



## Labor & Employment ADVISORY ■

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### The New Executive Order Suspends Entry of Immigrant Visa Applicants into the U.S. for 60 Days

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On April 22, 2020, the White House announced a new [Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak](#). The proclamation became effective on April 24, 2020.

#### **Who Does the Order Apply To?**

The proclamation suspends the entry of persons seeking to enter the U.S. as “immigrants” (i.e., immigrant visa or green card applicants) who:

- i. are outside the United States on the effective date of this proclamation;
- ii. do not have an immigrant visa that is valid on the effective date of this proclamation; and
- iii. do 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 the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

#### **Who Is Exempted?**

The following foreign nationals are exempted from the proclamation:

- Permanent residents.
- Immigrant health care workers and their families “seeking to enter the United States on an immigrant visa as a physician, nurse, or other healthcare professional to perform medical research or other research intended to combat the spread of COVID-19 or to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.”

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- EB-5 investors.
- Spouses of U.S. citizens.
- Children of U.S. citizens under 21 years old or who is a prospective adoptee pursuant to the IR-4 or IH-4 visa classifications.
- Persons important for law enforcement purposes as determined by the Secretary of State or Homeland Security, based on a recommendation of the Attorney General.
- Armed forces members and their spouses and children.
- Special immigrant visa (SI or SQ) applicants and their families.
- Aliens whose entry is in the “national interest.”
- Those applying for asylum, refugee status, withholding of removal, or protection under the Convention Against Torture.

### **When Will the Proclamation Expire?**

The proclamation expires “60 days from its effective date and may be continued as necessary.” Within 50 days from the effective date, the Secretary of the Department of Homeland Security (DHS) “shall, in consultation with the [Secretaries of State and Labor], recommend whether [the President] should continue or modify the proclamation.”

### **Are Nonimmigrant Visa Holders (Including Those on Employment-Based Visas) Affected?**

Nonimmigrant visa holders have not been included in the proclamation. However, within 30 days of the effective date, the Secretaries of Labor and DHS, in consultation with the Secretary of State, will review nonimmigrant programs and recommend to the President other appropriate measures to stimulate the U.S. economy and ensure “the prioritization, hiring, and employment” of U.S. workers. In other words, at present, employment-based visas, such as H-1B, L-1, TN, E-2, and E-3 visas are not impacted, but in 30 days, there may be additional provisions that may impact employment-based visas.

### **Analysis**

Before this Executive Order, the President has restricted travel to the U.S. (Presidential Proclamation 9645, September 24, 2017) and barred the U.S. Department of State from issuing immigrant visas to certain foreign nationals living abroad (Presidential Proclamation 9983, February 21, 2020). The U.S. Supreme Court ruled that Presidential Proclamation 9645 was a lawful exercise of the President’s authority under the Immigration and Nationality Act (INA).

A legal question today is whether the INA or another law authorizes the President’s stated goal of this April 24, 2020 Executive Order: protecting U.S. jobs. Some argue that high U.S. unemployment is not enough—there must be a reasonable legal basis for restrictions on legal immigration to the U.S., even if just a temporary ban. Others argue the health concerns are legally sufficient to support the secondary goal of protecting jobs.

Others argue that now barring legal immigrants, people who have been waiting in line for years to legally enter the U.S., because of U.S. unemployment numbers is illegal or an unreasonable basis for any restriction.

Most recently, because of the COVID-19 pandemic, the Administration has implemented numerous and different "immigration" policies, and COVID-19 has created a host of new facts. For example:

- February 2020 – Series of 30-day restrictions on travel to the U.S. from certain countries; U.S. embassy closures started.
- March 2020 – 30-day restriction on nonessential travel to the U.S. from most of Europe; ban on undocumented persons from entering the U.S.; CDC issues U.S. border officers COVID-19 assessment guidance.
- April 2020 – Easing of travel restrictions for foreign agricultural workers needed in the U.S. and foreign doctors assisting in solving the pandemic.
- April 2020 – 760,000 confirmed U.S. COVID-19 cases; CDC confirms the virus has continued to spread since the first CDC order in March.
- April 2020 – Each week, the number of U.S. jobless claims increases: from 10 million to 22 million then to 26 million.

As a result, in late April not only are the earlier 30-day nonessential travel bans extended for all nonessential travel (including undocumented immigrants, asylum-seekers, and unaccompanied children), but a tweet announces "suspension of Immigration." Soon thereafter, April 24, 2020, the Executive Order, with the applicable details, is finally issued.

Regardless of which law authorizes the Administration to suspend some legal U.S. immigration solely to protect U.S. jobs, with these unemployment numbers, one should anticipate future proclamations intended to try to improve U.S. employment, including new or extended immigration law restrictions. To date, upon review of the details, all immigration restrictions have been limited to persons outside the U.S., and even then, to a subset. No consequences to any foreign national/immigrant person legally living and working in the U.S. and/or their employers or family members. Based on past practices, these proclamations have not directly impacted these persons. Assuming more proclamations over the next six months at least, rest assured we are addressing both the legal issues and the actual details of each proclamation. In the meantime, our advice is to proceed as planned, but anticipate delays for nonessential persons seeking entry into the U.S.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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