



Trump Proclamation Expands Restrictions On Legal Immigration

Insights

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President Trump just issued a Proclamation to further restrict legal immigration, preventing employers from bringing new H-1B, H-2B, L-1A, L-1B, and J-1 workers from abroad into the United States. Effective June 24, 2020 (12:01am EDT), this Proclamation will bar new temporary visas for foreign workers and their dependents through 2020 and potentially longer. The Proclamation also immediately extends the prior suspension of immigrant visas for those applying from abroad for the remainder of 2020. What do employers need to know about this development?

Contours Of New Immigration Action

The Proclamation is limited to foreign nationals who:

- Are outside of the country on the effective date of proclamation;
- Do not have a nonimmigrant visa that is valid on the effective date of this proclamation; and
- Do not have an official travel document other than a visa that is valid on the effective date or issued on any date thereafter that permits them to travel to the United States and seek entry or admission.

This Proclamation does not, however, impact:

- Any foreign national seeking to enter the U.S. in other visa statuses such as B, E, TN, O, and P;
- Any foreign national inside the United States in H-1, H-2, J-1 or L-1 status and their dependents, including any foreign national in the U.S. with a pending H-1B change of status cap case;
- Any foreign national traveling to the US who currently has a valid H-1, H-2, J or L-1 visa and their dependents;
- Any foreign national traveling to the US with a valid Advance Parole;
- Lawful Permanent Residents (a/k/a green card holders);
- Spouses and children of U.S. Citizens;
- Foreign nationals entering to provide temporary services essential to U.S. food supply chain; and
- Foreign nationals whose entry is in the national interest as determined by Departments of State or Homeland Security, including those individuals involved with providing medical care to hospitalized COVID-19 patients, individuals providing medical research in the U.S. for COVID-19

hospitalized COVID-19 patients, individuals providing medical research in the U.S. for COVID-19, individuals who facilitate the immediate and continued economic recovery of the U.S., individuals in law enforcement, diplomacy, or national security, and foreign national children who are ageing out of qualifying for immigration benefits.

It is important to give context to these specific visa categories. The H-1B visa is a particularly important visa for specialty occupation professionals who work in the technology industry, at educational institutions, in the healthcare industry, and in engineering. The L Visa is for key employees, such as Presidents, CEOs and CFOs, of international organizations which invest in the U.S. and employ thousands of U.S. citizens. Many industries depend on the H-2B visas for seasonal workers in positions where domestic workers are scarce. Lastly, J visa holders are frequently highly educated scientists and researchers who are responsible for much of our innovation.

What Should Employers Do?

Employers should immediately take the following steps to ensure compliance with the Proclamation:

- Identify foreign national employees in the impacted visa categories who are abroad without valid visa stamps;
- Evaluate whether a national interest waiver is possible for the foreign worker;
- Review alternative visa categories for foreign workers who are abroad awaiting the reopening of U.S. Consulates and will now not be able to enter the U.S.;
- Delay planned intra-company transfers until at least 2021 and make alternative arrangements for the workflow;
- Recommend against travel abroad for foreign national employees who are currently in the U.S.; and
- Begin permanent residence processes for foreign nationals currently on temporary work visas in the U.S. in hopes of providing protections against further restrictions.

Conclusion

The Trump administration argues this order is necessary to protect U.S. workers following steep job losses due to COVID-19. However, the administration has targeted these visa categories long before the pandemic. Many of the job losses most impacted by the pandemic are not impacted by these new restrictions and these restrictions could have the opposite effect on job growth.

For example, international organizations with U.S. locations may change their business strategy in the U.S. because they cannot obtain visas for executives and managers. Companies seeking to employ top-level talent in technology may decide to export those jobs to where the talent resides. This loss of talent access and business unpredictability has caused companies to move positions and even operations to other countries in the past.

It is not clear how the Proclamation will be implemented or whether it will be challenged through litigation. For example, it is unclear whether Canadian citizens are exempt from the Proclamation because they are exempt from obtaining visas prior to entry into the U.S. More immigration restrictions to the H-1B program, the PERM Labor Certification process, the H-4 EAD, and the OPT Program for F-1 students are expected but many of those measures will need to go through a rulemaking process, which may take months.

We will continue to monitor further developments and provide updates on this situation, so make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Global Immigration Practice Group](#).

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