

# Fredrikson's Immigration Webinar Series:

## New Developments and Trends in Immigration Law and Upcoming H-1B Lottery Season

February 23, 2023

**Fredrikson**

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# *Proposed Legislation*

# What Do We Anticipate in 2023

## Proposed Bills

- Biden Immigration Bill
- Elimination of per country quota (Eagle Act)
- Physician legislation (Health Care Workforce Resilience Act)
- Dream Act 2023
- Title 42 Ending - new Asylum Rules

## TPS

## Parole Expansion

- Afghan and Ukraine Programs
- Expanded to Cubans, Haitians, Nicaraguans, and Venezuelans

# Current Trends



- Continued backlogs in adjudication with USCIS
- Expansion of Premium Processing
  - National Interest Waiver I-140 and EB-1 Multi-National manager (45 days)
- New Fee Increase Proposal
- Highest number of new US citizens in 15 years
- New look to Green Cards – increased security features

# Current Trends Continued

- Interview waivers (Adjustment of Status and Visas Stamping)
- H and L visa renewals within the U.S?
  - Pilot Project announced – stateside visas
- I-9 COVID Flexibilities to end July 31st



# *Visa Processing and Consular Reopening*

# Visa Retrogression in FY2023

- During FY-2022 rapid forward movements, especially in India EB-2, were made to utilize the unprecedented high employment immigrant visa numbers of 281,507
- Corrective action was required to keep number use within the maximum allowed under the FY-2023 annual limits
  - Retrogression in EB-2 for India
  - Cut-off date established in EB-2 for all countries
  - Cut-off dates established in EB-1 for China and India
  - Cut-off date may be established for EB-3 all counties in the coming month
- USCIS revised its policy on Child Status Protection Act age calculation for children of FB and EB adjustment of status applicants to allow

# NIV Consular Processing Changes



Drop Box for Renewals and First Time Visa Applicants

Third Country Processing

Pilot Program for State-side visa renewal

Administrative Processing

E-2 Processing Suspension and Delay Continues



# IV Consular Processing

- NVC Visa Processing backlog continues.

Number of IV applicants whose cases are documentarily complete at NVC and ready for interview as of January 31	444,828
Number of documentarily complete IV applicants scheduled for February 2023 interview appointments	36,372
Number of eligible IV applicants still pending the scheduling of an interview after February 2023 appointment scheduling was completed	408,456

Note: In Calendar Year 2019 on average, 60,866 applicants were pending the scheduling of an interview each month.

This data does not reflect IV cases that have already been transferred to an embassy or consulate for interview, cases that are still with USCIS for petition approval, or cases that are not considered documentarily complete.

<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-backlog.html>

- Delay in visa processing at consular posts
  - Majority of backlogs are at a handful of posts due to staffing shortage according to DOS
  - DOS intends to restore staffing at consular posts to pre-pandemic level by the end of 2023.



# *Agency Processing and Adjudication Trends*

# Public Charge Rule

- The Public Charge Final rule went into effect Dec. 23, 2022 and will affect all adjustment of status, admission, and immigrant visa applicants, based on INA 212(a)(4).
- DHS defines public charge as “if the noncitizen is likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.”
- Factors considered: age; health; family status; assets, resources, and financial status; education and skills
- Factors not considered: receipt of noncash benefits other than long-term institutionalization
  - Unlike the 2019 rule that was vacated, DHS will not consider supplemental public health benefits such as Medicaid and nutritional assistance

# Automatic Extensions

EAD Automatic Extensions – Who Qualifies?



I-90 Green Card Renewals – Two-Year Extension



I-751 and I-829– Two-Year Extension of  
Conditional Permanent Residence

# Employment Authorization Document Automatic Extensions

- On May 4, 2022, DHS published a [temporary final rule \(87 FR 26614\)](#) to temporarily increase the employment authorization for certain applicants who have a pending Form I-765, requesting a renewal of their employment authorization and/or EAD.
- The rule increases the automatic extension period from 180 days to 540 days. The automatic extension of up to 540 days applies to qualifying renewal applicants whose Forms I-797C, Notices of Action, have a “Received Date” of Oct. 26, 2023, and earlier.
- The rule does not cure any unauthorized employment that may have accrued prior to issuance of the rule.
- If renewal application is denied, the extension ends.
- Those who file their application after Oct. 26, 2023 only receive an extension of up to 180 days.
- How to calculate: Add 540 or 180 days after the date of expiration.

# EAD Automatic Extensions Eligibility

- Employees must have timely filed an application to renew their employment authorization on Form I-765, Application for Employment Authorization, before the EAD expired (except certain employees with Temporary Protected Status (TPS)), and the Form I-765 renewal application remains pending.
- The eligibility category on the front of the employee's EAD must have the same eligibility category as on the employee's Form I-797C, Notice of Action issued for the corresponding EAD renewal application. Exceptions:
  - In the case of an EAD and I-797C, Notice of Action, that each contains either an A12 or C19 TPS category code, the category codes do not have to match.
  - For H-4 (C26), E (A17) and L-2 (A18) dependent spouses, an unexpired Form I-94 indicating H-4, E, or L-2 nonimmigrant status, including E-1S, E-2S, E-3S and L-2S class of admission codes, must accompany Form I-797C.

# EAD Categories Eligible for Extension

(a)(3)	Refugee
(a)(5)	Asylee
(a)(7)	N-8 or N-9
(a)(8)	Citizen of Micronesia, Marshall Islands, or Palau
(a)(10)	Withholding of Deportation or Removal Granted
(a)(12)	Temporary Protected Status (TPS) Granted
(a)(17)	Spouse of principal E nonimmigrant with an unexpired I-94 showing E (including E-1S, E-2S and E-3S) nonimmigrant status*
(a)(18)	Spouse of principal L-1 Nonimmigrant with an unexpired I-94 showing L-2 (including L-2S) nonimmigrant status*
(c)(8)	Asylum Application Pending
(c)(9)	Pending Adjustment of Status under Section 245 of the Act
(c)(10)	Suspension of Deportation Applicants (filed before April 1, 1997) Cancellation of Removal Applicants Special Rule Cancellation of Removal Applicants Under NACARA
(c)(16)	Creation of Record (Adjustment Based on Continuous Residence Since January 1, 1972)
(c)(19)	Pending initial application for TPS where USCIS determines applicant is <i>prima facie</i> eligible for TPS and can receive an EAD as a “temporary treatment benefit”.
(c)(20)	Section 210 Legalization (pending I-700)
(c)(22)	Section 245A Legalization (pending I-687)
(c)(24)	LIFE Legalization
(c)(26)	Spouses of certain H-1B principal nonimmigrants with an unexpired I-94 showing H-4 nonimmigrant status
(c)(31)	VAWA Self-Petitioners

# I-90 Green Card Validity Automatic Extension

- Effective Sept. 26 USCIS automatically extended the validity of Permanent Resident Cards (Green Cards) to 24 months for lawful permanent residents who file Form I-90, Application to Replace Permanent Resident Card.
  - Form I-90 receipt notices had previously provided a 12-month extension of the validity of a Green Card.
- If you are a lawful permanent resident, you must replace your Green Card if your Green Card either expired or will expire within the next six months
- Eligibility: Lawful permanent residents who properly file Form I-90 to renew an expiring or expired Green Card may receive this extension.
- USCIS has updated the language on Form I-90 receipt notices to extend the validity of a Green Card for 24 months for individuals with a newly filed Form I-90.
  - On Sept. 26, USCIS began printing amended receipt notices for individuals with a pending Form I-90.
- These receipt notices can be presented with an expired Green Card as evidence of continued status. This extension is expected to help applicants who experience longer processing times, because they will receive proof of lawful permanent resident status as they await their renewed Green Card.



# Conditional Permanent Resident Automatic Extension

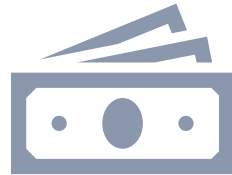
- USCIS extended the validity of Permanent Resident Cards (also known as Green Cards) for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status for 48 months beyond the card's expiration date.
- This change started:
  - January 11, 2023 for Form I-829
  - January 25, 2023, for Form I-751
- USCIS has updated the language on Form I-751 and Form I-829 receipt notices to extend the validity of a Green Card for 48 months for individuals with a newly filed Form I-751 or Form I-829.
  - USCIS will issue new receipt notices to eligible conditional permanent residents who previously received notices with an extension shorter than 48 months and whose cases are still pending.
- These receipt notices can be presented with an expired Green Card as evidence of continued status, while the case remains pending with USCIS. By presenting your updated receipt notice with your expired Green Card, you remain authorized to work and travel for 48 months from the expiration date on the front of your expired Green Card.

# USCIS Adjudication Trends



## Current Processing Times

Delay in Adjustment of Status Applications and Waiver of Adjustment of Status Interviews



## Proposed Fee Increases



## Request for Evidence (RFE) and Denial Trends

# RFE and Denial Trends

USCIS Extends  
Flexibilities for  
Responding to Agency  
Requests until 3/23/23

Delayed or missing RFE  
from USCIS Service  
Centers

Decrease in RFEs and  
Denials across several  
NIV categories (H-1B,  
L-1, O-1)

# Recent CBP Trends and Issues

- Implementation of Simplified Arrival using biometric facial comparison technology at all arriving airports, seaports, and southern pedestrian and most northern secondary land ports.
- Expansion of Stampless entry
- Relaxed original signature requirements – CBP follows guidance in the USCIS Policy Manual
- CBP requires work authorization when employees entering as a visitor as it relates to overseas employment
- Inconsistent L-1 adjudication



# *H-1B Cap Season Preparation*

# H-1B Cap Season



Lottery Season – March 1 – March 17



How to Identify Lottery Candidates



Potential Lottery Fee Increase – on hold



Adjudication Trend – So far, so good

# Presenters



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# Thank you!

**Fredrikson**

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