

June 23, 2020

Further Suspension on Entry of Foreign Nationals Announced

On June 22, 2020, President Trump signed a proclamation (available [here](#)) that suspends entry into the United States by foreign nationals¹ (subject to certain exceptions) seeking entry based on any of the following nonimmigrant visa categories:²

- H-1B visas (specialty occupations in fields requiring highly specialized knowledge) and H-2B visas (temporary worker performing other services or labor of a temporary or seasonal nature), and any foreign national accompanying or following to join such foreign national;
- J visas (professor, scholar, teacher (exchange visitor)), to the extent the foreign national is participating in an intern, trainee, teacher, camp counselor, au pair or summer work travel program, and any foreign national accompanying or following to join such foreign national; and
- L visas (intra-company transferee), and any foreign national accompanying or following to join such foreign national.

The suspension will affect foreign nationals who expected to rely on visas to enter and work in the United States, but had yet to have visas issued to them. The number affected will, as a practical matter, have been reduced in the short term due to the severe cut-back on consular services available at U.S. embassies. Nonetheless, the move has been heavily criticized by business leaders in a range of industries, particularly in the tech sector (which relies heavily on highly skilled employees entering on H-1B visas).

This latest proclamation is effective as of 12:01am EDT on June 24, 2020. It is scheduled to expire on December 31, 2020, but may be extended “as necessary.” Within 30 days of June 24, 2020, and every 60 days thereafter while the restrictions are still in effect, the Secretary of Homeland Security, in consultation with the Secretary of State and the Secretary of Labor, is to recommend any modifications as may be necessary.

¹ The proclamation uses the term “alien,” which is defined in the U.S. Code (8 U.S. Code §1101) as any person not a citizen or national of the United States.

² The proclamation also extends, until December 31, 2020, the 60-day ban announced April 22 on entry into the United States of foreign nationals as immigrants (under permanent resident cards (“green cards”) issued outside the United States), subject to certain limitations (available [here](#)). As a practical matter, the green card process has been hampered by the severe cut-back on consular services available at U.S. embassies.

The suspension and limitation on entry applies to any foreign national who: (i) is outside the United States on June 24; (ii) does not have a nonimmigrant visa that is valid on June 24; and (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil or an advance parole document) that is valid on June 24 or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

The suspension and limitation on entry does not apply to: (i) any lawful permanent resident of the United States; (ii) any foreign national who is the spouse or child of a U.S. citizen; (iii) any foreign national seeking to enter the United States to provide temporary labor or services essential to the U.S. food supply chain; and (iv) any foreign national whose entry would be in the national interest as determined by the Secretary of State or the Secretary of Homeland Security. It would also not apply to persons already in the United States and working under any of the affected visa categories or those outside the United States who hold valid visas.

The Secretary of State, the Secretary of Labor and the Secretary of Homeland Security are directed to promulgate standards that will define categories of foreign nationals whose entry would be in the national interest to include those persons who are: (i) critical to the defense, law enforcement, diplomacy or national security of the United States; (ii) involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; (iii) involved with the provision of medical research at U.S. facilities to help the United States combat COVID-19; or (iv) necessary to facilitate the immediate or continued economic recovery of the United States. Foreign national children who, as result of the suspension and limitation on entry, would lose eligibility for a visa due to their age also could qualify for an exemption from the ban on entry.

The proclamation does not limit the ability of an individual to seek asylum, refugee status, withholding of removal or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The proclamation provides for the following, if necessary:

- the provision of guidance on implementing measures that could reduce the risk that foreign nationals seeking admission or entry into the United States could introduce, transmit or spread the coronavirus within the United States;
- the promulgation of regulations or taking other appropriate actions, as determined by the Secretary of State, to ensure that the presence in the United States of foreign nationals who have been admitted or provided a benefit pursuant to an EB-2 or EB-3 visa or an H-1B nonimmigrant visa does not disadvantage U.S. workers; and

- the taking of appropriate action to ensure that foreign nationals will not be eligible for a visa or admission into the United States unless they have been registered with biographical and biometric information, and that those foreign nationals who have final orders of removal, who are inadmissible or deportable or have been arrested, are prevented from obtaining eligibility to work in the United States.

Other bans

This ban is the latest in a series of actions taken by the President that restrict and suspend the entry into the United States of foreign nationals who were physically present during the 14-day period preceding entry or attempted entry into the United States in the following jurisdictions (subject to limited exceptions), all of which remain in effect indefinitely:

- May 22, Brazil (available [here](#));
- March 14, the United Kingdom and Ireland ([here](#));
- March 11, the Schengen Area³ (available [here](#));
- February 29, Iran (available [here](#)); and
- January 31, China, excluding Macau and Hong Kong (available [here](#)).

We are continuing to monitor the situation.

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³ The Schengen Area countries include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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