



## ALERTS

### Presidential Proclamation Suspends Temporary Work Visas And Extends Prior Suspensions

June 23, 2020

#### Highlights

The President issued a new proclamation that suspends the admission of certain employment-based nonimmigrant visa holders to the U.S. and extends a previous suspension through Dec. 31, 2020

The proclamation was issued in the interest of protecting American workers, as a result of the impacts of COVID-19

The proclamation includes certain exceptions and hints at future regulatory actions that could further impact U.S. immigration

On June 22, 2020, after weeks of rumors about anticipated action, President Trump formally issued a [new proclamation](#) that suspends the issuance of certain categories of temporary visas (H-1Bs, H-2Bs, L-1s, certain J-1s, and their dependents) to individuals meeting specific criteria. The suspension goes into effect on Wednesday, June 24, and formally applies to foreign nationals meeting the following criteria:

- They are outside the United States on the effective date of this proclamation;

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- They do not have a nonimmigrant visa that was valid as of the effective date; and
- They 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 was valid on the effective date, or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

The proclamation states that the admission of these individuals to the U.S. would have a detrimental impact on the U.S. labor force and suspends the issuance of such visas, with certain exceptions, through Dec. 31, 2020.

## Extension of Immigrant Visa Proclamation

In addition to the suspension of these temporary nonimmigrant visas, the [new proclamation extends a previous proclamation](#) that suspended the issuance of certain immigrant visas for a period of 60 days. That suspension is now effective through the end of the year.

## Further Actions Regarding Other Visa Entrants and Work Authorization

This new proclamation hints at further actions impacting EB-2 and EB-3 immigrant visa entrants, H-1B visa entrants, as well as to the allocation of H-1B visas in the next lottery.

The proclamation also directs the Secretary of the Department of Homeland Security to take appropriate steps to avoid issuing work authorization to individuals who have been issued final orders of removal, who are inadmissible or deportable, and those who have been arrested for, charged with, or convicted of a criminal offense in the United States.

## Here is an FAQ covering many possible questions about the new Presidential proclamation:

1. What visa categories are covered by the proclamation?

H-1B, L-1, H-2B, H-4, and J-1 nonimmigrant visas are covered.

The proclamation will temporarily suspend the entry into the U.S. of new H-1B specialty occupation, high-skilled workers and L-1 intracompany workers, who are internal transfers of executives, managers and employees with specialized knowledge from multinational companies.

It will also suspend entry of foreign nationals in the following nonimmigrant visa categories:

- H-2B visas for short-term seasonal workers with an exception for jobs in agriculture
- J-1 visas for exchange visitor workers such as interns, trainees, summer work travel program participants, au pairs and camp counselors



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- Dependent spouses and immediate family members of these visa categories (H-1B, L-1, H-2B, and J-1) are also suspended from entry to the U.S.

The order does not apply to reentry of Lawful Permanent Residents of the U.S., spouses and minor children of U.S. citizens. Other exceptions include certain workers in the food supply chain, health care professionals, and individuals whose entry would be in the “national interest.”

## 2. What is the basis for this proclamation?

The proclamation is a continuation and further expansion of the [President's initial proclamation](#), issued in April, reflecting his stated purpose of protecting American workers' jobs in light of the COVID-19 pandemic. That initial proclamation placed a temporary pause on processing of green card cases outside of the U.S. and was set to expire this week, following the designated 60-day period. The new proclamation extends the original ban and expands restrictions to the most common nonimmigrant work visa categories.

Further, the new proclamation cites the economic disruption caused by the pandemic and the high unemployment rate in the U.S. between February and May. “[T]he Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.”

## 3. Does the proclamation affect individuals in the United States with a valid status?

Individuals inside the U.S. and in valid H, L, or J status are not included in this proclamation. It specifically affects those who are outside the U.S. as of June 24, 2020, do not currently have a valid non-immigrant visa, and do not have an official travel document other than a visa.

## 4. Does the proclamation impact individuals seeking a change of status in this year's H-1B lottery?

Those foreign nationals seeking a change of status in the H-1B lottery, and who are currently in the U.S., will not be affected by the proclamation. Those seeking a change of status are advised not to travel outside the U.S.

However, the Secretary of Homeland Security and the Secretary of Labor are directed to promulgate regulations and to take enforcement actions in compliance with the requirements of the Labor Condition Applications (LCA), and the terms of the PERM Application for Labor Certification for an EB-2 or EB-3 permanent residency case. This will likely result in Department of Labor (DOL) audits for compliance of both the LCA and PERM application certified for a particular case. The Department of Homeland Security (DHS) and the U.S. Citizenship and Immigration Services (USCIS) site visits will also likely increase along with request for additional evidence.

## 5. Does the proclamation impact individuals on an H-1B visa seeking a change of employer/ portability?

This process of H-1B portability involves a foreign national in valid H-1B

visa status in the U.S. being sponsored by a new employer filing a new I-129/H-1B petition.

If however, the foreign national is outside a 60-day grace period after a layoff, the proclamation will apply. This foreign national with a prior H-1B visa status in the U.S. would have to depart the U.S. and seek a new H-1B visa stamp at a U.S. Consulate after the approval of the new I-129/H-1B petition for the new employer. Unless the case falls into one of the enumerated exceptions of the proclamation, they are barred from entry until Dec. 31, 2020:

- Critical to defense, law enforcement, diplomacy or national security of the U.S.
- Involved with the provision of medical care to individuals with COVID-19 and currently hospitalized
- Involved with the provision of medical research at U.S. facilities to help the U.S. combat COVID-19
- Necessary to facilitate the immediate and continued economic recovery of the U.S.
- Foreign national children who would “age out” as a result of the suspension

6. Does the proclamation affect individuals seeking to “consular process” an H-1B visa?

The proclamation will affect the issuance of H-1B and H-4 laser visa stamps at a U.S. Consulate abroad where a foreign national would be applying. This is true whether it is for an initial H visa stamp or the renewal, unless the particular case falls into one of the enumerated exceptions.

Note that this proclamation barring the H-1B / H-4 category is in addition to the travel ban related to COVID-19 that remain in place for China, Iran, the Schengen Area, Ireland the United Kingdom and Brazil.

7. Does the proclamation impact H-4s in the U.S. who are applying for an Employment Authorization Document (EAD)?

They do not, however new regulations rescinding the H-4 employment authorization option for spouses in the process of obtaining permanent residency may be promulgated soon by USCIS. In addition, if an H-4 spouse or any foreign national in these visa categories in the U.S. has been arrested, charged or convicted of a crime, they will lose work authorization under this proclamation.

We anticipate this provision will be challenged as a violation of rulemaking requirements under the APA.

8. Does the proclamation impact L-1 visa applicants at U.S. Consulates?

Both individual I-129/L-1 petitions and Blanket L-1 /I-129S Petitions requiring visa issuance at a U.S. Consulate abroad are barred from visa issuance unless one of the exceptions apply.

9. Does the proclamation impact E-2 visa applicants?

The proclamation does not apply directly to the E, O, P or TN visa

categories.

However, we anticipate that U.S. consular officers worldwide and USCIS adjudicators will apply a higher level of documentary evidence to demonstrate eligibility from petitioning employers and the beneficiary employees.

10. Does this proclamation impact individuals seeking permanent residence through adjustment of status or seeking naturalization in the United States?

The proclamation does not impact persons seeking legal permanent residency through adjustment of status with USCIS or naturalization. The President may issue proclamations governing the entry of persons into the U.S.; however, in order to change or limit immigration processes for persons already in the U.S., a more formal process, “notice and comment rulemaking,” is required.

11. Does the proclamation impact individuals outside the United States who already had a valid H-1B, L-1, or J-1 visa in their passport on June 24, 2020, the effective date?

The Proclamation exempts persons with a valid H-1B, L-1, or J-1 visa.

12. Is the President expected to issue any more proclamations impacting U.S. immigration?

Given the frequency of immigration related proclamations issued by President Trump, the possibility of future proclamations significantly impacting U.S. immigration may not be discounted.

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