

# The Impact of COVID-19 Upon Travel and Visa Options Facing Cross Border Trade and Investment

Presentation to U.S. - Mexico Bar Association

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# Introduction

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

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# Topics Covered

- Key Terms
- Current Climate
- June 22, 2020 and April 22, 2020 Presidential Proclamations
- March 12, 2020 Travel Ban
- U.S. Mexico Cross Border Travel / Entry issues
- USCIS Reopening and U.S. Consulate / Embassy in Mexico Closings
- Comments on Temporary Visa Options – E-1, E-2, and TN Visas
- Recommendations



# 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.
- The June 22, 2020 Presidential Proclamation has extended and expanded the April 22, 2020 Presidential Proclamation’s visa ban.
- Delays – Under the current administration, there has been an increase in the number of challenges and denials of NIV and LPR cases.
- COVID-19 has created additional delays and uncertainty.



# June 22, 2020 Presidential Proclamation

- The President's July 22 Proclamation suspends the admission of certain employment-based temporary/ nonimmigrant visa holders to the U.S. and extends the April 22<sup>nd</sup> Proclamation through December 31, 2020.
- The Proclamation was issued in the interest of protecting U.S. workers as a result of the impacts of COVID-19.
- The Proclamation includes certain exceptions and hints at future regulatory actions that could further impact U.S. immigration.
- See <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak>





## June 22, 2020 Proclamation (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.
- **Duration** - The Proclamation will remain in effect at least until 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.



## June 22, 2020 Proclamation (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.

# June 22, 2020 Proclamation (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.



## June 22, 2020 Proclamation (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.**



## June 22, 2020 Proclamation (cont.)

- **Visa revalidation** – This is a process under the regulations which permits an individual with a nonimmigrant visa to travel to a “contiguous territory” which includes Mexico for a period of up to 29 days and return to the U.S. on his/ her expired visa and I-94. There are specific eligibility requirements to qualify for this process to enter the U.S. We anticipate this procedure will remain valid for travel to Mexico, but to date have not received confirmation from U.S. Customs and Border Protection.
- See [https://help.cbp.gov/s/article/Article-1218?language=en\\_US](https://help.cbp.gov/s/article/Article-1218?language=en_US)



## April 22, 2020 Presidential Proclamation

- 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.
- The June 22, 2020 Proclamation has extended this travel ban through December 31, 2020.
- 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.

# 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.

**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.





**CORONAVIRUS UPDATE**



## Travel Bans (cont.)

- President Trump has issued multiple proclamations in recent weeks suspending the entry into the U.S., as immigrants or non-immigrants, of individuals who were physically present within the U.K., Ireland, Schengen Area, the Islamic Republic of Iran, PRC and Brazil during the 14-day period preceding their entry, or attempted entry, into the U.S, subject to certain exceptions. See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html> .
- The exceptions include a spouse of USC and LPR.
- Assuming a person is subject to the 14 day travel ban, consider travelling to a country *not on the travel ban list* to spend 14 days in quarantine in an exempt country and then travel to the U.S., assuming no other travel or visa restrictions.





# 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 June 22, 2020 Presidential Proclamation.



# USCIS Limited Reopening and Consulate / Embassy Closings

- USCIS offices reopened *for limited services* on June 4, 2020.
- USCIS is accepting and adjudicating cases.
- The U.S. Consulates in Mexico and the Embassy are closed and most visa interviews have been rescheduled until July or August 2020. It remains unclear when consular posts 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>
- 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.



# Comments on Temporary Visa Options – E-1, E-2, and TN Visas

- These visa options are part of the NAFTA and now USMCA.
- These options are not covered under the June 22 Presidential Proclamation
- Once the U.S. Consulates and Embassy in Mexico reopen, these visa options will be available U.S. employers and investors to facilitate cross border investment.
- **Practice Pointer** - Include U.S. immigration issues, visa eligibility and U.S. employment start date issues as part of any transactional and M&A checklists in cross border transactions.

# Tips to assist clients with U.S. immigration considerations related to 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 the client's 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 the cross border transaction.

# Tips to assist clients with U.S. immigration considerations related to cross-border investments

- 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 if the client desires to apply for naturalization as a U.S. citizen.
- **Arrest** - In the unlikely event any client who holds a nonimmigrant visa or LPR status is arrested for any criminal matters, we recommend such person contact U.S. immigration counsel immediately because such arrest can impact (i) the client's eligibility to remain in the U.S, (ii) travel to/ from the U.S; and (iii) the client's ability to qualify for future U.S. nonimmigrant visas or LPR.



# U.S. – Mexico Bar Association

## About & Purpose

- The USMBA is a unique, bi-national bar association made up of attorneys from both Mexico and the United States.
- The purpose of the USMBA is to develop and promote understanding of the legal systems and practices and cultural differences of the two nations; to exchange professional information among its members, concerning issues of law that affect common interest, such as commerce, investment, and immigration, among others, to enable lawyers in the two countries, those in private practice as well as those serving in the judicial system, to better serve their communities and clients; to promote development of infrastructure for the provision of legal services and the solution of controversies; to share experiences in dealing with matters of common interest, and avoid unnecessary conflicts, without adopting or favoring any particular political standing

**Membership** - See <https://usmexicobar.org/signup/plans> to join.

# Questions?

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