



June 22, 2020

CED Issue Explainer : The Administration’s Immigration “Proclamation”

On June 22, President Trump issued a [Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak](#). The June 22 proclamation extends an earlier proclamation issued in April “pausing” the issuance of certain immigrant visas through the end of the year and expands the scope of the suspension to now cover many categories of non-immigrant (i.e. temporary) visas. Some of the key programs affected include:

Lawful Permanent Residents-- The entry of lawful permanent residents from outside of US borders, including spouses and children of legal permanent residents, initially suspended in April, will be continued. Exceptions covering immigrants already living and working in the US—the primary route to legal permanent residence—and the spouses and underage children of US citizens continue to be excepted.

Diversity Immigrant Visas – The “diversity lottery,” which provides roughly 50,000 visas a year to immigrants from countries with historically low rates of immigration to the US was initially suspended in April and remains suspended through the end of the year.

H1-B / H-4 visas – Through at least the end of the year, new H-1B visas will not be issued to immigrants unless they are already residing and working in the US. H-1B is an employer-sponsored temporary work visa typically limited to college graduates with highly specialized knowledge and is a principal route for foreign tech workers to come to the US and eventually acquire permanent residence. To sponsor a candidate for an H-1B visa, employers must attest or demonstrate that they were not able to hire an American citizen for the open position at the “prevailing” market wage.

While H-1B is a non-immigrant status, H-1B visa holders may pursue permanent residence while in the US. Since demand typically outstrips the statutorily capped supply of 85,000 H-1B visas, the US normally operates a once-a-year lottery in October to distribute a year’s worth of available visas among qualified applicants. For instance, in 2020, the US received over 200,000 private employer-sponsored applications. To be eligible for the October lottery, applications must be submitted in April. It is not clear if this year’s lottery will be delayed or if it will be conducted but with “winners” waiting until visa processing resumes before being able to enter the US. Universities and non-

profit entities can also sponsor H-1B workers who do not count toward the statutory cap.

In addition to the suspension of new H-1B visas, H-4 visas that go to the spouses of H-1B visa holders will not be processed.

H2-B visas – The issuance of employer-sponsored H-2B visas, the prime route to the US for non-college-educated temporary workers – sometimes referred to as the “guest worker” program, will be suspended through the end of the year with exceptions expected for food service employees. Temporary agricultural workers, covered by H-2A visas, will not be affected. By statutory limit, up to 66,000 new H-2B visas are issued each year, in two separate batches each covering a different initial six-month starting period. Employer-sponsored workers receiving an H-2B visa can extend their time in the US up to three years. The suspension will likely affect H-2A visas issued for workers who would have begun working in the upcoming period that begins October 1, 2020.

L visas – New L visas will not be issued to workers not already in the US through the end of the year. L-visas help multinational firms operate by allowing them to shift certain workers—managers or employees with specialized knowledge— (and their families) flexibly between international and US locations for a period of a limited number of years as business needs require or to send people to the US for a year to set up domestic offices. The US typically issues 100,000 L visas annually.

J Visas – The issuance of new J Visas, typically used for non-immigrant purposes to facilitate cultural and educational exchange, are also suspended. J visa status covers a wide ranging number of programs of different lengths (from brief visits to several years) that allow foreigners to teach, study, conduct research, demonstrate special skills or receive on the job training. It has been reported that the Administration will use a “national interest” exemption to carve-out an exception that allows the roughly 20,000 au pairs who use J visas annually to care for US children to continue coming to the US.

The Trump Administration estimated that the proclamation will result in 525,000 American jobs saved or created. Analysis by the Migration Policy Institute has estimated that up to 219,000 temporary immigrant workers would be prevented from coming to the US based on the order. Despite reporting that it might be affected, the Optional Practical Training (OPT) visa—which allows foreign students to work and acquire experience in their field of training during and/or for a limited period after completing US studies—was not restricted by the new proclamation.

In addition the June 22 proclamation, as part of a series of restrictions aimed at asylum seekers, the Trump Administration rescinded a rule last week requiring that asylum seekers in the US be granted a decision on requests for temporary work authorization within 30 days of application.

The change in rule opens the possibility that asylum seekers could be indefinitely delayed in being authorized to work.