

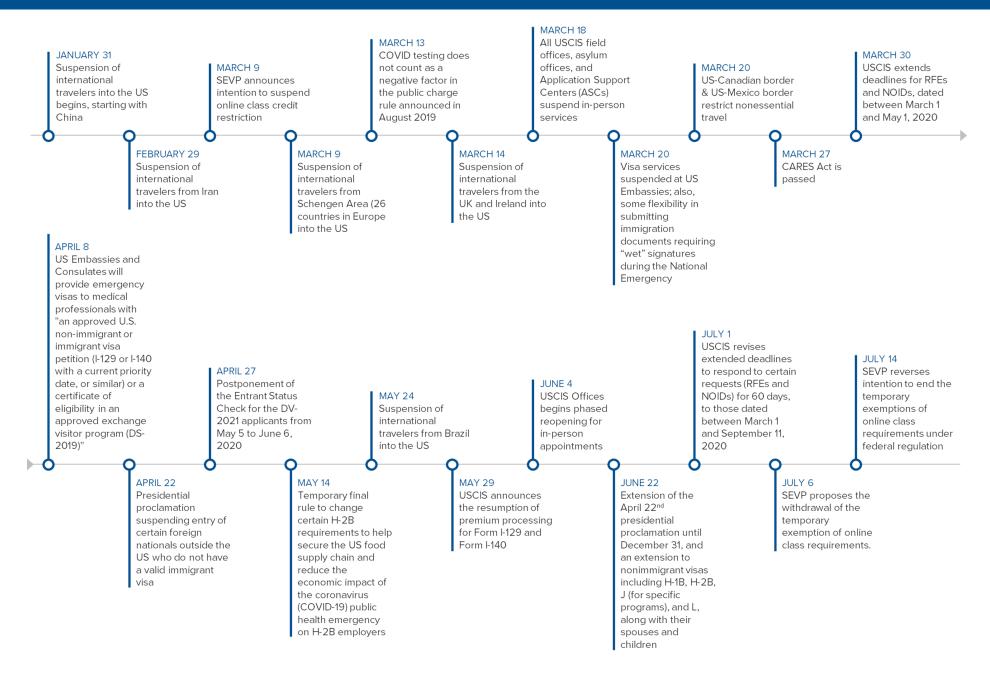
JW Jackson Walker LLP

Impacts of COVID-19 on U.S. Immigration and Travel Policies

JW Insights & Resources | July 2020



Timeline of U.S. Restrictions



For general travel restrictions, the U.S. Department of State has an updated list on restrictions by country.



COVID-19 has caused significant disruptions in every aspect of our daily lives. Several policies have been enacted, affecting millions of foreign national workers, both in the U.S. and abroad, along with the businesses that employ them. COVID-19 initiated significant shortfalls in the processing of immigration applications. The U.S. Citizenship and Immigration Services (USCIS) will likely face drastic budget issues due to the loss of revenue during this period from fees, and impending layoffs and furloughs of USCIS staff. This will, in turn, create an increased backlog of visa petitions and applications.

As USCIS, U.S. Customs and Border Protection (US CBP), and the U.S. Department of State (State Department) update, change, and restrict U.S. travel and immigration policies, Jackson Walker attempts to update this document to serve as a resource to assist individuals and businesses navigate this uncertain time.

Please note that this document is for informational purposes only and does not constitute legal advice. This document does not establish an attorney-client relationship with Jackson Walker or any individual attorney at Jackson Walker. You should not act or rely on any information from this document without seeking the advice of an attorney licensed to practice law in your jurisdiction for your particular issue. For additional assistance in these areas, you can contact an attorney in Jackson Walker's immigration practice.

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Suspended Entry Into the United States

President Trump has issued several presidential proclamations on entry into the United States by international travel. In general, these proclamations do not extend to U.S. citizens or legal permanent residents (green card holders), or certain family members of citizens or legal permanent residents, such as: (1) spouses, (2) parents or legal guardians, if the related U.S. citizen or green card holder is unmarried and under the age of 21; (3) siblings, provided they are both unmarried and under the age of 21; and (4) children, foster children, or wards, or prospective adoptees. Additionally, these orders excluded professional athletes and essential staff, including foreign diplomats traveling to the United States on A, E-1, NATO-1-4, -6, or G visas, or air and sea crew traveling to the United States on C, D, or C1/D visas.

Besides these stated exemptions, these orders do affect all others attempting to travel to the United States.

As of July 17, 2020, all travel suspensions remain in effect.

January 31 – China

The President suspended entry into the United States of "aliens who were physically present" in China 14 days before attempted entry into the U.S. This ban does not include Macau. The ban excludes U.S. citizens, legal permanent residents (green card holders), as well as certain close relatives as listed above.

February 29 - Iran

A second proclamation suspended entry into the United States of aliens who were physically present in Iran within the 14 days preceding entry or attempted entry into the United States.

March 11 – Schengen Area (26 Countries)

Schengen Area countries include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. The third proclamation restricted the entrance of foreign nationals "physically present" in any country that is part of the Schengen Area 14 days prior to entry in the U.S.

March 14 – United Kingdom and Ireland

A fourth proclamation by the President suspended travel for foreign nationals into the U.S. if they were physically present in the UK or Ireland within the 14 days prior to attempted entry.

May 24 – Brazil

The latest proclamation restricted foreign nationals who were physically present in Brazil within 14 days.



Full country-specific travel ban proclamations may be found at the following links:

- China: https://www.whitehouse.gov/presidential-actions/proclamation-suspensionentry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novelcoronavirus
- Iran: https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-coronavirus
- Schengen Area: https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-2019-novel-coronavirus
- United Kingdom and Ireland: https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-coronavirus-2
- Brazil: https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-novel-coronavirus
- Brazil Amendment: https://www.whitehouse.gov/presidential-actions/president-amendment-proclamation-president-may-24-2020



Suspension of Routine Visa Services

Several modifications to U.S. visa services have impacted many individuals seeking immigrant and nonimmigrant visas. On March 20, the U.S. State Department suspended all routine visa services at its Embassies and Consulates around the globe due to the COVID-19 pandemic. Routine visa services specifically include all routine immigrant and nonimmigrant visa appointments. U.S. Citizenship and Immigration Services (USCIS) has attempted to ease the difficulties that arose from these closures and is slowly reopening some facilities.

Routine Immigrant & Nonimmigrant Visa Services

All U.S. Embassies and Consulates will provide emergency visa services (i.e., air and sea crew and medical personnel), even if they remain closed. To do so, one may request an emergency appointment by locating the <u>specific city's Embassy website</u>. Many Embassy websites have specific information on the reopening of that Embassy and which services have resumed (routine U.S. passport and report of birth abroad services).

*UPDATE – some Embassies and Consulates have slowly begun to schedule appointments. Each Embassy/Consulate may exercise discretion on scheduling timeframes.

The Machine Readable Visa (MRV) fee needed to initiate a U.S. visa application in certain cases shall remain valid, even though all visa appointments have been canceled. The MRV fee may be used in the country of purchase within one year of the date of payment.

Visa Waiver Program

While routine visa services have been suspended, this suspension will not affect the Visa Waiver Program. While the Visa Waiver Program is available to a limited number of countries, many countries have been barred from entry due to country-specific bans based on physical presence in those countries. (Applicants traveling from Andorra, Australia, Brunei, Chile, Japan, Monaco, New Zealand, San Marino, Singapore, South Korea, or Taiwan may not be subject to any restrictions.) If an entrant is a citizen of a restricted country but has not directly traveled from or through their or any restricted country in the previous 14 days, then they are not subject to that ban. Any participant traveling from a country subject to a proclamation will have their Electronic System for Travel Authorization (ESTA) canceled, without any refund.

Under the program, if a Visa Waiver Program participant is unable to leave the U.S. due to COVID-19, the participant is advised to request an extension (called "satisfactory departure") through the <u>USCIS Contact Center</u>. Apart from emergencies, participants are not eligible to extend their stay or change status; however, due to COVID-19, the USCIS may permit additional 30-day period of satisfactory departure.



USCIS Attempts to Remedy Visa Delays Through Electronic Signatures and Time Extensions

Due to the nature of COVID-19 precautions, in-person activity has been largely suspended. This has caused a delay in visa petition processing, and difficulty obtaining any related documentation and meeting mandatory deadlines. USCIS has attempted to remedy some of these issues by increasing the methods to document submission and <u>extending certain</u> deadlines.

First, USCIS no longer will require a "wet" signature on "all benefit forms and documents with reproduced original signatures, including the Form I-129, Petition for Nonimmigrant Worker, for submissions dated March 21, 2020, and beyond." This is only for the duration of the National Emergency and only applies to signatures.

Additionally, on July 1, USCIS <u>extended</u> deadlines to respond to certain requests, dated between March 1 and September 11, 2020, by 60 days (extended from the initial period of March 1 to May 1 announced March 30). USCIS will consider a response to the following requests and notices received within 60 calendar days after the response due date set in the request or notice before taking action (for Form N-336 or Form I-290B received). These requests include:

- Request for Evidence;
- Continuations to Request Evidence (N-14);
- Notice of Intent to Deny;
- Notice of Intent to Revoke;
- Notice of Intent to Rescind:
- Notice of Intent to Terminate regional investment centers; and
- Filing date requirements for Form N-338, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)
- Filing date requirements from Form I-290B [Added on July 1]

Furthermore, a Notice of Appeal or Motion filed on Form I-290B and a Request for a Hearing on a Decision in Naturalization Proceedings filed on Form N-336 will be considered, if filed up to 60 calendar days from the issuance of a decision made by USCIS between March 1 and July 1, 2020.

USCIS acknowledges a need to remain in the U.S. beyond an authorized period of stay and allows for <u>nonimmigrants</u> to <u>apply for an extension</u>. One may file an application for extension of stay or change in status, which USCIS continues to accept and process both applications and petitions, and makes online filing and forms available. A pending application does not cause nonimmigrants to accrue unlawful presence. Additionally, if filing with the same employer and the same terms and conditions of the prior approval, the timely extension of stay request automatically extends authorization for up to 240 days after I-94 expiration.



USCIS may consider COVID-19 delays when deciding whether to excuse petitioners' or applicants' delays in filing an extension of stay or change of status request (on Forms I-129 or I-539). Current regulations permit extraordinary circumstances beyond a petitioner or applicant's control, and the length of delay is reasonable when considering the circumstances. The petitioner or applicant must submit <u>credible evidence to support their request</u>, and USCIS evaluates based on the relation of the evidence of circumstances and length of delay.



H-2A Visas as Essential and Amending Certain Requirements

The U.S. State Department has designated the H-2A program as "essential to the economy and food security of the United States." In March, USCIS announced plans to continue processing H-2A cases by authorizing consular officers "to expand the categories of H-2A visa applicants whose applications can be adjudicated without an in-person interview."

The U.S. now permits officers to elect to waive an in-person visa interview requirement for both first-time and returning H-2A applicants. Officers must determine the application has no apparent ineligibility or potential ineligibility. For returning H-2A applicants whose previous visas expired within 48 months, if no waiver of ineligibility was needed the last time they applied, they are exempted from an in-person interview. The returning applicant must be applying for the same visa classification.

The ability to increase the processing of H-2A visas depends heavily on each consulate's resources. The State Department advises any H-2A applicants to seek out the relevant U.S. embassy or consulate in order to confirm the level of services currently offered.

On April 20, USCIS <u>published</u> temporary regulatory amendments pertaining to "temporary and seasonal agricultural workers, and their U.S. employers, within the H-2A nonimmigrant classification." This is effective until August 18.

H-2A employers with a valid temporary labor certification (TLC) can employ certain H-2A status foreign workers currently in the United States immediately after receipt of the H-2A petition. The start date may be as early as when the USCIS receives the petition but cannot be earlier than the petition's listed employment start date. This rule may apply to H-2A extension of stay petitions and any applicable extension of stay application filed for an H-2A worker, if filed on or after March 1, 2020, and remain pending as of April 20, or received on or after April 20 until August 18.

USCIS notes that the H-2A rule does not modify "regulations covering the labor market test and recruitment of U.S. workers for the H-2A process" and an H-2A employer must have a valid TLC before petitioning.

On May 14, USCIS <u>published</u> temporary regulatory amendments pertaining to "temporary nonagricultural workers, and their U.S. employers, within the H-2B nonimmigrant classification." This temporary rule remains in effect until May 15, 2023.

Similar to the temporary rule amending the H-2A visas, an H-2B petitioner with a valid labor certification may immediately hire H-2B employees who are already in the United States for roles which support the U.S. food supply chain once USCIS receives the H-2B petition.



The petition must include an attestation to the qualification of the H-2B employee as eligible for the flexibilities in this rule. The employee may not start earlier than the start date of employment listed on the petition. Furthermore, the regulation allows certain H-2B workers to extend the three-year maximum allowable period of stay without requiring them to remain outside the U.S. for three months.

To take advantage of this time-limited change in regulatory requirements:

- the H-2B workers must be in the United States and in valid H-2B status on or after March 1, 2020.
- the H-2B petitioner must submit with its petition a new Form ATT-H2B (Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Essential to the U.S. Food Supply Chain), swearing under penalty of perjury that the H-2B worker(s) will be performing temporary nonagricultural services or labor that are essential to the U.S. food supply chain including, but not limited to:
 - o processing, manufacturing and packaging of human and animal food;
 - transporting human and animal food from farms or manufacturing or processing plants to distributors and end sellers; and
 - selling human and animal food through a variety of sellers or retail establishments, including restaurants.

In addition to H-2B petitioners who file their petitions on or after May 14, 2020, the temporary final rule allows certain H-2B employers and U.S. agents, with pending petitions on or after that date, to request the flexibilities provided under the temporary final rule by submitting the new Form ATT-H2B attestation to the appropriate center before USCIS adjudicates their petitions. H-2B employers and U.S. agents can request the flexibilities authorized under the temporary final rule through September 11, 2020.

A <u>June proclamation</u> targeted nonimmigrant "H-1B or H-2B visa, and any alien accompanying or following to join such alien." The Administration has suspended the entry of additional workers through the H-1B and H-2B nonimmigrant visa programs, believing the continued entry "presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak." However, the extended rules previously mentioned only apply to workers in the U.S. with a current H-2 visa, whereas the June proclamation only applies to those outside the U.S. without a valid visa.

The June proclamation does not apply to current holders of an H-2 visa. Anyone holding an H-2 visa should ensure their visa's validity and avoid international travel at this time. While the June proclamation does not bar entry for visa holders, general travel restrictions do apply to visa holders and travel precautions should be taken at this time.



Visas for Medical Professionals Entering and Currently in the U.S.

With U.S. Embassies and Consulates suspending routine visa services, all will continue to provide emergency and mission-critical visa services. Any medical professionals with an approved U.S. nonimmigrant or immigrant visa petition (I-129 or I-140 with a current priority date, or similar) or a certificate of eligibility in an approved exchange visitor program (DS-2019) may request an emergency visa appointment from their local embassy. Although USCIS allows for entry into the U.S. for medical professionals with an emergency visa, local government restrictions and resources may limit the some embassies' ability to process emergency visas, and travel restrictions still apply for certain countries. Applicants' travel may also be subject to local laws, regulations, and travel restrictions.

Foreign medical professionals currently in the United States on a J-1 visa have options to extend their visa for one year at a time for up to seven years. USCIS advises J-1 visa holders to consult with their program sponsor, ECFMG, to extend their programs in the United States and to confirm their required departure date—not the expiration date on a U.S. visa.



Suspension of Immigrants Who Present Risk to the US Labor Market During the Economic Recovery Following COVID-19 Outbreak

On April 22, 2020, a presidential proclamation suspended entry of certain immigrant visa applicants who present risk to the U.S. labor market during the economic recovery following the COVID-19 outbreak. It was continued by President Trump on June 23 and extended to nonimmigrant visa applicants as well, and will expire on December 31, 2020, unless continued.

The proclamation covered only those who did not have a valid immigrant visa on April 22, 2020, or who are U.S. citizens or lawful permanent residents. This only applied to those who, on April 23, 2020, (i) were outside the U.S.; (ii) did not have a valid immigrant visa; and (iii) did not have an official travel document (i.e., transportation letter, appropriate boarding foil, advance parole document) besides a valid visa (or issued to permit travel to seek entry).

This proclamation had several exemptions including:

- Lawful permanent U.S. residents;
- Certain healthcare professionals (physician, nurse, researcher to combat the spread of COVID-19) and any spouse and unmarried children under 21 years old;
- EB-5 investor visa;
- Spouses and children (categories IR2, CR2, IR3, IH3, IR4, IH4) of U.S. citizens (including prospective adoptees);
- Members of the United States Armed Forces and any spouse and children of the member,
- Afghan and Iraqi Special Immigrant Visa (SI or SQ classification), and any spouse and children of any such individual; and
- Any individual important to U.S. law enforcement objectives or in the national interest, as determined by the U.S. government officials.

While <u>some routine visa services are suspended</u>, emergency and mission-critical visa services are still functioning as resources allow. These applicants are likely under an exception, such as: medical professionals, spouses and children, SQ/SI visa classifications, as well as cases involving a child applicant who may age out may be considered for a national interest exception.

On June 22, 2020, the President extended the April 22 suspension of entry for certain immigrants through December 31, 2020, and created new restrictions. Now, nonimmigrant visa applicants seeking H-1B, H-2B, certain categories of J, and L visas, along with their spouses and children, will have their applications paused and suspend their entry into the U.S. Just as in the previous proclamation, this does not apply to U.S. citizens or lawful permanent residents, and no valid visas will be revoked. The proclamation includes the



same exceptions for immigrant visa applications for nonimmigrant visa applicants as mentioned in the April 22 proclamation.

The <u>official USCIS statement</u> assures those currently working in the U.S. on valid H-1B or similar visas are not affected by the proclamation. Additionally, those individuals with valid visas prior to June 24 are not barred from entering or re-entering the country, absent any other travel restrictions.



USCIS Releases Guidelines on COVID-19 Relief and Testing

As a result of COVID-19, the U.S. Government has acted to relieve both the pressures of a contagious virus and the resulting economic effects by passing the Coronavirus Aid, Relief and Economic Security (CARES) Act [See "COVID-19 Immigration Considerations" for more information]. The CARES Act allowed for more expansive unemployment benefits, small business loans, a stimulus check for certain U.S. citizens, residents, taxpayers, and funding for greater COVID-19 testing. Concern for many noncitizens resides in the choice of whether to use these benefits if there will be public charge penalties during their process to become citizens.

There is a reasonable concern that using these benefits could limit one's ability to obtain a green card. USCIS stated that the use of Medicaid for coronavirus-related treatment would not be considered a negative factor in the public charge test. Additionally, while eligibility varies by state, unemployment benefits do not count as "public benefits" for this purpose and would not penalize applicants.

The agency indicated that noncitizens who do find themselves unemployed or reliant upon public benefits during this time should provide additional evidence along with their application for a green card in order to explain that their hardship was a result of the pandemic. Such evidence will be considered on a case-by-case basis. USCIS states that seeking testing, treatment, or preventative care related to COVID-19 will not count against any noncitizen under the public charge rule.

Additionally, undocumented immigrants may receive testing regardless of immigration status <u>without fear of deportation</u> and are able to take advantage of some CARES Act benefits.



Pause in International Exchange Programs

As of March 12, 2020, the Bureau of Educational and Cultural Affairs (ECA) temporarily paused all ECA-funded programs that involve travel to and from certain countries for 60 days. Each country had heightened U.S. Centers for Disease Control and Prevention (CDC) alert levels, either level 2 and warning level 3, or heightened State Department COVID-19-related travel advisory levels 3 and 4. The ECA canceled certain events that would violate CDC suggestions, such as ECA-sponsored gatherings worldwide. The guidance did not govern private sector programs, but suggests all private-sector Exchange Visitor Program sponsors follow the guidance on exchange visitors pending entry into the U.S. and future exchange visitor recruitment. On May 12, the ECA continued the pause "until further notice" and suggested continued adherence for future programs. Lastly, the June 22 proclamation suspended J visas in six Exchange Visitor Program categories: Au Pairs, Camp Counselors, Interns, Teachers, Trainee, and Summer Work Travel. This will continue for the rest of the year.

The State Department and ECA have <u>provided detail</u> on the issues facing J visa applicants, holders, and sponsors in light of COVID-19. Most recently, visa holders may request a one-time <u>60-Day Extension</u> for exchange visitors in the academic categories whose programs end between May 31 and July 31, 2020, including the categories under the June 22 proclamation. To do so, sponsors must submit an extension justification for each exchange visitor to the Office of Designation mailbox at <u>AGExchanges@state.gov</u>. This is different than the April announcement, which allowed for a <u>two-month extension</u> for any program end date between April 1 and May 31, 2020. For participants, the State Department suggests contacting your sponsor. As for sponsors, there are <u>several releases</u> providing guidance on changes due to COVID.



USCIS Field Office Closure

On March 18, all USCIS offices <u>suspended in-person</u> services until April 1. USCIS <u>extended</u> the closure of the offices to May 4, finally announcing the planned reopening of certain offices on June 4, with some remaining closed. Please see the <u>USCIS website</u> for more detailed Field Office, Application Support Center, Asylum, and International Office statuses. Offices may have different hours. Currently, all field offices are open, and many Application Support Centers are set to open near the end of July.

Before June 4, any applicants who either had an appointment with an Application Support Center (ASC) on or after the March 18 closure or has filed an I-765 extension will have their application processed using previously submitted biometrics. Field offices automatically rescheduled interviews, but InfoPass or other appointments will need to be rescheduled by the applicant.

As for ASC, a USCIS biometrics services appointment will be automatically rescheduled as soon as possible, and the applicant will be mailed a new ASC appointment notice. If an applicant needs to reschedule a USCIS biometrics services appointment for good cause, especially if an applicant feels sick, the applicant will need to reschedule according to the biometrics appointment notice. There is no penalty if an applicant reschedules an appointment.

Visits must be scheduled, and visitors must follow all COVID-19 protocols (arrive only 15 minutes before appointment, wear mask coverings, etc.).

As USCIS offices reopen, it is best to find one's particular location of interest to ensure its open status, which can be found here.



ICE F-1/M-1 Guidance for Fall 2020 Semester for International Students

The Student and Exchange Visitor Program (SEVP) <u>responded</u> to the changing academic atmosphere due to the COVID-19 pandemic by informing students on March 9, 2020, that the SEVP "intends to be flexible with temporary adaptations." On March 13, SEVP <u>provided</u> guidance on the suspension of certain in-person requirements set forth by the program in order to allow students to attend school either in or outside the U.S.

On July 6, 2020, the SEVP <u>announced</u> a policy that would significantly affect students in the U.S. under a nonimmigrant F-1 and M-1 visa, in which it sought to end the temporary exemptions allowing these students to remain in the U.S. while attending online classes and to deny visas or entry into the U.S. for those enrolled in a school with classes fully online. Furthermore, the announcement stated students with a visa and who are currently enrolled in a school participating in solely online classes "must depart the country" or transfer to a school with in-person classes. The proposed rule also required students enrolled in schools with fully in-person classes to adhere to the existing federal restrictions, and students enrolled in schools with partially in-person classes to avoid taking entirely online classes.

On July 14, eight days after announcing the termination of the suspension of the rule, the Administration <u>reversed course</u> and withdrew its intentions to end the relief for students. The withdrawal signals an SEVP's intention to continue the temporary exemptions to the on-line class requirements under federal regulation.



Joint Agreement With Mexico and Canada to Restrict Nonessential Travel Across Borders

The U.S. and Canada jointly <u>announced</u> on March 20, 2020, the restriction of nonessential travel across the border between the two nations as a result of the COVID-19 pandemic. Nonessential travel includes all tourism or recreational travel, and not supply chains which cross the U.S.'s northern border, or other essential or urgent work or reasons. Implemented on March 21, 2020, the restriction was set to be in place for 30 days, but has been extended each 30-day period – most recently on June 16, 2020, <u>extending</u> the deadline to July 21, 2020.

Similar restrictions <u>extended</u> to the southern border as well, with a joint statement from the U.S. and Mexico prohibiting nonessential travel across the border. Just as with the Canadian border, the restriction last for a 30-day period and may be extended. The suspension of all nonessential travel has been extended each 30-day period – most recently on June 16, <u>extending</u> the deadline to July 21, 2020. Recently, this agreement has been extended for another 30-day period, set to now expire in August.



Our Immigration Practice

We provide integrated legal solutions to complex problems that permit our clients to achieve U.S. immigration objectives. Working with our attorneys in multiple practice groups including Corporate, International, Real Estate, Tax, and Wealth Planning, we represent companies and individuals concerning nonimmigrant and permanent / "green card" employment-based, family-based, naturalization, and derivative citizenship matters. Our experience ranges from start-ups, small- to medium-size enterprises (SMEs) and public companies who employ individuals that need U.S. visa options to grow and expand their business; families who wish to live in the U.S. temporarily and/ permanently; and persons who wish to acquire U.S. citizenship.

To explore our areas of service and practice highlights, visit our immigration practice page.

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