

Presidential Proclamation on Temporary Visa Suspensions:

What We Know So Far

By [Dan Berger](#) and [Stephen Yale-Loehr](#)

[President Trump issued a Proclamation](#) and a [fact sheet](#) on June 22, 2020, suspending entry to the United States of foreign nationals in certain temporary visa categories. The stated goal of the proclamation is to address current high unemployment rates for U.S. workers during the COVID-19 pandemic, even though there is strong evidence that [re-opening the economy will rely on temporary international workers with specific skills](#).

This Q&A sets out our current understanding of the Proclamation. We provide additional resources at the end of the article.

Who is affected by the Proclamation?

The Proclamation bars H-1B, H-2B, L-1, and certain J-1 exchange visitors (and their dependent family members) from entering the United States starting June 24, 2020 through the end of the year.

Who is NOT affected?

The following people are NOT covered by the Proclamation:

1. Key J-1 categories for academic institutions were thankfully spared, including specialists, short term or long term scholars, and students.
2. Anyone in the United States on June 24, 2020
3. Anyone with a valid visa stamp in their passport on June 24, 2020
4. Anyone with a valid travel document on June 24, 2020
5. Green card holders (lawful permanent residents)
6. The spouse or minor child of a US citizen
7. Anyone “whose entry would be in the national interest” as determined by the Secretary of State or the Secretary of Homeland Security

What are the gray areas?

There are several gray areas, including:

For #3, does this mean that the visa stamp has to be the same category? For example, could a new faculty member currently abroad with valid B-2 tourist visa on June 24, 2020 get an H-1B visa stamp over the summer and enter the United States in August to teach this fall? Or enter the United States in B status and change status to H-1B? There are issues with “intent on entry” with the change from B to H, but this strategy can be discussed if consular appointments are not available.

For #4, is an H-1B approval notice a valid travel document for a Canadian who is allowed to enter the US without a visa stamp?

For #7, when will those Departments issue guidance and what will it say? There was no blanket exemption for healthcare workers, and only a suggestion of exempting those healthcare workers directly treating COVID-19 patients. We expect that individual exemptions will involve applying for a visa stamp at a US consulate annotated as exempt under the Presidential Proclamation (as is being done with exemptions to the various COVID-19 related travel bans).

The [recent restrictions on Chinese graduate students](#) have still not been fleshed out with clear guidance, and we are not sure when we will know more of the details of the Proclamation. Inquiries are already going to CBP to clarify, but it is not clear that agencies have been given guidance.

The new Proclamation also orders federal agencies to: (1) take extra care in reviewing Department of Labor (DOL) applications (labor certification for permanent residence or LCA for H-1Bs); (2) revisit the terms of the Proclamation in late July and every 60 days after; and (3) “consider” regulations on H-1B lottery cases. Extra scrutiny of DOL applications could significantly affect academic visa sponsorship.

For academic institutions, who is likely to be most affected?

The three groups most likely to be impacted:

- new hires, such as faculty, IT professionals, researchers, librarians, etc. who are abroad and plan to enter on an H-1B visa this summer or fall.
- alumni who won the H-1B lottery, are abroad, and planned to come to the United States this fall to begin working on their H-1Bs on October 1
- H-4 family members who are abroad and not exempt, even if the H-1B is in the United States

There are few other visa categories available, so this affects a broad group of new faculty hires and recent graduates. For example, the J-1 scholar category cannot be used for a tenure track faculty member. And most H-1B workers who won the H-1B lottery lack other visa options. Even allowing the H-1B worker to start remotely involves complexity and expense in following the labor laws of the country she or he is in.

Many of these workers were already facing serious challenges coming to the United States. U.S. consulate appointments for visas remain quite limited, and the ability to come to the United States is further restricted by [COVID-19 related travel bans](#) (in particular, Europe and Brazil).

What are arguments against these restrictions at a time of high unemployment?

The [business](#) and [academic](#) communities ([see also here](#)) and even [some Republican lawmakers](#) asked the White House to temper limits on temporary work programs. The Proclamation does not affect any students in F-1 or J-1 status. But unfortunately, the Proclamation does not exempt new H-1B hires by colleges and universities.

Computer-related unemployment rates are still quite low (2.8%). 76% of H-1Bs are for computer-related jobs or engineering. [Research](#) has shown that H-1B workers create jobs for U.S. workers. [Research](#) also shows that H-1B workers complement U.S. workers, fill employment gaps in many STEM occupations, and expand job opportunities for all.

Will the Proclamation be challenged in court?

Various business and academic groups are considering litigation to try to overturn the Proclamation. While section 212(f) of the U.S. immigration statute allows the President to bar noncitizens from entering if they are "detrimental to the interests of the United States," such bans [are not unlimited](#). Courts have upheld prior entry bans that focused on foreign policy issues, such as terrorism. By contrast, it is unclear whether a judge would uphold a ban on certain foreign workers based on high unemployment, a domestic issue.

Additional information and next steps

For additional information, [NAFSA](#) summarizes the Proclamation, the [Penn State Center for Immigrants' Right Clinic](#) reviews the legal basis, and the [Chronicle of Higher Education presents the big picture \(as well as the AAU\)](#).

Even the threat of a Proclamation was having a chilling effect on international students and scholars wanting to come to the United States, especially combined with [future planned rulemaking cutting back post-graduation work authorization known as optional practical training](#) and [other Administration policies](#).

Beyond this Proclamation, we expect more efforts by the administration to limit immigration, including new regulations, guidance, and travel restrictions. We also expect continued litigation and attempts at congressional oversight. It will be a year of great uncertainty and change. The best we can do for international employees is keep sharing the latest information and let them know we will be there for them. We will continue to [advocate for reasonable immigration policies](#), [support congressional candidates](#) who support sensible immigration reform, and adapt to what comes.