Tuesday, June 23, 2020

For the past few weeks, experts have been expecting a new presidential action aimed at restricting entry into the United States of nonimmigrant workers in H-1B, L-1, and J-1 status. After more than a week of uncertainty regarding the breadth of the order, with multiple media outlets reporting diverse and contradictory speculations, the presidential proclamation was finally issued yesterday evening.

Who does the proclamation affect?

The proclamation affects both immigrants and nonimmigrants.

Immigrants: The proclamation extends the ban on immigrant visa admissions that we reported on in April through December 31, 2020, effective immediately. The same conditions and exceptions apply, although this proclamation also directs both the State Department and the Department of Homeland Security to exempt aging-out children under the national interest exception discussed below.
Nonimmigrants: Effective at 12:01 a.m. on June 24, 2020, the proclamation suspends admission to the United States for the following classes of nonimmigrants:

- Those on **H-1B** and **H-2B** visas, and their family members
- Those on **J-1** visas as Interns, Trainees, Teachers, Camp Counselors, Au Pairs, and for Summer Work Travel, and their family members. The remaining J-1 categories: College/University Students, Government Visitors, International Visitors, Physicians, Professors, Research Scholars, Secondary School Students, Short-Term Scholars, and Specialists are **not** suspended.
- Those on **L visas**, including **L-1A** and **L-1B**, and their family members

**How will the suspension be applied to nonimmigrants?**

The proclamation applies only to anyone in the above visa categories who:

- Is outside the United States as of the effective date of the proclamation, June 24, 2020;
- Does not already have a valid nonimmigrant visa in their passport as of June 24, 2020; and
- Does not currently hold, or subsequently obtain, a valid US travel document other than a visa, such as an advance parole.

**If I am outside the United States and have a valid H, L or J visa in my passport, can I still travel to the United States?**

Yes. Based on the above criteria, you are not subject to the proclamation if your H, L or J visa is valid on June 24, 2020.

**If I am outside the United States and have a valid visa in my passport, but it is not an H, L or J visa, can I apply for an H, L or J visa and enter the United States?**

Unclear. The proclamation bans people who do not have a “nonimmigrant visa” that is valid on the effective date. It does not specify that you are exempt from the ban only if your valid visa is an H, L or J visa. Therefore, it appears you may not be subject to the ban if you have any valid nonimmigrant visa in your passport as of June 24, 2020. However, without further guidance from the federal agencies that will enforce the proclamation, the answer is not entirely clear.

**If I am inside the United States and have a valid H, L or J visa in my passport, can I travel abroad and return in the same visa status?**

Probably. Based on the above criteria, if you are in the United States on June 24, 2020, and have an H, L or J visa in your passport that is valid on June 24, 2020, you are not subject to the proclamation and should be readmitted to the United States after travel abroad. However, we are anticipating further guidance from the federal agencies that will enforce the proclamation and that will issue boarding instructions to in-bound airlines.
In addition, remember that the CDC is still prohibiting admission for travelers who have been in certain countries for the 14 days prior to arriving in the United States.

**If I am inside the United States in H, L or J status and I travel abroad, can I renew my visa at a US consular post, and return?**

Probably. Based on the above criteria, if you are in the United States on June 24, 2020, you are not subject to the proclamation and should be able to renew your visa abroad and return. However, we are anticipating further guidance from the State Department.

In addition, remember that US consulates worldwide are still closed due to the pandemic and are not processing routine visa applications at this time.

**If I am Canadian and do not require a U.S. visa, am I banned from entering?**

Unclear. Because you are not required to have a visa to enter the United States in H, L or J status and the proclamation makes having a valid visa one of the entry requirements, the ban may not apply to you. However, this remains unclear until federal agencies provide further guidance.

**Are there any exceptions to the nonimmigrant suspension?**

Yes. Spouses and children of US citizens are not subject to the nonimmigrant suspension and may still enter the United States if they hold one of the visas mentioned above.

In addition, anyone whose entry is essential to the U.S. “food supply chain” or is “in the national interest” is exempted from the nonimmigrant suspension.

Finally, similar to the exception for immigrants, the proclamation directs the Departments of State and Homeland Security, using mandatory language (“shall exercise the authority”) to exempt aging-out children under the national interest exception.

**How will the exceptions be determined and implemented?**

The proclamation directs the Departments of State, Labor, and Homeland Security to establish criteria that will define who is eligible for the exceptions, including in the following categories:

- Critical to U.S. defense, law enforcement, diplomacy, or national security;
- Involved in providing medical care to people who are hospitalized with COVID-19;
- Involved in providing medical research at U.S. facilities to help combat COVID-19; or
- Necessary to facilitate immediate and continued economic recovery.

The proclamation further grants “sole discretion” to agencies of the State and
Homeland Security Departments to apply these criteria as they see fit to individual aliens who request exceptions. Those with discretion would include officers at US consulates and officers of US Customs & Border Protection at airports and land ports of entry.

**Can employers still sponsor nonimmigrants for temporary work-authorized status inside the United States?**

Yes. The proclamation has no effect whatsoever on any petitions or applications that are filed domestically with US Citizenship and Immigration Services and processed by that agency. These filings include nonimmigrant petitions filed on Form I-129; immigrant petitions filed on Forms I-130, I-140 and I-360; nonimmigrant change or extension of status applications filed on Form I-539; work and travel authorization applications filed on Forms I-765 and I-131; and adjustment of status applications filed on Form I-485.

**Can nonimmigrants who are already in the US extend or change their status?**

Yes. The proclamation does not affect petitions or applications filed in the United States, even if they are filed to change to H-1B, H-2B, H-4, L-1, L-2, J-1 or J-2 status.

**Does the proclamation contain any other provisions?**

Yes. The proclamation also requires federal agencies to take measures toward the following goals:

- Reducing COVID-19 contagion from people who seek admission to the United States;
- Ensuring that US workers are not disadvantaged by foreign workers who seek green cards in the EB-2 (Advanced Degree Professional) and EB-3 (Professional and Skilled Worker) categories, as well as those who hold H-1B status;
- Preventing anyone from receiving any US immigration benefit of any kind without first providing biographical and biometric data;
- Preventing anyone from obtaining work authorization who has a removal order; who is inadmissible or deportable; or who has a criminal arrest, charge, or conviction in the United States; and
- Ensuring that US workers are not disadvantaged by H-1B workers by revising the allocation of H-1B visa numbers.

**Can the proclamation be extended and/or changed?**

Yes. The proclamation can (theoretically) be extended past December 31, 2020. In addition, its provisions will be reviewed after 30 days, and subsequently every 60 days, and it can be modified at those intervals.