

U.S. Immigration Overview and The Impact of COVID-19 on U.S. Immigration

Presentation to Pinsent Masons Immigration Team



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Pinsent Masons

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Introduction

- ▶ Why is U.S. immigration relevant?
- ▶ The current immigration climate
- ▶ Government agencies involved: USCIS, USCBP, USICE, USDOS, and USDOL

Introduction



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Topics Covered

- ▶ Key Terms
- ▶ Temporary Visas and Green Card Options
- ▶ Citizenship - the prize
- ▶ COVID-19
 - Executive Order issued April 22, 2020
 - USCIS and U.S. Embassy Closings
 - Travel Bans and Border Closings
 - Visa Waiver Program and Satisfactory Departure
 - Impact of Furloughs and Terminations
- ▶ Impact of U.S. immigration law on other practice areas
- ▶ Continuous Change
- ▶ Recommendations

Key Terms

- ▶ What is a visa?
- ▶ What is status?
- ▶ Who is a U.S. citizen and how is citizenship acquired?
- ▶ Who is a “child”?
- ▶ Federal agencies
 - USCIS – Adjudicates immigration benefits
 - USCBP – Makes decisions to permit entry to the U.S.
 - USICE - Enforcement
 - U.S. Department of State – Embassies and Consulates

Temporary/Non-Immigrant Visas

- ▶ Many types – A to U
- ▶ Non working/visitor and employment
- ▶ Visa Waiver Program for B-1 (visitor for business) and B-2 (visitor for pleasure)
- ▶ Temporary work visas, including...
 - L-1 Intracompany Transferee
 - H-1B Specialized Knowledge Professional
 - E-1 Treaty Trader and E-2 Treaty Investor
 - O-1 Extraordinary Ability

Lawful Permanent Residence, aka “Green Cards”



Lawful Permanent Residence, aka “Green Cards”

- ▶ Generally two ways to obtain: (i) family; or (ii) employment
- ▶ Preference system
- ▶ Process, timing, and delays
- ▶ A Green Card is not forever
- ▶ Tax issues - “Exit” tax

Citizenship and Naturalization

- ▶ At birth, derivation, naturalization and Act of Congress
- ▶ Timing – depends on jurisdiction
- ▶ Long term benefits including travel/ where you live and estate / inheritance taxes

April 22, 2020 Executive Order

- ▶ Temporarily suspends the entry of certain employment-based, family-based and other *immigrants* for 60 days, if they are outside the U.S., and have not been issued an immigrant visa or similar official travel documents.
- ▶ Certain groups including Green Card holders and spouses of U.S. citizens are exempt from the EO.
- ▶ EO does not have an immediate impact on the H-1B, L-1 and other nonimmigrant worker programs. However, within 30 days of the EO effective date, authorities are ordered to review nonimmigrant programs and recommend measures to stimulate the U.S. economy and ensure the prioritization, hiring and employment of U.S. workers. The results of that report *could lead to future restrictions on nonimmigrant employment categories.*
- ▶ ***Future restrictions cannot be ruled out.***


USCIS and Embassy Closings

- ▶ USCIS offices are closed through June 6, 2020 for interviews and biometric appointments.
- ▶ USCIS is accepting and adjudicating cases.
- ▶ Embassies are closed and visa interviews have been cancelled with limited exceptions.
- ▶ See <https://travel.state.gov/content/travel/en/traveladvisories/COVID-19-Country-Specific-Information.html>
- ▶ Planning Tips
 - Monitor I-94 (see <https://i94.cbp.dhs.gov/I94/#/home>) and visa expiration dates; and
 - Assuming appropriate and qualified, consider filing timely visa extensions asap to avoid delays.


Travel Bans

CORONAVIRUS TRAVEL RESTRICTIONS:

To safeguard the homeland against the further spread of the coronavirus, President Trump has suspended the entry of foreign nationals who have been in China, Iran, and certain European countries at any point in the 14 days before their scheduled arrival to the U.S.



<p>AFFECTED:</p>	<p>FOREIGN NATIONALS</p> <p>The ban applies to foreign nationals of any country with qualifying travel within the impacted countries listed.</p>	<p>COUNTRIES IMPACTED</p> <p>Asia/Middle East: China and Iran. Europe: 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 U.K.</p>	
<p>NOT AFFECTED:</p>	<p>AMERICAN CITIZENS</p> <p>U.S. citizens, legal permanent residents, and their immediate family members can travel to the U.S. but are subject to a 14-day self-quarantine.</p>	<p>TRAVELERS FROM THE U.S.</p> <p>Passengers, regardless of nationality, traveling to Europe or Asia are not impacted.</p>	<p>CARGO SHIPMENTS</p> <p>Air and maritime cargo are not impacted.</p>



Homeland Security

CORONAVIRUS UPDATE

Travel Bans

- ▶ President Trump has issued multiple proclamations in recent weeks suspending the entry into the U.S., as immigrants or nonimmigrants, of individuals who were physically present within the U.K., Ireland, Schengen Area, the Islamic Republic of Iran, and the PRC during the 14-day period preceding their entry or attempted entry into the U.S, subject to certain exceptions.
- ▶ The exceptions include a spouse of USC and LPR.
- ▶ Anecdote- With BA flights departing out of Heathrow, I understand a U.S. citizen with British spouse were permitted to travel. It was reported their marriage certificate and passports were checked 3 times by BA staff at Heathrow prior to boarding a flight to Chicago.

Border Crossing Issues

- ▶ There are travel restrictions in place on the U.S. Canada and U.S. Mexico border through May 20, 2020.
- ▶ Travel on the Canadian and Mexican border is closed to “Non-Essential” traffic. Non-essential travel is currently defined as “travel that is considered tourism or recreational in nature.”
- ▶ Travel to the U.S. for business and work is considered “essential.”

Visa Waiver Program and Satisfactory Departure

- ▶ VWP permits entry for up to 90 days for persons who hold passports from VWP countries including the U.K.
- ▶ VWP applicants may be admitted to the U.S. for up to 90 days. Need to check I-94 expiration date.
- ▶ VWP travelers already in the U.S. who are unable to depart the U.S before their authorized period of admission ends may contact USCBP Ports of Entry to request satisfactory departure to remain an additional 30 days.
- ▶ Why is this important?
- ▶ On April 17, 2020, CBP announced that VWP entrants who have been granted satisfactory departure may apply for an additional 30-day extension of their admission period if they remain unable to depart the U.S. because of the COVID-19 pandemic. Travelers may seek satisfactory departure by contacting any local USCBP Port of Entry or Deferred Inspection site or the USCIS contact center.

Nonimmigrant Visa and Status Issues

- ▶ Extensions- Apply early
- ▶ Working from home
- ▶ Impact of furloughs and terminations nonimmigrant visa holders
- ▶ Consider change of status to B-2 visitor to remain lawfully in the U.S.

Impact of U.S. Immigration Law

- ▶ Tax issues including decision to apply for a green card and citizenship
- ▶ Interplay between M&A and U.S. immigration – e.g. non U.K. acquisition effect on existing temporary workers
- ▶ “Exit” tax and estate planning

Recommendations

- ▶ Stay tuned - U.S. immigration laws are dynamic and ever changing especially with COVID-19, Executive Orders and the upcoming elections.
- ▶ Be proactive and prepared.
- ▶ Obtain fact specific advice based upon a review of current facts and documents, existing laws, regulations, policies and executive orders.
- ▶ Proceed and file petitions ASAP assuming otherwise qualified for the immigration benefit(s). The USCIS is open and adjudicating cases.
- ▶ Consult with your attorney and request he/she advise you concerning ongoing developments.
- ▶ If eligible and qualified, consider applying for naturalization as a U.S. citizen.

Questions?

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