

Summary of June 22 Presidential Proclamation

The long-discussed and expected [presidential proclamation](#) suspending the admission to the United States of temporary (“nonimmigrant”) workers was issued June 22. The proclamation suspends the entry of certain nonimmigrants (NIVs) through December 31, 2020 and also continues to the end of the calendar year the temporary suspension of individuals seeking immigrant visas at consular posts (IVs) that had been in place the last 60 days.

Note that this summary does not touch on Section 4 and 5 of the proclamation, which relate to *future* agency actions. These agency actions include steps the Centers for Disease Control may take regarding the entry of NIVs, actions by various departments concerning implementation and enforcement, actions the Department of Labor may take concerning new recruitment requirements for green card sponsorship of labor certification-based EB2 and EB3 cases, and actions the Department of Homeland Security may take relating to H-1B prioritization and protection of U.S. workers in the H-1B classification.

Nonimmigrant workers are individuals that are often critical linchpins in the workforce of employers across the country. The temporary periods of stay for the impacted nonimmigrant workers are often strategic, specific to projects, and of varying duration (including months long, intermittent work in the U.S., or longer term assignments that can stretch into years). Because of COVID-19, there are actually many nonimmigrants who were previously in the country working in valid nonimmigrant status but outside now solely because of COVID-19. These individuals, despite their connection to the U.S. and the fact they might even be residing here and just temporarily outside the country, will be impacted by the June 22 proclamation because it is the understanding of the Trump administration that it has the broadest authority with regard to any foreign national outside the United States.

- With regard to **nonimmigrant visas (NIV)**, the June 22 proclamation may be summarized as follows:

Timing.

- The proclamation goes into effect in two days, on June 24, 2020 and is valid for a little longer than 180 days, through December 31, 2020.

Which NIV categories.

- Individuals in certain NIVs may be suspended from being admitted to the country during the effective period of the proclamation:
 - L-1A managers and executives
 - L-1B specialized knowledge staff
 - L-2 spouses and children of L-1 managers, executives, or specialized knowledge employees – included because L-2 spouses are authorized to obtain open-market work authorization (L-2 children are also barred)
 - H-1B specialty occupation workers
 - H-2B seasonal workers other than those in food supply
 - H-4 spouses and children – included because H-4 spouses of H-1Bs being sponsored for green cards are authorized to obtain open-market work authorization
 - J-1 exchange visitor participants who are
 - current full-time college students at foreign universities or recent college graduates of foreign universities participating in internships - Intern program

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- college graduates of foreign universities with some prior experience participating in on-the-job training - Trainee program
- primary and secondary (K-12) teachers – Teacher program
- foreign college students on summer break - Summer Work Travel program
- youth workers, students, or teachers working at summer camps – Camp Counselor program
- high school graduates age 18-26 proficient in English coming to live with a family and care for children – Au Pair program
- J-2 spouses and children of J-1s in the impacted categories – because J-2 spouses can obtain open-market work authorization (very few J-2s enter the U.S. with the particular J-1 categories included in the proclamation)

Scope of impact to the identified NIVs.

- Individuals are suspended from being admitted as nonimmigrant workers in the identified NIV classifications if they
 - Are outside the United States as of June 24, 2020,
 - Do not have in their possession as of June 24 a valid and unexpired, nonimmigrant visa in the classification in which they are seeking admission, and
 - Do not have other travel documents such as a transportation letter or advance parole document.
- All three criteria need to be satisfied in order for an individual to be subject to the NIV suspension of entry.
 - This means that the NIV proclamation cannot impact any individual in the United States as of June 24.
 - This also means that the NIV proclamation cannot impact any NIV outside the U.S. on June 24 who is in possession of a valid nonimmigrant visa in the category in which they want to enter the U.S. to work or is in possession of advance parole or a transportation letter that is valid as of June 24.
- The proclamation should have no impact to individuals in lawful NIV status today in the U.S. who later depart the United States and need to obtain a new NIV visa to seek admission to the U.S. again. Such individuals may do so, whether the new visa is to seek admission in the same NIV status they had on June 24 or if the new visa is for the purpose of admission in the same status they had when they depart the country.
- The proclamation does not impact an individual who is the spouse or minor child (under age 21) of a U.S. citizen. Regardless of whether that U.S. citizen's dependent is in the U.S. or not on June 24, the dependent may seek a nonimmigrant visa including in one of the categories suspended under the proclamation.
- The proclamation *does* impact individuals outside the U.S. today, to include those who are working from home in their native country or at a foreign office of a company, if the individual is not in possession of a valid NIV visa in the category in which they would seek admission to the U.S., unless they happen to have a transportation letter or advance parole document.
 - This will have impact on F-1 nonimmigrants on OPT or STEM OPT who are outside the U.S. on June 24 and the beneficiaries of approved or later approved H-1B petitions,

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- whose OPT or STEM OPT is about to expire or who otherwise cannot return the U.S. on an F-1 visa, because they will be unable to secure H-1B visas.
- This will have an impact on H-1B, L-1A, or L-1B professionals who were in the U.S. previously but happened to be out of the U.S. when COVID-19 travel restrictions started to be imposed, are outside the U.S. on June 24, and their underlying visa has expired.
- This will impact all H-1B, L-1A, or L-1B professionals who were scheduled to come to the U.S. this year for the first time, are outside the U.S. on June 24, and have not yet obtained a NIV visa due to COVID-19 consular issuance restrictions.
- Careful analysis will have to be done on the scope of the NIV proclamation with regard to individuals outside the country who will be trapped. For example, will Canadians seeking admission as H-1B, L-1A, or L-1B status be impacted if they are outside the U.S.? They do not have visas or travel papers but do not need them to enter.
- There is some question about the use of the word “and” in Section 3(a). Some readers believe there should be an “or” between Section 3(a)(ii) and (iii). More likely, the government drafters meant it exactly how it is written because it is their belief that the president’s 212f/215a authorities are unchallengeable with regard to foreign nationals outside the country who do not already have the ability to seek admission to the country.

Exemptions.

- The only exemption is for NIV workers “whose entry is in the national interest” or are providing services “essential to the United States food supply chain.”
- Careful analysis will have to be done on the exemptions, to assess the substantive scope, realistic use, and the extent of availability for the various nonimmigrant classifications.

➤ With regard to **immigrant visas (IV)** issued outside the United States, the proclamation of June 22 continues the same provisions announced April 22:

The proclamation continues the suspension of entry for individuals who are consular processing an IV at an American consulate and seeking to obtain permanent resident status by entering the US for the first time with an IV but do not have an IV in their passport yet. This part of the June 22 proclamation is effective immediately and valid through the end of the year, to December 31, 2020.

The IV proclamation does *not* apply to any one who

- is already a green card holder but happens to be outside the United States,
- has a valid IV in their passport right now,
- is seeing an IV based on the EB-5 investment program,
- is applying for Adjustment of Status to Permanent Resident in the United States,
- is seeking an IV at an American consulate for employment as a healthcare worker, researcher related to COVID-19, or a job “essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak,” or
- is a spouse or minor child of a United States citizen (but the proclamation does continue to temporarily suspend entry of parents of United States citizens).