COVID-19 and Immigration

On April 22, 2020, President Trump issued a Proclamation that temporarily limits the ability of certain foreign nationals to enter the United States of America as immigrants in an attempt to protect the labor market in the midst of the COVID-19 pandemic. Here is what employers need to know.

What Does the Proclamation Do?

The Proclamation temporarily suspends the issuance of immigrant visas (*e.g.*, EB-1, EB-2, *etc.*) for most foreign nationals, which effectively prevents them from entering and working in this country. President Trump focused on this visa category because "once admitted, [these foreign nationals are] granted 'open-market' employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy."

When Will it Go into Effect and How Long Will it Last?

The Proclamation will go into effect on April 23, 2020, and it will expire on June 22, 2020. While President Trump stated that this limitation is temporary, the Proclamation expressly provides for extension of same where it is "necessary" without giving any further details on what is "necessary." This notwithstanding, the Secretary of Homeland Security must confer with the Secretary of State and the Secretary of Labor and must advise the President on extending or modifying this Proclamation within 50 days.

Who Does this Proclamation Affect?

For the purposes of federal immigration law, a foreign national that enters the United States of America is either a non-immigrant or an immigrant. A non-immigrant is a person who intends to come to the country on a temporary basis for a specific reason, such as working, studying, or traveling. An immigrant, however, is a person who intends to enter the country and to remain here on permanent basis for familial or employment related reasons. This Proclamation will affect only foreign nationals who (1) are immigrants and (2) meet the following requirements:

1. They are outside of the country;

2. They do not have already have an immigrant visa; and

3. They do not have an official travel document other than a visa that is valid.

According to the Migration Policy Institute, a non-partisan immigration organization, this Proclamation has the potential to prohibit approximately 26,000 foreign nationals from entering each month.

Who is Exempt from this Proclamation?

While President Trump's pre-issuance tweet spoke broadly about prohibiting all immigration, the Proclamation still permits the following foreign nationals to obtain immigrant visas:

1. Lawful permanent residents;

2. Physicians, nurses, or other healthcare professionals (and their spouses and their unmarried children under the age of 21) that will perform (a) medical or other research to combat the spread of COVID-19 or (b) work essential with respect to COVID-19;

3. Investors that provide capital for a new commercial enterprise that creates new jobs for American workers;

4. Spouses of American citizens;

5. Children (under the age of 21) and prospective adoptees of American citizens;

6. Members of the Armed Forces and their spouses and children;

7. Special Immigrant Visa Holders in the SI or SQ classification (*e.g.*, Iraqi and Afghan translators or interpreters that worked for the American government) and their spouses and children; and

8. Anyone who whose entry would advance the national interest or would further important United States law enforcement objectives.

Furthermore, the Proclamation does not impose any limitations on non-immigrant visas for foreign nationals abroad. Even so, the Department of State has temporarily suspended routine visa processing at all American embassies and consulates and it is uncertain when they will resume.

What Should Employers Know?

The Proclamation does not prevent employers from requesting, changing, or extending a non-immigrant visa status for foreign nationals that are in the country. It, furthermore, has no effect on the ability of employers or certain foreign nationals that are eligible to self-petition to request green cards.

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