

FY2024 Developments Impacting Business Immigration

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A Look Back FYTD – Compliance POV

- U.S. Citizenship & Immigration Services (“USCIS”) [announced](#) that it will be launching a pilot of E-Verify+ in 2024. USCIS states that E-Verify+ will streamline the Form I-9 and employment eligibility verification process.
- U.S. Department of Justice (“DOJ”) and Apple [reached](#) a \$25 million settlement to resolve allegations of employment discrimination.
- U.S. Department of Homeland Security (“DHS”) [published](#) a final rule, effective immediately, increasing the amount of certain civil penalties for inflation. Among the penalties affected are penalties for document fraud, penalties assessed by U.S. Immigration and Customs Enforcement (“ICE”) against employers for violations of the Immigration and Nationality Act (“INA”), and penalties assessed by U.S. Customs and Border Protection (“CBP”) for violations of the INA.

•Civil penalties for unlawful employment, hiring or continuing to employ unauthorized noncitizens

Penalty name	Citation	Penalty amount as adjusted in the 2023 FR	Multiplier *	New penalty as adjusted by this final rule
Civil penalties for violation of INA sections 274C(a)(1)-(a)(4), penalty for first offense	8 CFR 270.3(b)(1)(ii)(A)	\$557-\$4,465	1.03241	\$575-\$4,610.
Civil penalties for violation of INA sections 274C(a)(5)-(a)(6), penalty for first offense	8 CFR 270.3(b)(1)(ii)(B)	\$472-\$3,765	1.03241	\$487-\$3,887.
Civil penalties for violation of INA sections 274C(a)(1)-(a)(4), penalty for subsequent offenses	8 CFR 270.3(b)(1)(ii)(C)	\$4,465-\$11,162	1.03241	\$4,610-\$11,524.
Civil penalties for violation of INA sections 274C(a)(5)-(a)(6), penalty for subsequent offenses	8 CFR 270.3(b)(1)(ii)(D)	\$3,765-\$9,413	1.03241	\$3,887-\$9,718.
Civil penalties for knowingly hiring, recruiting, referral, or retention of unauthorized aliens— Penalty for first offense (per unauthorized alien)	8 CFR 274a.10(b)(1)(ii)(A)	\$676-\$5,404	1.03241	\$698-\$5,579.
Penalty for second offense (per unauthorized alien)	8 CFR 274a.10(b)(1)(ii)(B)	\$5,404-\$13,508	1.03241	\$5,579-\$13,946.
Penalty for third or subsequent offense (per unauthorized alien)	8 CFR 274a.10(b)(1)(ii)(C)	\$8,106-\$27,018	1.03241	\$8,369-\$27,894.
Civil penalties for I-9 paperwork violations	8 CFR 274a.10(b)(2)	\$272-\$2,701	1.03241	\$281-\$2,789.

Other Penalties

Unlawful employment criminal penalties

- 6 months imprisonment for engaging in pattern or practice of knowingly hiring unauthorized noncitizens (or continuing to employ noncitizens knowing they are or have become unauthorized to work in the U.S.)
- 5 year imprisonment for engaging in fraud or false statement or otherwise misusing visas, immigration permits and identity documents

Other consequences:

- Loss of business license for non-compliance with state/local immigration laws
- Government audits and/or raids
- Debarment from participation in federal, state, local contracts
- Debarment from participation in Department of Labor supported immigration programs including the H-1B temporary worker visa and green card processes involving labor market testing
- Media exposes and brand damage

Note that the Department of Homeland Security relies upon tips, undercover investigators, and confidential informants

Note that more severe penalties/extended imprisonment for trafficking/sheltering undocumented workers

More Changes Present Compliance Challenges

- U.S. Citizenship and Immigration Services (“USCIS”) [announced](#) that certain applicants who have filed Form I-765 to renew their Employment Authorization Documents (EAD) qualify for an automatic extension of their EAD for 180 days while their renewal application is pending.
- USCIS [announced](#) the extension and redesignation of the following countries for Temporary Protected Status (TPS), impacting EAD expiration dates:
 - Burma (Myanmar)
 - Cameroon
 - El Salvador
 - Haiti
 - Honduras
 - Nepal
 - Nicaragua
 - Sudan
 - Syria
 - Venezuela
- USCIS [published](#) a reminder that, starting Wednesday, November 1, 2023, all employers must use the revised Form I-9, Employment Eligibility Verification, with the edition date August 1, 2023, when completing the employment eligibility verification process. Contains instructions for remote verifications for e-Verify participants.

Case Study



What role does MBV Legal play in alerting stakeholders of the changes reflected in the previous slide?



What kinds of resources does MBV Legal offer stakeholders to help manage risk?



To what degree does MBV's I-9 software vendor support/educate?



Comments on when/how to escalate non-compliance concerns?

Tips

Consider:

- Annual self-audit of I-9s and e-Verify confirmations
- Annual stakeholder training
- Training at time of onboarding for HR workers
- Limiting turnover/assignment to temps – I-9 compliance is highly specialized
- Using M-274 Handbook for Employers

A Look Back FYTD – Benefits POV

- U.S. Department of State (DOS) announced a pilot program to resume stateside visa renewal for qualified H-1B nonimmigrant visa applicants who meet certain criteria.
- This stateside visa renewal process is an alternative to applying for visa renewal at a U.S. consular office abroad.
- Notably, the program was limited to only principal H-1B visa applicants, not dependent H-4 visa applicants.
- Also, the applicant had to be renewing an H-1B visa that was previously issued by Mission Canada with issuance date from 1/1/2020 through 4/1/2023 or by Mission India with an issuance date from 2/1/2021 through 9/30/2021.
- The pilot program accepted online applications from 1/29/24 to 4/1/24.

H-1B Lottery Changes

- USCIS amended H-1B regulations to implement a “beneficiary-centric” selection process along with additional integrity measures for registrations in the annual H-1B lottery.
- The intent behind this change was to reduce the potential for gaming the registration system by ensuring each beneficiary would have the same chance of being selected, regardless of the number of registrations submitted on their behalf.
- The initial registration period for the Fiscal Year (“FY”) 2025 H-1B cap opened at noon Eastern on 3/6/24 and ran through noon Eastern on 3/22/24.
- USCIS conducted a second random selection for previously submitted FY2025 H-1B cap registrations under the regular cap. The second selection was completed on 8/5/2024.
- USCIS indicated a sufficient number of registrations have been selected to reach the maximum number of H-1B visas available for FY 2025. All selected registrations have been notified.

Case Study



What role does MBV Legal take in the annual H-1B lottery process?



Who is designated as an authorized representative on the organization's USCIS account?



What are some of the considerations in determining whom to sponsor?

Tips

- Start early. It takes time to:
 - Gather foreign nationals' education and experience documents for independent evaluation;
 - Examine the foreign national's immigration documents and history;
 - Review the job description and requirements and determine the required wage;
 - Get internal approvals from stakeholders;
 - Register USCIS accounts

Filing Fee Increases

- USCIS [announced an inflation adjustment to premium processing fees](#), increasing certain premium processing fees from \$1,500 to \$1,685, \$1,750 to \$1,965, and \$2,500 to \$2,805. The fee changes went into effect on February 26, 2024.
- Additional filing fee increases went into effect on April 1, 2024, the first substantial increases in 10 years.

New Benefits for Dreamers

President Biden [announced](#) two new benefits:

- The first is aimed at keeping families together, where certain noncitizen spouses of U.S. citizens can be considered for “parole” if they meet other conditions that include continuous physical presence in the U.S. for at least 10 years, have no disqualifying criminal convictions, do not pose a threat to national security and public safety, and are otherwise eligible to apply for adjustment of status to permanent residency.
- The second is aimed at easing the visa processing for U.S. college graduates, included those who have been granted DACA designation (“Deferred Action for Childhood Arrivals”).

FY2024 Green Card Quotas Met Early

- As of July 2024, there was retrogression in the EB-3 preference category due to high demand.
- By August, [DOS announced](#) that the annual limit for all EB-1, EB-3, EW, and EB-5 visas in FY 2024 had been reached.

Receipt Notice Delays

While beginning to improve, receipt notice issuance and filing fee processing delays have persisted at USCIS. This has led to:

- Receipt delays for petitions filed during the H-1B cap filing period
- Receipt delays of employment- and family-based adjustment of status applications including accompanying forms
- Employment authorization issues related to receipt delays
- Inability to provide accurate information regarding processing times
- Current status expiration while waiting for a receipt

Case Study



What steps does MBV Legal take when budgeting for immigration expenses?



What kinds of policies or guidelines, if any, are in place to set boundaries on sponsorship?

Tips

- Consider implementing policies/guidance around:
 - Who pays for dependent family members
 - Splitting costs where permissible by law
 - Repayment agreements
 - Limiting green card reclassification requests to game visa quotas
 - When to request premium processing service
 - Initiating a green card process sooner

Looking Ahead – FY2025

- Change in Administration
 - Travel bans
 - Increased enforcement measures
 - Impact on workforce with end of TPS, DACA and other humanitarian programs
 - Slowing of legal immigration
- Government shutdowns
- Civil unrest overseas leading to consular closures
- To the extent possible, plan ahead and have contingencies in place



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