



News & Types: Immigration Monthly Updates

Business Immigration Monthly - May 2023

5/31/2023

By: Julie T. Emerick, Derek W. Strain

Practices: Immigration

TERMINATION OF COVID-19 EMERGENCY AND THE IMPACT ON IMMIGRATION

Thirty-eight months after the World Health Organization (WHO) declared COVID-19 a pandemic, the United States is ending a number of flexibilities provided during the COVID-19 National Public Health Emergency.

1. TERMINATION OF COVID-19 EMERGENCY: IMPACT ON FORM I-9 VERIFICATION

On May 4, 2023, the US Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) announced employers will have 30 days to reach compliance with Form I-9, *Employment Eligibility Verification* (“Form I-9”) requirements after the COVID-19 I-9 flexibilities sunset on July 31, 2023. Under Form I-9 processing, an employer is required to complete the Form I-9 on the first day of hire and the employee is required to present in person original documentation of their identity and work authorization within 3 business days. As remote work expanded during the COVID-19 pandemic, in March 2020 DHS and ICE suspended the in person physical inspection of identity and employment eligibility documents for Forms I-9, with the expectation that actual physical inspection would occur within three business days after normal post-COVID operations resumed. In October 2022, DHS and ICE announced these flexibilities would be extended until July 31, 2023.

The current announcement clarifies employers have until August 30, 2023 to perform all required physical examination of identity and employment eligibility documents for those individuals hired on or after March 20, 2020, whose Form I-9 identity and eligibility documents were verified by a virtual or remote examination.

If you have questions about your company’s Forms I-9 and how to ensure you are in compliance with the current rules, please contact an attorney in the MFEM Immigration Group.

2. TERMINATION OF COVID-19 EMERGENCY: IMPACT ON INTERNATIONAL STUDENTS

International students (F or M visa) may face new challenges as the flexibilities for remote or virtual learning have ended. ICE recently announced the end to its published flexibilities for the Student and Exchange Visitor Program (SEVP) which were implemented due to restrictions and disruptions to international travel and changes in teaching methods during the pandemic. The end of these flexibilities impacts students’ options for online learning.

Active F and M students are allowed to complete the 2022-2023 under the flexibilities for remote or online learning through the end of the 2023 summer semester. For the 2023-2024 academic year, these students will not be permitted to count online classes toward a full course of study in excess of the regulatory limit of no more than one class or three credits per term for F students and no online instruction for M students.

Programs for initial or re-entering students must meet regulatory limits for distance learning, and the announcement indicates Designated School Officials (DSO) should not issue I-20 forms for new or initial students outside the US who plan to take classes at a certified institution for a program with online components beyond the regulatory limits. International students may no longer take classes online while outside of the United States and remain in Active status as an F-1 or M-1 nonimmigrant. Students who wish to continue their studies in F-1 or M-1 status must re-enter the United States to attend school.

3. TERMINATION OF COVID-19 EMERGENCY: IMPACT ON VACCINATION REQUIREMENTS FOR ENTRY INTO US

As of May 11, 2023, proof of COVID-19 vaccination is no longer required for entry into the US by Federal employees, Federal contractors, and international air travelers.

In 2021, the Biden administration announced a series of measures designed to protect the health and safety of the public and vulnerable populations. Due to declining rates of illness and hospitalization from COVID-19, the administration has deemed that these measures are no longer necessary and has declared an end to the public health emergency as of May 11th.

In addition to Federal employees, Federal contractors, and international air travelers, the Department of Health and Human Services and DHS announced they will start the process to end their vaccination requirements for Head Start educators, CMS-certified healthcare facilities, and certain noncitizens at the land border.

QUOTAS AND VISA AVAILABILITY

1. H-1B CAP QUOTA MET: BENEFICIARIES WITH MULTIPLE REGISTRATIONS RAISING QUESTIONS

At the end of March 2023, the U.S. Citizenship and Immigration Services (USCIS) announced that it had received enough H-1B registrations during the initial registration period to reach the fiscal year 2024 (FY-2024) (October 1, 2023 to September 30, 2024) quota for the H-1B Regular Cap and Master’s Cap. USCIS reported a significant overall increase in the number of registrations submitted compared to prior years, including the number of multiple registrations for the same prospective H-1B workers.

USCIS recently published this chart showing registration and selection numbers for fiscal years 2021-2024.

Cap Fiscal Year	Total Registrations	Eligible Registrations*	Eligible Registrations for Beneficiaries with No Other Eligible	Eligible Registrations for Beneficiaries with Multiple Eligible	Selections**
-----------------	---------------------	-------------------------	---	---	--------------

			Registrations	Registrations	
2021	274,237	269,424	241,299	28,125	124,415
2022	308,613	301,447	211,304	90,143	131,924
2023	483,927	474,421	309,241	165,180	127,600
2024	780,884	758,994	350,103	408,891	110,791

The chart shows that there was an increase in the overall total number of registrations this year, from 483,927 in FY-2023 filings to 780,884 in FY-2024. Most significantly, it shows that 408,891 of the FY-2024 H-1B beneficiaries had multiple registrations filed on their behalf, a significant increase from previous years. This has raised some criticism of the registration process and allegations that some are “gaming” the system to gain an unfair advantage by working together to submit multiple registrations on behalf of the same beneficiary to increase the odds of being selected.

When submitting a registration, employers must attest under penalty of perjury that the information submitted is complete, true, and correct. They must attest that legitimate job offers exists and that *“The registrant, or the organization on whose behalf the registration(s) is being submitted, has not worked with, or agreed to work with, another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase chances of selection for the beneficiary or beneficiaries in this submission.”* USCIS has indicated that, based on the numbers, they have already undertaken extensive fraud investigations, and have denied and revoked petitions accordingly, and are in the process of initiating law enforcement referrals for criminal prosecution.

2. GREEN CARD QUOTA - JUNE VISA BULLETIN UPDATE

The Department of State (DOS) recently issued the June 2023 Visa Bulletin and the trend of high demand for immigrant visas (or “Green Cards”) continues with little movement or priority dates in most preference categories.

Notable employment-based classifications cut offs include the following:

- The employment second preference (“EB-2”) final action priority date for All Chargeability (or “Rest of the World”), Mexico and the Philippines remains on February 15, 2022.
- For nationals of India in the EB-2 classification, the final action priority date remains on January 1, 2011.
- For nationals of China in the EB-2 classification, the final action date cutoff remains on June 8, 2019.
- In the employment third preference (“EB-3”) for All Chargeability (or “Rest of the World”), Mexico, and the Philippines, the final action priority date remains on June 1, 2022; and for China the EB-3 final action priority remains on April 1, 2019.
- DOS does predict a retrogression in the EB-3 category for India next month.

3. Selectees of the FY-2023 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.

4. DIVERSITY VISA (DV) GREEN CARD LOTTERY STATUS CHECK IS OPEN

From May 6, 2023, entrants in the 2024 Diversity Immigrant Visa "Green Card" Lottery Program (DV-2024) can enter their confirmation into the DOS' Electronic Diversity Visa Entrant Status Check system to determine whether they were selected. The link for DV-2024 applicants is available until September 30, 2024. The Entrant Status Check for DV-2023 applicants will remain open until September 30, 2023.

The DOS makes 55,000 "green cards" available annually to persons from countries with low rates of immigration to the United States. Applicants for Diversity Visas are chosen by a computer-generated random lottery drawing. The DOS will notify an applicant's selection exclusively online through the Entrant Status Check website. Entrant Status Check will also provide selected applicants with instructions on the procedures for the application process and will confirm appointments for visa interviews.