

# Alerts & Publications



## President Issues Proclamation Limiting Immigrant Travel to the United States

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On April 22, 2020, President Trump issued a Proclamation (*Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*) restricting the entry into the United States of noncitizens intending to travel to the United States to be immigrants. The restrictions will be in place for 60 days starting April 23, 2020, and may be extended by the President. The scope of the Proclamation is substantially narrower than initial statements by the President, with the restrictions not applying to noncitizens with a valid immigrant visa at the time of the Proclamation, seasonal workers, and a number of other aliens as described in more detail below. The Proclamation is also limited to immigrant visas and does not extend to noncitizens travelling to the United States on tourist or businesses visas, although many of those individuals may be subject to the COVID-19-related travel restrictions that have been imposed on China, Iran, and Europe (see [here](#)).

The Proclamation suspends the entry of aliens as immigrants who:

1. Are outside of the United States on the effective date of the Proclamation;
2. Do not have an immigrant visa that is valid on the effective date of the Proclamation; and
3. Do not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of the Proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

Consequently, an immigrant noncitizen in the United States or who otherwise has a valid immigrant visa as of April 23 is not subject to the restrictions of the Proclamation. Further, the Proclamation exempts:

1. Any lawful permanent resident of the United States;
2. Any alien seeking to enter the United States on an immigrant visa as a physician, nurse, or other healthcare professional; to perform medical research or other research intended to combat the spread of COVID-19; or to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak, as determined by the Secretary of State, the Secretary of Homeland Security, or their

respective designees; and any spouse and unmarried children under 21 years old of any such alien who are accompanying or following to join the alien;

3. Any alien applying for a visa to enter the United States pursuant to the EB-5 Immigrant Investor Program;
4. Any alien who is the spouse of a United States citizen;
5. Any alien who is under 21 years old and is the child of a United States citizen, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;
6. Any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee;
7. Any member of the United States Armed Forces and any spouse and children of a member of the United States Armed Forces;
8. Any alien seeking to enter the United States pursuant to a Special Immigrant Visa in the SI or SQ classification, subject to such conditions as the Secretary of State may impose, and any spouse and children of any such individual; or
9. Any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

The Proclamation differs from the COVID-19 travel restriction proclamations in many ways. The Proclamation primarily focuses on economic recovery and not the mitigation of COVID-19 itself. As such, it applies only to aliens seeking immigration status to permanently remain in the United States, not those seeking to travel to the United States for business or those seeking to work or study in the United States on a temporary non-immigrant visa. While travel from Europe, China, and Iran is currently limited, it is possible that those restrictions will be eased in conjunction with efforts to re-open the economy. This Proclamation, however, may be in place for a longer period of time as it is focused on addressing American unemployment.

The Proclamation is likely to be subject to legal challenges. In contrast to prior Trump Administration travel bans upheld in the Supreme Court, the proclamation is justified primarily on economic and not national security grounds. Section 212(f) of the Immigration and Nationality Act (8 U.S.C. § 1182(f)) permits the President to suspend or impose restrictions on the entry of aliens when the President determines their entry “would be detrimental to the interests of the United States.” While the Supreme Court deferred to national security-based determinations of the President in *Trump v. Hawaii*, it remains to be seen how courts will evaluate the economic justifications of this Proclamation.

Companies in the United States with immigrant employees or employees with immigrant family members should carefully review the terms of the Proclamation. Any immigrant in the United States seeking to travel abroad should ensure they have appropriate documentation to demonstrate that their readmission to the United States would be consistent with the terms of the Proclamation. Likewise, any alien abroad with United States immigration status seeking to travel to the United States should ensure that they will be in a position to demonstrate to United States border and immigration officials that their entry would be consistent with the Proclamation. O'Melveny's [Coronavirus Task Force](#) is advising clients on a range of COVID-19 issues, including issues related international travel restrictions.

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