

Mobility: immigration alert

March 2020

United States

COVID-19 Impact on business travel and immigration

Executive summary – new restrictions

I. Consular processing

Starting 20 March 2020, the US Department of State (DOS) temporarily suspended routine visa services at all US Embassies and Consulates worldwide. At this time, the DOS is unable to provide a specific date and time for when routine visa services will once again become available.

Impact: Standard work/study/visitor visa processing is on hold, so any travelers who do not already have a valid US visa in their passport will not be able to enter the US until the US consulates begin to reopen for regular processing. Additionally, employees already in the US who intended to renew their status through a visa application at a US consulate abroad may be forced to extend their status with USCIS in-country instead.

II. Cross-Border travel

Canada/Mexico

The US has limited all “nonessential” travel across its land borders with Canada and Mexico. The initial decree will last until the end of April 2020, but it could be extended if the spread of COVID-19 does not dramatically slow in the coming weeks.

Impact: Travelers looking to enter the US from Canada or Mexico for tourism or basic business purposes may not do so by land. Anecdotally, the US Customs and Border Protection (CBP) has been inconsistent already with its applications, causing some confusion and some erroneous rejections of entry to the US. It may take another week for CBP training to catch up with the administration's announcement, and travelers should continue to be aware of increased scrutiny regarding the purpose of travel to the US from Canada and Mexico. At this time, EY recommends against traveling to the US from Canada or Mexico without a work or study permit. For mission-critical travel, please reach out to your EY US immigration professional.

Mainland China/India/United Kingdom/Ireland/Schengen countries/Iran

The US has implemented a restriction on travel from these geographic regions, requiring any travelers who have been in those regions to first complete a 14-day quarantine period elsewhere before seeking admission to the US. There is currently no estimate from when these restrictions will be lifted. The countries on this general quarantine list may change over time, as the COVID-19 spread intensifies or lessens in different geographic regions.

Impact: Given the risks of travel and the increasing number of nations refusing entry from these countries due to the spread of the COVID-19 virus, it is recommended that travelers located in the following nations shelter in place, and wait until the restrictions have been lifted, rather than attempt to self-quarantine in a third country prior to entering the US:

- ▶ Mainland China
- ▶ India
- ▶ Scotland/England/Wales/Northern Ireland
- ▶ Republic of Ireland
- ▶ Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland
- ▶ Iran

While not exhaustive, the quarantine travel restrictions **do not** apply to the following individuals:

- ▶ US citizens and spouses of US citizens
- ▶ Lawful permanent residents and their spouses
- ▶ Siblings and parents of US citizens or lawful permanent residents who are unmarried and under 21 years old
- ▶ Children of US citizens and lawful permanent residents (including prospective adoptees)
- ▶ Members of the US armed forces and their immediate families.

III. In-country services

USCIS has suspended premium processing for all I-129 (work permit applications) and I-140 (employment-based immigrant petition) cases, meaning all cases must be filed via regular processing, which takes several months to be adjudicated. USCIS has not provided a date in which premium processing services will be reinstated. Additionally, USCIS has indicated the cases already filed via premium processing may not be adjudicated within the 15-day period; for those cases, USCIS has indicated that the \$1,440 premium processing fee will be refunded.

Impact: The suspension of premium processing will have two primary consequences:

- (1) There will be an increase in those holding "implied status", where an applicant has valid status for 240 days beyond their current visa expiration due to having a timely filed extension in process with USCIS. This is not impactful from an immigration standpoint, but it does impact the renewal and availability of ancillary documents and identifications such as state driver's licenses. Several states (e.g. NY, IL, CA), though not all, recognize a receipt notice from a timely filed extension request for purposes of issuing driver's licenses.
- (2) Those H-1B workers who were relying on having an expedited I-140 approval from USCIS for purposes of obtaining an extension of H-1B status beyond the initial 6-year visa period may run into situations where the I-140 approval cannot be obtained before the H-1B extension must be filed. Please connect with your EY US immigration attorney to discuss this risk on a case-by-case basis.

USCIS has closed its public offices. This impacts in-person meetings and interviews. The closure is intended to last at least until 1 April 2020, but it is widely anticipated that the period of closure will be extended through the end of April.

Impact: In the context of employment- or family-based immigration, the closure of USCIS offices to the public will result in a delay in the issuance of green cards/naturalization. Those employees (or their family members) who are at the beginning of the green card or naturalization process are likely to experience a delay in overall processing due to the inability of USCIS to schedule adjustment of status and naturalization interview. Those who will feel this impact most strongly are applicants who were already scheduled or about to be scheduled for an interview, which have now been canceled. Such persons will need to wait for USCIS to resume in-person services in order to obtain the green card or naturalization certificate.

Several states have ordered the closure of nonessential businesses, and many companies have taken the voluntary step of closing their office buildings and other worksites to help contain the spread of COVID-19 and protect their workforces.

Impact: The switch to "working from home" presents compliance issues in a couple of ways:

- (1) With offices and other places of business closed, US Department of Labor notice requirements for H-1B/E-3/H-1B1 and PERM cases cannot always be met. See the below for additional information regarding potential relief.
- (2) H-1B/E-3/H-1B1 workers are tied to a specific worksite(s) or location(s) - such workers are not entirely free to work from other non-listed geographic areas without first filing an amendment to their work location with USCIS. See below on how to best mitigate this risk.

Summary of Government Relief

I. Consular processing

The DOS through the foreign US consulates and Embassies, continue to process emergency visa applications, as well as certain US citizen services. Further information is provided below:

- ▶ Embassies and consulates will continue to provide emergency and mission-critical visa services, as resources allow.
- ▶ Services to US citizens continue to be available. Individuals needing these services should refer to the specific Embassy website for further information.
- ▶ Applicants with an urgent matter and who need to travel immediately should follow the guidance provided found on each consulate's website to request an emergency appointment.
- ▶ Although all routine immigrant and non-immigrant visa appointments are cancelled, the Machine Readable Visa fee (Visa Application Fee), is valid and may be used for a visa appointment in the country where it was purchased within one year of the date of payment.

II. Cross-border travel

Canada/Mexico

'Essential travel' will still be permitted across the borders. Included in this are: aircrews, diplomats, healthcare workers, and supply chain workers bringing in essential goods such as food, fuel, and medicine. According to the US Department of Homeland Security, 'essential travel' into the United States will include, but not be limited to the following circumstances:

- ▶ US citizens and lawful permanent residents returning to the United States;
- ▶ Individuals traveling for medical purposes (e.g., to receive medical treatment in the United States);
- ▶ Individuals traveling to attend educational institutions;
- ▶ Individuals traveling to work in the United States (e.g., individuals working in the farming or agriculture industry who must travel between the United States and Canada/Mexico in furtherance of such work);
- ▶ Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders entering the United States to support Federal, state, local, tribal, or territorial government efforts to respond to COVID-19 or other emergencies);
- ▶ Individuals engaged in lawful cross-border trade (e.g., truck drivers supporting the movement of cargo between the United States and Canada/Mexico);
- ▶ Individuals engaged in official government travel or diplomatic travel;
- ▶ Members of the US Armed Forces, and the spouses and children of members of the US Armed Forces, returning to the United States; and
- ▶ Individuals engaged in military-related travel or operations.

III. In-country services

US Department of Labor (DOL)

DOL will grant the following extensions to its regulatory deadlines:

- ▶ Extensions to filing deadlines for Requests for Information, Notices of Deficiency, and PERM Audits will be permitted on a case-by-case basis if the COVID-19 pandemic was the cause of missing the original deadline. Specifically, anyone with a filing deadline between 13 March 2020 and 11 May 2020 may timely file their responses by 12 May 2020 without making a special request.
- ▶ For those employers who began PERM recruitment between 15 September 2019 and 13 March 2020, the 180-day recruitment/notice deadline has been extended by 60 days for purposes of filing the ETA-9089 with DOL. These cases must be filed by no later than 12 May 2020.

DOL has stated that it will be issuing PERM certifications via email at least through 30 June 2020, and that employers will be able to proceed with their I-140 immigrant petitions using a printout of the emailed certification. It is still required that the Employer, Employee, and Attorney sign the printed copy in the original, so it is encouraged to continue the practice now in place of mailing the specific signature pages directly to your EY team professional. However, it is anticipated that some future allowances for scanned signatures may be extended (see USCIS section below).

H-1B/E-3/H-1B1 employees may begin working from home or an alternate worksite operated by the Employer without filing a new Labor Condition Application (LCA) so long as the new location is "within normal commuting distance" of the worksite(s) listed on the Certified LCA. DOL has not defined "normal commuting distance" in concrete terms, instead showing a fair amount of deference to employers to permit what is "normal" to their field or industry. Particularly in large urban areas with high real estate prices, it is not uncommon to have workers commuting miles each way between their home and work. So long as a reasonable business argument can be made that the new location is "within normal commuting distance", no new LCA or amended I-129 filing should be required. If you have questions or require additional information in this regard, please connect with your EY US immigration attorney to discuss what makes sense for your business.

DOL permits electronic notification of LCA filings, so where physical posting is unavailable/not practicable during the COVID-19 pandemic, employers may choose to post the notices either for 10 calendar days on their intranet or to send the notices to their workforce via email (this only needs to be done once). Please discuss how best to effectuate LCA notices electronically with your EY US immigration attorney.

US Citizenship and Immigration Services (USCIS)

USCIS has stated that it will accept photocopies of original ("wet") signatures on forms. The original ink signatures should be maintained for inspection purposes, should any of the reproduced signatures be questioned or for audit purposes. Please coordinate with your EY US immigration attorney on how best to manage form signatures during this disruption to usual business practices. USCIS filings must still be submitted in hard copy through the mail.

US Immigration and Customs Enforcement (ICE)

ICE announced that I-9 document inspections for purposes of verifying and re-verifying employment authorization may be done virtually during the COVID-19 pandemic if the employer is not maintaining regular business hours (is enforcing a remote work policy). The employer is obligated to obtain, inspect, and retain copies of the documents within 3 business days of the start of employment (or expiration of the prior I-9). Additionally, a physical inspection must take place within 3 business days from the resumption of normal business after the COVID-19 crisis. In Section 2 Additional Information, the employer should enter "COVID-19" as the reason for the delay in physical inspection. Employers must provide written documentation of their remote onboarding and telework policy for each employee. Any audit of subsequent Forms I-9 would use the "in-person completed date" as a starting point for these employees only.

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ey.com/en_ca

George Reis, Managing Partner
+1 416 943 2535
george.reis@ca.ey.com

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Christopher Gordon, Partner
+1 416 943 2544
christopher.d.gordon@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com