

Immigration Alert

Akin Gump
STRAUSS HAUER & FELD LLP

DHS Eases Immigration Rules Due to COVID-19 Pandemic

April 20, 2020

Key Points:

- Foreign visitors and employees can extend or change their immigration status.
- DHS relaxes requirements for original documents and original signatures.
- DHS offices are closed to the public but continue to adjudicate immigration benefits.
- State Department begins adjudication of visa applications for medical professionals.

The Department of Homeland Security (DHS) has relaxed certain immigration rules in light of the continuing COVID-19 pandemic in the United States. We are providing a summary of some of the most important DHS and Department of State announcements in this alert.

Foreign Visitors and Employees Eligible for Extension of Immigration Status

DHS announced on April 13, 2020, that it will consider requests for an extension or change of immigration status from those who are in the United States temporarily and are unable to leave the U.S. due to the COVID-19 pandemic. Rather than extending their stay automatically – as some of the other countries have done – DHS requires foreign visitors and employees to apply to extend or change their status. Such an application can sometimes be submitted online, and DHS continues to accept and process all types of immigration applications. DHS also indicated that it will allow some flexibility for late filing of applications, on a case-by-case basis. We strongly recommend submitting an application for an extension or change of immigration status before the current status expires.

Visa Waiver Program Travelers May be Eligible for Satisfactory Departure

As we have written in a [prior alert](#), foreign nationals present in the United States pursuant to the Visa Waiver Program (VWP)/ Electronic System for Travel Authorization (ESTA) authorization have been affected by the Presidential Proclamations restricting entry from the Schengen Area countries, the United Kingdom and Ireland, as well as by flight cancellations. Individuals who are unable to depart the

Contact Information

If you have any questions concerning this alert, please contact:

Lars Erik A. Hjelm

Partner

lhjelm@akingump.com

Washington, D.C.

+1 202.887.4175

Maka Y. Hutson

Counsel

mhutson@akingump.com

Dallas

+1 214.969.2781

Sina Kimiagar

Associate

skimiagar@akingump.com

Washington, D.C.

+1 202.887.4306

United States before the end of their current period of admission due to travel and flight restrictions may be able to apply for a 30-day extension of their stay called “Satisfactory Departure.” DHS has announced that those individuals may request the extension from U.S. Citizenship and Immigration Services (USCIS) by contacting the **USCIS Contact Center**. Alternatively, they can contact the **Deferred Inspection** unit of Customs and Border Protection (CBP) at the international airport where they entered the country – or the international airport closest to their current location – and request Satisfactory Departure that way. It is imperative for visitors to go through the extension process rather than overstay the ESTA authorization, even for a short period of time, because an overstay normally prevents a visitor from utilizing VWP/ESTA ever again.

DHS Eases I-9 Compliance

In lieu of physical inspection of original documents, DHS now allows employers operating remotely to inspect documents remotely/virtually (via video link, fax or email) when verifying their new employees’ eligibility to work in the United States. Physical inspection must take place within three (3) business days after normal operations resume. The exception also allows employers to accept expired state IDs or driver’s licenses if they have been automatically extended by the state of issuance. The exception is available until either May 19, 2020, or three (3) business days after the termination of the National Emergency declared on March 13, 2020.

However, the exception is not available when employees are physically present at an employer’s work location, such as when essential employees continue to perform their duties at their regular place of employment rather than remotely. In that situation, DHS guidance suggests that in-person examination of original documents before the completion of the I-9 form continues to be required.

USCIS Temporarily Accepts Electronically-Reproduced Original Signatures and Extends Certain Deadlines

USCIS has **announced** that it will accept filings with electronically-reproduced original signatures instead of normally required “wet” signatures. A document may be scanned, faxed, photocopied or similarly reproduced provided that the copy must be of an original document containing an original handwritten signature. Employers should retain copies of the original documents, which USCIS may request in future.

USCIS does not allow any electronic signatures on its forms or petitions. This means that no electronic means of authenticating an immigration filing satisfies the USCIS requirements, and the petitioner or applicant must have access to a printer and a scanner in order to sign a paper form and reproduce it for filing with USCIS. Additionally, USCIS forms are protected from alteration, and those security features normally prevent them from being electronically signed, even if the petitioner or applicant attempts to do that.

USCIS has also **announced** that it will temporarily extend certain deadlines for foreign nationals applying for immigration benefits by 60 days. These relate to requests for additional information or notices of intent to deny immigration benefits. Petitioners and applicants now have an additional 60 days to respond if the USCIS notices are dated between March 1, 2020, and May 1, 2020.

USCIS Offices Remain Closed for In-Person Interviews and Biometrics Collection

USCIS has **extended** the closure of its field offices until at least May 3, 2020, but most of its offices remain operational and continue adjudicating immigration benefits. The only unavailable services are in-person interviews (e.g., for a green card or citizenship) and biometrics services (i.e. required submission of fingerprints and a digital photo). However, there have been wide reports of USCIS adjudicating employment-based permanent resident applications (i.e. green cards) without the normally required in-person interviews. USCIS has not made an official announcement about this, but as long as all the other documentation is present, USCIS seems to waive the in-person interview and adjudicate the permanent residence nonetheless. Please note that this limited waiver does not seem to apply to family-based green cards or citizenship applications.

As for biometrics, USCIS has **announced** that, for extensions of benefits like work permits, it will reuse biometrics collected in the course of the previous application. However, immigration practitioners have reported that USCIS sometimes issues even original work permits without the collection of biometrics, potentially reusing biometrics collected in other circumstances, e.g., upon entry to the United States. We advise U.S. employers and foreign employees to file any applications for extension of nonimmigrant status or work permits as soon as possible to avoid delays in adjudication.

Department of State Begins Processing Visas for Medical Professionals

U.S. embassies and consulates continue to be closed, and non-emergency visa services have been suspended. However, the Department of State **announced** on April 8, 2020, that medical professionals with approved visa petitions, “particularly those working to treat or mitigate the effects of COVID-19,” should contact the nearest U.S. embassy or consulate for procedures to request an emergency visa appointment. There does not seem to be a uniform policy for such visa appointments, and embassies and consulates are developing distinct procedures to accept and process such visa applications.

Department of State Limits Issuance of U.S. Passports to Emergency Situations Only

The U.S. State Department has significantly reduced passport issuance operations at Regional Passport Agencies and other acceptance facilities, many of which are closed due to COVID-19. **Effective April 3, 2020**, Regional Passport Agencies will only accept urgent passport applications from applicants who have a qualified life or death emergency that requires international travel within 72 hours. Passport applicants will be required to provide documentation of a qualified emergency, such as a death certificate or a letter from the hospital or medical professional. Absent a qualified emergency, the State Department is still accepting passport applications via mail. However, expedited service has been suspended, and the State Department has **warned** applicants to expect significant processing delays.

For more resources, information, and analysis on how best to address legal issues presented by the spread of COVID-19 and the impacts it has had on global trade and

immigration, visit Akin Gump's [COVID-19 Resource Center](#), or contact one of the attorneys below.

akingump.com