

President Trump Extends and Expands Visa Restrictions

Update

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On June 22, 2020, President Donald Trump issued a proclamation extending and expanding existing restrictions on visas to enter the U.S. The White House also released a factsheet in connection with the proclamation, and that document argues that additional restrictions on foreign workers are necessary to help spur the recovery from the COVID-19 pandemic.

This action will have sweeping consequences, and has already been met with strong opposition from the business community. Administration officials say the restrictions may prevent as many as 525,000 foreign workers from entering the U.S. for the remainder of the year—important workers such as engineers, executives, and IT experts. The U.S. Chamber of Commerce released a statement condemning the proclamation, saying “[r]estrictive changes to our nation’s immigration system will push investment and economic activity abroad, slow growth, and reduce job creation.”

The new proclamation extends the expiration date of Proclamation 10014, the 60-day restriction on immigrant visas issued in April, to December 31, 2020. It expands the scope of Proclamation 10014 to cover nonimmigrant H1-B, H2-B, J and L visas. Certain exceptions are detailed below, such as for lawful permanent residents of the U.S.

The new immigration restrictions do include a limited number of exceptions. For example, the proclamation provides a “national interest” exception. However, the announcement did not identify which aliens fall under this exception, but instead calls for the Secretaries of State, Labor, and Homeland Security to establish categories of aliens who are critical to activities such as defense, law enforcement, COVID-19 medical care, and COVID-19 medical research.

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The extension of Proclamation 10014 is effective immediately, and the suspension on additional nonimmigrant visas will go into effect on June 24, 2020.

Summary

Findings: The Administration finds that (1) the earlier Proclamation 10014 (April 22, 2020), which suspended issuance of new immigrant visas for 60-days, provided insufficient time for the U.S. labor market to stabilize, and (2) the admission of workers in certain nonimmigrant visa categories pose a “risk of displacing and disadvantaging United States workers during the current recovery.”

Actions:

- **Extends the April Proclamation:** Extends the expiration date of Proclamation 10014 to December 31, 2020. This extension goes into effect immediately.
- **Expands Visa Suspension Scope:** Extends suspension of entry into U.S. to include the following visas:
 - H-1B or H-2B visas, and any persons accompanying or following to join such visa holders;
 - J visas, “to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien”; and
 - L visas, and any person accompanying or following to join L visa holder.
- **Applicability:** The expanded suspension on entry only applies to persons:
 - Outside of U.S. as of 12:01 a.m. eastern on June 24, 2020 (“effective date”);
 - Who are without a valid nonimmigrant visa as of effective date; and
 - Who do not have an official travel document other than visa allowing entry into the U.S. that is valid on the effective date.
- **Exceptions:** The Proclamation provides for the following exceptions:
 - **LPR:** Lawful permanent residents of the U.S.;
 - **Certain Family:** Spouse or children of a U.S. citizen;
 - **Food Supply Chain:** “[A]ny alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain”; and

- **National Interest:** “[A]ny alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.”
- Secretaries of State, Labor, and Homeland Security are required to establish categories of aliens covered by the “national interest” exception. Secretaries must include aliens who are:
 - Critical to defense, law enforcement, diplomacy or national security;
 - Involved with providing care to those hospitalized with COVID-19;
 - Involved with medical research to help combat COVID-19; or
 - Necessary to facilitate continued economic recovery of the U.S.
- **Consular Discretion:** Consular officers are empowered to determine “in his or her discretion” whether a nonimmigrant is eligible for an exception.
- **Additional DHS Requirements:** Requires that Secretary of Homeland Security:
 - Take “appropriate action, consistent with applicable law,” to ensure that aliens are not eligible for entry until biographical and biometric information is collected;
 - Take appropriate action to prevent aliens with removal orders, who are deportable, or who have been arrested or charged with crimes from obtaining visas; and
 - Consider taking action to ensure that H1-B visas do not disadvantage U.S. workers.