronic account holders to reschedule a biometrics appointment and a case status tracking system called “myProgress”.

On June 28, 2023, USCIS announced an online solution for individuals who need to reschedule an appointment for biometrics processing. Biometrics processing involves appearing at a USCIS Application Support Center (ASC) to have one’s photograph taken and to be fingerprinted so the U.S. government may complete required background checks for certain immigration processing. Individuals who apply for U.S. citizenship/naturalization, permanent resident status/Green Card, the renewal of their Green Card, certain nonimmigrant status and a reentry permit are required to complete biometrics processing. Prior to the COVID-19 pandemic, individuals requesting to extend or change their immigration status in the L-2 (dependent of an L-1 intracompany transferee), H-4 (dependent of an H-1B, H-1B1, H-2A, H-2B, H-3 temporary worker), or the E (dependent of E-1 Treaty Trader, E-2 Treaty Investor, E-3 Australian Worker) visa classifications were also required to complete biometrics processing. The suspension of biometrics processing for these individuals remains in place until September 30, 2023 and USCIS is looking to make this suspension permanent.

The biometric services appointment rescheduling tool can be accessed via a USCIS online account. The applicant is requested to select a reason for the reschedule request from a drop-down menu with options that include:

- Inability to obtain leave from employment;

- A significant life event (wedding, funeral or graduation ceremony);
- Illness/medical appointment/hospitalization;
- Previously planned travel;
- Inability to obtain transportation to attend the appointment; or
- The biometrics appointment notice was not received or received late.

The online request tool is only available for a future date (not missed) biometrics appointment and the request must be the first or second request to reschedule an original appointment. Individuals who miss a scheduled biometrics appointment or who do not wish to create a MyUSCIS Account or access the online tool may telephone the USCIS Contact Center at 1-800-375-5283. Notice of the new biometrics appointment will be published in the applicant's MyUSCIS account and will be available for 45 days, and thereafter deleted.

Individuals who have applied for an EAD/employment authorization (Form I-765), a travel document (Form I-131), renewal or replacement of their Permanent Resident Card (Form I-90), naturalization (Form N-400), or sponsored a family member for Permanent Resident status (Form I-130) may track milestones in their pending applications in their myUSCIS account. Under the myProgress tab in their USCIS account, USCIS will post estimates of processing times and status updates including:

- Confirmation that the application was received;
- Biometric services appointment (if required) has been completed; and
- The decision on the pending case.

Unfortunately, at this time, myProgress does not permit an applicant to request a USCIS Service Request if his/her case is taking longer than the normal processing time.

CBP ROLLS OUT NEW MOBILE APP FOR ESTA ENROLLMENT

Visitors from designated countries who are eligible to travel to the United States without a visa, under the Visa Waiver Program, are required to enroll and obtain approval in the Electronic System for Travel Authorization (ESTA) program before departure. U.S. Customs & Border Protection (CBP) has now launched a mobile app for ESTA enrollment, in addition to the ESTA website. The ESTA mobile app is available from an App Store for [iOS/apple](#) or [Android](#) devices. Enrollment in ESTA is not an automatic guarantee the traveler will be admitted to United States, CBP will make this admission determination upon the traveler's arrival at the port of entry.

UPDATE ON FEES, FEES, FEES!

As reported in the [January 2023 Business Immigration Monthly](#), in January 2023, USCIS proposed a substantial fee increase, averaging 40%. USCIS received close to 8,000 comments to its notice in the Federal Register "USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Requirements" and anticipates completing the review of the comments and publishing a final rule near the end of the year. Upon publication of the final rule-making notice, the new USCIS fee schedule will take effect 60 days later.

The Department of State (DOS) implemented its fee increase on June 17, 2023. The visa application fees are: \$205.00 for petition-based visa classifications (H, L, P, P, Q and R); \$185.00 for non-petition-based visa classifications (B-1, B-2, Border Crossing Card for Mexican Citizens, H-1B1 and TN); and \$315.00 for the E category (E-1, E-2 and E-3).

AUGUST VISA BULLETIN UPDATE

The DOS recently issued the August 2023 Visa Bulletin and the trend of high demand for immigrant visas (or “Green Cards”), particularly for nationals born in India, continues.

We reported in the June 2023 Business Immigration Monthly the severe retrogression of immigrant visas to Indian Nationals in the employment-based second (EB-2) and third (EB-3) preference categories. This retrogression has now affected Indian nationals in the employment-based first (EB-1) preference category, which is reserved for individuals of extraordinary ability, outstanding researchers and professors, and multinational executives and managers. In July 2023, the EB-1 cut off for Indian nationals is February 1, 2022. During August 2023, the EB-1 cut off for Indian nationals will retrogress ten years to January 1, 2012. DOS explains this retrogression is due to the complete allocation of EB-1 visas to Indian nationals and a high overall demand for visas in the EB-1 preference which limits the ability to allocate some prior unused visa EB-1 numbers to India. DOS does project that the immigrant visa cut off for Indian nationals in the EB-1 category will return to the July 2023 date of February 1, 2022 when the government’s new fiscal year commences October 1, 2023.

Other notable changes in the employment-based classifications include the following:

- The establishment of a cutoff date of August 1, 2023 for the EB-1 final action priority date for All Chargeability (or Rest of the World), Mexico and the Philippines.
- The EB-2 final action priority date for All Chargeability (or Rest of the World), Mexico and the Philippines advances from February 15, 2022 to April 1, 2022.
- For nationals of India in the EB-2 preference category, the final action priority date remains on January 1, 2011.
- For nationals of China in the EB-2 preference category, the final action date cutoff advances one month to July 8, 2019.
- In the EB-3 preference category for All Chargeability (or Rest of the World), Mexico, and the Philippines, the final action priority date retrogresses from February 1, 2022 to May 1, 2020; for nationals of India, the EB-3 final action priority date remains on January 1, 2009; and for nationals of China, the EB-3 final action priority date advances two months to June 1, 2019.
- In the EB-4 preference category, including but is not limited to Religious Workers, Afghan or Iraqi Translators and Special Immigrant Juveniles, a cutoff for all nationalities remains on September 1, 2018.
- In the EB-5 preference category for immigrant investors, the cutoff for India remains on April 1, 2017; and the cut off for China remains on September 8, 2015.

Typically, when a cutoff priority date does not change, it is a sign that the allotment of green cards has been issued for the fiscal year. A new allotment becomes available at the start of the next fiscal year, which will be on October 1, 2023.

Selectees of the Diversity Visa program (a/k/a DV Lottery) are reminded that they must either be approved for permanent residency in the United States (adjustment of status) or receive the immigrant visa from a consular post before September 30, 2023.

MFEM NEWS

MFEM ATTORNEYS APPOINTED TO VARIOUS AILA NATIONAL POSITIONS

Bob White has been re-appointed as Vice Chair of the American Immigration Lawyers Association's (AILA) Department of Labor (DOL) liaison committee. As Vice Chair, Mr. White will continue to focus on PERM, Labor Condition Application (LCA) and DOL Wage and Hour Department (WHD) policy issues and trends.

Julie Emerick is serving on the AILA USCIS Case Assistance Committee which monitors and identifies problematic USCIS adjudication trends. She is also serving on AILA's Member Engagement Committee which focuses on outreach initiatives and the organization of member engagement programs.

MR. BOB WHITE TO SPEAK DURING LATE BREAKING AILA SEMINAR ON THE NEW PERM APPLICATION IN FLAG

Mr. Bob White will be one of the panelists in an AILA Late Breaking seminar on the new PERM Application (ETA Form 9089) and its implementation into the DOL FLAG system. During the seminar, Mr. White will be providing tips on the new form. He will also be discussing the 9089 technical enhancements already made by the DOL and some of the technical issues still being encountered by users of the application in FLAG.

MASUDA FUNAI TO HOST LATE BREAKING WEBINAR ABOUT MAJOR CHANGES TO I-9 PROGRAM

Fazila Vaid and Julie Emerick, attorneys in Masuda Funai's Immigration Group, will be hosting a special webinar on Thursday, August 17th at Noon CST discussing the recent significant changes to the Form I-9 program. The webinar is titled "Late Breaking Webinar - Substantial I-9 Employment Verification Changes: Remote Verifications, Revised Form and Reverifications". Additional information (including a registration link) is available on the Masuda Funai website at [link](#).

[1] <https://www.e-verify.gov>

[2] <https://www.uscis.gov/i-9>

[3] <https://www.uscis.gov/i-9>

[4] <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents>

[5] <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>

[6] <https://www.uscis.gov/i-9-central>