

# Global Immigration alert

September 2025

## United States

### Presidential proclamation establishes new \$100,000 payment for some H-1B petitions

#### Executive summary

On 19 September 2025, President Donald J. Trump signed a proclamation, "Restriction on Entry of Certain Nonimmigrant Workers." The Proclamation, which went into effect at 12:01 am on 21 September, prohibits entry of H-1B workers to the United States unless their H-1B petitions are "accompanied or supplemented by a payment of \$100,000" with certain exceptions. The restriction "shall expire, absent extension, 12 months after the effective date of [the] proclamation."

The proclamation also directs the Secretary of the Department of Homeland Security (DHS) to "restrict decisions" on H-1B petitions not accompanied by this payment for workers currently outside the United States for a period of 12 months following the proclamation's effective date. The proclamation has a "national interest" exception clause, but as of 23 September, guidance has not been issued on how it may be applied or a process by which to submit.

Clarifications provided by the U.S. State Department on 21 September and memoranda issued by government agencies indicate that the \$100,000 payment will only be required for "new" H-1B petitions filed after the proclamation effective date, where the beneficiary is outside of the United States, and does not impact foreign nationals who are the beneficiaries of currently approved petitions, any petition filed prior to 12:01 AM ET on 21 September 2025, or foreign nationals in possession of "validly issued" H-1B non-immigrant visas.

#### Background and analysis

The proclamation cites the Immigration and Nationality Act (INA) section 212(f), which provides the president with a broad authority to restrict entry of foreign nationals to the United States. On 20 September 2025, U.S. Customs and Border Protection (CBP), the agency responsible for determining the admissibility of foreign nationals to the United States, issued a memorandum stating that the proclamation does not apply to the following:

- Beneficiaries of currently approved H-1B petitions;
- Petitions filed prior to 12:01 am EST on 21 September 2025; and
- Foreign nationals in possession of "validly issued" H-1B non-immigrant visas. The term "validly issued" is not defined.

The memorandum also confirms that CBP "will continue to process current H-1B visa holders in accordance with all existing policies and procedures" and that the proclamation does not impact the ability of existing H-1B visa holders to travel to and from the United States. A memorandum issued the same day by U.S. Citizenship and Immigration Services (USCIS), which processes H-1B petitions submitted by U.S. employers, confirmed the same. On 21 September 2025, the State Department updated its website with an "H-1B FAQ" that contained similar information.

The proclamation contains an exception to the \$100,000 payment that may be available to individual H-1B workers who are working for a company or within an industry if the Secretary of DHS determines that the hiring of such workers

“is in the national interest and does not pose a threat to the security or welfare of the United States.” The criteria and process to request an exception is not yet clearly defined.

The proclamation also directs DHS to prioritize “high-skilled and high-paid” workers and directs the Department of Labor to “initiate a rulemaking to revise the prevailing wage levels to levels consistent with the policy goals of [the] proclamation.”

#### **What this means**

The clarifications provided by CBP, USCIS, State, and the White House via guidance and press statements over the weekend have helped to assuage concerns that existing H-1B workers who happened to be abroad at 12:01 am EST on 21 September would not be required to present proof of the \$100,000 payment in order to return to the United States. Additional clarifications, however, are required to define which H-1B petitions will be subject to this payment for the next 12 months.

The proclamation directs DHS to restrict decisions on petitions not accompanied by the payment filed on behalf of beneficiaries currently outside the United States. By contrast, the State Department FAQ released on 21 September indicates the payment will be required for “any new H-1B petitions” submitted to USCIS after the proclamation effective date, with no further explanation of what is defined as a “new” petition.

Legal challenges to the proclamation are expected, and may cover various aspects, including the legality of the new \$100,000 payment. However, a nationwide injunction would require a certified class action, which requires that plaintiffs meet several requirements as a group, per a recent Supreme Court decision. Further, courts are generally deferential to the president's broad authority under INA 212(f) to restrict entry of foreign nationals to the United States.

Developments related to this proclamation are fluid. We will continue to monitor and share future updates. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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