



Immigration ADVISORY ■

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Unlawful Discrimination via Electronic Form I-9/E-Verify and New Stateside Visa Stamp Renewal Pilot Starting January 2024

by [Eileen Scofield](#)

First, every U.S. entity is required to complete and maintain a Form I-9 for every employee; many employers use electronic platforms or E-Verify. The U.S. Department of Justice Civil Rights Division Immigrant and Employee Rights Section (IER) investigates and fines employers for citizenship and national origin discrimination. IER regularly investigates and fines unwitting employers for “unintentional” or accidental discrimination, including resulting from electronic platforms. We monitor and have litigated these issues and understand why no system is perfect. Last week, [IER posted some guidance](#) on the issue, and the employers’ ongoing liability, regardless of the system used.

Second, currently, sponsored employees needing to renew their visa stamp are required to travel abroad and attend an appointment at a U.S. consulate. Years ago, this visa stamp renewal could be done stateside and the passport mailed to DC. After much discussion and consideration, the U.S. Department of State (DOS) is launching a limited stateside H-1B visa renewal pilot program starting January 29, 2024.

Here are a few highlights of the provision:

- The program will start January 29, 2024.
- The pilot program will only be open to select foreign nationals: those whose H-1Bs were previously issued by Canada and India missions for a specific time.
- The program will be limited to only the primary H applicant – not their dependents.
- The person must also be eligible for the interview waiver program. [You may recall](#) that includes if the individual has a visa issued in the last four years and has an approved H petition (approved by USCIS), among other things

DOS Stateside Visa Renewal Pilot Begins January 29, 2024

On December 20, 2023, the DOS shared [a Federal Register notice](#) announcing that the greatly anticipated stateside visa renewal pilot will begin January 29, 2024 and end April 1, 2024.

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Who is eligible to participate in the pilot?

Participation is voluntary and limited to principal H-1B applicants who:

- Are seeking to renew an H-1B visa during the pilot phase between January 29, 2024 and April 1, 2024 (H-4 dependents are excluded from the pilot).
- Are renewing a prior H-1B visa issued by:
 - **Mission Canada** with an issuance date from **January 1, 2020 through April 1, 2023**.
 - **Mission India** with an issuance date from **February 1, 2021 through September 30, 2021**.
- Are not subject to a nonimmigrant visa issuance (reciprocity) fee.
- Are eligible for an [in-person interview waiver](#).
- Have submitted 10 fingerprints to the DOS in connection with the prior visa application. [See Question 27 here](#).
- Have a prior visa that doesn't include a "clearance received" annotation.
- Do not have a visa ineligibility that would require a waiver before issuance.
- Have an approved and unexpired H-1B petition, were most recently admitted to the United States in H-1B status, and are maintaining H-1B status in the United States.
- Have an unexpired period of authorized admission in H-1B status.
- Intend to reenter the United States in H-1B status after a temporary period abroad.

NOTE: The pilot program will be limited to **H-1B principals only**. The agency's intention in limiting the scope of this pilot to previously issued visas from Mission Canada and Mission India is to assess how domestic visa renewals impact its visa processing capabilities and performance, and it feels these two missions provide a population that represents the global population.

What is the application period for the pilot program?

The DOS will begin accepting online applications for this pilot **beginning on January 29, 2024** via [the online application portal](#). Each week, the DOS will release approximately 2,000 application slots for those whose most recent H-1B visa was issued by Mission Canada and approximately 2,000 application slots for those whose most recent H-1B visa was issued by Mission India. The dates of release are:

- January 29, 2024
- February 5, 2024
- February 12, 2024
- February 19, 2024
- February 26, 2024

Once the weekly limits are reached for each mission, the online application portal will be locked until the next date. The application process will close when all slots are filled or April 1, 2024, whichever is sooner.

What is the application process?

Applications will be submitted via [the online application portal](#).

To complete the application, applicants should:

- Select the consular post of their most recent H-1B visa issuance (either Canada or India).
- Answer a series of questions to determine their eligibility to participate in the pilot.
- If eligible, complete and submit the electronic Form DS-160.
- Pay a non-refundable, non-transferable machine-readable visa (MRV) fee online by major debit or credit card.
- Receive instructions through the online portal on how to send their passports and other required documents via the U.S. Postal Service (USPS) or another courier service to the DOS.

NOTE: While the navigator tool is intended to help determine whether an applicant is eligible for the pilot program, it is possible an application will be returned to an unqualified applicant that the system did not screen out. The MRV fee will not be refunded in any case.

What documents must be provided?

Under the pilot, each applicant must provide the following:

- A properly completed and electronically filed Form DS-160, Online Nonimmigrant Visa Application.
- One photograph (taken within the last six months), which meets [these specifications](#).
- A passport valid for travel to the United States that is valid for at least six months beyond the visa application date and contains a blank, unmarked page for placement of a visa foil.
- An original or copy of the applicant's current Form I-797, Notice of Action.
- An original or copy of the applicant's Form I-94, Arrival/Departure Record.

Evidence of U.S. residency or international travel plans are not required in the initial application filing, though it may be requested by the DOS at a later date.

How will the application be processed and adjudicated?

Applications will be considered in the order they are received. No status on the application will be provided other than the return of the application or the issuance or refusal of the visa.

NOTE: Applicants can check the status of their application [via CEAC](#).

Once received, applications and passports will be assessed to determine if they are within the scope of the pilot program. Applications not in the scope of the program will be returned along with the passport. MRV fees will not be returned. Those that are within the scope will be forwarded for adjudication.

NOTE: If an application is adjudicated but does not satisfy the scope of the pilot program for any reason, it will result in a refusal under INA Section 221(g). The applicant may reapply by filing a new visa application at a consular post abroad with a new fee.

According to the DOS, the average processing time is expected to be **6–8 weeks from the time the passport and documents are received by the DOS**. The agency intends to complete processing of all applications by no later than May 1, 2024.

No requests for expedited processing will be accepted. If an applicant applies for domestic visa renewal and requires urgent travel, they may withdraw their application and request through the online portal that their passport be returned to them. If the applicant withdraws their application during the adjudication process, it will be refused under Section 221(g). The Section 221(g) refusal will not prejudice any future application.

What happens when the visa is issued?

Issued visas and passports and submitted documents will be returned to the applicant via USPS or a courier service. The agency reminds applicants that visa issuance is NOT a grant of nonimmigrant status and does not constitute an extension of nonimmigrant visa status or an admission to the United States. A visa only permits an applicant to seek admission at a U.S. port of entry after overseas travel.

What happens if the application is returned or the visa refused?

The DOS will return without adjudication any application that is not within the scope of the pilot program. The DOS will not refund the MRV fee.

If an application is accepted for adjudication but found to be ineligible, for example, if the applicant is found ineligible for a waiver of the in-person interview requirement under INA Section 222(h), the visa application will be refused under Section 221(g). In these cases, those seeking to continue pursuing a visa will have to apply at an overseas post and follow the required steps.

If an applicant fails to provide required documentation or information but is expected to provide them before the end of the pilot, the DOS will refuse the application under Section 221(g) and then provide specific instructions to the applicant for providing outstanding documentation or information, or to correct minor errors before April 15, 2024, to allow for the adjudication to be completed. Examples of additional information may include:

- A properly completed Form DS-160
- A photograph meeting DOS standards
- Evidence the applicant is resident in the United States

In these cases, a new MRV fee will not be required. If the requisite information is provided by April 15, 2024, the DOS will overcome the Section 221(g) refusal and issue the visa. After May 1, 2024, the visa will be refused.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or anyone from our [Immigration Team](#).

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