



## **AILA and American Immigration Council**

### **Summary of the Presidential Proclamation 10052 Suspending Entry of Immigrants and Nonimmigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak**

**Authority:** Immigration and Nationality Act sections 212(f) and 215(a) and 3 U.S.C. section 301

**Effective Date:** The Proclamation takes effect on June 24, 2020 at 12:01 AM ET. It will remain in effect through December 31, 2020 and may be continued or modified as necessary.

#### **Background:**

On June 22, 2020, President Trump issued Presidential Proclamation 10052, which suspends the entry of foreign nationals on certain employment-based nonimmigrant visas into the United States.

This Proclamation also extends, effective immediately, Presidential Proclamation 10014 issued on April 22, 2020 which suspended the entry of certain immigrants into the United States.

A summary of the Presidential Proclamation 10014 [can be found here](#).

The Proclamation suspends the issuance of visas for those seeking entry pursuant to a(n):

- H-1B visa and any foreign national accompanying or following to join them;
- H-2B visa and any foreign national accompanying or following to join them;
- J visa, to the extent the foreign national is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any foreign national accompanying or following to join them; and
- L visa, and any foreign national accompanying or following to join them.

The Proclamation will only apply to an individual identified above if they:

- Are outside the United States on the effective date of the Proclamation;

- Do not have a nonimmigrant visa in one of the categories that is now suspended on which they are seeking entry<sup>1</sup>, that is valid on the effective date of the Proclamation; and
- Do not have an official travel document other than a visa (such as a transportation letter, boarding foil, or advance parole document), valid on the effective date of the Proclamation or issued thereafter permitting the individual to be admitted to the United States.

### **Exemptions:**

The Proclamation will not apply to the following individuals:

- lawful permanent residents;
- spouse or child of a U.S. citizen;
- any individual seeking entry to provide temporary labor essential to the U.S. food supply chain;
- any individual whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

For the purposes of determining who is covered under the “national interest” exemption, the Proclamation directs the Secretaries of State, Labor, and Homeland Security to determine standards for those to whom such an exemption would be available, including any individuals who:

- are critical to the defense, law enforcement, diplomacy, or national security of the United States;
- are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized;
- are involved with the provision of medical research at U.S. facilities to help the United States combat COVID-19;
- are necessary to facilitate the immediate and continued economic recovery of the United States; or
- are children who would age out of eligibility for a visa because of this proclamation or Proclamation 10014.

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<sup>1</sup> On June 30, 2020 Presidential Proclamation 10052 was amended to change language in Section 3(a)(ii) of the original June 22, 2020 proclamation language. With this amendment, an individual outside of the United States is suspended from seeking entry as an H-1B, H-2B, J-1, or L-1, or their dependents, unless he or she had a nonimmigrant visa valid on the effective date of the Proclamation for the category in which they seek entry into the United States or is eligible for an exemption. For example, an individual with a valid B-1 visa on the day of the proclamation would be barred from receiving an H-1B, H-2B, J-1, or L-1 visa or their dependents. Individuals that are now subject will need to seek exemptions through Section 3(b). The amended text is available here: <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

**Discretion:** The consular officer has discretion to determine if an individual is within one of the exempted categories outlined above.

**Asylum Seekers:** Asylum seekers are not included in the ban. The Proclamation states that it does not limit the ability of individuals to apply for asylum, refugee status, withholding of removal or protection under the Convention Against Torture.

**Fraud:** Individuals who circumvent the application of the Proclamation through fraud, willful misrepresentation or illegal entry will be prioritized for removal.

**Additional Review:** Within 30 days of this Proclamation's effective date, and every 60 days after, while it and Proclamation 10014 are in effect, the Secretary of Homeland Security, in consultation with the Secretaries of Labor and State will make a determination as to any need to modify either proclamation.

**COVID-19 Prevention:** The Secretary of Health and Human Services will provide guidance to the Secretaries of State and Homeland Security concerning measures that will reduce the risk of those seeking admission to the United States introducing or spreading COVID-19 within the country. It is our understanding that this means individuals will be subject to a COVID-19 test before arrival.

**Additional Measures:**

- Issue regulations or take additional actions to ensure that those who have already been admitted, or are seeking admission, on an EB-2 immigrant visa, EB-3 immigrant visa, or H-1B nonimmigrant visa do not limit opportunity for U.S. workers.
- Undertake investigations of Labor Condition Application (LCA) violations pursuant to INA 212(n)(G)(i).
- Consider issuing regulations or other actions concerning the allocation of visas and ensuring that the presence of H-1B workers in the United States does not negatively affect U.S. workers. We understand that this would include prioritizing the highest paid H-1B workers in the numerical cap.
- Ensure that an individual will not be able to apply for a visa or admission to the United States until they have completed biometrics, including photographs, signatures, and fingerprints; and

- Take steps, consistent with law, to prevent certain individuals who have final orders of removal; who are inadmissible or deportable from the U.S.; have been arrested for, charged with or convicted of a criminal offense, from being able to work in the United States.

**Severability Clause:** If any provision, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of the Proclamation shall not be affected.

AILA and the Council will continue to monitor the implementation and impact of this proclamation.