

# Presidential Proclamation: Closing the Door to Foreign Nationals and Suspending Immigrant Visa Issuance through 2020

Alert

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On June 22, 2020, President Trump issued a proclamation expanding immigration restrictions, this time on the entry of foreign nationals and their family members pursuant to the employment-based H-1B, H-2B, L-1 and certain J-1 visa categories, as well as [extending Proclamation 10014](#), which suspends entry and immigrant visa issuance outside the U.S. through December 31, 2020. The new restrictions are effective on June 24, 2020.

Citing high unemployment and an economic downturn resulting from the COVID-19 pandemic, the proclamation asserts that certain immigrants and employment-based nonimmigrants compete for jobs with American workers and, therefore, should be temporarily prevented from entering the U.S. It does not take into consideration that some of these visa types are reserved for high skilled labor which is still in demand in the U.S. and is needed to jump start the U.S. economy.

The proclamation suspends entry of any individual seeking entry pursuant to the following nonimmigrant visas:

- H-1B visa and any derivative family members accompanying or following to join
- H-2B visa and any derivative family members accompanying or following to join
- J-1 visa (Physician category excluded), to the extent the individual is participating in an intern, trainee, teacher, camp counselor, au pair or summer work travel program, and any derivative family members accompanying or following to join

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- L-1 visa and any derivative family members accompanying or following to join

Importantly, the nonimmigrant visa suspension part of the proclamation applies *only* to a foreign national who:

- Is outside the U.S. on June 24, 2020
- Does not have a nonimmigrant visa that is valid on June 24, 2020 (the effective date of the proclamation)
- Does not have an official travel document other than a visa (e.g. advance parole document) that is valid on June 24, 2020 or issued on any date thereafter that permits entry to the U.S.

The proclamation has *no* impact upon:

- Foreign nationals currently in the U.S. pursuant to already approved nonimmigrant visa status—e.g., F-1, B1/B2, H-1B/H-4, H-1B1, H-2A/H-2B, J-1, L-1/L-2, TN, E, O, P, Q, etc. - who may remain in the U.S. and extend or change their status
- Foreign nationals currently outside of the U.S. who have valid nonimmigrant visas—and seek to enter the U.S. pursuant to valid visas or other travel document (e.g. advance parole, transportation letter, boarding foil)
- Foreign nationals currently outside of the U.S. who seek new visas not covered by the proclamation - e.g., F-1, B1/B2, H-1B1, H-2A, J-1 (physician), TN, E, O, P, Q, etc.
- Foreign nationals currently outside of the U.S. who are eligible to enter the U.S. pursuant to the Visa Waiver Program

The proclamation provides the following exemptions:

- Lawful permanent residents and spouses/children of U.S. citizens
- Children who would 'age out' of eligibility for a visa due to either proclamation
- Individuals seeking entry to provide temporary labor essential to the U.S. food supply chain
- Individuals and their spouses and children seeking to enter the U.S. as a physician, nurse, health care professional or medical researcher essential to combatting and alleviating the effects of the COVID-19 outbreak
- Individuals who are critical to the national interest of the U.S. as determined by the Secretary of Homeland Security or Secretary of State
- Individuals necessary to facility the immediate and continued economic recovery of the U.S.
- Foreign nationals seeking asylum, refugee status, withholding of removal or protection under the Convention against Torture.

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The Department of State (through consular officers at U.S. embassies and consulates) will ultimately determine whether a nonimmigrant applicant has established his or her eligibility for one of the above exemptions.

There are particular circumstances which are not clearly addressed in the latest proclamation. The proclamation omits any specific reference to Canadians, who are generally visa-exempt, seeking H-1B, H-2B, J-1 or L-1 status and their family members, implying an exemption. Likewise, it appears that a foreign national currently outside the U.S. who has a nonimmigrant visa of any type that is valid on June 24, 2020 or an official travel document is also exempt from the nonimmigrant visa suspension part of the proclamation and may seek H-1B, H-2B, J-1 or L-1 status. Stinson is seeking clarification on these issues and closely monitoring the implementation of the proclamation, and will provide further updates.

The proclamation also provides for the following additional measures:

- The Secretary of Health and Human Services shall provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that foreign nationals seeking entry to the U.S. may spread COVID-19 within the U.S.
- The Secretary of Labor shall consider promulgating regulations or take other appropriate action to ensure that the presence in the U.S. of aliens pursuant to EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage U.S. workers.
- The Secretary of Homeland Security shall take appropriate actions to ensure that: 1) visa applicants and entry applicants go through biometrics; 2) certain nonimmigrants (with final removal orders, inadmissibility/deportability issues, or criminal arrest/record in the U.S.) are prevented from obtaining eligibility to work in the U.S.; and 3) allocation of visas and the presence in the U.S. of H-1B nonimmigrants does not disadvantage U.S. workers.

Except for continuing proclamation 10014 related to suspending immigrant visa (green card) issuance from abroad, the latest proclamation is effective on June 24, 2020 and set to expire on December 31, 2020, but may be continued in consultation with the Secretary of Labor and Secretary of State. This proclamation directs various federal agencies to develop regulations and guidance to further restrict the H-1B visa program and raise the bar for certain categories of employment-based permanent residence.

The latest proclamation is limited somewhat because many U.S. consular posts around the world remain closed due to the COVID-19 pandemic. It is still undoubtedly disruptive for U.S. businesses seeking to add foreign talent to their workforce, including those companies who might already have approval for new H-1B employees seeking to enter the U.S. at the beginning of the government's fiscal year on October 1, 2020. Those individuals may be barred from entry through at least the end of the year and possibly longer. The proclamation exempts those already in the U.S., as well as those who already hold valid visas and happen to

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be abroad.

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