President Biden Issues Proclamation Adding India to COVID-19 Travel Restrictions (US)

On April 30, 2021, the President issued another Proclamation suspending entry into the United States of nonimmigrants and noncitizens who were physically present within the Republic of India during the 14-day period preceding their attempted entry into the United States. These restrictions take effect at 12:01 am EDT on May 4, 2021 and remain in effect until terminated by order of the President.

The scope of this Proclamation is similar to those issued by President Trump covering China, Iran, the United Kingdom, the Republic of Ireland, the European Schengen Area, and Brazil. On January 25, 2021, President Biden signed a Proclamation continuing the suspension of entry of certain travelers from these countries and added South Africa.

The following categories of individuals are exempted from the entry restrictions:

- U.S. citizens, noncitizen nationals and lawful permanent residents;
- Spouse of a U.S. citizen or permanent resident;
- Parent or legal guardian of a U.S. citizen or permanent resident, if the U.S. citizen or permanent resident is unmarried and under the age of 21;

- Sibling of a U.S. citizen or permanent resident, provided that both are unmarried and under the age of 21;

- Child, foster child, or ward of a U.S. citizen or permanent resident, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;

- Noncitizen (foreign national) traveling at the invitation of the U.S. government for a purpose related to containment or mitigation of the virus;

- Nonimmigrant crewmembers holding C-1, D or C-1/D nonimmigrant visas;

- Noncitizen seeking entry or transiting the United States under an A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1 through NATO-4 or NATO-6 visa;

- Noncitizen whose entry would further important United States law enforcement objectives; or

- Noncitizen whose entry would be in the **national interest** as determined by the Secretary of State, Secretary of Homeland Security or their designees.

While the **National Interest Exception (NIE)**, referenced in the last bullet point, has been included in all of the geographic Proclamations issued since February 2020, the qualifying criteria has evolved over time. One could even say, the definition of “national interest” has mutated. Per recent guidance issued by the State Department, national interest includes travelers “who are seeking to provide vital support for critical infrastructure sectors” or seeking to enter the United States “for purposes related to humanitarian travel, public health response, and national security.” In addition, the State Department has determined the following individuals automatically qualify for an NIE:

- Fiancé(e)s.

- Students and certain academics covered by exchange visitor programs; students with academic programs beginning August 1, 2021 or later; students with valid F-1 and M-1 visas intending to begin or continue an academic program from August 1, 2021 or later;

- Journalists.

- Pilots and aircrew traveling to the United States for training or aircraft pickup, delivery, or maintenance.

- Certain J-1 exchange visitors, including:
  - Au pair caring for children of U.S. citizens, lawful permanent residents, or nonimmigrants when the au pair possesses special skills required for a child with particular needs (e.g., medical, special education, or sign language);
Au pair that prevents a U.S. citizen, lawful permanent resident, or other nonimmigrant from becoming a public health charge or ward of the state or of a medical or other public funded institution;

Au pair providing childcare services for a child whose parents are involved with the provision of medical care to individuals who have contracted COVID-19 or COVID-19 related medical research at United States facilities;

Travel for an exchange program conducted pursuant to an MOU, Statement of Intent, or other valid agreement or arrangement between a foreign government and the U.S. government designed to promote U.S. national interests if the agreement or arrangement with the foreign government was in effect prior to June 24, 2020;

Interns and Trainees on U.S. government agency-sponsored programs;

Specialized Teachers in Accredited Educational Institutions with a program number beginning with “G-5” on Form DS-2019;

- Travel in support of critical foreign policy objectives; limited to exchange visitors participating in a small number of exchange programs that fulfill critical and time sensitive foreign policy objectives, per the State Department guidelines; and

- Derivative family members accompanying noncitizen who is excepted from or otherwise not subject to the Proclamation and who is engaging in certain types of long-term employment, studies, or research of four weeks or longer.

NIEs have become increasingly difficult to obtain in recent months, particularly for standard business visitors, but even for many workers on visas related to critical infrastructure sectors, with the Department of State often determining that their activities can be properly conducted remotely or that the connection to critical infrastructure is insufficient.