

# U.S. Immigration Law Update & Impact of the Presidential Proclamations

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# Introduction

- The current immigration climate
- Uncertainty - Presidential Proclamations, Covid-19, energy demand, and global energy markets
- Government agencies involved: USCIS, USCBP, USICE, USDOS and USDOL

# Introduction (cont.)



# Introduction (cont.)





# Topics Covered

- Key Terms
- Current Climate
- Presidential Proclamations
- U.S. Mexico & U.S. Canada Cross Border Travel / Entry issues
- What temporary/ nonimmigrant visa options are currently available?
- Impact of furloughs
- USCIS Reopening, Premium Processing and U.S. Embassy London Update
- Recommendations/ Practical Considerations



# Key Terms

- **Visa** - A permit to enter the U.S.
- **Status** - This term determines what a person can do in the U.S., i.e. vacation, attend business meetings, or work.
- **Lawful Permanent Residence (LPR)** aka “Green Cards”
- **I-94** - This is an electronically issued document by U.S. Customs and Border Protection when a person enters the U.S.
- **Passport** - Each person from a foreign country must have one to enter the U.S.
- **Overstay** - A person who overstays his/her period of authorized admission to the U.S.
- **Out of Status** - This relates to when a person is no longer authorized to remain lawfully in the U.S.



# Current Climate

- The immigrant process does work successfully – Immigration is mentioned specifically in the U.S. Constitution.
- Delays – Under the current administration, there has been an increase in the number of challenges and denials of NIV and LPR cases.
- The issuance of Presidential Proclamations and their implementation have affected travel and adjudications. This is a dynamic process.
- COVID-19 has created additional delays and uncertainty.



## Presidential Proclamations

- PP 9993, suspending visa issuance and travel from Schengen countries, Iran and China (March 11, 2020)
- PP 9996, suspending visa issuance and travel from the UK and ROI (March 14, 2020)
- PP 10014, as subsequently continued, suspending Immigrant Visas until December 31, 2020 (with several exceptions, including for spouses and minor children of U.S. citizens (USC) and EB5 approved petitions (April 22, 2020)
- PP 10052, suspending Non-Immigrant Visas to H-1B, H-2B, L-1 and most J-1 applicants as well as to their dependents (June 22, 2020)
- Suspension of F1 visas to university students whose classes would be entirely online (repealed on Tuesday, July 14, 2020)



# PP 9996 Suspending visa issuance and travel from the UK and ROI (March 14, 2020)

## 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.


**AFFECTED:**

**FOREIGN NATIONALS**

The ban applies to foreign nationals of any country with qualifying travel within the impacted countries listed.

**COUNTRIES IMPACTED**

**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.



**NOT AFFECTED:**

**AMERICAN CITIZENS**


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.

**TRAVELERS FROM THE U.S.**

Passengers, regardless of nationality, traveling to Europe or Asia are not impacted.

**CARGO SHIPMENTS**

Air and maritime cargo are not impacted.



Homeland Security

## CORONAVIRUS UPDATE

# PP 9996 Suspending visa issuance and travel from the UK and ROI - March 14, 2020 (cont.)

- Key Point- Check the U.S. Embassy London website – see <https://uk.usembassy.gov/information-for-nonimmigrant-visa-applicants-following-the-coronavirus-covid-19-outbreak/>
- On July 10, 2020 The U.S. Embassy in Slovakia website has issued an expansion of the National Interest Exception (NIE) Travel to Students, Business Travelers, Investors and Academics. See [https://sk.usembassy.gov/28131/?fbclid=IwAR206\\_Kr6Zp5D3Sz1MG0UR-uXjrmO0MkGTUHZeEWGCZr7qOcmYDLA7Nag](https://sk.usembassy.gov/28131/?fbclid=IwAR206_Kr6Zp5D3Sz1MG0UR-uXjrmO0MkGTUHZeEWGCZr7qOcmYDLA7Nag) .
- The notice states in part as follows: Effective July 15, 2020, the following travelers may apply to be considered for the NIE:
- **Economic:** Temporary travel that provides a substantial economic benefit to the U.S. economy. *Examples may include:*
- **Technical experts and specialists** to install, service, maintain, or receive training for vessels, machinery and other specialized equipment used by U.S. and foreign firms with a substantial investment in the United States. Travel is temporary in nature and of a defined period.
- **Senior-level managers and executives**, and their dependents, who provide strategic direction necessary for the success of the company or venture.
- **Professional athletes, dependents, and essential staff** who enter the United States to participate in major sporting events, which bolster the U.S. economy.



## PP 9996 Suspending visa issuance and travel from the UK and ROI - March 14, 2020 (cont.)

- **Professional athletes, dependents, and essential staff** who enter the United States to participate in major sporting events, which bolster the U.S. economy.
- **Investors:** Travel in connection with investment or trade in the U.S. economy that generates a substantial economic impact, including **investors** and **treaty-traders** and the senior-level employees who provide strategic direction or expertise essential to the success of the investment, and their dependents.
- **Students:** All students, and their dependents, traveling to the United States to: Pursue a full course of study; or Participate in an exchange program as a bona fide student.
- **Academics:** All exchange visitors and their dependents traveling to the United States under INA 101(a)(15)(J) in certain categories
- **Travelers Without A Visa**

# PP 9996 Suspending visa issuance and travel from the UK and ROI - March 14, 2020 (cont.)

- **Limitations of NIE Travel**

- Although travelers approved for a national interest exception for economic and investor related travel, will be issued full validity visas, the exception is valid only for 30 days from the date of approval and is valid for a single entry to the U.S. An individual who departs the U.S. and wishes to return must be re-assessed for a national interest exception.
- Students, investors, and academic researchers do not need to be re-approved for each entry to the United States. F and J visa travelers should also be reminded that they must still meet all Student and Exchange Visitor Program requirements.
- All individuals are reminded that their admission remains subject to a determination by USCBP officers at ports of entry and they may be subject to a 14-day quarantine upon arrival. DHS requires travelers using a NIE waiver to fly into one of 15 specifically designated airports.




## PP 10014 Immigrant Visa Suspension (April 22, 2020)

- Temporarily suspended 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.*
- This applies to immigrant visas for (i) parents, adult sons and daughters, and siblings of U.S. citizens; (ii) spouses and children of green card holders; (iii) diversity visa lottery; and (iv) employment based categories.
- **Initial Effective Period** – 60 days starting 11:59 eastern daylight time on April 23, 2020. (ending June 22, 2020 initially – Now Dec. 31, 2020)
- Does not affect adjustment of status process of USCIS.
- Does not affect labor certification process of Department of Labor.



# PP 10052 Suspending Non-Immigrant Visas (June 22, 2020)

- PP 10052 suspends the admission of certain employment-based temporary/ nonimmigrant visa holders to the U.S. and extends PP 10014 (April 22, 2020) through December 31, 2020.
- PP10052 was issued in the interest of protecting U.S. workers as a result of the impacts of COVID-19.
- This Proclamation includes certain exceptions and hints at future regulatory actions that could further impact U.S. immigration.



## PP 10052 Suspending Non-Immigrant Visas - June 22, 2020 (cont.)


- **Which visa categories *are affected* by the Proclamation?**  
H-1B, L-1A, L-1B and certain J-1 nonimmigrants and their dependents in these categories who (i) are outside the U.S. on June 24, 2020; (ii) does not already have a nonimmigrant visa in their passport on June 24, 2020; and (iii) does not currently hold, *or subsequently obtain* a valid visa, advance parole or other U.S. travel document.
- **Expires on December 31, 2020** unless it is invalidated by the federal courts.
- **The Proclamation does not directly apply to foreign nationals in the U.S.** On its face, the Proclamation *does not affect* individuals currently present in the U.S. in valid status, and who are in the process of extending their stay, changing status, or adjusting status. However, while the Proclamation does not affect foreign nationals inside the U.S. or those who hold valid visas, future regulations could make it more difficult to change or extend status.

# PP 10052 Suspending Non-Immigrant Visas - June 22, 2020 (cont.)

**Who is excluded / exempt from the entry ban?** The Proclamation does not apply to the following:

- Foreign nationals present in the U.S. at 12:01am EDT on June 24, 2020;
- Foreign nationals holding a valid visa, advance parole or other U.S. travel document on June 24, even if they are outside the U.S. when the Proclamation takes effect;
- LPRs, aka green card holders;
- Spouse or child of a U.S. citizen;
- Any individual seeking entry to provide temporary labor essential to the U.S. food supply chain; and
- 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.






# PP 10052 Suspending Non-Immigrant Visas - June 22, 2020 (cont.)

## **What is national interest?**

For the purposes of determining who is covered under the “national interest” exemption, the Proclamation directs the Secretaries of State, Labor, and Homeland Security to determine standards for those to whom such an exemption would be available, including any individuals who:

- (i) are critical to the defense, law enforcement, diplomacy, or national security of the U.S.;
- (ii) are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized;
- (iii) are involved with the provision of medical research at U.S. facilities to help the U.S. combat COVID-19;
- (iv) are necessary to facilitate the immediate and continued economic recovery of the U.S.; *or*
- (v) are children who would age out of eligibility for a visa because of this proclamation or Proclamation 10014.



## PP 10052 Suspending Non-Immigrant Visas - June 22, 2020 (cont.)

- A nonimmigrant presently in the U.S. in H-1B, L-1A or J-1 status and in possession of a valid H-1, L-1 or J-1 visa in their passport *may* be able to travel outside the U.S. and return with a valid visa stamp.
- Note, the American Immigration Lawyers Association has received confirmation from an individual who spoke with a senior USCIS official advising those with valid visas issued prior to the effective date of the Proclamation (June 24, 2020, at 12:01 am (ET) will be allowed entry after the suspension goes into effect regardless of whether they have come in before or not on that visa.
- **The process for individuals with nonimmigrant visas to travel outside the U.S. and return is fluid and evolving. We advise clients to consult with their immigration counsel to obtain fact specific advise before making international travel plans.**



## Furloughs and Layoffs

- H-1B/E-3 Workers: Change in salary or worksite can impact the ability to maintain legal status
  - Wage continuity for H-1B workers is required. No benching during furloughs/lay-offs.
  - The H-1B employer must pay the offered wage.
  - Termination/rehire if wage continuity not possible . 60 day grace period.
- Other Foreign Workers including E-1/2, L-1, and O-1
  - There is limited flexibility in changes to worksite and salary
  - Termination and re-hire for other foreign workers is problematic.
  - 60 day grace period to seek new employment, if terminated.



## U.S. - Mexico Cross-Border Travel Issues

- There are travel restrictions in place on the U.S. - Mexico *border* at present through July 21, 2020.
- Travel on the 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.”
- Note the prior comments related to the PP 10052 Suspending Non-Immigrant Visas - June 22, 2020.



## Comments on Temporary Visa Options - E-1, E-2 and O-1 Visas and More

- These temporary visa options are not covered under PP 10052 - June 22, 2020
- Since June 22, 2020, Employers can submit an O-1 petition using premium processing.
- There is a procedure to request expedite appointments at the U.S. Embassy in London.
- **New Petitions and Extensions will be impacted by USCIS Furloughs** - On May 15, 2020, USCIS notified Congress of a projected budget shortfall and requested emergency funding of \$1.2 billion. USCIS notified a significant portion of its workforce that, absent action by Congress, it would need to furlough employees for up to 90 days. The furloughs, which are expected to start August 3, 2020 *will have an adverse impact not only on applications and petitions pending with USCIS.*



# USCIS Limited Reopening and Consulate / Embassy Phased Reopening

- USCIS offices have reopened *for limited services*.
- *USCIS is accepting and adjudicating cases.*
- The Department of State has announced that from July 15, 2020 consulates will begin phased reopening on a post-by-post basis.
- The U.S. Embassy in London is closed and most visa interviews have been rescheduled until August 2020. It remains unclear when the U.S. Embassy in London will resume routine visa interviews and when travel restrictions will be lifted.
- See <https://travel.state.gov/content/travel/en/traveladvisories/COVID-19-Country-Specific-Information.html> and <https://uk.usembassy.gov/information-for-nonimmigrant-visa-applicants-following-the-coronavirus-covid-19-outbreak/>
- Planning Tips
  - Monitor I-94 (see <https://i94.cbp.dhs.gov/I94/#/home> ), passport expiration dates and visa expiration dates; and
  - Assuming appropriate and qualified, consider filing timely visa extensions in the U.S. asap to avoid delays and the possible need to depart the U.S.



## Recommendations/ Practical Considerations for U.S. immigration and cross-border investments

- Stay tuned - U.S. immigration laws are dynamic and ever changing especially with COVID-19, Presidential Proclamations, Executive Orders and the upcoming elections.
- Consult with a U.S. immigration counsel to stay up to date with current developments.
- Be proactive and prepared.
- Have a passport valid for at least one year. Monitor and check passport, I-94 and visa expiration dates for the principal and dependents.
- Evaluate long term U.S. plans and objectives to determine what U.S. immigration options may be available and the impact of U.S. immigration changes/ developments on investment and cross border transactions.
- Define short term and long term goals, i.e. travel, visa and status expiration date(s); filing of timely visa extension; LPR petitions, and U.S. citizenship. If eligible and qualified, consider applying for naturalization as a U.S. citizen.

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# Questions?

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