



News & Types: Immigration Monthly Updates

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Practices: Immigration

EXPANSION OF PREMIUM PROCESSING FOR CHANGE OF STATUS TO F, M, OR J

U.S. Citizenship and Immigration Services (USCIS) continues to expand availability of Premium Processing. Premium Processing is a program that allows applicants for certain types of petitions to receive expedited processing of their cases within a guaranteed period of time for an additional fee.

Beginning on June 13, USCIS began to accept premium processing requests for applicants with **pending** I-539 applications seeking a change of status to F-1, F-2, M-1, M-2, J-1, or J-2 status.

As of June 26, USCIS further expanded premium processing to individuals submitting **initial** I-539 applications requesting a change of status to F-1, F-2, M-1, M-2, J-1, or J-2 status.

Individuals applying in these categories will be able to submit Form I-907 (Request for Premium Processing Service) on paper or online, along with an additional \$1750 fee (not \$2500 fee). With this, USCIS guarantees that it will take some adjudicative action on the case within 30 calendar days (not 15 calendar days).

SUPREME COURT WATCH – OPT/STEM OPT LITIGATION

Litigation challenging employment authorization for foreign students (F-1 visa holders) has reached the U.S. Supreme Court. Plaintiffs in *Washington Alliance of Technology Workers v. DHS, et al.* challenge the Department of Homeland Security's (DHS's) regulatory authority of the Optional Practical Training ("OPT") and related program for graduates of science, technology, engineering, mathematics programs ("STEM OPT") which allow F-1 students in the United States to work upon graduation.

Arguing "OPT is now the largest alien guestworker program in the immigration system," the Washington Alliance of Technology Workers contend the OPT/STEM OPT programs violate the Administrative Procedures Act ("APA"). The APA governs the process by which federal agencies develop and issue regulations. The petitioner's Writ for Certiorari explains the STEM OPT program was proposed in 2007 by representatives of Microsoft Corporation to then DHS Secretary Michael Chertoff during a dinner party and then implemented without appropriate compliance with the notice and comment periods for regulations under the APA. The plaintiffs argue the lower courts "took *Chevron* deference into the realm of absurdity" and "its application of *Chevron* transforms the system of nonimmigrant visas from being a creation of Congress through statute into a system of regulation defined by the bureaucracy." *Chevron* deference is a doctrine of judicial deference given to administrative actions. It allows a government agency's interpretation of an ambiguous status/law to be

permissible if such interpretation is “rational” or “reasonable” and Congress has not otherwise addressed the issue. An administrative agency can establish reasonableness of its regulation through adjudications or notice-and-comment rulemaking.

U.S. Senators Ted Cruz (R-TX), Mike Lee (R-UT), Tom Cotton (R-AR), Mike Braun (R-IN), and Katie Boyd Britt (R-AL) filed an Amici Curiae in support of the Washington Alliance of Technology Workers contending “Congress set the requirements for nonimmigrant visa eligibility based on carefully considered judgments about which categories of aliens can be allowed into the country, how long they can stay, what they must do while here, whether they can lawfully work in the United States, and what happens when they fail to maintain their visa requirements” and the OPT programs created by DHS are workarounds circumventing Congress’ authority. In the Immigration and Nationality Act (INA), Congress’ view is that DHS authority is limited to regulations only to the moment of a foreign student’s physical entry to the United States to attend school, not for employment after school ends.

The U.S. Supreme Court has been moving towards limiting the independence of regulatory agencies and is also evaluating the application of the *Chevron* doctrine in other cases this term.

Additional information about whether the U.S. Supreme Court agrees to consider the appeal will be contained in future Masuda Funai newsletters when they become available.

VISA BULLETIN FOR JULY – SEVERE RETROGRESSION FOR EB-3 INDIA

The U.S. Department of State (DOS) recently posted the Visa Bulletin for July 2023. In addition to the final action dates and dates for filing, the Bulletin contained specific information regarding the retrogression and establishment of final action dates for certain employment and family-based categories.

Notable developments in the employment-based categories include the following:

1. Due to consistently robust use of numbers for the Employment-based third preference (EB-3) category for India, the availability of immigrant visas retrogressed to cases with priority dates of January 1, 2009, or earlier. This means that immigrant visas are only available for cases with priority dates of January 1, 2009, or earlier.
2. A final action date was established for the EB-3 cases for the Rest of World, Mexico, and the Philippines due to higher-than-expected demand from applicants with earlier than established priority dates. This means that immigrant visas are only available for cases with priority dates of February 1, 2022, or earlier.

In the family categories, the following was announced:

1. For the F2A category (spouses and minor children of permanent residents), a final action date of September 8, 2020, was established. It is likely that this category will further retrogress next month to keep number use within the FY 2023 annual limit.
2. For the F2B category (adult unmarried children of permanent residents), it may become necessary to retrogress final action dates for Rest of World, India, and China to keep number use within the FY 2023 annual limit.

NEW FLORIDA LAWS ADVERSELY IMPACT IMMIGRANTS

Florida has enacted two new laws which will impact the rights of immigrants in the state of Florida.

S.B. 264 "Florida's New Alien Land Law" limits real estate ownership and transactions by individuals from designated countries.

- Beginning January 1, 2024, a government entity/agency of the State of Florida may not accept a bid/proposal or enter into a contact with a company/entity having a controlling interest (25% or more) by nationals of the People's Republic of China, The Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, The Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic.
- Beginning July 1, 2023, foreign principals may not directly or indirectly own, have a controlling interest or acquire by purchase, grant, devise, or descent (inheritance) agricultural land in Florida. Such land owned prior to July 1, 2023, must be registered with Florida's Department of Agriculture and Consumer Services by January 1, 2024. Violators of this provision face criminal and civil penalties.
- Beginning July 1, 2023, with some exceptions, foreign principals may not directly or indirectly own, have a controlling interest or acquire by purchase, grant, devise, or descent (inheritance) any real property within 10 miles of any military installation or critical infrastructure facility in Florida. A foreign person may purchase one residential property that is up to two acres in size if such parcel is not on or within 5 miles of any military installation in the State of Florida, the foreign national has a verified U.S. Visa (except a B-1 or B-2 visa for visitors) or has been granted asylum.
- Persons who are nationals of the People's Republic of China, the Chinese Communist Party, or any official or member of the People's Republic of China or the Chinese Communist Party having more than a 5% interest in real property in the State of Florida before July 1, 2023 are required to register such interest with the State of Florida's Department of Economic Opportunity before December 31, 2023. Chinese nationals who have become U.S. citizens or permanent residents are exempt from this restriction.
- From July 1, 2023, persons who are nationals of the People's Republic of China, the Chinese Communist Party, or any official or member of the People's Republic of China or the Chinese Communist Party may not acquire directly or indirectly an ownership interest, have a controlling interest in, or acquire by purchase, grant, devise, or descent more than a 5% interest in real property in the State of Florida. Chinese nationals who have become U.S. citizens or permanent residents are exempted from this restriction.
- From July 1, 2023, persons who are nationals of the People's Republic of China, the Chinese Communist Party, or any official or member of the People's Republic of China or the Chinese Communist Party who acquired real property in the State of Florida by devise or descent, through the enforcement to security interest or through debt collection may hold such property provided it is sold, transferred or otherwise divested within 3 years.

Florida Bill 1718 limits certain rights and privileges of individuals who are not U.S. citizens or permanent residents while in the State of Florida and appropriates \$12 million to implement this law.

- Prohibiting counties and municipalities, respectively, from providing funds to any person, entity, or organization to issue identification documents to an individual who does not provide proof of lawful presence in the United States.
- Florida will no longer recognize driver's licenses and permits issued by other states to unauthorized immigrants. Several States including Arizona, California, Colorado, Delaware, Hawaii, Illinois, Maryland, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington and the District of Columbia will issue a driver's licenses or identity cards to unauthorized immigrants if they have certain documentation, such as a foreign birth certificate, foreign passport, or consular card, and evidence of current residency in the state. Immigrants caught driving with such license in Florida will receive a citation.
- Hospitals accepting Medicaid in Florida are required to collect a patient's immigration status and report whether the patient is a U.S. citizen or lawfully present in the United States or is not lawfully present in the United States. However, such reported information is to have no effect on patient care or result in a report of the patient's immigration status to immigration authorities.
- Effective July 1, 2024, it becomes illegal for any person to knowingly employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within Florida, an individual who is not duly authorized to work pursuant to the immigration laws of the United States, or the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security. Florida's Department of Economic Opportunity is empowered to issue penalties and suspend business licenses to employers found in violation of this law.
- Beginning July 1, 2023, employers with 25 or more employees are required to use the USCIS E-Verify system and report its compliance to the State. Investigations for compliance may be conducted by the Department of Law Enforcement, the Florida Attorney General, a state attorney, a statewide prosecutor or the Department of Economic Opportunity. Contractors are required to obtain from any subcontractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized worker.

Florida law SB 264 is pending litigation in the U.S. District Court for the Northern District of Florida.

MASUDA FUNAI NOTES

Bob White to Speak at AILA Annual Conference DOL Open Forum and at AILA Paralegals Conference

Bob White, an attorney in the Masuda Funai Immigration Group, is speaking at the American Immigration Lawyers Association (AILA) Annual Conference in Orlando, Florida. Serving as Vice Chair of the AILA Liaison Committee with the Department of Labor (DOL), he will be a panelist on an Open Forum session with DOL officials discussing agency processes and procedures and the new PERM process. He is also speaking at the 2023 AILA Paralegals Conference providing paralegals with an overview of the PERM labor certification program for employment sponsorship for permanent resident status, navigating the entire cycle from initiating a new PERM application to filing a PERM with the DOL.

Julie Emerick to Speak at AILA Annual Conference on RFE Issues

Julie Emerick, an attorney in the Masuda Funai Immigration Group, is also speaking at the AILA Annual Conference. She will be discussing solutions and options when responding to a USCIS inquiry (“Request for Evidence” or “RFE”) on Intracompany Transferee petition (L-1 visa) and the current trends and challenges to obtain an approval for this visa classification.