

# COVID-19 INTERNATIONAL TRAVEL BAN LIFTED FOR VACCINATED VISITORS ON NOVEMBER 8, BUT SIGNIFICANT IMMIGRATION HEADACHES REMAIN FOR EMPLOYERS

Insights  
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We now have the exact date that international travel to the United States will be reopened for vaccinated visitors – November 8 – meaning that businesses will have an easier time bringing over business visitors and employees. But in some cases the immigration nightmare will continue for employers, depending on the citizenship and residence of any given visitor or noncitizen employee. What do employers need to know about the October 15 announcement and what should you do in the coming weeks to prepare?

## **Business Travel Opens Up for the Vaccinated on November 8**

As of November 8, travelers will be able to enter the United States by showing proof of full vaccination prior to boarding their overseas flights, and a negative COVID-19 test taken no more than three days prior to departure. [As we previously reported](#), enhanced contact tracing and masking will also be required, but there will be no quarantine requirement.

This is great news for employers seeking to invite business visitors to the United States from currently banned countries (the U.K. and Ireland, [the 26](#)

## **Service Focus**

Immigration

Schengen Area countries, Brazil, China, India, Iran, and South Africa) and to welcome employees with approved working visas from those countries. From early 2020 until now, noncitizen travelers who were otherwise completely legal to come to the United States frequently found themselves blocked from traveling unless they could obtain a “National Interest Exemption” (NIE) from a U.S. Embassy or Consulate. Obtaining NIEs was a hit-and-miss process, with some consulates and embassies operating at significant delays, and some more stingy with NIE approvals than others. Businesses will now be able to put the NIE nightmare behind them when it comes to vaccinated individuals.

### **Which Vaccines Will Be Accepted?**

A key question that will have to be addressed includes which vaccines the United States government will recognize. It has been reported that the U.S. will accept vaccines that have been approved by the FDA and those that have been approved by the WHO for emergency use. According to CDC spokesperson Caitlin Shockey, “to help them prepare their systems, the CDC informed airlines that the vaccines that are FDA authorized/approved or listed for emergency use by WHO will meet the criteria for travel to the U.S.”

The FDA and WHO have approved the Moderna, Pfizer, and Johnson & Johnson vaccines. The WHO has approved for emergency use the Oxford/Astrazenica AZD1222 vaccine, as well as the Oxford/Astrozenica formulation of the Serum Institute of India’s Covishield. WHO has also approved Sinopharm (Beijing)’s BBIBP-CorV and the Sinovac CoronaVac vaccines. We will continue to monitor the list of acceptable vaccines and will update this Insight when the government makes an official announcement.

### **What Proof of Vaccinations Will Be Used?**

Another question presently unanswered revolves around what forms of vaccination proof the United States will accept. No doubt that immigration officials

will put measures in place to detect and prevent the use of fraudulent vaccination records, but as of yet we do not have detailed information about how the certification process will work. Check back as this Insight will be updated when more information is received.

## **The State Department is Experiencing a Huge Backlog of Visa Applications**

But it's not all good news when it comes to employers working with immigrants and foreign nationals as part of their workforce or as business partners. Significant roadblocks still remain before things can be considered business as usual.

As a general default, in order to come to the United States, foreign nationals must first obtain a visa. For business and pleasure travelers of certain nationalities, the requirement of a visa is waived. This waiver program is known as ESTA (Electronic System for Travel Authorization). Some 40 countries participate in ESTA, which means that citizens of those countries can come to the US for business or pleasure without first obtaining a B-1 or B-2 visa. The only requirement is that they sign up for ESTA online, pay a fee, and get ESTA authorization before they travel.

For citizens of those countries that do not participate in ESTA, they must apply for a B-1 visa (visitor for business), which involves consular processing. Likewise, if a non-US citizen has been offered a job in the United States, obtained approval for a work visa (H-1B, L-1, or other) from USCIS (United States Citizenship and Immigration Service), or are seeking to process their visa application at a US Embassy or Consulate, they must jump through some hoops. In most cases, they must schedule a visit to the Embassy or Consulate, sit for an interview with an officer, and wait for a few days to get their passport back with a visa stamp in it.

Currently, depending on the Embassy or Consulate, getting an interview appointment can range from a few

days, to a few weeks, to **even a few years**. According to [Travel.State.Gov](https://travel.state.gov), appointment wait times in Tokyo for an appointment for all visa types is one day. Rio De Janeiro, on the other hand, shows a wait time of 999 days for visitor visas and other nonimmigrant visas, which means that such visas appointments are being issued on an emergency-only basis. Anecdotal stories of individuals in India with valid H-1B approvals from USCIS being told they will have to wait until sometime in 2022 for an interview are plentiful, while the US Embassy in Sarajevo, for example, is issuing B-1 visa appointments for **2023**.

[The State Department reports that](#), as of September 2021, its backlog for individuals seeking visa appointments is running at approximately 470,000. By way of comparison, in Calendar Year 2019 on average, 60,866 applicants were pending the scheduling of an interview each month.

#### [According to the State Department:](#)

Since March 2020, the COVID-19 pandemic has dramatically affected the Department of State's ability to process immigrant visa applications. U.S. embassies and consulates are working to resume routine visa services on a location-by-location basis as expeditiously as possible in a safe manner. However, the pandemic continues to severely impact the number of visas our embassies and consulates abroad are able to process. The particular constraints vary based on local conditions and restrictions, but include local and national lockdowns; travel restrictions; host country quarantine regulations; and measures taken by our embassies and consulates to contain the spread of COVID-19.

It does not appear that the visa interview backlog is going to ease up soon. Some individuals are able to obtain visa appointments by going to U.S. consulates in other countries, while others seek earlier appointment dates by applying for emergency consideration, but neither of those options is guaranteed to succeed.

Indeed, more and more consulates are shutting their doors to third-country nationals, choosing instead to focus on citizens and residents of the countries in which they are located. And as the backlog worsens, emergency appointments are increasingly difficult to get.

Unless the government takes urgent and immediate action to address the visa appointment backlog, U.S. businesses will find that some key visitors for business and newly hired overseas employees will be virtually stranded in their home countries for many months, or even years.

### **What Should You Do?**

At this point, businesses planning to invite international visitors to the U.S., whether on work visas or for business meetings, should immediately start to encourage noncitizens to start the vaccination process now in anticipation of the new rules going into effect in November. They should be sure to get one of the WHO-approved vaccines listed above, and they should keep their proof of vaccination record secure, as they would their passport and other important documents.

To the extent a business visitor or employee with a USCIS approval needs a visa appointment with a local U.S. Embassy or Consulate to get a visa stamp, encourage them to make an appointment as soon as possible. Even if the appointment is for an unreasonably far date in the future, have them accept that appointment. Work with immigration counsel to seek an emergency appointment from the consulate.

The same arguments that applied to requests for NIEs should be once again deployed. Describe how crucial the foreign national's position and their talents are to your business. Provide information about the detriments, both economically and operationally, that would follow if the foreign national is unable to come to the U.S. to perform their job (as opposed to working remotely). Most importantly, explain the potential harm to the United State's critical infrastructure that would

arise if the foreign national is unable to travel to the country.

We will monitor these developments and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Immigration Practice Group](#).