

Immigration Executive Order in Response to COVID-19: 60-Day Entry Suspension of Employment-Based Immigrants

Alert

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Following a surprise announcement on Twitter, President Donald Trump signed an executive order late Wednesday, April 22, 2020, temporarily suspending the issuance of new green cards (immigrant visas) filed from abroad through the State Department and entry into the U.S. of foreign national immigrants.

The executive order purports to protect the domestic labor market experiencing historic unemployment levels, conserve critical state department resources currently needed to assist U.S. citizens abroad, and relieve additional pressure from an already strained health care system.

The executive order has NO immediate impact upon:

- Foreign nationals currently in the U.S. pursuant to approved nonimmigrant status - e.g., F-1, B1/B2, H-1B/H-4, H-2A/H-2B, L-1/L-2, TN, E, O, P, Q, etc. - who may remain in the U.S. and extend or change status
- Foreign nationals currently of outside the U.S. and who seek nonimmigrant visas or entry into the U.S. as nonimmigrants after April 23, 2020
- Foreign nationals applying for green cards (through the adjustment of status process) within the U.S.
- Foreign nationals seeking asylum, refugee status, withholding of removal or protection under the Convention against Torture

The suspension of entry into the U.S. only applies to foreign nationals seeking to enter the U.S. as immigrants who:

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- Are outside the U.S. on April 23, 2020
- Do not have an immigrant visa that is valid on April 23, 2020
- Do not have an official travel document other than a visa (e.g., advance parole document) that is valid on April 23, 2020 or issued on any date thereafter that permits entry to the U.S.

Moreover, the suspension of entry into the U.S. does NOT apply to:

- Lawful permanent residents
- Individuals and their spouses and children seeking to enter the U.S. on an immigrant visa as a physician, nurse or other health care professional essential to alleviating the effects of the COVID-19 outbreak
- Individuals applying for a visa pursuant to the EB-5 immigrant investor visa program
- Spouses and children of U.S. citizens, including prospective adoptee children under 21
- Individuals who would further important U.S. law enforcement objectives
- Members of the U.S. Armed Forces and their spouses and children
- Individuals and their spouses or children eligible for special immigrant visas as an Afghan or Iraqi translator/interpreter or U.S. government employee
- Individuals whose entry would be in the national interest

Aside from employment-based immigrants, there is also an immediate impact on certain relatives of U.S. citizens and legal permanent residents who will not be able to join their families in the U.S. These categories of immigrants include parents, adult children and siblings of U.S. citizens, as well as spouses and children of legal permanent residents.

Importantly, the executive order requires the secretary of labor and the secretary of homeland security, in consultation with the secretary of state, within 30 days of the effective date, to review nonimmigrant (e.g., H-1B, L-1, etc.) programs and recommend to President Trump "other measures appropriate to stimulate the U.S. economy and ensure the prioritization, hiring and employment of U.S. workers."

The executive order is effective on April 23, 2020 at 11:59 p.m. (ET) and will remain in place for 60 days, unless further extended.

While the overall impact of this executive order is narrow and limited to prospective immigrants outside of the U.S., and diluted further by the halted air travel and limited functioning of U.S. consular posts abroad, it is the extension of this order and the review of nonimmigrant programs that may bring future restrictions and more lasting consequences.

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