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## Questions and Answers for Proclamation 10052 - Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

### Legal Disclaimer:

Please note that this information does not constitute direct legal advice for specific case facts and is for informational purposes only. For specific legal opinions, please schedule a consultation with a WR attorney.

### Summary:

[Presidential Proclamation 10052](#) and [its amendment](#), which is the newest [presidential proclamation/travel ban](#) impacting certain nonimmigrant visa categories, is currently effective from June 24, 2020, to December 31, 2020. This travel ban suspends the issuance of visas for those seeking entry in H-1B, L-1, H-2B, and J-1 status (certain programs only), as well as their dependents. It includes those who do not have a valid H-1B/H-4, L-1/L-2, or J-1/J-2 visa stamp on June 24, 2020, or an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document). For those affected by the proclamation, it suspends both nonimmigrant visa issuance and entry into the United States. Moreover, the proclamation extends the validity of [Presidential Proclamation 10014](#), which suspends the entry of certain immigrants, to December 31, 2020.

### What amendments has the Trump Administration made to Proclamation 10052?

On June 29, President Trump amended section 1 to read as follows:

Section 1. Amendment. Section 3(a)(ii) is amended to read as follows:  
(ii) does not have a nonimmigrant visa, of any of the classifications specified in section 2 of this proclamation **and pursuant to which the alien is seeking entry**, that is valid on the effective date of this proclamation

This amendment clarifies that the exemption of having a valid nonimmigrant visa only applies to those who have a valid H, L, or J visa on June 24, 2020, and seek admission pursuant to that valid visa.

### What is the timeframe of Presidential Proclamation 10052?

The proclamation went into effect on June 24, 2020, and expires on December 31, 2020. It "may be continued as necessary," and calls for the Secretary of Homeland

Security, in consultation with the Secretaries of State and Labor, to periodically "recommend any modifications as may be necessary."

### **Who is impacted by Presidential Proclamation 10052?**

- Foreign nationals outside of the United States who have expired H-1B/H-4, L-1/L-2, or J-1/J-2 (only impacted programs) visa stamps, are **barred** and will need to wait until **AFTER** the validity of this travel ban proclamation (currently, December 31, 2020) to return to the U.S.
- Foreign nationals inside the United States with expired H-1B/H-4, L-1/L-2, or J-1/J-2 (only impacted programs) visa stamps, should **NOT** travel internationally for the validity of this travel ban (currently, until December 31, 2020), otherwise, he or she may be **barred** from re-entering.

### **Which J-1 programs are impacted by Presidential Proclamation 10052?**

- The J-1 programs impacted are intern, trainee, teacher, camp counselor, au pair, and summer work travel programs.

### **Who is NOT impacted by Presidential Proclamation 10052?**

- Foreign nationals inside the United States on June 24, 2020, and who do not plan to travel for the validity of this travel ban (currently, December 31, 2020) are not impacted.
- Foreign nationals in B-1/B-2, E-1, E-2, E-3, F-1, H-3, O-1, and TN status inside or outside of the United States are not impacted by this travel ban.
- F-1 OPT applications or STEM OPT extensions are not impacted by this travel plan.
- H-1B/L-1 extensions and H-1B transfers filed with the USCIS are not impacted by this travel ban.
- J-1 program extensions while in the United States are not impacted by this travel ban.
- H-1B cap petitions filed with the USCIS are not impacted by this travel ban.
- Canadians, including those in H-1B/H-4, L-1/L-2, and J-1/J-2 status, are not impacted by this travel ban (based on recent U.S. Customs and Border Protection's guidance).

- Foreign nationals who have a valid H, J, or L visa issued on June 24, 2020, and seek admission pursuant to that valid visa should not be impacted by this travel ban as long as he or she returns **BEFORE** his/her current H-1B/H-4, L-1/L-2 or J-1/J-2 (only impacted programs) visa stamp expires.
- Foreign nationals who have a valid advance parole document are not impacted by this travel ban, regardless of whether they are inside or outside the United States.

### **What exemptions are there to Presidential Proclamation 10052?**

- A foreign national who is a spouse or child (unmarried and under 21) of a U.S. citizen is exempted.
- Foreign nationals seeking to enter the U.S. to provide temporary labor or services essential to the U.S. food supply chain are exempted.
- Foreign nationals whose entry would be in the national interest as determined by the Secretary of State are exempted.

### **What does it mean that a foreign national's entry would be in the national interest?**

The proclamation provided a standard to define national interest to mean those whose entry would be in one of the following:

- Critical to the defense, law enforcement, diplomacy, or national security of the U.S.;
- Involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized;
- Involved with the provision of medical research at United States facilities to help the United States combat COVID-19;
- Necessary to facilitate the immediate and continued economic recovery of the U.S.; or,
- Children who would age out of eligibility for a visa.

### **What is still unclear?**

Presidential Proclamation 10052 has provided more questions than answers. The U.S. Department of State and the U.S. Department of Homeland Security are

expected to issue guidance on the implementation of this travel ban. Currently, the biggest questions we have are the following:

- Whether or not this travel ban impacts Chilean and Singaporeans under H-1B1 visas? A plain reading of the proclamation would clearly mean they are excluded. However, the U.S. Embassies in both Chile and Singapore are awaiting guidance from the U.S. Department of State. Accordingly, until we receive further notice, WR does not recommend travel outside of the U.S. unless the H-1B1 visa stamp in your passport is still valid, and you return **BEFORE** your current H-1B1 visa stamp expires.
- Whether or not the travel ban excludes foreign nationals who currently have valid H-1B/H-4, L-1/L-2, or J-1/J-2 visas but are set to expire before December 31, 2020, from applying for a renewal? A plain reading of the proclamation would clearly mean they are not impacted as they had a valid visa on June 24, 2020, in the status they would seek entry in, but the U.S. Department of State tweeted a cryptic text stating those with expired visas would not be eligible to renew. Thus, WR recommends foreign nationals avoid travel outside of the U.S. to avoid any issues trying to return.

### **What else did Presidential Proclamation 10052 include?**

The proclamation also includes additional directions for the U.S. Department of Homeland Security ("DHS"), Department of State ("DOS"), and the Department of Labor ("DOL"). First, it directs the DHS to consult with the DOS and DOL to "recommend modifications as necessary" through the validity of Proclamation 10052. Then, it also directs DHS, DOS, and DOL to take "additional measures" to ensure U.S. workers are not impacted by foreign nationals.

### **What additional measures did the Presidential Proclamation 10052 request?**

The proclamation further directs:

- DOL and DHS to ensure compliance with the permanent labor certification ("PERM") for EB-2 and EB-3 cases and the Labor Condition Application ("LCA") for H-1B cases based on the current regulations and to consider promulgating additional regulations. Current regulations include DOL investigations for possible LCA violations. Additional measures may also include additional review of those already admitted or seeking admission as EB-2 or EB-3 immigrants, or H-1B nonimmigrants.
- DHS to consider promulgating regulations on the allocation of visas to ensure the presence of H-1B workers in the United States does not disadvantage U.S. workers. Based on the Presidential [Fact Sheet](#) released the same day as Proclamation 10052, the requested H-1B program reform includes prioritizing

workers who are offered the highest wage to ensure the highest skilled applicants are admitted.

- DHS and DOS to ensure each foreign national requesting a visa or admission properly register biometric information including photographs, signatures, and fingerprints.
- DHS to promulgate regulations that would prevent certain foreign nationals from obtaining work authorization in the United States if they have final removal orders, are inadmissible or deportable from the U.S., or have been arrested for, charged with, or convicted of a criminal offense in the U.S.

### **Have questions or need assistance?**

If you are currently abroad and planning to return to the U.S. or are planning to travel internationally outside of the U.S. between now and the end of the year, please contact a WR attorney for assistance.

We also recommend that you read the blog post the WR law firm has released about this topic <https://wolfsdorf.com/blog/2020/06/23/trump-administration-suspends-entry-of-certain-nonimmigrant-workers/>, as well as check back in for future updates that will come.