

White House Announces New Immigration Restrictions for H, J, and L Visas

by Ieva Aubin

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On Monday, June 22, 2020, the White House issued a long-expected executive order outlining new U.S. immigration restrictions. The order extends and expands upon the earlier restrictions put in place by President Trump in April.

Note that the April order has been extended without modification, until December 31, 2020. For more information on these existing provisions, please read Dorsey's analysis from April.

The new June 22 order directs the U.S. Department of State to stop issuing certain categories of nonimmigrant visas to foreign nationals seeking to work or live in the United States. The affected categories are:

1. H-1B worker visas and H-2B non-agricultural worker visas, as well as H-4 visas for dependent family members
2. J-1 visas for anyone who is not a physician* or secondary school student, as well as J-2 visas for dependent family members
3. L-1A and L-1B intracompany transferee visas, as well as L-2 visas for dependent family members

*Physicians who are exempt from the restrictions include those pursuing graduate medical education or training, or pursuing programs involving medical research, observation, consultation, or teaching.

The order goes into effect at 12:01AM EDT on June 24, 2020. At that time, any foreign national who is outside the United States without an existing valid visa in one of the above categories will be unable to process for a new visa in these categories. Note that merely possessing a valid visa in any classification does not create an exemption to the restrictions; the valid visa must already be in the specific category affected and in which the foreign national seeks to enter the U.S. (i.e. H-1B, H-2B, H-4, J-1, J-2, L-1, or L-2).

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This interpretation of the rule was clarified on June 29, 2020 by the Administration.

All other types of nonimmigrant visas remain valid and are not affected by this order; the State Department will continue issuing other types of nonimmigrant visas after the effective date.

The executive order will have no immediate impact on foreign nationals who are already in the United States in one of the affected categories. This is because of the distinction between a visa (an entry document that is stamped into a passport) and a status (a legal right to be in the United States). This executive order stops the Department of State from issuing certain new work **visas**, but it does not cancel or affect the **status** of foreign workers already in the United States. For example, foreign nationals with pending cap-subject H-1B petitions should not be affected, provided their petition was filed requesting a “change of status” (which is generally the case).

The order also does not apply to visa-exempt Canadian citizens who may still enter the U.S. under the H-1B, L 1 or J-1 categories.

As usual, the order contains a number of different exemptions, which include:

1. U.S. Lawful Permanent Residents (“green card” holders)
2. The foreign national spouse and children of U.S. citizens
3. Workers who are providing labor and services essential to the U.S. food supply chain
4. Foreign nationals whose entry would be in “the national interest” of the United States

The order states that the “national interest” exemption (No. 4 above) will include foreign nationals who “are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States.”

In the coming days and weeks, the relevant U.S. agencies will develop specific standards for “national interest” exemptions, although those standards may not be shared publicly. Since the order will be implemented by State Department consular officers working at U.S. diplomatic posts, it is likely that there will be some amount of discretion involved in granting an exemption.

Finally, note that any Advance Parole documents – whether existing or issued in the future – will continue to be valid for entering the U.S.

Dorsey Recommendations

- Although the order does not go into effect for several days, it is unlikely that foreign nationals will be able to avoid being subject to the restrictions. This is because the order bars the issuance of visas, a process that normally takes at least several days to complete. Even if a foreign national were able to secure a visa appointment

immediately, the visa would not be issued before the order came into effect.

- It is likely that U.S. diplomatic posts will establish specific procedures to seek an exemption to the order. Foreign nationals who believe they qualify for an exemption should reach out to the consular section at their specific consulate or embassy to enquire about exemptions.
- If you believe you qualify for an exemption, you will want to persuasively document the nature and purpose of your work to the consular officer during your visa appointment. It may be prudent in some cases to seek congressional assistance or support for an application.

If you would like to discuss how this order may affect you or your business, please visit our [immigration practice group](#) and reach out to one of our attorneys.