

Cozen O'Connor Immigration Catch Up: October 2023

Executive Overview

October 2023 not only provided amazing Halloween costumes but big updates to U.S. and global immigration. The Cozen O'Connor catch-up this month highlights these changes and provides the details you need to determine how or if these changes impact you and your business.

In the United States, the Department of State (DOS) has a proposal to enable H-1B visa holders to renew their visas in the United States (this program had been discontinued in 2004). The U.S. Citizenship and Immigration Services (USCIS) issued a policy memo clarifying certain elements of the L-1 process and, most significantly, released a proposed rulemaking to amend its current regulations to modernize the H-1B visa program. In addition, the new form I-9 becomes mandatory as of November 1, 2024, and the USCIS issued policy guidance regarding the two-year foreign residence requirement for J nonimmigrants.

In international immigration news, Israel was formally admitted into the Visa Waiver Program (VWP) in September 2023, but the rollout date was moved earlier to October 19, 2023, in light of the current situation in the Middle East.

United States immigration updates

Visa revalidation

- DOS has drafted a Federal Register notice (Pilot Program to Resume Renewal of H-1B Nonimmigrant Visas in the United States for Certain Qualified Noncitizens), which is currently being reviewed by the Office of Information and Regulatory Affairs.
- This program would be limited to H-1B principal holders only and open for 20,000 applicants.
- It is currently slated for an early 2024 rollout.

What this means to you

- H-1B visa stamps are only required to re-enter the United States. Often, foreign nationals departing the United States have to secure a visa at a consulate/embassy in their home country, which takes time. With this program, H-1B principal visa holders will be able to obtain a new visa in the United States prior to departure, which will save time and stress for international travel.

USCIS Memo regarding L-1 sole proprietorship

- New L-1 policy guidance clarifying two points:
 - A sole proprietorship may not be the Petitioning Employer when filing an L-1 Petition on behalf of its owner.
 - The update distinguishes a sole proprietor from a self-incorporated petitioner (e.g., a corporation or a limited liability company with a single owner).
 - The Petitioning Employer's existence cannot depend on the individual seeking the L-1 visa. The entity must exist completely separate and apart from its owner.
 - For additional information, please see the alert by Frances Rayer and Beth Olivera, "USCIS Offers Clarification of Policy on L-1 Petition."

What this means to you:



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Related Practice Areas

- Immigration Policy & Strategy
- Labor & Employment

- When analyzing the relationship between the U.S. entity and foreign entity, it's critical to ensure that the relationship adheres to this new clarification by the USCIS.

New Form I-9 required as of November 1, 2024

- As of November 1, 2024, employers must ensure they are utilizing the new version of Form I-9 (the one dated 08/01/23).
- Employers may also begin to remotely examine employees' Form I-9 documents provided they are enrolled in E-Verify.

USCIS issues guidance regarding 2-year foreign residency requirement

- For background, certain J-1 visa holders are required to satisfy a foreign residency requirement where they must be physically present in their country of nationality or last legal residence abroad for an aggregate of at least two years before they are eligible to apply for an immigrant visa, adjustment of status, or a nonimmigrant H, L, or K visa.
- In summary, the USCIS just clarified how to calculate the two-year time in certain situations, including where a travel day, where a fraction of the day is spent in the country of nationality or last residence, counts towards the two-year foreign residency requirement.
- In summary, be careful when calculating this time period and ensure that all time spent outside is validated by this latest memo.

And last but certainly not least ...

Proposed changes to the H-1B visa program

- On October 23, 2023, the Department of Homeland Security (DHS) released a notice to amend current regulations to modernize the H-1B visa program.
- Public comments are currently being accepted until December 22, 2023.
- Major updates to the H-1B visa program include:
 - Revising the regulatory definition of "specialty occupation" to make it more clear, allowing for a wider range of qualifying degrees while maintaining the requirement that the degree must be directly related to the offered position
 - Providing guidance to adjudicators to defer to prior determinations when no underlying facts have changed,
 - Expanding cap-exempt status to certain nonprofit entities,
 - Proposal to extend the cap-gap extension period for students changing status from F-1 to H-1B,
 - Potentially updating the H-1B cap selection process to benefit those with certain credentials.

Global Immigration updates

Israel Visa Waiver Program (VWP) - UPDATE

- As of October 19, 2024 (moved up from November 1, 2024), Israeli citizens will be able to apply online for the ESTA visa to the United States through the ESTA mobile app or [online](#).
 - The United States has formally admitted Israel into the Visa Waiver Program (VWP), known as the Electronic System for Travel Authorization (ESTA).
 - For the first time, citizens of Israel can apply for an ESTA visa to the United States, enabling them to secure a two-year visitor visa to the United States that can be renewed indefinitely.
 - The ESTA visa is *not* a work authorization visa, nor does it entitle the ESTA holder to work authorization.
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