

Mobility: immigration alert

June 2020

United States

Presidential Proclamation suspending entry of aliens presenting risk to the U.S. labor market

Executive summary

On 22 June 2020 President Trump signed a Presidential Proclamation ("Proclamation") that will take effect at midnight on 24 June 2020. The Proclamation extends the prior suspension of consular processed immigrant visas to include certain non-immigrant visas, including H-1B, H-2B, L-1 and J-1 workers. The suspension of the issuance of these non-immigrant visas is meant to last at least through 31 December 2020.

Impact

- ▶ New H-1B visas
- ▶ New H-4 visas (accompanying or following to join)
- ▶ New J-1 visas (intern, trainee, teacher, camp counselor, au pair, or summer work travel program)
- ▶ New J-2 visas (accompanying or following to join)
- ▶ New L-1A and L-1B visas
- ▶ New L-2 visas (accompanying or following to join)
- ▶ New H-2B visas (and their H-4 dependents)

Exemptions

- ▶ The Proclamation does not impact individuals already holding valid H-1B/H-2B/H-4, J-1/J-2, and L-1/L-2 visas in their passports as of 22 June 2020.
- ▶ The Proclamation does not impact individuals in H-1B, H-2B, H-4, J-1, J-2, L-1A, L-1B, or L-2 status currently in the U.S.
- ▶ The Proclamation does not impact J-1 participants, or their J-2 dependents, who are not in one of the following programs: intern, trainee, teacher, camp counselor, au pair, or summer work travel program.
- ▶ The Proclamation should not impact Canadian passport-holders, who are exempt from visa requirements by treaty.
- ▶ The Proclamation does not impact dependent children who would otherwise "age out" of visa eligibility (if they are turning 21 before 31 December 2020).
- ▶ The Proclamation does not impact those holding a valid Advance Parole document.
- ▶ The Proclamation makes no mention of treaty-based visas such as E-1, E-2, E-3, H-1B1, or TN visas.
- ▶ The Proclamation makes no mention of O-1 and other visas.

Waiver

The Proclamation provides exceptions for impacted workers who are:

- ▶ Married to a U.S. Citizen
- ▶ Providing labor or services that are essential to the U.S. food supply chain
- ▶ Determined by the State Department to be entering “in the national interest” of the United States, including but not limited to those that are:
 - ▶ Critical to the defense, law enforcement, diplomacy, or national security of the United States
 - ▶ Involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized
 - ▶ Involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or
 - ▶ Necessary to facilitate the immediate and continued economic recovery of the United States.

The Proclamation also extends the prior 60-day suspension of new immigrant visas through 31 December 2020.

Litigation on the legality of the Administration’s suspension of new non-immigrant visas is anticipated, and a future injunction is possible.

Future actions contemplated by the Proclamation

The Proclamation also directs the Department of Labor to “consider promulgating regulations or take appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B non-immigrant visa does not disadvantage United States workers.”

Finally, the Proclamation asks the Department of Homeland Security not only to implement its terms, but also, in conjunction with the State Department, to ensure no alien may enter without first having been “registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints”. It is not yet clear how these measures will be implemented or whether this will delay the visa issuance or port-of-entry admissions processes.

U.S. Consulates remain closed

U.S. Consulates worldwide generally remain closed due to Covid-19, except for individuals requiring emergency or national-interest appointments. The new rules under the Proclamation will be of no meaningful effect until the Consulates reopen. At this time, it is not clear when the U.S. Consulates will reopen.

Next steps

Given the broad nature of the Proclamation, employers should begin taking the following steps:

1. Advise foreign national populations that your organization is currently investigating the impact of the Proclamation.
2. Identify any H-1B, H-4 EAD, H-2B, L-1, L-2 EAD or J-1 workers currently outside the U.S. to assess potential remote work opportunities if U.S.-based employment is not an option before the end of 2020.
3. For those currently in the U.S., consider issuing a travel warning and/or travel approval process to H-1B, H-4 EAD, H-2B, L-1, L-2 EAD and J-1 workers seeking to travel. We recommend a case-by-case review only after the risk of being denied readmission is validated by your mobility team and/or immigration counsel.
4. Reach out to H-1B, H-4 EAD, H-2B, L-1, L-2 EAD, and J-1 workers to identify if any have dependent family members outside the U.S. awaiting H-4/L-2/J-2 visa issuance to discuss options and long-term plans.
5. Where possible, change all H-1B, H-2B, H-4, L-1A, L-1B, L-2, J-1, and J-2 status renewal plans to Extensions of Status (filed with USCIS) to avoid future travel outside the U.S.

We will keep you updated with the latest news regarding the government’s responses to the pandemic. Please contact your EY Law LLP immigration professional for additional information and guidance.

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