



News & Types: Client Advisories

Trump Extends Visa Suspension Proclamations Until March 31, 2021

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By: Bryan Y. Funai

Practices: Immigration

EXECUTIVE SUMMARY

On December 31, 2020, soon to be former President Trump extended his proclamations suspending the issuance of certain immigrant visas (April 22, 2020 proclamation) and H-1B, H-2B, J-1 and L-1 nonimmigrant visas (June 22, 2020 proclamation) until March 31, 2021. The immigrant visa suspension was directed primarily at family-based immigrant visa applications, and the nonimmigrant visa suspension was initially directed towards all visa applications, and subsequently modified, through litigation and Department of State guidance to primarily restrict new visa applications, as opposed to visa renewals.

With regards to the nonimmigrant visa ban, because of the numerous exceptions and modifications to the implementation of the proclamation, while nonimmigrant visa applications for the affected visas have been accepted for processing by US Consulates, there remains a considerable amount of confusion in determining who is subject to the visa ban. As a result, nonimmigrant visa applications in the affected categories are taking longer than normal as these applications are frequently sent for secondary review. Furthermore, the standard for qualifying for a visa subject to the ban have been tightened - in many instances to a degree beyond what is specified in the Immigration and Nationality Act.

While the proclamations only apply to visa applications filed abroad, the effect of the proclamations has been that applications filed at the US Citizenship and Immigration Services ("USCIS") are being harshly reviewed, and what were once routine extensions of stay are now being routinely denied, with USCIS often straining incredulity in denying a case. In one instance, USCIS, in denying an L-1 extension of stay for the Vice President of a company stated, in part: **"...the fact that the beneficiary will manage or direct your business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity..."**

For companies seeking a remedy to ensure that qualified personnel are able to enter the US, we recommend the following:

1. If the company qualifies, consider applying for an E visa. E visas were unaffected by the proclamations and are being processed at US Consulates that are open for business;

2. Even though applications for extensions of stay are being strictly scrutinized at USCIS, if a person's status will expire soon, file the application with USCIS. As long as the application is timely filed, the person's status will be continued for 240 days or until the application is adjudicated. If the application is filed conventionally (as opposed to using Premium Processing), the application process will take 2-3 months for adjudication. This will provide adequate time for the company to arrange for a visa application abroad after the March 31, 2021 expiration of the proclamations.