

Important Changes to U.S. Entry Restrictions Due to COVID-19

The Biden Administration recently issued a Proclamation and published new guidance affecting entry into the United States due to the ongoing COVID-19 pandemic. First, President Biden issued a Proclamation restricting individuals traveling from India from entering the United States. Meanwhile, the Secretary of State authored new guidance regarding the “National Interest Exception” to the United States’ entry restrictions, expanding and clarifying the scope of that exception, which will likely allow additional qualified individuals to enter the United States, despite the broad entry restrictions.

SUSPENSION OF ENTRY FROM INDIA

Given the rapid spread of COVID-19 throughout the Republic of India, President Biden issued a Proclamation prohibiting foreign nationals in India from entering the United States, subject to certain exceptions listed below. Any foreign national who does not qualify for an exception will be prevented from traveling to the United States if he or she has been physically present in India within 14 days of attempting to enter the United States. This Proclamation went into effect on May 4, 2021 and will remain in effect until terminated by the President.

- The Proclamation does not apply to:
 - Citizens of the United States;
 - Lawful permanent residents of the United States;
 - Non-citizen nationals;
 - Spouses citizens or lawful permanent residents;
 - Parents, legal guardians, or siblings of citizens or lawful permanent residents (unmarried and under 21);
 - Children, foster children, or wards of citizens or lawful permanent residents, or prospective adoptees;
 - Non-citizens “traveling at the invitation of the United States Government for a purpose related to containment or mitigation” of the COVID-19 virus;
 - Noncitizens that will serve as air or sea crew;
 - Noncitizens that will work for foreign governments or international organizations;
 - Noncitizens that serve in the United States Armed Forces and their spouses or children;
 - Noncitizens whose entry would “further important United States law enforcement objectives;” and
 - Noncitizens whose entry “would be in the national interest.”

As with [previous proclamations relating to immigration in the wake of the COVID-19 pandemic](#), employers should advise their non-citizen employees currently in the United States not to travel to countries with high incident rates. This is especially true if those employees intend to visit India or any of the countries affected by earlier proclamations, which are still in effect. Given the indefinite nature of the Proclamation, and the stringent restrictions on travelers departing from the affected countries, a noncitizen who visits one of these countries could be barred from re-entering the United States for a significant period of time. Where necessary, employers also should consider extending the immigration status of their current noncitizen employees while they are in this country, to avoid any disruption caused by the need to travel to and from the affected countries.

NEW GUIDANCE ON NATIONAL INTEREST EXCEPTION

The United States Secretary of State recently made a determination regarding the National Interest Exception included in the Presidential Proclamations affecting immigration during the COVID-19 pandemic, including the most recent Proclamation limiting entry from India. This determination provides further guidance about the exception, clarifying the categories of individuals who may use it to enter the country notwithstanding their physical presence in a country subject to travel restrictions.

The National Interest Exception allows individuals to enter the United States from affected nations if their entry would be “in the national interest.” Previously, the Department of State established that it would grant entry under the National Interest Exception to individuals whose entry was related to humanitarian travel, public health response, and national security. The Secretary of State now has clarified that the following categories of individuals may qualify for entry under the National Interest Exception:

- Individuals seeking to provide vital support or executive direction for critical infrastructure;
- Those traveling to provide vital support or executive direction for significant economic activity in the United States;
- Journalists;
- Students and certain academics covered by exchange visitor programs;
- Immigrants; and
- Fiancés of individuals already in America.

The Department of State also clarified the process by which an individual may obtain a National Interest Exception, advising that individuals who believe they may qualify for an Exception should contact their nearest United States embassy or consulate before traveling. If a National Interest Exception is approved, individuals may travel on either a valid visa or ESTA authorization. The Exception is valid for a single trip to the United States within 30 days of approval.