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Trump Suspends Immigrant Visa Processing for Select Applicants

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Practices: Immigration

On April 22, 2020, President Trump ("Trump") issued an Executive Order ("EO") which, under the guise of a national emergency due to the COVID-19 pandemic, will suspend Immigrant Visa processing for persons outside the United States for a period of 60 days. The legal authority cited is section 212(f) of the Immigration and Nationality Act ("INA") which allows the President to bar the entry into the United States of non-US citizens in the event that the President deems such entry to be detrimental to the best interests of the United States.

Trump has determined that the continued issuance of Immigrant Visas to certain categories of applicants would be detrimental, as those intending immigrants would potentially take US jobs away from US workers, at a time of high unemployment and the suspension of visa issuance to those persons is designed to give unemployed US workers a "head start" on finding employment after the COVID-19 pandemic is over. Trump's EO can be extended if, in the opinion of Trump, the interests of the United States are still at risk.

The EO will apply to persons:

1. who are outside of the United States as of the date of the EO;
2. who do not have an immigrant visa that was issued on or before the date of the EO;
3. who do not have a valid visa or other travel document issued on or before the date of the EO which authorizes travel to the United States.

Notably, the EO will not apply to:

1. Lawful Permanent Residents, that is, current green card holders;
2. nonimmigrant visa holders, such as H-1B, L-1 and E visa holders;
3. physicians or health care workers whose jobs are essential to combating COVID-19;
4. spouses and minor children of US citizens;
5. members of the armed forces and their families; and
6. EB-5 Immigrant Investors.

The EO will not affect the status of persons currently in the United States and will not affect any applications for Adjustment of Status. While the EO purports to suspend all employment-based immigrant visa applications

(with the exception of the EB-5), any person who has received a nonimmigrant visa would be able to (if allowed under current travel restrictions) change his/her status from the nonimmigrant classification to permanent residence after entering the United States. Therefore, the impact of the EO will fall primarily on family members of current green card holders, including minor children.

In our opinion, in the short term, this EO will have limited impact as the US State Department has closed or curtailed most visa operations at US embassies and consulates due to COVID-19, and as a result, visas, both immigrant and nonimmigrant, are not being issued except in cases of emergency, and the United States, as well as other countries around the world, have implemented travel restrictions for non-citizens. However, the EO can be revisited and extended if, in Trump's opinion, the entry of immigrants remains detrimental to the interests of the United States. In addition, Trump and his advisors have stated that they will also be reviewing the nonimmigrant visa system to determine if the continued use of these categories are likewise detrimental to the United States.

Persons who are in the process of applying for visas may wish to consider changing strategies to apply for Extensions of Stay or Adjustment of Status with the US Citizenship and Immigration Services ("USCIS") in order to minimize the risk of exclusion from the United States.