

PRESIDENT TRUMP'S EXECUTIVE ORDER ON IMMIGRATION DUE TO COVID-19

Hodgson Russ Immigration Alert
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It began with a late-night tweet earlier this week when President Trump declared his intention to ban immigration to the United States as part of the fight against COVID-19. The resulting Executive Order, entitled “*Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*”, becomes effective at 11:59 p.m. ET on April 23, 2020.

The Executive Order does not ban all immigration to the U.S., but instead focuses on immigrant visa applicants who are seeking admission as lawful permanent residents to obtain the document commonly known as a “green card”. The reasoning behind the Executive Order appears to be three-fold: (1) to help preserve jobs during the COVID-19 recovery period for the more than 22 million American workers who have lost employment since March 1, 2020; (2) to conserve Department of State resources by allowing consular officers to focus on assisting U.S. citizens abroad rather than on processing immigrant visa applications; and (3) to allow fewer people access to an already strained U.S. healthcare system.

As of right now, the ban applies only to individuals who: (1) are outside the U.S. on April 23, 2020; (2) do not have an immigrant visa that is valid on April 23, 2020; and (3) do not have an official travel document such as a transportation letter, an appropriate boarding foil, or an advance parole document that is valid on April 23, 2020, or issued on any date thereafter that permits him or her to travel to the U.S. and seek entry or admission. This order primarily impacts individuals who are seeking immigrant visas through qualifying family members, which represents the largest number of green cards issued by the U.S. government each fiscal year.

The ban does not apply to individuals who already hold lawful permanent resident status or to applicants who are processing for lawful permanent residency through work or family from inside the U.S. (referred to as “adjustment of status”). Notably, the Executive Order also exempts immigrant visa applicants who are spouses and children (under age 21) of U.S. citizens, as well as physicians, nurses, medical researchers and other healthcare professionals who are seeking admission to the U.S. with immigrant visas. Additionally, the ban does not prevent people from seeking asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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The Executive Order is set to last for a period of 60 days, but states that, at least 10 days prior to its termination date, the Secretary of Homeland Security, Secretary of State and Secretary of Labor will confer to recommend whether to continue or modify the ban.

Additionally, while the Executive Order focuses only on certain immigrant visa applicants, the document states that, “[w]ithin 30 days of the effective date of this proclamation, the Secretary of Labor and the Secretary of Homeland Security, in consultation with the Secretary of State, shall review nonimmigrant programs and shall recommend to me other measures appropriate to stimulate the United States economy and ensure the prioritization, hiring, and employment of United States workers.” Therefore, whether restrictions and changes occur to various nonimmigrant visa programs for skilled/professional workers (e.g. H-1B, L-1, E-1/E-2, O-1, etc.) remains to be seen.

Contact Jill Apa (716.848.1745), Margot Watt (716.848.1353) or any of our Immigration Practice attorneys, to discuss what your options are going forward if you have employees that may be impacted by this ban.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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