

U.S. Entry Restrictions and Immigration Update

Immigration Alert

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U.S. agencies are rapidly adapting immigration policy to respond to shifting developments in the COVID-19 pandemic. Our immigration lawyers provide information on the unprecedented range of revised policies.

U.S. Entry Restrictions

U.S. citizens and lawful permanent residents (green card holders) and their immediate family members are not subject to the COVID-19 Entry Restrictions ("Entry Restrictions"). The same exemption also applies to U.S. military members and their immediate family members and the following nonimmigrant categories:

- A-1, A-2, C-2, C-3 (as a foreign government official or immediate family member of an official), E-1 (as an employee of TECRO or TECO or the employee's immediate family members), G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6 (or seeking to enter as a nonimmigrant in one of those NATO categories), or those whose travel falls within the scope of Section 11 of the United Nations Headquarters Agreement.

The Entry Restrictions apply to those foreign nationals who have visited the following countries within 14 days of arrival into the United States: China (including the Special Administrative Regions of Hong Kong and Macau), Iran, the European Schengen Area (see next section below for specific countries), the United Kingdom, and Ireland.

Note, however, that even those travelers exempt from the Entry Restrictions are now required to enter solely through 13 airports within the United States. There, they will be screened for COVID-19 symptoms and asked about their recent travel history.

Electronic System for Travel Authorization (ESTA) Suspended

Many companies have employees abroad who use ESTA for limited purposes, such as business meetings. The United States has suspended all Visa Waiver/ESTA Approvals for any and all entrants subject to the COVID-19 Entry Restrictions. This includes entrants from each of these countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Those who may have previously registered under the program have had their approvals canceled preemptively in the

ESTA but will be able to reapply upon the resumption of the program.

Visa Waiver Program Departure Extensions

Those who have entered under the Visa Waiver Program (VWP) or ESTA programs and are unable, due to COVID-19 travel restrictions, to depart the United States prior to the expiration of their 90-day allowable period of stay may be eligible for an extension of their stay.

Pursuant to federal regulations, if an emergency prevents a VWP visitor from departing the United States within the period of authorized stay, a period of Satisfactory Departure may be granted not to exceed 30 days—provided that the request is made during the period of admission and the individual is still in status at the time of the request. Said visitor is regarded as having made a timely departure without overstaying the allowed time.

Since a request for Satisfactory Departure is adjudicated by the U.S. Citizenship and Immigration Services (USCIS) at an in-person appointment and all USCIS field offices have closed until at least April 1, such requests, presumably, must be mailed in or granted nunc pro tunc. U.S. Customs and Border Protection (CBP) may adjudicate requests for Satisfactory Departure; however, this authority is available to individuals who were admitted to the United States through John F. Kennedy International Airport, New York, and Newark Liberty International Airport, New Jersey, and other specified ports of entry. They may contact the CBP Deferred Inspections office at JFK (or other specified port) and request Satisfactory Departure for up to 30 days. Attorneys are permitted to request Satisfactory Departure if a client's period of stay will expire in 14 days or less from the day he or she contacts JFK's Deferred Inspections office. If their period of VWP/ESTA admission has expired, the decision to grant Satisfactory Departure will be considered on a case-by-case basis.

Visa Appointments Suspended at All U.S. Consulates Abroad, Impact on Blanket L

The U.S. Department of State has suspended visa services and canceled related nonemergency immigrant and nonimmigrant visa interview appointments throughout the world. Applicants are notified electronically. U.S. citizens requiring American Citizen Services from a U.S. Embassy or Consulate may still contact the appropriate department within the consular post of their host country.

For the duration of the suspension, an employer will be unable to use a Blanket L petition to renew the status of an L-1 employee since that requires an application at a U.S. Consulate abroad. Rather, the employee will have to apply directly at USCIS from within the United States via an individual L-1 petition. Employers should be mindful that an individual petition will typically be subject to heightened scrutiny and will require substantial documentation of the employee's eligibility for L-1 status.

I-9 Verification, Onboarding, and Inspections

Employers onboarding new employees may deputize any person as the employer's representative to review the original documents and complete Section 2 of the I-9 form. As noted below, the requirement for original or "wet" signatures has been suspended. Employers and workplaces that are operating remotely or employees taking physical proximity precautions due to COVID-19 will not be required to review the employee's identity and employment authorization documents in person, and may now inspect the Section 2 documents remotely (e.g., over video link, fax, or email). Once normal operations resume, in-person verification will be required within **three business days**. Given the containment policy due to the ongoing national emergency, on-site inspections, audits, or enforcement actions are likely to be rescheduled.

On March 19, 2020, the Department of Homeland Security announced that it is granting employers who were served with a Notice of Inspection in March, and who have not already

responded, an automatic 60-day extension to respond. This is truly fortuitous event for those employers to complete internal I-9 audits.

The temporary guidance was set to expire June 18. Because of ongoing precautions related to COVID-19, DHS has *extended this policy* for an additional 30 days.

[DHS extended the flexibilities](#) in rules related to Form I-9 compliance during the COVID-19 pandemic by an additional 30 days. The accommodations now expire on November 19, 2020.

USCIS

As of March 18, 2020, USCIS has suspended routine in-person services until at least April 1. USCIS staff will continue to perform duties that do not involve contact with the public. USCIS will provide emergency services for limited situations.

USCIS field offices are mailing notifications to applicants, petitioners, and counsel concerning cancellations of appointments. EOIR and USCIS asylum offices are doing likewise. When USCIS resumes normal operations, USCIS will automatically reschedule Application Support Center appointments due to the office closure.

On March 20, 2020, USCIS announced that, due to the ongoing COVID-19 national emergency, it will accept all benefit forms and documents with reproduced original signatures, including the Form I-129, Petition for Nonimmigrant Worker, for submissions dated March 21, 2020, and beyond.

Specific Information About H-1B, E1/2, E-3, F-1 (OPT, STEM OPT), I, L-1, O-1, and TN

Nonimmigrant workers and their respective employers will be impacted by business shutdowns and remote work requirements. Specifically, the H-1B Labor Condition Application (LCA) attestations require employers to account for any H-1B wage or location changes, as well as any benching. Below are several points of impact across the nonimmigrant classification spectrum:

- H-1B regulations allow H-1B employees to work unlimited days off-site in locations that are within the normal commuting distance from the work location listed in the employer's H-1B petition. Normal commuting distance is generally considered to be a one-hour commute or less.
- H-1B workers who are working in remote locations that are outside of normal commuting distance would be limited to 30 days in the remote location before the employer would need to file an H-1B amendment with a new LCA and pay the wage associated with the remote location. USCIS has been asked to temporarily suspend the requirement that employers amend an H-1B petition when a new LCA is required if the change in workplace is in response to the COVID-19 outbreak.
- Any change in work location means the LCA must be posted physically or electronically for 10 calendar days total before an H-1B or E-3 employee commences work at the new location. The Office of Foreign Labor Certification has acknowledged that many businesses may not be able to meet this requirement prior to relocating an H-1B or E-3 employee, and notice will now be considered timely when placed ***as soon as practical and no later than 30 calendar days after the worker begins work at the new location.***
- Short, paid leaves due to required quarantine for H-1B workers would not raise any immigration implications, as long as the leaves are approved and taken according to company policies in place at the time. If leave became extended and went beyond allowable company policies, such that termination was required, the foreign national worker would be in jeopardy of being considered out of legal immigration status and could become subject to removal from the United States. **Employers are also required to pay an H-1B**

employee the required wage listed in the LCA under the “no-benching” obligation to pay for nonproductive time.

- Nonimmigrant workers on OPT, STEM OPT, L-1, E-1/2, I, O-1, or TN status who are required to work remotely during quarantine should not generally be impacted for short stints of working from home in the United States.
- While foreign national employees are outside the United States, their U.S. immigration status has no bearing on an employer’s decision to suspend, terminate, or allow them to work remotely.

USCIS Has Announced an Immediate and Temporary Suspension on All Form I-129 Nonimmigrant Petitions and Form I-140 Immigrant Petitions

- This includes all FY2021 H-1B cap petitions and may adversely impact the ability of many F-1 students to remain in the United States in work-authorized status through the adjudication of their H-1B cap case.
- Employers must prepare to file nonimmigrant extensions as early as possible to minimize the risk of employees maxing out of lawful status in the United States or, in some states, losing the ability to renew a driver’s license.
- The suspension of premium processing for I-140 immigrant petitions may impact the ability of an H-1B employee to extend status beyond a sixth year.

Changes in Passport Services Operations

Due to public health measures to limit the spread of COVID-19, effective March 20, 2020, service will be limited to customers who have a qualified life-or-death emergency and need a passport for immediate international travel within 72 hours.

Life-or-death emergencies are serious illnesses, injuries, or deaths in the immediate family (e.g., parent, child, spouse, sibling, aunt, uncle) that require travel outside the United States **within 72 hours (three days)**. An applicant must provide:

- A **passport application with supporting documents.**
- Proof of the life-or-death emergency (such as a death certificate, a statement from a mortuary, or a signed letter from a hospital or medical professional). Documents must be translated into or be in English.
- Proof of international travel (e.g., reservation, ticket, and/or itinerary).

Analysis and Response

Multinational entities (MNEs) are reliant on an agile, global, and mobile workforce. The restrictions imposed on human mobility, within the United States and abroad, are impacting MNEs and their foreign national workforce immediately and significantly. Sectors reliant on such workers are also among those in the critical infrastructure and include financial markets, medicine, information technology, and energy and oil.

Government response to the COVID-19 national emergency is extraordinarily fluid and will continue to demand employer and employee vigilance and legislative monitoring. For the near term, MNEs should manage assignments such that nonimmigrant workers remain within the United States unless absolutely required to leave and unable to obtain a Satisfactory Departure or extension of stay. Those nonimmigrant workers currently abroad should be afforded the opportunity to work remotely if practicable under home country immigration laws. Consult with your immigration counsel to determine what options are available for preservation of status, extensions of stay, or other remedies specific to your particular situation.