Special Immigration Alert: President Trump Expands Immigration Restrictions, DHS Extends Flexibility for Verifying Forms I-9, and More

Tuesday, June 23, 2020

**Presidential Proclamation Temporarily Suspends New H-1B, H2B, J-1, and L-1 Visa and Travel from Abroad**

On June 22, 2020, President Trump issued a [proclamation](#) (“Proclamation”) suspending and limiting the entry of individuals into the United States in the following employment-based nonimmigrant visa categories:

- **a.** H-1B or H-2B visas, and their H-4 family derivatives;
- **b.** J-1 visas, and their J-2 family derivatives; and
c. L-1 visas, and their L-2 family derivatives.

The Proclamation takes effect on June 24, 2020, and is set to expire on December 31, 2020, but may be extended. In addition, upon recommendation of the Secretary of Homeland Security, the Proclamation may be modified within the next 30 days after June 24, 2020, and every 60 days thereafter, “as may be necessary.”

The Proclamation applies only to those with applicable visa statuses who:

1. are outside the United States on or after June 24, 2020, and

2. do not possess either (i) a valid unexpired H, J, or L nonimmigrant visa on June 24, 2020, or (ii) an official travel document other than a visa that is valid on or after June 24, 2020 (e.g., a transportation letter, boarding foil, or advance parole).

The Proclamation is an extension of Proclamation 10014, issued in April 2020, restricting immigrant visa applications (i.e., green card applications) at U.S. embassies abroad. Of importance, however, the Proclamation is limited to the above-listed visa statuses.

Foreign nationals who are already physically present in the United States in H-1B, H-2B, J-1, or L-1 visa status, or their family derivative beneficiaries holding respective H-4, J-2, and L-2 visa statuses, are not affected by the Proclamation. However, if these foreign nationals have expired visas and need to leave the United States this year, then they will likely not be able to return to the United States until 2021, i.e., after the Proclamation expires.

The Proclamation also does not affect any past, current, or future U.S. Citizenship and Immigration Services (“USCIS”) case processing and adjudications. Therefore, all H-1B change of status, change of employer, and cap cases already filed or to be filed will not be impacted. The same goes for L-1 extensions filed or to be filed.

In addition, and contrary to some concerns that have been raised, the Proclamation does not impact F-1 and H-4 employment authorization provided under an EAD (work authorization card).

The Proclamation also does not apply to the following:

1. spouses and children of U.S. citizens;

2. lawful permanent residents (“LPRs”) of the United States, and their spouse or children;

3. individuals seeking to enter the United States to provide essential labor or services to the U.S. food supply chain; or

4. individuals whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

The Proclamation directs the Secretaries of State, Labor, and Homeland Security to
establish standards to define the categories of individuals covered by the “national interest” exemption, 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 U.S. facilities to help the United States combat COVID-19;
- necessary to facilitate the immediate and continued economic recovery of the United States; or
- children who would age out of eligibility for a visa because of the Proclamation or because of Proclamation 10014.

Foreign nationals should also be reminded that the presidential proclamation issued earlier this year suspending entry of travelers who were physically present in countries that pose a risk of spreading COVID-19 is still in effect as of the date of this alert. Thus, even if an individual has a valid visa in his or her passport, the foreign national may not travel to the United States at this time if within the immediate 14 days prior to requesting entry into the United States, the foreign national has traveled:

1. China (excludes Hong Kong and Macau);
2. Iran;
3. the Schengen area (Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, and Switzerland);
4. the United Kingdom;
5. Ireland; or
6. Brazil.

Homeland Security Further Extends Special Flexibility for Verifying Forms I-9

On March 20, 2020, we published a Special Immigration Alert regarding the Department of Homeland Security (“DHS”) granting employers special flexibility to verify Form I-9 documents without requiring the viewing of the actual original documents, provided the employers followed specific requirements. On May 20, 2020, DHS extended this special flexibility for an additional 30 days, to June 19, 2020, and then again extended this special flexibility for another additional 30 days, up to July 19, 2020.
Absent further extension, all employers will be required to revert to the pre-COVID-19 requirement to complete I-9 verification of new hires as of July 20, 2020. We will advise if this special flexibility receives another extension.

U.S. Supreme Court Upholds DACA for Now

On June 18, 2020, the United States Supreme Court issued a decision in *DHS v. Regents of the University of California* blocking the government from terminating the Deferred Action for Childhood Arrivals Program (i.e., “DACA”). The Court held that the DHS’s action to terminate the DACA program was arbitrary and capricious under the Administrative Procedure Act (“APA”). Of importance, the Court did not rule on the legality of the program, but rather remanded the matter to the DHS for further proceedings in accordance with the APA. Thus, although Court’s decision was good news for DACA recipients and allows them to continue with their authorized stay and legal work authorization for the time being, the potential for termination of the program after further review and proceedings by DHS remains.

USCIS Issues New Policy Memo to Relax Adjudication Requirements for H-1B Petitions Filed by Employers Placing Employees at Third-Party Sites

On June 17, 2020, USCIS issued a new policy memo relaxing the H-1B adjudication requirements regarding how to determine if a true employer-employee relationship exists for H-1B employers that assign H-1B employees to third-party sites. In the past, USCIS has adjudicated these cases under the strict Neufeld Memo, which obligates the employer to meet several requirements, including proving the existence of its ability to hire, pay, fire, supervise, or otherwise control the work of the employee. Due to a federal court settlement, USCIS has since instituted a new policy memo substantially relaxing these requirements.

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