



News & Types: Client Advisories

Amended Proclamation Bars Visa Issuance to H-1B, H-2B, J-1 and L-1 Work Visa Categories

6/23/2020

By: Fazila Vaid

Practices: Immigration

On June 22, 2020, the President extended and amended Proclamation 10014 (signed on April 22, 2020), which suspended the issuance of certain immigrant visas by U.S. consular posts worldwide. The amended Proclamation now extends to the H-1B, H-2B, J-1 and L-1 nonimmigrant worker visa categories and bars the issuance of visas to new visa applicants not previously issued visas in these categories effective June 24, 2020. In the Preamble to the Proclamation, the President cited the severe economic disruption caused by the Covid-19 pandemic as the reason why these restrictive measures were being put in place. The President incorrectly concluded that foreign workers pose a threat to the U.S. economic recovery, and that restricting their entry until December 31, 2020 will open up job opportunities for U.S. workers.

The fallacy with this reasoning is that Congress has already placed very strict requirements to qualify for U.S. work visas, and particularly where the L-1 visa category is concerned, it is utilized by multinational corporations and investors to create jobs in the U.S. The Proclamation now shuts the door on those businesses to establish in the U.S. and restricts the ability of existing L-1 qualified companies to transfer new executives, managers and individuals with specialized knowledge of their products or business to the U.S., hindering growth, opportunities and expansion in an already difficult economy.

While the Proclamation does allow the U.S. Department of Homeland Security the opportunity to review the Proclamation every 60 days to make modifications, as we have learned with other travel bans, it is unlikely that the federal government will take any measures to loosen these restrictions unless compelled to by the courts. The specific provisions of the Proclamation are outlined below:

WHICH VISA CATEGORIES ARE IMPACTED BY THIS PROCLAMATION?

The Proclamation restricts visa issuance to the following **new** nonimmigrant visa categories:

- **Nonimmigrants:** H-1B, H-2B, J-1 (intern, trainee, teacher, camp counselor, au pair, or summer work travel program), L-1A, L-1B, and dependent spouses and children who are accompanying or following to join principal visa holders.

The Proclamation **extends** visa restrictions on the following immigrant visa categories contained in the original Proclamation issued on April 22, 2020:

- **Immigrants:** All family and employment-based immigrant visa applicants with the exception of the following:
- Spouses and minor children of U.S. citizens
- Physicians or health care workers whose jobs are essential to combating COVID-19
- Members of the armed forces and their families
- EB-5 Immigrant Investors
- Lawful Permanent Residents (green card holders)

For detailed information on the restrictions placed on immigrants, please refer to our Client Advisory ([link](#)) published on April 23, 2020.

WHAT IS THE IMPACT OF THE PROCLAMATION ON H-1B, H-2B, J-1, L-1A, L-1B AND THEIR DEPENDENTS CURRENTLY IN THE U.S.?

Nonimmigrants who are currently present in the U.S. in the restricted categories can continue to legally work and remain in the U.S. The Proclamation may or may not restrict the ability of these affected individuals from traveling internationally, as explained below. As a result, it will be important to monitor the expiration date of their petition or immigration documents to ensure that their status is timely extended by filing a petition or application with the U.S. Citizenship and Immigration Service for H-1B, H-2B and L-1 nonimmigrants, and in the case of J-1s, the U.S. Department of State.

ARE THERE ANY EXCEPTIONS TO THE NEW MEASURES?

The Proclamation cites the following categories of individuals who are exempt from the travel ban:

- Individuals seeking to enter the U.S. to provide services essential to the U.S. food supply chain; and
- Any individual whose entry would be in the national interest as determined by the U.S. Department of State or U.S. Department of Homeland Security.

CAN AN INDIVIDUAL WITH A VALID VISA IN THE RESTRICTED CATEGORY CONTINUE TO TRAVEL?

The Proclamation only applies to those individuals who are present outside the U.S. on its effective date (June 24, 2020), and who are not in possession of a valid visa. For example, an L-1A Manager who is currently outside the U.S. who already has a valid visa in his passport would not be restricted from returning to the U.S. Nevertheless, foreign nationals who are currently in the U.S. are advised not to travel internationally until it is clear that the U.S. Customs and Border Protection has been properly advised on the non-enforceability of the new Proclamation on these categories of visa holders. As we have seen with previous travel bans, improper communication among the various federal agencies can lead to misapplication of the law.

CAN AN INDIVIDUAL WITH A VALID VISA IN THE RESTRICTED CATEGORY RENEW HIS OR HER VISA UPON EXPIRATION?

While the Proclamation does not specifically address this question, there are reports that the Proclamation will allow those who currently have valid visas in the restricted categories, the ability to travel abroad to renew their existing visas. We expect that in the coming days, there will be official guidance from the government on this issue.

SINCE CANADIANS NATIONALS DO NOT REQUIRE VISAS, DO THESE MEASURES AFFECT CANADIANS?

The Proclamation does not specifically address this issue. However, it would appear that because Canadian nationals are exempt from the visa requirement, that there would be no impact on their continued ability to travel to the U.S. As with the prior question, we will need to wait for further clarification from the federal government on this issue.

WHAT ARE THE EFFECTIVE AND TERMINATION DATES OF THE PROCLAMATION?

The Proclamation becomes effective at 12:01 a.m. on June 24, 2020 and is set to expire on December 31, 2020 but gives the President the power to extend it as necessary.

As we alluded, there are many issues/situations in the amended Proclamation which are not clear and will take some time to analyze. Within the next several days, we should get additional guidance from the federal government to address specific questions with more certainty. This Alert will be updated as additional guidance is released. Please find a [link](#) to the Proclamation.