

President's Executive Order Extends and Expands Restriction of Visas to Certain Immigrants and Nonimmigrants Seeking to Enter United States

President Donald Trump on June 22, 2020, signed an executive order extending until December 31, 2020,* and expanding on his April 22, 2020, proclamation, temporarily suspending the entry of certain immigrants into the United States. The expanded order restricts certain nonimmigrants from entry to the United States. The new executive order will go into effect at 12:01 a.m. ET on June 24, 2020, and will remain in effect in until at least December 31, 2020.

The expansion temporarily bars individuals who are outside of the United States and who do not have a valid nonimmigrant visa on the effective date of the order or do not have an official travel document on the effective date of the order from entering the United States pursuant to the following visa categories:

- H-1B visas, which allow U.S. companies to temporarily employ nonimmigrant workers in specialty occupations.
- H-2B visas, for temporary non-agricultural workers.
- L visas, available to employees engaged in intracompany transfers.
- J visas, for work and study-based exchange visitor programs to the extent the individuals are participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program.
- Family members accompanying or following to join individuals in the above visa categories.

Intent and Potential Effect

The Trump administration argues that these restrictions are necessary to protect jobs for American workers amid the economic crisis caused by COVID-19. The proclamation will affect Fiscal Year 2021 H-1B cap-subject cases with October 1, 2020, start dates, although other H-1B cases are affected too. There are exemptions for individuals: 1) who are lawful permanent residents of the United States; 2) who provide temporary labor or services that are related to the U.S. food supply; 3) who are the spouse or child of a U.S. citizen; and 4) whose entry would be in the national interest.

In addition to barring entry to those seeking to enter in H-1B, H-2B, H-4, L visas, and J visas, President Trump has directed the secretary of the U.S. Department of Health and Human Services to provide guidance to the secretary of the U.S. Department of Homeland Security in implementing measures that could reduce the risk of transmission of COVID-19 by foreign nationals entering the United States.

The order also allows the possibility for the secretaries for the U.S. Department of Labor and Department of Homeland Security to announce regulations or take other action to make sure that foreign nationals who have been admitted to the United States and are seeking immigration services do not violate certain sections of the immigration regulations pursuant to an employment-based second preference (EB-2) or employment-based third

preference (EB-3) immigrant visa or an H-1B visa. The secretary of labor is also authorized to pursue investigations pursuant to the Immigration and Nationality Act.

Another provision of the order allows for the consideration of other regulations or action to be taken on the allocation of visas.

Practical Implications

- Employees on H-1B, H-2B, L-1, or J-1 visas who are currently in the United States in valid H-1B, H-2B, L-1, or J-1 status should not be affected by this executive order unless they plan to travel internationally.
- Employees on H-1B, H-2B, L-1, or J-1 visas who are currently outside the United States and have a valid H-1B, H-2B, L-1, or J-1 visa stamp in their passport, should not be affected by this executive order. While still unclear, employees who are visa exempt because they are Canadian citizens may not be affected by this executive order.
- All employees on an employment-sponsored visa or who are otherwise receiving work authorization should inform their employer of any upcoming international travel plans, in order to determine whether they may be affected by these immigration restrictions.
- Employees who are currently outside the United States and awaiting the approval of their work authorization or a visa stamp to be issued because U.S. consulates or embassies continue to be closed due to COVID-19, should contact legal counsel to see if any extenuating circumstances or options exist for the process to be expedited.

What's Next

The executive order can be modified as necessary within 30 days of the effective date and then every 60 days thereafter. We will continue to monitor any developments and provide any updates.

The proclamation* was amended on June 29, 2020.

**On December 31, 2020, the Trump administration issued a presidential proclamation extending the ban of entry for certain nonimmigrant and immigrant visas to March 31, 2021.*

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