

Immigration Suspension Has Questionable Impact

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On April 22, 2020, President Trump signed a proclamation temporarily suspending the immigration of certain immigrants who present a "risk" to the U.S. labor market during the COVID-19 outbreak. In sum and substance, the edict has little impact on the vast majority of immigrants, their employment- or family-based sponsorship.

Very Small Subset of Immigrants Is Impacted

Commencing at 11:59 p.m. EST on April 23, 2020, and lasting for a period of at least 60 days, consular officers are asked to deny the entry of those immigrants who

- are outside the United States on the effective date of the proclamation;
- do not have a valid immigrant visa on the effective date; **and**
- do 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 United States to seek entry or admission.

As most practitioners can attest, the above is a very small subset of all immigrants. In fact, one is hard pressed to think of any reason why an intending immigrant who neither has an immigrant visa nor is in possession of a travel document is before a U.S. consular officer. To be plain, it is nearly impossible that such an event can occur in the next 60 days, since all U.S. Consulates have cancelled immigrant visa appointments as of March 20, 2020. Finally, it is incomprehensible how the identified class of immigrants, either in terms of number or skill set, pose a risk to the U.S. labor market.

Who Is Exempt

Bewilderment as to the nexus between the targeted immigrant class and the risk to the U.S. labor market increases when one parses the exemptions to the temporary suspension:

- any lawful permanent residents;
- any individuals and their spouses or children seeking to enter the U.S. on an immigrant visa as a physician, nurse, or other healthcare professional to perform work essential to combatting, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak (as determined by the Secretary of State and Secretary of Homeland Security, or their respective designees);

- any individuals applying for a visa to enter the U.S. pursuant to the EB-5 immigrant investor visa program;
- any spouses of U.S. citizens;
- any child of a U.S. citizen under the age of 21 and prospective adoptees seeking to enter on an IR-4 or IH-4 visa;
- any individual whose entry would further important United States law enforcement objectives, as determined by the Secretary of State and Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee;
- any member of the United States Armed Forces and any spouse and children of a member of the United States Armed Forces;
- any individual seeking to enter the United States pursuant to a Special Immigrant Visa in the SI or SQ classification, subject to such conditions as the Secretary of State may impose, and any spouse and children of any such individual; or
- any individual whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

What to Expect

The proclamation does require the Secretaries of Labor and the Department of Homeland Security to evaluate nonimmigrant programs by May 23, 2020, and make specific recommendations to the President to protect U.S. workers and stimulate the economy and to ensure the prioritization, hiring, and employment of U.S. workers. The results of these evaluations ought to be of keen interest to both employers and foreign national workers.

We can confirm that both the U.S. Department of Labor and the U.S. Citizenship and Immigration Services continue to accept and adjudicate applications and petitions, including applications for lawful permanent residence and extensions or changes of nonimmigrant status. Despite its very limited reach, the proclamation appears headed for a challenge in federal court as being beyond the President's authority under Section 212(f) of the Immigration and Nationality Act, since it serves no legitimate national security purpose.

Take good care, be safe, and stay well.

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