

Immigration Moratorium? Presidential Proclamation On Immigration Not As Sweeping As Earlier Tweet Suggests

by Ieva Aubin

On Wednesday, April 22, 2020, the White House issued its anticipated proclamation regarding the 60-day suspension of immigration processes. Although President Trump's late Monday Tweet suggested a broad moratorium on all foreign workers and travelers, the proclamation, found [here](#), does not impose an overall moratorium.

For some, the news is good: the order does not impact foreign nationals currently in the United States in valid non-immigrant status. This includes foreign workers on H-1B or L-1 status, two of the most commonly-utilized work visas for highly skilled workers. The order also does not impact foreign nationals who are currently in the United States and applying for a green card via the so-called "adjustment of status" route; only foreign nationals applying for a green card from *outside* the United States are affected.

While the strong rhetorical tone of the proclamation reflects President Trump's stance on immigration, the actual effect is limited, essentially amounting to a 60-day pause on the issuance of immigrant visas at U.S. consulates and embassies abroad. This has little practical effect because for weeks now, most U.S. embassies and consulates have been closed for visa services. Furthermore, the reduction in international flights, combined with interlocking national travel restrictions, have made it extremely difficult to travel internationally. Thus, it could be argued that this latest executive order merely legally ratifies an already-existing situation on the ground.

Like previous coronavirus-related travel bans that have been issued since the onset of this COVID-19 pandemic, this new order contains key exemptions:

1. Lawful Permanent Residents (green card holders);
2. Physicians, nurses, and other healthcare professionals entering 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;
3. Significantly, spouses and unmarried children under 21 years old of medical professionals described in category 2 are also able to enter the US;

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4. Foreign nationals seeking entry pursuant to the EB-5 Immigrant Investor Program;
5. Foreign national spouses of US citizens;
6. Minor children being adopted by US citizens;
7. Members of the US Armed Forces their spouses and minor children;
8. Foreign nationals seeking entry under the Special Immigrant Visa in the SI or SQ classification; and
9. Foreign nationals whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

While the exemptions for medical professionals, nurses, and scientists working on COVID-19 related research are discretionary, one hopes that the U.S. State Department will quickly develop processes to allow the most critically-needed medical personnel into the United States to aid in the fight against COVID-19. The decision on whether to grant an exemption for medical personnel will be implemented by the U.S. Foreign Service Officers serving at U.S. embassies and consulates abroad.

Given everything it does not include, what does it cover? The order suspends entry of foreign nationals who:

- (i) are outside the United States as of April 23, 2020;
- (ii) do not have an immigrant visa that is valid as of April 23, 2020; and
- (iii) 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 as of April 23, 2020 or that is issued on any date thereafter that permits the foreign national to travel to the United States and seek entry or admission.

Dorsey Recommendations:

- For foreign nationals who qualify for one of the exemptions listed above, be prepared to appear at the US consulate with documentation of your exemption. For example, if you qualify for an exemption based on a U.S. citizen child, ideally you should carry a copy of your U.S. citizen child's birth certificate and passport. For exemptions based on marriage, carry copies of your marriage certificate and spouse's passport if possible. Make sure your critical documents are accompanied by English translations.
- Be proactive. Understand if the restrictions apply to you, and be sure to document your authorization and itinerary.
- Be prudent. In the current immigration and customs environment, U.S. immigration and customs officials are increasingly enforcement-oriented. In an unstable, uncertain, and quickly evolving situation like this, err on the side of caution. Consequences of non-compliance with immigration regulations can be severe and lifelong, including a permanent bar from entering the United States.

Current Dorsey clients, employers, business travelers, and others impacted by this new order or any of the other travel bans imposed since the onset of the COVID-19 pandemic should closely monitor the situation, including by regularly checking the U.S. government's [coronavirus website](#) and Dorsey & Whitney's [Coronavirus Resource Center](#).

If you would like to contact an attorney to discuss how this order may affect you or your business, please visit our [immigration practice group](#).