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News & Types: Immigration Monthly Updates

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Practices: Immigration

H-1B QUOTA REGISTRATION OPENS IN APPROXIMATELY 1 MONTH - IS YOUR COMPANY READY?

The H-1B quota registration for FY2024 (October 1, 2023 to September 30, 2024) should open during the first week of March 2023. It is assumed that the U.S. Citizenship and Immigration Services (USCIS) will announce within the next two weeks the official dates of the registration period and any changes to the electronic registration process this year.

Similar to previous years, the USCIS in FY2024 will be authorized to approve 65,000 initial regular H-1B quota petitions. The USCIS will also be authorized to approve an additional 20,000 initial H-1B quota petitions for individuals who have earned a U.S. advanced degree (a.k.a U.S. advanced degree exception).

Last year, the USCIS announced that it received more than 483,927 H-1B quota registrations which was an approximately 60% increase over the previous year. Additionally, the USCIS indicated that approximately 31% of the registrations (150,000) were filed requesting the U.S. advanced degree exception. Because more than 85,000 H-1B quota registrations were submitted, the USCIS conducted random selection processes of the registration submitted. Employers with registrations selected were then allowed to submit H-1B quota petitions during a 90-day window on behalf of the individuals identified in the selected registrations. Unlike in previous years, the USCIS selected last year a significantly higher number of registrations (127,600) to ensure that it would not have to conduct multiple selection processes to meet the quota numerical allocations. It is assumed that the USCIS will again this year select a higher number of registrations so that it does not have to conduct multiple selection processes.

Because the H-1B quota registration period will be opening in approximately one month, we would encourage employers with current and potential employees who are subject to the H-1B quota to contact the MFEM Immigration Group as soon as possible in order to allow sufficient time for us to gather the data necessary to timely file the quota registrations.

USCIS ROLLS OUT FURTHER EXPANSION OF PREMIUM PROCESSING

The USCIS offers Premium Processing for many employment-related immigration petitions. The advantage of Premium Processing is that, for an additional fee, USCIS will review the immigration petition often quicker than under their standard processing times.

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Starting January 30, 2023, Premium Processing will become available for all pending and initial petitions for Multinational Executive/Managers (EB-1C) and National Interest Waivers (NIW). Such petitions serve as a basis for individuals to qualify to apply for Permanent Resident status. The Premium Processing fee will be $2,500 and USCIS will review these petitions within 45 calendar days (not 15 calendar days).

In addition, USCIS plans to continue its roll out of the expansion of its Premium Processing service to other petition/application types to comply with Emergency Stopgap USCIS Stabilization Act. The USCIS indicated the following anticipated schedule for the further expansion:

- To be announced in March 2023: Premium Processing of the Form I-765 for F-1 students seeking Optional Practical Training (OPT) and F-1 students seeking STEM OPT extensions who have a pending Form I-765, Application for Employment Authorization. For this service, the Premium Processing fee will be $1,500 and USCIS will review these applications within 30 calendar days (not 15 calendar days).
- To be announced in May 2023: Eligibility to request a Premium Processing upgrade of a pending I-539 application for an in-country change of status to F-1, F-2, J-1 or J-2 nonimmigrant status. For this service, the Premium Processing fee will be $1,750 and USCIS will review these applications within 30 calendar days (not 15 calendar days).
- To be announced in June 2023: Eligibility to request a Premium Processing for an initial I-539 application for an in-country change of status to F-1, F-2, J-1 or J-2 nonimmigrant status. For this service, the Premium Processing fee will be $1,750 and USCIS will review these applications within 30 calendar days (not 15 calendar days).

As discussed in the article below, the USCIS is proposing to change Premium Processing from calendar days to business days.

The exact timing of the aforementioned USCIS Premium Processing roll-out will depend on whether its standard processing times increase. USCIS is bound by a legislative requirement that limits the expansion of premium processing if its standard processing times increase.

MORE FEES, FEES, FEES!

Both the USCIS and the Department of State (DOS) have proposed fee increases indicating that additional funding is required to support services being offered. The following is more detailed information about the proposed increases with potential timing for the increases:

USCIS Proposes Substantial Fee Increase

On January 4, 2023, the USCIS commenced the regulatory process to increase its filing fees for employers who are sponsoring foreign workers and individuals who are applying for temporary status or Permanent Resident status (Green Card). While the overall weighted average fee increase is 40%; some family-based and employment-based immigration filings will feel the brunt of the proposed increases.

In the fee increase proposal, the USCIS explains the reason for the significant increase suggesting, “if USCIS ultimately received the resources identified in this proposed rule and subsequently achieves significant efficiency gains, this could result in backlog reductions and shorter processing times.” The USCIS processing

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backlogs increased from 1.4 million cases in December 2016 (last major adjustment to processing fees) to a current backlog of 8 million cases as of September 2021.

Proposed Employment-Based Fee Changes

- To support humanitarian programs which have a cost estimate in excess of $425 million, all employment-based petitions (Forms I-129 and Forms I-140) will be required to pay an Asylum Program Fee of $600 for each Petition in addition to the regular increased filing fee.
- The fee for Form I-129 Petition for a Nonimmigrant Worker would change from a base fee of $460 to varying rates depending on the type of temporary employment sought: H-1B Workers ($780), L-1 Intracompany Transferee ($1,385), O-1 Extraordinary Workers ($1,055), E-1, E-2, E-3 and TN Treaty Workers ($1,015). The Asylum Program Fee of $600 would be assessed in addition to these regular increased filing fees.
- The fee for Form I-539 dependent accompanying family members would increase from $370 to $620.
- The fee for Form I-765 Employment Authorization would increase from $410 to $650.
- The fee for the H-1B quota registration would increase to $215 from the current $10.00 fee. This fee increase will not be in place for the FY2024 H-1B quota registration which as discussed above will be available in March 2023.
- USCIS also proposes to change the Premium Processing times from calendar days to business days.

Proposed Permanent Resident Status or Citizenship Fee Changes

- The fee for Form I-140 Immigrant Petition for Alien Worker would increase from $700 to $715. The Asylum Program Fee of $600 would be assessed in addition to this regular increased filing fee.
- Individuals filing Form I-485 Adjustment of Status in the United States who desire interim employment authorization (EAD) and international travel permission (Advance Parole) would pay $2,280 per applicant rather than the current fee of $1,225 if age 14 to 78, or $1,140 for persons age 79 and older, or $750/$1,140 for children under age 14.
- The fee for Form N-400 Application for Naturalization/U.S. citizenship will increase from $640 to $760.

As an incentive to file eligible applications on-line, USCIS proposes some slightly lower fee increases for on-line processing of certain applications.

USCIS estimates the proposed fee rule would generate an additional $1.9 billion annually to support USCIS staffing and pay for customer service efforts, technology enhancements (on-line filings), initial asylum requests at U.S. borders and refugee resettlement costs. The last adjustment to fees for standard processing of immigration petitions was December 23, 2016.

Comments on the proposed fee increases are due by March 6, 2023. USCIS will review the comments and then release a final regulation. The final regulation will indicate the date on which the increased filing fees will become effective, unless a court postpones or prevents the implementation of the new fees.

Update on Proposed Increases to DOS Fees for Consular Services

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On December 28, 2021, the DOS proposed the following increases to its visa processing fees for nonimmigrant visas, Border Crossing Cards for Mexican nationals, and for processing a waiver of the two-year home residence requirements (INA 212(e)) for certain J-1 visa holders:

Proposed changes

- Non-petition-based nonimmigrant visa processing would increase from $160 to $245 per application. 90% of all nonimmigrant visas processed by U.S. Consular posts fall into the non-petition classifications and include visas for visitors (B-1/B-2), students and exchange visitors (F-1/F-1, M-1/M-2, and J-1/J-2); transit travelers (C), crew members (D); representatives of foreign media (I), and Border Crossing Cards (BCCs) for Mexican nationals age 15 or older.
- Petition-based nonimmigrant visa processing would increase from $190 to $310 per application. These include visas for temporary workers (H), intracompany transferees (L), worker having extraordinary ability/achievement (O); athletes, artists, and entertainers (P); international cultural exchange participants (Q); and religious workers (R).
- The processing fee for treaty traders (E-1), treaty investors (E-2) and Australian workers (E-3) and any dependent family members would increase from $205 to $485 per application.
- The processing fee for a J-1 waiver of the two-year home residence requirement for certain J-1 visa holders would increase from $120 to $510.

The DOS received 340 comments on its fee increase proposal and has not yet released a final regulation indicating the date on which it plans to implement the fee increase. However, in a regulatory filing, the DOS indicated that it would like to implement the new fees in March 2023.

LEGISLATION ENACTED WITH CHANGES IN THE E VISA AND H-2B PROGRAMS

On December 23, 2022, the President signed FY2023 the James M. Inhofe National Defense Authorization Act (NDAA), which authorizes and specifies the Department of Defense's (DOD) military activities. Among other provisions, the NDAA changed two provisions that will impact E-visa eligibility and the H-2B Program.

Change in E-Visa Eligibility

Section 5902 of the FY2023 NDAA grants individuals and companies with Portuguese nationality the right to apply for E visas.

Additionally, the same section adds a three-year domicile requirement to the use of "Citizenship by Investment" to apply for an E visa. To apply for an E-visa, the applicant must be a national of one of the Treaty Countries under the qualifying Treaty of Friendship, Commerce, and Navigation or its equivalent. Certain E-visa Treaty Countries, such as Grenada, allow individuals to obtain citizenship through financial investment in the country through "Citizenship by Investment" (CBI). The use of the CBI allows certain investors in these E-visa Treaty Countries to become eligible to apply for E-2 visas through investment in another country. To limit such CBI use, Section 5902 introduces the limitation that CBI nationals of the Treaty Countries would be ineligible for the E visas unless they are domiciled in the treaty country for a continuous period of not less than 3 years at any point before applying for E visa. This domicile requirement does not apply to individuals who have previously been granted E visas.

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Extend H-2B Visa Workers' Eligibility in Guam and the Commonwealth of Northern Mariana Islands (CNMI)

Section 5901 of the FY 2023 NDAA extends specific H-2B workers' eligibility for services in Guam and the Commonwealth of Northern Mariana Islands (CNMI) for one additional year through December 31, 2024.

Generally, under the H-2B program, U.S. employers or agents who meet specific requirements can hire and bring foreign nationals to the U.S. to fill temporary nonagricultural jobs. One of the specific requirements is that the job must be temporary; for example, the job must be in seasonal or intermittent need. However, since FY 2018, NDAA had exemptions from this "temporary need requirement" for certain H-2B workers who perform services related to military realignment or healthcare in Guam and the CNMI. For eligibility, such H-2B workers' services or labor in Guam or the CNMI must be (1) for construction, repairs, renovations, or facility services; and (2) related to the military realignment in Guam or the CNMI. Additionally, NDAA extends the H-2B eligibility to a healthcare worker at a facility that jointly serves members of the U.S. armed forces, dependents, and civilians in Guam or the CNMI. Graduates of medical schools coming to perform service or labor as members of the medical profession are excluded from this exception for these healthcare workers.

Since the NDAA was created in 2018, it has expanded this exemption to include the H-2B numerical limit and temporary need requirement, and FY 2023 extends this exemption to December 30, 2024.

USCIS UPDATES PAROLE PROCESSES FOR CUBANS, HAITIANS, NICARAGUANS, AND VENEZUELANS

On January 5, 2023, the Department of Homeland Security (DHS) announced a new procedure by which Cubans, Haitians, Nicaraguans, and Venezuelans, and their immediate family members outside the country can request to come to the United States for up to two years. The stated reason for the new procedure is the need to reduce irregular migration of Cubans, Haitians, Nicaraguans, and Venezuelans, and to allow qualifying individuals to lawfully enter the United States on a case-by-case basis for urgent humanitarian reasons or significant public benefit. No numerical limit has been placed on the number of applicants and there is no mention of a termination date for the program.

To qualify for the program, and be paroled into the US, beneficiaries must be outside the country, and:

1. Have a valid, unexpired passport (including minor children);
2. Be able to pay for commercial air travel to U.S. POE and final U.S. destination;
3. Have an eligible "supporter" (sponsor) in the U.S. file Form I-134A with USCIS;
4. Go through security and public safety vetting;
5. Comply with vaccine requirements;
6. Meet eligibility criteria;
7. Demonstrate that a parole is warranted for significant public benefit or urgent humanitarian reasons and that a favorable exercise of discretion is merited.

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Certain individuals are not eligible for the procedure. These include persons with prior orders of removal within the last five years or persons subject to bars based on prior removal orders. In addition, persons who have crossed illegally into the US after the date of this announcement are not eligible, though a single-entry exception exists if the person was given voluntary departure or allowed to withdraw the application for admission. Persons who irregularly crossed the Panamanian or Mexican border after this date are ineligible, as are children under 18, not accompanied by a parent.

MFEM News

REGISTER TODAY FOR THE MFEM IMMIGRATION GROUP'S COMPLIMENTARY ANNUAL IMMIGRATION SEMINAR ON THURSDAY, FEBRUARY 23RD

The MFEM Immigration Group will be hosting its next complimentary immigration seminar on the morning of Thursday, February 23rd at the DoubleTree Hotel in Arlington Heights, Illinois. Topics for this year's seminar will include:

- Is Your Company Ready for the FY2024 H-1B Quota Lottery?
- All Is Not Lost - Viable Options if the H-1B Quota Registration is Not Selected
- Why Is It Taking So Long for the Government to Review Cases?
- Crossroads Between Remote Work and Immigration Rules
- Hot Topics – Managing the Past and Preparing for the Future
- There will also be two Q&A sessions during which time attendees can ask their immigration questions to one of the MFEM Immigration Attorneys.

Additional information about the seminar (including how to register for the seminar) is available in the News and Events Section of the MFEM website (link).

Ms. Kathleen Gaber Speaks on Latest Talent Acquisition Trends at the Alliott Global Alliance Leadership Conference

Ms. Kathleen Gaber , an attorney in the MFEM Immigration Group, led a discussion on the latest talent acquisition trends and solutions with a panel of experienced law and accounting firm partners at the Alliott Global Alliance Leadership Conference which took place in New Orleans on January 4-6, 2023. Her panel focused on successes and failures in finding and onboarding new staff against the background of the `talent crunch' all mid-size firms are experiencing in North America.

Mr. Bob White Elected As Chair Elect of NAFSA: Association of International Educators' Region V

Mr. Bob White, an attorney in the MFEM Immigration Group, was recently elected as Chair Elect of NAFSA: Association of International Educators' Region V. NAFSA is the world's largest nonprofit association dedicated to international education and exchange. NAFSA serves the needs of more than 10,000 members and international educators worldwide at more than 3,500 institutions, in more than 160 countries. NAFSA's Region V consists of approximately 800 members at more than 500 institutions located in Illinois, Wisconsin and Michigan. As Chair Elect, Mr. White will focus on providing information to Region V members on U.S.

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immigration policy and practice changes and how these changes may impact members' universities, colleges and other educational institutions.

Several Masuda Funai Attorneys Selected as 2023 Best Lawyers, Super Lawyers, and Leading Lawyers in the Field of Immigration Law



U.S. News & World Report and Best Lawyers recently released the 2023 "Best Law Firms" rankings and gave Masuda, Funai, Eifert & Mitchell, Ltd. a Tier 1 in Immigration Law Regional Ranking and a Tier 2 in Immigration Law National Ranking. Bryan Funai, Kathleen Gaber and Robert White were recognized in the 2023 edition of "The Best Lawyers in the Midwest" for Immigration Law.



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Bryan Funai and Robert White have been selected to the 2023 *Illinois Super Lawyers* list. Super Lawyers highlights top legal talent after completing an extensive selection process which includes independent research, peer nominations and peer evaluations.



Bryan Funai, Kathleen Gaber, Eldon Kakuda, Fazila Vaid, Derek Strain, and Robert White, have been selected as Leading Lawyers for 2023. The Leading Lawyers designation is limited to less than 5% of lawyers licensed in each state, based on peer recommendations.

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