



April Sees End to Work Visa Ban, Bringing Relief to Employers

Insights

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The Trump-era Presidential Proclamation that temporarily suspended certain nonimmigrant visas expired at the end of March, and federal immigration officials announced that temporary workers could once again begin applying for visas effective immediately. The Department of State announced on April 1 that H-1B, H-2B, L-1, and J-1 visa applicants who were previously refused visas due to the restrictions of Presidential Proclamation 10052 – commonly called as the “work visa ban” – may reapply by submitting a new application including a new fee. This comes as welcome news for many employers who faced significant obstacles in bringing their much-needed workforce since the Proclamation was issued.

What Was the H, L, and J Visa Ban?

The Presidential Proclamation 10052 was first enacted on June 22, 2020 in response to the pandemic. It targeted the most common and popular work visas such as H-1B for professional employees, L-1 for intracompany transferees, and H-2B temporary worker program which is used to meet seasonal labor demands. Initially set to expire on December 31, 2020, the Trump administration extended the Proclamation until March 31, 2021.

Impact of the Work Visa Ban

The Proclamation significantly impacted businesses and universities by drastically reducing their ability to bring workers, scholars, and researchers in H, L, or J visa status. Many employers expressed concerns over the ban’s impact on continued business operations already disrupted and burdened by the pandemic. The U.S. Chamber of Commerce, along with a coalition of business groups, successfully challenged the ban in federal court and obtained a preliminary injunction on October 1, 2020. Although the injunction was limited to the named plaintiffs and members of the plaintiff associations only, U.S. District Judge Jeffrey S. White found that the Proclamation “simply eliminates H-1B, H-2B, L-1, and J-1 visas and nullifies the statutes creating those visa categories” and “rewrites the carefully delineated balance between protecting American workers and the need of American businesses to staff their operations with skilled, specialized, and temporary workers.”

What Employers Need to Know

Employers may now have their foreign workers and exchange visitors schedule a visa appointment for an initial H-1B, H-2B, L-1, or J-1 visa at a U.S. embassy or consulate. Visa services will occur on

a post-by-post basis, depending on the specific conditions of the location. Some consular posts may have a significant backlog of several months for regular visa appointments regardless of the visa classification. An emergency appointment may be granted for urgent business travel needs if the employer can sufficiently demonstrate how its operation will suffer a significant loss of opportunity if the expedited appointment is not approved.

The end of Proclamation 10052 does not affect the 14-day travel bans on foreign nationals who were physically present in Brazil, China, European Schengen area, Iran, Ireland, United Kingdom, and South Africa. The travel ban that suspends the entry of travelers who have been in these regions during the 14-day period preceding their entry into the U.S. does not have a set expiration date. Employees applying for a visa in these regions must qualify under at least one exception of the travel ban, such as certain family members of U.S. citizens, permanent residents, or any noncitizen whose entry would be in the national interest.

Employers should continue to anticipate delays in work visa applications in these regions and must plan accordingly.

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