



COVID-19-Related Suspension of Nonimmigrant Entry

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On June 22, 2020 President Trump issued a [proclamation](#) ([amended](#) on June 29) suspending the entry of foreign nationals (*aliens*) in certain nonimmigrant (temporary) visa categories that allow foreign nationals to work in the United States. Citing the high unemployment rate resulting from public health measures to reduce the spread of COVID-19, Proclamation 10052 suspends the entry of foreign nationals—and their accompanying family members—on H-1B, H-2B, J, and L visas, with some exceptions. On December 31, 2020, President Trump issued a new [proclamation](#) extending the June proclamation through March 31, 2021.

Proclamation 10052 follows [Proclamation 10014](#) from April 22 (which it extends through December 31, 2020) suspending the entry of permanent immigrants (see [CRS Insight IN11362](#)). In Proclamation 10014, President Trump directed the Secretaries of Labor and Homeland Security to review nonimmigrant programs and recommend measures to prioritize the hiring of U.S. workers. According to the June 22 proclamation, the Secretaries found that admitting temporary workers in the aforementioned categories “poses a risk of displacing and disadvantaging United States workers during the current recovery.”

The President cited two immigration-related legal authorities. Under [Section 212\(f\)](#) (8 U.S.C. §1182(f)) of the Immigration and Nationality Act (INA), the President may suspend immigration when it would be detrimental to the interests of the United States. Under [INA §215\(a\)](#) (8 U.S.C. §1185(a)) the President may prescribe limitations and exceptions on who may enter or depart the United States.

How long will the suspension last?

Proclamation 10052 suspending the entry of foreign nationals in certain nonimmigrant visa categories was in effect from June 24, 2020, through December 31, 2020, and was subsequently [extended](#) until March 31, 2021. Beginning 30 days after the effective date, and every 60 days thereafter, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of State, may recommend changes to it.

Who is included in the suspension?

Section 2 suspends the entry of nonimmigrants in these visa categories:

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- **H-1B** (specialty occupation workers);
- **H-2B** (seasonal nonagricultural workers) unless performing work essential to the food supply chain;
- **J-1** (exchange visitors) in the following program categories: [intern](#), [trainee](#), [teacher](#), [camp counselor](#), [au pair](#), and [summer work travel](#);
- **L-1** (intracompany transferees);
- accompanying spouses or children of the above (most of whom are not authorized to work in the United States).

Who is not included in the suspension?

Section 3 exempts the following individuals:

- aliens in the United States on June 24, 2020;
- aliens with valid nonimmigrant visas or other official travel documents in the visa categories listed above as of June 24, 2020;
- lawful permanent residents (LPRs or “green card” holders);
- spouses and children of U.S. citizens;
- aliens seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain;
- aliens whose entry would be in the national interest as determined by the Secretaries of State and Homeland Security.

What other measures are included in the proclamation?

Section 5 directs Secretaries of the following three departments to take certain actions beyond the suspension of nonimmigrant entry. Specifically, it directs

- **HHS** to provide guidance to DHS and DOS on measures to “reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.”
- **DOL** to (1) take action to ensure that U.S. workers are not disadvantaged by H-1B temporary workers or workers admitted permanently through the 2nd and 3rd employment-based LPR categories; and (2) investigate employers of H-1B workers who may not be in compliance with statute.
- **DHS** to (1) ensure that biographic and biometric information is collected from all aliens applying for immigration benefits or admission to the United States; (2) prevent aliens from obtaining work authorization who are removable or who have been arrested for, charged with, or convicted of a criminal offense in the United States; and (3) “ensure the efficient allocation of [H-1B] visas” including by re-allocating visas from those obtained fraudulently to legitimate applicants and “ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.”

Implementation

The proclamation gives DOS consular officers discretion to determine whether aliens qualify for exceptions to this suspension. The proclamation also directs the Secretaries of State, Labor, and Homeland Security to produce standards for determining which aliens fall under the national interest

exemption, including those “critical to the defense, law enforcement, diplomacy, or national security of the United States,” those involved with COVID-19-related medical care and research, those “necessary to facilitate the immediate and continued economic recovery of the United States,” and alien children who would age out of eligibility for a visa as a result of this proclamation or [Proclamation 10014](#).

What are some implications of this proclamation?

The immediate impact is unclear, given that DOS had already [suspended overseas visa processing](#) as of March 20, 2020. [DOS visa issuance data from 2019](#) may provide some indication of how many prospective nonimmigrants could be affected were visa issuances in 2020 to remain at 2019 levels. From July 2019 to December 2019 (roughly the same months as this proclamation’s effective dates), DOS issued approximately 116,000 H-1B visas, 26,000 H-2B visas, 41,000 L-1 visas, and 133,000 J-1 visas (in all program categories). In addition, DOS issued approximately 135,000 visas for accompanying family members in these categories. Taking into account the fraction of J visa exchange visitors represented by the suspended program categories and the proportion of family members of H-1B, H-2B, and J visitors who would be covered, this proclamation could result in around 360,000 aliens being unable to obtain nonimmigrant visas.

Because this proclamation does not apply to aliens already in the United States or those who have valid nonimmigrant visas, it does not include those applying for a change of status from within the United States. For example, foreign students on F-1 visas pursuing work authorization through the [Optional Practical Training](#) (OPT) program, or F-1 students or J-1 physicians wishing to change to H-1B status are not included. In addition, aliens overseas applying for F-1 student visas or J-1 exchange visitor visas in the following categories are not included: [physician](#), [government visitor](#), [international visitor](#), [professor](#), [research scholar](#), [short-term scholar](#), [specialist](#), and [student](#). [Temporary agricultural workers](#) on H-2A visas are also not included.

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