

COVID-19 Business Immigration Digest

by Ieva Aubin

Dorsey & Whitney LLP remains active and available to assist our clients!

Many of our offices have shifted to working from home, with certain essential administrative, financial, and mail-processing personnel continuing to work physically in our offices with proper care and consideration regarding local conditions.

Our firm's Coronavirus Resource Center is available at:

<https://www.dorsey.com/newsresources/publications/client-alerts/2020/coronavirus-resources>.

The U.S. government agencies that oversee the U.S. immigration system have been active in responding to the COVID-19 pandemic (for a brief overview of each agency, please refer to the last section of this update):

Department of State (DOS): COVID-19 Response

- U.S. Consulates and Embassies around the world are closed for most business other than assisting U.S. citizens:
<https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>.
- U.S. Consulates and Embassies have suspended routine issuance of visas:
<https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>.
- DOS Advisory to U.S. citizens: Do not travel internationally.
<https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html>.
- National Visa Center (NVC) confirms correspondence delays:
<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/ask-nvc.html>.
 - A temporary reduction of staff by NVC has affected its ability to respond to inquiries made via the "Ask NVC" form and it will no longer reply to routine messages submitted on or after March 27, 2020. Only urgent humanitarian or medical inquiries or necessary case updates may still make use of the Ask NVC form.

Related People

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Related Capabilities

- Immigration
- Labor & Employment
- Labor & Employment Guides

Department of Homeland Security (DHS): COVID-19 Response

U.S. Customs and Border Protection (CBP):

- Many travelers from COVID-19 “hot spot” are prohibited from entering the United States. <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html>.
- Note well - U.S. Citizens, green card holders (legal permanent residents), and certain applicants for adjustment of status with Advance Parole travel authorization may be eligible for the limited exceptions to this rule: <https://www.dhs.gov/news/2020/03/17/fact-sheet-dhs-notice-arrival-restrictions-china-ira-n-and-certain-countries-europe>.
- The United States has made agreements with Canada and Mexico to limit entries at their shared borders. The Northern and Southern borders are closed to “non-essential” travel until at least April 20, 2020 (30 days). The restrictions apply only at land ports of entry not to air travel: <https://www.dhs.gov/news/2020/03/23/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus>.

U.S. Citizenship and Immigration Services (USCIS):

- USCIS International Office Closures: <https://www.uscis.gov/about-us/find-a-uscis-office/international-immigration-offices>.
- USCIS Field Offices and Application Support Centers (ASCs) closed through May 3: <https://www.uscis.gov/about-us/uscis-office-closings>.
 - Notices will be sent by USCIS field offices to applicants with scheduled interview appointments or naturalization ceremonies affected by office closures.
 - ASC appointments will be automatically rescheduled by USCIS for applicants affected by center closures.
 - USCIS to continue providing limited emergency services. Please call the USCIS Contact Center for assistance with emergency services. <https://www.uscis.gov/contactcenter>.
- The USCIS has suspended Premium Processing for all I-129 and I-140 petitions: <https://www.uscis.gov/working-united-states/temporary-workers/uscis-announces-temporary-suspension-premium-processing-all-i-129-and-i-140-petitions-due-coronavirus-pandemic>.
- If and when the USCIS lifts the suspension on I-129 Premium Processing, it is more likely that H-1B cap cases will not be eligible for Premium Processing, per guidance that was issued prior to the COVID-19 crisis beginning: <https://www.uscis.gov/news/alerts/uscis-announces-temporary-suspension-premium-processing-fy2021-cap-subject-petitions>.
- The USCIS is allowing Request for Evidence (RFE) and Notice of Intent to Deny (NOID) response deadline flexibility: <https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests>.

“Any response to an RFE, NOID, NOIR, or NOIT received within 60 calendar days after the response due date set in the request or notice will be considered by USCIS before any action is taken. Any Form I-290B received up to 60 calendar days from the date of the decision will be considered by USCIS before it takes any action.”
- The USCIS has relaxed original / “wet” signature requirements, though it does require those submitting petitions or applications to retain the original documents for

submission via mail/courier if it requests them:

<https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>.

- USCIS to reuse previously submitted biometrics to process I-765 applications: <https://www.uscis.gov/news/alerts/uscis-continue-processing-applications-employment-authorizations-extension-requests-despite-application-support-center-closures>.
 - Applicants will have their application processed using previously submitted biometrics if they had ASC appointments or filed for a work authorization extension on or after March 18.
- COVID-19 and the Public Charge Rule: <https://www.uscis.gov/greencard/public-charge>.
 - Testing, treatment, or preventative care related to COVID-19 will not be considered as part of a public charge determination or as related to the public benefit condition applicable to certain nonimmigrants seeking an extension of stay or change of status by USCIS, even if such treatment is provided or paid for by public benefits. <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>.
 - The earned benefits through a person's employment and specific tax deductions such as unemployment benefits will not be considered public benefits by USCIS under the public charge inadmissibility determination.

U.S. Immigration and Customs Enforcement (ICE):

- ICE has issued guidance on electronic issuance of Forms I-20 to students: <https://www.ice.gov/sites/default/files/documents/Document/2020/COVID-19FAQ.pdf>.

Other Actions Taken by DHS:

- Form I-9, Employment Eligibility Verification during COVID-19: <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>.
 - DHS will exercise discretion to defer the physical presence requirements associated with Form I-9 by not requiring employers to review the employee's identity and employment authorization documents in the employee's physical presence.
- E-Verify Extends Timeframe for taking action to resolve Tentative Confirmations: <https://www.e-verify.gov/about-e-verify/whats-new/e-verify-extends-timeframe-for-taking-action-to-resolve-tentative>.
 - The timeframe to take action to resolve SSA and DHS Tentative Nonconfirmations (TNCs) extended by E-Verify due to private and public office closures.

Department of Labor (DOL):

- The DOL has issued guidance on how employers can comply with LCA posting requirements and other issues: https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf.
- The DOL is now issuing electronic approval materials for Certified PERM applications to be sent to the employer/applicant in the case via email: <https://www.foreignlaborcert.doleta.gov/pdf/DOL->

Minnesota Department of Public Safety: COVID-19 Response

- MN provides an extension for expiring driver's licenses or ID cards:
<https://dps.mn.gov/divisions/dvs/news/Pages/frequently-asked-questions.aspx>.
 - The expiration dates of valid driver's licenses or IDs that would expire during the peacetime emergency will be extended for two months after the month the peacetime emergency ends.

Overview of Principal Government Agencies Administering Immigration Law:

- The Department of Homeland Security (DHS). Key DHS agencies that affect immigration include:
 - **U.S. Citizenship and Immigration Services (USCIS)** is the principal agency that processes petitions and applications for U.S. immigration benefits for foreign nationals. If you or one of your foreign national employees are preparing to file a petition or application for U.S. immigration benefits (e.g. permission to employ a foreign worker), the USCIS is the agency you are most likely to need to deal with next.
 - **U.S. Customs and Border Protection (CBP)** supervises and manages entry to the U.S. at the border, for both U.S. citizens and foreign nationals. If your U.S. citizen or foreign national employees plan to enter the United States, they will need to deal with a U.S. CBP officer for their application for admission.
 - **U.S. Immigration and Customs Enforcement (ICE)** is the enforcement arm of the DHS. It oversees investigations, enforcement, worksite violations, and deals with document fraud. You are likely to encounter ICE agents if your company gets audited for Form I-9 compliance.
- **U.S. Department of State (DOS)** operates the U.S. Embassies and Consulates around the world, which control the issuance of visa stamps to foreign nationals. If you have a foreign national employee who is outside the United States and needs to apply for a visa stamp in their passport, the DOS is the government agency they are most likely to deal with next.
- **U.S. Department of Labor (DOL)** has jurisdiction over U.S. labor laws, including elements regarding the employment of foreign nationals in the United States. It oversees the PERM Labor Certification program (which relates to green card/permanent residence processing) and the Labor Condition Application (LCA) program (which relates to foreign nationals working in H-1B, H-1B1, or E-3 immigration status). If you are preparing to file an LCA or PERM application with the Department of Labor in conjunction with another filing, or waiting to receive its decision, the DOL's processing will affect the timing of when you can make related filings with the USCIS and/or DOS.

If you would like to contact an attorney to discuss how these U.S. government agency updates and closures may affect you or your business, please visit our [immigration practice group](#).

To learn more about Dorsey's recommendations on international travel bans, USCIS and Consulate closures, and the business immigration challenges in the U.S. as the world recovers from the global pandemic, join us on April 22nd for the 10th Annual Labor &

Employment 2020 Webinar Symposium. Further information and a link to register can be found [here](#).