On June 22, 2020, the Trump administration issued a presidential proclamation suspending the entry of individuals to the United States on select nonimmigrant visas, including H-1B, H-2B, J-1, and L-1 visa holders, as well as their dependents. The order does not impact foreign nationals currently in the United States. Foreign nationals in the United States can continue to seek extensions of stay and changes to visa status, and pursue permanent residency. The order will primarily impact individuals currently outside the United States seeking a visa stamp at a U.S. consulate or embassy abroad.

The order comes as an expansion of the Trump administration’s executive order from April 22, 2020, suspending the entry of individuals traveling to the United States on immigrant visas. The April 2020, order included a provision tasking the Secretary of Labor and the Secretary of Homeland Security to review various nonimmigrant visa
programs to determine their potential impact to unemployed U.S. workers returning to work as stay-at-home orders are lifted.

The June 22 suspension expands the travel ban to several core temporary work visa categories. The suspension will now cover persons holding H-1B, H-2B, J-1 and L-1 visas. The suspension will last through December 31, 2020, with the provision that it may be continued “as necessary.” Within 30 days of June 24, 2020, and every 60 days thereafter while the order is in effect, additional recommendations and modifications may be released. This suspension, in conjunction with the current closures of the U.S. consulates and embassies, will in effect limit, if not eliminate, the issuance of new visas abroad at least through December 31, 2020.

Not surprisingly, the order leaves the term “visa” undefined. For example, it is unclear whether a person who possesses an approved and currently effective H-1B petition from U.S. Citizenship and Immigration Services (USCIS), but who requires a new visa stamp from a U.S. consulate, will be permitted to obtain the stamp and return to the United States. Likewise, it is unclear whether the ban will apply to citizens of Canada, who are not required to apply for visas at a U.S. consulate in order to apply for admission to the United States in H-1B, H-2B, J-1, or L-1 status. Persons outside the United States who hold approved USCIS petitions bearing a future effective date (such as new fiscal year (FY) 2021 H-1B quota cases), however, appear to be barred from entry.

The scope of the suspension is limited to the following nonimmigrant visa categories:

- H-1B (specialty occupation) and their dependents;
- H-2B (temporary non-agricultural workers and seasonal workers) and their dependents;
- J-1 (cultural and educational exchange visitors) and their dependents, for J-1 programs for interns, trainees, teachers, camp counselors, au pairs, or summer work travel programs; and
- L-1 (multinational intracompany transferees) and their dependents.

The suspension of the nonimmigrant visa holders applies specifically to those who:

- are outside the United States as of June 24, 2020;
- do not already have a valid visa effective on June 24, 2020; and
- do not have an official travel document other than a visa (such as an advance parole travel document).

Further, the visa suspension does not apply to the following individuals:

- Lawful permanent residents of the United States (i.e., green card holders);
- Spouses and children of U.S. citizens;
- Applicants seeking to enter the United States to provide temporary labor or services essential to the U.S. food supply chain;
- Any other applicant whose entry is deemed to be in the “national interest.” The order requires the Department of State and Department of Homeland Security to create criteria for what will be considered in the “national interest,” including those who 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 . . . combat COVID-19;” or
“necessary to facilitate immediate and continued economic recovery of the United States.”

Notably, the order does not restrict individuals seeking “asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.”

Additionally, the order contains several general provisions charging the various agencies, including the Department of Health and Human Services, the Department of Labor, and the Department of Homeland Security, to promulgate new rules and regulations concerning:

- The implementation of new measures to reduce the risk of spread and transmission of COVID-19 from individuals seeking admission and entry into the United States;
- Changes to regulations or other actions impacting the PERM-related employment based green card process;
- Requiring registration of biographical and biometric information for entry into the United States, including but not limited to photographs, signatures, and fingerprints;
- Preventing individuals with final orders of removal, who are inadmissible or deportable from the United States, or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States;
- Proposing regulations or other actions regarding the efficient allocation of immigrant visas and for “ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.”

The language of the order leaves many open questions and room for interpretation. We expect further guidance to be released shortly by the agencies on how the proclamation’s provisions will be applied.


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