

New Restrictions on Entry into the United States

On January 25, 2021, President Biden issued a Proclamation that limits the ability of foreign nationals who have been present in South Africa, Brazil, and many European countries from entering the United States. This proclamation is likely to affect a broad scope of employers who employ and work with immigrants and non-immigrants. This is what employers need to know.

What Does the Proclamation Do?

The Proclamation reinstates and expands entry restrictions for travelers from Brazil, the United Kingdom, Ireland, and the 26 countries of the Schengen Area of Europe. These restrictions were previously lifted in the final days of the Trump Administration. The Proclamation also establishes new restrictions for travelers from South Africa. These restrictions are based on a review of the public health situations by the Centers for Disease Control and Prevention (CDC), as well as the emergence of recently discovered strains of the virus in the affected countries.

Specifically, the proclamation bars foreign nationals who have been present in these countries from entering the United States, subject to certain exceptions list below. Any foreign national who does not qualify for an exception will be prevented from traveling to the United States if they have been physically present in any of the affected countries within 14 days of attempting to enter the United States.

The full list of affected countries, including the 26 Schengen Area countries, is as follows:

- Austria
- Belgium
- Brazil
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Slovakia
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- United Kingdom

When Did it Go into Effect?

The Proclamation's travel restrictions for Brazil, the United Kingdom, Ireland, and the Schengen Area went into effect on January 26, 2020, while the restrictions for South Africa went into effect on January 30, 2021.

How Long Will it Last?

The Proclamation is indefinite in length, set to "remain in effect until terminated by the President." The Proclamation directs the Secretary of Health and Human Services to review the policy every month and recommend whether the President should "continue, modify, or terminate" the Proclamation each month.

Who is Exempt from this Proclamation?

The Proclamation does not apply to:

- Citizens;
- Lawful permanent residents;
- 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;
- Noncitizen 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.”

What Should Employers Know?

One of the key takeaways for employers is that their noncitizen employees currently in the United States should not leave the country, especially if those employees intend to visit any of the affected nations. 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. Likewise, employers should consider extending the immigration status of their current noncitizen employees, where necessary, while they are in this country to avoid any disruption caused by the need to travel to and from the affected countries.

Employers should also take note of the exception to the Proclamation regarding noncitizens whose entry into the United States “would be in the national interest.” While the Administration has not published any guidance as to its review or determination of noncitizen entry under this “national interest” exception, we anticipate that employees whose work is vital to national defense, food supply chains, energy, infrastructure, or COVID-19-related healthcare efforts may be able to use this exception to gain entry into the United States.