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Immigration

USCIS Increases H-2B Nonimmigrant Visa Availability

Legal Update

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This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

In a temporary final rule published on December 15, 2022, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has increased the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for fiscal year (FY) 2023. To “assist U.S. businesses that need workers to begin work on different start dates,” the Departments of Homeland Security (DHS) and Labor (DOL) will distribute the supplemental visas in several allocations, including two separate allocations in the second half of FY 2023.

Of the total 64,716 visas made available, 20,000 visas are reserved for nationals of Guatemala, El Salvador, Honduras or Haiti. All 64,716 visas are available only to “those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form.” In addition to making the additional 64,716 visas available under the FY 2023 time-limited authority, DHS is exercising its general H-2B regulatory authority to provide temporary portability flexibility again by allowing H-2B workers who are already in the United States to begin work immediately after an H-2B petition (supported by a valid temporary labor certification) is received by U.S. Citizenship and Immigration Services (USCIS) and before it is approved.

DHS will not accept any H-2B petitions under provisions related to the FY 2023 supplemental numerical allocations after September 15, 2023, and will not approve any such H-2B petitions after September 30, 2023. Provisions related to portability are only available to petitioners and H-2B nonimmigrant workers starting work by January 24, 2024.

USCIS previously announced that petitioners requesting additional H-2B workers under the rule must file their petitions at the California Service Center. This change does not affect the filing locations for petitions filed under the permanent H-2B regulations, whether they are cap-subject or cap-exempt. USCIS also announced that it is temporarily suspending premium processing for H-2B supplemental cap petitions until January 3, 2023. Premium processing remains available for all other

H-2B petitions.

DHS and DOL are accepting written public comments on the temporary final rule and related new information collection (Form ETA-9142B-CAA-7) by February 13, 2023. Instructions on submitting comments are included in the temporary final rule.