



President Extends The Suspension Of Entry Of Certain Foreign Nationals Until March 31

Insights

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The president recently signed yet another Presidential Proclamation that extends the ability of certain foreign nationals from being able to enter into the U.S. until March 31, 2021. This move tacks several months onto the earlier Presidential Proclamations signed into effect in 2020 (both PP 10014 and 10052). What do employers need to know about this new proclamation signed on December 31, 2020, especially in light of the impending change in White House leadership?

The Proclamations: The Basics

Effective on April 23, 2020, [PP 10052](#) suspended entry into the US for any individual seeking to enter the U.S. as an immigrant (i.e. permanent resident or green card holder) who (1) was outside the U.S. after the effective date, (2) did not have a valid immigration visa in their passport, and (3) did not have a valid travel document permitting travel to the U.S. This proclamation effectively closed entry to the U.S. to anyone who was outside the country and seeking to obtain permanent residency through employment or family.

[PP 10014](#) was effective June 24, 2020 and expanded PP 10052 to include bars to new temporary visas for foreign nationals seeking to work in the U.S. in J-1, H-2B, L-1A, L-1B and J-1 status. It also restricted these affected individuals from obtaining visa stamps and their dependents. This proclamation has several exceptions, including those who were in the U.S. and had a visa valid on the effective date.

What Do Employers Need To Know About The Latest Proclamation?

For now, nothing has changed other than these proclamations have been extended through March 31, 2021. While these proclamations have had considerable impact on employers seeking to retain or continue employment of foreign nationals both in and outside the U.S., there are limits, that remain in place, to who is impacted. The restrictions are still limited to foreign nationals who:

- were outside of the country on or after June 24, 2020;
- did not have a nonimmigrant visa valid on or before June 24, 2020; and
- did not have an official travel document other than a visa valid on June 24, 2020 or before or issued on any date thereafter that permits them to travel to the United States and seek entry or

admission.

Moreover, this proclamation still does not impact:

- foreign nationals seeking to enter the U.S. in other nonimmigrant statuses (i.e., B, E, TN, O, and P;
- foreign nationals 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;
- foreign nationals traveling to the U.S. with currently valid H-1, H-2, J or L-1 visas and their dependents;
- foreign nationals traveling to the U.S. 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, with exceptions outlined in earlier alerts.

What Should Employers Do?

This new proclamation is simply an extension of existing restrictions for an additional three months (unless overturned by the new administration). Therefore, employers should continue to heed previous recommendations, including identifying employees who may be impacted and are outside the U.S. and limiting international travel as much as possible.

Additionally, employers should take the following steps to minimize further impact to those employees who thought they would be able to travel in the new year:

- Identify any employees who may have left the U.S. with plans to obtain a visa stamp and return to the U.S. in 2021.
- Evaluate whether a national interest waiver is available to those foreign workers to help aid in their return to the U.S.
- Continue to recommend against travel abroad for foreign national employees who are currently in the U.S., especially for those who made travel arrangements in early 2021.
- Review whether alternative visa options are available for those who are stuck outside the U.S. and plan for delays for intra-company transfers.

How Will the Biden Administration Handle These Proclamations?

The incoming Biden administration has not yet issued a response to the March 31st extension, nor does its announced immigration plan address these visa/travel bans. It is possible that Biden may move to limit these restrictions as there is considerable opposition to them from those who note that pandemic-related job losses are not impacted by the restrictions. Opponents also note that these restrictions have been found to have considerable adverse impact on U.S. employers. If the Biden administration does alter these proclamations, it is unclear whether that will be a day-one initiative or something that comes down the road.

Conclusion

For at least the short term, the restrictions against travel into the U.S. for certain foreign nationals have been extended through March 31, 2021 without change. The same restrictions that were in effect through much of 2020 remain in effect as do the varying exceptions. Because it is unclear what steps the Biden administration will take to limit or terminate these proclamations, if at all, employers should continue to advise against international travel whenever possible and advise extreme caution to those who opt to travel internationally.

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