

Immigration Alert

Akin Gump
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President Trump Issues Proclamation Suspending Entry of Certain Foreign Workers

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Key Points

- Visa issuance and entry of certain H-1B, H-2B, L-1, and J-1 visa holders are suspended.
- Proclamation does not apply to anyone currently in the United States.
- Proclamation does not apply to anyone who already has a valid visa in their passport.
- Existing suspension of entry of applicants for an immigrant visa (“green card”) who are currently outside the United States is extended.

On June 22, 2020, President Trump signed a Presidential Proclamation (the “Proclamation”) that extends the entry suspension of applicants for an immigrant visa (also known as a “green card”), which was originally issued on April 22, 2020. Further, the Proclamation suspends visa issuance and entry of certain nonimmigrant workers. The Proclamation only applies to those who are currently outside the United States without a valid visa. It does not apply to anyone who is already in the United States or who is outside the United States but has a valid visa in their passport.

The proclamation is effective as of June 24, 2020, is set to expire on December 31, 2020, and may be extended. The Secretaries of Homeland Security, State, and Labor must recommend any necessary modifications to the Proclamation within 30 days of its effective date, and every 60 days thereafter.

Background

The Immigration and Nationality Act (INA) gives the President the authority to suspend entry of any noncitizens whose entry would be “detrimental to the interests of the United States.” Citing the COVID-19 pandemic and record numbers of Americans who have filed for unemployment as the result of the pandemic, on April 22, 2020, the President imposed a temporary suspension on entry to the United States of certain immigrants to reduce the competition for jobs and to conserve consular resources abroad and health care resources in the United States. For a detailed analysis on that proclamation, see the Akin Gump alert [here](#). The Proclamation issued on April 22,

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2020, allows the President to extend the suspension of entry “as necessary.” Using this authority, President Trump has extended the suspension of entry of applicants for a green card until December 31, 2020. He also suspended visa issuance and entry of applicants for several nonimmigrant visa categories.

What Foreign Nationals Does the Proclamation Affect?

The Proclamation suspends visa issuance and entry of foreign workers and their dependent family members (spouse and minor children) in the following categories:

- H-1B (“specialty occupation” workers) and their H-4 dependents
- H-2B (seasonal nonagricultural workers) and their H-4 dependents
- L-1 (intracompany transferees, including L-1A executives/managers and L-1B individuals with specialized knowledge) and their L-2 dependents
- J-1 (only interns, trainees, teachers, camp counselors, au pairs, and summer work travel program participants) and their J-2 dependents.

What Foreign Nationals Does the Proclamation NOT Affect?

The Proclamation only affects individuals who are currently outside the United States without valid visas in their passports. It does NOT affect any of the following categories of individuals:

- Anyone already present in the United States.
- Immigrants or nonimmigrants who hold valid visas in their passports.
- Individuals applying for a green card in the United States (through the “adjustment of status” process with the U.S. Citizenship and Immigration Services (USCIS)).
- Individuals changing or extending their nonimmigrant status in the United States, by applying to the USCIS.
- Foreign workers seeking admission to the United States in other visa categories, such as E-1, E-2, E-3, O-1, P-1, R-1, or TN (citizen of Canada or Mexico).
- Foreign exchange visitors in other J-1 categories, including students, physicians, professors, research scholars, short-term scholars, and specialists.
- Foreign students applying for and entering the United States with an F-1 visa, including those on Optional Practical Training (OPT).

Who is Exempt from the Proclamation?

The Proclamation provides exemptions for certain categories of individuals currently abroad, most notably:

- Lawful permanent residents of the United States (i.e., those who have already obtained a green card).
- Spouses of U.S. citizens, or children of U.S. citizens under the age of 21.
- Individuals seeking to enter the United States to provide temporary labor or services essential to the U.S. food supply chain.
- Individuals whose entry would be in the national interest of the United States.

Forthcoming Agency Guidance

The implementation of the Proclamation falls on U.S. consular officers at embassies and consulates abroad because they adjudicate visa applications. Three government agencies—the Department of State, the Department of Homeland Security, and the Department of Labor—are tasked with establishing standards to define categories of individuals that fall under the “national interest” exemption above. The Proclamation lists several such categories:

- Individuals critical to the defense, law enforcement, diplomacy, or national security of the United States.
- Individuals involved with the provision of medical care to those currently hospitalized due to COVID-19.
- Individuals involved in medical research at U.S. facilities to help combat COVID-19.
- Individuals necessary to facilitate the immediate and continued economic recovery of the United States.

We expect further guidance on these standards and categories of exempt individuals to be released by the three agencies tasked with the implementation of the Proclamation. They are expected to develop a framework that U.S. employers would utilize to request exemptions for their employees.

Immediate Impact

As we described in a prior [alert](#), U.S. embassies and consulates have suspended routine visa issuance due to the COVID-19 pandemic. They are only providing emergency services to U.S. citizens abroad, as well as processing visa applications for emergency travel and for essential work, such as by health care professionals and agricultural workers. Because of the suspension of routine visa services abroad, the Proclamation has not immediately changed the situation for green card and nonimmigrant visa applicants. However, as U.S. embassies and consulates are preparing to resume routine visa services, the Proclamation will prevent those whose entry has been suspended from obtaining immigrant and nonimmigrant visas and, ultimately, from entering the United States.

The part of the proclamation that extends the suspension of entry by immigrants continues to primarily affect family-based immigrants who are coming to join their families in the United States: spouses and children of permanent residents, parents of U.S. citizens, adult children of U.S. citizens, and siblings of U.S. citizens, as well as diversity lottery immigrants. However, the expansion of the proclamation to nonimmigrant visas is likely to have a significant effect on U.S. businesses who hire foreign workers to fill available positions. USCIS processing of work visa petitions has not been affected by the Proclamation, so U.S. employers can still obtain USCIS approval to bring their foreign workers to the United States. However, whether those workers can obtain a visa in their passport and arrive to assume their positions will depend on whether they can be exempt from the Proclamation under one of the exemption grounds listed above.

We expect further guidance regarding the possibility of visa renewals at U.S. Embassies and Consulates and travel abroad by nonimmigrant workers who are

currently in the United States and thus do not fall under the application of the Proclamation. The language of the Proclamation does not provide an exemption for continuing foreign workers returning from abroad after a temporary absence from the United States, including work-related travel, if they do not possess a valid visa in their passport. We expect further clarification on whether they can renew their visas and re-enter the United States to resume their job duties. We also expect that the administration will clarify whether Canadian citizens are subject to the Proclamation since they do not require a visa to enter the United States.

The Proclamation does not modify any of the travel suspensions due to the COVID-19 pandemic, also analyzed in a prior [alert](#). Entry of foreign nationals who have visited China, Iran, the Schengen Area countries, United Kingdom, Ireland, and Brazil in the last 14 days remains prohibited.

Planned Regulatory Actions

In addition to the immediately effective suspensions of entry for immigrants and nonimmigrants, the Proclamation directs the Department of Labor and the Department of Homeland Security to promulgate regulations or take appropriate action with regard to the following categories of individuals, among others:

- Applicants for an H-1B visa or a Labor Certification—a process for U.S. employers to prove that there is not an available and willing U.S. worker to accept a position that a foreign national is offered on a permanent basis. The regulations must ensure that the presence of foreign nationals in those categories does not disadvantage U.S. workers in violation of the law.
- Certain individuals who have been arrested for, charged with, or convicted of a criminal offense in the United States. Agency action may prevent those individuals from obtaining eligibility to work in the United States.
- H-1B applicants subject to the numerical cap. The regulations must ensure that the presence in the United States of H-1B nonimmigrants does not disadvantage U.S. workers. This likely means a revision to the current H-1B lottery process.

The attorneys with our [Immigration Law and Policy](#) practice are available to help you with case-specific questions related to the Proclamation. We will cover forthcoming regulatory proposals and agency guidance in future alerts.

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