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# President Trump's Executive Order to Temporarily Restrict Certain Immigrant Visa Classifications; Specifically Excludes EB-5

## SUMMARY

*This updates a previous alert with respect to the shutdown of U.S. borders and immigration-related services [found here](#).*

On April 22, 2020, the White House released President Trump's proclamation temporarily suspending certain immigration to the United States. The proclamation becomes effective on April 23, 2020 at 11:59 p.m. (ET).

The proclamation provides for the temporary suspension of the following individuals seeking to enter the United States as an immigrant who:

1. Is outside the United States on the effective date of the proclamation;
2. Does not have a valid immigrant visa on the effective date; AND
3. Does not have a valid official travel document (such as an advance parole document) that permits travel to the United States on the effective date.

The proclamation specifically excludes:

1. Lawful permanent residents
2. Physicians, nurses, and other healthcare professionals who perform work essential to combating COVID-19
3. Individuals applying for a visa to enter the U.S. pursuant to the EB-5 immigrant investor program
4. Spouses of U.S. citizens
5. Children of U.S. citizens under the age of 21
6. Individuals whose entry would be in the national interest as determined by DHS or DOS
7. Members of the U.S. Armed Forces and their spouses/children

The rationale for the proclamation is apparently to suspend entry of those foreign workers "who present a risk to the U.S. Labor market during the economic recovery following the COVID-19 Outbreak." Essentially, as described above, the proclamation limits those outside the United States from temporarily applying for certain immigrant visa categories to the United States. It provides discretion to the consular officer to determine if the visa applicant falls within any of the

excluded categories. It is questionable what practical impact these new temporary restrictions will have as wait times for these immigrant categories all exceed several years, the immigrant visa section of most consulates are closed for the foreseeable future and the proclamation is only valid for 60 days, although it could be extended.

What is clear, and a relief to the hundreds of thousands of professional, skilled and unskilled foreign workers in the United States, the proclamation has no impact on existing non-immigrant visa holders (HIB, H2B, etc.) nor does it impact foreign students, visitors for business or pleasure and E-2 investors in the United States, all of whom will be allowed to remain in the country pursuant to their visas. The proclamation also does not impact those with approved immigrant visa petitions who are applying for adjustment of status within the United States.

Meanwhile, among immigrant visa categories not impacted by the proclamation, EB-5 visas are specifically excluded. Congress authorized 10,000 visas annually for foreign investors and their families whose investment creates employment in the United States. Existing I-526 and I-829 Petitions are therefore, not impacted.

This proclamation coincides with four other travel bans recently issued in an apparent effort to combat the COVID-19 pandemic's spread in the United States. These include the following:

- 1. China Travel Proclamation.** January 31, 2020 - [Proclamation 9984 of January 31, 2020](#), published at 85 FR 6709, titled *Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel COVID-19*. The proclamation cites INA 212(f) to suspend entry into the United States of all aliens (immigrants, nonimmigrants, and other non U.S. citizens) who were physically present within the People's Republic of China, excluding the Special Autonomous Regions of Hong Kong and Macau, during the 14-day period preceding their entry or attempted entry into the United States. This COVID-19 travel ban became effective as of 5:00 p.m. on Sunday, February 2, 2020.
- 2. Iran Travel Proclamation.** February 29, 2020 - [Proclamation 9992 of February 29, 2020](#), published at 85 FR 12855, titled *Proclamation on the Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting COVID-19*. The proclamation cites INA 212(f) to suspend entry into the United States of all aliens (immigrants, nonimmigrants, and other non U.S. citizens) who were physically present within the Islamic Republic of Iran during the 14-day period preceding their entry or attempted entry into the United States. This COVID-19 travel ban became effective at 5:00 p.m. eastern standard time on March 2, 2020. This proclamation does not apply to persons aboard a flight scheduled to arrive in the United States that departed prior to 5:00 p.m. eastern standard time on March 2, 2020.
- 3. European Schengen Area Proclamation.** March 11, 2020 - [Proclamation 9993 of March 11, 2020](#), titled *Proclamation - Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel COVID-19*. "The entry into the United States, as immigrants or nonimmigrants, of all aliens who were physically present within the Schengen Area during the 14-day period preceding their entry or attempted entry into the United States is hereby suspended and limited subject to section 2 of this proclamation... This proclamation is effective at 11:59 p.m. eastern daylight time on March 13, 2020. This proclamation does not apply to persons aboard a flight scheduled to arrive in the United States that departed prior to 11:59 p.m. eastern daylight time on March 13, 2020." Although in his address President Trump reportedly said the ban would last 30 days, the proclamation language itself states that it "shall remain in effect until terminated by the President."
  - Note: the European Schengen area includes: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

4. **Ireland and United Kingdom Proclamation.** March 14, 2020 - [Proclamation 9996 of March 14, 2020](#), titled *Proclamation on the Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting COVID-19*. "The entry into the United States, as immigrants or nonimmigrants, of all aliens who were physically present within the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland during the 14-day period preceding their entry or attempted entry into the United States is hereby suspended and limited ... This proclamation is effective at 11:59 p.m. eastern daylight time on March 16, 2020. This proclamation does not apply to persons aboard a flight scheduled to arrive in the United States that departed prior to 11:59 p.m. eastern daylight time on March 16, 2020."

Prior to COVID-19, in 2017, the Trump administration enacted similar restrictions on certain foreign nationals entering the United States from specified countries. These restrictions were widely condemned as unconstitutional, discriminatory and overreaching. The 2017 Trump Related Travel Bans suspended immigration from nationals of Yemen, Syria, Iran, Libya and Somalia- as well as placed restrictions on nationals from North Korea and Venezuela.

Additionally, Trump also suspended inbound immigration from nationals of Eritrea, Kyrgyzstan, Myanmar, Nigeria, Sudan and Tanzania which took effect on February 21, 2020. The Trump administration has sought to justify these specific travel bans based on national security concerns, i.e., "for failing to meet US security and information-sharing standards."

Irrespective of whether the travel restrictions stem from legitimate health related concerns, an assertion of protecting U.S. workers and/or vague and questionable national security concerns, cumulatively they are some of the most limiting travel restrictions America has endured in more than a century. The consequences of such restrictions remains to be seen, however, it is clear that for the time being, the valuable contributions of immigrants will be suspended until further notice.

Saul Ewing Arnstein & Lehr attorneys are experienced in counseling on immigration matters and can assist with issues and challenges posed by COVID-19. If you have questions regarding an issue raised in this alert, please contact the authors or the attorney at the Firm with whom you are regularly in contact.

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