



News & Types: Immigration Monthly Updates

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Practices: Immigration

DOS ROLLS OUT ONLINE PASSPORT RENEWAL PROCESS FOR U.S. CITIZENS

The U.S. Department of State (DOS) recently announced the introduction of online U.S. passport renewals for certain U.S. citizens. U.S. citizens over age 25 who reside in the United States and whose 10-year passport has expired between 2009 and 2015 will be able to apply to renew their passport online.

The online processing is not available for persons desiring to change their name, gender, correct a date of birth, correct a place of birth, to renew a lost, stolen or damaged passport, or for U.S. Citizens who reside abroad or who have an Army Post Office (APO) or Fleet (FPO) address. Persons convicted of a federal or state drug offense or convicted of statutory "sex tourism" crimes; are subject to an outstanding federal, state, or local warrant of arrest for a felony; have a criminal court order forbidding their departure from the United States; or have received a subpoena from the United States in a matter involving federal prosecution for, or grand jury investigation of, a felony are not eligible to renew their passport on-line.

The renewal process requires the applicant to create an online account. **Once an online application is submitted (not approved), the applicant's existing passport is automatically cancelled and may not be used for international travel.** Processing of an online application may take eight weeks or longer **and expedited processing is not available.** Individuals may continue to renew their passport by mail or in person at a passport agency or center.

Additional information about the U.S. passport renewal process is available at <https://travel.state.gov/content/travel/en/passports/have-passport.html>.

EMPLOYMENT AUTHORIZATION DOCUMENT (EAD) CATEGORY ANNOUNCED FOR T NONIMMIGRANT APPLICANTS

The Department of Homeland Security (DHS) recently announced a new C40 category designation for Employment Authorization Documents (EADs) for applicants for T nonimmigrant status.

T nonimmigrant status is a temporary benefit that enables certain victims of a severe form of trafficking in persons to remain in the United States for an initial period of up to 4 years if they have complied with any reasonable request for assistance from law enforcement in the detection, investigation, or prosecution of human trafficking or qualify for an exemption or exception. The status is also available to their qualifying family members.

T nonimmigrants are eligible for employment authorization and certain federal and state benefits and services. T nonimmigrants who qualify may also be able to adjust their status and become lawful permanent residents (a.k.a. “Green Card”).

Principal T nonimmigrant applicants and their family members may now receive an EAD with category C40, instead of the previously used deferred action (C14) category. If T-1 nonimmigrant status is granted, individuals will receive an EAD with category A16 and dependents will receive an EAD with category C25.

I-9 VERIFICATION WHEN USCIS RECEIPT NOTICE IS DELAYED

U.S. Citizenship & Immigration Services (USCIS) is experiencing inexplicable delays (30 days or longer) in issuing receipt notices for all types of petitions and applications, even those filed under Premium Processing.

For employers hiring a new H-1B Specialty Occupation Worker based upon a change of employer petition or for employees whose immigration status/work authorization is being extended, having the USCIS receipt notice for the petition filed is useful (but not required) in the Form I-9 *Employment Eligibility Verification* process.

I-9 Completion for an H-1B Employer Change

An eligible H-1B Specialty Occupation Worker may start working for the new employer once USCIS receives the change of employer petition. For I-9 completion, USCIS recommends that the employer write in the Additional Information area of I-9 Section 2, the date the change of employer petition (Form I-129) was sent to USCIS and “AC21”. AC21 refers to the *American Competitiveness Act in the Twenty-First Century* law that permits an eligible H-1B Specialty Occupation Worker to begin working for a new employer upon the filing of the change of employer H-1B petition (also known as “H-1B portability”).

I-9 Completion for Noncitizens Extending Status

For a noncitizen employee whose employer-sponsored immigration status has expired in the CW-1, H-1B, H-1B1, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, R-1, TN, A-3, E-1, E-2, E-3, or G-5 classifications and an extension of status has been timely filed and remains pending with USCIS, work authorization is automatically extended for up to 240 days.

For I-9 completion, USCIS recommends that the employer write in the Additional Information area of I-9, Section 2, the date the extension petition (Form I-129) was sent to USCIS and “240-day Ext”. 240-day Ext refers to the regulation (8 CFR §214.12(b)(20)) that permits the continued work authorization for 240 days while USCIS is processing the extension of stay.

For either situation, the employer should have available a copy of the Form I-129 submitted to USCIS, proof of payment of the Form I-129 filing fees, and proof of having sent the Form I-129 to USCIS – such as a FedEx/DHL/UPS/USPS waybill and/or delivery confirmation.

While the employer is prohibited from asking an employee to present specific documents of identity and employment eligibility in the I-9 process, the noncitizen employee may voluntarily provide their Form I-94 and their foreign passport (List A, Item 5.a. and 5.b. documents). In I-9 Section 1, the noncitizen employee should have made the attestation of being “a noncitizen authorized to work” and provided the expiration of their Form

I-94 along with either their USCIS A-Number, Form I-94 Admission Number or Foreign Passport Number and Country of Issuance.

The employer is required to update the Form I-9 after receiving the decision on the petition from USCIS. Please note that employers should be sure to use the current version of the Form I-9, which is edition date 08/01/23.

USCIS EXTENDS VALIDITY OF GREEN CARDS PENDING RENEWAL

Recognizing its own processing delays and backlogs, USCIS is extending the validity of an expired Permanent Resident Card (a.k.a. Green Card) from 24 months to 36 months as part the renewal process. Permanent residents having a Permanent Resident Card valid for ten years are required to renew their Permanent Resident Card, unless naturalizing or abandoning their permanent residency.

After USCIS accepts the renewal application, the permanent resident will receive a receipt notice stating their Permanent Resident Card is automatically extended for 36 months from its expiration date. This receipt notice along with the individual's expired Permanent Resident Card and passport may be used to return to the United States from international travel.

The receipt notice along with the individual's expired Permanent Resident Card may also be used as evidence of identity and employment authorization (List A, Item 2) for Form I-9 processing.

Permanent residents who currently have a renewal application (Form I-90) pending prior to this USCIS policy change will be receiving an amended receipt notice indicating the 36-month validity period (instead of the previous 24-month automatic validity extension).

USCIS UPDATES POLICY MANUAL FOR F/M NONIMMIGRANT STUDENTS

USCIS recently updated its Policy Manual regarding F-1 and M-1 nonimmigrant students. This is the second update to the Policy Manual regarding F-1 and M-1 nonimmigrant students within the past year. This update provides guidance regarding Optional Practical Training (OPT), online study, school transfers, the grace period and study abroad.

The following are some highlights from the update:

- **Online study:** Students may count one class or three credits (or the equivalent) per academic session (or the equivalent) toward a full course of study if they take the class online or through distance learning not requiring physical attendance for any purpose integral to completion of the class.
- **School transfers:** Students may transfer between U.S. Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Program (SEVP)-certified schools at the same educational level or move between educational levels.
- **Grace Period:** During the 60-day grace period following an authorized period of post-completion of OPT, students may change their education level, transfer to another SEVP-certified school, or file an application or petition with USCIS to change to another nonimmigrant or immigrant status.
- **OPT Eligibility:** Students may be eligible for post-completion OPT after completing an associate's, bachelor's, master's, or doctoral degree program.

- **Timing of OPT Application:** Corrects the period during which students may apply for STEM OPT extensions and makes other technical corrections.
- **Study Abroad:** A student enrolled in a SEVP-certified school during a study abroad program may remain active in the SEVP SEVIS system if the study abroad program lasts less than five months, but that the student will need a new Form I-20 if the program lasts longer than five months.

OCTOBER 2024 VISA BULLETIN UPDATE

October is the start of the government's new fiscal year (Fiscal Year 2025 – FY2025), and thus a new allocation of green cards becomes available.

For the start of FY2025, DOS recently issued the October 2024 Visa Bulletin. The statutory quota for employment-based immigrant visas (a.k.a. green cards) is at least 140,000 which are divided amongst five employment-based classifications. Additional employment-based immigrant visas may become available if unused immigrant visas exist from family-based immigration. The breakdown of the statutory quota for employment-based immigration is:

- **40,040** for noncitizens eligible for the employment-based 1st preference (**EB1**) category who qualify as a Multinational Manager/Executive, Outstanding Researcher/Professor or who are recognized for their Extraordinary Ability, and their accompanying or following-to-join family spouse and children.
- **40,040** for noncitizens eligible for the employment-based 2nd preference category (**EB2**) who qualify as an Advanced Degree Professional or who are recognized for their Exceptional Ability, or who qualify for a National Interest Waiver, and their accompanying or following-to-join family spouse and children.
- **40,040** for noncitizens eligible for the employment-based 3rd preference category (**EB3**) who qualify as a Professional, Skilled Worker, or Other Worker. The Other Worker classification is capped at 10,000.
- **9,940** for noncitizens eligible for the employment-based 4th preference category (**EB4**) who qualify as Special Immigrants including religious workers; Special Immigrant Juveniles; individuals coming to the United States to work as broadcasters for the United States Agency for Global Media (USAGM); certain retired officers or employees of a G-4 international organization or NATO-6 civilian employees and their family members; certain employees of the U.S. government who are abroad and their family members – this includes consular staff; members of the U.S. armed forces; Panama Canal company or Canal Zone government employees; certain physicians licensed and practicing medicine in a U.S. state as of Jan. 9, 1978; and, noncitizens who have supplied information concerning a criminal organization or enterprise or a terrorist organization, enterprise, or operation (S nonimmigrants).
- **9,940** for noncitizens eligible for the investment/employment-based 5th preference category. This category has some special limits based upon the specific area of investment such as in a rural area (20%), in a high unemployment area (10%); and for an infrastructure project (2%).

Additionally, no more than 7% of the total of family- and employment-based immigrant visas may be allocated to any one country. It is this country limitation which adds to the long wait for noncitizens from high demand countries including China and India.

Based upon historic information and employment-based immigrant visa usage during last government fiscal year (FY2024), it is anticipated that advancement of priority dates for any classification will be very slow.

The new FY2025 allocation opens a window for the following eligible individuals approved in an *employment-based* immigrant classification to apply for a green card through adjustment of status (AOS) in the United States.

First Preference (EB1)

- **China-born** persons whose priority date is before **January 1, 2023**.
- **India-born** persons whose priority date is before **April 15, 2022**.
- For the rest of the world, meaning persons born in any country other than India or China, EB1 visas are available.

Second Preference (EB2)

- **China-born** persons whose priority date is before **October 1, 2020**.
- **India-born** persons whose priority date is before **January 1, 2013**.
- Persons born in any country other than India or China whose priority date is before **August 1, 2023**.

Third Preference (EB3)

- **China-born** persons whose priority date is before **November 15, 2020**.
- **India-born** persons whose priority date is before **June 8, 2013**.
- Persons born in any country other than India or China whose priority date is before **March 1, 2023**.

The following individuals who already either have their AOS application pending or who will complete the Immigrant Visa processing at a U.S. Consular Post become eligible to have their AOS application approved or their interview scheduled in October 2024.

First Preference (EB1)

- **China-born** persons whose priority date is before **November 8, 2022**.
- **India-born** persons whose priority date is before **February 1, 2022**.
- For the rest of the world, meaning persons born in any country other than India or China, EB1 visas are available.

Second Preference (EB2)

- **China-born** persons whose priority date is before **March 22, 2020**.
- **India-born** persons whose priority date is before **June 15, 2012**.
- Persons born in any country other than India or China whose priority date is before **March 15, 2023**.

Third Preference (EB3)

- **China-born** persons whose priority date is before **April 1, 2020**.
- **India-born** persons whose priority date is before **November 1, 2012**.
- Persons born in any country other than India or China whose priority date is before **November 15, 2022**.

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