

CLINE WILLIAMS

WRIGHT JOHNSON & OLDFATHER

PRESIDENTIAL PROCLAMATION SUSPENDS ENTRY OF IMMIGRANTS DURING THE ECONOMIC RECOVERY FOLLOWING COVID-19

Effective April 23, 2020, a presidential proclamation bars entry of any individual who seeks entry to the United States as an immigrant and who:

- is outside the U.S. on the effective date of the proclamation;
- does not have a valid immigrant visa on the effective date; and
- does not have a valid official travel document (such as a transportation letter, boarding foil, or advance parole document) on the effective date, or issued on any date thereafter that permits travel to the U.S. to seek entry or admission.

A brief summary of this proclamation and its impact on employers is set forth below.

A. Who is exempt from the proclamation?

The following groups are exempt from the proclamation:

1. Lawful permanent residents (LPR)
2. Individuals, and their spouses or children, seeking to enter the U.S. on immigrant visas: to perform work as a physician, nurse, or other healthcare professional; to perform medical research or other research intended to combat the spread of COVID-19; or to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak (as determined by the Secretaries of State and Department of Homeland Security (DHS), or their respective designees)
3. Individuals applying for a visa to enter the U.S. pursuant to the EB-5 immigrant investor visa program
4. Spouses of U.S. citizens
5. Children of U.S. citizens under the age of 21 and prospective adoptees seeking to enter on an IR-4 or IH-4 visa
6. Individuals who would further important U.S. law enforcement objectives (as determined by the Secretaries of State and DHS based on the recommendation of the Attorney General (AG), or their respective designees)
7. Members of the U.S. Armed Forces and their spouses and children
8. Individuals and their spouses or children eligible for Special Immigrant Visas as an Afghan or Iraqi translator/interpreter or U.S. Government Employee (SI or SQ classification)
9. Individuals whose entry would be in the national interest (as determined by the Secretaries of State and DHS, or their respective designees).

Nonimmigrant visa holders are not subject to the proclamation. However, the proclamation requires that within 30 days of the effective date, the Secretaries of Labor and DHS, as well as the Secretary of State, shall review nonimmigrant programs and recommend to the President other appropriate measures to stimulate the U.S. economy and ensure “the prioritization, hiring and employment” of U.S. workers.

B. Who determines if an individual is exempt from the proclamation?

It is within the discretion of the consular officer to determine if an individual is within one of the exempted categories outlined above.

C. How does the proclamation affect U.S. employers who currently employ or seek to employ nonimmigrant foreign national workers in the U.S.?

Presently, the proclamation does not apply to any foreign national employee who is physically in the U.S. and employed in valid nonimmigrant visa status (H-2A, H-1B, H-2B, E-3, L-1, O-1, R-1, J-1, F-1 OPT, etc.). Many employers are currently in the process of sponsoring nonimmigrant H-1B employees who were recently selected in the FY 2021 H-1B lottery. At this point, the proclamation does not impact the ability of U.S. employers to continue with filing those registered and selected H-1B petitions on behalf of their foreign national employees.

Section 6 of the proclamation contains language regarding a review or consultation by the U.S. Departments of Labor, Homeland Security and State within 30 days of the effective date. It is possible that, after 30 days, additional measures may be put in place and could impact the employment of nonimmigrant foreign national employees currently in the U.S or seeking entry in nonimmigrant status.

Employees currently holding a valid non-immigrant visa who are outside of the U.S. are not barred from re-entering the U.S. as the proclamation does not apply to nonimmigrant visa holders. Individuals outside the U.S. seeking to process a nonimmigrant employment visa at an available U.S. Embassy/Consulate may proceed with visa consular processing.

D. Does the proclamation apply to foreign national employees that U.S. employers are sponsoring for an employment-based immigrant visa (permanent residency)?

The proclamation does not impact the ability of U.S. employers to sponsor their foreign national employees for permanent residency. Although the labor certification process ultimately leads to an immigrant visa for a foreign national employee, as long as these sponsored employees are physically present in the U.S., they can continue to pursue permanent residency. If, however, they are outside of the U.S. and seek to process an immigrant visa to enter the U.S., they would be subject to the proclamation and denied an immigrant visa and/or entry.

Employment-based immigrants seeking to enter the U.S. can do so if they fall into one of the groups of exempt immigrants: (1) to perform work as a physician, nurse, or other healthcare professional; (2) to perform medical research or other research intended to combat the spread of COVID-19; or (3) to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak (as determined by the Secretaries of State and DHS, or their respective designees).

E. How long will the proclamation be in effect?

Currently, the proclamation will expire 60 days from its effective date of April 23, 2020, but it may be extended if deemed necessary. As the U.S. begins to slowly emerge from the COVID-19 outbreak, additional changes to the existing proclamation and/or new policies are anticipated that will impact employers and their foreign national employees.

We will continue to provide updates on these issues as they evolve. In the meantime, if you have any questions regarding employment issues arising the impact of COVID-19, please reach out to a member of Cline Williams' Labor and Employment Law Section:



[Susan K. Sapp](#)



[Henry L. Wiedrich](#)



[Tara A. Stingley](#)



[Jason R. Yungtum](#)



[Jill G. Jensen](#)



[Jody N. Duvall](#)



[David R. Buntain](#)



[Lily Amare](#)



[Richard A. Spellman](#)



[Daniel W. Oldenburg](#)



[Renee A. Eveland](#)



[Mary R. Marcum](#)



[Keith T. Peters](#)



[Michelle L. Sitorius](#)



[Katie A. Joseph](#)

The information included in this document is for general informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of and reference to this document or any website it may appear on does not create an attorney-client relationship between Cline Williams and the user or browser.