No. 20-17132

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL ASSOCIATION OF MANUFACTURERS, *et al.*,
Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
No. 4:20-cv-4887-JSW
The Hon. James S. White

DEFENDANTS-APPELLANTS' EXCERPTS OF RECORD

Volume 4 of 6
ER 430–684

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

WILLIAM C. PEACHEY
Director

MATTHEW J. GLOVER
Senior Counsel to the Assistant Attorney General

GLENN M. GIRDHARRY
Assistant Director

AARON S. GOLDSMITH
Senior Litigation Counsel

JOSHUA S. PRESS
Trial Attorney
United States Department of Justice
Civil Division,
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Phone: (202) 305-0106
Fax: (202) 305-7000
e-Mail: joshua.press@usdoj.gov

Attorneys for Defendants-Appellants

TABLE OF CONTENTS

ECF No.	DATE	DESCRIPTION	PAGES
69-5	08/29/2020	Exhibit - U.S. Embassy in Argentina Printout	ER 0430
69-6	08/29/2020	Declaration of William Gustafson	ER 0487
69-7	08/29/2020	Second Declaration of Marcie Schneider	ER 0490
66	08/19/2020	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction	ER 0498
31	07/31/2020	Plaintiffs' Motion for a Preliminary Injunction and Accompanying Exhibits and Declarations	ER 0532
31-1	07/31/2020	Declaration of Paul Hughes	ER 0565
31-2	07/31/2020	Exhibit - Presidential Proclamation 10052	ER 0571
31-3	07/31/2020	Exhibit - Background Press Call	ER 0577
31-4	07/31/2020	Exhibit - DHS Printout	ER 0591
31-5	07/31/2020	Exhibit - Tweet	ER 0594
31-6	07/31/2020	Exhibit - Tweet	ER 0596
31-7	07/31/2020	Exhibit - Tweet	ER 0598
31-8	07/31/2020	Exhibit - Tweet	ER 0600
31-9	07/31/2020	Exhibit - Tweet	ER 0602
31-10	07/31/2020	Exhibit - Tweet	ER 0604
31-11	07/31/2020	Exhibit - DOL Printout	ER 0606
31-12	07/31/2020	Exhibit - CRS Report	ER 0608

31-13	07/31/2020	Exhibit - USCIS H-1B Report	ER 0630
31-14	07/31/2020	Exhibit - DHS Inspector General Report	ER 0640

2d Hughes Declaration

Exhibit 4

Nonimmigrant Visas

The Consular Section of the U.S. Embassy in Buenos Aires is responsible for providing visa services to those seeking to enter the United States for tourism, business, study, medical treatment, work or other temporary travel purposes.

Please visit our Visa Appointment Service website for complete information on applying for a nonimmigrant U.S. visa, including a directory of nonimmigrant visa categories.

- Security and Access Policy
- Visiting the Embassy
- Expedited Appointments
- Administrative Processing
- Contact Us
- Lost or Stolen Passports
- Refusal Policy

Applying for a Nonimmigrant Visa

There are different options and procedures to apply for a nonimmigrant visa. You may find detailed information below.

- Regular Visa Application Process
- Applicants 13 years old or younger
- Applicants 80 years old or older
- Visa Renewal
- Protocol Visas
- Group Visas
- Treaty Traders & Investors Visa (E)
- J-1 Summer Work and Travel & Exchange Programs

Suspension of routine visa services

As of August 24, the United States Embassy in Argentina is resuming visa services for F, M, and J student visa applicants. We remain unable to resume other routine visa services at this time. We will resume routine visa services as soon as possible but are unable to provide a specific date. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately (or if you are a student visa applicant), please follow the guidance provided under the "Expedited Appointments" tab here to request an emergency appointment. Please don't submit an Expedited Appointment Request more than 20 days before your intended travel date.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here.

U.S. Embassy in Barbados, the Eastern Caribbean, and the OECS

Visas

As of July 22, the United States Embassy in Barbados is resuming certain immigrant and nonimmigrant visa services, including: F1, J1, M1, O1, P1, C1/D and Interview Waiver and Renewal Interview Waiver categories for nonimmigrants and IR1/2/3 and CR1/2 categories for immigrants. At this time Post is only offering services to visa applicants who are residents in our consular district, which includes Barbados and the Eastern Caribbean. While the Embassy aims to process cases as soon as practicable, there are likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ais.usvisa-info.com/en-bb/niv, or 246-623-9832 or 246-6239833 to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

If you are currently unable to travel to Barbados for your visa appointment due to commercial flight restrictions, you have the option to attempt to secure an appointment by contacting your nearest reachable U.S. Embassy or Consulate.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Additional Resources

- Nonimmigrant Visa FAQs
- Travel and Tourism in the U.S.
- Legal Rights and Protections
- Summer Work Travel
- Fraud Prevention Warning
- A to Z Index
- U.S. passport and travel information for U.S. citizens following the Coronavirus (COVID-19) pandemic
- U.S. Visa and Travel FAQs for non-U.S. citizens following the Coronavirus (COVID-19) pandemic

Contact Us

Telephone

Call Center:

- 246-623-9832
- 246-623-9833

Monday to Friday – 7:00 am to 7:00 pm.

Email

Non-Immigrant Visas – bridgetownniv@state.gov

U.S. Embassy in Belize

Visas

Resumption of limited visa services June 2020

As of Wednesday July 15, 2020, the United States Embassy in Belmopan, Belize is resuming certain immigrant and nonimmigrant visa services, including: Immigrant visa classes IR1, IR2, CR1, and CR2; Nonimmigrant visa classes F, M, and J. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ais.usvisa-info.com/en-bz/niv to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

Effective Tuesday March 24, 2020, U.S. Embassy Belmopan has suspended routine consular services. For emergency American Citizens Services, including emergency passports, please visit our website for additional information https://bz.usembassy.gov/u-s-citizen-services/passports/apply-u-s-passport-2/

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Information for visa applicants regarding novel coronavirus:

As of March 16, 2020, the United States Embassy in Belmopan, Belize is cancelling routine immigrant and nonimmigrant visa appointments. We will resume routine visa services as soon as possible but are unable to provide a specific date at this time. The MRV fee is valid and may be used for a visa application in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ais.usvisa-info.com/en-bz/niv to request an emergency appointment.

Additional Resources

- Nonimmigrant Visa FAQs
- Travel and Tourism in the U.S.
- Legal Rights and Protections
- Summer Work Travel
- Fraud Prevention Warning
- A to Z Index

Contact Us

Services by Appointment Only
Nonimmigrant Visa Hours: Mon., Wed., Thurs. 8:00 – 11:00
Petition-based Visa Hours: Tues. 1:00 – 2:00

Immigrant Visa Hours: Tues. 8:00 – 11:00

Closed on all U.S. and Belize Holidays
Contact: Global Support Services (GSS) website or call 0 800 013 0407.

ConsulBelize@state.gov

Government Agency Links

- U.S. Citizenship and Immigrant Services
- U.S. Customs and Border Protection
- USA.gov
- U.S. Department of State

Visas

As of July 15, 2020, the United States Embassy in Sarajevo is resuming certain immigrant and nonimmigrant visa services, including: IV – IR1, IR2, CR1, CR2, and NIV – F, M, J (certain categories allowed by PP), E, I, O, P visas. While the U.S. Embassy in Sarajevo aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at Global Support Services (GSS) to request an emergency appointment.

If you were issued an immigrant visa in one of the following categories: IR1, IR2, CR1, CR2, IH-3, IH-4, IR-3, IR4, EB5, SI, SQ before 23 April 2020, and your visa expired before you were able to travel to the United States, you may be eligible to have your visa reissued. Please contact us at SarajevoVisas@state.gov for more information.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

Admission to the U.S. remains subject to a determination by Customs and Border Protection officers at ports of entry and subjects may be subject to a 14-day quarantine upon arrival.

Entry of non-resident foreign nationals who were present in the People's Republic of China (not including the Special Administrative Regions of Hong Kong and Macau), the Islamic Republic of Iran, Brazil, the United Kingdom, or the 26 countries that comprise the Schengen Zone within 14 days prior to their arrival at the port of entry in the United States is suspended, per Presidential Proclamation. If you reside in, have traveled recently to, or intend to transit or travel to China, Iran, Brazil, the UK and Ireland, or the Schengen Zone (including 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) prior to your planned trip to the United States, we recommend you postpone your visa interview appointment until 14 days subsequent to your departure from the subject country(ies).

Translation

BHS

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Contact Us

U.S. Embassy Consular Section
1 Robert C. Frasure Street
71000 Sarajevo
Phone: +387 33 943-955 (For all Visa inquiries)
e-mail:
SarajevoVisas@state.gov – All Visa related matters
SarajevoACS@state.gov – American Citizen Services

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Visas

As of July 20, 2020, the United States Embassy in Sofia, Bulgaria is resuming certain immigrant and nonimmigrant visa services, including: nonimmigrant crew (C1/D), students enrolled in studies at a school in the United States, certain agricultural and supply chain workers (H2 categories excepted from Presidential Proclamations), media (I), treaty trader/investor (E), and performers (O/P) as well as scheduling for immigrant visa categories IR1/CR1, IR2/CR2, and IH3. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ustraveldocs.com/bg/index.html or telephone 02-491-6461/ email support-Bulgaria@ustraveldocs.com to request an emergency appointment.

Interview waiver applications: if you already have a full validity B1/B2 or C1/D visa which is still valid or which expired less than 12 months ago, you may be eligible to renew your visa without an interview appointment. For interview waiver information, please visit: http://ustraveldocs.com/bg/bg-niv-visarenew.asp.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/

For more information please see: https://travel.state.gov/content/travel/en/News/visas-news/proclamation-suspending-entry-of-immigrants-and-nonimmigrants-who-present-risk-to-the-US-labor-market-during-the-economic-recovery-following-the-COVID-19-outbreak.html

Translation

български

Important Information

Notifications
Security Requirements
Consular Exchange Rate

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Consular Operations Updates

Last updated : August 19, 2020 at 12:27 pm EDT

We understand your concern about visas and travel in light of the continuing impact of the coronavirus (COVID-19) pandemic, and appreciate your patience as we safely resume our operations.

The United States Embassy and Consulates in Canada are resuming certain non-emergency U.S. citizen and nonimmigrant visa services. The U.S. Consulate General in Montreal is resuming certain immigrant visa services, including spouses and children of U.S. citizens and other mission critical categories such as medical professionals. All other immigrant visa services, including fiancé (K) visas, remain restricted to emergency appointments. Each post's ability to expand service offerings will differ based on facilities, staffing resources, and local conditions, and it is important to monitor each location as they will resume services at different times. While the Embassy and Consulates aim to process cases as soon as practicable, there are likely to be increased wait times for completing services due to substantial backlogs. Wait times for appointments will also be longer than normal.

Please review the information below for services available.

Location	Citizen Services			Visa Services	
	Passports	Consular Reports of Birth Abroad	Notary Service	Immigrant and Fiancé Visas	Non-Immigrant Visas
Calgary	🟢	🟢	🟢	N/A	🔴
Halifax	🟢	🟢	🟢	N/A	🟡
Montreal	🟢	🟢	🟡	🟡	🔴
Ottawa	🟢	🟢	🟢	N/A	🟡
Quebec City	🟢	🟢	🟢	N/A	🟡
Toronto	🟢	🟢	🔴	N/A	🟡
Vancouver	🟢	🟢	🟢	N/A	🟡

	Current Service Status
🟢	Full Services
🟡	Limited Services
🔴	Emergency Services

For nonimmigrant visa applicants: the MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. Appointments may be made here. If you have an urgent matter and need to travel immediately, please follow the guidance provided on the FAQ page to request an emergency appointment. Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

For information on appointments to renounce or relinquish your U.S. citizenship in Canada, please send an email to CanadaCLNInquiries@state.gov.

Additional Resources

- American Citizen Services
- Visa Information

Our Embassy and Consulates

- U.S. Embassy in Ottawa
- U.S. Consulate General Vancouver
- U.S. Consulate General Calgary
- U.S. Consulate Winnipeg
- U.S. Consulate General Toronto
- U.S. Consulate General Montreal
- U.S. Consulate General Quebec
- U.S. Consulate General Halifax

U.S. Embassy Santiago: Routine Visa Operations Remain Suspended; Limited Student Visa Services Resume

In response to challenges related to the COVID-19 pandemic, routine visa operations remain suspended at U.S. Embassy Santiago. We have postponed or canceled all routine immigrant and nonimmigrant visa appointments as of March 20, 2020. We continue to provide emergency and mission-critical visa services as resources and local conditions allow. Although select appointments may still appear confirmed in the online scheduling system, all appointments are temporarily suspended until further notice, unless otherwise indicated. We will resume routine visa operations as soon as possible but are unable to provide a specific date at this time.

The health and safety of both our visa applicants and workforce remain our highest priority, and we will be enforcing strict social distancing measures and require masks covering mouth and nose while in our facility. To support social distancing, applicants should not arrive more than 5 minutes before their scheduled appointment time. Any applicant with symptoms such as a cough, sore throat, or fever should reschedule their interview immediately, for a date at least 14 days after the disappearance of symptoms.

For Nonimmigrant Visas:

- As of August 10, 2020, the United States Embassy in Chile is resuming processing for certain nonimmigrant visa classes, to include: F1, M1, and J1 visa classes ***not subject to Presidential Proclamation 10052***. To qualify for an interview, students must be enrolled in a full course of study *other than English as a Second Language (ESL)* and designated to start Fall semester 2020 in the United States. Because of limited capacity and safety precautions due to COVID-19, applicants should expect to experience some delay in appointment availability. If student applicants have less than one week before the start of classes, they may request an emergency appointment by logging into their account (https://ais.usvisa-info.com/en-cl/niv).
- Applicants for certain J categories covered by Presidential Proclamation 10052 (Intern, Trainee, Teacher, Camp Counselor, Summer Work and Travel, Au Pair) should only request an appointment if they have reason to believe they may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.
- Interviews for all other visa categories, including B1/B2, remain suspended.
- Applicants of any visa category with an urgent need to travel can request an emergency appointment. If you have an urgent matter and need to travel immediately, please follow the guidance provided to request an emergency appointment at https://ais.usvisa-info.com/en-cl/niv/information/faqs#need_earlier_appt.
- Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

Filter

Keyword(s):

Content Type:
- ☐ News
- ☐ Speeches
- ☐ Press Releases
- ☐ Events
- ☐ Video

Month/Year

Apply Filter

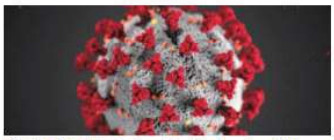
Topics

Alert
Art & Culture
Consular Affairs
Education
embassy
Emergency Services
Environment
Events

Show More ∨

Recent Posts

Health Alert – U.S. Embassy Santiago – Covid-19 Update (8/26/2020)



COVID-19 in Chile: Information for American Citizens

Health Alert – U.S. Embassy Santiago – Covid-19 Update (8/19/2020)

Nonimmigrant Visas

Important Notice:

Starting August 14, 2020, the U.S. Embassy in Bogota will begin conducting a limited number of nonimmigrant visa interviews in the student and exchange visitor categories for Colombian citizens and residents. We will schedule interviews for certain applicants in the F, M, and J visa categories with an approved I-20 or DS-2019 form, including immediate family members who qualify for F-2, M-2, or J-2 visas. However, we will not yet schedule interviews for students of English as a Second Language studies (ESL) . We will only conduct interviews for exchange (J) applications for categories that are not subject to Presidential Proclamation 10052. These exchange categories are alien physician, professor, research scholar, short-term scholar, specialist, and students, as well as very few au pairs who meet a specific National Interest Exception.

Applicants should schedule any available appointment at https://ais.usvisa-info.com/es-co/niv and then request an expedited, earlier appointment, following the instructions at https://ais.usvisa-info.com/en-co/niv/information/faqs#need_earlier_appt. In the request, applicants must detail the program start date, course of study on the I-20 (for F or M visas), and Exchange Visitor Category from Box 4 of the DS-2019 (for J visas). Au Pairs seeking a National Interest Exception must explain why they qualify. The Embassy is reviewing previously denied expedite requests and will reschedule such applicants for earlier appointments if they qualify, capacity permitting.

Applicants must appear at the Embassy only for the interview. The Centro de Atención a Solicitantes (CAS) is not yet open for appointments .

Because of limited capacity and safety precautions due to COVID-19, there may be delays in appointment availability. In order to protect the health and safety of our personnel and the public, we will institute strict social distancing practices in our facilities. All applicants must wear masks. Any applicant with symptoms such as a cough, sore throat, or fever or who believe they have been exposed to COVID-19 will not be admitted to the Embassy and must contact us at https://co.usembassy.gov/visas/nonimmigrant-visas/non-immigrant-visa-contact-form/ to reschedule the interview.

Routine interviews for all other visa categories, including B1/B2, remain suspended.

For any questions, please review our information page at https://co.usembassy.gov/visas/nonimmigrant-visas/fmj-visa-information-during-covid-19/ or contact us at https://co.usembassy.gov/visas/nonimmigrant-visas/non-immigrant-visa-contact-form/.

U.S. Embassy Bogotá's Consular Section processes nonimmigrant visas for temporary travel for tourism, business, study and exchange programs, employment, and other purposes.

Please visit our visa information and appointment system website for details on applying for a U.S. nonimmigrant visa, including a directory of nonimmigrant visa categories.

Information for Visa Applicants Regarding Novel Coronavirus

The United States Embassy in Bogota remains unable to resume routine immigrant and nonimmigrant visa services at this time. We will resume routine visa services as soon as possible but are unable to provide a specific date. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the link (https://ais.usvisa-info.com/en-co/niv/information/faqs#need_earlier_appt) to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

Translation

Español

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index
Arrive Right on Time
Report a Lost or Stolen U.S. Visa
Report Fraud
Information for Deportees

Contact Us

Passport delivery issues: asa_contactus+co+courier+es@visaops.net
Fee payment issues: asa_contactus+co+mrv+es@visaops.net
Technical and account issues: asa_contactus+co+info+es@visaops.net

For further information and support about the registration, scheduling and delivery process, please contact in Colombia: (571) 5088165 – (571) 5088185. In the United States: (1)7032494652

Government Agency Links

U.S. Citizenship and Immigration Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Visas

Resumption of Visa Services for B1 and B2 Categories of Nonimmigrant Visas

*The U.S. Embassy in Zagreb is pleased to announce as of August 18, 2020, the resumption of **limited B1/B2 visa appointments** intended for business or tourism travel purposes for Croatian nationals only. This is in addition to current processing of certain categories of nonimmigrant visas such as: F, J (with an exception for aliens participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program), M, I, O, P and E.*

We are encouraging visa applicants who qualify under these categories to apply. All other nationals or applicants who do not have residency in Croatia will not receive appointments at this time.

If you want to apply for B, I, O or P visas you must register in the system, make payment and schedule the first available appointment.

The procedure for E visa applications remains the same per instructions on the website.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ais.usvisa-info.com/en-hr/niv/information/faqs#need_earlier_appt to request an emergency appointment.

Effective June 13 all visitors over the age of two years old to the Consular Section of the U.S. Embassy in Zagreb are required to wear a face covering. The Consulate will not provide face coverings and you will be denied entry if you do not bring a covering with you. Please plan ahead.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Nonimmigrant Visas

Travel to the United States on a temporary basis, including tourism, temporary employment, study and exchange.

Immigrant Visas

For foreign citizens who want to live permanently in the United States.

Translation

Hrvatski

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Contact Us

For questions about **nonimmigrant visas** please contact Global Support Services.

For questions about **immigrant visas**, please email ZagrebIV@state.gov

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Information on Travel Restrictions (FAQ)

Related Links

- View U.S. Embassy Prague Most Recent Alerts
- Smart Traveler Enrollment Program
- FAQ regarding Presidential Proclamations and Travel from Europe to the U.S.

FREQUENTLY ASKED QUESTIONS ON TRAVEL BETWEEN THE CZECH REPUBLIC AND THE UNITED STATES

Are you accepting visa applications? When will you start accepting them?

U.S. Embassy Prague has resumed limited visa processing including: B-1, F-1, M-1, P, O, E-2, and certain categories of exchange visitors under J-1. While U.S. Embassy Prague aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. If you have an emergency and need to depart the United States in the next week or two, you can submit a request for an emergency visa appointment at consprague@state.gov

I had a visa appointment and it was cancelled. When can I have a visa interview? Can I get my visa fee back?

If your interview was cancelled, you now have the ability to reschedule your visa interview as long as you fall into one of the visa categories listed above and are not otherwise subject to any Presidential Proclamations. We are not offering visa fee refunds, but you may use your visa fee, the MRV fee, at any time within one year of your payment.

I have a valid visa or ESTA approval. Can I travel to the States?

If you have a valid previously issued F-1 or M-1 student visa you may travel to the United States and apply for admission on your current, valid visa, so long as you are in possession of a valid Form I-20.

If you have a valid previously issued nonimmigrant visa, including B-1, P, O, E-2, you may be able to travel to the United States, pending additional clearance by U.S. Embassy Prague. In order to determine your eligibility please send us an email at PragueESTA@state.gov. Your email should include your full name, date of birth, place of birth, passport number, a copy of valid U.S. visa, purpose of travel, and intended dates of travel.

Travelers with a valid ESTA, traveling under the Visa Waiver Program, may be eligible to travel to the United States, pending additional clearance by U.S. Embassy Prague. If you are traveling with a valid ESTA, and believe your purpose of travel falls within one of the exceptions to the Presidential Proclamations on travel, please email us at PragueESTA@state.gov in order for us to evaluate your eligibility for travel. Your email should include your full name, date of birth, place of birth, passport number, purpose of travel, and intended dates of travel.

Certain individuals are exempt from the Presidential Proclamation on travel from the Schengen Area, such as some family members of U.S. citizens. See the language of the Proclamation and the list of exemptions here.

I have an approved DS-2019 form and need a J-1 visa for summer work travel or participation another exchange program. I have an approved I-20 form and need an F-1/M-1 student visa. Will I be able to make it? When can I have my interview?

We are currently accepting limited appointments for F-1/M-1 student visas and certain categories of exchanges visitors under J-1 (such as professors, research scholars, short-term scholars and specialists). This determination does not apply to J-1 visa applicants who will be participating in au pair, intern, trainee, teacher, camp counselor, or summer work travel programs, as well as accompanying derivative family members, as their travel is suspended under PP 10052.

On June 22, 2020, the President issued Presidential Proclamation 10052 (P.P. 10052) titled "Suspension of Entry of Aliens Who Present A Risk to the U.S. Labor Market Following the Coronavirus Outbreak." This P.P. effectively suspends issuance of certain **H-1B, H-2B, J-1** (for certain categories within the Exchange Visitor Program), and **L Nonimmigrant visas** (NIVs) through December 31, 2020, unless continued by the President. No valid visas will be revoked under the proclamation. If you believe you are not subject to the Presidential Proclamation, and have an emergency situation, please send an email explaining your circumstances to consprague@state.gov.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

I am an American citizen and I want to visit Prague. When will the Czech Republic start letting Americans in?

Currently, American citizens cannot travel to the Czech Republic for tourism or business purposes unless they are immediate family members of Czech citizens or EU citizens residing in the Czech Republic. The Czech Ministry of the Interior is the Czech agency that administers admission of foreign citizens into the Czech Republic. The Ministry of the Interior's COVID-19 website provides detailed information on who can enter the Czech Republic currently. Particularly useful are PDF charts on that website that list specific conditions for entry and that are updated very frequently. The Ministry of the Interior also provides answers via email at cestovani.covid19@mvcr.cz. U.S. Embassy Prague cannot provide clarifications or interpretation of the Czech government's rules, so please contact the Czech Ministry of the Interior for advice or evaluation of your particular circumstances.

Limited Resumption of Visa Appointments on August 14

Updated: August 21, 2020

Limited Visa Services Resumed August 14 in Copenhagen: Visa services were suspended worldwide in March 2020 in response to the COVID-19 global pandemic.

On August 14 the U.S. Embassy in Copenhagen resumed limited visa services in a phased, safe, and orderly manner. Effective August 14, routine appointments are available for scheduling for F/M/J student and exchange visitor visa applicants only. All other visa categories continue to be suspended while we assist hundreds of student and exchange visitors with fall 2020 academic start dates. The U.S. Embassy in Copenhagen will continue to provide emergency and mission critical visa services for humanitarian, life-and-death related travel. If you believe you qualify for an emergency appointment please login to your profile on www.ustraveldocs.com to request an emergency appointment. If you are not a student or do not have a life-or-death reason for travel, please monitor this website for updates for further updates. We will continue to phase in other visa categories as we resume visa services.

While the Embassy aims to process cases as soon as practicable when we resume services, there will be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an appointment in the country where it was purchased within one year of the date of your payment

Travel Restrictions from Schengen Zone to United States Remain in Effect: The Presidential Proclamation 9993 on Novel Coronavirus suspending entry into the United States for foreign nationals physically present in the Schengen Area (which includes Denmark), the UK, Ireland, Brazil, Iran, or China during the 14-day period preceding their entry into the United States is still in effect. There is no definitive date for lifting these travel restrictions. The proclamation does not apply to U.S. citizens, lawful permanent residents, spouses of U.S. citizens, minor children of U.S. citizens, diplomatic and official travelers, air and sea crew members, members of the U.S. Armed Forces and their spouses and children, and certain other categories of travelers. Monitor the White House website for up-to-date information about the travel restrictions.

Expansion of National Interest Exception Travel for Students, Business Travelers, Investors, and Academics: On July 16, the State Department announced that certain travelers subject to Presidential Proclamations 9993 and 9996 (which suspend travel to the United States from the Schengen Area, the UK, and Ireland), may qualify for a national interest exception for non-tourist travel to the United States. Travelers that may qualify for a national interest exception to the Presidential Proclamation include:

- **Humanitarian**: For example, if you are having a child born to surrogacy in the United States; you require urgent medical treatment in the United States; or you have an immediate family member in the United States who is gravely ill.
- **Economic:** Temporary travel that provides a substantial economic benefit to the U.S. economy. Examples may include: **Technical experts** and **specialists** to install, service, maintain, or receive training for vessels, machinery and other specialized equipment used by U.S. and foreign firms with a substantial investment in the United States; **Senior-level managers** and **executives**, and their dependents, who provide strategic direction necessary for the success of the company or venture; **Professional athletes, dependents, and essential staff** who enter the United States to participate in major sporting events, which bolster the U.S. economy.
- **Investors**: Travel in connection with investment or trade in the U.S. economy that generates a substantial economic impact, including **investors** and **treaty-traders** and the senior-level employees who provide strategic direction or expertise essential to the success of the investment, and their dependents.
- **Students:**All students, and their dependents, traveling to the United States to: pursue a full course of study per INA 101(a)(15)(F) or INA 101(a)(15)(M); or participate in an exchange program as a bona fide student per INA 101(a)(15)(J).
- **Academics:** All exchange visitors and their dependents traveling to the United States as a nonimmigrant under INA 101(a)(15)(J) in the following categories: Professors, Research Scholars, Short Term Scholars, Specialists

F-1, F-2, M-1, and M-2 Students with Valid Visas: Students with a valid F or M visa and a valid I-20 do not need to seek a national interest exception and may return to the United States without further administrative steps. Please ensure that you follow any quarantine or social distancing requirements upon your return. You do not need a letter or other permission from the U.S. Embassy to travel to the

Filter

Keyword(s):

Content Type:
- News
- Speeches
- Press Releases
- Events
- Video

Month/Year

Apply Filter

Topics

Agriculture
Alert
Alumni
Ambassador
American Spaces
Art & Culture
Business
Chargé D'Affaires

Show More v

Recent Posts

Message for U.S. Citizens: Reminder to Register to Vote

Pride Week 2020 – Open Letter from Ambassador Carla Sands

On recent death of Dr. Konrad (Koni) Steffen in Greenland

United States from the Schengen area on your valid F or M visa.

Other Travelers with Valid Visas or ESTA: Travelers that already have valid nonimmigrant visas or ESTA and believe they qualify for an national interest exception (NIE) for economic, investor, or exchange visitor related purposes must verify with a consular official that they qualify. To do so, travelers must send the following information along with supporting documentation to CopenhagenNIV@state.gov. Supporting documents may include a letter of invitation, confirmation of your medical treatment in the United States, letter from the U.S. business explaining the economic impact of your travel on the U.S. economy, etc. Due to a large volume of inquiries it may take up to ten business days to review your documents and qualifications. You will be notified by e-mail if you meet the NIE requirements. Print out that e-mail as confirmation of your excepted status.

1. What is the purpose of your travel? Does your travel meet one of the national interest exceptions listed above? If so, please explain how your travel provides a substantial economic benefit to the United States. Please provide a clear explanation, including the impact to jobs for U.S. citizens (if applicable).
2. Do you already have an approved ESTA or visa on which you plan to travel that is applicable to your purpose of travel? If you have a valid visa, please send a copy of it. If you have a valid ESTA, please send your ESTA confirmation number.
3. Please send a copy of the biographic page of your passport.
4. Have you or any family members traveling with you experienced any COVID-19 symptoms? Have you or any family members traveling with you been tested for COVID-19? If so, when and what were the test results?
5. Do you and any family members traveling with you agree to follow the health advice provided to you by the U.S. Department of Homeland Security officials during your enhanced screening at the port of entry? The U.S. Centers for Disease Control and Prevention recommends all travelers to the United States take extra precautions – which include staying home as much as possible and avoiding being around people at higher risk for severe illness from COVID-19 – for 14 days after you arrive in the United States. See the CDC website for the most up-to-date information about advice for travelers to the United States.
6. Will any other family members be travelling with you to the United States? If so, please provide copies of the biographic pages of their valid passports and copies of their valid visas (if applicable).
7. Where in the United States will you be staying and for how long do you anticipate being in the United States?
8. Have you booked a flight? If so, please share the flight itinerary. If not, please provide the anticipated travel date and the route you will most likely book.

IMPORTANT: Limitations of National Interest Exception: If approved, the exception is valid only for 30 days from the date of approval and is valid for a single entry to the United States. An individual who departs the United States and wishes to return must be re-assessed for a national interest exception. Students, investors, and academic researchers do not need to be re-approved for each entry to the United States. F and J visa travelers are reminded that they must still meet all Student and Exchange Visitor Program (SEVP) requirements. All individuals are reminded that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival. DHS requires travelers using a NIE waiver to fly into one of 15 specifically designated airports found here.

Travelers Without Valid Visas: If you believe you fall into any of the exception categories noted above, another exception to the Proclamation, or have reason to believe you may qualify for a national interest exception on a basis other than that noted above, and you require a visa to travel, please monitor this page for information about visa services at the U.S. Embassy in Copenhagen. Effective August 14, the U.S. Embassy in Copenhagen will resume limited visa services in a phased, safe, and orderly manner. Effective August 14, routine appointments will be available for scheduling for F/M/J student and exchange visitor visa applicants only. All other visa categories continue to be suspended while we assist hundreds of student and exchange visitors with fall 2020 academic start dates. Once a definitive date for resumption of additional visa services is announced you can schedule your appointment on our website. If the purpose of your travel to the United States is for a life-or-death emergency and you believe you qualify for one of the exceptions note above, e-mail the Embassy at CopenhagenNIV@state.gov to discuss your purpose of travel.

Travel Restrictions for H-1B, H-2B, L, and Certain J Visas: On June 22, the President signed Proclamation 10052 suspending the entry of certain foreign nationals to the United States who present a risk to the United States labor market during the economic recovery following the 2019 Novel Coronavirus outbreak. The Proclamation went into effect on June 24, 2020 and will be in effect through December 31, 2020. Under the Proclamation, the Department of State will not issue H-1B, H-2B, H-4, L1, L2, or the following J visa categories: interns, trainees, teachers, camp counselors, au pairs, and summer work travel program participants. The Proclamation is not retroactive. No valid visas will be revoked under this Proclamation. Read the full text of the Proclamation for additional information. For questions about adjusting status or extending the authorized period of stay in the United States, please contact the U.S. Citizenship and Immigration Services office (USCIS). USCIS has full jurisdiction over immigration matters for foreign citizens physically within the United States.

Message for U.S. Citizens: Overseas Voter Registration Information

Health Alert – U.S. Embassy Copenhagen, Denmark

Specific inquiries about visas during COVID-19

Visa Services

As of August 3, 2020, the United States Embassy and Consulate in Ecuador resumed limited nonimmigrant visa services, including visa renewals that qualify under the Interview Waiver Program.

While we aim to process cases as soon as practicable, **there is likely to be increased wait times for completing such services due to substantial backlogs**.

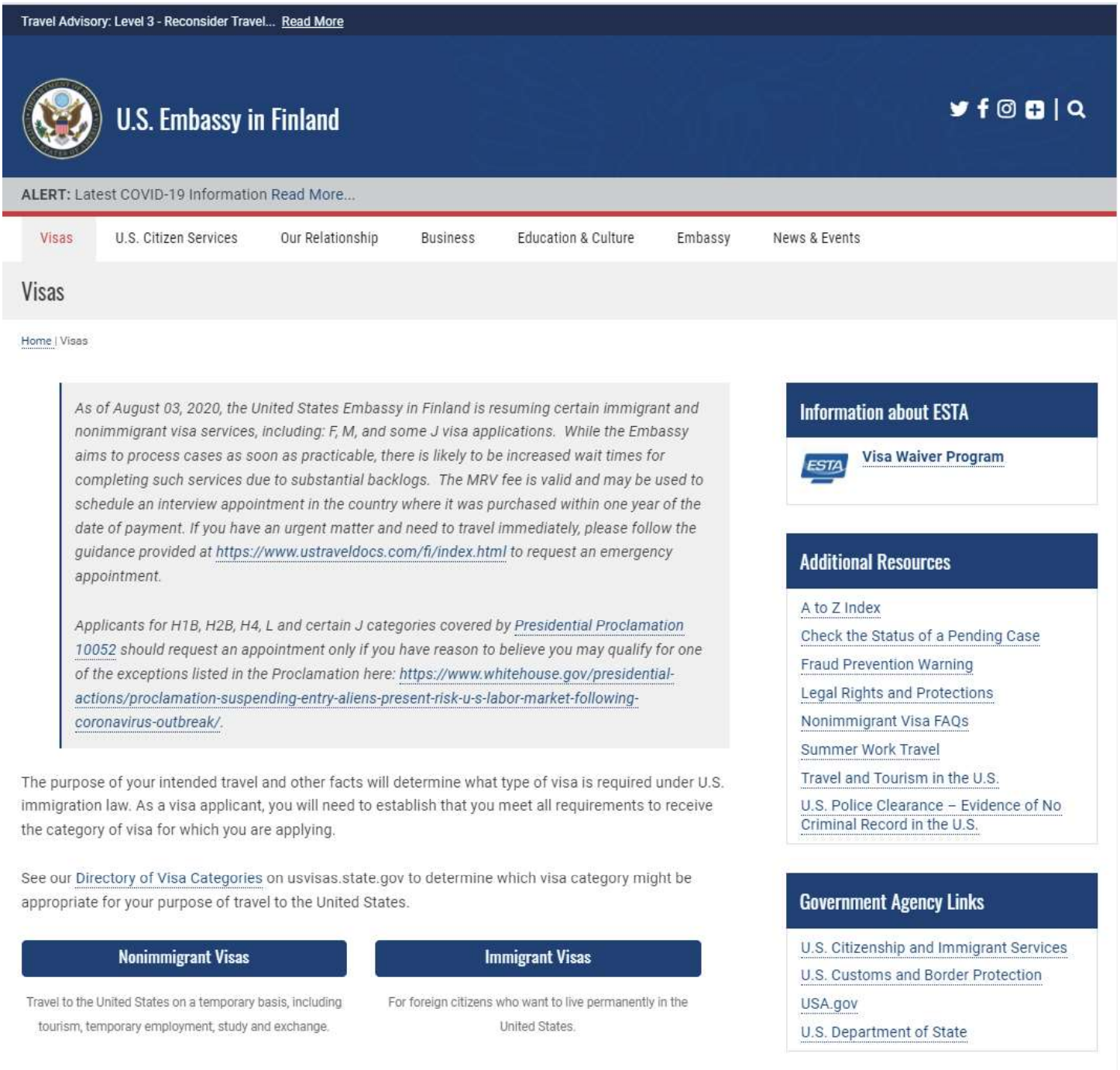
The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ais.usvisa-info.com/en-ec/niv/information/faqs to request an emergency appointment. If you require further assistance please refer to the "Help" section at the bottom of the previous mentioned website.

Please see these notices which contain detailed information about the current status of visa services worldwide and visa restrictions related to the COVID-19 global pandemic: https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-visa-services-and-restrictions.html. For general information about visas, please visit our Visa section on this website.

On Monday, June 22, President Trump signed a proclamation suspending entry into the United States of certain immigrants and nonimmigrants who present a risk to the U.S. labor market following the coronavirus outbreak. Effective immediately, the proclamation extends the suspension of entry for certain immigrants (Presidential Proclamation 10014) through December 31, 2020. The new restrictions imposed by the proclamation are effective at 12:01 a.m. EDT on Wednesday, June 24 and expire on December 31, 2020, unless continued by the President. U.S. citizens, lawful permanent residents, and aliens who are or were inside the United States or those holding valid nonimmigrant or immigrant visas on the effective date are not subject to the proclamation.

The proclamation suspends entry of nonimmigrants in the following categories: H-1B, H-2B, J (for aliens participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program) and L, along with their spouses and children. No valid visas will be revoked under the proclamation. Presidential Proclamation 10014 and this proclamation provide exceptions to their restrictions for certain categories of immigrants and nonimmigrants. The full text of the presidential proclamations are available on the White House website at: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.



Travel Advisory: Level 3 - Reconsider Travel... Read More

U.S. Embassy in Finland

ALERT: Latest COVID-19 Information Read More...

Visas | U.S. Citizen Services | Our Relationship | Business | Education & Culture | Embassy | News & Events

Visas

Home | Visas

As of August 03, 2020, the United States Embassy in Finland is resuming certain immigrant and nonimmigrant visa services, including: F, M, and some J visa applications. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://www.ustraveldocs.com/fi/index.html to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Nonimmigrant Visas

Travel to the United States on a temporary basis, including tourism, temporary employment, study and exchange.

Immigrant Visas

For foreign citizens who want to live permanently in the United States.

Information about ESTA

Visa Waiver Program

Additional Resources

A to Z Index
Check the Status of a Pending Case
Fraud Prevention Warning
Legal Rights and Protections
Nonimmigrant Visa FAQs
Summer Work Travel
Travel and Tourism in the U.S.
U.S. Police Clearance – Evidence of No Criminal Record in the U.S.

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Visas

Urgent information for visa applicants regarding COVID-19 pandemic and associated visa and travel suspensions

21 July 2020

The United States Department of State recognizes the immense importance of international travel and commerce to the United States. Our country's openness is a source of national strength and it is in our direct interest to maintain our free and unfettered engagement with the world.

However, the COVID-19 pandemic has required unprecedented actions to protect the United States and its citizens. Visas and entry to the United States for persons who have been in a Schengen country within fourteen days of intended entry are suspended by Presidential Proclamation (PP 9993). Presidential Proclamation 9993 remains in force. In addition, PP 10052, suspends the entry of nonimmigrants traveling on work visas in the H, L, and certain J visa categories as well as most immigrant visas. When these suspensions are lifted, we will resume routine visa services as soon as possible. Unfortunately, there is no information at this time as to when these measures will be lifted.

The Proclamations and their exceptions can be found at:
https://travel.state.gov/content/travel/en/News/visas-news.html

There are limited exceptions to the proclamations. In mid-July 2020, the Department announced that certain business travelers, investors, treaty traders, academics (professors, research scholars, short term scholars, or specialists), and students may qualify for national interest exceptions (NIE). The Embassy will resume visa processing for these categories shortly.

Applicants in these categories may schedule an appointment following the guidance on the scheduling website. Au pair, Intern, trainee, teacher, camp counselor or summer work travel program J visa applicants are not being processed at this time except in limited cases as travel under those categories remain restricted.

There are other limited exceptions to the restrictions on travel. These include travel on ESTA for dire humanitarian situations and travel on ESTA or a visa providing substantial economic benefit to the United States economy. The bar for qualifying as travel providing substantial economic benefit will be very high.

Intending French citizen and French resident travelers who believe they qualify for an NIE should send an email to ParisVisaInquiry@state.gov with the subject line: "CONSIDERATION FOR NATIONAL INTEREST EXCEPTION – [Last Name]". Emails should include scans of the biodata passport page of all intending travelers, and scans of any valid United States visas for all travelers.

For consideration of an exception for ESTA travel as providing substantial economic benefit, intending travelers need to include documentation from a United States entity (client, vendor, affiliate, etc.) describing the intended activity of the traveler and its link to a quantified economic benefit.

Applicants with questions about visa applications currently in process with the Embassy may send their inquiry via ParisIVPending@state.gov for Immigrant visa applications or ParisVisaInquiry@state.gov for Nonimmigrant visa applications.

Translation

Français

National Interest Exceptions

Visa appointments for Students, Academics, Business Travelers, and Investors – please click here. (PDF 136KB)

ESTA – Visa Waiver Program

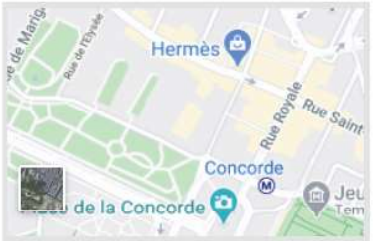
Learn more about ESTA – Visa Waiver Program

Additional Resources

U.S. Legal Permanent Residents/Green Card Holders
Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State



Download Adobe Reader

Frequently Asked COVID-19 Questions for VISAS

The United States Embassy and Consulates in Germany have resumed certain immigrant and nonimmigrant visa services, including: travelers with urgent travel needs, F, M, and certain J visas, and some family members of U.S. citizens consistent with Presidential Proclamation 10014. Applicants requesting visa services from the U.S. Mission in Germany are welcome to apply at any of the three visa-processing locations – Frankfurt, Berlin, and Munich. While applications will be processed as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs.

The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please email the consular section in your area (FrankfurtVisaInquiries@state.gov, ConsBerlin@state.gov, or ConsMunich@state.gov) to request an emergency appointment.

Applicants for H1B, H2B, H4, L, and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here.

Before reading the FAQ below, please become familiar with all of the most recent Presidential Proclamations issued by the White House, particularly Presidential Proclamations 9993, 10014, and 10052.

Q: I had a planned vacation in the United States. Can I travel on ESTA or get a B1/B2 tourist visa?

A: In general, no. Presidential Proclamation 9993 restricts travel from the Schengen area to the United States due to the Novel Coronavirus. However, if you have a U.S. citizen or lawful permanent resident (LPR) child or sibling under the age of 21 or a U.S. citizen or LPR spouse, you may be eligible for an exception from Presidential Proclamation 9993.

If you believe you do qualify for an exception, please email the consular section in your area. You will need to have the original documentation of your relationship, an annotated visa excepting you from the Presidential Proclamation on the Novel Coronavirus, or a exception applied to your ESTA to board a flight.

Please be advised, if a national interest exception is granted for travel **on a new or existing visa or for travel under ESTA, it is good for only one entry and for travel within 30 days after it is approved.**

Q: Can I travel to the United States through a country that is not covered by Presidential Proclamation 9993?

A: Direct travel to the United States from a country that is not covered by the COVID-19 Regional Proclamations may be possible, however CBP controls U.S. port of entry and will determine to admit you into the United States. Individuals that are subject to the COVID-19 Regional Proclamations 9984, 9992, 9993, or 9996 may travel to a country not subject to restrictions and remain there for at least 14 days and then travel directly to the United States, but we advise you to verify whether the country to which you intend to travel has implemented travel or other restrictions before you make travel arrangements. One possible source of such information is travel.state.gov which contains links to the websites of other countries' immigration authorities.

U.S. consular sections in Germany are not able to suggest countries to which you may travel, or comment on the travel regulations that apply to a country other than the United States and Germany.

Q: I do not have a U.S. citizen or LPR child under 21 or a U.S. or LPR citizen spouse, but I have another immediate family member (ex. U.S. citizen or LPR parent, child or sibling over 21) in the United States and need to travel urgently. Can I travel on ESTA or a B1/B2 tourist visa?

A: Please email the U.S. consular section in your area with an explanation of your need to travel urgently along with medical documentation. You may be eligible for an exception to the restrictions in Presidential Proclamation 9993, such as for critical medical treatment or to provide critical medical care for a family member in the U.S.

Translation

Deutsch

Filter

Keyword(s):

Content Type:
- ☐ News
- ☐ Speeches
- ☐ Press Releases
- ☐ Events
- ☐ Video

Month/Year

Apply Filter

Topics

Agriculture
Alert
Alumni
Ambassador
American Spaces
Amerika Dienst
Art & Culture
Business

Show More

Recent Posts

Health Alert – U.S. Embassy and Consulates in Germany, August 13, 2020

Travel Advisory – U.S. Embassy and Consulates in Germany, August 7, 2020

Please be advised, if a national interest exception is granted for travel **on a new or existing visa or for travel under ESTA, it is good for only one entry and for travel within 30 days after it is approved.**

Q: I am engaged to a U.S. citizen (K). Can I continue my visa application?

A: We are not processing K visa applications unless they qualify for another exception under the proclamation. If you are eligible for an exception from Presidential Proclamation 9984 (ex. you have a U.S. citizen or LPR child under 21 or a U.S. citizen or LPR spouse), please contact us at FrankfurtVisaInquiries@state.gov. Your petition remains valid and can be re-validated at the time of your interview. We will make information available moving forward that informs all applicants of the category of visas that are processing.

Q: I am a student (F or M) or exchange visitor student (J) or medical researcher/short-term scholar (J). Can I apply for a visa or use my previously approved visa?

A: Yes. As a J exchange student or academic researcher/short-term scholar you may be eligible for an exception to the restrictions in Presidential Proclamation 9993. Please make a visa appointment online if you are a first-time applicant for one of these categories. If you already have a visa but are currently located in the Schengen area, please email the U.S. consular section in your area to be considered for an exception.

Students who already hold valid F and M visas do not need to apply for a new visa and may now travel directly from the Schengen area to the United States. Prospective students who need an F or M visa should make an appointment for a visa interview. All F and M travelers must have a current I-20 form that complies with all Student and Exchange Visitor Program requirements; if admitted into the U.S., such students may have to self-quarantine for 14 days.

Please be advised, if a national interest exception is granted for travel **on a new or existing visa or for travel under ESTA, it is good for only one entry and for travel within 30 days after it is approved.**

Q: I am being sponsored as an au pair, camp counselor, intern, or trainee (J). Can I apply for a visa or use my previously approved visa?

A: If you are present in the Schengen area, you are subject to the travel restrictions pursuant to Presidential Proclamation 9993. In addition, if you are within one of these J visa categories, you are subject to the travel restrictions pursuant to Presidential Proclamation 10052. Limited exceptions apply.

However, if you are an au pair (J) for a child with special needs or providing care for a child whose parents are working to mitigate COVID-19, you may be eligible for an exception to Presidential Proclamations 9993 and 10052. Please email the U.S. consular section in your area.

Q: I am a member of a flight or ship crew and need to renew my visa (C1/D). Can I submit paperwork for a renewal?

A: Yes. We are processing visa renewals for crew members. You may make an appointment by emailing your nearest U.S. Consulate. If you are eligible for renewal without an interview, please follow the instructions for the Visa Waiver Program and be sure to include a photocopy of your flight ID badge or a letter from your employer.

Q: My company is transferring me to work for our office in the United States (L). Can I get apply for a visa or use my previously approved visa?

A: We are not currently processing routine L visa applications except in limited cases. Intracompany transferees are subject to Presidential Proclamation 10052 on the Risk to the Labor Market through December 31, 2020. Additionally, if you are present in the Schengen area, you are subject to the travel restrictions pursuant to Presidential Proclamation 9993. However, if your company is assisting in the containment of mitigation of COVID-19, please email the U.S. consular section in your area.

National Interest exceptions are available for L2 spouses or children who will accompany or follow to join a principal applicant who is not subject to Presidential Proclamation 10052 or who has received an exception to Presidential Proclamations 10052 and 9993.

Q: I am a highly skilled worker (H1B). Can I apply for a visa or use my previously approved visa?

A: We are not currently processing routine H1B visa applications except in limited cases. Skilled workers are subject to Presidential Proclamation 10052 on the Risk to the Labor Market through December 31, 2020. Additionally, if you are present in the Schengen area, you are subject to the travel restrictions pursuant to Presidential Proclamation 9993. However, if your company is assisting in the containment of mitigation of COVID-19, please email the U.S. consular section in your area.

COVID-19 Information

Health Alert – U.S. Embassy and Consulates in Germany, July 30, 2020

Health Alert – U.S. Embassy and Consulates in Germany, July 23, 2020

National interest exceptions are available for H4 spouses or children who will accompany or follow to join a principal applicant who is not subject to Presidential Proclamation 10052 or who has received an exception to Presidential Proclamations 10052 and 9993.

Q: I am a technician (B1, E2), and my company needs me to travel to the United States to service equipment necessary to mitigating COVID-19. Can I apply for a visa or use my previously approved visa?

A: Yes. You are eligible for an exception to the restrictions in Presidential Proclamation 9993. Please make a visa appointment online to schedule a visa interview if you are a first-time applicant. If you already have a visa but are currently located in the Schengen area, please email the U.S. consular section in your area to be considered for an exception to apply to enter the United States.

Please be advised, if a national interest exception is granted for travel **on a new or existing visa or for travel under ESTA, it is good for only one entry and for travel within 30 days after it is approved.**

Q: I am investor or treaty trader (E) whose company is working on mitigating COVID-19. Can I apply for a visa or use my previously approved visa?

A: Yes. You are eligible for an exception to the restrictions in Presidential Proclamation 9993. Please make a visa appointment online to schedule a visa interview if you are a first-time applicant or registrant. If you already have a visa but are currently located in the Schengen area, please email the U.S. consular section in your area to be considered for an exception to apply to enter the United States.

Please be advised, if a national interest exception is granted for travel **on a new or existing visa or for travel under ESTA, it is good for only one entry and for travel within 30 days after it is approved.**

Q: I am in the immigrant visa process right now. Do the Presidential Proclamations affect me?

A: Under Presidential Proclamation 10014 (April 22, 2020) which was extended by President Proclamation 10052 (June 22, 2020), who have not been issued an immigrant visa as of April 23 are subject to the proclamation's restrictions unless eligible for an exception. The proclamation's restrictions extend through December 31, 2020. Exceptions include lawful permanent residents; immigrants seeking to enter as healthcare professionals; spouses, children, and prospective children of U.S. citizens; and certain Special Immigrant Visa applicants. Please read Presidential Proclamation 10052 for detailed information.

Lawful permanent residents and those holding valid immigrant visas on as of April 23 are not subject to the proclamation's restrictions. No valid visas will be revoked under this Proclamation.

In order to maximize use of our limited resources, we are not able to schedule visa appointments for IV applicants subject to the Presidential Proclamations unless you have reason to believe you may qualify for one of the exceptions in the proclamation. This includes all Diversity Visa Program applicants.

Q: I fall under an exception to the proclamations. Can I continue with the immigrant visa application process?

A: If you are applying for an immigrant visa and the case is being processed by NVC, please click here for information. Please contact NVC directly using the online contact form on that website if you still have questions. The Consulate cannot answer any questions about NVC cases, including any questions about expedite options or about appointments.

If you are applying for a visa as the spouse or child of a U.S. citizen (IR-1, CR-1, IR-2 or CR-2) and your case is with a U.S. consular section in Germany, please contact us at FrankfurtIV@state.gov.

If you are applying for an immigrant visa in any category OTHER than what is listed above and you have been advised that your case file has been forwarded to the Consulate in Frankfurt, you may refer to our website at https://de.usembassy.gov/visas/immigrant-visas for an overview of the application procedure and begin compiling the necessary supporting documents. Please monitor our website for updates. Applicants are typically given 12 months in which to apply for the visa, starting from the date on which the Consulate's Immigrant Visa Unit writes to them with instructions about the status of their case.

Please be advised that the validity of immigrant visas cannot be extended. If you are unable to travel within the validity period of your visa due to circumstances beyond your control, you can request visa reissuance by writing FrankfurtIV@state.gov.

Q: I am a Special Immigrant, approved through the SIV program. Can I continue my visa application?

A: SIV applicants in the SI and SQ classification qualify for an exception to P.P. 10052 and individuals who qualify for an exception to that proclamation should also be considered to qualify for an exception to P.P. 9993. Please contact us at FrankfurtVisaInquiries@state.gov.

Changes in Visa Services due to COVID-19

For non-immigrant visa applicants:

Update on H-2B Visas

Beginning on August 19, 2020, the U.S. Embassy in Guatemala will begin processing H-2B visa applications through its H-2 Interview Waiver mechanism, pursuant to Section 222(h)(1)(C)(ii) of the Immigration and Nationality Act.

Until complete resumption of routine visa services, applicants who appear to be subject to entry restrictions under Presidential Proclamation 10014, Presidential Proclamation 10052, and/or regional-focused Presidential Proclamations related to COVID-19 (P.P. 9984, 9992, 9993, 9996, and/ or 10041) might not be processed unless the applicant also appears to be eligible for an exception under the applicable Proclamation(s). Applicants who are subject to any of these Proclamations, but who believe they may qualify for a national interest exception or other exception, should follow the application instructions at ustraveldocs.com. For additional information on national interest exceptions under Presidential Proclamation 10052, please visit travel.state.gov. Final determination regarding visa eligibility will be made at the time of visa processing.

Please note that U.S. Embassies and Consulates may only be able to offer limited visa services due to the COVID-19 pandemic, in which case they may not be able to accommodate your request unless the proposed travel is deemed emergency or mission critical.

Overview

Due to health concerns, the United States Embassy in Guatemala City remains unable to resume routine nonimmigrant visa services at this time. We will resume routine visa services as soon as possible but are unable to provide a specific date. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at http://cdn.ustraveldocs.com/gt/gt-niv-expeditedappointment.asp to request an emergency appointment.

Specifics

As of Thursday, July 16, the United States Embassy in Guatemala is cancelling all routine **nonimmigrant visa** appointments. Beginning July 16, the Embassy will also temporarily suspend B1/B2 visa renewals via Cargo Expreso (Interview Waiver). We will resume these types of routine visa services as soon as possible but are unable to provide a specific date.

Applicants whose scheduled appointment has been cancelled will receive an email notification to the email address they provided when they created their visa appointment. If you used the services of a travel agency or other facilitator to make your appointment, you may want to consult with that service provider for notifications regarding your appointment. If you have already paid a non-immigrant visa application fee, this fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. The application fee is non-transferable.

The Embassy continues to process applications for the following categories of visas:

- Diplomatic and official visas
- H-2 visas, specifically those associated with food production (e.g., agriculture H-2A and seafood production H-2B)
- H-2B visas eligible under the expanded national interest exceptions to Presidential Proclamation 10052
- Medical professionals applying for J-1, H-1B, or O-1 visas to engage in employment or research in the United States
- Air and sea crew members
- Medical emergencies

For more information please visit www.ustraveldocs.com/gt or contact our call center at 2376-1978 (from Guatemala) or (703) 745-5477 (from the United States) You can also email your inquiries to support-guatemala@ustraveldocs.com.

Nonimmigrant Visas

The Consular Section of the U.S. Consulate General in Hong Kong is responsible for providing visa services to those seeking to enter the United States for a temporary period and for those wishing to take up indefinite or permanent residence in the United States.

Please visit our Global Support Services (GSS) website for complete information on applying for a nonimmigrant U.S. visa, including a directory of nonimmigrant visa categories.

- Contact Us
- Hours and Holidays
- What to Expect When Visiting the Consulate General
- Visa Requirements for Domestic Employees
- Guam/CNMI Visa Waiver Program

Suggested for You

Suspension or Termination of Three Bilateral Agreements with Hong Kong

Statement by National Security Advisor Robert C. O'Brien

Translation

中文

PLEASE DO NOT BRING:

Please do not bring lighter, bags > (12x10x3in), computer, camera, tablet and food/drink.

Non-Dangerous Prohibited Items

Non-dangerous prohibited items can be retained at the guard checkpoint.

Additional Resources

- Nonimmigrant Visa FAQs
- Travel and Tourism in the U.S.
- Legal Rights and Protections
- Summer Work Travel
- Fraud Prevention Warning
- A to Z Index
- Visa Waiver Program
- Visa Forms
- What Kind of Visa Do I Need?

Additional Links

- Report Fraud
- Report Lost or Stolen Travel Document or Visa

Contact Us

The U.S. Consulate General Hong Kong and Macau is pleased to resume limited immigrant and nonimmigrant visa services, including student visas. While the Consulate aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. Eligible immigrant visa applicants will be contacted to schedule an appointment. To schedule a nonimmigrant visa appointment, please visit Apply for a U.S. Visa in Hong Kong and Macau. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please email support-hongkong@ustraveldocs.com or call +852 5808-4666.

Phone:

In Hong Kong & Macau: 852 5808 4666 (9 a.m. to 5 p.m. Monday through Friday)
In the U.S.: 1-703-665-1986 (9 a.m. to 5 p.m. Eastern Standard Time)

Email: For general information about visas and routine inquiries, please write to support-hongkong@ustraveldocs.com

For a specific case in which the applicant has been interviewed by a consular officer, applications for A or G type visas, or concerns regarding an immigrant visa case, or travel as a crew member (C1/D), please use Visa Inquiry Form.

Hours and Holidays

Rainy and Typhoon Season

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Visas

Consular sections across India are now accepting drop box applications for F,M,J, H, and L visa renewals at Visa Application Centers across India. Please visit our website to determine whether you are eligible for drop box processing. A list of drop-off locations is available on our website at: http://cdn.ustraveldocs.com/in/in-loc-documentdropoff.asp#locations.

Student visa appointments are now available through our website at http://cdn.ustraveldocs.com/in/. . We expect appointment slots to be filled quickly. Please continue to monitor our website for availability. Student visas are a high priority, and we will make every effort to assist student visa applicants in a timely fashion, while keeping our customers and staff safe. However, due to our very limited appointment availability we will not be able to accommodate all requests in time for the start of the fall semester. We ask for your patience during this time.

Consular sections remain closed for routine immigrant and nonimmigrant visa services. We will resume routine visa services as soon as possible but are unable to provide a specific date. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent need to travel, please follow the guidance provided at http://cdn.ustraveldocs.com/in/in-niv-expeditedappointment.asp to request an emergency appointment.

Under the June 22 Presidential Proclamation, the Department of State temporarily ceased issuance of H-1B, H-2B, L, and certain J nonimmigrant visas, and their derivative visa categories for family members, apart from exceptions as described in the Proclamation. However, these applicants may qualify for one of the national interest exceptions announced on August 12: https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html. The Department of State may also issue H-4, L-2, and J-2 visas to otherwise qualified derivative applicants who qualify for a national interest exception, such as those seeking to join a principal applicant currently in the United States.

. However, to protect the health of our staff and customers, we are only able to accommodate appointments for a very limited number of mission critical visa cases at this time. If you believe that you or your constituent are eligible for an exception to the Proclamations, please request an expedited appointment through our website and provide specific details as to why the applicant may qualify for an exception. As our ability to offer services is limited, we may not be able to accommodate your request. In such cases, we will re-review the request when we are able to safely expand our visa processing capabilities.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Entry of aliens who were present in China, excluding the Special Administrative Regions of Hong Kong and Macau, Iran, and certain countries in the European Union within 14 days prior to their arrival at the port of entry in the United States is suspended, per Presidential Proclamation.

Nonimmigrant Visas | Immigrant Visas

Translation

اردو

हिन्दी

Visa Section Closures 2020

India-Wide Visa Section Closures 2020 (PDF 304KB)

Important Notice on Consular Exchange Rate

As of June 15, 2020 the Consular Exchange Rate will change from 72 Indian rupees to 1 U.S. dollar to 76 rupees to 1 U.S. dollar. This change corresponds to recent shifts in the market exchange rate for Indian rupees to U.S. dollars.

Contact Us

Visa Inquiries

Email: support-india@ustraveldocs.com

Tel: (91-120) 4844644
(91-40) 4625-8222
1-703-520-2239 (from the U.S.)

Applying for a U.S. Visa is Simple (Videos)

Three Steps for a U.S. Visa in Mumbai
In New Delhi
In Hyderabad
Traveling to the U.S. in a group?
In Kolkata

Additional Resources

Nonimmigrant Visas

As of July 20, 2020, the United States Embassy and Consulates General in Italy are resuming certain immigrant and nonimmigrant visa services, including routine appointments for students (F and M), exchange visitors (J), investors/treaty traders (E), journalists (I), aliens of extraordinary ability (O), and athletes/artists/entertainers (P), as well as emergency and mission critical cases. While the Embassy and Consulates aim to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ais.usvisa-info.com/en-it/niv or (+39) 06 9480 3777 to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/. In addition, applicants in certain visa categories (Business (B1), Investors (E), Academics (J – certain categories only), Professional Athletes (P), and Students (F and M) may be eligible for a National Interest Exception, which would allow travel to the United States. Applicants in these categories should carefully read the information provided through the link in the National Interest Exceptions sidebar box on this page.

***Urgent information for visa applicants regarding novel coronavirus:** Entry of foreign nationals who were physically present within the following list of countries within 14 days prior to their entry or attempted entry into the United States is suspended, per Presidential Proclamations 9984, 9992, 9993, 9996 and the subsequent proclamation issued May 24, 2020:*

- *Brazil (effective May 26 at 11:59 p.m. EDT)*
- *The United Kingdom of Great Britain and Northern Ireland, excluding overseas territories outside of Europe;*
- *The Republic of Ireland;*
- *The 26 countries that comprise the Schengen Area (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 Islamic Republic of Iran;*
- *The People's Republic of China, not including the Special Administrative Regions of Hong Kong and Macau*

There are certain exceptions to the suspension of entry, including exceptions for U.S. lawful permanent residents and certain family members of U.S. citizens and lawful permanent residents, among other exceptions listed in the proclamations. If you reside in, have traveled recently to, or intend to transit or travel to the above list of countries prior to your planned trip to the United States, we recommend you postpone your visa interview appointment until 14 days subsequent to your departure from the subject country(ries). Additionally, if you are experiencing flu-like symptoms, or believe you may have been exposed to the novel coronavirus, you are strongly encouraged to postpone your appointment by at least 14 days. There is no fee to change an appointment and visa application fees are valid for one year in the country where the fee was paid. For questions about rescheduling a pending consular appointment, please contact us at https://ais.usvisa-info.com/en-it/niv or (+39) 06 9480 3777 for specific guidance.

The Consular Section of the U.S. Embassy in Italy is responsible for providing visa services to those seeking to enter the United States for a temporary period and for those wishing to take up indefinite or permanent residence in the United States.

Translation

Italiano

National Interest Exceptions

Visa appointments for Students, Academics, Business Travelers, and Investors – please click here. (PDF 185 KB)

Are You Sure You Need a Visa?

Reciprocity Fee Notice

Beginning December 19, 2019, Italian nationals are subject to reciprocity fees to be paid at the consular section at the time of issuance for the following visa classifications:

E-1/E-2 (treaty traders, investors, and their spouses/children): $308
H-1B (persons in specialty occupations and their spouses/children): $168
L-1/L-2 (intracompany transferees and their spouses/children): $323
R-1/R-2 (religious workers and their spouses/children): $129

For more information, please see here.

Download Adobe Reader

COVID-19 Information

FOR THE MOST UP-TO-DATE INFORMATION FROM THE CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC), VISIT CORONAVIRUS.GOV

The U.S. Embassy continues to carefully monitor the spread of COVID-19 in Japan. The Department of State has issued a level three advisory for Japan recommending that U.S. citizens reconsider travel. Japan has instituted strict immigration restrictions, and most travelers will not be permitted to enter. More information is available from Japan's Ministry of Justice.

Country-Specific Information:

- Case numbers in Tokyo, Osaka, Nagoya, Fukuoka, Okinawa, and in other areas across Japan have risen significantly in the past two weeks, and many prefectural officials are requesting residents comply with specific mitigation efforts centered around refraining from visiting nightlife establishments and other non-essential outings and travel.
- The Prime Minister and many prefectural officials have reiterated calls for citizens to reduce people-to-people contact, with a focus on avoiding the "three Cs:" closed spaces, crowded spaces, and close-contact settings.
- Several U.S. Forces Japan installations have reinstituted stringent health protection measures to protect both their personnel and local populations.
- Japanese immigration officials have: extended the period of application for certain types of visa extensions and residency applications; increased the waiting time for decisions in certain cases; extended visa validity for visitors whose period of stay expired in March through July; and, have announced new measures to reduce congestion in waiting rooms. More information can be found online here.
- The U.S. Embassy in Tokyo continues to closely monitor developments related to COVID-19 in Japan and will update this webpage with additional information as it becomes available.
- We strongly encourage all U.S. citizens to comply with measures announced by local authorities, including limiting personal outings, avoiding crowded spaces, and maintaining at least six feet of distance between yourself and others.

Entry and Exit Requirements:

- Most non-Japanese citizens who leave Japan, even U.S. citizen legal residents, will not be able to return under current conditions.
- The Government of Japan published information regarding limited exceptions to the entry restrictions. On July 22, the government updated these travel restrictions. U.S. citizens resident in Japan who returned to the United States before the implementation of the restrictions on April 3, and who have a valid reentry permit, may be able to return to Japan after August 5. The Government of Japan published information regarding exemptions to its entry restrictions and contact information for the Immigration authorities, which is available here. The Ministry of Justice also maintains a website.
- U.S. residents who believe they may qualify for one of these exemptions are strongly advised to consult with Japanese Immigration authorities prior to departing Japan.
- The Government of Japan has designated COVID-19 as a "Designated Infectious Disease" and placed entry restrictions on foreign visitors, including on foreigners traveling from the United States. Please visit the Japan National Tourism Organization website for detailed information on entry restrictions currently in place.
- For detailed information on countries with entry or activity restrictions for travelers coming from Japan, please see this online site (Japanese only).
- International flights are currently available in Japan, but service has been drastically reduced compared with the pre-COVID-19 period. As a reminder, non-Japanese citizens who leave Japan, even U.S. citizen legal residents, will not be able to return under current restrictions.

Filter

Keyword(s):

Content Type:
- ☐ News
- ☐ Speeches
- ☐ Press Releases
- ☐ Events
- ☐ Video

Month/Year

Apply Filter

Topics

Agriculture
Alert
Alumni
Ambassador
Art & Culture
Business
Chargé D'Affaires
Commercial Affairs

Show More v

Recent Posts

Welcome to EducationUSA Week

A Huge Step Forward for Women Voters Turns 100

American Citizen Services and Visa Services:

The U.S. Department of State is beginning to resume a very limited number of routine visa and passport services. Routine appointments remain suspended in Tokyo, but some appointments are available at our consulates. For specific information please check our website for visas and American Citizen Services.

Effective immediately, online payment for mail-in adult U.S. passport renewal is available in Japan. For information, please see our website.

U.S. citizens and visa applicants who are granted appointments at the U.S. Embassy in Tokyo or any U.S. consulate in Japan must wear masks upon entering the premises and are prohibited from entering these facilities if they have symptoms of COVID-19 or have been exposed to anyone known to have tested positive for COVID-19 in the previous 14 days.

Innovation's Essential Ingredient: Failure

Health Alert – U.S. Embassy Tokyo (August 5, 2020)

Health Alert – U.S. Consulate General Naha (August 1,

Nonimmigrant Visas

As of July 26, 2020, the United States Embassy in Amman will resume certain routine nonimmigrant and immigrant visa services, including: student and trainee (F and M) visas, certain exchange visitor (J) visas, E visas, journalist (I) visas, and petition-based O and P visas. While the Embassy aims to process cases as soon as practicable, there are likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at www.ustraveldocs.com/jo to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

Student and exchange visa applicants should keep in mind that current U.S. law requires that all educational programs must contain an in-class element. Programs which are 100% on-line are not eligible under current visa regulations.

Entry of foreign nationals who were physically present within the following list of countries within 14 days pior to their entry or attempted entry into the United States is suspended, per Presidential Proclamations 9984, 9992, 9993, 9996 and the subsequent proclamation issued May 24, 2020:

- *Brazil*
- *The United Kingdom of Great Britain and Northern Ireland, excluding overseas territories outside of Europe;*
- *The Republic of Ireland;*
- *The 26 countries that comprise the Schengen Area (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 Islamic Republic of Iran;*
- *The People's Republic of China, not including the Special Administrative Regions of Hong Kong and Macau*

The Consular Section of the U.S. Embassy in Amman is responsible for providing visa services to those seeking to enter the United States for a temporary period and for those wishing to take up indefinite or permanent residence in the United States.

Translation

العربية

Reciprocity Fees

As of January 9, 2020, reciprocity fees for approved F and I visas for Jordanian applicants are now $106 (or JD equivalent).

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Visas

As of July 21, the United States Embassy Vientiane in Laos is resuming certain nonimmigrant visa services, including visa types F, M, and J, for foreign nationals applying in Laos. Before scheduling a visa appointment, all Lao citizens and nationals applying in Laos should read further information regarding discontinuation of visa issuance to Lao nationals here. While the Embassy aims to process cases as soon as practicable, there may be increased wait times due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided here to request an emergency appointment. Please read more information about multiple Presidential Proclamations here; you are encouraged to consider your eligibility for a visa before you make any payments as applicants do not receive refunds for refused visas.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation suspending entry aliens present risk u s labor market following coronavirus-outbreak/.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Entry of non-LPR foreign nationals who were present in the People's Republic of China, not including the Special Administrative Regions of Hong Kong and Macau, the Islamic Republic of Iran, or the 26 countries that comprise the Schengen Zone within 14 days prior to their arrival at the port of entry in the United States is suspended, per Presidential Proclamation. If you reside in, have traveled recently to, or intend to transit or travel to China, Iran, or the Schengen Zone (which includes 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) prior to your planned trip to the United States, we recommend you postpone your visa interview appointment until 14 days subsequent to your departure from the subject country(ies).

Nonimmigrant Visas | Immigrant Visas

Translation

ພາສາລາວ

Consular Section Closures

2019 Consular Section Closures

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Contact Us

Email: support-laos@ustraveldocs.com
Telephone: 856 21 255 500 (local);
+1 703 665 7347 (from U.S)

Email Inquiries: conslao@state.gov
Fax: 856 21 480 670

Lao Mailing Address:
Consular Section
U.S. Embassy
P.O. BOX 114
Vientiane, Lao PDR

Visas

As of July 15, 2020 the United States Embassy in Riga, Latvia is resuming certain non-immigrant visa services, including: travelers with urgent travel needs; students (F, M, and some J), sea and air crew members (C1/D); and some family members of U.S. citizens consistent with Presidential Proclamation 10014. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs.

NOTE: All visa applicants should bring facemasks to be used at all times upon entry to the Embassy and its territory.

RENEWALS – We strongly encourage applicants from the above groups who are renewing previously issued nonimmigrant visas of the same classification that expired less than 12 months ago, to follow the guidance on applying via the mail-in (drop box) process and NOT schedule a visa interview. See guidance here on ustraveldocs.com .

If you have an urgent matter and need to travel immediately, please follow the guidance at here on ustraveldocs.com or contact the call center at +371-6609-2000 to request an emergency appointment. Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Nonimmigrant Visas | Immigrant Visas

Translation

Latviski

Русский

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Contact Us

Telephone in Latvia: +371 6609 2000, Monday – Friday 8:00 a.m. till 8:00 p.m. local time, except holidays
Telephone in the United States: +1 703 520 2565, Monday – Friday 7:00 a.m. till 3:00 p.m. Eastern Standard Time, except holidays
E-mail: support-latvia@ustraveldocs.com
Skype and online chat is accessible from the website: www.ustraveldocs.com

U.S. Embassy Vilnius is resuming certain immigrant & certain non-immigrant visa services – Consular Affairs

As of July 15, U.S. Embassy Vilnius, Lithuania, is resuming certain immigrant and certain non-immigrant visa services.

Non-immigrant visas

For those who wish to apply for a U.S. visa, the U.S. Embassy in Vilnius, Lithuania, is processing only a small number of the following nonimmigrant visas:

- Official visas: A, G, NATO
- Air/sea crew visas: C1/D, B1 (only if annotated "OCS" for seaman working on the Outer Continental Shelf of the United States)
- Student visas: F (if holding a valid Form I-20) or M (if holding a valid Form I-20).

If you are already holding a visa in any of above-mentioned categories, no additional procedures are required, and you may travel to the U.S.

If you hold a valid visa of not listed above category, you must follow the additional procedures. It means you must get from the Consular Section Chief an approved **National Interest Exception** (NIE). It would be granted for one entry within 30 days of the date of the approval. National Interest Exception may be provided to:

- B1 (or B1/B2) or O visa holders (and their dependents) who are senior-level managers and executives traveling for business reasons.
- B1 (or B1/B2) visa holders seeking to install or service complex machinery or equipment and who have specialized knowledge to do so.
- P visa holders who are professional athletes (and their dependents) and essential staff.
- E visa holders (treaty traders and investors).
- J visa holders (with valid Form DS-2019) who are professors, research scholars, short-term scholars or specialists.
- B2 (or B1/B2) visa holders traveling for humanitarian reasons: generally, persons seeking emergency medical treatment (including for family members) or seeking to visit a family member in the United States who is undergoing emergency medical care.

Without NIE any visa holder will not be permitted to enter the U.S.

Please note! that the June 22, 2020 Presidential Proclamation protecting the U.S. labor market specifically bans travel through December 31, 2020 for persons holding visas in category H or L, without regard to any economic benefit to the United States, and also bans travel for J visa holders participating in au pair, intern, trainee, teacher, camp counselor or the summer work travel program.

If you believe, you qualify for NIE, it means you are a business traveler providing a substantial economic benefit, an academic or a person traveling for humanitarian reason, you may send a letter to ConSec@state.gov providing any documentation explaining and supporting your application for NIE.

Appointments at the U.S. Embassy Vilnius are available! The F, M, C1/D, certain B1categories will be processed as regular. All other categories may be processed as well but will only be issued if the Consular Chief grants NIE. If you think you do not qualify for NIE, please postpone your appointment to a later date.

Please note! MRV fees are valid for a year from the date of payment.

Immigrant visas:

The U.S. Embassy Vilnius, Lithuania, is processing immigrant visa cases for the spouses and children (under 21) of U.S. Citizens (visa classes IR-1, CR-1, IR-2, and CR-2).

With the exception of certain cases (Adoptions, Age-outs, Humanitarian cases, SIVs, V92/V93s, SB-1s) the Embassy is not currently processing any other classes of immigrant and diversity visas.

If you have any further questions, you may send a letter to our Consular section: ConSec@state.gov

Filter

Keyword(s):

Content Type:
☐ News
☐ Speeches
☐ Press Releases
☐ Events
☐ Video

Month/Year

Apply Filter

Topics
Alert
Alumni
Ambassador
Art & Culture
Business
Chargé D'Affaires
Commercial Affairs
Commercial Opportunities
Show More v

Recent Posts
COVID-19 Information
Solicitation Proposal – Passenger Vehicle with Big Cargo Compartment
Latest Civil Society Organization Sustainability Index on Lithuania: 2019

Travel Advisory: Level 3 - Reconsider Travel... Read More

U.S. Embassy in Malta

Health Alert: Country-specific information related to COVID-19 Read More...

Visas | U.S. Citizen Services | Our Relationship | Business | Education & Culture | Embassy | News & Events

Nonimmigrant Visas

Home | Visas | Nonimmigrant Visas

As of March 27, 2020, U.S. Embassy Malta suspended non-emergency visa services.

Urgent information for visa applicants regarding novel coronavirus:

As of July 15, 2020 the United States Embassy in Malta is resuming certain non-immigrant visa services, including: travelers with urgent travel needs; students (F-1, M-1, and certain J-1); and some family members of U.S. citizens consistent with Presidential Proclamation 10014. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. Please provide your full name, date of birth, SEVIS ID#, program start date, and the bar code number on the Form DS-160 confirmation page to **ConsularMalta@state.gov.** After reviewing your information, we will get back to you with an appointment date and time if you qualify for an appointment.

If you have an urgent matter and need to travel immediately, please email us at **ConsularMalta@state.gov** to request an emergency appointment. Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here.

In response to significant worldwide challenges related to the COVID-19 pandemic, the Department of State has temporarily suspended routine visa services at all U.S. Embassies and Consulates, but will continue to provide emergency and mission-critical visa services as resources and local conditions allow. We will resume *routine* visa services as soon as possible but are unable to provide a specific date at this time.

Please see these notices which contain detailed information about the current status of visa services worldwide and visa restrictions related to the COVID-19 global pandemic:
https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-visa-services-and-restrictions.html

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa that you apply for.

See the Department of State's Directory of Visa Categories to determine which visa category is appropriate for your purpose of travel to the United States.

- **To apply for a non-immigrant visa and make an appointment, click here.**
- **To apply for ESTA, click here.**

*Please note that effective **December 27, 2019**, the reciprocity schedule for Malta will be revised for H, L, I, and R visas. The reciprocity tables displayed on travel.state.gov will be updated to reflect these changes.*

How to Apply for a U.S. Visa Online.

Additional Resources - Know Before You Go

- DHS Traveler Redress Inquiry System (DHS TRIP)
- U.S. Visa Waiver Program
- Items with Import Prohibitions or Restrictions
- Bringing Gifts to the U.S.
- Bringing Food to the U.S.
- Bringing Money to the U.S.
- Restrictions on In-Cabin Electronic Devices (select points of departure)

U.S. Embassy in Mauritius & Seychelles

Visas

As of July 15, 2020, the United States Embassy in Port Louis is resuming certain nonimmigrant visa services, including: F-1, M-1, J-1 (Exchange visitors such as professors and researchers only), E, I, O, and P. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you fall under any of the above categories or have an urgent matter and need to travel immediately, please email the Consular Section at PTLConsular@state.gov to schedule an appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

The Visa Unit processes all categories of non-immigrant visas for foreign nationals wishing to travel to the United States. **We do not process immigrant visas, which are handled by U.S. Consulate General Johannesburg, South Africa.**

Additional Resources

- Travel & Tourism in the U.S.
- Legal Rights and Protections
- Fraud Prevention Warning
- Summer Work & Travel
- A to Z Index

Government Agency Links

- U.S. Citizenship & Immigrant Services
- U.S. Customs & Border Protection
- USA.gov
- U.S. Department of State

Visas

Important Notice

Starting August 3, 2020, the U.S. Embassy in Mexico City and the U.S. Consulates in Guadalajara, Monterrey, Tijuana and Hermosillo will resume limited operations for student visa processing for Mexican citizens and residents. We will accept applications in the F, M, and J visa categories with an approved I-20 or DS-2019 form. In regards to J visas, we will only accept applications for categories that are not subject to Presidential Proclamation 10052. This includes alien physician, professor, research and short-term scholars, specialist, and students.

Applicants should visit https://ais.usvisa-info.com/es-mx/niv to schedule an appointment. Because of limited capacity and safety precautions due to COVID-19, applicants should expect to experience some delay in appointment availability. If applicants have less than one week before the start of classes, they may request an emergency appointment by logging into their account at https://ais.usvisa-info.com/es-mx/niv.

Interviews for all other visa categories, including B1/B2, remain suspended. Applicants of any visa category with an urgent need to travel can request an emergency appointment.

Where conditions allow for it, we have resumed limited processing of visa renewals eligible for interview waiver, since these cases do not require applicants to visit our consular sections. Schedule a renewal appointment at https://mx.usembassy.gov/visas/nonimmigrant-visas/

In order to protect the health and safety of our personnel and the public, we will institute strict social distancing practices in our facilities. All applicants must wear masks. Any applicant with symptoms such as a cough, sore throat, or fever should contact us at visas_mexico@state.gov to reschedule their interview.

For any questions, please email visas_mexico@state.gov.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

Translation

Español

Operating Status During COVID-19 crisis

In response to significant worldwide challenges related to the COVID-19 pandemic, the Department of State has temporarily suspended routine visa services at all U.S. Embassies and Consulates. Embassies and consulates have canceled all routine immigrant and nonimmigrant visa appointments as of March 20, 2020, but will continue to provide emergency and mission-critical visa services as resources and local conditions allow. We will resume routine visa services as soon as possible but are unable to provide a specific date at this time. Please see these notices which contain detailed information about the current status of visa services worldwide and visa restrictions related to the COVID-19 global pandemic:

https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-visa-services-and-restrictions.html

U.S. Embassy and Consulate in the Netherlands

Visas

The United States Consulate General in Amsterdam is resuming limited visa services. As of July 15, we are processing limited visa categories including immigrant visas (IR-1, IR-2, CR1, CR-2) and non-immigrant visas (C1/D, E, F-1/F-2, certain J-1/J-2, M-1/M-2, and certain petition-based visa categories). While the Consulate aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment.

We will also continue to provide emergency and mission critical services. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://ais.usvisa-info.com/en-nl/niv/information/faqs#visa-appt , or contact us via email at fae_contractus+nl+info+en@visaops.net or call +31 20 241 0364 (Netherlands) and +1 703 543 9346 (U.S.) to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/. In addition, applicants in certain visa categories (Business (B1), Investors (E), Academics (J – certain categories only), Professional Athletes (P), and Students (F and M) may be eligible for a National Interest Exception, which would allow travel to the United States. ***Applicants in these categories should carefully read the information provided through the link in the National Interest Exceptions sidebar box on this page.***

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

National Interest Exceptions

Visa appointments for Students, Academics, Business Travelers, and Investors – please click here. (PDF 144 KB)

Urgent Message

Urgent Message for Visa Applicants with China Travel (PDF 33 KB)

Additional Resources

Nonimmigrant Visa FAQs
Apply for a Visa Here
Travel and Tourism in the U.S.
Working and Living in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index
Helpful Videos

Visas

IMPORTANT NOTICE

Health Alert: U.S. Consulate General Auckland

Update: Auckland Continues at Level 3, Rest of New Zealand at Level 2

*On August 24, the Government of New Zealand announced that the Auckland region will remain at Alert Level 3 until 11:59pm on Sunday 30 August (then moving to Alert Level 2 until at least Sunday 6 September 2020), and the rest of New Zealand will be at Alert Level 2 at least Sunday 6 September 2020. (**details here**). In accordance with New Zealand guidelines, the U.S. Consulate General in Auckland is closed for all routine services until further notice. Applicants are encouraged to **reschedule their appointments for a future date (reschedule here)**. "Routine services" include:*

- *passport applications,*
- *consular reports of birth abroad,*
- *federal benefit services,*
- *notarial services, and*
- *renunciations.*

Emergency passport services will be considered on a case-by-case basis. If you have an urgent need to travel and are in need of an emergency passport, please email AucklandACS@state.gov with details of your request.

****

VISA SERVICES:

*As of July 20, 2020 the United States Consulate in Auckland, New Zealand resumed certain immigrant and nonimmigrant visa services, including employment, student, petition-based, and tourist nonimmigrant visas, K fiancé visas, as well as IR-1/2, CR-1/2, IR 3/4, SB-1, and EB-5 immigrant visas. While the Consulate aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at **our visas information website** to request an emergency appointment.*

*Applicants for H1B, H2B, H4, L and certain J categories covered by **Presidential Proclamation 10052** should request an **appointment only** if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation **here**.*

*For the latest updates of COVID-19, please visit **nz.usembassy.gov/covid-19-information**.*

See our Directory of Visa Categories to determine which visa category might be appropriate for your purpose of travel to the United States.

Ask a COVID-19 Question

Ask a COVID-19 Question

Search for...

Additional Information

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index
EVUS
Be aware of ESTA scams

Government Agency Links

U.S. Citizenship and Immigrant Services
U.S. Customs and Border Protection
USA.gov
U.S. Department of State

Download Adobe Reader

Get ADOBE® READER®

Nonimmigrant Visas

Please check the website Holidays and Closures to check when the Consular Section of the Embassy in Warsaw and the Consulate General in Krakow will be closed to the public.

The Consular Section of the U.S. Embassy in Warsaw and the Consulate General in Krakow are responsible for providing visa services to those seeking to enter the United States for a temporary period and for those wishing to take up indefinite or permanent residence in the United States.

Please visit our Global Support Services (GSS) website for complete information on applying for a nonimmigrant U.S. visa, including a directory of nonimmigrant visa categories.

Notice

Nonimmigrant visa (NIV) operations at the U.S. Embassy Warsaw have resumed as of July 20, 2020. However, a number of restrictions apply to those seeking to apply for a nonimmigrant visa, as well as to persons who already have a valid nonimmigrant visa or ESTA. Please consult our Frequently Asked Questions to determine how those restrictions may apply to you. Please see our immigrant visa page for information relating to immigrant and diversity visas.

Nonimmigrant Visas

As of 16 July, the United States Embassy in Lisbon, Portugal is resuming certain nonimmigrant visa services, including but not limited to student and academic exchange visitors. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided and ***email us*** *to request an emergency appointment.*

Please note that all requests for tourism and personal travel that is not for an urgent humanitarian purpose will be denied.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

NATIONAL INTEREST EXCEPTIONS FOR CERTAIN TRAVELERS FROM THE SCHENGEN AREA, UNITED KINGDOM AND IRELAND: *Students traveling from the Schengen Area, the UK, and Ireland with valid F-1 and M-1 visas, do not need to seek a national interest exception to travel. Students from those areas who are traveling on a J-1 may contact the nearest embassy or consulate to initiate an exception request.*
For more information visit: https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exceptions-from-certain-travelers-from-the-schengen-area-uk-and-ireland.html

FOR ALL NEW STUDENT VISA APPLICANTS EXCEPT J VISAS*: You may apply, pay and schedule your visa interview appointment here. An exception to the Proclamation will be considered at the time of your interview. There is no need to submit a separate exception inquiry for students.*

FOR ALL OTHER VISA APPLICANTS*: If you believe you meet one of the limited exceptions under the Presidential Proclamations – which may also apply to holders of valid visas, qualified applicants for new visas, or travel under the Visa Waiver Program (ESTA) – please answer the questions listed in the EXCEPTION INQUIRY link and email your responses to LisbonWaivers@state.gov.*

PLEASE NOTE: Your EXCEPTION INQUIRY cannot be processed without the information requested. ***– This inquiry MUST be attached to your email.***
For all J Visa applicants, please attach copies of DS- 2019 and SEVIS. Additional documentation may be required to process your request. If approved, the traveler will be allowed a one-time travel exception to be used within 30 days of approval. If applying for a new visa, the exception request will be processed prior to the application for a new visa. Subsequent travel to the U.S. will require another request.

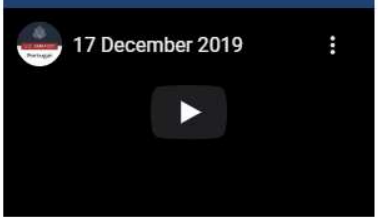
FOR NEW, NON-STUDENT VISA APPLICANTS*: PLEASE DO NOT PAY FOR OR APPLY FOR A VISA UNTIL YOU HAVE RECEIVED APPROVAL OF YOUR REQUEST. All normal visa requirements apply. The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.*

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Translation

Português

How to apply for a non-Immigrant Visa?



Additional Resources

- Nonimmigrant Visa FAQs
- Travel and Tourism in the U.S.
- Legal Rights and Protections
- Summer Work Travel
- Fraud Prevention Warning
- A to Z Index
- Visas for Diplomats, Officials, and Fulbright Scholars
- Student Visa

Government Agency Links

- U.S. Citizenship and Immigration Services
- U.S. Customs and Border Protection
- USA.gov
- U.S. Department of State

U.S. Visa and Travel FAQs for non-U.S. Citizens Following the COVID-19 Pandemic

U.S. Embassy Belgrade

Last Updated: August 1, 2020

We understand your concern regarding visas and travel in light of COVID-19. We hope that this information will help answer your questions.

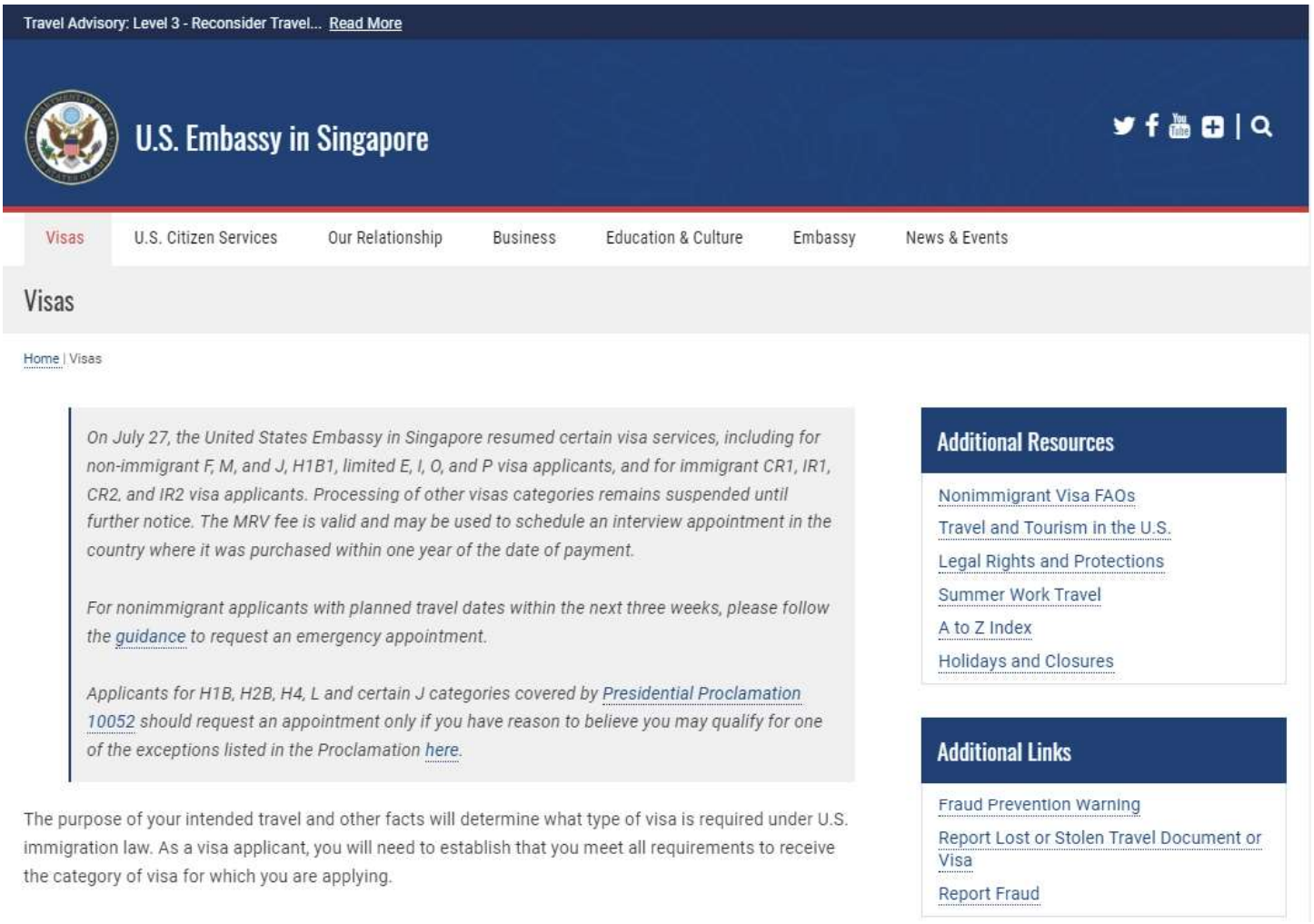
Due to the volume of inquiries we receive, we are only able to respond to individual questions that are not answered on this page or elsewhere on our website. Therefore, please carefully review these FAQs to find the information you require. At this time, we are unable to provide a specific date for when the U.S. Embassy in Belgrade will return to processing at pre-COVID workload levels. Any updates to the Presidential Proclamations and visa operations will be posted on this page, so please check our website regularly.

Please read the information below and navigate to the Nonimmigrant Visa, Immigrant Visa or Fiancé Visa specific information section to find more information that is relevant to your circumstances.

- General Information FAQ
- Specific Information for Nonimmigrant Visa Applicants and Nonimmigrant Visa Holders
- Specific Information for Immigrant Visa Applicants and Immigrant Visa Holders
- Specific Information for Fiancé(e) Visa (K-1) Applicants and Fiancé(e) Visa Holders
- Other Questions

Additional Resources

- Consular Section - U.S. Embassy Belgrade, Serbia
- COVID-19 Information



Travel Advisory: Level 3 - Reconsider Travel... Read More

U.S. Embassy in Singapore

Visas | U.S. Citizen Services | Our Relationship | Business | Education & Culture | Embassy | News & Events

Visas

Home | Visas

On July 27, the United States Embassy in Singapore resumed certain visa services, including for non-immigrant F, M, and J, H1B1, limited E, I, O, and P visa applicants, and for immigrant CR1, IR1, CR2, and IR2 visa applicants. Processing of other visas categories remains suspended until further notice. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment.

For nonimmigrant applicants with planned travel dates within the next three weeks, please follow the guidance to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
A to Z Index
Holidays and Closures

Additional Links

Fraud Prevention Warning
Report Lost or Stolen Travel Document or Visa
Report Fraud

Embassy Bratislava Resumes Limited Visa Services

Expansion of National Interest Exception Travel to Students, Business Travelers, Investors, and Academics

Expansion of National Interest Exception Travel to Students, Business Travelers, Investors, and Academics

Eligible travelers

On July 10th, 2020, Washington announced that certain travelers from Schengen area countries could resume traveling to the United States. Those traveling as students (F1 and M1), researchers (certain J1 programs), investors (E2) or business travel (B1) may now qualify for a national interest exception (NIE) to President Trump's March 11, Presidential Proclamation suspending routine travel from Europe to the United States. Effective July 15, 2020, the following travelers may apply to be considered for the NIE:

- **Economic:** Temporary travel that provides a substantial economic benefit to the U.S. economy. Examples may include:
- **Technical experts** and **specialists** to install, service, maintain, or receive training for vessels, machinery and other specialized equipment used by U.S. and foreign firms with a substantial investment in the United States. Travel is temporary in nature and of a defined period.
- **Senior-level managers** and **executives**, and their dependents, who provide strategic direction necessary for the success of the company or venture.
- **Professional athletes, dependents, and essential staff** who enter the United States to participate in major sporting events, which bolster the U.S. economy.
- **Investors**: Travel in connection with investment or trade in the U.S. economy that generates a substantial economic impact, including **investors** and **treaty-traders** and the senior-level employees who provide strategic direction or expertise essential to the success of the investment, and their dependents.
- **Students:** All students, and their dependents, traveling to the United States to:
- Pursue a full course of study per INA 101(a)(15)(F); or
- Participate in an exchange program as a bona fide student.
- **Academics:** All exchange visitors and their dependents traveling to the United States under INA 101(a)(15)(J) in the following categories:
- Professors
- Research Scholars
- Short Term Scholars
- Specialists

Travelers with Valid Visas or ESTA

Student travelers that already have valid visas and I-20s may return to the United States without further administrative steps. Please ensure that you follow any quarantine or social distancing requirements upon your return.

Travelers that already have valid visas or ESTA and believe they qualify for an NIE for economic, investor, or exchange visitor related purposes must verify with a Consular official that they qualify. To do so, travelers must send the following information along with supporting documentation to consulbratislava@state.gov. Supporting documents may include, letter of invitation, confirmation of participation in a conference, etc. Please allow three business days to review your documents and qualifications. You will be notified by e-mail if you meet the NIE requirements. Print out that e-mail as confirmation of your excepted status.

Name as It Appears on Passport:

Date of Birth (MM/DD/YYYY):

Passport #:

Passport Date of Issuance:

Reason for Travel:

Proposed Itinerary:

E-mail:

Phone #:

Travelers Without A Visa

Travelers that do not yet have their required visas and that believe that they fall in to one of the excepted travel statuses should apply for their visa as normal. Please visit the Embassy website or travel.state.gov to begin your application process. Applicants that already have a pending visa interview appointment but desire an earlier interview should follow the interview expedite process found here.

Limitations of NIE Travel

Although travelers approved for a national interest exception for economic and investor related travel, will be issued full validity visas, the exception is valid only for 30 days from the date of approval and is valid for a single entry to the United States. An individual who departs the United States and wishes to return must be re-assessed for a national interest exception.

Students, investors, and academic researchers do not need to be re-approved for each entry to the United States. F and J visa travelers should also be reminded that they must still meet all Student and Exchange Visitor Program (SEVP) requirements.

All individuals are reminded that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival. DHS requires travelers using a NIE waiver to fly into one of 15 specifically designated airports found here.

By U.S. Embassy Bratislava | 13 July, 2020 | Topics: Announcements

Embassy Speaker Talks Texas and NASA with Summer Campers

Joint Statement of the Diplomatic Community on equal rights for LGBTI

DCM & U.S. Army Representatives Present PPE to the Ministry of Health

U.S. Embassy in Slovenia

Visas

Urgent information for visa applicants regarding Coronavirus:

Entry into the United States is generally suspended for foreign nationals who were present in the 26 countries that comprise the Schengen Zone (including Slovenia) within 14 days prior to their arrival in the United States, per Presidential Proclamation. U.S. Legal Permanent Residents, crew (C1/D visas), and diplomats (A, G, NATO visas) are permitted. New visa applications for certain specific immigrant and temporary worker visa categories are currently suspended to protect the U.S. labor market. Please see these notices which contain detailed information about visa restrictions related to the COVID-19 global pandemic.

Travelers with existing valid visas or who are eligible to travel on visa-waiver (ESTA)

All travelers with existing visas or ESTA may travel to the U.S. if they first spend 14 days outside the Schengen zone (and also outside Britain/Ireland, China, Brazil, and Iran) and then travel directly to the U.S. without transiting the Schengen zone. However, students (F and M visas) with existing visas may travel directly to the United States from the Schengen zone. See the Department's announcement of National Interest Exceptions. In addition, the Embassy may be able to grant exceptions for others to travel direct from the Schengen zone for:

- Emergency medical treatment in the U.S.
- Those working on the Coronavirus
- Academic professors/researchers (J visa)
- Investors & treaty traders (E visa)
- Certain business travelers
- Certain professional athletes

If you already possess a visa, or your travel is eligible under visa-waiver, and are seeking an exception to allow travel direct from the Schengen zone, contact the U.S. Embassy at LjubljanaVisa@state.gov, providing:

- Name
- Date of Birth
- Place of Birth
- Passport number
- a copy of existing visa (if applicable)
- purpose of travel
- travel dates

If your request is approved, it is valid for one entry within 30 days from the date of approval; any future travel to the United States will require another approval. All individuals are reminded that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival. DHS requires travelers to fly into one of 15 specifically designated airports found here.

Travelers needing to apply for a new visa

The U.S Embassy in Ljubljana is providing very limited visa services.

- Students in the F or M category may follow the links below and make an appointment on-line.
- For travelers in one of the other possibly excepted categories mentioned above, first email the Embassy at LjubljanaVisa@state.gov to request approval to make an appointment, explaining the purpose of travel. Please let us know if you have been outside Slovenia within the past 14 days, noting which countries.

For your appointment: Facemasks are required. If you experience any Covid symptoms (fever, shortness of breath, cough), have been in contact with someone diagnosed with Covid, have been to a hospital or nursing home within the past 14 days, or if you traveled outside Slovenia within the past 14 days, you should again email us prior to your appointment (at least one day in advance).

Additional Resources

- Travel & Tourism in the U.S.
- Legal Rights and Protections
- Fraud Prevention Warning
- Summer Work & Travel
- A to Z Index

Government Agency Links

- U.S. Citizenship & Immigrant Services
- U.S. Customs & Border Protection
- USA.gov
- U.S. Department of State

Although travelers will be issued full validity visas, the exception is valid only for 30 days from the date of approval and is valid for a single entry to the United States. An individual who departs the United States and wishes to return must be re-assessed for a national interest exception. All individuals are reminded that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival. DHS requires travelers to fly into one of 15 specifically designated airports found here.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying. See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Nonimmigrant Visas

Important Notice:

Travel by foreign nationals to the United States from Spain currently is limited by one or a combination of the following: a) the Presidential Proclamation prohibiting travel to the United States from the European Schengen zone; b) the Presidential Proclamations suspending issuance of several types of U.S. visas.

We have no information about when any of these limitations will be lifted. These proclamations do not apply to U.S. citizens or U.S. Lawful Permanent Residents (LPRs).

U.S. Embassy Madrid will begin a phased resumption of some visa services on July 20, 2020 and offer visa appointments to those applicants who qualify for an exception to the COVID-19 Presidential Proclamations. The health and safety of both our visa applicants and workforce remain our highest priority and we will be enforcing strict social distancing measures and require masks covering mouth and nose while in our facility. While U.S. Embassy Madrid aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. Please note travel for the primary purpose of tourism remains suspended. See here for more information and links to information regarding new, updated exceptions to the proclamations.

COVID-19 Visa FAQ

Translation

Español

Video on Visa Application Process

Additional Information

Diplomatic, Official, and International Organization Visas

Treaty Trader and Investor Visas

Fulbright Participants and Government-Sponsored Exchange Visitor

COVID-19 Information

Ask a COVID-19 Question

Search for...

Country-Specific Information:

- Suriname has confirmed cases of COVID 19 within its borders. Please visit www.covid-19.sr for an updated case count.
- It is mandatory to wear face masks in public.
- Gatherings are limited to five people, with an exception for workplaces.
- Grocery stores remain open.

Entry and Exit Requirements:

- Are U.S. citizens permitted to enter? No
  - Suriname's borders remain closed except for repatriation of residents and citizens of Suriname. The Ministry of Foreign Affairs may grant exceptions on a case by case basis for other emergency travel to Suriname. U.S. citizens should contact the nearest Embassy or Consulate of Suriname for more information.
- Is a negative COVID-19 test (PCR and/or serology) required for entry? No
- Are health screening procedures in place at airports and other ports of entry? Yes
- Foreigners present in Suriname who need to request an extension of their stay in Suriname may contact the Vreemdelingenpolitie (Foreign Police) at vreemdelingsurcovid19@gmail.com.

Movement Restrictions:

- Is a curfew in place? Yes.
- A curfew is in place from 8pm to 5am daily.
- Are there restrictions on intercity or interstate travel? No.

Quarantine Information:

- Are U.S. citizens required to quarantine? Yes
  - Travelers from the U.S. may be required to quarantine at a government facility for 14 days.

COVID-19 Testing:

- Report symptoms right away if you believe you may have COVID-19 or were exposed to someone who may have COVID-19 by dialing 178 to reach the designated Ministry of Public Health COVID-19 hotline, or by sending a text to 8836643. The Ministry of Public Health will provide instructions for COVID-19 testing to those who meet the requirements.

Transportation Options:

- Are commercial flights operating? Yes
  - KLM is operating commercial flights from Paramaribo to Amsterdam. U.S. citizens departing Suriname are permitted to transit Schiphol airport, remain airside, and continue onward to the United States. However, passengers will not be permitted to exit the transit area. Passengers should have a confirmed onward flight to the U.S. prior to commencing travel. For further information about these flights or to book tickets, please visit www.klm.com.

- Is public transportation operating? No.
- Taxis remain available.

Fines for Non-Compliance:

- Violators of Suriname's COVID-19 prevention measures may be fined up to 10,000 SRD. Repeat violators may be sentenced to up to 6 months imprisonment.

Consular Operations:

- The U.S. Embassy in Paramaribo is providing emergency services to American citizens, including registrations of birth as well as passport renewals for those whose documents will soon expire. For an appointment, please write to caparamar@state.gov.
- As of August 20, 2020, the United States Embassy in Suriname is resuming certain nonimmigrant visa services, including: F and M student visas, and J exchange visas (not subject to or excepted from Presidential Proclamation 10052). While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. You may request an appointment for one of these visa services by writing to caparamar@state.gov.

The U.S. Embassy in Suriname remains unable to resume routine nonimmigrant visas services for other visa categories at this time, including B1/B2 visitor visas. If you have an urgent matter and need to travel immediately, please write to caparamar@state.gov to request an emergency appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an emergency appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

Health Alert – U.S. Embassy Paramaribo, Suriname

French Guiana Travel Advisory Level 4: Do Not Travel

Visas

Please Note: ***Embassy Bern Resumes Limited Visa Services***

Beginning July 15, 2020, we will resume very limited interviews for specific categories of visas that are exempt under relevant Presidential Proclamations, including E, F, M, limited J, and some B1 visas. More information about the categories potentially available for interview are listed in our "Embassy Bern Resumes Limited Visa Services" announcement. If you believe you may qualify for an exemption permitting travel, you may schedule an appointment. Please click here to begin your application process.

Applicants who already have a pending visa interview appointment but desire an earlier interview should request an expedited appointment.

As of March 16, 2020, the United States Embassy in Bern, Switzerland is cancelling routine immigrant and non-immigrant visa appointments. We will resume routine visa services as soon as possible but are unable to provide a specific date at this time. The MRV fee is valid and may be used for a visa application in the country where it was purchased within one year of the date of payment.

Translation

Deutsch
Français
Español
Italiano

Additional Resources

Nonimmigrant Visa FAQs
Travel and Tourism in the U.S.
Legal Rights and Protections
Summer Work Travel
Fraud Prevention Warning
A to Z Index

Information for Visa Applicants Regarding Novel Coronavirus

Announcement

As of July 15, U.S. Embassy Bangkok and U.S. Consulate General Chiang Mai have resumed certain nonimmigrant services, including: F, M, certain J categories (alien physician, government visitor, international visitor professor, research scholar, short-term research scholar, specialist, secondary school student and college/university student), C1/D, E, I, O, and P visas, and certain immigrant visas including IR1, IR2, CR1, and CR2. Applicants seeking C1/D, I, O, and P visas should request an expedited appointment. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://www.ustraveldocs.com/th/th-niv-expeditedappointment.asp to request an emergency appointment.

Applicants for H1B, H2B, L1, and certain J categories and their dependents covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here.

Entry of foreign nationals who were physically present within the following list of countries within 14 days preceding their entry or attempted entry into the United States is suspended, per Presidential Proclamations 9984, 9992, 9993, 9996 and the subsequent proclamation issued May 24, 2020:

- The United Kingdom of Great Britain and Northern Ireland, excluding overseas territories outside of Europe;
- The Republic of Ireland;
- The 26 countries that comprise the Schengen Area (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 Islamic Republic of Iran;
- The People's Republic of China, not including the Special Administrative Regions of Hong Kong and Macau

There are certain exceptions to the suspension of entry, including exceptions for U.S. lawful permanent residents and certain family members of U.S. citizens and lawful permanent residents, among other exceptions listed in the proclamations. If you reside in, have traveled recently to, or intend to transit or travel through any of the above listed countries prior to your planned trip to the United States, we recommend you postpone your visa interview appointment until 14 days subsequent to your departure from the subject country(ries). Additionally, if you are experiencing flu-like symptoms, or believe you may have been exposed to the novel coronavirus, you are strongly encouraged to postpone your appointment by at least 14 days. There is no fee to change an appointment and visa application fees are valid for one year in the country where the fee was paid. For questions about rescheduling a pending consular appointment, please contact us at https://www.ustraveldocs.com/th/th-main-contactus.asp for specific guidance.

Visas

As of July 15, the United States Embassy in Tunis has resumed certain immigrant and nonimmigrant visa services. These visa categories include: students (F-1, M-1, and certain J-1 visas); some family members of U.S. citizens consistent with Presidential Proclamation 10014 (IR-1, CR-1, IR-2, CR-2); and tourist and business travelers (B1/B2) with urgent travel needs. While Embassy Tunis aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. The machine readable visa (MRV) fee of 160 U.S. dollars is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. Applicants seeking any type of visa service should carefully review the COVID-19 related travel restrictions on Travel.State.Gov – https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-visa-services-and-restrictions.html.

To seek an appointment for a nonimmigrant visa service, please follow the guidance provided at www.ustraveldocs.com to request an emergency appointment. For assistance, please email support-Tunisia@ustraveldocs.com or call +216 31 37 81 45. Note: applicants for H-1B, H-2B, H-4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

If you have a question about an existing immigrant visa petition or case, please contact the National Visa Center or the Embassy Tunis Immigrant Visa Unit at TunisIV@state.gov. Note: On April 22, 2020, President Trump signed a proclamation suspending entry into the United States of certain immigrants who present risk to the U.S. labor market during the economic recovery following the COVID-19 outbreak. The proclamation will expire on December 31, 2020, unless continued. Applicants for immigrant visas covered by the Proclamation, including Diversity Visa applicants, who have not been issued an immigrant visa as of April 23 are subject to the Proclamation's restrictions, unless eligible for an exception.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Nonimmigrant Visas

Travel to the United States on a temporary basis, including tourism, temporary employment, study and exchange.

Immigrant Visas

For foreign citizens who want to live permanently in the United States.

- What is a Visa?
- Contact Us
- Customer Service Statement

Translation

Français

العربية

Additional Resources

- Nonimmigrant Visa FAQs
- Travel and Tourism in the U.S.
- Legal Rights and Protections
- Summer Work Travel
- Fraud Prevention Warning
- A to Z Index

Contact Us

The U.S. Embassy in Tunisia is located at North East Zone Berges du Lac, North of Tunis 2045 La Goulette.

The Embassy working hours are as follows:

Winter: 8:00 a.m. to 4:45 p.m.
Summer: 7:30 a.m. to 4:00 p.m.
Ramadan: 8:00 a.m. to 3:00 p.m.

For telephone inquiries about visas, please contact +216 74 61 78 20. The embassy will answer telephonic inquiries about visas Monday to Thursday between 2PM and 4PM.

Government Agency Links

- U.S. Citizenship and Immigrant Services
- U.S. Customs and Border Protection
- USA.gov
- U.S. Department of State

Nonimmigrant Visas

Resuming Limited Routine Services

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

Please see the following notices which contain detailed information about the current status of visa services worldwide and visa restrictions related to the COVID-19 global pandemic: https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-visa-services-and-restrictions.html

For more information go to:

- *Travel restrictions: https://travel.state.gov/content/travel.html*
- *U.S. Mission in Turkey's COVID-19 page: https://tr.usembassy.gov/covid-19-information/*
- *Appointment updates: https://usvisa-info.com, then select Turkey*

On June 22, the President signed a Proclamation which extends the previous Proclamation 10014 and suspends the entry of certain additional foreign nationals to the United States through December 31, 2020. The Department of State is implementing this Proclamation in conjunction with the Department of Homeland Security and interagency partners, and in accordance with all applicable laws and regulations. The full text of the presidential proclamation is available on the White House website at: https://www.whitehouse.gov/

The U.S. Embassy in Ankara and the Consulate General in Istanbul offer Non-Immigrant Visa (NIV) interviews by appointment only. All visa applicants should follow instructions at www.usvisa-info.com to schedule an appointment.

*** **Important Note:** We advise applicants not to make any travel arrangements before they physically receive their visas. ***

Frequently Asked Questions About NIV Services

Contact Us

Translation

Türkçe

Important Notice

Urgent information for visa applicants regarding novel coronavirus:

Entry of foreign nationals who were physically present within the following list of countries within 14 days prior preceding to their entry or attempted entry into the United States is suspended, per Presidential Proclamations 9984, 9992, 9993, 9996 and the subsequent proclamation issued May 24, 2020:

- Brazil (effective May 26 at 11:59 p.m. EDT)
- The United Kingdom of Great Britain and Northern Ireland, excluding overseas territories outside of Europe
- The Republic of Ireland
- The 26 countries that comprise the Schengen Area (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 Islamic Republic of Iran
- The People's Republic of China, not including the Special Administrative Regions of Hong Kong and Macau

Nonimmigrant Visas

As of August 12, the United States Embassy in Ukraine will resume certain nonimmigrant services, including: F, M, certain J categories (alien physician, government visitor, international visitor professor, research scholar, short-term research scholar, specialist, secondary school student and college/university student), C1/D, E, I, O, and P visas, and certain immigrant visas including IR1, IR2, CR1, and CR2. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://www.ustraveldocs.com/ua/ua-niv-expeditedappointment.asp to request an emergency appointment.

Applicants for H1B, H2B, L1, and certain J categories and their dependents covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here.

Please note, you must wear a face mask when visiting the Embassy. If you are feeling ill or have reason to believe you have been exposed to COVID-19, please do not enter the Embassy and reschedule your appointment for a later date.

The Presidential Proclamations suspending the entry of foreign nationals who were physically present within 14 days in certain countries prior to their entry or attempted entry into the United States (Presidential Proclamations 9984, 9992, 9993, 9996, and 10041), and the Presidential Proclamations suspending the entry of certain immigrants and nonimmigrants who present a risk to the U.S. labor market following the coronavirus outbreak (Presidential Proclamations 10014 and 10052) remain in effect. For details about these Presidential Proclamations click here .

Attention: Nonimmigrant visa applicants should submit electronically the DS-160 online form before making an appointment. Update your profile with the DS-160 barcode number by selecting "Update Profile" on this website. When scheduling your appointment, use the same barcode from your current DS-160. If you have made an appointment with an invalid or previously used barcode, you must update your profile at least three (3) business days prior to your appointment date with the new/valid barcode. Otherwise, you will not be allowed in for an interview and will need to make a new appointment using the new/valid DS-160 barcode. Please bring printouts of your DS-160 confirmation and appointment confirmation to your interview.

The Consular Section of the U.S. Embassy in Kyiv is responsible for providing visa services to those seeking to enter the United States for a temporary period and for those wishing to take up indefinite or permanent residence in the United States.

Please visit our Global Support Services (GSS) website for complete information on applying for a nonimmigrant U.S. visa, including a directory of nonimmigrant visa categories.

Contact Us

General Information

How to Apply

Translation

Українська

Notice

The United States Embassy in Ukraine remains unable to resume routine immigrant and nonimmigrant visa services at this time. The Embassy continues to provide emergency and mission-critical services. In addition, from now through December 31, 2020, applicants who wish to renew a nonimmigrant visa of the same classification that has been expired less than 24 months (previously 12 months) may qualify to renew their visa without an interview through the procedures explained here. We will resume routine visa services as soon as possible but are unable to provide a specific date.

The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. If you have an urgent matter and need to travel immediately, please follow the guidance provided at https://www.ustraveldocs.com/ua/ to request an emergency appointment. Applicants for H1B, H2B, H4, L, and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

U.S. Embassy & Consulates in the United Kingdom

Nonimmigrant Visas

In general, a citizen of a foreign country who seeks to enter the United States temporarily must first obtain a U.S. nonimmigrant visa, which is placed in the traveler's passport.

For information regarding the new VWP/ESTA eligibility requirements, click here.

European Travel Info & Health Advisory: advice on travel for UK citizens and Global Health Advisory

On June 22, 2020, the President signed a Proclamation which extends the previous Proclamation 10014 and suspends the entry of certain additional foreign nationals to the United States through December 31, 2020. Please read the Proclamation in full for details, including exemptions.

Please also carefully review our Frequently Asked Questions (FAQs) for the latest information about travel to the United States and visa services in the UK.

***UPDATE:** As of July 27, 2020, the United States Embassy in London and as of August 3, 2020 the United States Consulate General in Belfast are resuming certain immigrant and nonimmigrant visa services, including: immigrant visas for spouses and children of U.S. citizens; F-1 and M-1 student visa categories.*

While we aim to process cases as soon as practicable, there are likely to be increased wait times for completing such services due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment.

If you have an urgent matter and need to travel immediately, please follow the guidance provided through your Visa Appointment Service account to request an expedited appointment. Once you have booked the earliest available appointment, you can then follow the on-screen instructions to request an expedited appointment.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation.

Entry of foreign nationals who were physically present within the following list of countries within 14 days prior to their entry or attempted entry into the United States is suspended, per Presidential Proclamations 9984, 9992, 9993, 9996 and 10041:

- *Brazil;*
- *The United Kingdom of Great Britain and Northern Ireland, excluding overseas territories outside of Europe;*
- *The Republic of Ireland;*
- *The 26 countries that comprise the Schengen Area (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 Islamic Republic of Iran;*
- *The People's Republic of China, not including the Special Administrative Regions of Hong Kong and Macau*

Please review the Presidential Proclamation for detailed information.

Additional Resources

Ineligibilities & Waivers including Arrests, Cautions & Convictions
Nonimmigrant Visa FAQs
Immigrant Visa FAQs
Interview Waiver Program
Contact Us
Fraud Prevention Warning
Lost or Stolen Non-U.S. Passports
Chinese B Visa Holders & EVUS

Coronavirus 2019

Suspension of Entry of Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus

Contact Us

- Nonimmigrant Visas Embassy London
- Immigrant Visas Embassy London
- Nonimmigrant Visas Belfast
- Nonimmigrant Visa Appointments Embassy London and Consulate General Belfast

Government Agency Links

U.S. Citizenship & Immigrant Services
U.S. Customs & Border Protection
USA.gov
Transportation Security Administration

Ask a COVID-19 Question

Search for...

COVID-19 Information

Updated: August 26, 2020

Country-Specific Information:

- Uruguay has a total of 1543 confirmed cases of COVID-19 since March 13, 2020. 178 cases are currently active, and there have been 43 recorded deaths due to the virus. Active cases are currently located in the following departments: Artigas, Canelones, Colonia, Montevideo, Salto, San José, Soriano, Río Negro,Rivera,Tacuarembó.
- Essential services are open. Public transportation and hospitals are operating at normal capacity. Schools and universities are open for in-person classes on at least a part-time basis. Masks are strongly encouraged in all public spaces.

Entry and Exit Requirements:

- Are U.S. citizens permitted to enter? **Yes**
  - Uruguayan borders are currently closed, although exceptions in the following areas may be made. For more detail, please check with the Ministry of Tourism.
    - Family reunification between parents and minor single children or adult children with disabilities, or between spouses or common-law spouses.
    - Drivers for international transportation
    - Airplane pilots
    - Seamen
    - Entrance may be authorized for humanitarian reasons or for labor, economic, business or judicial purposes, as managed by the National Migration Directorate or by the Ministry corresponding to the area of activity involved and based on reasons of urgent need.

- Is a negative COVID-19 test (PCR and/or serology) required for entry? **Yes**
- Are health screening procedures in place at airports and other ports of entry? **Yes**
- Sanitary requirements for entry into Uruguay, per the Ministry of Tourism:
  - Negative PCR coronavirus results, carried out up to 72 hours before the start of the trip conducted by a laboratory in the country of origin or another country in transit .
  - An affidavit stating the absence of symptoms and contact with confirmed or suspected COVID-19 cases in the 14 days prior to admission.
  - Proof of medical insurance with specific coverage for COVID-19.
  - Contact information (phone number) in Uruguay for traceability.

- All immigration regulations in Uruguay remain under the purview of the National Directorate of Migration. Please adhere to all visa laws when visiting Uruguay. For questions regarding your specific situation or visa, please contact the National Directorate of Migration directly for the most accurate information:
  Dirección Nacional de Migración Uruguay
  Email: dnm-secertaria@minterior.gub.uy
  Tel: 00 (598) 2030 1833

Movement Restrictions:

- Is a curfew in place? **No**
- Are there restrictions on intercity or interstate travel? **No**

Filter

Keyword(s):

Content Type:
- ☐ News
- ☐ Speeches
- ☐ Press Releases
- ☐ Events
- ☐ Video

Month/Year

Apply Filter

Topics

Alert
Alumni
Ambassador
Commercial Opportunities
Consular Affairs
Culture
Economic Issues
Education

Show More v

Recent Posts


Travel Alert – U.S. Embassy, Montevideo, Uruguay


Travel Alert – U.S. Embassy, Montevideo, Uruguay


Travel Alert – U.S. Embassy, Montevideo, Uruguay

China's Predatory Fishing Practices in the Galápagos

Quarantine Information:

- Are U.S. citizens required to quarantine? **Yes**
  - In case of a stay greater than 7 days, mandatory preventive social isolation is required for the first 7 days of your stay. Following the initial 7 days of social isolation, you may either perform a new RT-PCR test on the 7th day of stay (with negative result), or extend the mandatory preventive social isolation for an additional 7 days, for 14 days in total.
  - You must provide contact information (phone number) for traceability.
  - You may not use public transportation during the mandatory social isolation period.
  - If a case of COVID-19 occurs, you are instructed to contact the Ministry of Public Health in order to facilitate monitoring and communication.

COVID-19 Testing:

- Tests are generally available through insurance companies. Contact your health provider for more information.
- The current cost of a PCR-CT COVID-19 test is $6000 Uruguayan pesos, or approximately $126 U.S. dollars.
- Negative results from a COVID-19 test within 72 hours are required for entry into Uruguay.

Transportation Options:

- Are commercial flights operating? **No**
- Is public transportation operating? **Yes**
  - Masks are required for public transportation, and strongly encouraged in public settings.
  - Taxis and Uber are generally limited to three passengers at a time.

Fines for Non-Compliance: (if applicable)

- Fines may be applied to businesses who do not comply with COVID-19 protocols.

Consular Operations:

- **United States Citizen Services:** The U.S. Embassy Montevideo is currently offering limited appointments for passports, Consular Reports of Birth Abroad (CRBA). Notary Services are currently not available. To make an appointment for a passport or CRBA, please visit our appointment page for U.S. Citizens. We also continue to offer emergency services for U.S. citizens.For U.S. Citizens issues please write to: MontevideoACS@state.gov
- **Visa Services:** As of August 03, 2020, the United States Embassy in Montevideo has resumed certain immigrant visa services, including IR-1, IR-2, CR-1, and CR-2 immigrant visa, and some nonimmigrant visa services, including F1, M1, H-2A, C1/D, I, O1, O2, P1, P3, E1, E2, and certain J1 nonimmigrant. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. If you have an urgent matter and need to travel immediately, please follow the guidance provided on our website to request an emergency appointment.Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may quality for one of the exceptions listed on travel.state.govNotices containing detailed information about the current status of visa services worldwide and visa restrictions related to the COVID-19 global pandemic can be found here.For questions related to immigrant visa issues please write to: MontevideoIV@state.gov.
  For questions related to non-immigrant visa services, please write to: MontevideoVisas@state.gov

Nonimmigrant Visas

To start your application for a nonimmigrant visa, please visit our visa services website here.

If this is your first time applying for a nonimmigrant visa, you will need to have an interview at either the U.S. Embassy in Hanoi, or at the U.S. Consulate General in Ho Chi Minh City. Please see below for additional information on nonimmigrant visas.

Please see the Department of State's website for the latest information on fees.

Attention All Applicants

- The barcode on your DS-160 must match the barcode on your appointment confirmation page. If you come to your interview with an incorrect DS-160 barcode (for example, from a previous interview) you will not be allowed to enter, and will need to make a new appointment using the correct DS-160 barcode.
- For assistance updating your profile with the correct barcode, please click here or contact the Call Center at 19006444 (Vietnamese and English available) in Vietnam or +1-703-665-7350 internationally.

Mail-In Visa Renewal Program updates!

Have a current U.S. visa or one that expired in the last 12 months? Want to save time and money and avoid coming to the Embassy or Consulate for an interview? You may be able to take advantage of our visa renewal program.

Applicants may now qualify to renew their visas by mail if their prior visa expired no more than 12 months ago, and meet all the other requirements for renewal without interview. For more information, please click here.

Requirements for Chinese Citizens

As of November 29, 2016, Chinese citizens with 10-year B1, B2 or B1/B2 visas in Peoples' Republic of China passports are required to update their biographical and other information from their visa application through the Electronic Visa Update System (EVUS) before travelling to the United States. This update must be done every two years, or upon getting a new passport or B1, B2, or B1/B2 visa, whichever occurs first.

EVUS enrollment is available here. There is currently no fee for EVUS enrollment. Until a fee is implemented, travelers can enroll in EVUS without charge. The Department of Homeland Security, Customs and Border Protection (CBP) will keep visa holders informed of new information here.

- Contact Us
- Visiting the Embassy or Consulate
- Where will I have my interview?
- How do I renew my visa by mail?
- How do I apply for a Diplomatic/Official or No-fee visa?
- Where can I report fraud?
- How do I study abroad in the United States?
- How long until I get my visa?
- Important notices

Suggested for You

Translation

Tiếng Việt

Important Notices

Please note, you must wear a face mask when visiting the Embassy or Consulate General. If you are feeling ill or have reason to believe you have been exposed to COVID-19, please do not enter the Embassy or Consulate General buildings and reschedule your appointment.

The U.S. Embassy in Hanoi and Consulate in Ho Chi Minh City are pleased to announce the resumption of certain nonimmigrant visa services, including visa types F, M, and certain J categories: alien physician, government visitor, international visitor, professor, research scholar, short-term scholar, specialist, secondary school student and college/university student. While the Embassy and Consulate aim to process cases as soon as practicable, there may be increased wait times due to substantial backlogs. The MRV fee is valid and may be used to schedule an interview appointment in the country where it was purchased within one year of the date of payment. Please read more information about multiple Presidential Proclamations here; you are encouraged to consider your eligibility for a visa before you make any payments as applicants do not receive refunds for refused visas. Applicants with an urgent need to travel can request an emergency appointment here.

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here.

Because of strict social distancing guidelines, the number of appointments we can provide will be limited. All applicants are expected to maintain proper physical distancing, and wash their hands to prevent transmission of COVID-19.

Visas

COVID-19 and VISA Services

As of August 3, the United States Embassy in Harare is resuming limited immigrant and nonimmigrant visa services, including: F1, M, IR1 and IR2. While the Embassy aims to process cases as soon as practicable, there is likely to be increased wait times for completing such services due to substantial backlogs. ***Please note that all non-immigrant visa appointment slots are now full for the month of August.***

Applicants for H1B, H2B, H4, L and certain J categories covered by Presidential Proclamation 10052 should request an appointment only if you have reason to believe you may qualify for one of the exceptions listed in the Proclamation here: https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/.

The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. As a visa applicant, you will need to establish that you meet all requirements to receive the category of visa for which you are applying.

See our Directory of Visa Categories on usvisas.state.gov to determine which visa category might be appropriate for your purpose of travel to the United States.

Nonimmigrant Visas

- Tourism & Visit
- Temporary Employment & Business
- Study & Exchange
- Government & International Organizations
- Crewmember Visa

Immigrant Visas

- Family-Based Immigration
- Fiancé(e) Visa
- Employment-Based Immigration
- Diversity Visa Program
- Returning Resident Visa

Additional Resources

- Travel & Tourism in the U.S.
- Legal Rights and Protections
- Fraud Prevention Warning
- Summer Work & Travel
- A to Z Index
- Panel Physicians Approved to Administer Medical Examinations

Contact Us

U.S. Embassy Harare
2 Lorraine Drive, Bluffhill
Harare, Zimbabwe
Please note that we only take Non Immigrant and Immigrant Visa inquiries through the following email address:
consularharare@state.gov

Government Agency Links

- U.S. Citizenship and Immigration Services
- U.S. Customs & Border Protection
- USA.gov
- U.S. Department of State

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL ASSOCIATION OF MANUFACTURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL RETAIL FEDERATION, TECHNET, and INTRAX, INC.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF STATE; CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security; and, MICHAEL R. POMPEO, in his official capacity as Secretary of State,

Defendants.

Case No. 4:20-cv-4887-JSW

DECLARATION OF WILLIAM GUSTAFSON IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, William Gustafson, declare as follows:

1. I am the President and Chief Executive Officer of ASSE International, Inc. (ASSE) and EurAuPair International, Inc. (EurAuPair).

2. I make this declaration based on my own personal knowledge and if called as a witness could and would testify competently to these statements.

3. ASSE's and EurAuPair's mission is to foster international understanding through educational and cross-cultural programs. ASSE was founded in 1976 and EurAuPair was founded in 1988, and both are not-for-profit, public benefit organizations. ASSE is designated by the U.S. Department of State to conduct J-1 exchange visitor programs in the High School, Intern, Summer Work Travel, and Trainee categories. EurAuPair is designated by the U.S. Department of State to conduct J-1 exchange visitor programs in the Au Pair category.

4. The June 22 Proclamation did not bar issuance of J-1 visas to certain J-1 program participants, including for example, participants in the high school exchange programs. ASSE has thus continued to apply for and have J-1 visas issued for high school students. Since the June 22 issuance of the Proclamation barring issuance of certain J-1 visas, ASSE has had J-1 visas for high school program participants issued in the following thirteen counties: Czech Republic, Denmark, France, Germany, Italy, Mexico, Netherlands, Portugal, Spain, Switzerland, Taiwan, Thailand, and Turkey. ASSE thus has first-hand knowledge that U.S. consulates in these countries are currently processing non-immigrant visas in categories other than those blocked by the June 22 Proclamation. That is, to the extent that these consulates ceased operations during the COVID-19 pandemic, they have now reopened and are issuing non-immigrant visas.

5. ASSE has confirmed with its partners abroad that nonimmigrant visa processing for J-1 visa-seekers has resumed in at least the following additional seven countries: Croatia, Jordan, Laos, Latvia, Mauritius, Serbia, Singapore.

6. I am aware of the July 17, 2020 and August 12, 2020 Guidance issued by the U.S. Department of State addressing certain national-interest exceptions putatively available for participants in certain programs, including J-1 programs.

7. The only national interest exception that potentially was available to participants in any of our J-1 programs was that for au pairs. We surveyed our Host Families to assess whether the national interest exception guidance would provide an opportunity for visa issuance that would help our Host Families. Our informal survey of EurAuPair Host Families revealed that at most there are 9% of families that feel they might qualify for one of the exceptions available to J-1 au pairs. For most of these, though, it seems unclear how they would document qualifications for an exception and the State Department has failed to provide any indication of exactly what documents would be acceptable to prove the exceptions for J-1 au pairs described in the July 17 and August 12 guidance.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 23, 2020
Laguna Beach, California

WILLIAM GUSTAFSON

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL ASSOCIATION OF MANUFACTURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL RETAIL FEDERATION, TECHNET, and INTRAX, INC.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF STATE; CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security; and, MICHAEL R. POMPEO, in his official capacity as Secretary of State,

Defendants.

Case No. 4:20-cv-4887-JSW

SECOND DECLARATION OF MARCIE SCHNEIDER IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Marcie Schneider, declare as follows:

1. I am the President of International Training & Exchange Inc. d/b/a Intrax.

2. Intrax is a plaintiff in this action, and it is also a member of Plaintiff Chamber of Commerce of the United States of America. I make this declaration based on my own personal knowledge and if called as a witness could and would testify competently to these statements.

3. Since I signed my first declaration, multiple developments have transpired.

Embassies continue to reopen following COVID-19 shutdowns.

4. Since my initial declaration, several U.S. embassies and consulates abroad have continued their phased reopening following earlier COVID-19 closures, and individuals throughout the world are being issued United States visas and are allowed to travel here.

5. For example, one Intrax program that has not been shut down sponsors high school students on J-1 visas for exchange visits in the United States. Since June 22, 2020, participants in these programs, sponsored by Intrax, have received interviews and visas at U.S. consulates in each of Brazil, Chile, France, Germany, Hong Kong, Italy, Japan, Netherlands, South Korea, Spain, and Thailand. That is, notwithstanding the COVID-19 pandemic, visas have been processed for Intrax J-1 visa participants in each of these countries.

6. Additionally, outside its high school J-1 exchange program, Intrax has had J-1 program participants recently approved visas in Brazil, Colombia, Ecuador, El Salvador, Germany, Iceland, Japan, Mexico, South Africa, Spain, Thailand, and Turkey. Intrax thus has first-hand experience that consulates in each of these countries are also processing and issuing non-immigrant visas. Accordingly, notwithstanding COVID-19, Intrax could have program participants from each of these countries, but for the Proclamation and its implementation.

7. Intrax is ready today to complete work on sponsoring J-1 interns, trainees, work and travel students, and au pairs for start dates in 2020 for individuals coming from at least the 11 countries in which it has recently successfully obtained J-1 high school program visas. Intrax already has interested J-1 visa-seekers for programs subject to the Proclamation in these 11 countries and, given that Intrax has successfully secured J-1 visas for our high school program since the Proclamation was announced on June 22, Intrax knows that the U.S. consulates in these

countries are currently processing and issuing non-immigrant visas.

8. In 2019, Intrax had more than 2,000 au pairs arrive solely from the 11 countries identified above where Intrax has already successfully secured J-1 visas for high school students. If the Proclamation not barring issuance of J-1 visas in these 11 countries, Intrax would have had an estimated 350 au pairs arrive in August alone. The Proclamation is thus the sole cause inflicting very direct and substantial harm on Intrax, and that harm cannot later be remedied. We currently have at least 2,000 host families needing an au pair immediately so that they will be able to return to work. We are having to turn away this business and revenue because the Proclamation precludes us from sponsoring au pairs in the time frame they are needed .

9. Similarly, for the 11 countries identified above where Intrax has had J-1 visas issued since June 22, for the period from June 22 to December 31, 2019, Intrax had 998 visas issued from these countries alone for its intern and trainee programs. But for the Proclamation, Intrax would sponsor hundreds of interns and trainees from these 11 countries during the third and fourth quarters of 2020.

The State Department's August 12 Guidance.

10. Since my initial declaration, the State Department issued additional guidance purporting to expand the national interest exceptions available under Proclamation 10052.[1]

11. The August 12 Guidance did not make any additional changes in the au pair category from the July 22 Guidance I addressed in my first declaration. The August 12 Guidance allows a national interest exception waiver for very limited categories of au pairs serving particular types of families. Specifically, it allows a waiver for (1) an au pair with special skills required for a child with particular medical issues diagnosed by a qualified medical professional; (2) an au pair that prevents a citizen or resident from becoming a public charge or ward of the state or other institution; or (3) an au pair to provide childcare services for a child whose parents are involved with the provision of medical care to individuals who have contracted COVID-19 or medical research at

[1] *See* U.S. Dep't of State, Bureau of Consular Affairs, *National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak* (Aug. 12, 2020), https://perma.cc/6SDU-A5TS.

United States facilities to help the United States combat COVID-19.

12. These exceptions will have only a miniscule effect on Intrax's business. To begin with, it only meaningfully applies to Intrax's au pair program, which is only one of five Intrax programs shut down by the Proclamation. This exception has no effect on Intrax's summer work travel program, its camp counselor program, its intern program, or its trainee program.

13. Intrax has been tracking approvals and denials under Proclamation 10052's national interest exception but has not seen any meaningful amount granted. As of August 21, Intrax has had only 75 national interest exceptions for au pairs approved worldwide. 75 approvals in a program that serves 6,000 participants is insignificant. The dire harms remain to Intrax's business, because far more than 90% of Intrax's au pair business remains completely shuttered by the Proclamation.

14. Further, in Intrax's experience, consulates abroad have taken very strict interpretations of the applicable national interest exception. For example, in its au pair program, Intrax has an interested host family with a parent in the medical profession. Intrax identified a potential au pair from Brazil who applied for a J-1 visa and entry under the national interest exception waiver to provide childcare services for this parent in a medical profession. The embassy in Brazil denied a waiver under the national interest exception because the host parent is not sufficiently on the "front lines" working with COVID-19 patients.

15. The process for seeking a national interest exception costs time and money that, but for the Proclamation and its implementation, would not be spent in securing these J-1 visas. Thus, even when national interest exceptions are granted, it imposes harms—through financial costs and resource diversion—that cannot be recouped from the government. So long as we must seek national interest exceptions, Intrax will suffer direct harms that can never later be recovered.

16. The national interest exception process creates several harms, which in the aggregate create substantial additional work and cost for each individual au pair. Intrax personnel must take substantial time and effort to assist individual J-1 applicants and their host families in navigating the national interest exception process. This creates a resource drain on Intrax's staff which, but for the Proclamation and its implementation, would not be required. Intrax has no way to recover these costs.

17. Au pairs incur additional expense to travel to the consulate because most national interest exception appointments are made at the last minute, requiring urgent travel to the local consulate. And, if granted, a national interest exception waiver requires the au pair to enter the United States within 30 days of receiving the national interest exception waiver. Last minute flight costs range from an additional $500 to $1000 per au pair, over and above the usual costs when international travel is planned with advance notice. Some embassies, like Brazil, require applying for an emergency visa interview, creating additional work to justify access to an interview in addition to justifying the applicability of the national-interest exception. Intrax, J-1 au pair applicants, and/or their host families must often pay for emergency delivery fees of documents to the consulate, which often cost from $30 to $50 per au pair per filing. These additional requirements and costs per participant further harm Intrax's ability to recoup sufficient revenue to cover the costs of running its business.

18. Participants must be willing to pay a $160 fee for a DS160 application plus a $35 SEVIS fee. Both of these fees are non-refundable even in programs banned by the Proclamation. To be sure, participants must pay these fees in a normal season, but the fact that the program is banned and a discretionary national interest exception is the only way to recoup this investment makes the fees a heavy financial burden.

19. For host families applying for a national interest exception based on a child's particular medical needs, the host family must also engage in a lengthy documentation collection process. A family must secure letters from the child's doctors and therapists and from the parents' employers confirming the business is both essential and in the U.S. national interest; they also must draft a national interest exception application and letter for the Consulate's review. On the au pair's side, she too must collect various documents, including letters establishing her experience working with special needs children and certificates from courses showing she has the educational background to work with special needs children. The collection and/or creation of these documents is burdensome and time consuming. Intrax staff supervises these efforts, diverting time and resources—and, ultimately, costing Intrax substantially greater overhead costs to run its programs.

20. As for Intrax's intern and trainee programs, Intrax has no interns or trainees arriving

due to Proclamation 10052, when it would normally have thousands arriving. The August 12 Guidance does not ameliorate the harms at all. The August 12 Guidance provides a potential exception for U.S. government agency-sponsored programs where the individual "supports the immediate and continued economic recovery of the United States." But Intrax's programs are hosted with private companies, not with U.S. government agencies. Thus, the entirety of Intrax's business regarding its intern and trainee programs remains completely shut down. Indeed, by definition, State Department regulations do not allow participants in the intern, trainee, or summer work travel programs to play vital roles in critical infrastructure or be long-term or key employees of the host companies.

21. The exemption for agreements between a foreign government and a U.S. government is also inapplicable to all (or at least virtually all) of Intrax's programs. (This is the exemption for an "exchange program conducted pursuant to an MOU, Statement of Intent, or other valid agreement or arrangement between a foreign government and any federal, state, or local government entity in the United States that is designed to promote U.S. national interests if the agreement or arrangement with the foreign government was in effect prior to the effective date of the Presidential Proclamation."). This has no applicability to the vast majority of Intrax's programs.

22. The exception for an exchange program "that fulfills critical and time sensitive foreign policy objectives" has failed to provide Intrax any meaningful relief. Though Intrax believes that every cultural exchange program fulfills foreign policy objectives, it is impossible to predict whether any particular foreign policy objective is sufficiently "critical" and "time sensitive" to make an applicant eligible for the national interest exception waiver.

23. To the extent that any companies could attempt to apply for an exception, they must prepare a letter and provide proof that their company qualifies for the national interest exception. This requires substantial time and resources for companies that are already stretched thin. Program sponsors, like Intrax, must devote substantial staff time to navigating host companies through this national interest exception process. Program sponsor staff now provide hands-on assistance to participants, host companies, and the consulates to navigate through the complex process that culminate in a highly discretionary decision. This also imposes irrecoverable new costs on Intrax,

none of which was required prior to the Proclamation.

24. All told, Intrax has not had any national interest exception waivers for interns and trainees, which has resulted in irreparable harm to Intrax.

25. Similarly, notwithstanding the August 12 Guidance, Intrax's camp counselor and summer work travel programs remain completely shut down. There are no specific national interest exceptions for these programs. And the "critical foreign policy objectives" exception is entirely too vague and subjective to determine whether a particular exchange program would qualify. Because no national interest exception waivers would be available for camp counselor and summer work travel programs, each of the harms I identified in my first declaration resulting from the complete suspension of these programs are causing and will continue to cause Intrax substantial irreparable harm.

Harms caused by the State Department's failure to process visas.

26. In pre-COVID-19, pre-Proclamation times, Intrax's work travel program winter season would enroll approximately 1,100 participants. Because of the uncertainty that the Proclamation has created, winter participants are hesitant to commit to a program that is covered by the Proclamation. Still, the Intrax work travel program currently has at minimum 350 winter seasonal jobs committed to by US employers. These jobs are at risk of going unfilled due to the Proclamation. Intrax already has willing participants lined up from seven of the countries, identified above. In order for these individuals to enter the United States on or around January 1, 2021 (the date the Proclamation expires), Intrax would normally direct program participants to begin applying for visas at U.S. consulates in September and October 2020. Because the State Department has stopped the processing of these visas, these individuals cannot arrive in the United States on or around January 1, 2021. As a result, most of these 350 participants will be unable to participate in the work travel program this winter. That is because, from the time a J-1 visa applicant applies for a visa until the time it is granted, it usually takes one to three months. The winter season for which these individuals are hired (at locations like ski resorts) typically ends in March. Thus, by failing to process visas until 2021, the effect of the State Department's policy barring the processing and issuance of visas is to foreclose all or virtually all of Intrax's winter work travel programs. An

injunction now obligating the State Department to process and issue visas would restore to Intrax a winter work travel program.

Intrax's harms remain.

27. Notwithstanding the August 12 Guidance, Intrax has suffered and will continue to suffer because of Proclamation 10052. Because the Proclamation has continued to shut down Intrax's programs, it has not been able to reverse the furloughs of 30-50% of its approximately 300 U.S. staff nor the very substantial pay cuts taken by Intrax's staff. Thus, Intrax will still suffer severe and irreversible economic harm even in view of the August 12 Guidance if the Proclamation's entry ban continue until December 31, 2020. If the ban extends into 2021, even in view of the August 12 Guidance, Intrax still likely will not survive.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 28, 2020
San Francisco, California

MARCIE SCHNEIDER

ETHAN P. DAVIS
Acting Assistant Attorney General

WILLIAM C. PEACHEY
Director

GLENN M. GIRDHARRY
Assistant Director

AARON S. GOLDSMITH
Senior Litigation Counsel

JOSHUA S. PRESS
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Telephone: (202) 305-0106
Facsimile: (202) 305-7000
e-Mail: joshua.press@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NATIONAL ASSOCIATION OF MANUFACTURERS, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants.

Case No. 4:20-cv-4887-JSW

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: September 11, 2020
Time: 9:00 a.m.
Judge: Hon. Jeffrey S. White
Ctrm.: 5

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 2

A. Presidential Proclamations 10014 and 10052 2

1. Proclamation 10014 2

2. Proclamation 10052 3

3. National-Interest Exceptions to Proclamations 10014 and 10052 4

B. Procedural Background 5

STANDARD OF REVIEW 5

ARGUMENT 6

A. Plaintiffs Have No Likelihood of Success on the Merits 6

1. Plaintiffs lack standing 6

2. Plaintiffs do not challenge any discrete, final agency action 8

3. The APA does not permit judicial review of Presidential action 8

4. Proclamation 10052 is lawful because the INA does not limit the President from determining what falls within the national interest 13

B. Plaintiffs Fail to Demonstrate Irreparable Harm Attributable to Proclamation 10052 20

C. The Balance of Harms Strongly Favors the Federal Government 23

D. There is No Basis in Law or Equity for an Injunction That Would Apply to U.S. Consular Posts Worldwide 24

CONCLUSION 25

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

TABLE OF AUTHORITIES

CASES

Abourezk v. Reagan,
785 F.2d 1043 (D.C. Cir. 1986) 15, 17

Allen v. Milas,
896 F.3d 1094 (9th Cir. 2018) 9, 10

Alliance for the Wild Rockies v. Cottrell,
632 F.3d 1127 (9th Cir. 2011) 20

Am. Diabetes Ass'n v. Dep't of Army,
938 F.3d 1147 (9th Cir. 2019) 7

Bates v. United Parcel Serv., Inc.,
511 F.3d 974 (9th Cir. 2007) 6

Bennett v. Spear,
520 U.S. 154 (1997) 8

Bustamante v. Mukasey,
531 F.3d 1059 (9th Cir. 2008) 9

Cabaccang v. USCIS,
627 F.3d 1313 (9th Cir. 2010) 8

Caribbean Marine Servs. Co., Inc. v. Baldrige,
844 F.2d 668 (9th Cir. 1988) 20, 23

Castaneda-Gonzalez v. INS,
564 F.2d 417 (D.C. Cir. 1977) 12

City of L.A. v. Barr,
941 F.3d 931 (9th Cir. 2019) 9

Colo. River Indian Tribes v. Town of Parker,
776 F.2d 846 (9th Cir. 1985) 23

Dalton v. Specter,
511 U.S. 462 (1994) 9, 17

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Detroit Int'l Bridge Co. v. Gov't of Canada,
189 F. Supp. 3d 85 (D.D.C. 2016) 10, 11

Doe #1 v. Trump,
944 F.3d 1222 (9th Cir. 2019) 20

Doe v. Trump,
418 F. Supp. 3d 573 (D. Or. 2019) 15, 16, 19

East Bay Sanctuary Covenant v. Trump,
932 F.3d 742 (9th Cir. 2018) 9

Ecological Rights Found. v. Pac. Lumber Co.,
230 F.3d 1141 (9th Cir. 2000) 7

Franklin v. Massachusetts,
505 U.S. 788 (1992) 8

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.,
528 U.S. 167 (2000) 6

Gill v. Whitford,
138 S. Ct. 1916 (2018) 24

Gundy v. United States,
139 S. Ct. 2116 (2019) 19

Jensen v. Nat'l Marine Fisheries Serv. (NOAA),
512 F.2d 1189 (9th Cir. 1975) 10

Judulang v. Holder,
565 U.S. 42 (2011) 12

Kantor v. Pompeo,
400 F. Supp. 3d 464 (E.D. Va. 2019) 10

Kleindienst v. Mandel,
408 U.S. 753 (1972) 10

L.A. Mem'l Coliseum Comm'n v. NFL,
634 F.2d 1197 (9th Cir. 1980) 5

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Li Hing of Hong Kong, Inc. v. Levin,
800 F.2d 970 (9th Cir. 1986) 9

Lujan v. Nat'l Wildlife Fed'n,
497 U.S. 871 (1990) 8

Madsen v. Women's Health Ctr., Inc.,
512 U.S. 753 (1994) 25

McMichael v. Cty. of Napa,
709 F.2d 1268 (9th Cir. 1983) 7

Monsanto Co. v. Geertson Seed Farms,
561 U.S. 139 (2010) 6

New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.,
434 U.S. 1345 (1977) 24

Nishimura Ekiu v. United States,
142 U.S. 651 (1892) 17

Nken v. Holder,
556 U.S. 418 (2009) 24

Norton v. S. Utah Wilderness Alliance,
("*SUWA*"), 542 U.S. 55 (2004) 8

Oakland Tribune, Inc. v. Chronicle Publ'g Co., Inc.,
762 F.2d 1374 (9th Cir. 1985) 23

Saavedra Bruno v. Albright,
197 F.3d 1153 (D.C. Cir. 1999) 9

Sale v. Haitian Centers Council, Inc.,
509 U.S. 155 (1993) 13, 14, 17

Scott v. Pasadena Unified Sch. Dist.,
306 F.3d 646 (9th Cir. 2002) 7

Senate of the State of Cal. v. Mosbacher,
968 F.2d 974 (9th Cir. 1992) 24

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Small v. Avanti Health Sys., LLC,
661 F.3d 1180 (9th Cir. 2011) 24

Smith v. Pac. Props. & Dev. Corp.,
358 F.3d 1097 (9th Cir. 2004) 7

Summers v. Earth Island Inst.,
555 U.S. 488 (2009) 24

Trump v. Hawaii,
138 S. Ct. 2392 (2018) ..... *passim*

Trump v. Int'l Refugee Assistance Project,
137 S. Ct. 2080 (2017) 25

Tulare Cty. v. Bush,
185 F. Supp. 2d 18 (D.D.C. 2001) 10, 11

U.S. Ass'n of Reptile Keepers, Inc. v. Jewell,
106 F. Supp. 3d 126 (D.D.C. 2015) 25

U.S. ex rel. Knauff v. Shaughnessy,
338 U.S. 537 (1950) ..... *passim*

United States v. Curtiss-Wright Export Co.,
299 U.S. 304 (1936) 17, 19

United States v. George S. Bush & Co., Inc.,
310 U.S. 371 (1940) 13

Va. Soc'y for Human Life v. FEC,
263 F.3d 379 (4th Cir. 2001) 25

Ventura-Escamilla v. Immigration & Naturalization Serv.,
647 F.2d 28 (9th Cir. 1981) 10, 14

Weinberger v. Romero-Barcelo,
456 U.S. 305 (1982) 24

Winter v. Nat. Res. Def. Council, Inc.,
555 U.S. 7 (2008) ..... *passim*

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Wisc. Gas Co. v. FERC,
758 F.2d 669 (D.C. Cir. 1985) 23
Youngstown Sheet & Tube Co. v. Sawyer,
343 U.S. 579 (1952) 13
Zivotofsky ex rel. Zivotofsky v. Kerry,
135 S. Ct. 2076 (2015) 19

STATUTES

5 U.S.C. § 703 25
5 U.S.C. § 704 8
5 U.S.C. § 706(2) 25
8 U.S.C. § 1103(a)(1) 24
8 U.S.C. § 1104(a) 9
8 U.S.C. § 1182 12
8 U.S.C. § 1182(a) 12
8 U.S.C. § 1182(a)(2)(H) 15
8 U.S.C. § 1182(a)(3)(E) 15
8 U.S.C. § 1182(f) ..... *passim*
8 U.S.C. § 1201(g) 11

REGULATIONS

3 C.F.R. § 50 (1981) 18
3 C.F.R. § 133 (1996) 18
22 C.F.R. § 41.121(a) 12

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

INTRODUCTION

This Court should deny Plaintiffs' request for an extraordinary, universal preliminary injunction that would enjoin the entirety of Proclamation 10052, *Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, 85 Fed. Reg. 38,263 (Jun. 25, 2020). The President, relying on his "broad discretion to suspend the entry of aliens into the United States" to issue this Proclamation, *Trump v. Hawaii*, 138 S. Ct. 2392, 2408 (2018), lawfully exercised his authority to temporarily suspend the admission of certain foreign nonimmigrants to the United States while the Nation addresses the harms to the labor market that have been caused by COVID-19. Plaintiffs ask this Court to issue immediate universal relief halting the Proclamation because they disagree with the Executive Branch's judgment on how to ameliorate the American unemployment rate in a time of national emergency. Specifically, Plaintiffs challenge the Proclamation as (1) *ultra vires* to the Immigration and Nationality Act ("INA") and (2) violative of the Administrative Procedure Act ("APA"). *See* Compl., ECF No. 1 ¶¶ 164–81. These claims are meritless and this Court should deny Plaintiffs' extraordinary request for a preliminary injunction.

First, Plaintiffs, four organizations and one company, are not likely to prevail on the merits. At the threshold, they lack standing. The organizational Plaintiffs point to no specific facts that demonstrate harm to either themselves or their members. The company Plaintiff that participates in a J-1 exchange visitor visa program has pleaded only speculative harm and cannot point to a single exchange-visitor participant who has been denied a visa. In fact, there are no visa applications associated with any of the Plaintiffs in this case. Even if Plaintiffs could establish standing, several defects in their claims would require denying their motion. Plaintiffs' request for injunctive relief fails as a matter of law because, under binding precedent, the APA does not provide them with a cause of action against a Presidential Proclamation. Plaintiffs also fail to identify any discrete final agency action for the Court to review. And even if Plaintiffs could somehow get past these defects, they still cannot prevail because the President lawfully issued Proclamation 10052 under his broad authority to suspend the entry of certain aliens based on his

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

finding that their entry would be detrimental to the interests of the United States in light of the significant economic harm the COVID-19 pandemic continues to inflict on the Nation. *See* 8 U.S.C. §§ 1182(f), 1185(a). Moreover, reading Section 1182(f) in harmony with Section 1201(g) forecloses Plaintiffs' argument that the entry restrictions do not support the denial of visas by U.S. consular posts.

Second, Plaintiffs fail to demonstrate an immediate, irreparable injury. Many of Plaintiffs' purported injuries, including assertions of economic losses, do not constitute irreparable harm as a matter of law. Third, enjoining the Proclamation would be contrary to the public interest. If this Court were to set aside a proclamation issued to address a specific threat to the American workforce during a national emergency, the negative repercussions for the public would be great and irreversible. The Proclamation addresses the catastrophic harms being inflicted on the U.S. labor market and the Nation because of an ongoing national emergency. A universal preliminary injunction would cut at the heart of the President's broad legal authority over the border at a time when the authority and flexibility of the Executive Branch is most needed. Thus, the balance of the equities weigh decisively against entry of a preliminary injunction. Finally, if the Court were to issue some injunctive relief, that relief would need to be sharply limited. There is no basis in law or equity to support Plaintiffs' request for a universal injunction that would apply to U.S. consular posts worldwide. Instead, relief must be tailored to the injury asserted by the plaintiffs and cannot properly extend further under Article III, equitable principles, or the APA.

For these reasons, the Court should deny Plaintiffs' motion in its entirety.

BACKGROUND

A. Presidential Proclamations 10014 and 10052.

1. Proclamation 10014.

Although Plaintiffs focus their claims on Proclamation 10052, that Proclamation's history and context are necessary to understanding how we arrived at the Plaintiffs' challenge. On April 22, 2020, the President signed Proclamation 10014. *See* Presidential Proclamation 10014, Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 Fed. Reg. 23,441

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

(Apr. 27, 2020). Proclamation 10014 was issued to address the damage to the economy caused by COVID-19 in the United States, especially the rising unemployment rate from the virus and the policies that have been necessary to mitigate its spread. *Id*. Proclamation 10014 directed, "[w]ithin 30 days of the effective date of this proclamation, the Secretary of Labor and the Secretary of Homeland Security, in consultation with the Secretary of State, shall review nonimmigrant programs and shall recommend … other measures appropriate to stimulate the United States economy and ensure the prioritization, hiring, and employment of United States workers." *Id*. at 23,442.

2. Proclamation 10052.

The President signed Proclamation 10052 on June 22, 2020, extending Proclamation 10014 through December 31, 2020. *See* 85 Fed. Reg. 38,263. The President explained that the 60-day timeframe set by Proclamation 10014 was insufficient for the United States labor market to rebalance and that "the considerations present in Proclamation 10014 remain." *Id*.

Besides extending the suspension under Proclamation 10014, the President announced that the Secretaries of Labor and Homeland Security had reviewed nonimmigrant programs, as directed in Proclamation 10014, and "found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery." *Id*. Proclamation 10052 states that "[u]nder ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers." *Id*. The President found that "[t]he entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs … presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak." *Id*. at 38,264. "For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas." *Id*. at 38,263-64. And "more than 20 million United States workers lost their jobs in key

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

industries where employers are currently requesting H-1B and L workers to fill positions." *Id*. at 38,264. Further, "the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high." *Id*. Recognizing that, "[h]istorically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity" and "assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand." *Id*. Exercising authority under, *inter alia*, 8 U.S.C. § 1182(f) and § 1185(a), the President "determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States," including H-1B, H-2B, J, and L nonimmigrant temporary workers. *Id*.

3. National-Interest Exceptions to Proclamations 10014 and 10052.

The Proclamations include exceptions for individuals whose entry would be in the national interest, as determined by the Secretaries of State or Homeland Security, or their respective designees. *See* https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html (last visited Aug. 19, 2020). On August 12, 2020, the Department of State explained the exceptions available for certain nonimmigrant workers in H-1B, H-2B, L and J visa categories. *Id*. That guidance provides "a non-exclusive list of the types of travel that may be considered to be in the national interest," and it is "based on determinations made by the Assistant Secretary of State for Consular Affairs, exercising the authority delegated to him by the Secretary of State under Section 2(b)(iv) of [Proclamation] 10014 and 3(b)(iv) of [Proclamation] 10052." *Id*. The State Department's guidance indicates that applicants "who are subject to any of these Proclamations, but who believe they may qualify for a national interest exception or other exception, should follow the instructions on the nearest U.S. Embassy or Consulate's website regarding procedures necessary to request an emergency appointment and should provide specific details as to why they believe they may qualify for an exception." *Id*. The guidance also states that "[w]hile a visa applicant subject to one or more Proclamations might

meet an exception, the applicant must first be approved for an emergency appointment request and a final determination regarding visa eligibility will be made at the time of visa interview." Acknowledging the ongoing limitations of U.S. consular operations around the world due the COVID-19 pandemic, the State Department added "that U.S. Embassies and Consulates may only be able to offer limited visa services due to the COVID-19 pandemic, in which case they may not be able to accommodate [a request for a national interest exception] unless the proposed travel is deemed emergency or mission critical." *Id.*

B. Procedural Background.

On July 21, Plaintiffs filed this lawsuit challenging Proclamation 10052 as *ultra vires* and arbitrary and capricious under the APA. *See* Compl., ¶¶ 164–81. Plaintiffs are four trade associations and one company that participates in the J-1 cultural-exchange visa program. *See* Compl. ¶¶ 18–22, 130. The National Association of Manufacturers, the U.S. Chamber of Commerce, the National Retail Federation, and Technet (the organizational Plaintiffs) allege that the Proclamation will cause economic harm and assert their unnamed members' claims of difficulty with importing temporary skilled and unskilled foreign workers into the United States. *Id.* ¶¶ 112–29. Intrax Inc. (the company Plaintiff) alleges that it has had to cease many of its J-1 exchange visitor visa programs and that the Proclamation has left it unable "to plan for the future" because "potential [visa-beneficiary] participants are … unwilling to sign up without assurances the Proclamation actually will be lifted." *Id.* ¶ 131. On July 31, Plaintiffs moved to preliminarily enjoin Proclamation 10052 on a universal basis. Pls.' Mot., ECF No. 31.

STANDARD OF REVIEW

The purpose of a preliminary injunction is to "preserve the status quo ante litem pending a determination of the action on the merits." *L.A. Mem'l Coliseum Comm'n v. NFL*, 634 F.2d 1197, 1200 (9th Cir. 1980). A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "A plaintiff seeking preliminary injunctive relief must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Id.* at 20.

ARGUMENT

The Court should deny Plaintiffs' preliminary-injunction motion. They cannot satisfy any of the requirements for injunctive relief.

A. Plaintiffs Have No Likelihood of Success on the Merits.

Plaintiffs are not likely to succeed on the merits. First, Plaintiffs fail to establish standing to proceed. Second, even if Plaintiffs had standing, they fail to challenge a discrete final agency action. Third, Plaintiffs have no cause of action under the APA to challenge a Presidential Proclamation. Fourth, if the plaintiffs can get past those defects, their claims still fail because Proclamation 10052 is a lawful exercise of the President's broad authority under 8 U.S.C. § 1182(f) and the INA does not limit the President from determining what falls within the national interest.

1. Plaintiffs lack standing.

To establish standing, a plaintiff must allege an injury in-fact that is (1) concrete and particularized, as well as actual and imminent; (2) fairly traceable to the challenged action; and (3) redressable. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). Plaintiffs "must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 185 (2000). And to establish standing for prospective injunctive relief, a plaintiff must demonstrate that "he has suffered or is threatened with a concrete and particularized legal harm coupled with a sufficient likelihood that he will again be wronged in a similar way." *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (citation and internal quotation marks omitted).

In this case, none of the organizational Plaintiffs—the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Retail Federation, and Technet—have provided any facts of *specific* harm to themselves that was or will be caused by the Proclamation. An organization may establish injury in-fact for itself "if it can demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

[conduct] in question." *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004). Nothing like that is alleged here. *See Am. Diabetes Ass'n v. Dep't of Army*, 938 F.3d 1147, 1155 (9th Cir. 2019) (rejecting organizational standing where "the Association did not divert any resources but was merely going about its business as usual"). No organizational Plaintiff has mentioned their resources at all. Nor have they shown that, at the time the complaint was filed and as a result of the Proclamation, any alteration of their resources to separately address the Proclamation. *See Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 655 (9th Cir. 2002).

An organization has standing to sue on behalf of its members where: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purposes; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000). Plaintiffs fail to meet the first element because they have failed to provide any sort of declaration regarding the vague descriptions of member-harm alleged in the Complaint. *See Am. Diabetes Ass'n*, 938 F.3d at 1157 & n.5 (affirming dismissal of a facial challenge to standing where members' declarations post-dated the complaint). They also fail to meet the second element because none has alleged that they have any organizational interest related to immigration.

The company Plaintiff, Intrax, Inc., lacks standing because it has merely alleged a generalized economic harm that is not specifically tied to the Proclamation: "Intrax operates six exchange programs, five of which—summer work travel, au pair, intern, trainee, and camp counselor—are entirely shut down." Compl. ¶ 130. This allegation of injury is no different than the economic injuries suffered by U.S. businesses across the country with no ties to the importation of foreign workers or the Proclamation being challenged. It is insufficient to establish standing. *McMichael v. Cty. of Napa*, 709 F.2d 1268, 1270 (9th Cir. 1983) ("[P]laintiff's injury must not be shared in substantially equal measure by all or a large class of citizens—if so, it represents a generalized grievance not normally appropriate for a judicial resolution." (internal quotations omitted)).

The Court should deny the preliminary-injunction motion for lack of standing.

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

2. Plaintiffs do not challenge any discrete, final agency action.

This Court also cannot reach Plaintiffs' two APA claims because they have failed to point to any specific, final agency action they are challenging. *See Cabaccang v. USCIS*, 627 F.3d 1313, 1316 (9th Cir. 2010). Judicial review under the APA is limited to "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. To constitute "final agency action," an action both must "mark the consummation of the agency's decisionmaking process" and "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citations and quotations omitted); *see also Franklin v. Massachusetts*, 505 U.S. 788, 796–97 (1992) ("The core question is whether the agency has completed its decisionmaking process." (citations and quotations omitted)). Plaintiffs have the burden of identifying specific federal conduct and explaining how it is "final agency action," *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882 (1990), and identifying a discrete agency action that the federal agency was legally required to take but failed to do so, *Norton v. S. Utah Wilderness Alliance* ("*SUWA*"), 542 U.S. 55, 64 (2004). In the absence of any identified final agency action, this Court cannot reach any APA claim.

Here, Plaintiffs point to no specific agency action (that is, no "agency rule, order, license, or sanction")—let alone an action reflecting an agency's final decisionmaking process—in their Complaint. *Id.* at 62. For instance, Plaintiffs have not pointed to any specifically denied visa-petition application. But without any rule or denial to point to, there is not only an obvious lack of finality, but also a lack of "agency action" under the APA after *SUWA*. The closest Plaintiffs come is an allegation relating to a tweet. *See* Compl. ¶ 108 & n.49. This is not enough. *See SUWA*, 542 U.S. at 64. Plaintiffs thus fail to challenge a discrete, final agency action, and as a result this Court is without jurisdiction to assess Plaintiffs' APA claims.

3. The APA does not permit judicial review of Presidential action.

Plaintiffs argue that they are likely to succeed on their APA challenge for the same reasons that they contend that the Proclamation is unlawful. *See* Pls.' Mot. 17–18. Although Plaintiffs contend that their APA claim is "independently actionable," *id.* at 18, it is black letter law that courts cannot review Presidential actions under the APA, *Franklin*, 505 U.S. at 801; *see also*

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Specter, 511 U.S. at 468 ("The APA does not apply to the President."). But that is precisely what Plaintiffs insist be done in this case—apply the APA to review a Presidential Proclamation.

Plaintiffs suggest that *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018), allows for them to do so. Pls.' Mot. 18. They are wrong: in that case the court reviewed an interim joint final rule issued by two agencies, not a Presidential Proclamation. *East Bay*, 932 F.3d at 760. The Ninth Circuit was clear that it did not have "any authority under ... the APA to review the Proclamation" that was issued contemporaneously with that rule. *Id*. at 770. Instead, it reviewed the agency's "rule of decision," from which the legal consequences flowed when the agency applied the rule in asylum proceedings. *Id*. In contrast, here, Plaintiffs are directly challenging Proclamation 10052 and are seeking to enjoin its implementation. *See* Compl. ¶¶ 165–81 (explicitly challenging the Proclamation or its implementation); Pls.' Mot. 1 (same). Unlike in *East Bay*, Plaintiffs here do not challenge any agency rule. Thus, the APA does not permit judicial review of Presidential action or its implementation.

Consular Nonreviewability. To the extent that Plaintiffs challenge the President's actions as ultimately implemented through consular officers' individualized visa determinations, the APA also does not permit review of such decisions under the doctrine of consular nonreviewability. *See Saavedra Bruno v. Albright*, 197 F.3d 1153, 1160 (D.C. Cir. 1999). This doctrine recognizes that Congress has empowered consular officers with the authority to issue or refuse an application for a visa made overseas. *See* 8 U.S.C. §§ 1104(a), 1201(a), (g).[1] A "'consular official's decision to issue or withhold a visa is not subject either to administrative or judicial review.'" *Bustamante v. Mukasey*, 531 F.3d 1059, 1061 (9th Cir. 2008) (quoting *Li Hing of Hong Kong, Inc. v. Levin*, 800 F.2d 970, 971 (9th Cir. 1986)). The doctrine of consular nonreviewability is rooted in "'the recognition that the power to exclude or expel aliens, as a matter affecting international relations and national security, is vested in the Executive and Legislative branches of government.'" *Allen*

[1] In light of this statutory authority, Plaintiffs are incorrect to suggest that the State Department may not lawfully implement a presidential proclamation restricting entry of foreign workers into the United States. Pls.' Mot. 5–6 (citing, *inter alia*, *City of L.A. v. Barr*, 941 F.3d 931, 938 (9th Cir. 2019) (recognizing that an agency cannot act beyond its statutory authority)).

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

v. Milas, 896 F.3d 1094, 1104 (9th Cir. 2018) (quoting *Ventura-Escamilla v. Immigration & Naturalization Serv.*, 647 F.2d 28, 30 (9th Cir. 1981)). "[W]here Congress entrusts discretionary visa-processing ... in a consular officer ... the courts cannot substitute their judgments for those of the Executive." *Allen*, 896 F.3d at 1105 (citing *Kleindienst v. Mandel*, 408 U.S. 753, 769–70 (1972)). It does not matter that Plaintiffs here purport to challenge a "policy" rather than an individual visa denial. *See Hawaii*, 138 S. Ct. at 2420: "A conventional application of *Mandel*, asking only *whether the policy* is facially legitimate and bona fide, would put an end to our review." (emphasis added); *see also Kantor v. Pompeo*, 400 F. Supp. 3d 464, 468 (E.D. Va. 2019) (similar). Instead, Plaintiffs' attempted end-run around this doctrine via the APA was rightly rejected by the Ninth Circuit. *See Allen*, 896 F.3d at 1107 & n.3 ("Allen's theory converts consular nonreviewability into consular reviewability. The conclusion flies in the face of more than a century of decisions limiting our review of consular visa decisions."). Plaintiffs thus cannot establish a substantial likelihood of success on the merits with respect to the "implementation" of the Proclamation for any refused visas.

No APA Cause of Action. More broadly, actions taken by an executive branch agency to implement a Presidential Proclamation, under discretionary authority committed to the President, are unreviewable under the APA—after all, *all* Presidential orders are implemented by executive agencies. *See Detroit Int'l Bridge Co. v. Gov't of Canada*, 189 F. Supp. 3d 85, 100 (D.D.C. 2016), *aff'd*, 875 F.3d 1132 (D.C. Cir. 2017) (collecting cases, and reasoning that when the President retains final authority under the Constitution or a valid statute, "presidential acquiescence constitutes an exercise of discretion that gives effect to the delegee's actions" and thus, the action is unreviewable under the APA), *opinion amended and superseded*, 883 F.3d 895 (D.C. Cir. 2018), *as amended on denial of reh'g* (Mar. 6, 2018); *see also Jensen v. Nat'l Marine Fisheries Serv. (NOAA)*, 512 F.2d 1189, 1191 (9th Cir. 1975) ("For the purposes of this appeal the Secretary's actions are those of the President, and therefore by the terms of the APA the approval of the regulation at issue here is not reviewable"); *Tulare Cty. v. Bush*, 185 F. Supp. 2d 18, 28–29 (D.D.C. 2001) (finding that agency was "merely carrying out directives of the President, and the APA does not apply to presidential action"), *aff'd*, 306 F.3d 1138 (D.C. Cir. 2002).

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

It would be "absurd" to suggest that the President himself must personally carry out an action in order for the APA's limitation on judicial review to apply. *See Tulare Cty.*, 185 F. Supp. 2d at 28–29. By way of illustration, in *Detroit Int'l Bridge*, a district court concluded that Congress had delegated authority to approve international bridges to the President, rather than the State Department, and that, therefore, these approvals were not subject to APA review notwithstanding the State Department's role in implementing the Presidential decision. *See* 189 F. Supp. 3d at 104. Had Congress intended to ensure the reviewability of permit approvals, it could have delegated the authority directly to the Department of State and not to the President. *Id*. But because the statutory delegation of authority was to the President, judicial review under the APA was not permitted. *See id*. Similarly, here, Congress expressly authorized the President (not the State Department), to suspend entry into the United States. *See* 8 U.S.C. §§ 1182(f), 1185(a)(1). Thus, when the President exercises his discretionary authority under these statutes, this exercise of discretion is not subject to APA review even if the President relies on agencies, such as the State Department, to carry out his decision. *See Detroit Int'l Bridge*, 189 F. Supp. 3d at 104. So Plaintiffs cannot demonstrate a substantial likelihood of success on the merits on their APA claims against either the President or any agency.

Lastly, Plaintiffs contend that, apart from their challenge to the Proclamation, they have a valid APA claim challenging the State Department's purported non-processing of visas, in the absence of an exemption, for foreign nationals barred from entering the country under the Proclamation. *See* Pls.' Mot. 18–20. Even assuming *arguendo* that this "policy by tweet" constitutes final agency action, Plaintiffs' challenge to that purported policy is not viable after *Hawaii*. *See* 138 S. Ct. at 2414 (interpreting 8 U.S.C. § 1201(g)). As the Supreme Court explained there, "Section 1182 defines the pool of individuals who are admissible to the United States" and held that "any alien who is inadmissible under § 1182 ... is screened out as 'ineligible to receive a visa.'" *Id.* (quoting 8 U.S.C. § 1201(g)). In other words, if the foreign national is inadmissible under § 1182, he or she is ineligible to be issued a visa from a consular officer. Section 1182 lists several grounds for ineligibility—among them health, criminal history, and terrorist affiliation. Whatever the relevant underlying ground in any individual case, the applicant is denied a visa

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

because he is "ineligible" to *enter* "under section 1182." *Id.* Plaintiffs' argument insists that the State Department ignore these ineligibility grounds in their decisionmaking on whose visas should be prioritized and processed in the middle of a pandemic and limited consulate operations. But consular officers may not ignore situations where someone is inadmissible.

This is equally true of foreign nationals who are ineligible to enter because they are subject to a suspension of admission under § 1182(f). The D.C. Circuit has held that "as an absolute precondition to admission, an alien must submit his proof that he is not excludable to a preliminary screening by a consular officer." *Castaneda-Gonzalez v. INS*, 564 F.2d 417, 426–27 (D.C. Cir. 1977) (recognizing that this "double check" system requiring both the consular officer and the officer at the port of entry to find that the foreign national is admissible imposes some costs, but that Congress has "decided that its benefits outweigh its costs"); *see also* 8 U.S.C. § 1182(a). The conditions for being "excludable"—now referred to as "inadmissible," *see Judulang v. Holder*, 565 U.S. 42, 46 (2011)—are contained in 8 U.S.C. § 1182, which explains that "aliens who are inadmissible under the following paragraphs" (including § 1182(f)) "*are ineligible to receive visas*." 8 U.S.C. § 1182(a) (emphasis added). Thus, if foreign nationals are subject to an entry suspension under § 1182(f) or § 1185(a)(1), the State Department does not issue them visas to travel to the United States and present themselves at customs. *See* U.S. Dep't of State, 9 *Foreign Affairs Manual* 302.14-3(B) (2017) (treating foreign nationals covered by presidential orders under § 1182(f) as ineligible for visas).

Far from being arbitrary and capricious, such an approach is rational because there would be little reason to issue a visa to a foreign national who is barred from entering the country, only for the foreign national to travel to the United States and then be denied entry upon arrival at the port of entry. Plaintiffs are correct that when a consulate schedules an interview at which a foreign national executes a visa application, the consular officer, generally, must issue the visa, refuse the visa, or discontinue granting the visa. Pls.' Mot. 19 (citing 22 C.F.R. § 41.121(a)). But it does not follow logically that a consular officer is *required to schedule* a visa interview for a foreign national that the officer already knows is ineligible to enter the United States. Moreover, any suggestion that the State Department must first engage in notice-and-comment rulemaking before

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

it may decide whether to schedule a visa interview for a foreign national who is inadmissible, Pls.' Mot. 19–20, is without merit, *see Hawaii*, 138 S. Ct. at 2414.

4. Proclamation 10052 is lawful because the INA does not limit the President from determining what falls within the national interest.

The Supreme Court has long recognized that "[t]he exclusion of aliens is a fundamental act of sovereignty" that is grounded in plenary power and "inherent in the executive power to control the foreign affairs of the nation." *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). Thus, "the decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign." *Id.* at 543. In keeping with that understanding, Congress enacted 8 U.S.C. § 1182(f) two years later, recognizing the President's authority to suspend entry of foreign nationals: "[w]henever the President finds that the entry of ... any class of aliens into the United States would be detrimental to the interests of the United States, he may ... suspend entry of ... any class of aliens ... or impose on the entry of aliens any restrictions he may deem to be appropriate." Where, as here, the President "acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possess in his own right plus all that Congress can delegate." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

Interpreting 8 U.S.C. § 1182(f), the Supreme Court has held that the "sole prerequisite" to this "comprehensive delegation" is that the President find that entry of the covered foreign nationals would be detrimental to the national interest. *Hawaii*, 138 S. Ct. at 2408. The Court added that whether the President's chosen method of addressing a problem "is justified from a policy perspective" is irrelevant, and that the President need not "conclusively link all of the pieces in the puzzle before courts grant weight to his empirical conclusions." *Id.* at 2409. This was consistent with longstanding precedent holding that judicial inquiry into the reasoning of a Presidential Proclamation "would amount to a clear invasion of the legislative and executive domains." *United States v. George S. Bush & Co., Inc.*, 310 U.S. 371, 380 (1940); *see also Sale*

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

v. Haitian Centers Council, Inc., 509 U.S. 155, 165 (1993) ("The wisdom of the policy choices" reflected in proclamations are not "matter[s] for our consideration.").

Here, the President expressly found that "that the entry into the United States ... of persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States." 85 Fed. Reg. 38,264. This finding was based on, among other things, a review of nonimmigrant programs by the Secretaries of Labor and Homeland Security that "found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery." *Id.* at 38,263. Under these extraordinary circumstances, the President reasonably found that additional entry restrictions were appropriate in order to protect U.S. workers and this finding satisfied the "sole prerequisite" required under § 1182(f). *See Hawaii*, 138 S. Ct. at 2408. Plaintiffs' Motion raises four primary arguments as to why the Proclamation is *ultra vires*, but none is persuasive.

First, Plaintiffs argue that the Proclamation is unlawful because it "nullifies significant swaths of the INA, declaring statutorily established visa categories invalid for the remainder of the year." Pls.' Mot. 6. But *Hawaii* rejected this same argument. There, plaintiffs argued that Proclamation 9645 exceeded the President's authority because it addressed vetting concerns that Congress had already addressed. 138 S. Ct. at 2410–12. The Supreme Court rejected the plaintiffs' arguments because the proclamation did not "expressly override particular provisions of the INA." *Id.* at 2411. The Court refused to adopt the plaintiffs' "cramped" reading of § 1182(f) based on plaintiffs' attempt to identify implicit limits on the President's authority in other provisions of the INA. *Id.* at 2412. Instead, the Court held that § 1182(f) gives the President authority to impose *additional* limitations on entry. *Id.*; *see also id.* 138 S. Ct. at 2408 (holding that "§ 1182(f) vests the President with 'ample power' to impose entry restrictions in addition to those elsewhere enumerated in the INA"); *accord Sale*, 509 U.S. at 187 (President may "establish a naval blockade that would simply deny illegal Haitian migrants the ability to disembark" even though Congress specifically provided migrants with a statutory right to seek asylum if they reach our shores). With this backdrop, there is no basis for contending that a President is not permitted to restrict

the entry of foreign temporary workers under § 1182(f) simply because they might be otherwise admissible under other provisions of the INA.[2]

Plaintiffs argue that the present case is distinguishable because the Proclamation restricts "admission to entire classes of people that Congress has affirmatively said should be admitted." Pls.' Mot. 9. But this is incorrect because it is the same sort of "unspoken tailoring requirement" rejected in *Hawaii*. 138 S. Ct. at 2408, 2010; *see also Abourezk v. Reagan*, 785 F.2d 1043, 1049 (D.C. Cir. 1986) (the President "may act pursuant to section 1182(f) to suspend or restrict 'the entry of any aliens or any class of aliens'"), *aff'd by an equally divided Court*, 484 U.S. 1 (1987). Plaintiffs also rely on *Doe v. Trump*, 418 F. Supp. 3d 573, 592 (D. Or. 2019), *stay pending appeal denied*, 957 F.3d 1050 (9th Cir. 2020). *See* Pls.' Mot. 7. This reliance is also misplaced. In *Doe*, a district court ruled that the President's use of § 1182(f) in issuing Presidential Proclamation 9945, *Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System in Order to Protect the Availability of Healthcare Benefits for Americans* ("Healthcare Proclamation"), 84 Fed. Reg. 53,991, violated the nondelegation doctrine because the Healthcare Proclamation "engage[d] in domestic policymaking, without addressing any foreign relations or national security issue or emergency," 418 F. Supp. 3d at 592. The district court's ruling in *Doe* was wrong and contrary to *Knauff*, which held that the nondelegation doctrine does not apply to the President's exercise of statutory authority to limit entry to the United States, because that is a constitutional foreign-affairs function over which the President shares constitutional authority along with Congress. *See* 338 U.S. at 542–43. But even under the

---

[2] In fact, it is not uncommon for Presidential Proclamations to address threats to the national interest by adding restrictions on entry that are similar to grounds of admissibility established by Congress. For example, Presidential Proclamation 8342 bars entry of foreign government officials responsible for failing to combat human trafficking, 74 Fed. Reg. 4093 (Jan. 22, 2009), even though Congress separately made human traffickers inadmissible. *See* 8 U.S.C. § 1182(a)(2)(H); *compare also* 8 U.S.C. § 1182(a)(3)(E) (inadmissibility for genocide, Nazi persecution, and acts of torture or extrajudicial killings), *with* Proclamation No. 8697, 76 Fed. Reg. 49277 (Aug. 9, 2011) (covering persons participating in violence based on race, religion, and similar grounds or who participated in war crimes, crimes against humanity, and serious violations of human rights), *and* Proclamation No. 7452, 66 Fed. Reg. 34775 (June 29, 2001) (covering persons responsible for wartime atrocities).

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

reading of § 1182(f) put forward by the district court in *Doe*, this type of national emergency is an appropriate circumstance for the President to exercise authority under § 1182(f).[3] *See* 418 F. Supp. 3d at 592 (explaining that "in the immigration context," § 1182(f) may be used where "that authority involves foreign relations … [and] especially in an emergency"); *cf. also Hawaii*, 138 S. Ct. at 2415 (rejecting plaintiffs' limited reading of § 1182(f) and concluding that the "President be permitted to suspend entry … in response to an epidemic").

Second, Plaintiffs question the Proclamation's effectiveness—alleging a "mismatch" between the stated goal of the Proclamation (protecting U.S. workers), and the means employed. Pls.' Mot. 11–15; *see also id*. at 14 ("the Proclamation utterly disregards the clear economic consensus that the presence of international workers in this country boosts productivity and innovation"). These arguments are doomed by *Hawaii*, which made clear that litigants are not permitted to "challenge" a Presidential entry-suspension order "based on their perception of its effectiveness and wisdom," because Congress did not permit courts to substitute their own assessments "for the Executive's predictive judgments on such matters, all of which are delicate, complex, and involve large elements of prophecy." 138 S. Ct. at 2421 (citations and quotations omitted); *see id*. at 2409 (rejecting a "searching inquiry into the President's judgment").

It does not make sense to read § 1182(f) as applying solely in the "foreign" as opposed to the "domestic" context. *See* Pls.' Mot. 4–5. The entry of foreign nationals is always a foreign affairs matter over which the President has independent constitutional authority. *See Knauff*, 338 U.S. at 542. Moreover, nothing suggests that § 1182(f) is limited to a particular subset of concerns or context. *See id.* at 2413, 2415 (recognizing a health emergency might be an appropriate basis

---

[3] Plaintiffs' reliance on language from the Ninth Circuit's decision in *Doe* denying the Government's request for a stay is misplaced, because the panel found, as a threshold matter, that the Government failed to meet its burden of showing irreparable harm. *Doe*, 957 F.3d at 1058–59 (stating that "the question of whether the Proclamation ... exceeds the President's authority ... is at the core of this dispute, to be resolved at the merits stage of this case") (citations and quotations omitted); *see id*. at 1058 (explaining "if the petition has not made a certain threshold showing regarding irreparable harm ... then a stay may not issue, regardless of the petitioner's proof regarding the other stay factors") (citations and quotations omitted). Thus, any discussion of the merits of the Government's arguments on the lawfulness of the Healthcare Proclamation was unnecessary.

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

for suspending entry under § 1182(f)); *see also Dalton v. Specter*, 511 U.S. 462, 476 (1994) (holding that where a statute such as the Defense Base Closure and Realignment Act of 1990 "commits decisionmaking to the discretion of the president, judicial review of the President's decision" on the grounds that he exceeded his statutory authority "is not available"). In fact, *Hawaii* pointed to numerous cases that discussed the President's broad authority in this sphere even in the absence of an explicit national security or foreign affairs goal. 138 S. Ct. at 2408 (citing *Sale*, 509 U.S. 155, and *Abourezk*, 785 F.2d 1043). This authority derives from the political branches' shared constitutional authority to exclude foreign nationals, where it is permissible to delegate to the President the role of determining which noncitizens would have a detrimental impact if allowed to enter the United States. Immigration from foreign countries where consular officers adjudicate visa applications necessarily implicates protecting the United States from unidentified harms, and thus the Proclamation fits squarely within the President's foreign affairs powers. *See, e.g.*, *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892) (explaining that "the department of state, having the general management of foreign relations," can be assigned the role of determining which aliens may be permitted to travel to the United States); *United States v. Curtiss-Wright Export Co.*, 299 U.S. 304, 321 (1936) (distinguishing acts by the State Department from other Cabinet departments).

Further, the exclusion of foreign nationals abroad does not become a domestic-policy issue simply because the entry of some applicants would impose harms within the United States. Section 1182(f) speaks to aliens whose entry *into* the United States would be detrimental, so the harm being addressed will often occur domestically. *See Hawaii*, 138 S. Ct. at 2404 (upholding restriction on entry of individuals who could pose a threat of violence to individuals *within* the United States). And Presidents have exercised this authority to exclude foreign nationals to advance "domestic" interests. *See, e.g.*, Executive Order No. 12807, 57 Fed. Reg. 23,133 (1992) (aimed at the "serious problem of persons attempting" to enter the U.S. "illegally" and "without necessary documentation"); Proclamation No. 4865, 46 Fed. Reg. 48,107 (1981) (suspending entry of undocumented individuals who, if allowed entry, would strain "law enforcement resources" and threaten "the welfare and safety of communities" within the United States).

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Plaintiffs also argue that the Proclamation is unlawful because it fails to explicitly consider certain countervailing evidence that Plaintiffs consider relevant. Pls.' Mot. 14. But nothing in § 1182(f) suggests that the President, in addition to making a finding that entry would be detrimental to the interests of the United States, must consider—or explicitly address—countervailing evidence. *See Hawaii*, 138 S. Ct. at 2409 (referring to Presidential Proclamation 6958, 3 C.F.R. § 133 (1996) (explaining in one sentence why suspending entry of members of the Sudanese government and armed forces "is in the foreign policy interests of the United States"); Presidential Proclamation No. 4865, 3 C.F.R. §§ 50–51 (1981) (explaining in five sentences why measures to curtail "the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States" are "necessary"). To the contrary, *Hawaii* expressly held that the "sole prerequisite" for suspending entry is a Presidential finding that entry would be detrimental to the interests of the United States. *See id*. at 2408. Such a finding was made here.

Plaintiffs also contend that the Proclamation is unlawful because it purportedly represents an abrupt change in immigration policy. Pls.' Mot. 14. But nothing in § 1182(f) bars abrupt changes. Instead, § 1182(f) provides broad authority to enable the President to respond quickly. Plaintiffs' argument also misconstrues (or ignores) why the Proclamation was necessary—to address the sudden harm caused by a pandemic. *See* 85 Fed. Reg. 38,263–64 (explaining that the worldwide outbreak of COVID-19 caused a swift, unexpected economic contraction resulting in the loss of more than 17 million United States jobs). The proclamation at issue in *Hawaii* also represented a change in policy but the Court never suggested that it was unlawful as a result. 138 S. Ct. at 2403. The swiftness of a change under § 1182(f) does not show that the change is unlawful.[4] If anything, the abrupt use of § 1182(f) in a time of national emergency is appropriate.

[4] Not pleased with *Hawaii*, Plaintiffs argue that their narrow reading of § 1182(f) passed in 1952 is supported by congressional debate from 1941. Pls.' Mot. 12, n.7 (contending that this debate indicated that members of Congress recognized a distinction between the words "find" and "deem"). Defendants do not believe this is relevant. Even if it were, though, the congressional debate in 1941 shows vigorous disagreement over whether there was any difference between the use of the word "'find'" and the word "'deem.'" *See* 87 Cong. Rec. 5049 ("[T]here is no difference between the word 'deem' and the word 'find.' There is absolutely no difference.") (statement of Rep. Bloom); 87 Cong. Rec. 5052 ("I think it is the difference between tweedledum and tweedledee") (statement of Rep. Luther A. Johnson). Regardless of the precise language used, as

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Third, Plaintiffs argue that the nondelegation doctrine requires a reading of § 1182(f) that implicitly imposes meaningful limitations on the President's authority. Pls.' Mot. 15–16. This is contrary to Supreme Court case law. *See, e.g.*, *Hawaii*, 138 S. Ct. at 2408, 2419–20; *Knauff*, 338 U.S. at 542. It is true that the nondelegation doctrine "bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, 139 S. Ct. 2116, 2121, 2131 (2019) ("Congress ... may not transfer to another branch powers which are strictly and exclusively legislative."). But in the field of foreign affairs, Congress need not "lay down narrowly definite standards by which the President is to be governed." *Curtiss-Wright*, 299 U.S. at 320–22; *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2089 (2015) ("Congress may grant the President substantial authority and discretion in the field of foreign affairs.").

Consistent with this view, *Knauff* rejected a nondelegation challenge to § 1182(f)'s predecessor, which authorized the President to, "upon finding that the interests of the United States required it, impose additional restrictions and prohibitions on the entry into ... the United States during the national emergency proclaimed May 27, 1941." 338 U.S. at 541. The Court held this was not an "unconstitutional delegation[] of legislative power," explaining "there [wa]s no question of inappropriate delegation of legislative power involved" because "[t]he exclusion of aliens is a fundamental act of sovereignty" that "is inherent in the executive power to control the foreign affairs of the nation." *Id.* at 542. *Hawaii* similarly concluded that § 1182(f) constituted a "comprehensive delegation" of authority and rejected a rule of constitutional law that "would inhibit the flexibility" of the President "to respond to changing world conditions" pursuant to this type of comprehensive delegation. 138 S. Ct. at 2408, 2419–20.

Plaintiffs argue to the contrary, relying on *Doe*, 418 F. Supp. 3d at 592. *See* Pls.' Mot. 16. For the reasons stated above, this district court decision is incorrect and, moreover, the Ninth Circuit, despite having two opportunities to consider its reasoning, has declined to adopt the district court's nondelegation theory. *Doe #1*, 957 F.3d at 1067 ("In deference to the merits panel,

---

a practical matter the President's determinations could not be challenged. *See* 87 Cong. Rec. 5051 ("[Y]ou cannot go back of the finding and you cannot challenge it by saying that sufficient consideration has not been given.") (statement of Rep. Gwynne).

we decline to address the probable likelihood of success for either party on this claim"); *see also Doe #1 v. Trump*, 944 F.3d 1222, 1222 (9th Cir. 2019) (declining to address the merits of the district court's decision). The nondelegation doctrine simply is not implicated here.

Fourth, Plaintiffs argue that there is no alternative legal basis for the Proclamation other than § 1182(f). Pls.' Mot. 17. This is incorrect given the President's inherent authority to exclude foreign nationals. *See Knauff*, 338 U.S. at 542; *Hawaii*, 138 S. Ct. at 2424 (Thomas, J., concurring) ("the President has *inherent* authority to exclude aliens from the country") (emphasis in original). The Proclamation is also supported by the President's authority under § 1185(a)(1). *Hawaii*, 138 S. Ct. at 2407 n.1 ("Because [Section 11855(a)(1)] 'substantially overlap[s]' with § 1182(f), … we need not resolve the precise relationship between the two.") (citations omitted).

B. Plaintiffs Fail to Demonstrate Irreparable Harm Attributable to Proclamation 10052.

A court may not issue "a preliminary injunction based only on a *possibility* of irreparable harm … [since] injunctive relief [i]s an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22 (emphasis added). "[P]laintiffs must establish that irreparable harm is *likely*, not just possible, in order to obtain a preliminary injunction." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011); *see also Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (a speculative injury is not an irreparable injury sufficient for a preliminary injunction). Harm is irreparable when, as name suggests, it cannot be undone by a later order by the court. *See id.*

Plaintiffs contend that the Proclamation "injures the Plaintiff associations and their members" because they "hire employees in H, J, and L visa categories" and the Proclamation "disrupt[ed] these hiring practices." Pls.' Mot. 20-21. Plaintiffs further allege that the Proclamation has inflicted an injury "on businesses over the next six months at least" because it "bar[s] them from hiring employees from outside the United States via visa categories Congress established" and these injuries are irreparable because their "effects cannot possibly be undone." *Id*. at 21. Three points show those arguments to be unsound.

First, the COVID-19 pandemic—not Proclamation 10052—"disrupt[ed Plaintiffs'] hiring practices." More than three months before Proclamation 10052 took effect, on March 20, 2020, the State Department announced that it would "temporarily suspend routine visa services at all U.S. Embassies and Consulates," and only "emergency and mission critical visa services" would continue as resources allow. *See* https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html (last visited Aug. 19, 2020). Under this suspension of routine visa services, unless persons seeking nonimmigrant visas to enter the United States in H-1B, H-2B, L-1, or J-1 status could demonstrate an emergency or mission critical need for such a visa, U.S. consular posts worldwide were not scheduling non-essential, nonimmigrant worker visa appointments.[5] This complicates Plaintiffs' pointing to the Proclamation as the source of all their harm; regardless, such determinations over how to balance diplomatic functions and entry suspensions under § 1182(f) are for the President to decide. *See Hawaii*, 138 S. Ct. at 2414–15.

Second, on August 12, 2020, the State Department updated guidance on its website to mitigate the very problems Plaintiffs wish to be addressed. Specifically, the State Department provided a non-exhaustive list of national-interest exceptions to Presidential Proclamations 10014 and 10052 that may be available for certain workers seeking entry into the United States in H-1B, H-2B, L-1, and J-1 nonimmigrant statuses. Under this guidance, nonimmigrant workers in these nonimmigrant worker visa categories may request an exception to the Proclamations in order to travel to the United States to work for their petitioning employers. *See* https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html (last visited Aug. 19, 2020). For instance, the beneficiary of an H-1B nonimmigrant worker petition who requests travel to the United States "to resume ongoing

---

[5] The State Department updated its guidance on July 14, 2020, indicating that the resumption of routine visa services may occur 'on a post-by-post basis," but those services remain subject to "post-specific," country conditions. *See* https://travel.state.gov/content/travel/en/News/visas-news/phased-resumption-routine-visa-services.html (last visited Aug. 19, 2020).

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

employment in the United States in the same position with the same employer and visa classification" may be eligible for a national interest exception to the Proclamations. *Id.* The website provides similar guidance for H-2B, L-1, and J-1 workers seeking nonimmigrant visas to enter the United States and advises that "[t]ravelers who believe their travel falls into one of these categories or is otherwise in the national interest may request a visa application appointment" and "a decision will be made at the time of the interview as to whether the traveler has established that they are eligible for a visa pursuant to the exception." *Id.*

In claiming harm, Plaintiffs assert that, for instance, Amazon and Microsoft suffer from an irreparable injury in the form of "disrupt[ion to their] business operations" based on each corporation's reference to one employee who is purportedly the beneficiary of an approved H-1B petition and "traveled abroad to visit family" or to "hold[] cultural and religious ceremonies for a newborn" when the Proclamation was issued and "is now unable to return" to the United States to continue employment. Pls. Mot. 22. But as the State Department has explained, these employees can seek a visa appointment at a U.S. consular post to request a national-interest exception to return to the United States and continue their employment in H-1B status. It does not appear that the Plaintiffs have even tried to apply for an exception, much less proven that they would not be considered under this provision.

The same potential remedy is available to the foreign workers that Plaintiffs assert are seeking to travel to the United States and be employed in H-2B, L-1, or J-1 nonimmigrant status. Pls.' Mot. 21–24. For instance, the State Department has explained that there are certain circumstances under which workers in each of those visa categories may be eligible for a national-interest exception. *See* https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html (last visited Aug. 19, 2020). With this potential administrative remedy unexhausted for the "many … employees in H, J, and L visa categories" that Plaintiffs' members have outside the United States, Pls.' Mot. 21, Plaintiffs cannot plausibly argue that at this point, they suffer from an immediate irreparable injury.

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Third, "[r]ecoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant's business." *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *see also Colo. River Indian Tribes v. Town of Parker*, 776 F.2d 846, 850 (9th Cir. 1985); *Oakland Tribune, Inc. v. Chronicle Publ'g Co., Inc.*, 762 F.2d 1374, 1376 (9th Cir. 1985). Here, Plaintiffs' claims of economic harms do not meet this standard. Plaintiffs attempt to attribute H-2B employers' "approximately $400,000 in 2020 revenue loss" and an "approximate[] $8 to $10 million in lost revenue for the remainder of the calendar year" to the Proclamation causing a "[foreign] labor deficit." Pls. Mot. 22–23. These economic harms are not irreparable. And Plaintiffs fail to acknowledge that the COVID-19 pandemic resulted in the suspension of routine visa services worldwide since March 20, 2020, and that impeded all U.S. employers' ability to import non-essential foreign workers more than three months before the Proclamation went into effect. The same holds true for Plaintiffs' claims of economic harm related to the J-1 program employers. *Id*. at 23. In any event, Plaintiffs make no mention of any attempt to mitigate their claims of economic loss based on unfilled positions by seeking to employ U.S. workers to fill their needs for the "necessary [unskilled] labor." Pls. Mot. 22. Instead, Plaintiffs assert only that because they are unable to import foreign unskilled workers, they had to "forego[] [sic] hiring domestic workers for three specific management positions." *Id*. This is insufficient to demonstrate an irreparable injury sufficient for the injunctive relief that they seek.

Plaintiffs also contend that "Defendants' separate policy refusing to process and issue visas … causes independent irreparable harm," because had it not been for the Proclamation, one of the J-1 program employers "would [have] enter[ed into] agreements with partner businesses for" J-1 program participants, and the company "would earn revenue as a result." Pls. Mot. 24. That is nothing more than a speculative injury that is insufficient for a preliminary injunction. *See Caribbean Marine Servs. Co.*, 844 F.2d at 674. Accordingly, Plaintiffs fail to demonstrate that they suffer from an irreparable injury that is attributable to Proclamation 10052.

C. The Balance of Harms Strongly Favors the Federal Government.

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the federal government is the opposing

party. *See, e.g.*, *Nken v. Holder*, 556 U.S. 418, 435 (2009). Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312–13 (1982).

Here, the balance of equities and the public interest favor the government. "[T]he public interest favors applying federal law correctly." *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011). And that is especially certain where Congress has explicitly charged the Executive Branch with administering and enforcing all immigration laws, with broad authority to regulate the employment of temporary workers with nonimmigrant status. *See* 8 U.S.C. §§ 1103(a)(1), 1184(a)(1), (c)(1). Moreover, any order that grants "particularly disfavored" relief by micro-managing executive agencies' vested control over a statutory program, or enjoining them from administering entry requirements they are in charge of enforcing, constitutes irreparable injury and weighs heavily against the entry of injunctive relief. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977). Finally, Plaintiffs are improperly attempting to obtain the same relief sought by the amended complaint in advance of a full adjudication on the merits. *See, e.g.*, *Senate of the State of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). This request to short-circuit both the administrative and normal APA processes of judicial review should be denied, *see id.*, particularly because the balance of equities and the public interest tip strongly in favor of Defendants.

D. There is No Basis in Law or Equity for an Injunction That Would Apply to U.S. Consular Posts Worldwide.

If the Court concludes that injunctive relief is warranted, the Court should reject Plaintiffs' request for an injunction that would apply to U.S. consular posts worldwide. Such relief is inappropriate for two reasons. First, Article III requires that a "remedy must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018). Allowing a party to challenge policies "apart from any concrete application that threatens imminent harm to [their] interests" would "fly in the face of Article III's injury-in-fact requirement." *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009). Likewise, injunctions that go beyond Plaintiffs' own injuries exceed the power of a court sitting in equity, which must limit injunctions to "be no more

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). "[T]he purpose of" preliminary equitable relief "is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). Courts thus "need not grant the total relief sought by the applicant but may mold [their] decree to meet the exigencies of the particular case." *Id.*; *U.S. Ass'n of Reptile Keepers, Inc. v. Jewell*, 106 F. Supp. 3d 126, 129 (D.D.C. 2015) ("the Court has not finally determined that the [action] is unlawful," so "the need for narrow tailoring ... is particularly important," and any "injunction should be limited in scope to protect only" parties), *aff'd*, 852 F.3d 1131 (D.C. Cir. 2017). Relief from the APA claims should not encumber the President's response to the extreme economic disruption caused by a national emergency. Otherwise, a universal injunction would be disproportionate and unwarranted given the fact that this Court can provide sufficient interim relief narrowly tailored to the circumstances.

Second, the APA does not authorize relief beyond the parties before the Court. It provides only that a court may "hold unlawful and set aside agency action." 5 U.S.C. § 706(2). In this case, of course, as mentioned above, Plaintiffs challenge not "agency action" but a lack thereof—so there is plainly no APA-grounded basis for broad relief. In any event, nothing in section 706(2)'s text specifies whether challenged agency action, if found invalid, should be set aside on its face or as applied to the plaintiffs before the Court. In the absence of a clear statement in the APA that it displaces traditional rules of equity, the Court should adopt the narrower reading. *See Va. Soc'y for Human Life v. FEC*, 263 F.3d 379, 393 (4th Cir. 2001). Indeed, the APA further provides that in the absence of a special statutory review provision, the proper "form of proceeding" under the APA is a traditional suit for declaratory or injunctive relief. *See* 5 U.S.C. § 703. But declaratory and injunctive remedies are equitable in nature, and, as discussed, equitable relief traditionally has been limited to determining the rights of the parties before the court.

CONCLUSION

The Court should deny Plaintiffs' motion because they fail to satisfy any of the requirements necessary for the extraordinary relief they seek.

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Stn.
Washington, D.C. 20044
(202) 305-0106

Respectfully submitted,

ETHAN P. DAVIS
Acting Assistant Attorney General

WILLIAM C. PEACHEY
Director

GLENN M. GIRDHARRY
Assistant Director

AARON S. GOLDSMITH
Senior Litigation Counsel

/s/ Joshua S. Press
JOSHUA S. PRESS
Trial Attorney
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 305-0106
Facsimile: (202) 305-7000
e-Mail: joshua.press@usdoj.gov

Attorneys for Defendants

Dated: August 19, 2020

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2020, I filed the foregoing document and any attachments thereto with the Clerk of the Court through the Court's ECF system and that the foregoing document will be served electronically upon registered participants identified on the Notice of Electronic Filing.

Dated: August 19, 2020

/s/ Joshua S. Press
JOSHUA S. PRESS
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section

MCDERMOTT WILL & EMERY LLP
Paul W. Hughes (*Pro Hac Vice*)
phughes@mwe.com
Michael B. Kimberly (*Pro Hac Vice pending*)
mkimberly@mwe.com
Sarah P. Hogarth (*Pro Hac Vice to be filed*)
shogarth@mwe.com
500 North Capitol Street NW
Washington, DC 20001
(202) 756-8000

MCDERMOTT WILL & EMERY LLP
William G. Gaede, III (136184)
wgaede@mwe.com
275 Middlefield Road, Suite 100
Menlo Park, CA 94025
(650) 815-7400

Counsel for Plaintiffs

[Additional Counsel Listed on Signature Page]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL ASSOCIATION OF MANUFACTURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL RETAIL FEDERATION, TECHNET, and INTRAX, INC.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF STATE; CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security; and, MICHAEL R. POMPEO, in his official capacity as Secretary of State,

Defendants.

Case No. 4:20-cv-4887-JSW

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

Date: September 11, 2020
Time: 9:00 a.m.
Judge: Hon. Jeffrey S. White
Ctrm.: 5

TABLE OF CONTENTS

Table of Authorities ii

Summary of Argument vi

Notice of Motion and Motion for Preliminary Injunction 1

Memorandum of Points and Authorities 1

Background 1

A. Visa categories. 1

B. INA Section 212(f). 2

C. The Proclamation. 3

D. Plaintiffs and their members. 4

Argument 4

I. Plaintiffs are likely to succeed on the merits. 4

A. The Proclamation is beyond the President's lawful authority. 4

1. The Proclamation unlawfully eviscerates vast portions of the INA. 6

2. The Proclamation lacks a reasonable relationship to its stated goals. 11

3. The nondelegation doctrine requires a reading of Section 212(f) that imposes meaningful limitations on the President's authority. 15

4. There is no alternative authority for the Proclamation. 17

B. For the same reasons, the implementation of the Proclamation is invalid under the APA. 17

C. Defendants' moratorium on visa processing and issuance is unlawful, wholly apart from the Proclamation's own failings. 18

II. The Proclamation causes direct and irreparable injuries. 20

III. The balance of the equities and the public interest favor an injunction. 24

Conclusion 25

TABLE OF AUTHORITIES

Cases

A.L.A. Schechter Poultry v. United States,
295 U.S. 495 (1935) 16

Almendarez-Torres v. United States,
523 U.S. 224 (1998) 15

Am. Power & Light Co. v. SEC,
329 U.S. 90 (1946) 16

Arizona v. United States,
567 U.S. 387 (2012) 6

Armstrong v. Exceptional Child Ctr.,
135 S. Ct. 1378 (2015) 6

California v. Azar,
911 F.3d 558 (9th Cir. 2018) 25

City of Arlington v. FCC,
569 U.S. 290 (2013) 6

City of L.A. v. Barr,
941 F.3d 931 (9th Cir. 2019) 5

Dep't of Commerce v. New York,
139 S. Ct. 2551 (2019) 18

DHS v. Regents of Univ. of Cal.,
140 S. Ct. 1891 (2020) 18

Doe #1 v. Trump,
957 F.3d 1050 (9th Cir. 2020) ..... *passim*

Doe #1 v. Trump,
No. 19-36020 (Feb. 6, 2020) 5

Doe v. Trump,
418 F. Supp. 3d 573 (D. Or. 2019) 16

E.V. v. Robinson,
906 F.3d 1082 (9th Cir. 2018) 6

East Bay Sanctuary Covenant v. Barr,
964 F.3d 832 (9th Cir. 2020) 4

East Bay Sanctuary Covenant v. Trump,
950 F.3d 1242 (9th Cir. 2020) 18, 20, 23, 25

Erringer v. Thompson,
371 F.3d 625 (9th Cir. 2004) 20

Fiallo v. Bell,
430 U.S. 787 (1977) 17

Fong Yue Ting v. United States,
149 U.S. 698 (1893) 17

Franklin v. Massachusetts,
505 U.S. 788 (1992) 6, 18

Cases—continued

Galvan v. Press,
347 U.S. 522 (1954) 17

Gundy v. United States,
139 S. Ct. 2116 (2019) 16

Hawaii v. Trump,
859 F.3d 741 (9th Cir. 2017) (*Hawaii I*) 4, 11

Hawaii v. Trump,
878 F.3d 662 (9th Cir. 2017) (*Hawaii II*) ..... *passim*

Indus. Union Dep't, AFL-CIO v. Am. Petroleum Institute,
448 U.S. 607 (1980) 15

INS v. Chadha,
462 U.S. 919 (1983) 17

La. Pub. Serv. Comm'n v. FCC,
476 U.S. 355 (1986) 6

Lexmark Int'l, Inc. v. Static Control Components, Inc.,
572 U.S. 118 (2014) 18

Michigan v. EPA,
135 S. Ct. 2699 (2015) 15

Mingo Logan Coal Co. v. EPA,
829 F.3d 710 (D.C. Cir. 2016) 15

Mistretta v. United States,
488 U.S. 361 (1989) 16

Nken v. Holder,
556 U.S. 418 (2009) 24

Oregon Advocacy Center v. Mink,
322 F.3d 1101 (9th Cir. 2003) 20

Pub. Citizen v. U.S. Trade Rep.,
5 F.3d 549 (D.C. Cir. 1993) 18

Sierra Club v. Trump,
929 F.3d 670 (9th Cir. 2019) 6, 11, 25

Spokeo, Inc. v. Robins,
136 S. Ct. 1540 (2016) 20

Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.,
240 F.3d 832 (9th Cir. 2001) 22

Tin Cup LLC v. U.S. Army Corps of Eng'rs,
904 F.3d 1068 (9th Cir. 2018) 12

Trump v. Hawaii,
138 S. Ct. 2392 (2018) (*Hawaii III*) ..... *passim*

Trump v. Hawaii,
138 S. Ct. 377 (2017) 4

United States v. Castleman,
572 U.S. 157 (2014) 12

Cases—continued

Youngstown Sheet & Tube Co. v. Sawyer,
343 U.S. 579 (1952) 25

Statutes, Rules, and Regulations

8 C.F.R.
§ 214.1(a)(2) 2
§ 214.2(h)(6)(iv)(A) 7
§ 214.2(h)(9)(iv) 13
§ 274a.12 13
20 C.F.R.
§ 655.16 8
§ 655.20(t) 8, 13
§ 655.43 8
§ 655.45 8
§ 655.46 8
§ 655.50 13
§ 655.50(b) 8
22 C.F.R.
§ 41.121(a) 19, 20
§ 62.22 2
§ 62.31 2
§ 62.32 2
5 U.S.C.
§ 553(b) 20
§ 705 ..... 18, 19
§ 706 18
§ 706(2)(D) 20
8 U.S.C.
§ 1101(a)(13) 19
§ 1101(a)(15) 1
§ 1101(a)(15)(H) 2
§ 1101(a)(15)(H)(i)(b) 2, 8
§ 1101(a)(15)(H)(ii)(b) 2, 7, 13
§ 1101(a)(15)(J) 2
§ 1101(a)(15)(L) 2, 10
§ 1101(a)(26) 19
§ 1184 1
§ 1184(c)(2)(B) 2
§ 1184(c)(2)(F) 10
§ 1184(g)(1)(B) 8
§ 1184(i)(1) 2
§ 1185(a)(1) 3, 17
§ 1201(a)(1)(B) 19
§ 1182(n)(1)(A)-(C) 8
§ 1182(n)(1)(A)-(D) 2

Statutes, Rules, and Regulations—continued

8 U.S.C.
§ 1182(n)(1)(E) 8
§ 1182(n)(1)(G) 8
§ 1182(n)(3)(A) 8
Eisenhower Exchange Fellowship Act of 1990, Pub. L. 101-454 § 8, 104 Stat. 1063 10
H-1B Visa Reform Act of 2004, Pub. L. 108-447, 118 Stat. 3353 ....9, 10
Pub. L. 82-414, § 101(a)(13), 66 Stat. 163 (1952) 19
Pub. L. 104-208, § 301(a), 110 Stat. 3009 19
Alien Temporary Employment Labor Certification Process, 56 Fed. Reg. 11,705 (Mar. 20, 1991) 9
85 Fed. Reg. 38,263 (June 25, 2020) 3

Other Authorities

87 Cong. Rec. 5051 (1941) 12
Black's Law Dictionary (11th ed. 2019) 11, 12
H.R. Rep. 91-851 (1970) 10
H.R. Rep. 101-723, pt. 1 (1990) 9
S. Rep. 106-260 (Apr. 11, 2000) 9

SUMMARY OF ARGUMENT

On June 22, 2020, President Trump issued Presidential Proclamation 10052. A putative exercise of INA Section 212(f) (8 U.S.C. § 1182(f)), the Proclamation suspends entire visa categories for at least six months. The stated purpose of the Proclamation, according to administration officials, is to "free[] up" "about 525,000 jobs" in 2020 alone. Hughes Decl. Ex. 2.

Because the Proclamation is unlawful and is causing substantial, irreparable injury to countless businesses and the workers they employ, the Court should promptly enjoin it.

I. The Proclamation rests on Section 212(f), which authorizes the President to suspend the entry of noncitizens for reasons of foreign affairs and national security. The Ninth Circuit recently held that, if Section 212(f) supplies any authority to act with respect to domestic policy, that power is limited. The Proclamation here severely transgresses the scope of Section 212(f) authority.

First, in exercising Section 212(f) powers, the President may not direct actions that conflict with other statutory provisions. Yet that is precisely what the Proclamation does—deleting wholesale visa categories used by hundreds of thousands of individuals each year.

Second, Section 212(f) requires the President to "find" that the action serves the "interests of the United States." Here, however, the Proclamation's findings fail to meet the required standard because there is a fundamental mismatch between the problem identified and the action taken, there is a failure to address crucial evidence, and there is disregard of reliance interests.

Third, these limits on Section 212(f) ensure that it constitutes a lawful delegation of authority from Congress to the Executive. Absent such limits, the Proclamation is unlawful.

II. An injunction is necessary to prevent irreparable injury. The purpose of the Proclamation is to fundamentally disrupt how companies may hire employees for at least the next six months. The Plaintiff associations represent, in the aggregate, hundreds of thousands of American businesses. Accordingly, and by design, the Proclamation inflicts on Plaintiffs and their members—including Microsoft Corporation, Amazon.com, Inc., Gentle Giant Moving, Singing Hills Landscape, Intrax, Alliance Abroad, and more—specific, acute, and irremediable harms.

III. The balance of equities and the public interest favor an injunction for multiple reasons, including that adherence to congressional judgments necessarily serves the public interest.

NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that on September 11, 2020, at 9:00 a.m. in Courtroom 5 of the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, before the Honorable Jeffrey S. White, Plaintiffs the National Association of Manufacturers, the Chamber of Commerce of the United States of America, the National Retail Federation, TechNet, and Intrax, Inc. will and hereby do move for a preliminary injunction against Defendants the United States Department of Homeland Security, the United States Department of State, Chad F. Wolf, and Michael R. Pompeo pursuant to Federal Rule of Civil Procedure 65(a).

Plaintiffs seek a preliminary injunction enjoining Defendants, their agents, servants, employees, and all others in active concert or participation with them from, pending final judgment:

- implementing, enforcing, or otherwise carrying out Section 2 of Proclamation 10052 with respect to Plaintiffs and, with respect to the association Plaintiffs, their members; and
- with respect to the Plaintiffs and the members of the association Plaintiffs, engaging in any action that results in the non-processing or non-issuance of applications or petitions for visas in the H, J, and L categories which, but for Presidential Proclamation 10052, would be eligible for processing and issuance.

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

A. Visa categories.

The Immigration and Nationality Act (INA) governs the admission of noncitizens into the United States. *See generally* 8 U.S.C. §§ 1101 *et seq.* Among other things, the INA provides for various categories of nonimmigrant visas for noncitizens planning to enter the United States temporarily and for a specific purpose. *See id.* §§ 1101(a)(15), 1184.

Pertinent here are three nonimmigrant visa categories: L visas, H visas, and J visas.

L Visa Category. L visas provide for intra-company transfers. They are issued to noncitizens who have "been employed continuously for one year by a firm or corporation . . . and who seek[] to enter the United States temporarily in order to continue to render [their] services to the same employer" and will perform a "managerial" or "executive" function (L-1A visas) or have

"specialized knowledge" about the company's product or processes and procedures (L-1B visas). *See* 8 U.S.C. § 1101(a)(15)(L); *id.* § 1184(c)(2)(B) (defining "specialized knowledge"). L-2 visas are available for accompanying spouses and minor children. *Id.* § 1101(a)(15)(L).

H Visa Category. H-1B visas are issued to highly skilled workers "coming temporarily to the United States to perform services . . . in a specialty occupation" (8 U.S.C. § 1101(a)(15)(H)(i)(b)), which involves "application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in the specific specialty" (*id.* § 1184(i)(1)). Before hiring an H-1B nonimmigrant, a company must attest, among other things, that the position pays prevailing wages, that the position will not adversely impact other workers, and that the employer has provided certain forms of notice regarding the position. *Id.* § 1182(n)(1)(A)-(D). New H-1B visas are capped at 65,000 per year with an additional 20,000 available to individuals with an advanced degree from a U.S. higher-education institution.

H-2B visas are issued to noncitizens "coming temporarily to the United States to perform [non-agricultural] temporary service or labor." 8 U.S.C. § 1101(a)(15)(H)(ii)(b). An H-2B visa may be issued only "if unemployed persons capable of performing [the needed] service or labor cannot be found in this country." *Id.* H-2B visas are limited to 66,000 per year.

H-4 visas are available to "the alien spouse and minor children" of a noncitizen entering under one of the other H visa categories. 8 U.S.C. § 1101(a)(15)(H); 8 C.F.R. § 214.1(a)(2).

J Visa Category. The J visa category—a mainstay of U.S. diplomatic efforts for decades—provides for cultural exchange visitors in a variety of programs. 8 U.S.C. § 1101(a)(15)(J). Relevant here, J-1 programs include the summer work travel program (22 C.F.R. § 62.32); the au pair program (*id.* § 62.31); and the trainee and intern programs (*id.* § 62.22). The J-2 visa is available to the spouse and children of an individual entering on a J-1 visa. 8 U.S.C. § 1101(a)(15)(J).

B. INA Section 212(f).

INA Section 212(f) provides:

> Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

8 U.S.C. § 1182(f). INA Section 215(a) makes it unlawful "for any alien to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe." 8 U.S.C. § 1185(a)(1).

C. The Proclamation.

The Presidential Proclamation 10052, issued on June 22, 2020, asserts that "[t]he entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs . . . presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak." 85 Fed. Reg. 38,263, 38,264 (June 25, 2020) (Hughes Decl. Ex. 1). Subject to limited exceptions, Section 2 of the Proclamation bars "[t]he entry into the United States of any alien seeking entry pursuant to":

> (a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;
>
> (b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and
>
> (c) an L visa, and any alien accompanying or following to join such alien.

Id. § 2. The Proclamation's entry ban "shall expire on December 31, 2020" but "may be continued as necessary." *Id.* § 6. In putative implementation of the Proclamation, the Department of State has announced that it will not issue visas in the impacted categories. Hughes Decl. Exs. 5-7. For its part, DHS similarly announced it would "temporarily pause the issuance of certain new nonimmigrant visas until December 31, 2020." Hughes Decl. Ex. 3.

The Proclamation's purpose is clear: It is intended to radically alter the U.S. labor market on a massive scale. Baselice Decl. ¶ 8. On June 22, 2020, the White House held a "background press call" during which a "senior administration official" stated that, taking the Proclamation together with an accompanying bar on immigrant visas, "the sum total of what these actions will do in terms of freeing up jobs over the course of the rest of 2020 is about 525,000 jobs. Quite a significant number." Hughes Decl. Ex. 2. The official described the purpose and effect of the policy as to "clear out this workspace for Americans." *Id.* The same day, DHS official Ken Cuccinelli stated on television that "just the temporary pieces of this . . . are over 500,000 job openings for Americans in the latter half of this year. That is a very big deal. Unprecedented level of effort

by a president to clear the American job market of competition like this." Hughes Decl. Ex. 4.

D. Plaintiffs and their members.

Plaintiff associations—the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Retail Federation, and TechNet—represent hundreds of thousands of American businesses of all sizes and across all economic sectors. Baselice Decl. ¶ 2; Hall Decl. ¶¶ 2, 4, 7. Plaintiff Intrax is one of the Nation's leading operators of State Department regulated cultural exchange programs. The Proclamation's unprecedented reconfiguration of the U.S. labor market immediately and irreparably harms Plaintiffs and their respective members.

ARGUMENT

"On a motion for a preliminary injunction, plaintiffs must make a 'threshold showing' … that (1) they are likely to succeed on the merits, (2) they are likely to 'suffer irreparable harm' without relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest." *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832 (9th Cir. 2020) (citations omitted).

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

A. The Proclamation is beyond the President's lawful authority.

Plaintiffs are likely to succeed on their claim that the Proclamation and its implementation exceeds the authority conferred on the President by Section 212(f).

At the outset, there is no doubt that, when the President acts with respect to foreign affairs and national security, his authority pursuant to Section 212(f) is broad. In *Trump v. Hawaii*, 138 S. Ct. 2392, 2408 (2018) (*Hawaii III*),[1] the Court observed that Section 212(f) "exudes deference to the President." *See id*. at 2415 (noting "the President's flexible authority [under Section 212(f)] to suspend entry based on *foreign policy* interests.") (emphasis added). More recently, however,

[1] A brief recap of the *Hawaii* litigation: In *Hawaii I*, the Ninth Circuit affirmed a preliminary injunction against an executive order imposing a version of the President's so-called travel ban. *See Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017) (*Hawaii I*). That opinion was vacated as moot by the Supreme Court after the executive order in question "expired by [its] own terms." *Trump v. Hawaii*, 138 S. Ct. 377 (2017). The President then issued a presidential proclamation with similar provisions; the Ninth Circuit in *Hawaii II* largely affirmed a preliminary injunction against the enforcement of that proclamation. *See Hawaii v. Trump*, 878 F.3d 662 (9th Cir. 2017) (*Hawaii II*). That decision was reversed by the Supreme Court on its merits—although as discussed below, the Court did not disagree with several of the premises underlying the Ninth Circuit's analysis, many of which are applicable here. *See Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (*Hawaii III*).

the Ninth Circuit held that the calculus changes when the President purports to exercise this authority to accomplish domestic policy. While *Hawaii III* considered the president's Section 212(f) authority in "the context of international affairs and national security," "his power is more circumscribed when he addresses a purely domestic economic issue." *Doe #1 v. Trump*, 957 F.3d 1050, 1067 (9th Cir. 2020). Thus, "in domestic economic matters, the national security and foreign affairs justifications for policy implementations disappear, and the normal policy-making channels remain the default rules of the game." *Id*.

Indeed, a straightforward reading of Section 212(f)—which requires the President to act in "the interests of the United States" (8 U.S.C. § 1182(f))—demonstrates that this power is tied, inherently, to foreign relations and national security. That operative phrase is a term of art referencing (in the context of immigration) the external-facing, national-security and foreign-affairs interests of "the United States" as an international actor, rather than the more general "public interest."[2] Section 212(f) "does not provide the President with limitless power to deny visas to immigrants based on purely long-term economic concerns" or "purely domestic economic problem[s]." *Doe #1*, 957 F.3d at 1065, 1067.

Even if the President may employ Section 212(f) authority to achieve a domestic end, the deference due in that context is substantially lessened—and it markedly distinguishes this case from *Hawaii III*. As we will show, the Proclamation transgresses the limits of Section 212(f) power for several reasons.

Defendants therefore may not lawfully implement the Proclamation's provisions, because there is no other source of authority that could authorize them to suspend the operation of the INA's visa provisions and impose an entry ban. *See, e.g.*, *City of L.A. v. Barr*, 941 F.3d 931, 938

---

[2] This interpretation is confirmed by unbroken executive practice. As a group of over thirty immigration-law scholars explained in an *amicus* brief before the Ninth Circuit, "[i]n every case out of the over forty proclamations and executive orders issued under § 1182(f) or related statutory authority, presidential action has shown a specific nexus with the conduct of foreign governments." Br. of Immigration Law Professors 7, *Doe #1 v. Trump*, No. 19-36020 (Feb. 6, 2020), Dkt. 40; *see also id.* ("[E]very single example the [Supreme] Court cited [in *Hawaii III*] concerned foreign policy—because no counterexamples exist."); *id.* at 20-36 (comprehensive chart of Section 212(f) entry suspensions; "[n]one address a purely domestic issue."). Because domestic unemployment is not such a "foreign policy interest[]" (*Hawaii III*, 138 S. Ct. at 2415), the Proclamation exceeds the scope of Section 212(f).

(9th Cir. 2019) ("When an agency is charged with administering a congressional statute, 'both its power to act and how it is to act are authoritatively prescribed by Congress.' An agency 'literally has no power to act . . . unless and until Congress confers power upon it.'") (quoting *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013); and *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)) (alterations incorporated).[3] And it is established that "the officers who attempt to enforce the President's directive" may be "enjoin[ed]." *Hawaii II*, 878 F.3d at 680 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 828 (1992) (Scalia, J., concurring)).

1. The Proclamation unlawfully eviscerates vast portions of the INA.

First, the Proclamation nullifies significant swaths of the INA, declaring statutorily established visa categories invalid for the remainder of the year. Section 212(f) may provide the President broad authority, but it does not allow him to "nullify[] Congress's considered judgments on matters of immigration." *Hawaii II*, 878 F.3d at 685; *see also id.* ("[T]he Executive may not exercise [its Section 212(f)] power in a manner that conflicts with the INA[]."). While the Supreme Court ultimately held that the proclamation in *Hawaii* did not conflict, it acknowledged the "premise" that Section 212(f) "does not give the President authority to countermand Congress's considered policy judgments." *Hawaii III*, 138 S. Ct. at 2410-2411 ("We may assume that § 1182(f) does not allow the President to expressly override particular provisions of the INA.").

That is just what the Proclamation attempts here. The INA, and in particular the provisions governing the work-related visas, sets out a "finely reticulated regulatory scheme governing the admission of foreign nationals." *Hawaii II*, 878 F.3d at 685; *cf. Arizona v. United States*, 567 U.S. 387, 395 (2012) ("Federal governance of immigration and alien status is extensive and complex"). The statute provides in great detail which noncitizens may enter the country, for what purposes, and under what circumstances. The Proclamation takes a sledgehammer to that carefully crafted system, declaring by executive fiat that four entire visa categories are no longer operative.

---

[3] *See also Sierra Club v. Trump*, 929 F.3d 670, 694 (9th Cir. 2019) ("The Supreme Court has 'long held that federal courts may in some circumstances grant injunctive relief against' federal officials violating federal law.") (quoting *Armstrong v. Exceptional Child Ctr.*, 135 S. Ct. 1378, 1384 (2015)); *E.V. v. Robinson*, 906 F.3d 1082, 1090-1091 (9th Cir. 2018) (acknowledging free-standing cause of action for "suits alleging that a federal official acted ultra vires of statutorily delegated authority").

A comparison to the Supreme Court's decision in *Hawaii III* is instructive here. The presidential proclamation at issue in *Hawaii III* barred entry to nationals of a list of enumerated countries, on the basis that those countries provided insufficient information to the United States for the proper vetting of their citizens, harming national security. *Hawaii III*, 138 S. Ct. at 2404-2405. The Supreme Court upheld that proclamation against a challenge that it conflicted with the INA, essentially because that proclamation was additive in nature: it did not actually "*conflict*" with any existing INA provisions; rather, it "impose[d] *additional* limitations on entry beyond the grounds for exclusion set forth in the INA." *Id.* at 2411-2412 (emphases added).

This Proclamation is quite different. Rather than simply "supplement[ing]" the INA's existing national-security provisions (*Hawaii III*, 138 S. Ct. at 2412), it would wipe whole categories of legislatively created visas from the statute books. Until the end of the year, the Proclamation announces, there simply *is no more* H-1B visa—and no H-2B, L-1, or J-1 visas either—and the statutes creating those visas are without effect. Such an attempt to nakedly "nullify[] Congress's considered judgments on matters of immigration," as embodied in the INA, is not within the power conferred by Section 212(f). *Hawaii II*, 878 F.3d at 685; *see also Doe #1*, 957 F.3d at 1067 (rejecting reliance on Section 212(f) due to "serious questions as to whether the President has effectively rewritten provisions of the INA").

That alone is enough to render the Proclamation *ultra vires*. But even more strikingly, the particular visa provisions that the Proclamation "effectively rewrit[es]" (*Doe #1*, 957 F.3d at 1067) already strike a conscious balance—fine-tuned over decades of statutory amendments—between the very interests at stake here: American businesses' need for skilled, specialized, and temporary workers, on the one hand; and protections for domestic workers on the other. By purporting to strike a different balance than that enacted into law by Congress, the Proclamation further exceeds the President's power under Section 212(f).

Perhaps most obviously, the H-2B visa category is already subject to an incredibly stringent protection for domestic workers: By statute, the visa may only be issued "if unemployed persons capable of performing [the needed temporary] service or labor cannot be found in this country." 8 U.S.C. § 1101(a)(15)(H)(ii)(b); *see also* 8 C.F.R. § 214.2(h)(6)(iv)(A).

That assurance is achieved through a robust labor certification process overseen by the Department of Labor, under which an employer with a temporary job opening must provide a job order to the relevant State Workforce Agencies for posting and recruitment of domestic workers (20 C.F.R. § 655.16); contact former workers and "solicit their return to the job" (*id.* § 655.43); provide notice of the opening to any relevant union or post the opening at the job site or online (*id.* § 655.45); and conduct any other domestic recruitment deemed necessary by the Department of Labor personnel reviewing the application (*id.* § 655.46). Only if these (and other) steps are taken without filling the position will the Department of Labor "certify . . . that there is an insufficient number of U.S. workers who are qualified and who will be available for the job opportunity" (*id.* § 655.50(b))—and even after certification, the employer has a "[c]ontinuing requirement" to "provide employment to any qualified U.S. worker who applies" (*id.* § 655.20(t)). Existing law thus guarantees that the issuance of an H-2B visa will not disadvantage American workers[4]—yet the Proclamation writes the entire visa category out of the INA anyway.

Congress also struck a conscious balance between the needs of American business and American labor with the H-1B visa, which is available to skilled foreign workers in "specialty occupation[s]." 8 U.S.C. § 1101(a)(15)(H)(i)(b). Recognizing the struggles of American companies to fill all their skilled specialty positions with domestic workers, Congress tailored the labor protections for H-1B visas slightly differently than for unskilled H-2B workers. For example, all sponsoring employers must attest that wages paid to H-1B workers will not undercut wages paid to U.S. workers; that H-1B employees' working conditions will not adversely affect those of U.S. workers; and that the employer has provided notice of its plan to hire H-1B employees to any relevant domestic union representative, or otherwise posted conspicuous notice. *Id.* § 1182(n)(1)(A)-(C). A subset of employers—those with a history of willful certification violations, and those with a large percentage of workers already on H-1B visas—must make additional certifications, including that the company has tried and failed to fill the position with a domestic worker. *Id.* § 1182(n)(1)(E), (n)(1)(G), (n)(3)(A).[5]

---

[4] H-2B visas are also capped at 66,000 per year. *See* 8 U.S.C. § 1184(g)(1)(B).

[5] The H visa category dates to the INA of 1952, and the current H-1B statute was enacted in

The availability of H-1B visas—and the associated labor protections—have been further titrated over the decades since 1990. The Senate Report accompanying a 2000 law that temporarily raised the numerical caps on H-1B visas identified Congress's policy judgment:

> Many of the concerns about H-1B visas revolve around the fear that individuals entering on H-1B visas will 'take' a job from an American worker. This fear arises from the premise that there is a fixed number of jobs for which competition is a zero-sum game. But this premise is plainly flawed[.]

S. Rep. 106-260, at 12 (Apr. 11, 2000); *see also id.* (noting the "general principle that labor markets have demonstrated time and time again: additional people entering the labor force, whether native-born students out of school, immigrants, or nonimmigrants, expand job opportunities and create other jobs through innovation, entrepreneurship, and money spent on consumer items"). Congress has continued to refine H-1B conditions since, including through legislation that adjusted the number of visas available by adding a set-aside for individuals completing U.S. graduate degrees; and otherwise calibrated the program to meet the needs of the domestic economy. *See* H-1B Visa Reform Act of 2004, Pub. L. 108-447, Div. J, Subtitle B, 118 Stat. 3353. Indeed, the annual cap, revised over the years, is clear congressional judgment on the scope of the H-1B program, and its interrelation with domestic labor.

This "finely reticulated regulatory scheme" (*Hawaii II*, 878 F.3d at 685)—arrived at through decades of intentional balancing by Congress—reflects a final legislative judgment that the entry of international workers is in the national interest when they arrive under the terms and conditions set by the statute. Unlike the proclamation upheld in *Hawaii*, the Proclamation here goes far beyond "supplement[ing]" that legislative judgment; rather, it "supplant[s] it," refusing admission to entire classes of people that Congress has affirmatively said should be admitted. *Hawaii III*, 138 S. Ct. at 2410. And this overruling of Congress was based not on some national

---

roughly its current form in 1990. That law was explicitly aimed at addressing "the need of American business for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found." H.R. Rep. 101-723, pt. 1, at 41 (1990). As such, the statutory scheme was immediately recognized by the government as the result of an intentional balancing of interests: "The Department believes that the broad intent of the Act is clear. . . . [It] seeks to make the immigration system more efficient and responsive to the needs of employers experiencing labor shortages, while at the same time providing greater safeguards and protections for both U.S. and alien workers." *Alien Temporary Employment Labor Certification Process*, 56 Fed. Reg. 11,705, 11,706-11,707 (Mar. 20, 1991).

security threat or interstitial rulemaking—it is not simply an "additional limitation[] on entry beyond the grounds for exclusion set forth in the INA" (*id.* at 2412)—but on an executive rebalancing of the precise domestic policy factors Congress already considered and enacted into law. *Hawaii III* lends no support for the Proclamation's evisceration of careful congressional judgment.

Congress's chosen approach to labor protections for L-1 visas, used for intra-company transfers, reflects the same kind of purposeful balancing. In creating the category in 1970, Congress acted "to meet the objective of American industry which has been seriously hampered in transferring personnel"; the House Report observed that "[s]uch intracompany transfers have contributed immeasurably to the growth of American enterprise throughout the world and to the international trade of the United States." H.R. Rep. 91-851, at 5-6 (1970). In recognition that L-1 employees possess irreplaceable experience—L-1 nonimmigrants have at least a year of company-specific experience by definition (*see* 8 U.S.C. § 1101(a)(15)(L))—the L-1 category does not require the same labor certifications as H-1B or H-2B. But Congress has nonetheless been vigilant in responding to perceived abuses of the L-1 visa; in 2004, Congress prohibited the use of L-1 visas in so-called work-for-hire arrangements, in which companies would bring workers to the country on L visas and then hire them out to other domestic employers. L-1 Visa Reform Act of 2004, Pub. L. 108-447, Div. J, Subtitle A, 118 Stat. 3351-3353; *see* 8 U.S.C. § 1184(c)(2)(F).[6]

In all, Congress enacted specific labor-market protections for each of the tailored visa categories at issue and fine-tuned those statutory protections over time, making unmistakably clear the legislative judgment about the circumstances under which the Nation should admit foreign workers. These are precisely the sorts of "considered judgments" that the President may not simply discard under Section 212(f) because he would balance the relevant interests differently. *Hawaii II*, 878 F.3d at 685; *see also Doe #1*, 957 F.3d at 1067. Because it purports to "rewrit[e]" (*id.*) and "nullify[]" (*Hawaii II*, 878 F.3d at 685) those statutory enactments, the Proclamation is

[6] Congress has been similarly attentive to perceived abuses of J visas, responding to criticism that the au pair program was primarily a source of labor (rather than cultural exchange) by explicitly reaffirming the program. *See* Eisenhower Exchange Fellowship Act of 1990, Pub. L. 101-454 § 8, 104 Stat. 1063, 1065.

beyond the President's Section 212(f) authority. This court should therefore enjoin Defendants from carrying it out. *Sierra Club*, 929 F.3d at 694.

2. The Proclamation lacks a reasonable relationship to its stated goals.

The Proclamation is also exceeds the authority conferred in Section 212(f) because it does not comport with the one procedural prerequisite contained in that section: a presidential "find[ing]" that "the entry of" the excluded class of noncitizens "would be detrimental to the interests of the United States." 8 U.S.C. § 1182(f).

Section 212(f)'s finding requirement calls for more than just the President's *ipse dixit*. Rather, as the Ninth Circuit has explained, the statutory language "requires that the President's findings *support* the conclusion" that the admission of the excluded noncitizens "would be harmful to the national interest." *Hawaii I*, 859 F.3d at 770 (emphasis added); *see also Hawaii II*, 878 F.3d at 692-693. Although the Supreme Court cast some doubt on this standard in the foreign-affairs context at issue in *Hawaii III* (138 S. Ct. at 2409), the Ninth Circuit subsequently made clear that more searching review of the President's findings *is* warranted when he uses his Section 212(f) power to solve a *domestic* problem: "[W]hile the 'President may adopt a preventive measure in the context of international affairs and national security,' and he is then 'not required to conclusively link all of the pieces in the puzzle before courts grant weight to his empirical conclusions,' his power is more circumscribed when he addresses a purely domestic economic issue." *Doe #1*, 957 F.3d at 1067 (quoting *Hawaii III*, 138 S. Ct. at 2409) (citations omitted; alterations incorporated); *see also id.* ("We reject the government's argument that the Proclamation implicates the President's foreign affairs powers simply because the Proclamation affects immigrants.").

It is thus the law of this Circuit that Section 212(f) requires "'find[ings]' that support the conclusion that admission of the excluded aliens would be 'detrimental,'" and that courts are competent to adjudicate whether the President's findings satisfy that requirement. *Hawaii II*, 878 F.3d at 693 (quoting 8 U.S.C. § 1182(f)); *see also Doe #1*, 957 F.3d at 1066-1067.[7]

[7] That is also the natural reading of Section 212(f)'s text. Congress has required that the President "find" that entry would be detrimental, a common-law term invoking the weighing of evidence by a factfinder. *See* Finding of Fact, *Black's Law Dictionary* (11th ed. 2019) ("A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the rec-

The Proclamation flunks that test. That is because there is no reasonable relationship between the problem identified and the action taken.

First, because there is a significant mismatch between the unemployment caused by the COVID-19 pandemic and the classes of noncitizens barred by the Proclamation, its "find[ings]" do not "support the conclusion that admission of the excluded aliens would be 'detrimental.'" *Hawaii II*, 878 F.3d at 693. Pandemic-related unemployment is concentrated in service occupations; by contrast, an analysis of the federal government's unemployment statistics reveals that unemployment in "computer occupations" has remained low, and actually *decreased* from 3.0% in January 2020 to 2.8% in April 2020, and 2.5% in May 2020.[8] That rate is actually lower than what the Federal Reserve believes to be the lowest unemployment rate the economy can sustain.[9] And during the 30 days ending June 9, 2020, there were over 630,000 active job vacancy postings advertised online for jobs in common computer occupations, indicating that overall demand for high-skilled workers in these occupations still exceeds the domestic supply.[10]

These computer-related jobs, with low unemployment and great demand, are precisely the ones that H-1B workers seek to fill: 66% of approved H-1B visa petitions are for jobs in "computer-related occupations," according to DHS data.[11] This information was also presented to the

---

ord."). And "[i]t is a settled principle of interpretation that, absent other indication, Congress intends to incorporate the well-settled meaning of the common-law terms it uses." *United States v. Castleman*, 572 U.S. 157, 162 (2014). Moreover, the fact that Congress chose to employ more deferential phrasing elsewhere in the same section—permitting a suspension to last "for such period as [the President] shall *deem* necessary" (8 U.S.C. § 1182(f) (emphasis added))—"demonstrates that Congress intended to convey a different meaning for those words." *Tin Cup LLC v. U.S. Army Corps of Eng'rs*, 904 F.3d 1068, 1074 (9th Cir. 2018); *see* Deem, *Black's Law Dictionary* (11th ed. 2019) ("To consider, think, or judge."). Indeed, the legislative history confirms as much. *See Hawaii II*, 878 F.3d at 692-693 ("The use of the word 'find' was deliberate. Congress used 'find' rather than 'deem' in the immediate predecessor to § 1182(f) so that the President would be required to 'base his [decision] on some fact,' not on mere 'opinion' or 'guesses.'") (quoting 87 Cong. Rec. 5051 (1941)).

[8] Hughes Decl. Ex. 31, Nat'l Foundation for American Policy 1, *Updated Analysis of Employment Data for Computer Occupations* (June 2020), perma.cc/P7JB-NFBQ.

[9] Hughes Decl. Ex. 10. Bd. of Governors of the Federal Reserve System, *What is the lowest level of unemployment that the U.S. economy can sustain?* (June 10, 2020), perma.cc/R79F-QVFE; *see also id.* ("Even in good times, a healthy, dynamic economy will have at least some unemployment as workers switch jobs, and as new workers enter the labor market and other workers leave it.").

[10] Hughes Decl. Ex. 31, Nat'l Foundation for American Policy, *supra*.

[11] Hughes Decl. Ex. 14, at ii.

Administration—but the Proclamation failed to consider it. Corley Decl. ¶ 5 & Ex. 1. Instead, the Proclamation cites statistics regarding unemployment in (unnamed) "*industries*" in which employers are currently seeking (an unspecified number of) work-related visas. *See* Proclamation, preamble. But unemployment in an "industr[y]" is not probative of whether there are qualified workers available to fill open *positions*—a retailer, for example, cannot hire unemployed retail clerks to work in its IT department as software engineers.

Yet more strange, the Proclamation bars the entry of categories of noncitizens who are already prevented, by statute, from competing for jobs with United States workers. H-2B visas *already* may be issued only "if unemployed persons capable of performing [the needed] service or labor cannot be found in this country." 8 U.S.C. § 1101(a)(15)(H)(ii)(b). As discussed above, this prohibition is implemented through an extensive labor certification process that culminates in a visa only if the Department of Labor makes an affirmative finding, based on the specifics of a particular employer's application, that "there is an insufficient number of U.S. workers who are qualified and who will be available for the job opportunity" 20 C.F.R. § 655.50.[12] The Proclamation has the remarkable effect of barring temporary seasonal labor *even when* an employer is unable to fill open positions during the COVID-19 pandemic. *See* Leman Decl. ¶ 9; O'Gorman Decl. ¶ 12. Existing law thus guarantees that H-2B workers will not "pose[] a risk of displacing and disadvantaging United States workers during the current recovery" (Proclamation, preamble)—meaning that the Proclamation's "find[ings]" do not actually "support the conclusion that admission of the excluded aliens would be 'detrimental.'" *Hawaii II*, 878 F.3d at 693.

The same is true for the dependents of H-1B and H-2B workers, who enter the country on H-4 visas. *Cf.* Proclamation § 2(a). With one cabined exception (*see* 8 C.F.R. § 214.2(h)(9)(iv)), such dependents are not authorized to work in the United States in the first place. *Id.* § 274a.12. These dependents, too, are prevented by existing law from competing with domestic workers for jobs, and their entry similarly cannot be "detrimental to the interests of the United States" (8

[12] Even after the Department of Labor issues the certification, the employer is subject to a "[c]ontinuing requirement" to "provide employment to any qualified U.S. worker who applies to the employer for the job opportunity" in preference to H-2B workers. 20 C.F.R. § 655.20(t).

U.S.C. § 1182(f)) for the reasons stated in the Proclamation.[13]

Second, the Proclamation fails to support the conclusion reached because it declined to address substantial evidence relevant to the problem at issue. Again, not only was the data available to the Administration, but was actively presented to decisionmakers by a coalition of companies and business groups in the run-up to the Proclamation. *See* Corley Decl. ¶ 5 & Ex. 1.

That is, the Proclamation utterly disregards the clear economic consensus that the presence of international workers in this country boosts productivity and innovation, and has the net result of *creating* jobs for domestic workers. An exhaustive 2015 empirical study of state-level employment data conducted by the American Enterprise Institute and the Partnership for a New American Economy found that, "[o]verall, when looking at the effect of all immigrants on employment among US natives, *there is no evidence that immigrants take jobs from US-born workers*."[14] To the contrary, "[t]he results give clear evidence that both the H-1B and H-2B programs for temporary workers correspond to *greater* job opportunities for US-born workers."[15] In short, foreign workers tend to complement native workers, not compete with them.[16]

Third, the Proclamation abruptly changes the immigration policy of the United States without any apparent consideration of the impact on American firms and their business planning. *See* Chen Decl. ¶¶ 6, 14-19 (describing but a few examples of interests upset by the Proclama-

---

[13] The State Department recently issued guidance asserting that certain dependents may apply for discretionary national interest exceptions. *See* Compl. ¶ 141. Agency guidance—at odds with the Proclamation's text, and issued a month later—cannot render the Proclamation itself lawful. What is more, even if dependents were categorically eligible for exceptions, that would be all the more proof that the Proclamation—which includes them facially—is overbroad.

[14] Hughes Decl. Ex. 29, Madeline Zavodny, *Immigration and American Jobs* 11 (2011).

[15] *Id.* Indeed, "[a]dding 100 H-1B workers results in an additional 183 jobs among US natives," and "[a]dding 100 H-2B workers results in an additional 464 jobs for US natives." *Id.* at 4.

[16] This is not a controversial point among economists. A literature review conducted the National Academies of Sciences, Engineering, and Medicine—authored by nearly 40 economists from across the political spectrum—highlighted "several studies [that have] found a positive impact of skilled immigration on the wages and employment of both college-educated and noncollege-educated natives . . . consistent with the view that skilled immigrants are often complementary to native-born workers." Hughes Decl. Ex. 32, National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration, The National Academies Press* 6 (2017), perma.cc/JU7U-LVJ2. The panel concluded that "immigration is integral to the nation's economic growth," and that "[t]he prospects for long-run economic growth in the United States would be considerably dimmed without the contributions of high-skilled immigrants." *Id.* at 6-7. Many other analyses tell the same story. *See* Hughes Decl. Exs. 18-33.

tion); Brown Decl. ¶ 14 ("Like other Fortune 100 companies, Amazon builds its business plans around short-term and long-term goals. Many L-1 transfers from overseas operations were planned prior to the COVID-19 pandemic, and the transferees were expected to help implement Amazon's operational growth plans."); Bell Decl. ¶ 9. Consideration of reliance interests is a fundamental requirement of reasoned decisionmaking when a policy is reversed.[17]

In the end, the Proclamation fails to offer a reasonable connection between the executive action in question and the policy interest it purports to serve. It is therefore insufficient under Section 212(f). *Hawaii II*, 878 F.3d at 693; *Doe #1*, 957 F.3d at 1066-1067.

3. The nondelegation doctrine requires a reading of Section 212(f) that imposes meaningful limitations on the President's authority.

These limitations on the scope of Section 212(f) authority render it a lawful delegation of authority from Congress to the President. It is a basic principle that "[a] statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998); *see also Indus. Union Dep't, AFL-CIO v. Am. Petroleum Institute*, 448 U.S. 607, 646 (1980) ("If the Government was correct [about the scope of a provision], the statute would make such a sweeping delegation of legislative power that it might be unconstitutional. . . . A construction of the statute that avoids this kind of open-ended grant should certainly be favored.").

If the Court concludes that we are wrong about the scope of the President's power under Section 212(f), though—that is, if the statute actually *does* empower the President to simply delete entire sections of the INA with the stroke of a pen, or to act based on findings that do not reasonably support the proposed action, or to suspend entry to achieve domestic economic policy goals—then the Court would have to confront the serious constitutional question whether Section 212(f) amounts to an unconstitutional delegation of power to the executive branch.

[17] That rule is an application of the general principle that "reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions." *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015); *see Mingo Logan Coal Co. v. EPA*, 829 F.3d 710, 732 (D.C. Cir. 2016) (Kavanaugh, J., dissenting) ("[R]easoned decisionmaking requires assessing whether a proposed action would do more good than harm."). But the Proclamation considers neither.

"The nondelegation doctrine bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, 139 S. Ct. 2116, 2121 (2019) (plurality op. of Kagan, J.). As the law now stands, "a statutory delegation is constitutional as long as Congress 'lays down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform.'" *Id.* at 2123 (quoting *Mistretta v. United States*, 488 U.S. 361, 372 (1989) (alterations incorporated)); *see also id.* at 2129 ("[I]n a related formulation, the Court has stated that a delegation is permissible if Congress has made clear to the delegee 'the general policy' he must pursue and the 'boundaries of his authority'") (quoting *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)) (alteration incorporated).

If, contrary to our position, the President can invoke Section 212(f) for *any* conceivable policy end, then nothing in the statute supplies a limit to executive authority. Under that reading of Section 212(f), Congress has neither "made clear" any "general policy [the President] must pursue" nor set any "boundaries" on his "authority" (*Gundy*, 139 S. Ct. at 2129 (quoting *Am. Power & Light*, 329 U.S. at 105))—or, in other words, Congress would not have set out an "intelligible principle" to which the President "is directed to conform" (*id.* at 2123 (quoting *Mistretta*, 488 U.S. at 372)). If Section 212(f) authority is limitless, "[t]his is delegation running riot." *A.L.A. Schechter Poultry v. United States*, 295 U.S. 495, 553 (1935) (Cardozo, J., concurring).

Thus, another court in this Circuit recently held that, if Section 212(f) authorizes the President to engage in domestic policymaking, then, "[i]n this wholly domestic context, the delegation by Congress is without any intelligible principle and thus fails under the nondelegation doctrine." *Doe v. Trump*, 418 F. Supp. 3d 573, 592 (D. Or. 2019).

As we described above, Section 212(f) authority is most broad when invoked to advance foreign relations and national security interests. It does not provide the President limitless authority to make *domestic* policy judgments, it certainly does not permit the President to nullify statutes reflecting *congressional* determinations (including the decision to allow immigration for certain temporary work), and it does not license the President to rest on putative findings where the action taken bears no reasonable relationship to the problem addressed. Identifying these limits appropriately avoids the underlying and serious constitutional question.

4. There is no alternative authority for the Proclamation.

The President has no alternative authority, apart from Section 212(f), that could independently authorize the Proclamation. Although the Proclamation cites Section 215(a) of the INA (8 U.S.C. § 1185(a)), the Ninth Circuit has rejected that provision as an independent source of authority for actions beyond the scope of Section 212(f): "[T]he Government cannot justify the Proclamation under § 1182(f) by using § 1185(a) as a backdoor." *Hawaii II*, 878 F.3d at 694; *cf. Hawaii III*, 138 S. Ct. at 2407 n.1 ("Because [Section 215(a)] 'substantially overlap[s]' with [Section 212(f)], . . . we need not resolve the precise relationship between the two."). And even if—contrary to the Ninth Circuit—it could be viewed as providing the President authority, all the limitations on Section 212(f) we have identified would apply, too. *See* pages 6-10, *supra*.

Nor is the Proclamation a proper exercise of any constitutional authority of the President. As the Ninth Circuit held in *Hawaii II*, "the President lacks independent constitutional authority to issue the Proclamation, as control over the entry of aliens is a power within the exclusive province of Congress." *Hawaii II*, 878 F.3d at 697.[18] Indeed, "[p]olicies pertaining to the entry of aliens and their right to remain here are . . . entrusted exclusively to Congress." *Galvan v. Press*, 347 U.S. 522, 531 (1954).[19] As the Supreme Court long ago established, under our constitutional system, "[t]he power to exclude or to expel aliens . . . is to be regulated by treaty or by act of congress." *Fong Yue Ting v. United States*, 149 U.S. 698, 713 (1893). The President's role is limited to "execut[ing]" that power "according to the regulations so established" (*id.*)—that is, he has no independent power to legislate general rules of exclusion in the first instance, and he certainly may not do so in a manner that contradicts duly enacted statutes. *See* pages 4-6, *supra*.

B. For the same reasons, the implementation of the Proclamation is invalid under the APA.

For these same reasons, Plaintiffs are likely to demonstrate that the Defendants' imple-

---

[18] Because it ruled on other grounds, the Supreme Court had no occasion in *Hawaii III* to address this holding.

[19] *See also INS v. Chadha*, 462 U.S. 919, 940 (1983) ("The plenary authority of Congress over aliens under Art. I, § 8, cl. 4 is not open to question."); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) ("This Court has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.") (quotation marks omitted).

mentation of the Proclamation violates the APA, as it is "arbitrary, capricious," and "not in accordance with law." 5 U.S.C. § 706.

While presidential action is ordinarily not "agency action" reviewable under the APA (*Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)), that rule "is limited to those cases in which the President has final constitutional or statutory responsibility for the final step necessary for the agency action directly to affect the parties." *Pub. Citizen v. U.S. Trade Rep.*, 5 F.3d 549, 552 (D.C. Cir. 1993). The Ninth Circuit in *Hawaii* thus heard an APA challenge against a Section 212(f) proclamation that was implemented by agency officials, and the Supreme Court did not disagree. *Hawaii II*, 878 F.3d at 680-681; *see also East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1271 (9th Cir. 2020) (the "operative rule of decision" established by Section 212(f) proclamation and agency's implementing actions "is reviewable by this court" under the APA).[20]

Thus, the same failings identified above—that the Proclamation is not authorized by Section 212(f); that it disregards critical evidence and is not reasonably related to the unemployment caused by COVID-19; and that it fails to account for reliance interests—are independently actionable under the APA. The Court should therefore stay implementation of the Proclamation by Defendants under the APA as well. 5 U.S.C. § 705; *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2584 (2019); *DHS v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

C. Defendants' moratorium on visa processing and issuance is unlawful, wholly apart from the Proclamation's own failings.

Plaintiffs are also likely to succeed in demonstrating that, apart from the validity of the Proclamation itself, related steps Defendants have taken are *ultra vires* and also violate the APA.

Putatively relying on the Proclamation, the State Department has announced that it "will not be issuing H-1B, H-2B, L, or certain J visas, and their derivatives through December 31, 2020, unless an exception applies." Hughes Decl. Ex. 5. DHS similarly announced that the Proclamation "directs the Department of Homeland Security . . . to temporarily pause the issuance of

[20] Plaintiffs' interests also easily "fall within the zone of interests protected by" the INA. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014). American employers seeking to sponsor noncitizens for explicitly work-based visas are undoubtedly within the zone of interests that those work-based visa statutes are intended to protect.

certain new nonimmigrant visas until December 31, 2020," along with its intention to "begin implementing" that instruction. Hughes Decl. Ex. 3. Defendants have thus stopped the processing and issuance of visas and related paperwork for the affected visa categories. That is unlawful.

The Proclamation does not provide Defendants legal authority to adopt the policy of not processing visa applications or petitions. To the contrary, it "suspend[s]" "[t]he *entry* into the United States of any alien seeking entry pursuant to any of the [affected] nonimmigrant visas." Proclamation § 2 (emphasis added). Likewise, Section 212(f) does not speak to visa issuance at all—only to entry. Entry is distinct from issuance of a visa. *E.g.*, 8 U.S.C. § 1101(a)(13), (26).[21]

The Proclamation goes on to instruct the Secretary of State and the Secretary of Homeland Security to "implement this proclamation." Proclamation § 4(a). But a direction to "implement" a ban on the "entry" of noncitizens does not even purport to authorize Defendants to rescind the statutory authority of consular officers to "issue . . . to a nonimmigrant who has made proper application therefor, a nonimmigrant visa." 8 U.S.C. § 1201(a)(1)(B). Nor does it excuse consular officers from their nondiscretionary *duty* under the regulations to adjudicate visa applications by either issuing or refusing the visa. *See* 22 C.F.R. § 41.121(a) ("When a visa application has been properly completed and executed in accordance with the provisions of the INA and the implementing regulations, the consular officer *must* issue the visa, refuse the visa, or, pursuant to an outstanding order under INA 243(d), discontinue granting the visa.") (emphasis added).[22]

Defendants' policy of refusing to process applications and petitions for visas is therefore beyond their lawful authority. It should therefore be stayed under the APA (5 U.S.C. § 705) and enjoined as *ultra vires*, regardless of the lawfulness of the Proclamation itself.

That is, since the Proclamation does not—indeed, could not—order Defendants to stop processing visa applications, the only means through which Defendants could institute such a

---

[21] Prior to 1996, "entry" was a defined term in the INA. *See* Pub. L. 82-414, § 101(a)(13), 66 Stat. 163, 167 (1952). In 1996, Congress substituted the concept of "admission" for "entry" in the INA's definition section (*see* Pub. L. 104-208, § 301(a), 110 Stat. 3009, 3009-575), but many INA provisions still speak of entry.

[22] Nor *could* the Proclamation have directed the Departments of State and Homeland Security to stop processing visa applications and related paperwork—because Section 212(f) itself only authorizes the President to "suspend the *entry*" of specified noncitizens, not to cease processing visa applications according to applicable laws and regulations.

non-adjudication policy is notice-and-comment rulemaking: Whatever the government might call it, agency action "that effectively amends a prior legislative rule is legislative and must be promulgated under notice and comment rulemaking." *Erringer v. Thompson*, 371 F.3d 625, 632 (9th Cir. 2004). And by directing consular officers not to adjudicate visa applications, Defendants' actions here "effectively amend[]" the State Department regulation mandating that consular officers "*must* issue the visa [or] refuse the visa" when an application "has been properly completed and executed." 22 C.F.R. § 41.121(a) (emphasis added).[23] For this reason, as well, Defendants' moratorium on processing visas is unlawful under the APA. *See* 5 U.S.C. §§ 553(b), 706(2)(D).

II. THE PROCLAMATION CAUSES DIRECT AND IRREPARABLE INJURIES.

Plaintiffs and the members of the Plaintiff associations have suffered and will continue to suffer injury if the implementation of the Proclamation is not enjoined. And these substantial injuries are irreparable, requiring preliminary injunctive relief to protect Plaintiffs and their members from devastating harms the implementation of the Proclamation will inflict before a final judgment in this case.

For standing purposes, a plaintiff must have suffered an (1) injury in fact (2) fairly traceable to the challenged conduct and (3) likely to be redressed by a favorable decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). An association has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1109 (9th Cir. 2003).[24] Irreparable harm, moreover, is "harm for which there is no adequate legal remedy." *East Bay*, 950 F.3d at 1280.

A. The Proclamation, by purposeful design, injures the Plaintiff associations and their

---

[23] Consular officers also may not "refuse" visas on the basis of the Proclamation's entry ban: "Nonimmigrant visa refusals must be based on legal grounds, such as one or more [of various INA provisions], or other applicable law." 22 C.F.R. § 41.121(a).

[24] In the paragraphs below, we demonstrate that members of the Plaintiff associations would have standing to sue in their own right. The associations seek to protect interests germane to their organizational purposes. *See* Baselice Decl. ¶¶ 3-8; Hall Decl. ¶ 5-7. The participation of individual members is not required; that said, Intrax is both a U.S. Chamber member and a plaintiff.

members. Approximately 300,000 businesses are direct members of the U.S. Chamber—many of which hire employees in H, J, and L visa categories. *See* Baselice Decl. ¶¶ 2, 4-7.[25] The purpose of the Proclamation is to disrupt these hiring practices. According to the White House, the Proclamation "open[s] up about 525,000 jobs" and "clear[s] out this workspace for Americans." Hughes Decl. Ex. 2. Per DHS official Ken Cuccinelli, the Proclamation is an "[u]nprecedented level of effort by a president to clear the American job market of competition." *Id.* Ex. 4.

The injury purposefully inflicted on businesses over the next six months at least—barring them from hiring employees from outside the United States via visa categories Congress established—is a quintessential irreparable harm, as its effects cannot possibly be undone. Unless the implementation of the Proclamation is enjoined now, businesses will forever lose opportunities and productivity. *See, e.g.*, Baselice Decl. ¶¶ 9-12. Further, because employment is durable, if a company foregoes hiring an individual in the third or fourth quarter of 2020—or locates employees and operations abroad—that decision will reverberate well beyond 2020. *Id.* ¶¶ 11-12.

B. While these categorical injuries suffice to establish standing and irreparable injury, specific, immediate, and irremediable harm is easy to identify across the impacted visa categories.

L-1. Microsoft Corporation, a member of plaintiffs the NAM, the U.S. Chamber, and TechNet (Chen Decl. ¶ 1), "utilizes L visas for key intracompany transfers." *Id.* ¶ 12. As one current example, Microsoft currently seeks to transfer a French national, who has worked for the company since 2011, from France to the United States. *Id.* ¶¶ 16-17. He was slated to lead a team of 25 new software engineers in 2020, with growth to 50 engineers in 2021. *Id.* ¶ 17. Because the Proclamation will bar his entry indefinitely, he remains in France, so Microsoft had to change course and hire 10 software engineers there instead. *Id.* ¶ 18 "This disruption to Microsoft's business planning will have lasting effects" because, "[o]nce a team is established overseas, it will be difficult and unduly disruptive to relocate the team's key personnel to the U.S., as Microsoft had hoped and planned." *Id.* ¶ 19. This example is far from unique—Microsoft details three other in-

[25] *See also* Chen Decl. ¶¶ 1, 11-12 (a U.S. Chamber member, Microsoft hires employees via the H-1B and L-1 visa categories); Brown Decl. ¶¶ 1, 7-8 (same regarding Amazon); Brummel Decl. ¶¶ 2, 5 (Brummel Lawn & Landscape, a U.S. Chamber member, hires H-2B workers); O'Gorman Decl. ¶¶ 10, 13 (Gentle Giant, a U.S. Chamber member, hires H-2B workers and J visitors).

dividuals who, but for the Proclamation, would transfer to the United States now via L-1 visas. *Id.* ¶¶ 23-25, 26-27, 28. Only an immediate injunction can remedy these harms.

H-1B. Amazon.com, Inc., a member of the U.S. Chamber (Brown Decl. ¶ 1), hires certain workers on H-1B visas. *Id.* ¶¶ 4, 8-9. An Amazon employee, who is a senior manager with Amazon's Transportation Operations Management (TOM) team, traveled abroad to visit family prior to the Proclamation. Because he was abroad when the Proclamation issued, and because he requires a new H-1B stamp to reenter the country, he is now unable to return to his home and place of employment within the United States. *Id.* ¶¶ 10-12. This is disrupting Amazon's business operations, and an injunction would remedy this direct and otherwise irreparable harm. *Id.* ¶¶ 11-12.

Similarly, on June 10, 2020, Microsoft hired an individual, holding an approved Microsoft H-1B petition, to move to the U.S. to become a "Senior Program Manager." Chen Decl. ¶ 29. The Proclamation bars his relocation to the United States, and it substantially interferes with his work for the company. *Id.* ¶¶ 30-31. Another Microsoft employee has lived in the U.S. since 2009, and he joined Microsoft in 2015. *Id.* ¶ 33. He and his family were outside the United States, visiting family and holding cultural and religious ceremonies for a newborn child, when the Proclamation was announced. *Id.* ¶ 34. The family now cannot return to their home, resulting in medical complications for a child who is removed from established care in Washington. *Id.* ¶ 36.

H-2B. Singing Hills Landscape, a U.S. Chamber member (Leman Decl. ¶ 2), is currently petitioning for 25 H-2B laborers to enter the U.S. on October 1, 2020. *Id.* ¶ 14. But for the Proclamation, Singing Hills—which has a long history of hiring H-2B workers (*id.* ¶¶ 5-6)—would hire some or all of these 25 workers in two months. If Singing Hills cannot bring in these workers, the labor deficit will cause approximately $400,000 in 2020 revenue loss. *Id.* ¶ 15. This loss is irreparable. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) ("[T]hreatened loss of prospective customers … certainly supports a finding of the possibility of irreparable harm."). Because Singing Hills cannot obtain necessary labor, it has also foregone hiring domestic workers for three specific management positions. Leman Decl. ¶¶ 18-19.

Gentle Giant Moving Company, a premier moving company and a member of the U.S. Chamber (O'Gorman Decl. ¶¶ 2-4), currently has 83 approved but unfilled petitions for H-2B

seasonal workers. *Id.* ¶¶ 10, 15. The sole barrier to these trained employees entering the country is the Proclamation. *Id.* ¶ 11. Gentle Giant is currently losing business because it lacks the labor it needs; by foreclosing the hiring of these 83 workers, the Proclamation will cost Gentle Giant approximately $8 to $10 million in lost revenue for the remainder of the calendar year. *Id.* ¶ 16. It will also preclude Gentle Giant from hiring more domestic workers. *Id.* ¶ 17.

J-1. Plaintiff Intrax (also a member of the U.S. Chamber) is a leading sponsor of J-1 cultural exchange programs. The Proclamation has shut down five of Intrax's six programs—its programs for summer work travel, au pair, intern, trainee, and camp counselor. Schneider Decl. ¶ 6. Because of the Proclamation, Intrax has been precluded from bringing to the United States more than 8,200 participants in its programs who were scheduled to arrive between June 24 (the Proclamation's effective date) and today. *Id.* ¶ 7. The result is a loss of nearly all revenue. *Id.* ¶ 29. This ongoing economic devastation cannot later be remedied. *Id.* ¶ 30. *See East Bay*, 950 F.3d at 1280 ("[W]here parties cannot typically recover monetary damages flowing from their injury … economic harm can be considered irreparable"). Intrax has already furloughed or laid off 40 to 50% of its 300-person domestic staff, and the remaining staff have taken very substantial pay cuts. Schneider Decl. ¶ 31.

All of Alliance Abroad's J-1 cultural exchange programs have been shut down by the Proclamation. Bell Decl. ¶ 3; *see also id.* ¶ 1 (Alliance Abroad is a U.S. Chamber member). If the Proclamation remains through 2020, it will cost Alliance Abroad about $7.5 million in lost revenue—all of which is irremediable. *Id.* ¶ 5. Alliance Abroad has had to lay-off 87 of 115 staff members. *Id.* ¶ 7. The State Department's refusal to process or issue visas is causing additional harm, because it has rendered recruiting for 2021 virtually impossible. *Id.* ¶ 13. Alliance Abroad was founded in reliance on an operational J-1 program (*id.* ¶ 9), but if the Proclamation continues for more than a few months longer, it "will likely have to cease operations." *Id.* ¶ 17.[26]

The irreparable harms abound: Without L-1s and H-1Bs, Microsoft and Amazon cannot

[26] Although the State Department has identified certain national interest exceptions for limited categories, none of these waivers apply to any of the harms documented here. *See, e.g.*, Bell Decl. ¶ 6; Schneider Decl. ¶ 34; Chen Decl. ¶¶ 40-41.

build planned development teams at their U.S. headquarters (Chen Decl. ¶¶ 6-9; Brown Decl. ¶¶ 8-15). Without H-2Bs, Gentle Giant cannot hire 83 experienced seasonal workers to generate substantial revenue during busy season (O'Gorman Decl. ¶¶ 16-19); Singing Hills cannot accept new business opportunities (Leman Decl. ¶¶ 15-18); and Brummel Lawn cannot make capital investments (Brummel Decl. ¶ 21). Without J-1s, Intrax and Alliance Abroad will not even have businesses to run (Schneider Decl. ¶ 43; Bell Decl. ¶ 17).

An injunction will redress each of these injuries: It would allow Microsoft and Amazon to move their employees to the United States via L-1 and H-1B visas. It would enable Gentle Giant to add 83 H-2B workers immediately to finish its busy season; Singing Hills to add H-2B workers around October 1 to fulfill its business opportunities; and Brummel Lawn to make capital investments. It would restart the J-1 programs by Intrax and Alliance Abroad, allowing them to resume revenue. And, most fundamentally, it will stop the massive reconfiguration of the labor market, which harms the Plaintiff associations' members as a whole. Baselice Decl. ¶¶ 4-7, 10-13.

C. Defendants' separate policy refusing to process and issue visas (*see* pages 18-20, *supra*) causes independent irreparable harm. For example, but for this separate action, Intrax would presently be lining up individuals on J-1 visas to enter the United States on January 1, 2021, it would enter agreements with partner businesses for these individuals, and it would earn revenue as a result. Schneider Decl. ¶ 39. The failure of defendants to process and issue visas before the end of 2020 precludes this conduct. *Id*. If the Court enjoins this independent unlawful behavior, this immediate harm would be remedied, regardless of the lawfulness of the Proclamation itself. *Id*.

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST FAVOR AN INJUNCTION.

The remaining equitable factors—the balance of equities and the public interest—merge where the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 436 (2009). Here, they sharply favor preliminary injunctive relief.

First, respecting congressional judgments is in the public interest:

> [W]hen Congress chooses how to address a problem, "[i]t is quite impossible ... to find secreted in the interstices of legislation the very grant of power which Congress consciously withheld," as doing so is "not merely to disregard in a particular instance the clear will of Congress," but "to disrespect the whole legislative process and the constitutional division of authority between President and Congress."

Sierra Club, 929 F.3d at 707 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 609 (1952) (Frankfurter, J., concurring). That is, "the public has an interest in ensuring that the 'statutes enacted by [their] representatives are not imperiled by executive fiat.'" *East Bay*, 950 F.3d at 1281. Congress has chosen how to balance the needs of American employers with protection for American labor. *See* pages 8-10, *supra*. Because Congress has not authorized a wholesale repeal of the H, J, or L visa categories, "Congress presumably decided" that this entry ban "was not in the public interest," which is a factor that weighs heavily here. *Sierra Club*, 929 F.3d at 707. That conclusion is especially appropriate in view of the aggressive actions Congress *has* taken with respect to COVID-19's economic repercussions. Similarly, the "public interest is served by compliance with the APA." *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018).

Second, the Plaintiff associations represent the interests of their members, which constitute a broad cross section of American business. The Plaintiff associations seek relief that is substantially in the public interest—it will ensure that businesses may recover, that they may expand their operations, and that they may hire large numbers of domestic workers. *See, e.g.*, Chen Decl. ¶¶ 10-31; Brown Decl. ¶ 14; Brummel Decl. ¶¶ 8, 20; Leman Decl. ¶¶ 18-19; Schneider Decl. ¶¶ 29-33; Bell Decl. ¶ 7; O'Gorman Decl. ¶ 17. These interests, which will accrue to the public as a whole, substantially favor the grant of injunctive relief. Baselice Decl. ¶¶ 13-14; Hall Decl. ¶ 7.

Third, as is "often" the case, the public interest favors preservation of the status quo ante; "a stable immigration system" benefits the Nation, including the myriad stakeholders who rely on operation of the system that Congress created. *Doe #1*, 957 F.3d at 1068.

CONCLUSION

The Court should grant the motion for a preliminary injunction.

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

DATED: July 31, 2020

By: */s/ Paul W. Hughes*

Paul W. Hughes (*Pro Hac Vice*)
phughes@mwe.com
Michael B. Kimberly (*Pro Hac Vice pending*)
mkimberly@mwe.com
Sarah P. Hogarth (*Pro Hac Vice to be filed*)
shogarth@mwe.com
500 North Capitol Street NW
Washington, DC 20001
(202) 756-8000

William G. Gaede, III (136184)
wgaede@mwe.com
275 Middlefield Road, Suite 100
Menlo Park, CA 94025
(650) 815-7400

Counsel for Plaintiffs

MANUFACTURERS' CENTER FOR LEGAL ACTION
Linda E. Kelly (*Pro Hac Vice to be filed*)
Patrick D. Hedren (*Pro Hac Vice to be filed*)
Erica T. Klenicki (*Pro Hac Vice to be filed*)
733 10th Street NW, Suite 700
Washington, DC 20001
(202) 637-3000

Counsel for the National Association of Manufacturers

U.S. CHAMBER LITIGATION CENTER
Steven P. Lehotsky (*Pro Hac Vice to be filed*)
Michael B. Schon (*Pro Hac Vice to be filed*)
1615 H Street NW
Washington, DC 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

MCDERMOTT WILL & EMERY LLP
Paul W. Hughes (*Pro Hac Vice*)
phughes@mwe.com
Michael B. Kimberly (*Pro Hac Vice pending*)
mkimberly@mwe.com
Sarah P. Hogarth (*Pro Hac Vice to be filed*)
shogarth@mwe.com
500 North Capitol Street NW
Washington, DC 20001
(202) 756-8000

MCDERMOTT WILL & EMERY LLP
William G. Gaede, III (136184)
wgaede@mwe.com
275 Middlefield Road, Suite 100
Menlo Park, CA 94025
(650) 815-7400

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL ASSOCIATION OF MANUFACTURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL RETAIL FEDERATION, TECHNET, and INTRAX, INC.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF STATE; CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security; and, MICHAEL R. POMPEO, in his official capacity as Secretary of State,

Defendants.

Case No. 4:20-cv-4887-JSW

DECLARATION OF PAUL W. HUGHES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Paul W. Hughes, declare as follows:

I am a partner at McDermott Will & Emery LLP, counsel for Plaintiffs National Association of Manufacturers, Chamber of Commerce of the United States of America, National Retail Federation, TechNet, and Intrax, Inc. I make this declaration based on my own personal knowledge and records maintained in the ordinary course of McDermott's business. If called as a witness, I could and would testify competently thereto. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction.

1. Attached hereto as Exhibit 1 is a true and correct copy of Proclamation 10052, 85 Fed. Reg. 38,263 (June 25, 2020).

2. Attached hereto as Exhibit 2 is a true and correct copy of Office of the Press Secretary, Transcript of White House Background Press Call Concerning the June 22 Presidential Proclamation Suspending Entry of Certain Nonimmigrants (June 22, 2020). This document is also available at perma.cc/Z9YU-MUZK.

3. Attached hereto as Exhibit 3 is a true and correct copy of Press Release, *Trump Administration, DHS Prioritizes American Citizens for American Jobs* (June 22, 2020). This document is also available at perma.cc/7UGS-JANF.

Government Tweets

4. Attached hereto as Exhibit 4 is a true and correct copy of a screenshot of a June 22, 2020 tweet from Ken Cuccinelli (@HomelandKen) captured on July 28, 2020. The screenshot is also available at perma.cc/HTT5-AUC8. Access to the original video embedded in the tweet is available at https://twitter.com/HomelandKen/status/1275201179920760839.

5. Attached hereto as Exhibit 5 is a true and correct copy of a screenshot of a June 25, 2020 tweet from U.S. Dep't of State, Bureau of Consular Affairs (@TravelGov) captured on July 28, 2020. The screenshot is also available at perma.cc/TE9S-G2C8. The Twitter account with the handle @TravelGov is designated the "Official Twitter for U.S. Dept of State Bureau of Consular Affairs."

6. Attached hereto as Exhibit 6 is a true and correct copy of a screenshot of a June 30, 2020 tweet from U.S. Dep't of State, Bureau of Consular Affairs (@TravelGov) captured on

July 28, 2020. The screenshot is also available at perma.cc/3CTU-CG4K.

7. Attached hereto as Exhibit 7 is a true and correct copy of a screenshot of a June 26, 2020 tweet from U.S. Dep't of State, Bureau of Consular Affairs (@TravelGov) captured on July 28, 2020. The screenshot is also available at perma.cc/8262-NKFY.

8. Attached hereto as Exhibit 8 is a true and correct copy of a screenshot of a July 21, 2020 9:22 am tweet from Dep't of State, Bureau of Consular Affairs (@TravelGov) captured on July 28, 2020. The screenshot is also available at perma.cc/M5Q8-YJHJ.

9. Attached hereto as Exhibit 9 is a true and correct copy of a screenshot of a July 21, 2020 9:30 am tweet from Dep't of State, Bureau of Consular Affairs (@TravelGov) captured on July 28, 2020. The screenshot is also available at perma.cc/2RW4-LLBE.

Government Publications

10. Attached hereto as Exhibit 10 is a true and correct copy of Bd. of Governors of the Federal Reserve System, *What is the lowest level of unemployment that the U.S. economy can sustain*? (June 10, 2020). This document is also available at perma.cc/R79F-QVFE.

11. Attached hereto as Exhibit 11 is Congressional Research Service, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends* (Jan. 13, 2016). This document is also available at perma.cc/9VHJ-J3SE.

12. Attached hereto as Exhibit 12 is a true and correct copy of U.S. Citizenship & Immigration Services, Office of Policy & Strategy, Policy Research Division, *H-1B Authorized-to-Work Population Estimate*. This document is also available at perma.cc/N9R4-XNQM.

13. Attached hereto as Exhibit 13 is a true and correct copy of U.S. Dep't of Homeland Security, Office of Inspector General, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program* (Jan. 2006). This document is also available at perma.cc/Y88X-3JBP.

14. Attached hereto as Exhibit 14 is a true and correct copy of U.S. Dep't of Homeland Security, U.S. Citizenship & Immigration Services, *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress* (Mar. 5, 2020). This document is also available at perma.cc/VL4G-FVNN.

15. Attached hereto as Exhibit 15 is a true and correct copy of U.S. Dep't of State,

Bureau of Educational & Cultural Affairs, *Moving People to Move Ideas*. This document is also available at perma.cc/5XPX-EADR.

16. Attached hereto as Exhibit 16 is a true and correct copy of U.S. Dep't of State, Bureau of Educational and Cultural Affairs, *The United States Department of State Exchange Visitor Program*. This document is also available at perma.cc/86D7-ACCC.

17. Attached hereto as Exhibit 17 is a true and correct copy of U.S. Dep't of State, *Classes of Nonimmigrants Issued Visas (Including Border Crossing Cards) Fiscal Years 2015-2019*. This document is also available at perma.cc/BE3T-9PR4.

Analyses and Studies

18. Attached hereto as Exhibit 18 is a true and correct copy of Alex Nowrasteh, *Don't Ban H-1B Workers: They Are Worth Their Weight in Innovation*, Cato at Liberty (May 14, 2020). This document is also available at perma.cc/SMW4-UUJT.

19. Attached hereto as Exhibit 19 is a true and correct copy of Alliance for International Exchange, *EurekaFacts, Au Pair Program: 2020 Executive Summary Report* (July 16, 2020). This document is also available at perma.cc/EB2T-WL7C.

20. Attached hereto as Exhibit 20 is a true and correct copy of Alliance for International Exchange, *EurekaFacts Study: Impact of Camp Counselor Program*. This document is also available at perma.cc/MJK2-SYWH.

21. Attached hereto as Exhibit 21 is a true and correct copy of Alliance for International Exchange, *EurekaFacts Study: Impact of Intern and Trainee Programs*. This document is also available at perma.cc/4WH2-5DWY.

22. Attached hereto as Exhibit 22 is a true and correct copy of Alliance for International Exchange, *EurekaFacts Study: Impact of SWT Program*. This document is also available at perma.cc/7L99-MZ38.

23. Attached hereto as Exhibit 23 is a true and correct copy of Americans for Cultural Exchange, *Benefits* (2019). This document is also available at perma.cc/Y6PR-AGVY.

24. Attached hereto as Exhibit 24 is a true and correct copy of Christian Gunadi, *An inquiry on the impact of highly-skilled STEM immigration on the U.S. economy*, 61 Labour

Economics (2019). This document is also available at perma.cc/UTX9-8VFV.

25. Attached hereto as Exhibit 25 is a true and correct copy of Deloitte & The Manufacturing Institute, *The jobs are here, but where are the people?: Key findings from the 2018 Deloitte and The Manufacturing Institute skills gap and future of work study* (2018). This document is also available at perma.cc/W2ND-RRLB.

26. Attached hereto as Exhibit 26 is a true and correct copy of Gaurav Khanna, Munseob Lee, *High-Skill Immigration, Innovation, and Creative Destruction*, Nat'l Bureau of Economic Research (2018). This document is also available at perma.cc/QE87-KDAC.

27. Attached hereto as Exhibit 27 is a true and correct copy of Giovanni Peri & Chad Sparber, *Presidential Executive Actions Halting High Skilled Immigration Hurt the U.S. Economy* (July 2020). This document is also available at perma.cc/3B6B-25YU.

28. Attached hereto as Exhibit 28 is a true and correct copy of Giovanni Peri, Kevin Shih, Chad Sparber, *STEM Workers, H-1B Visas, and Productivity in U.S. Cities* (July 2015). This document is also available at perma.cc/N4GV-YJJ6.

29. Attached hereto as Exhibit 29 is a true and correct copy of Madeline Zavodny, *Immigration and American Jobs* (2011). This document is also available at perma.cc/66K3-NZDQ.

30. Attached hereto as Exhibit 30 is a true and correct copy of a screenshot of a June 22, 2020 tweet from Migration Policy Institute (@MigrationPolicy) captured on July 28, 2020. The screenshot is also available at perma.cc/26QH-JCF6.

31. Attached hereto as Exhibit 31 is a true and correct copy of National Foundation for American Policy, *Updated Analysis of Employment Data for Computer Occupations* (June 2020). This document is also available at perma.cc/P7JB-NFBQ.

32. Attached hereto as Exhibit 32 is a true and correct copy of National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration*, The National Academies Press (2017). This document is also available at perma.cc/JU7U-LVJ2.

33. Attached hereto as Exhibit 33 is a true and correct copy of New American Economy Research Fund, *Sizing Up the Gap in our Supply of STEM Workers: Data & Analysis*

(Mar. 29, 2017). This document is also available at perma.cc/4BZR-ED9S.

34. Attached hereto as Exhibit 34 is a true and correct copy of Partnership for a New American Economy, *The H-1B Employment Effect: H-1Bs awarded between 2010-2013 will create more than 700,000 jobs for U.S.-born workers by 2020* (2015). This document is also available at perma.cc/C6T2-6TKZ.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 31, 2020
Washington, DC

PAUL W. HUGHES

Hughes Declaration

Exhibit 1

Federal Register
Vol. 85, No. 123
Thursday, June 25, 2020

Presidential Documents

Title 3—

The President

Proclamation 10052 of June 22, 2020

Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak

By the President of the United States of America

A Proclamation

The 2019 Novel Coronavirus (COVID–19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID–19 and reduce the spread of SARS–CoV–2, the virus that causes COVID–19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020—producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted "open-market" employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID–19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking

to fill worker positions tied to H–2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H–1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high—29.9 percent for 16–19 year olds, and 23.2 percent for the 20–24 year old group. The entry of additional workers through the H–1B, H–2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID–19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment—those who are typically ''last in'' during an economic expansion and ''first out'' during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation's immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Continuation of Proclamation 10014.* (a) Section 4 of Proclamation 10014 is amended to read as follows:

''**Sec. 4**. *Termination*. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.''

(b) This section shall be effective immediately.

Sec. 2. *Suspension and Limitation on Entry.* The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H–1B or H–2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. *Scope of Suspension and Limitation on Entry.* (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. *Implementation and Enforcement.* (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: 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 United States facilities to help the United States combat COVID–19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal,

or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. *Additional Measures.* (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS–CoV–2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB–2 or EB–3 immigrant visa or an H–1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H–1B nonimmigrants does not disadvantage United States workers.

Sec. 6. *Termination.* This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. *Effective Date.* Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

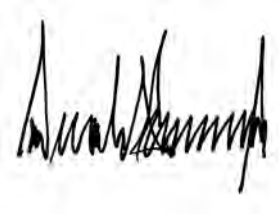
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–13888
Filed 6–24–20; 11:15 am]
Billing code 3295–F0–P

Hughes Declaration

Exhibit 2

Office of the Press Secretary

FOR IMMEDIATE RELEASE

June 22, 2020

BACKGROUND PRESS CALL
BY SENIOR ADMINISTRATION OFFICIAL
ON THE ADMINISTRATION'S UPCOMING IMMIGRATION ACTION

Via Teleconference

3:05 P.M. EDT

SENIOR ADMINISTRATION OFFICIAL: Thank you, sir. Good afternoon, everyone. Thanks so much for taking the time to join this background briefing regarding the administration's upcoming immigration action.

The ground rules are as follows: The information on the call is on background and can be attributable to a senior administration official. And the content is embargoed until the end of this call.

Today's participants are [senior administration officials].

As a reminder, participating in this call, you are agreeing to the ground rules I've set forth. And with that, I'll turn the call over to [senior administration official].

SENIOR ADMINISTRATION OFFICIAL: Thank you. I appreciate it. And I thank everybody for joining us today. This was a lot of immigration and economic news from the President. He is leading an America First recovery. And as part of that, he's extending and expanding the suspension of certain visas through the end of this calendar year 2020 -- so through December 31st.

You'll recall, on April 22nd, that he put in place a 60-day pause on incoming green cards coming into the country who can take any job they like once they're here. And that is being extended to the end of the year. And the President is expanding that measure in light of the -- frankly, the expanding unemployment and the number of Americans who are out of work. And he is going to include a number of non-immigrants visas: the H-1B visa, H-4 visa, the H-2B visa, and J and L visas.

The H-1B is the high-tech visa. H-4 is the spouses of certain other visa holders, including H-1B and H-2B. H-2B is a bit of a low-skill catchall. The only ones that'll come in under the H-2B will be those in the food service industry, which is less than 15 percent of all H-2Bs. And then, almost all working J visas will be excluded, and then all L visas. Ls are intra-company transfers from, say, company X, their facility in Germany to their facility in Michigan.

And the sum total of what these actions will do in terms of freeing up jobs over the course of the rest of 2020 is about 525,000 jobs. Quite a significant number, where President Trump is focusing on getting Americans back to work as quickly as possible after we've suffered this hit to our economy based on the coronavirus and the harm it's done.

I would also note that, today, based on instructions the President gave a long time ago, a regulation he's issuing to eliminate certain incentives to file for asylum claims for the purpose of getting a work permit. And while maintaining the integrity of the asylum system, the President has got us closing a bunch of those loopholes, which, in addition to cleaning up the asylum system, will also free up more jobs for Americans as well. That is done by regulation, however, not by the executive order.

So those -- the H-1Bs, the pause on visas, is the temporary action in the President's action today in the executive order. The more permanent actions that he is directing us to take include reforming the H-1B system to move in the direction of a more merit-based system. This is -- you hear the President talk all the time about getting the best and the brightest, and you also hear him talking about protecting American jobs. So these reforms will do both.

Under these reforms, the H-1B program is going to prioritize those workers who are offered the highest wages as the best proxy for what they bring to the table to add to the American economy. There is a cap on H-1B visas of 85,000 every year. Last year, 225,000 applications were received for those 85,000 visas. Up until this year, those visas have then been distributed by random lottery. So those 225,000 people, 85,000 pick of a lucky number, if you will.

The President has instructed us to get rid of the lottery and replace it with ranking the salaries -- so the top 85 [thousand] salary offers among the 225,000 or so applicants for those visas will get those visas. This will drive both the wage

level and the skill level of the H-1B applicants up. It will eliminate competition with Americans, it will reduce American competition in these industries at the entry level, and will do more to get the best and the brightest.

The President has also instructed us to close the loopholes that have allowed employers to, essentially, domestically outsource their labor by replacing American workers with low-cost foreign labor. And the way this loophole worked was the analysis of whether an incoming immigrant worker would displace an American worker was done at the company hiring the immigrant.

Well, if the company hires a bunch of immigrants and then subcontracts them out to another company -- say, Disney or AT&T, to just pick two historical examples -- then they end up displacing American workers at Disney and AT&T, both of which infamously had their American citizen employees training their H-1B replacements as their last act.

The President has instructed us to end that practice and will do so by regulation as soon as we possibly can.

The Department of Labor has also been instructed by the President to change the prevailing wage calculation and clean it up, with respect to H-1B wages. It has really -- it's an old, crazy system from the Clinton era, with four tiers, and the prevailing wage calculation is done in a variety of bases. And the Department of Labor is going to fix all that, with the idea of setting the prevailing wage floor at the 50th percentile so these people will be in the upper end of earnings -- again, so we're getting the best and the brightest, we're adding the most value to the economy, and we're maximizing the opportunity for Americans to get jobs.

The Secretary of Labor is also going to commence using his statutory authority to investigate abuses in the H1B states. While this statutory authority has existed, I do not believe that any Secretary of Labor, prior to Secretary Scalia, has ever sought to use it. And the President has directed him to do that. He's enthusiastic to commence that.

Some other permanent changes that are being ordered by the President are to start using -- getting biometrics prior to entry and doing security checks prior to matriculation into the U.S., travel to the United States, as opposed to the rather -- it is not a uniform set of checks before people arrive, currently.

The President has also directed HHS and CDC to identify what will be needed for those coming into the country to avoid bringing COVID-19 with them. This effort will undoubtedly be coupled with the analysis that is already ongoing about how travel can be conducted on a forward-going basis, across our land borders and via air and sea. So that will be a change you'll see coming from HHS and CDC.

And finally, the last item on this long list from the President is that he has directed DHS to eliminate work permits for those who have final orders of removal or who commit crimes in the United States or who are deportable here in the United States. That category alone is in excess of 50,000 jobs a year that will be opened up for Americans.

Taken together, the green card pause, along with the pausing of the H-1Bs, the H-4s, the H-2Bs, Js, and Ls, it will open up about 525,000 jobs for Americans, which is, the President's priority is getting Americans back to work.

So, with that, I am happy to answer questions. I would note -- I guess I'll make one last comment: We're hopeful that this is going to see broad bipartisan support. I mean, these are steps that people on the other side of the aisle have been supportive of, not just Republicans, including then-Senator Barack Obama, when he noted how migration can depress wages. That's particularly true in 13.5 percent unemployment versus, say, 3.5 percent that we had in a Trump economy back in January and February.

When he became President, one of his economic advisors, Paul Krugman, noted how wages for American citizens compete with immigrants. That's true. And high unemployment is -- it becomes less and less so as the unemployment rate gets closer and closer to zero.

So, in the current circumstances, this substantially improves circumstance to open up 525,000 jobs that might otherwise be taken by foreign workers -- legal, but foreign workers.

So, with that, I'm happy to open it up for questions.

MR. GIDLEY: Sure. I'd just like to remind the group to -- thanks. The information is on background and attributable to a senior administration official. All the content is embargoed until the end of the call. So now let's take some questions.

Q Good afternoon. This is Andrew Feinberg with Breakfast Media. Thanks for doing the call. Two questions. First, you said that, in total, these changes could result in 525,000 jobs being saved for Americans. There are 36 million -- there have

been 36 million unemployment claims filed over the last few months. Is this really a jobs program, or this is just being able to implement a longstanding, just, (inaudible) program on account of the COVID-19 pandemic?

And also, the exceptions for food service workers in the H-2B program that you're leaving in place, that includes, on your website, retail establishments, including restaurants. Would restaurants include, for instance, private clubs, golf clubs that serve food, hotels that serve food?

SENIOR ADMINISTRATION OFFICIAL: So let me -- let me cut you off. Let's not -- that is not -- we're not talking about retail restaurants and waiters; we're talking about seafood and food processing. We're talking about getting food from where I starts as a source to being able to eat, not the hospitality industry, not restaurants, not waiters -- none of the things you identified or named.

Q Yes, hello, this is Carrie Sheffield with JusttheNews.com. I'm wondering -- we did an interview with a civil rights leader who is African American, and she was looking in particular at the effects of illegal immigration on African Americans workers, of U.S. citizens. And I'm wondering, has your team done any analysis to say which American citizens might be benefitting from this program in terms of the (inaudible) to these programs and these immigration restrictions?

SENIOR ADMINISTRATION OFFICIAL: Sure. So if you read the President's April 22nd proclamation, you saw some language you will see repeated in today's proclamation, and that is an explicit concern for the people at the margin of the economy -- what the President calls the people who are first out and last in

-- to the economic benefits. And those are some of the people he's most concerned about, and those are some of the folks, in some of these visa categories, who will see some of the competition ease economically for certain job positions.

And so that is a major concern. And there's -- you know, the President is very proud of the fact that he created an economy that, for African Americans and Hispanics, reached the lowest unemployment level ever recorded. And I would note -- I'm over 50 years old, and we have spent more time with under 8 percent African American ~~employment~~ [unemployment] under President Trump alone than the entire rest of my life combined.

And he is determined to get back to that sort of economic circumstance so every American -- African American, Hispanic, white, Asian, whatever -- purple, green, whatever you are -- has the benefits that we were reaching towards with sub-4 percent unemployment. And that is a big part of why the President is trying the clear out this workspace for Americans.

And the first half of the last question was comparing the total number of unemployment claims to what we can do here, and the reality is the President is doing what he can do. This is a -- you know, the job creation measures, in the short term, are just that. They are short term. The long-term measures will have much longer-term effect, but they're not in the 525,000 job count. That comes later from the implementation of the long-term provisions and reforms that the President has ordered us to undertake.

Thank you for your question.

Q Hi, guys. This is Weijia Jiang with CBS News. Thanks

for doing this call. I'm wondering, in the 60 days that the order has already been in place, can you tell us how many American jobs have been protected and in what sectors, specifically?

SENIOR ADMINISTRATION OFFICIAL: So for the 60 days, that was green card recipients who would've come in, and rough estimate would be about 50,000 jobs in that time period. Cannot tell you the sectors. Just don't have the kind of data drilled down on that. I'd invite [senior administration official] if he knows different.

But there is -- when people come in with a green card, they have open market work opportunities. They can go to any job, anywhere -- whereas, say, H-2Bs and Js and H-1Bs, these are market restricted; they have particular types of jobs they can work in.

So for the last two months, we just don't have that kind of fidelity on where incoming green cards end up working in any particular period.

SENIOR ADMINISTRATION OFFICIAL: Yeah, that's correct. This is [senior administration official].

Just to add to that: When the State Department ultimately issues the immigrant visa before the applicant can travel into the United States, by and large, they're not -- I mean, they're checking everything on the application to make sure that it's valid, but they're not checking -- there's no need to, with a green card, to check what industry they'll be working in when they get here. Or, frankly, even if they accepted the employment-based one, for a family-based petition, we wouldn't

even know if they had a job lined up before they came in.

So we wouldn't be able to say that with any, sort of -- as [senior administration official] said, with any, sort of, fidelity.

Q Hi, Neil Munro at Breitbart. This is all very interesting. One of the things that's clear is that the major companies import these H-1Bs through the pipelines because they wish to replace Americans. And that, of course, means -- we have black, white, brown, losing -- Asians -- losing jobs to companies importing Indians and Chinese.

Are you guys going to look at this as a question of discrimination as, sort of, management policies that deliberately discriminate against Americans? And also, are we going to get that report about the -- estimating the total number of H-1Bs to be 600,000?

SENIOR ADMINISTRATION OFFICIAL: So, with respect to the discrimination question, the only thing in the executive order that gets to that is the President's directive to the Secretary of Labor to commence using statutory investigation authority. Of course, DOJ has authority, along the lines of the discrimination you described, but the new authority being brought to bear here is that of the Secretary of Labor.

And nothing in this executive order addresses any particular reports going out, and I don't know exactly where any of them are in the pipeline at the moment. But this is directed at action by the President, and really, we've hit all of the topics. The one where you'd see more enforcement would come from the Secretary of Labor. That would be over on top of what already exists. Thank

you.

MR. GIDLEY: I think we have time for one more question.

Q Hi, this Priscilla Alvarez from CNN. Thanks for the call. Could you lay out the exceptions to the visa categories that you detailed? And the work permits that you described and any new restrictions on that, will that be through regulation, and does it hit TPS and refugees as well?

SENIOR ADMINISTRATION OFFICIAL: Thanks, Priscilla. So it does not hit refugees. It does not -- TPS are people who are already here, so this addresses people who are not yet here. They would be applying for a visa to come in, and they would be barred travel. So for -- the two categories you mentioned are not covered.

The exceptions -- there are none under H-1B or H-4. H-2B, I noted -- the H-2B exception is those dealing in closest to agriculture or aquaculture, seafood, but not the kind of restaurant, hotel, club, et cetera, stuff you heard referenced earlier. That's about 10 to 15 percent of all H-2Bs are in either seafood or food processing. This is, you know, packaging up food to be distributed or participating in the distribution. There are no exemptions for any of the L visas.

The J visas focus, first and foremost, on work categories. So there are about 15 subcategories of Js. Most of them do not work. And let me see if I can pull this up real quick for you. But I know that there is interest in the au pairs. That's the question I get the most. The au pairs are excluded and as are pretty much all working Js, with the exception -- let me see if there are any exceptions. I believe

professors. Professors, scholars, that sort of thing -- those are the only working exception to the J exclusion. And that is the universe.

I would note that the exemptions from the April 22nd proclamation still stand, but the medical exemption has been narrowed dramatically to only those coming into work on COVID care or COVID research. And if you look back at the April proclamation, that was any medical worker coming in. And what we saw with the April data after the proclamation -- so we didn't see it until May -- was significant furloughs and layoffs across the board in the medical industries. So aside from fighting COVID, the President decided to narrow that down substantially for that exemption so that we can protect American workers in those industries as well.

Thank you for your questions, everyone. I appreciate you taking some time with us today. And, Hogan, thanks for having us.

MR. GIDLEY: Sure. Thanks so much, guys. Just remember, the call is on background, attributable to senior administration officials. And the embargo is now lifted. Thanks.

END 3:29 P.M. EDT

The White House · 1600 Pennsylvania Ave NW · Washington, DC 20500-0003 · USA · 202-456-1111

Hughes Declaration

Exhibit 3

U.S. Department of
Homeland Security

Trump Administration, DHS Prioritizes American Citizens for American Jobs

Release Date: June 22, 2020

Trump Administration moves to suspend foreign worker visas as nation undertakes economic recovery following COVID-19 closures.

The Department of Homeland Security (DHS) announced it will begin implementing a Trump Administration proclamation to protect American workers in the wake of unprecedented unemployment caused by COVID-19.

“The President is taking decisive action to put American families and workers first in the reopening of the economy and the Department stands ready to implement this important executive action,” said DHS Acting Secretary Chad F. Wolf. “This proclamation ensures Americans are first in line for American jobs as the economy reopens.”

The proclamation unveiled by President Trump directs the Department of Homeland Security to undertake a two-part approach to ensure employers put Americans first.

First, the proclamation uses presidential authority under Section 212(f) of the Immigration and Nationality Act to temporarily pause the issuance of certain new nonimmigrant visas until December 31, 2020, which could be extended as necessary. The visa categories paused include H-1B, H-2B, L and certain J nonimmigrants. The stipulations will not apply to foreign workers already in the country on existing visas or foreign nationals already in possession of visas at the time of the proclamation’s effective date.

Second, DHS is also directed to use all available tools to transition to a merit-based immigration system, ending often-exploited avenues for fraud and abuse. New provisions include non-displacement provisions, which prohibit companies from laying off American workers only to replace citizen employees with foreign nationals, and new efforts to prevent illegal aliens from obtaining work permits.

DHS is also working with United States Government partners to ensure enhanced medical screening procedures are in place for foreign workers in the event that travel suspensions are lifted as well as to improve biometric collection. Existing policies for both matters will be expanded and improved in the coming days.

The full text is available here. (https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/)

Topics: Citizenship and Immigration Services (/topics/immigration-and-citizenship-services), Secretary of Homeland Security (/topics/secretary-homeland-security)

Keywords: Acting Secretary Chad Wolf (/keywords/acting-secretary-chad-wolf), Coronavirus (COVID-19) (/keywords/coronavirus-covid-19), U.S. Citizenship and Immigration Services (USCIS) (/keywords/uscis), President Trump (/keywords/president-trump)

Last Published Date: July 9, 2020

Hughes Declaration

Exhibit 4

Search Twitter

Acting Deputy Secretary Ken Cuccinelli
@HomelandKen

.@realDonaldTrump has "made rubber meet the road" when it comes to protecting over half a million jobs for American workers.

6:57 PM · Jun 22, 2020 · Twitter Web App

41 Retweets and comments **77** Likes

Hughes Declaration

Exhibit 5


Search Twitter
clarify .
1
Travel - State Dept
@TravelGov
Replying to @ajaycse2006
@ajaycse2006 @raghuchalla0620 Suspension of entry applies to those who do not have a valid nonimmigrant visa as of June 24, 2020. We will not be issuing H-1B, H-2B, L, or certain J visas, and their derivatives through December 31, 2020, unless an exception applies.
8:31 AM · Jun 25, 2020 · Hootsuite Inc.
1 Retweet and comment

Hughes Declaration

Exhibit 6

Search Twitter

Travel - State Dept
@TravelGov

Replying to @dawnfunari @gsiskind and @abi_srivastava

@dawnfunari @gsiskind @abi_srivastava Hi Dawn - We will not be issuing H-1B, H-2B, L, certain J visas, or their derivatives through December 31, 2020, unless an exception applies. See the link for exceptions:

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor M...
The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers hav
whitehouse.gov

9:06 AM · Jun 26, 2020 · Hootsuite Inc.

15 Retweets and comments **5** Likes

Hughes Declaration

Exhibit 7

Search Twitter

proclamation.

28 21 23

Travel - State Dept
@TravelGov

Replying to @3alimustafa

@3alimustafa Hi Ali - We will not be issuing H-1B, H-2B, L, or certain J visas, and their derivatives through December 31, 2020, unless an exception applies. See Proclamation for exceptions: whitehouse.gov/presidential-a... Please also see this amendment:

Proclamation on Amendment to Proclamation 10052 | The White House
By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Im
whitehouse.gov

8:15 AM · Jun 30, 2020 · Hootsuite Inc.

Hughes Declaration

Exhibit 8


Search Twitter
Travel - State Dept
@TravelGov
Replying to @iamkhusro1 @ExcludeFromBan and 13 others
@iamkhusro1 Without a valid visa on June 24, 2020, or physical presence in the US on that date, you are subject to the Proclamation's restrictions. The Proclamation's restrictions are set to expire on Dec. 31, 2020, unless extended by the President.
9:22 AM · Jul 21, 2020 · Hootsuite Inc.
8 Retweets and comments
2 Likes

Hughes Declaration

Exhibit 9


Search Twitter
Travel - State Dept
@TravelGov
Replying to @AshSanthanagop1 @ExcludeFromBan and 13 others
@AshSanthanagop1 An approved petition is not a valid US visa. If you did not have a valid visa on June 24, 2020, and you were not present in the US on that date, you are subject to the Proclamation. The Proclamation's restrictions expire on Dec. 31, 2020, unless extended.
9:30 AM · Jul 21, 2020 · Hootsuite Inc.
1 Retweet

Hughes Declaration

Exhibit 10

FAQs

Share RSS

Have A Question?

Ask Us

What is the lowest level of unemployment that the U.S. economy can sustain?

It is not possible to know exactly how low the unemployment rate may be able to fall in a sustained way without causing excessive inflation. The so-called normal or "natural" rate of unemployment is estimated using historical relationships between employment and inflation. But those estimates vary widely.

Recent experience suggests that the relationship between unemployment and inflation may be weaker than it was in the past, allowing unemployment to remain low without sparking unwanted inflation. As a result, estimates of the natural rate of unemployment have declined in recent years. Even in good times, a healthy, dynamic economy will have at least some unemployment as workers switch jobs, and as new workers enter the labor market and other workers leave it. The lowest level of unemployment that the economy can sustain also changes over time as the labor force changes and employers use new ways to search for workers and workers use new ways to find jobs.

Some estimates suggest that the long-run normal level of the unemployment rate--the level that the unemployment rate would be expected to reach over the next five to six years in the absence of shocks to the economy--is in a range between 3.5 percent and 4.5 percent.

Policymakers' judgments about the long-run normal rate of unemployment, published four times a year in the Summary of Economic Projections, are generally in this range as well.

Though a variety of factors influence the level of unemployment in the economy, the Federal Reserve makes monetary policy decisions that aim to foster the lowest level of unemployment that is consistent with stable prices.

Related Information

FOMC economic projections FAQs

Bureau of Labor Statistics

June 10, 2020
Federal Reserve Board and Federal Open Market Committee release economic projections from the June 9-10 FOMC meeting

Last Update: June 10, 2020

Hughes Declaration

Exhibit 11

Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends

Ruth Ellen Wasem
Specialist in Immigration Policy

January 13, 2016

Congressional Research Service
7-5700
www.crs.gov
R43735

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Temporary visas for professional, managerial, and skilled foreign workers have become an important gateway for high-skilled immigration to the United States. Over the past two decades, the number of visas issued for temporary employment-based admission has more than doubled from just over 400,000 in FY1994 to over 1 million in FY2014. While these visa numbers include some unskilled and low-skilled workers as well as accompanying family members, the visas for managerial, skilled, and professional workers dominate the trends.

Since 1952, the Immigration and Nationality Act (INA) has authorized visas for foreign nationals who would perform needed services because of their high educational attainment, technical training, specialized experience, or exceptional ability. Today, there are several temporary visa categories that enable employment-based temporary admissions for highly skilled foreign workers. These visa categories are commonly referred to by the letter and numeral that denote their subsection in the INA. They perform work that ranges from skilled labor to management and professional positions to jobs requiring extraordinary ability in the sciences, arts, education, business, or athletics.

Policy makers and advocates have focused on two visa categories in particular: H-1B visas for professional specialty workers, and L visas for intra-company transferees. These two nonimmigrant visas epitomize the tensions between the global competition for talent and potential adverse effects on the U.S. workforce. The employers of H-1B workers are the only ones required to meet labor market tests in order to hire professional, managerial, and skilled foreign workers.

Although foreign students on F visas are generally barred from off-campus employment, some F-1 foreign students are permitted to participate in employment known as Optional Practical Training (OPT) after completing their undergraduate or graduate studies. OPT is temporary employment that is directly related to an F-1 student's major area of study. Generally, an F-1 foreign student may work up to 12 months in OPT status. In 2008, the Bush Administration added a 17-month extension to OPT for F-1 students in STEM fields, and the Obama Administration recently proposed a 24-month extension for F-1 students in STEM fields.

Congress has an ongoing interest in regulating the immigration of professional, managerial, and skilled foreign workers to the United States. This workforce is seen by many as a catalyst of U.S. global economic competitiveness and is likewise considered a key element of the legislative options aimed at stimulating economic growth. The challenge central to the policy debate is facilitating the migration of professional, managerial, and skilled foreign workers without putting downward pressures on U.S. workers and U.S. students entering the labor market.

Contents

Overview of the Issues 1
Policy Questions 3
Specific Concerns 3
H-1B Visa Issues 3
L-1 Visa Issues 5
Managerial, Professional, and Skilled Workers 6
Temporary Professional Specialty Worker: H-1B Visas 6
Treaty Professional Specialty Workers: TN and E-3 Visas 9
Cultural Exchange Workers: J and Q Visas 9
"Conrad 30" J Visa Waiver 9
Q Cultural Exchange 10
Multinational Executive and Specialist Employees: L-1 Visas 10
International Investors and Traders: E Visas 10
Persons with Outstanding and Extraordinary Ability: O and P Visas 10
Religious Workers: R Visas 11
Trends by Category of Worker 11
Optional Practical Training (OPT) 13
Taxation Rules and Exceptions 15
Federal Income Taxes 15
Social Security and Medicare Taxes 15
Opportunities for Legal Permanent Residence 16
Dual Intent and the §214(b) Presumption 17
Concluding Comments 18

Figures

Figure 1. Temporary Employment-Based Visas Issued, FY1994-FY2014 2
Figure 2. Total H-1B Petitions Approved, FY1994-FY2014 8
Figure 3. Visas Issued to Principals by Categories of Temporary Managerial, Professional, and Skilled Employees in FY2014 12
Figure 4. Trends in Temporary Managerial, Professional, and Skilled Employee Visas Issued, FY1994–FY2014 13
Figure 5. F-1 Foreign Students Approved for Optional Practical Training: 14

Contacts

Author Contact Information 18
Acknowledgments 18

Congress has an ongoing interest in regulating the immigration of professional, managerial, and skilled foreign workers to the United States. This workforce is seen by many as a catalyst of U.S. global economic competitiveness and is likewise considered a key element of the legislative options aimed at stimulating economic growth. The challenge central to the policy debate is facilitating the migration of professional, managerial, and skilled foreign workers without adversely affecting U.S. workers and U.S. students entering the labor market.

This report opens with an overview of the policy issues. It follows with a summary of each of the various visa categories available for temporary professional, managerial, and skilled foreign workers as well as an analysis of the trends in the use of these various visas over the past two decades. The policy of authorizing foreign students to work in the United States for at least a year following graduation is discussed next. The labor market tests for employers hiring temporary foreign workers are also summarized. The rules regarding federal taxation of professional, managerial, and skilled foreign workers are explained. The report concludes with a discussion of the avenues for professional, managerial, and skilled foreign workers to become legal permanent residents (LPRs) in the United States.

Overview of the Issues

Temporary visas for professional, managerial, and skilled foreign workers have become an important gateway for high-skilled immigration to the United States.[1] Over the past two decades, the number of visas issued annually for temporary employment-based admission has more than doubled from just over 400,000 in FY1994 to over 1 million in FY2013 and FY2014.[2] As **Figure 1** shows, the total number of temporary employment-based visas issued in FY2007 and FY2008 surpassed 1 million and subsequently fell during the 2007-2009 recession.[3] While the total visa numbers include some unskilled and low-skilled workers,[4] the visas for managerial, skilled, and professional workers depicted in **Figure 1** clearly dominate the trends. FY2014 has surpassed the prior peak year of FY2007 (729,137) as it reached 765,226 visas issued to managerial, skilled, and professional workers.

The data presented in **Figure 1** understate the trends in professional, managerial, and skilled foreign workers because the State Department does not issue visas to nonimmigrants who change status within the United States. For example, a foreign national who is in the United States as a student may convert status to a temporary foreign worker nonimmigrant without going abroad to obtain a new visa. For comparison, the Department of Homeland Security Office of Immigration Statistics estimated that there were approximately 1.1 million temporary workers and long-term exchange residents living in the United States in January 2012;[5] the State Department reported 936,824 visas issued to temporary employment-based workers and their families in FY2012.[6]

[1] Temporary visas are issued for an expressed purpose and a specific period of time. In most cases, the foreign national must demonstrate they have a "home they have no intention of abandoning" in their native country. For more background on temporary visas, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

[2] Bureau of Consular Affairs, *Report of the Visa Office*, U.S. Department of State, Table XVI, multiple years.

[3] From December 2007 to June 2009, the economy experienced the longest and deepest recession since the Great Depression of the 1930s. CRS Report R41578, *Unemployment: Issues in the 113th Congress*, by Jane G. Gravelle

[4] In FY2014, the total of 1,034,858 nonimmigrants included 160,065 temporary foreign workers in agriculture, seasonal or shortage occupations, or trainee positions. It also included 109,147 spouses and minor children of temporary workers. Bureau of Consular Affairs, *Report of the Visa Office 2014*, U.S. Department of State, Table XVI, 2015.

[5] Bryan Baker, *Estimates of the Size and Characteristics of the Resident Nonimmigrant Population in the United States:*
(continued...)

Figure 1. Temporary Employment-Based Visas Issued, FY1994-FY2014

Source: CRS presentation of data from the annual reports of the U.S. Department of State Office of Visa Statistics.

Notes: Includes managerial, professional, skilled, and unskilled temporary employees and accompanying family; does not include foreign nationals converting to temporary employment-based visas within the United States.

The foreign labor certification program in the U.S. Department of Labor (DOL) is responsible for ensuring that foreign workers do not displace or adversely affect the working conditions of U.S. workers. Under current law, DOL adjudicates labor certification applications (LCA) for permanent employment-based immigrants.[7] Many of the foreign nationals entering the United States on a temporary basis for employment, however, are *not* subject to any labor market tests (i.e., demonstrating that there are not sufficient U.S. workers who are able, willing, qualified, and available), and as a result, their employers do not file LCAs with the DOL. There are several groups of temporary foreign employees, however, that are covered by labor market tests.[8] DOL adjudicates the streamlined LCA known as *labor attestations* for certain temporary workers, as discussed more fully below.[9]

(...continued)

January 2012, U.S. Department of Homeland Security Office of Immigration Statistics, Population Estimates, February 2014.

[6] Bureau of Consular Affairs, *Report of the Visa Office 2012*, U.S. Department of State, Table XVI, 2013.

[7] The INA bars the admission of employment-based lawful permanent residents who seek to enter the U.S. to perform skilled or unskilled labor, unless it is determined that (1) there are not sufficient U.S. workers who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the United States.

[8] Employers of those entering with H visas are generally required to have approved labor attestations, which includes H-2A temporary agricultural workers, and H-2B temporary nonagricultural workers as well as H-1B temporary professional workers.

[9] For a fuller discussion and analysis, see CRS Report R43223, *The Framework for Foreign Workers' Labor Protections Under Federal Law*, by Margaret Mikyung Lee and Jon O. Shimabukuro; and, CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

Policy Questions

The admission of professional, managerial, and skilled foreign workers poses a complex set of policy questions as the United States competes internationally for the most talented workers in the world, while the nation also contends with historically high long-term unemployment rates and youth unemployment rates.[10]

- Should the number of professional, managerial, and skilled foreign workers be numerically limited each year? If so, should some classes or types of workers be exempt from numerical limits?
- Should employers of professional, managerial, and skilled foreign workers be required to meet labor markets tests, such as making efforts to recruit U.S. workers and offering wages and benefits that are comparable to similarly employed U.S. workers?
- What, if any, labor protections and worker rights should be extended to professional, managerial, and skilled foreign workers to prevent abuse or exploitation of the worker?
- What, if any, guarantees should professional, managerial, and skilled foreign workers make to their employers to ensure the contractual obligations are met?
- Should professional, managerial, and skilled foreign workers have "visa portability" so they can change jobs? If so, to what visa categories and under what circumstances should visa portability apply?
- Should regulations governing the admission of professional, managerial, and skilled foreign workers be streamlined so that the rules are less time consuming and burdensome for employers?
- Should professional, managerial, and skilled foreign workers be permitted to have "dual intent," that is, to apply for lawful permanent resident (LPR) status while seeking or renewing temporary visas? If so, for what visa categories and under what circumstances should dual intent be permitted?

Specific Concerns

In addition to these cross-cutting questions, policy makers and advocates have focused on two visa categories in particular: H-1B visas for professional specialty workers, and L visas for intra-company transferees. These two nonimmigrant visas epitomize the tensions between the global competition for talent and potential adverse effects on the U.S. workforce.

H-1B Visa Issues

H-1B visas are for temporary "professional specialty workers," an employment category closely associated with science, technology, engineering, and mathematics (STEM) fields, but not limited to them.[11] The H-1B visa has been an important avenue for many U.S. businesses seeking to

[10] For an in-depth discussion of the employment rates, see CRS Report R43476, *Returning to Full Employment: What Do the Indicators Tell Us?*, by Marc Labonte

[11] For a fuller discussion of science, technology, engineering, and mathematics (STEM) fields, see CRS Report R42642, *Science, Technology, Engineering, and Mathematics (STEM) Education: A Primer*, by Heather B. Gonzalez and Jeffrey J. Kuenzi.

recruit high-skilled foreign workers, but the category has numerical limits. [12] Applications for new H-1B workers have routinely exceeded such limits in recent years—in some years exceeding limits during the first week or even on the first day that applications are received. In addition to these concerns about whether employers have adequate access to H-1B workers, some Members of Congress have raised questions about whether H-1B workers may be placing downward pressure on wages and benefits as well as discouraging or displacing U.S. students in STEM fields.[13]

Over the years, the U.S. Government Accountability Office (GAO) has issued reports that recommended more controls to protect workers, to prevent abuses, and to streamline services in the issuing of H-1B visas. GAO has observed that the U.S. Department of Labor (DOL) has limited authority to question information on the labor attestation form and to initiate enforcement activities.[14] In 2011, GAO identified several weaknesses in the H-1B program's ability to protect workers: (1) oversight that is fragmented between four agencies and restricted by law; (2) lack of legal authority to hold employers accountable to program requirements when they obtain H-1B workers through a staffing company; and (3) expansions that have increased the pool of H-1B workers beyond the cap and lowered the bar for eligibility.[15]

A 2008 internal Department of Homeland Security (DHS) investigation of H-1B visa adjudications found a 13.4% fraud rate as well as a 7.3% technical violation rate. Violations reportedly ranged from document fraud to deliberate misstatements regarding job locations, wages paid, and duties performed. The investigation also discovered that some petitioning employers shifted the burden of paying various filing fees to foreign workers. A 2010 DHS

---

[12] National Academy of Sciences, National Academy of Engineering, and Institute of Medicine, *Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future*, Committee on Prospering in the Global Economy of the 21st Century, 2007; Brookings Institution and George Mason University, *Immigration Policy: Highly Skilled Workers and U.S. Competitiveness and Innovation*, Forum hosted by the Brookings Center for Technology Innovation and the George Mason Center for Science and Technology Policy, February 7, 2011; Vivek Wadhwa, Guillermina Jasso, and Ben Rissing, et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain, part III*, Duke University, New York University, Harvard Law School and the Ewing Marion Kauffman Foundation, August 2007; U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *H-1B Visas: Designing a Program To Meet the Needs of the U.S. Economy and U.S. Workers*, 112th Cong., 1st sess., March 31, 2011; U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *STEM the Tide: Should America Try to Prevent an Exodus of Foreign Graduates of U.S. Universities with Advanced Science Degrees?*, 112th Cong., 1st sess., October 5, 2011; and, Mallie Jane Kim, "Chamber of Commerce, Bloomberg Push Immigration Reform," *U.S. News & World Report*, September 28, 2011.

[13] Richard Freeman, "The Market for Scientists and Engineers," *NBER Reporter*, no. 3 (Summer 2007); Rudy M. Baum, "Unemployment Data Worst In 40 Years," *Chemical and Engineering News*, March 21, 2012; U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security, *The Economic Imperative for Enacting Immigration Reform*, answers to questions for the record, witness Professor Ron Hira, 112th Cong., 1st sess., July 26, 2011U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *H-1B Visas: Designing a Program To Meet the Needs of the U.S. Economy and U.S. Workers*, testimony of Professor Ron Hira, 112th Cong., 1st sess., March 31, 2011; and, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *STEM the Tide: Should America Try to Prevent an Exodus of Foreign Graduates of U.S. Universities with Advanced Science Degrees*, testimony of Dr. B. Lindsey Lowell, 112th Cong., 1st sess., October 5, 2011.

[14] U.S. General Accounting Office, *H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers*, GAO/HEHS-00-157, September 2000; U.S. General Accounting Office, *H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce*, GAO-03-883, September 2003; and, U.S. Government Accountability Office, *H-1B Visa Program: Reforms are Needed to Minimize the Risks and Costs of Current Program*, GAO-11-26, January 14, 2011.

[15] U.S. Government Accountability Office, *H-1B Visa Program: Multifaceted Challenges Warrant Re-examination of Key Provisions*, GAO-11-505T, March 31, 2011, p.2, http://www.gao.gov/assets/90/82421.pdf.

investigation found a 14% "not verified" rate, which U.S. Citizenship and Immigration Services (USCIS) officials cited to suggest a reduced level of fraud in the H-1B program.[16] It was unclear, however, how the 14% "not verified" rate compared with 13.4% fraud rate and the 7.3% technical violation rate.

Media coverage of the links between H-1B workers and outsourced jobs has sparked outrage, and a bipartisan group of Members has called for further investigations and legislative action.[17] More specifically, the major U.S. utility company Southern California Edison announced plans in early 2015 to lay off 400 U.S. technology workers and to outsource the technology-related work to companies in India. The India-based companies reportedly proposed to use H-1B workers to perform technology-related work that would remain in California.[18] More recently, the *New York Times* published a series that exposed companies such as Disney and Toys 'R' Us requiring their U.S. workers to train H-1B workers before their positions were outsourced overseas.[19]

L-1 Visa Issues

The L-1 intra-company transferee visa was established for companies that have offices abroad to transfer key personnel freely within the organization.[20] It is considered a visa category essential to retaining and expanding international businesses in the United States. Some, however, have raised concerns that intra-company transferees on the L-1 visa may displace U.S. workers who had been employed in those positions for these firms in the United States. Others express concern that the L-1 visa has become a substitute for the H-1B visa, noting that L-1 employees are often comparable in skills and occupations to H-1B workers, yet lack the labor market protections the law sets for hiring H-1B workers. These concerns have been raised, in particular, with respect to certain outsourcing and information technology firms that employ L-1 workers as subcontractors within the United States. A related concern is that an unchecked use of L-1 visas will foster the transfer of STEM and other high-skilled professional jobs overseas, as managers and specialists gain experience in the United States before they transfer the operations abroad. After investigating the L-1 visa, the Department of Homeland Security Inspector General offered this assessment: "That so many foreign workers seem to qualify as possessing specialized knowledge appears to have led to the displacement of American workers, and to what is sometimes called the

[16] Office of Fraud Detection and National Security, *H-1B Benefit Fraud and Compliance Assessment*, U.S. Citizenship and Immigration Services, September 2008; and, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers*, testimony of Donald Neufeld, USCIS Associate Director,112th Cong., 1st sess., March 31, 2011.

[17] Lisa Mascaro and Jim Puzzanghera, "Senators seek federal investigation of alleged H-1B visa abuse at Edison," *The Los Angeles Times*, April 9, 2015; Julia Preston, "Senator Seeks Inquiry Into Visa Program Used at Disney," *The New York Times*, June 4, 2015; and, Office of U.S. Senator Chuck Grassley, "Grassley, Durbin Push for H-1B and L-1 Visa Reforms," press release, November 15, 2015, http://www.grassley.senate.gov/news/news-releases/grassley-durbin-push-h-1b-and-l-1-visa-reforms?et_rid=79443772&et_cid=106146.

[18] Shan Li and Matt Morrison, "Edison's plans to cut jobs, hire foreign workers is assailed," *Los Angeles Times*, February 10, 2015; Editorial Board, "End H-1B visa program's abuse," *The Los Angeles Times*, February 16, 2015.

[19] Julia Preston, "Toys 'R' Us Brings Temporary Foreign Workers to U.S. to Move Jobs Overseas," *The New York Times*, September 29, 2015; Julia Preston, "In Turnabout, Disney Cancels Tech Worker Layoffs," *The New York Times*, June 16, 2015; Julia Preston, "Senator Seeks Inquiry Into Visa Program Used at Disney," *The New York Times*, June 4, 2015; and Julia Preston, "Pink Slips at Disney. But First, Training Foreign Replacements," *The New York Times*, June 3, 2015.

[20] Spouses and children of L-1 visaholders may be issued the L-2 visa.

'body shop' problem."[21] Legislation to address these concerns is frequently linked with H-1B reform.[22]

On the other hand, concern is being expressed about the increase in denials of L-1 visas as well as the increase in requests for additional evidence in order to adjudicate the L petition. Stuart Anderson of the National Foundation for American Policy analyzed the subset of L-1 petitions for employees with specialized knowledge (L-1B). Over a 10-year period from FY2004 to FY2013, denials of L-1B petitions rose from 10% in FY2004 to 34% in FY2013. The same study reported that requests for additional evidence went from 2% of L-1B petitions to 46% of L-1B petitions.[23] Immigration attorney and former chief counsel at USCIS Lynden Melmed is quoted as saying, "(I)t is very difficult for companies to make business decisions when there is so much uncertainty in the L-1 visa process. A company is going to be unwilling to invest in a manufacturing facility in the U.S. if it does not know whether it can bring its own employees into the country to ensure its success."[24]

It is difficult to assess the merits of these concerns without a deeper understanding of the temporary visas for professional, managerial, and skilled foreign workers. The following section of this report delves into the purposes of the various visas, the statutory rules that govern admission under these visas, and the trends in usage of these visas.

Managerial, Professional, and Skilled Workers

When it was enacted in 1952, the Immigration and Nationality Act (INA) authorized visas for foreign nationals who would perform needed services because of their high educational attainment, technical training, specialized experience, or exceptional ability. Today, there are several temporary visa categories that enable employment-based temporary admissions for highly skilled foreign workers. These visa categories are commonly referred to by the letter and numeral that denote their subsection in the INA.[25] They perform work that ranges from skilled labor to management and professional positions to jobs requiring extraordinary ability in the sciences, arts, education, business, or athletics.

Temporary Professional Specialty Worker: H-1B Visas

The INA makes H-1B nonimmigrant visas available for foreign workers in "specialty occupations," which the regulations define as requiring theoretical and practical application of a body of highly specialized knowledge in a field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, law, accounting, business specialties, theology, and the arts, and requiring the

[21] Office of the Inspector General, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, U.S. Department of Homeland Security , OIG-06-22, January 2006, p. 9, http://www.oig.dhs.gov/assets/Mgmt/OIG_06-22_Jan06.pdf.

[22] Office of U.S. Senator Chuck Grassley, "Grassley, Durbin Push for H-1B and L-1 Visa Reforms," press release, November 15, 2015, http://www.grassley.senate.gov/news/news-releases/grassley-durbin-push-h-1b-and-l-1-visa-reforms?et_rid=79443772&et_cid=106146.

[23] Stuart Anderson, *L-1 Denial Rates for High Skilled Foreign Nationals Continue to Increase*, National Foundation for American Policy, NFAP Policy Brief, March 2014.

[24] Stuart Anderson, *L-1 Denial Rates for High Skilled Foreign Nationals Continue to Increase*, National Foundation for American Policy, NFAP Policy Brief, March 2014. The Melmed quote is on page 3.

[25] For a fuller discussion and analysis, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

attainment of a bachelor's degree or its equivalent as a minimum.[26] Current law generally limits annual H-1B admissions to 65,000, but most H-1B workers are exempted from the limits because they are returning workers or they work for universities and nonprofit research facilities that are exempt from the cap.[27]

Prospective employers of H-1B workers must submit a labor attestation to the Secretary of Labor before they can file petitions with USCIS to bring in foreign workers. The H-1B labor attestation, a three-page application form, is a statement of intent rather than a documentation of actions taken. In the labor attestation for an H-1B worker, the employer must attest that the firm will pay the nonimmigrant the greater of the actual wages paid to other employees in the same job or the prevailing wages for that occupation, that the firm will provide working conditions for the nonimmigrant that do not cause the working conditions of the other employees to be adversely affected, and that there is no applicable strike or lockout. The firm must provide a copy of the labor attestation to representatives of the bargaining unit or—if there is no bargaining representative—post the labor attestation in conspicuous locations at the work site.[28]

H-1B Dependent Requirements

The law requires that employers defined as H-1B dependent (generally firms with at least 15% of the workforce who are H-1B workers) meet additional labor market tests.[29] These H-1B dependent employers must also attest that they tried to recruit U.S. workers and that they have not displaced U.S. workers in similar occupations within 90 days prior to or after the hiring of H-1B workers. Additionally, the H-1B dependent employers must offer the H-1B workers compensation packages (not just wages) that are comparable to U.S. workers.[30]

All prospective H-1B nonimmigrants must demonstrate to USCIS that they have the requisite education and work experience for the posted positions. After DOL has approved the labor attestation, USCIS processes the petition for the H-1B nonimmigrant (assuming other immigration requirements are satisfied) for periods up to three years. A foreign national can stay a maximum of six years on an H-1B visa.

H-1B Trends

The Immigration Act of 1990 set an annual cap of 65,000 H-1B workers, a level not reached in the early years of the visa category. As the information technology industry began turning to H-1B visas for temporary foreign workers, the limits of the cap were reached. Although Congress enacted legislation in 1998 to increase the number of H-1B visas,[31] that annual ceiling of 115,000

[26] 8 C.F.R. §214.2(h)(4). Law and regulations also specify that fashion models deemed "prominent" may enter on H-1B visas.

[27] For more on H-1B admissions, see CRS Report R42530, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, by Ruth Ellen Wasem.

[28] INA §212(n); 8 C.F.R. §214.2(h)(4). For a further discussion of labor attestations, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

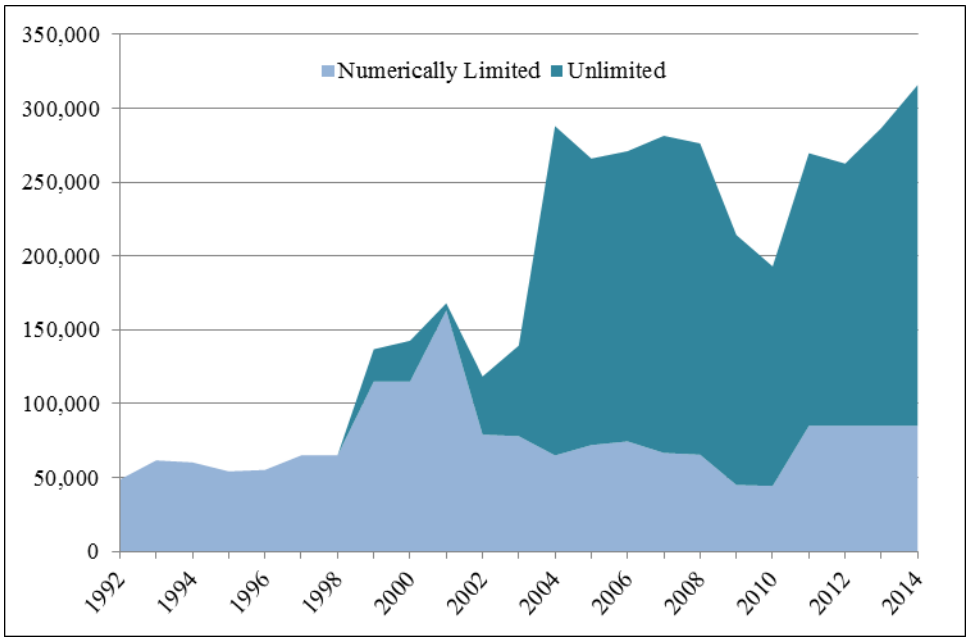
[29] The American Competitiveness and Workforce Improvement Act (ACWIA) (Title IV of P.L. 105-277) defined H-1B dependent employers as follows: firms having 25 or less employees, of whom at least 8 are H-1Bs; firms having 26-50 employees of whom at least 13 are H-1Bs; firms having at least 51 employees, 15% of whom are H-1Bs; excludes those earning at least $60,000 or having masters degrees. CRS Report 98-531, *Immigration: Nonimmigrant H-1B Specialty Worker Issues and Legislation*, by Ruth Ellen Wasem (archived).

[30] INA §212(n).

[31] Title IV of the FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277).

visas was reached months before FY1999 and FY2000 ended. Many in the business community, notably in the information technology area, once more urged that the ceiling be raised. In 2000, Congress enacted legislation to raise the annual ceiling to 195,000 for three years and to permanently exempt those H-1B workers who are renewing their visas or who work for universities and nonprofit research facilities from the 65,000 cap.[32] During this temporary period, the higher cap of 195,000 was not met because an increasing number of H-1B workers were now exempt from the cap. A subsequent provision also annually exempts up to 20,000 aliens holding a master's or higher degree from the numerical limit on H-1B visas.[33] The impact of these temporary increases in the cap, as well as the exemptions to the cap, is evident in **Figure 2.**

Figure 2. Total H-1B Petitions Approved, FY1994-FY2014



Source: CRS presentation of data from the DHS Office of Immigration Statistics (OIS) and its predecessor in the Immigration and Naturalization Service.

Notes: Congress increased the H-1B cap to 115,000 for FY1999-FY2000 and to 195,000 for FY2001-FY2003. The H-1B Visa Reform Act of 2004 set aside up to 20,000 H-1B visas for those who have U.S.-earned masters or higher degrees in addition to the 65,000 cap. Not all H-1B workers with approved petitions actually use the visa.

In FY2014, USCIS approved 318,824 H-1B professional specialty worker petitions, an increase from a 21st century low point of 192,990 in FY2010 following the 2007-2009 recession.[34] The previous high point was 288,000 H-1B professional specialty worker petitions approved in FY2004. Although current law sets a numerical limit of 65,000 H-1B workers each year (plus 20,000 with masters degrees), only initial grants are counted under the cap. As **Figure 2** displays, over the past decade more H-1B workers were approved outside of the numerical limits than under the cap. Not all H-1B workers with approved petitions actually use the visa.

[32] The American Competitiveness in the Twenty-First Century Act of 2000 (P.L. 106-313).

[33] The Consolidated Appropriations Act of 2005 (P.L. 208-447) included the H-1B Visa Reform Act of 2004.

[34] The National Bureau of Economic Research (NBER) maintains a timeline of the U.S. business cycle and declares when a recession begins and ends. According to the NBER, a peak was reached in December 2007, marking the end of the expansion that began in November 2001 and the beginning of the recession that ended in June 2009. CRS Report R40052, *What is a Recession and Who Decided When It Started?*, by Brian W. Cashell.

Over the years, a noteworthy portion of H-1B beneficiaries have worked in STEM occupations. In FY2014, the most recent year for which detailed data on H-1B beneficiaries (i.e., workers renewing their visas as well as newly arriving workers) are available, 203,425 H-1B workers were employed in computer-related occupations, and they made up 65% of all H-1B beneficiaries that year. Of all H-1B beneficiaries in FY2014, 45% had a bachelor's degree, 47% had a master's or professional degree, and almost 8% had a doctorate degree. The median salary reported for all H-1B beneficiaries in FY2014 was $75,000.[35]

Treaty Professional Specialty Workers: TN and E-3 Visas

There are two nonimmigrant visa categories quite similar to H-1B visas that are designated for temporary professional workers from specific countries. These visas are based upon specific trade agreements foreign nations have signed with the United States. Canadian and Mexican temporary professional workers may enter according to terms set by the North American Free Trade Agreement (NAFTA) on TN visas. The E-3 treaty professional visa is a temporary work visa limited to citizens of Australia.[36] Occupationally, they mirror the H-1B visa in that the foreign worker on an E-3 visa or a TN visa must be employed in a specialty occupation. Employers of E-3 workers are required to file a labor attestation. The TN visa is valid for one year and is renewable.

Cultural Exchange Workers: J and Q Visas

The broadest category for cultural exchange is the J visa, which includes professors and research scholars, students, foreign medical graduates, teachers, resort workers, camp counselors, and au pairs who are participating in an approved exchange visitor program. The U.S. Department of State's Bureau of Educational and Cultural Affairs (BECA) is responsible for approving the cultural exchange programs. J visa holders are admitted for the period of the program. Most foreign nationals on J-1 visas are permitted to work as part of their cultural exchange program participation. The J cultural exchange visas have expanded over time from visas issued for educational, research, or scholarship purposes to visas issued for programs engaged in more mundane tasks, such as child care, resort work, or camp counseling. Today, the J visas may be issued to over a dozen subcategories of exchange visitors, many of whom work in the United States.

"Conrad 30" J Visa Waiver

Currently, foreign medical graduates may enter the United States on J-1 visas in order to receive graduate medical education and training. As is the case with most foreign nationals on J-1 visas, foreign medical graduates must return to their home countries after completing their education or training for at least two years before they can apply for certain other nonimmigrant visas or LPR status, unless they are granted a waiver of the foreign residency requirement. States are permitted to sponsor up to 30 waivers per state, per year on behalf of FMGs under a temporary program, colloquially known as the Conrad 30 Program because it was originally sponsored by former Senator Kent Conrad. The objective of the Conrad 30 Program is to encourage immigration of

[35] U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2014 Annual Report*, Department of Homeland Security, February 26, 2015.

[36] §501 of P.L. 109-13, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.

foreign physicians to medically underserved communities. GAO has reported that it has been a major means of providing physicians to practice in underserved areas of the United States.[37]

Q Cultural Exchange

The Q visa is used by a smaller employment-oriented cultural exchange program, and its stated purpose is to provide practical training and employment as well as share history, culture, and traditions. U.S. Citizenship and Immigration Services (USCIS) approves the Q cultural exchange programs, and only employers are allowed to petition for Q nonimmigrants. USCIS encourages the prospective employer to submit evidence illustrating that the program activities take place in a public setting where the sharing of culture can be achieved through direct interaction with the American public. Employers are expected to offer the Q cultural exchange worker wages and working conditions comparable to other workers in the locale that are similarly employed.

Multinational Executive and Specialist Employees: L-1 Visas

Intra-company transferees who are executive, managerial, or have specialized knowledge and are employed with an international firm or corporation are admitted on the L-1 visas. The prospective L-1 nonimmigrant must demonstrate that he or she meets the qualifications for the particular job as well as the visa category. The foreign national must have been employed by the firm for at least six months in the preceding three years in the capacity for which the transfer is sought. The foreign national must be employed in an executive capacity, a managerial capacity, or have specialized knowledge of the firm's product to be eligible for the L-1 visa. Those with specialized knowledge are often labeled L-1B. The INA does not require firms who wish to bring L-1 intra-company transfers into the United States to demonstrate that U.S. workers will not be adversely affected in order to obtain a visa for the transferring employee. The L-1 visa is valid for five years and is renewable for a total of seven years.

International Investors and Traders: E Visas

Aliens who are treaty traders enter on E-1 visas, whereas those who are treaty investors enter on E-2 visas. An E-1 treaty trader visa allows a foreign national to enter the United States for the purpose of conducting "substantial trade" between the United States and the country of which the person is a citizen. An E-2 treaty investor can be any person who comes to the United States to develop and direct the operations of an enterprise in which he or she has invested, or is in the process of investing a "substantial amount of capital." Both these E-class visas require that a treaty exist between the United States and the principal foreign national's country of citizenship.[38] Both the E-1 and E-2 visas are valid for two years and are renewable in two-year intervals.

Persons with Outstanding and Extraordinary Ability: O and P Visas

Persons with extraordinary ability in the sciences, the arts, education, business, or athletics can be admitted on O visas. Generally, the O visa is reserved for the highest level of accomplishment and covers a fairly broad set of occupations and endeavors, including athletics and entertainment. Regulations implementing the O visa define extraordinary ability in the field of science,

[37] U.S. Government Accountability Office, *Foreign Physicians: Data on Use of J-1 Visa Waivers Needed to Better Address Physician Shortages*, GAO-07-52, November 30, 2006, http://www.gao.gov/products/GAO-07-52.

[38] See CRS Report RL33844, *Foreign Investor Visas: Policies and Issues*.

education, business, or athletics as a level of expertise indicating that the person is one of a small percentage that has arisen to the very top of the field of endeavor.[39] The O visa is valid for up to three years and is renewable for one year.

The P visa has a somewhat lower standard of achievement than the O visa, and it is restricted to a narrower band of occupations and endeavors. The P visa is used by an alien who performs as an artist, athlete, or entertainer (individually or as part of a group or team) at an internationally recognized level of performance and who seeks to enter the United States temporarily and solely for the purpose of performing in that capacity. The law allows individual athletes to stay in intervals up to five years at a time, up to 10 years in total.

Religious Workers: R Visas

Foreign nationals working in religious vocations enter on R visas. The regulations define religious occupation as "an activity which relates to a traditional religious function." USCIS further defined "religious denomination" to clarify that it applies to a religious group or community of believers governed or administered under some form of common ecclesiastical government. Under the regulations, the denomination must share a common creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. The initial length of admission on an R visa is for a period up to 30 months.[40]

Trends by Category of Worker

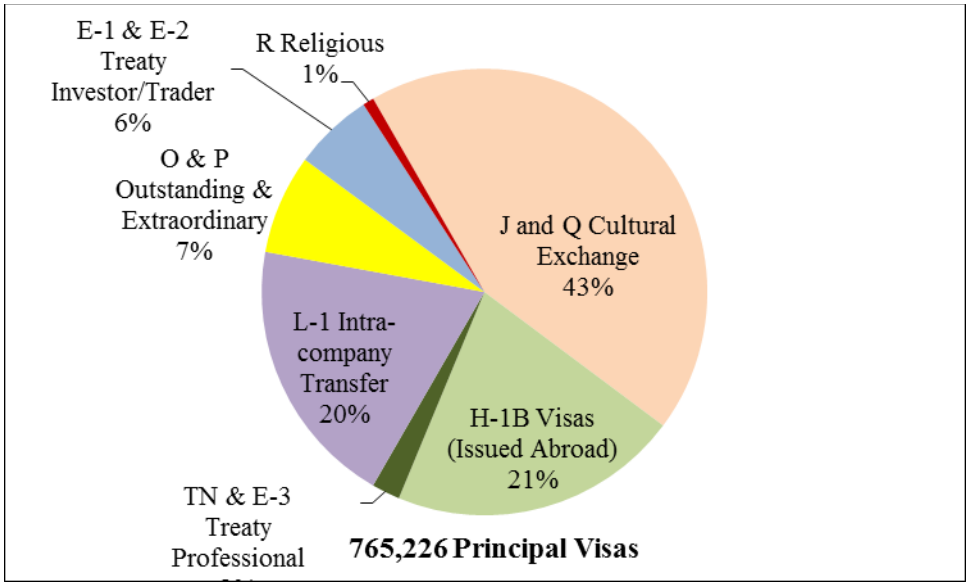
A more detailed presentation of visas issued to professional, managerial, and skilled foreign workers by visa category for FY2014 is presented in **Figure 3**. As some, but not all, visa categories differentiate between the principal or qualifying foreign national and derivative immediate family that are permitted to accompany the foreign national, **Figure 3** omits the derivative family members when possible. The total number of professional, managerial, and skilled foreign worker visas issued abroad to principals was 765,226 in FY2014.[41]

[39] 8 C.F.R. §214.2(o)(3)(ii).

[40] U.S. Citizenship and Immigration Services, "Special Immigrant and Nonimmigrant Religious Workers," 73 *Federal Register*, 72276, Nov. 26, 2008.

[41] Bureau of Consular Affairs, *Report of the Visa Office 2013*, U.S. Department of State, Table XVI, 2014.

Figure 3. Visas Issued to Principals by Categories of Temporary Managerial, Professional, and Skilled Employees in FY2014



Source: CRS presentation of data from the FY2014 annual report of the U.S. Department of State Office of Visa Statistics.

Note: Derivative family members are omitted when they are entering through a separate visa category (e.g., H-4, J-2, L-2, R-2). The 161,369 H-1B visas issued abroad represent about half of all H-1B petitions USCIS approved in FY2014; the other half changed status within the United States..

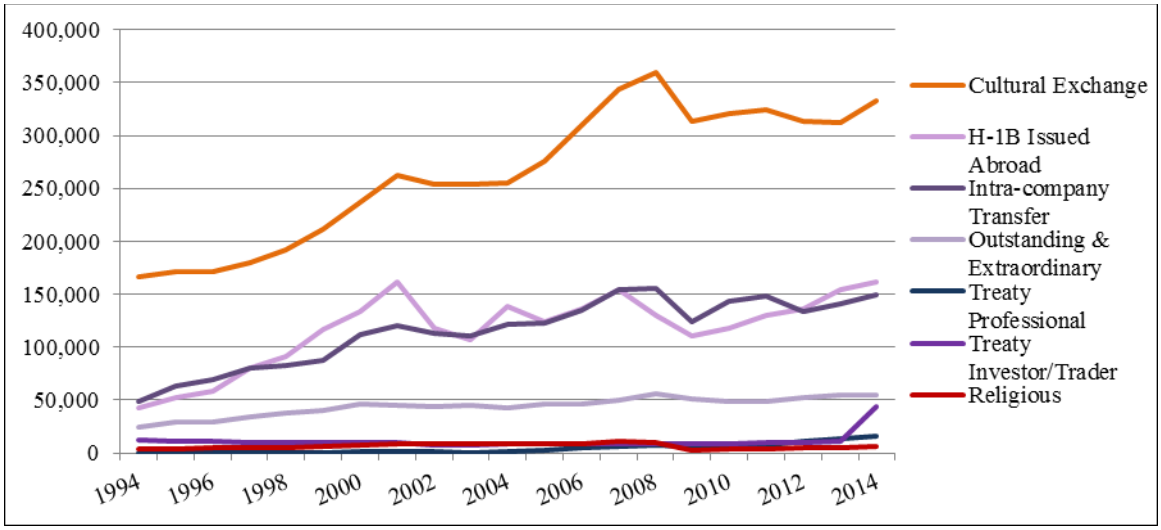
Although the cultural exchange workers are the largest single category of temporary foreign workers (43%), it is important to note that about one-third of the J-1 visas are issued to persons engaged in Summer Work Travel (SWT). The State Department characterizes SWT as providing "foreign students with an opportunity to live and work in the United States during their summer vacation from college or university to experience and to be exposed to the people and way of life in the United States."[42] Many compare this use of the J-1 visas for SWT to the H-2 visas for seasonal and shortage guest workers.[43] Similarly, the Q visa is often used by the hospitality and entertainment industry (e.g., Disney Parks). Q visas comprised less than 1% of all cultural exchange visas issued in FY2014.

Over the past two decades, the numbers of visas issued to each of the categories of professional, managerial, and skilled foreign worker have increased. The relative portions, however, have not changed substantially, as **Figure 4** makes clear. The professional workers (H-1Bs and TNs), the cultural exchange workers (J-1), and the intra-company transferees (L-1) have driven most of the growth over the past two decades. There has also been a slow but steady increase in foreign workers deemed outstanding and extraordinary (O and P) over this same period. Only the religious worker visa category has remained rather flat.

[42] U.S. Department of State, "J-1 Visa Exchange Visitor Program, Summer Work Travel Program," available at http://j1visa.state.gov/programs/summer-work-travel (visited May 14, 2014).

[43] For a more complete discussion, see CRS Report R42434, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, by Andorra Bruno.

Figure 4. Trends in Temporary Managerial, Professional, and Skilled Employee Visas Issued, FY1994–FY2014



Source: CRS presentation of data from the annual reports of the U.S. Department of State Office of Visa Statistics.

Note: Derivative family members are omitted when they are entering through a separate visa category (e.g., H-4, J-2, or L-2).

Optional Practical Training (OPT)

Although foreign students on F visas are generally barred from off-campus employment, some F-1 foreign students are permitted to participate in employment known as Optional Practical Training (OPT) after completing their undergraduate or graduate studies. OPT is temporary employment that is directly related to an F-1 student's major area of study. Generally, an F-1 foreign student may work up to 12 months in OPT status. In 2008, the Bush Administration expanded the OPT work period to 29 months for F-1 students in STEM fields. To qualify for the 17-month extension, F-1 students must have received STEM degrees included on the STEM Designated Degree Program List, be employed by employers enrolled in E-Verify,[44] and have received an initial grant of post-completion OPT related to such a degree (i.e., already approved for 12 months in OPT).[45]

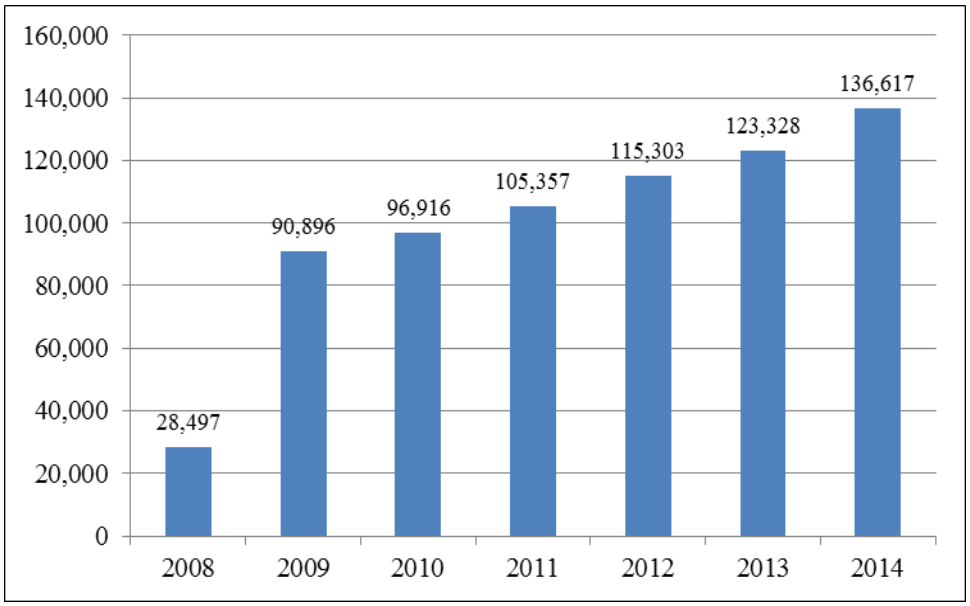
President Barack Obama's Immigration Accountability Executive Action of November 20, 2014, included a "High Skilled Memorandum" that directed USCIS and Immigration and Customs Enforcement (ICE) to develop regulations to expand the number of degree programs eligible for OPT, and to extend the time period and use of OPT for STEM students and graduates. The new policy would also require the OPT program to have stronger ties to degree-granting institutions to ensure that a student's OPT furthers his or her course of study in the United States. In addition, the "High Skilled Memorandum" stated that the new policy would have to be consistent with U.S.

[44] E-Verify is an electronic employment eligibility verification program that U.S. employers voluntarily use to confirm the new hires' employment authorization through Social Security Administration and, if necessary, DHS databases. CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

[45] 8 C.F.R. 214.2(f)(10).

worker protections.[46] DHS proposed new rules in October 2015 that, among other things, would extend the 17-month extension for STEM graduates to a 24-month extension.[47]

Figure 5. F-1 Foreign Students Approved for Optional Practical Training:
FY2008-FY2014



Source: CRS presentation of data from U.S. Citizenship and Immigration Services.

According to USCIS, the number of F-1 visa holders who are engaged in OPT has risen substantially, from 28,497 in FY2008 to 136,617 in FY2014 (**Figure 5**). OPT workers are now approaching the H-1B workers in terms of number of visas issued annually.

In 2014, GAO released a report noting the potential for fraud and abuse of the OPT status. GAO concluded that DHS' Immigration and Customs Enforcement was unable to "fully ensure foreign students working under optional practical training are maintaining their legal status in the United States."[48]

[46] U.S. Department of Homeland Security, Memorandum to Leon Rodriquez, Director, U.S. Citizenship and Immigration Services, and Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, from Jeh Charles Johnson, Secretary of Homeland Security, *Policies Supporting U.S. High-Skilled Business and Workers*, November 20, 2014.

[47] The proposed rule also includes the "Cap-Gap" policy initially implemented in 2008 for any F-1 student with a pending H-1B petition. This proposal allows such students to automatically extend the duration of F-1 status and any current employment authorization until October 1 of the fiscal year for which such H-1B visa is being requested. U.S. Department of Homeland Security, "Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and CapGap Relief for All Eligible F–1 Students," 80 *Federal Register* 63376-63404, October 19, 2015.

[48] U.S. Government Accountability Office, Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strenthen Oversigfht of Foreign Students with Employment Authorization, GAO-14-356, February 27, 2014, p. 18, http://www.gao.gov/products/GAO-14-356.

Taxation Rules and Exceptions

Federal Income Taxes

Foreign nationals in the United States are classified as resident or nonresident aliens for federal income tax purposes. Resident aliens are generally subject to the same income tax obligations as citizens of the United States. Temporary foreign workers may also be considered resident aliens if they satisfy a "substantial presence" test based upon the number of days they have been in the United States.[49] If the foreign national is on an F, J, M, or Q visa[50] working as a teacher, student, or trainee, the days working in that capacity do not count toward substantial presence.[51] Professional, managerial, and skilled foreign workers as a category are generally not exempt from the individual mandate to have health care coverage under the Affordable Care Act.[52]

Social Security and Medicare Taxes

In terms of the Federal Insurance Contributions Act (FICA), most noncitizens employed in the United States are subject to Social Security and Medicare taxes on wages in the same manner as U.S. citizens.[53] However, the Internal Revenue Code specifically excludes the employment of foreign temporary agricultural workers, foreign students on F and M visas, and cultural exchange visitors on J and Q visas from the definition of employment for the purposes of FICA.

Regulations implementing current FICA law for employment of students provide that when an individual is working for a college or university and when the primary status of the individual is as a student, rather than as an employee, then any work performed is excluded from employment for purposes of FICA. The regulations clarify that full-time employees are not "students" for purposes of the FICA exception. "If an employee is not a full-time employee, then whether the employee qualifies as a student depends on all the relevant facts and circumstances. An individual is a student if education, not employment, is the predominant aspect of the employee's relationship with the employer."[54] For example, medical residents working full-time are not considered students by the IRS and are subject to FICA payroll taxes.[55] Although most students working off-campus are typically engaged in work that would be covered by FICA taxes, the

[49] For a full discussion of the taxation of noncitizens, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States*, by Erika K. Lunder.

[50] Foreign students who wish to pursue a non-academic (e.g., vocational) course of study apply for an M visa rather than the F visa. The Q visa is an employment-oriented cultural exchange program, and its stated purpose is to provide practical training and employment as well as share history, culture, and traditions. CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

[51] Internal Revenue Service, *U.S. Tax Guide for Aliens*, Publication 519, January 21, 2014, http://www.irs.gov/pub/irs-pdf/p519.pdf, pp. 4-5.

[52] For more information on the ACA individual mandate, see Internal Revenue Service , *Affordable Care Act Tax Provisions for Individuals and Families*, May 15, 2014, http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Individuals-and-Families; and, CRS Report R41331, *Individual Mandate Under the ACA*, by Annie L. Mach.

[53] For a fuller discussion of whether they are eligible to receive benefits under these programs, see CRS Report RL32004, *Social Security Benefits for Noncitizens*, by Dawn Nuschler and Alison Siskin.

[54] Internal Revenue Service, Background Information on the Final Regulations and Revenue Procedure Providing Guidance on the Student FICA Exception (Section 3121(b)(10) of the Internal Revenue Code), U.S. Department of Treasury, December 21, 2004, http://www.irs.gov/pub/irs-tege/student_fica_-_background_info_7-28-05.pdf.

[55] *Mayo Foundation for Medical Education and Research et al. v. United States*, 09–837 (2011).

regulations expressly exempt foreign students and exchange visitors from FICA, if DHS has given them work authorization.[56]

In terms of foreign students and cultural exchange visitors, current law on the definition of employment exempts the following for the purposes of FICA:

> Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be.[57]

This blanket exemption for foreign nationals on F and J visas (as well as M and Q visas) is based upon nonimmigrant status. It does not differentiate the type of employment or relationship to the employer. To continue the example of medical residents, a foreign national who is on a J visa as a medical resident working full-time is not subject to FICA payroll taxes. If a foreign national on an F-1, J-1, M-1, or Q visa performs work that is not connected to the purpose for which he or she was admitted to the United States, the employment is covered by Social Security, unless otherwise specifically excluded by law.

According to the IRS, the following types of employment of F-1 and J-1 workers are exempt from FICA taxes:

- On-campus student employment up to 20 hours a week (40 hours during summer vacations).
- Off-campus student employment authorized by USCIS.
- OPT student employment on or off campus.
- Employment as professor, teacher, or researcher.
- Employment as a physician, au pair, or summer camp worker.[58]

Totalization Agreements that the United States has signed with selected foreign governments to avoid double taxation of income for social security purposes also bear on whether the temporary foreign workers are subject to FICA.[59]

Opportunities for Legal Permanent Residence

Temporary professional visas have become an important gateway for high-skilled immigration to the United States. [60] About half of all employment-based lawful permanent residents (LPRs) have

[56] 20 C.F.R. 404.1001, 404.1012, 404.1028 and 404.1036.

[57] Section 210(a)(19) of the Social Security Act.

[58] Internal Revenue Service, *Social Security/Medicare and Self-Employment Tax Liability of Foreign Students, Scholars, Teachers, Researchers, and Trainees*, December 4, 2013, http://www.irs.gov/Individuals/International-Taxpayers/Foreign-Student-Liability-for-Social-Security-and-Medicare-Taxes.

[59] More specifically, §3121(b) of the I.R.C. Wages may also be exempt from FICA pursuant to totalization agreements authorized by section 233 of the Social Security Act. 26 U.S.C. §3101(c). For more information, see Internal Revenue Service, *Totalization Agreements*, August 2, 2013, http://www.irs.gov/Individuals/International-Taxpayers/Totalization-Agreements; and CRS Report RL32004, *Social Security Benefits for Noncitizens*, by Dawn Nuschler and Alison Siskin.

[60] Not all companies, however, seek to convert H-1B employees to LPR status. Research by Professor Ron Hira of the Rochester Institute of Technology indicates that many of the largest users of the H-1B visa sponsor few, if any, of their H-1Bs for permanent residency. U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, (continued...)

been working in the United States on temporary visas. More specifically, 46% of the foreign nationals who became employment-based LPRs in the United States during the decade of 2000-2009 had formerly held H-1B visas.[61] Over this same time period, almost half (48.6%) of employment-based principals who were deemed extraordinary/priority workers had been L intracompany transferees.[62]

More recently, the OPT status may provide the link for foreign students to become employment-based LPRs. Many anecdotal accounts tell of foreign students who are hired by U.S. firms as they are completing their programs. Employers may opt to hire them as OPT to extend their F-1 visas. According to DHS: "This extension of the OPT period for STEM degree holders gives U.S. employers two chances to recruit these highly desirable graduates through the H-1B process, as the extension is long enough to allow for H-1B petitions to be filed in two successive fiscal years."[63] If the temporary foreign workers meet expectations, the employers may also petition for them to become LPRs through one of the employment-based immigration categories.[64]

Over 90% of employment-based LPRs are adjusting from a temporary visa category to LPR status within the United States, rather than newly arriving from abroad. Because the INA requires most foreign nationals seeking to qualify for a nonimmigrant visa to demonstrate that they are not coming to reside permanently, these adjustment of status statistics prompt further explanation on the exceptions noted in the law.

Dual Intent and the §214(b) Presumption

Temporary workers who are H-1B or L visa holders are permitted to petition for a LPR visa at the same time that they file for an H-1B or L visa, a policy exception known as dual-intent.[65] (i.e., generally, a foreign national applying for a temporary visa cannot also be seeking an LPR visa). Specifically, §214(b) of the INA generally presumes that all aliens seeking admission to the United States are coming to live permanently; as a result, most foreign nationals seeking to qualify for a nonimmigrant visa must demonstrate that they are not coming to reside permanently. Currently, the INA exempts foreign nationals seeking H-1 professional visas and L intra-company transferee visas (as well as V accompanying family members) from the requirement that they prove they are not coming to live permanently.[66]

(...continued)

Refugees and Border Security, *The Economic Imperative for Enacting Immigration Reform*, 112th Cong., 1st sess., July 26, 2011.

[61] Ruth Ellen Wasem, "Global Competition for Talent: Parameters of and Trends in U.S. Economic Migration," Center for the History of the New America Conference on Immigration & Entrepreneurship, University of Maryland, MD, September 14, 2012.

[62] Ibid.

[63] U.S. Citizenship and Immigration Services, *Extension of Post-Completion Optional Practical Training (OPT) and F-1 Status for Eligible Students under the H-1B Cap-Gap Regulations*, U.S. Department of Homeland Security, April 2, 2010.

[64] Not all companies, however, seek to convert H-1B employees to LPR status. Research by Professor Ron Hira of the Rochester Institute of Technology indicates that many of the largest users of the H-1B visa sponsor few, if any, of their H-1Bs for permanent residency. U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security, *The Economic Imperative for Enacting Immigration Reform*, 112th Cong., 1st sess., July 26, 2011.

[65] The other categories permitted dual intent are intracompany transfers employed with international firms who enter on L visas and foreign nationals with V visas for family-related nonimmigrant. §214(b) of the INA; 8 U.S.C. §1184(b).

[66] §214(b) of the INA; 8 U.S.C. §1184(b).

Concluding Comments

The metaphor for U.S. policy on economic migration is a post at the border with two signs: one reads "Help Wanted," and the other reads "Keep Out." This tension between competing interests on foreign workers has long characterized American immigration policy. [67] Balancing these priorities on the issues of temporary visas for professional, managerial, and skilled foreign workers is no small feat, and is further complicated by a lack of consensus on the broader policy debate over comprehensive immigration reform.

Author Contact Information

Ruth Ellen Wasem
Specialist in Immigration Policy
rwasem@crs.loc.gov, 7-7342

Acknowledgments

Adam Salazar updated some of the statistics presented in this report.

[67] Ruth Ellen Wasem, "Global Competition for Talent: Parameters of and Trends in U.S. Economic Migration," Center for the History of the New America Conference on Immigration & Entrepreneurship, University of Maryland, MD, September 14, 2012.

Hughes Declaration

Exhibit 12

H-1B Authorized-to-Work Population Estimate

U.S. Citizenship and Immigration Services

Office of Policy & Strategy

Policy Research Division

Executive Summary

The purpose of this report is to provide a total estimate of nonimmigrants who, as of September 30, 2019, are currently authorized to work in the United States under the H-1B visa classification. A detailed analysis of current data has concluded that as of the above date, the H-1B authorized-to-work population is approximately 583,420. All aliens included in this number are nonimmigrants who have received authorization from USCIS and the Department of State (if applicable), to work in an H-1B specialty occupation. The report provides the total number of aliens who are approved I-129 (H-1B) beneficiaries and in granular detail explains which of those aliens are and are not part of the final estimate. Included in this report is a technical appendix presenting the methodology used.

1. Introduction

The H-1B nonimmigrant visa classification is a vehicle through which U.S. employers may obtain workers on a temporary basis in specialty occupations. Information on the current population of foreign nationals authorized to work in the United States in H-1B nonimmigrant classification remains important to policy makers and researchers. However, estimating the H-1B authorized-to-work (ATW) population currently residing in the United States is complex as no electronic data system tracks or houses this information.

The objective of this study is to estimate the population of H-1B ATW beneficiaries as of September 30, 2019 (the end of federal fiscal year 2019). The ATW population is defined as the aggregate of unique foreign nationals who (1) are beneficiaries of an approved I-129 petition for a H-1B specialty occupation, and (2) have not adjusted to lawful permanent resident (LPR) status, changed to another nonimmigrant status, or been denied a visa to the United States by a U.S. consulate if the beneficiary requested consular processing abroad when the I-129 petition was approved. As such, this report does not remove from the final estimate of the ATW population aliens who held a valid H-1B visa/status but have abandoned their visa/status (leaving the United States permanently or did not attempt to enter the United States if they are the beneficiary of an approved I-129 petition for new employment). Nor does it remove from the final estimate aliens with a valid H-1B visa or H-1B nonimmigrant status who were denied entry by Customs and Border Protection (CBP) at the ports of entry.

2. Methodology

We first identify unique foreign nationals who are beneficiaries of approved[1] I-129 petitions for H-1B specialty occupations with a validity period through September 30, 2019. The size of the approved unique beneficiary (AUB) population has a cyclical pattern, as this population typically experiences marked changes when a new fiscal year starts and ends, given the annual numerical allocations for each fiscal year (commonly referred to as the H-1B cap). We then estimate the number of aliens who have adjusted status, changed status, or have been denied a visa to the United States by U.S. consulates if they requested

[1] Most of USCIS data is transactional in nature and changes daily as we receive, approve, or deny applications, petitions, and requests. Additionally, USCIS sometimes revoke applications and petitions after an initial approval, or approve applications and petitions after an initial denial (typically as a result of a motion or appeal). Therefore, count of approvals as captured by USCIS' system of records (SOR) can change depending on the time of data extraction. For more information, please refer to https://www.uscis.gov/tools/reports-studies/understanding-our-data.

consular processing abroad. Subtracting these outgoing estimates from the AUB population will yield the H-1B ATW estimate for September 30, 2019.

2.1 Estimating AUB population

USCIS electronic system of record (SOR) shows there are 725,613 approved H-1B petitions with a validity period through Fiscal Year (FY) 2019 and beyond. However, one alien may be the beneficiary of multiple petitions. Because no unique person identifier exists for all H-1B petitions in the USCIS electronic SOR, we use a methodology of statistical inference. We first use the subpopulation with social security number (SSN) as a sample[2] to estimate the duplication rate, and then apply this duplication rate to the entire population (consisting of both SSN and non-SSN subpopulations) to derive the AUB population estimate.

Table 1 and Figure 1 show the H-1B AUB population estimate from 9/30/2016 through 9/30/2019. A cyclical pattern is evident. At the end of a fiscal year (which is also the end of the H-1B cap year), the estimated population is the lowest of all four quarters. After the new cap year begins, the estimated population increases. At the end of the first quarter of a new fiscal year, it is estimated that the AUB population increases by an average 9% to 10% over the end of the previous quarter and remains relatively flat for the next two quarters (reflected by the population estimate on 3/31 and 6/30). On September 30, 2019, the estimated H-1B AUB population is 619,327.

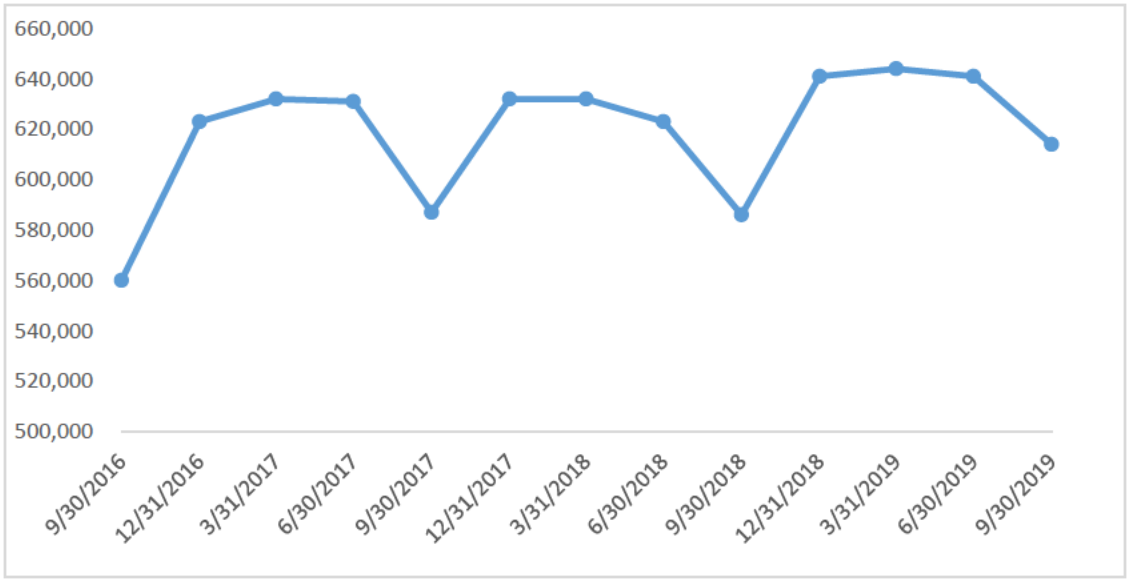
Table 1 H-1B Approved Unique Beneficiaries (AUB) Population Estimate FY2016-FY2019[3]

Date	Estimated Total Approved Unique Beneficiaries
9/30/2016	564,663
12/31/2016	628,163
3/31/2017	637,553
6/30/2017	636,288
9/30/2017	592,725
12/31/2017	637,249
3/31/2018	637,920
6/30/2018	628,449
9/30/2018	591,745
12/31/2018	647,299
3/31/2019	649,379
6/30/2019	646,564
9/30/2019	619,327

[2] The SSN sample was determined through an analysis to be a statistically unbiased sample, where SSN is the identifier for unique persons. About 78% of the approved petitions with a validity period through FY 2019 (and beyond) have SSN captured by USCIS SOR.

[3] Estimates were derived from approved H-1B petitions with a validity period through the end of each quarter.

Figure 1 H-1B Approved Unique Beneficiary (AUB) Population Estimate FY2016-FY2019



2.2 Estimating Outgoing Subpopulations

The actual number of H-1B nonimmigrants residing in the United States is smaller than the AUB population estimate due to a number of factors. First, even if an alien is the beneficiary of an approved Form I-129 petition for H-1B specialty occupation, those aliens requesting consular processing abroad may need to be approved for the visa by the Department of State (DOS) in order to travel to and request entry into the United States. In some cases, the visa will not be issued by DOS, in which case the alien will not be allowed to travel to and seek entry as an H-1B worker on the basis of the previously approved H-1B petition. Second, H-1B workers may also adjust their status to become a lawful permanent resident (LPR). Third, aliens that were previously granted H-1B status may change to a different nonimmigrant status.

2.2.1 Consular Denial:

USCIS data show about 15% of the approved Form I-129 petitions for H-1B specialty occupation were for beneficiaries requesting consular processing overseas[4]. This population may need to apply for a visa from a U.S. consulate abroad in order to enter the United States to work as an H-1B worker. DOS data indicates the denial rate for H-1B consular processing from FY2015 through FY2019 ranges from 1.9% to 2.3%, with an average of 2.2%[5]. Applying this rate to the population of those approved H-1B beneficiaries that would need consular processing, we estimate the approximate number of aliens who were denied a visa by DOS is 2,100.

[4] Based on response to Form I-129, Petition for a Nonimmigrant Worker, Part 2, Question 4.
[5] Based on data provided by Department of State to USCIS.

2.2.2 Change of Status (COS):

Aliens in H-1B status may request a change to another nonimmigrant status. First, aliens may request a change to a different employment-based nonimmigrant status (such as O-1, L-1, etc.) based on filing a new Form I-129. Second, an alien in H-1B status may request a change to a non-employment-based nonimmigrant status (such as F-1, H-4, etc.) by filing Form I-539, Application to Extend/Change Nonimmigrant Status. We derive an estimate of these two subpopulations by comparing the last action date of the change of status petition and that of the H-1B approval date. If the former is more recent, we deem the alien has changed status.

2.2.2.a) Form I-129 COS: The Form I-129 COS number is very small. The COS number for the SSN subpopulation is 379. Extrapolating this to the entire population yields 485.

2.2.2.b) Form I-539 COS: The I-539 COS number is also very small. The COS number for the SSN subpopulation is 774. Extrapolating this to the entire population yields 990.

Combining these two subpopulations, we conclude the COS population on 9/30/2019 is approximately 1,475.

2.2.3 Adjustment of Status (AOS):

Nonimmigrants in H-1B status in the United States can adjust status to lawful permanent resident (LPR) in the discretion of USCIS if they qualify and, in cases when a statutory numerical limit exists, if a visa number is available. Historical data shows an overwhelming majority (greater than 80%) of the H-1B status holders who have adjusted status did so via employment-based preference categories, while a small minority adjusted status via family based, humanitarian, diversity, or other categories.

Since an H-1B visa is valid for up to 3 years, former H-1B status holders who adjusted status in FY2017-FY2019 could potentially have H-1B visa validity dates though 9/30/2019. The most recent LPR data compiled by the Office of Immigration Statistics (OIS) shows in FY2017 and FY2018, 37,001 and 31,561 H-1B status holders adjusted to LPR status respectively. These figures include aliens who held H-1B status valid through 9/30/2019 or beyond. As of the date of this writing, OIS has not released the FY2019 LPR data. Thus, the number of H-1B nonimmigrants adjusting to LPR status in FY2019 needs to be estimated. After analyzing the trend of the historical data in FY2016-FY2018, we arrive at an estimate of 28,236. Thus, the estimated total number of H-1B nonimmigrants who have adjusted status in FY2017-FY2019 is 96,798.

The Technical Appendix summarizes a methodology we use to estimate the number of aliens in the H-1B AUB population who have adjusted status. Using this methodology, we estimate the number of aliens in the H-1B AUB population who have adjusted status is 32,332.

3. Conclusion

The following table summarizes our findings:

Table 2 H-1B Authorized to Work Population Estimate September 30, 2019

Total Authorized Unique Beneficiaries (AUBs)	619,327
Consular Denials	-2,100
Change of Status (COS)	-1,475
Adjustment of Status (AOS)	-32,332
Authorized to Work as of 9/30/2019	**583,420**

USCIS concludes the H-1B authorized-to-work (ATW) population on September 30, 2019 is approximately **583,420**. We expect the ATW population also to follow the same cyclical pattern as the AUB population. The ATW population in the first two quarters of Fiscal Year 2020 is expected to be approximately 10% higher than this estimate. Lastly, it must be pointed out that, as described in the Introduction, the scope of this study is estimating the authorized to work population, defined as the population that has received authorization from USCIS and DOS (if applicable) to work as H-1B specialty occupation nonimmigrant worker in the United States, and has not adjusted status or changed status. It does not remove from the final estimate aliens who held a valid H-1B visa/status but have abandoned their visa/status (leaving the United States permanently or did not attempt to enter the United States at all if they are the beneficiary of an approved I-129 petition for new employment). Nor does it remove from the final estimate H-1B visa holders or returning H-1B workers who were denied entry by Customs and Border Protection (CBP) at the ports of entry. Merging USCIS data with CBP's entry/exit data is needed in order to assess the impact of such scenarios.

Technical Appendix

In this appendix we present the details of estimating the adjustment of status population for H-1B status holders. We first assess the size of this population under a scenario featuring a universal validity period assumption and two even distribution assumptions (defined below). Then we adjust this preliminary estimate using a ratio derived from the historical data in FY2017-FY2018 to arrive at a final estimate.

For the sake of simplicity, we assume all H-1B petitions have a universal validity period of 3 years. Suppose there are N_1 H-1B status holders who are admitted as LPR in FY2017. Suppose there are L working days in a fiscal year. Thus, the validity period of an H-1B visa is $3L$ work days. Assuming (1) every day there are equal number of aliens who obtained LPR status, (2) the 3L work day validity period is also equally distributed, then it follows that the probability of an alien who obtained LPR status on the first work day (usually October 1st) has an valid period through 9/30/2019 is $\frac{1}{3L}$; the probability of an alien who obtained LPR status on the second work day has an validity period through 9/30/2019 is $\frac{2}{3L}$; ….; the probability of an alien who obtained LPR status on 9/30/2017 (or the last work day of the fiscal year) has an valid period through 9/30/2019 is $\frac{L}{3L}$. Hence, in FY2017 the total number of H-1B status holders who adjust and who also have a valid period through 9/30/2019 is

$$\frac{N_1}{L}\left(\frac{1}{3L}+\frac{2}{3L}+\cdots+\frac{L}{3L}\right)=\frac{L+1}{6L}N_1$$

If L is sufficiently large (261, or the number of work days in a year [6]), then $\frac{L+1}{6L}\approx\frac{1}{6}=0.167$. We know N_1=37001 from the OIS LPR dataset. Thus, in FY2017 the total number of aliens who have a validity period through 9/30/2019 is $0.167N_1 = 0.167 \times 37001 = 6179$.

Likewise, if there are N_2 H-1B status holders who are admitted as LPRs in FY 2018, and if the two even distribution assumptions hold, then the total number of aliens who have a validity period through 9/30/2019 is

$$\frac{N_2}{L}\left(\frac{L+1}{3L}+\frac{L+2}{3L}+\cdots+\frac{2L}{3L}\right)=\left(\frac{L+1}{6L}+\frac{1}{3}\right)N_2$$

If L is sufficiently large (261, or the number of working days in a year), then $\frac{L+1}{6L}+\frac{1}{3}\approx\frac{1}{6}+\frac{1}{3}=0.5$. We know N_2=31561 from the OIS LPR dataset. Thus in FY2018 the total number of aliens who have a validity period through 9/30/2019 is $0.5N_2 = 0.5 \times 31561 = 15780$.

Lastly, if there are N_3 H-1B status holders who are admitted as LPR in FY 2019, and if the two even distribution assumptions hold, then the total number of aliens who have a validity period through 9/30/2019 is

$$\frac{N_3}{L}\left(\frac{2L+1}{3L}+\frac{2L+2}{3L}+\cdots+\frac{3L}{3L}\right)=\left(\frac{L+1}{6L}+\frac{2}{3}\right)N_3$$

Again, if L is sufficiently large (261, or the number of working days in a year), then $\frac{L+1}{6L}+\frac{2}{3}\approx\frac{1}{6}+\frac{2}{3}=0.833$. Thus, in FY2019 the total number of aliens who have a validity period through 9/30/2019 is $0.833N_3$.

[6] The total number of work days in a calendar year is usually 261.

Using a simple smoothing technique and utilizing H-1B adjustment of status data in FY2016-FY2018, we forecast N_3=28236. Thus, in FY2019 the total number of aliens who have a validity period through 9/30/2019 is $0.833 \times 28236 = 23520$ under the scenario featuring universal validity period and even distributions. Finally, under this scenario, the total number of H-1B workers who have validity period through 9/30/2019 and who have also adjusted their status would be

$$0.167N_1 + 0.5N_2 + 0.833N_3 = 6179 + 15780 + 23520 = 45479$$

In reality, the 3-year universal validity assumption and the two even distribution assumptions do not hold. Some of the H-1B beneficiaries have a validity period less than 3 years[7]. In addition, due to the priority date in the employment-based preference categories (which account for nearly 83%[8] of the H-1B adjustment of status population), it stands to reason that the number of H-1B status holders who adjust their status is inversely correlated with time. Both factors lead to a smaller number than what was calculated under the universal validity and even distribution scenarios. In fact, 6,812 aliens in the AUB population have an A-number matched in the OIS LPR dataset. Since only 45% of the AUB population have an A-number captured by USCIS systems, we estimate the approximate number of the H-1B status holders in the AUB population who have adjusted status in FY2017 and FY2018 is 15,129, indeed less than the 21,959 (sum of 6,179 and 15,780) estimate based on the universal validity and even distribution assumptions. Assuming this pattern continues to hold in FY2019, we estimate the number of aliens in the H-1B AUB population who have adjusted status in FY2019 is 23520*(15129/21959) =16203. Therefore, the total estimate of aliens in the H-1B AUB population who have adjusted status is 15129+16203 = 32332.

[7] In FY2017-18, the average validity period for approved H-1B beneficiaries is 2.3 years (2.5 years for initial employment and 2.2 years for continuing employment, respectively).
[8] Calculated from the 2016-18 LPR data compiled by the Office of Immigration Statistics (OIS).

List of Acronyms

AOS	Adjustment of Status
ATW	Authorized-to-Work
AUB	Approved Unique Beneficiaries
CBP	Customs and Border Protection
COS	Change of Status
DOS	Department of State
LPR	Lawful Permanent Resident
OIS	Office of Immigration Statistics
SOR	System of Records
SSN	Social Security Number
USCIS	U.S. Citizenship and Immigration Services

Hughes Declaration

Exhibit 13

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program

Office of Inspections and Special Reviews

OIG-06-22 **January 2006**

Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports as part of our oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

This report assesses vulnerabilities and potential abuses of the L-1 intra-company transferee nonimmigrant visa program. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner
Inspector General

Contents

Executive Summary 1

Background 2

Results of Inspection 5

Adjudicators Need Additional Information To Verify Managerial Status 6
Definition of the Term “Specialized Knowledge” May Not Be Sufficiently Restrictive 7
Adjudicators Need Additional Information To Verify a Foreign Company's Legitimacy 13
Recommendations 16
Management Comments and OIG Analysis 16

Appendices

Appendix A: Purpose, Scope, and Methodology 20
Appendix B: Relevant Sections of the Immigration and Nationality Act 21
Appendix C: USCIS Adjudicator's Field Manual, App 32-1, Specialized Knowledge 23
Appendix D: The Consular Survey 26
Appendix E: Management Response to Draft Report 28
Appendix F: Department of State Response to Draft Report 36
Appendix G: Major Contributors to This Report 38
Appendix H: Report Distribution 39

Abbreviations

CA	Bureau of Consular Affairs, Department of State
DHS	Department of Homeland Security
DOS	Department of State
DS	Bureau of Diplomatic Security, Department of State
FDNS	USCIS Office of Fraud Detection and National Security
ICE	Immigration and Customs Enforcement
IT	Information Technology
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
LCA	Labor Condition Application
OIG	Office of Inspector General
RFE	Request for Evidence
USCIS	U.S. Citizenship and Immigration Services

OIG

Department of Homeland Security
Office of Inspector General

Executive Summary

Section 415 of the Consolidated Appropriations Act of 2005, Pub. L. 108-447, requires that the Office of Inspector General (OIG) examine the vulnerabilities and potential abuses in the L-1 visa program.[1] The L-1 nonimmigrant visa is one of several temporary worker visa classifications.

We interviewed program managers in Washington, DC, and adjudicators and their supervisors at one of the four service centers that process petitions. With the assistance of the Bureau of Consular Affairs (CA) of the Department of State (DOS), we surveyed experienced consular professionals at 20 of the largest L-visa issuing posts. We also visited the Kentucky Consular Center's Fraud Prevention Office and interviewed employees there.

The L-1 program is vulnerable in several respects. First, the program allows for the transfer of managers and executives, but adjudicators often find it difficult to be confident that a firm truly intends using an imported worker in such a capacity. Second, the program allows for the transfer of workers with "specialized knowledge," but the term is so broadly defined that adjudicators believe they have little choice but to approve almost all petitions. Third, the transfer of L-1 workers requires that the petitioning firm is doing business abroad, but adjudicators in the United States have little ability to evaluate the substantiality of the foreign operation. Fourth, the program encompasses petitioners who do not yet have, but are merely are in the process of establishing, their first U.S. office, and it also permits petitioners to transfer themselves to the United States. These two provisions, separately and in combination, represent "windows of opportunity" for some of the abuse that appears to be occurring.

Our report contains three recommendations directed to the Department of Homeland Security (DHS) Bureau of Citizenship and Immigration Services (USCIS). Other vulnerabilities can only be reduced through legislative action to redefine the category.

[1] Division J, Title IV, Subtitle A of the act (sections 411-417) is also cited as "The L-1 Visa (Intracompany Transferee) Reform Act of 2004."

Background

The L classification, which originated with the 1970 amendments to the Immigration and Nationality Act (INA),[2] was designed to facilitate the temporary transfer of foreign nationals' management, executive, and specialized knowledge skills to the United States to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate.[3] The Immigration Act of 1990 (IMMACT) made several modifications to the existing L category.[4]

- IMMACT changed the definition of "manager" in the INA to include mangers of a "department, subdivision, function, or component of the organization"[5] or those managers that manage an "essential function"[6] within the company.
- IMMACT removed L nonimmigrants from those categories being "presumed to be an immigrant."[7] L aliens are specifically excluded from the intending immigrant presumption of section 214(b) of the INA and are, furthermore, not required to have a residence abroad which they have no intention of abandoning. In addition, INA 214(h) provides that an alien who has sought permanent residence in the United States is not precluded from obtaining an L nonimmigrant visa or otherwise obtaining or maintaining that status.[8]
- IMMACT specified new limitations on the period of stay for L visa holders: seven years for executives/managers[9] and five years for specialized knowledge personnel.[10]
- IMMACT modified the definition of "affiliate" to include the international partnership agreements used by international accounting firms[11] and mandated a "blanket" petition process to accelerate the admission of individual L nonimmigrants.[12]
- IMMACT also modified the requirement that the beneficiary have been employed by the petitioner for at least one year immediately prior to the submission of the petition. The new, less restrictive requirement to qualify an L-1 employee was any one year of the prior three.[13]

[2] See INA § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L), as added by Pub. L. No. 91-225, Sec.1(b), 84 Stat.116.
[3] USCIS Adjudicator's Field Manual, Chapter 32.
[4] See Pub. L. No. 101-649.
[5] See INA § 101(a)(44)(i), 8 U.S.C. § 1101(a)(44)(A)(i), as added by Pub. L. No. 101-649 Sec. 123.
[6] See INA § 101(a)(44)(ii), 8 U.S.C. § 1101(a)(44)(A)(ii), as added by Pub. L. No. 101-649 Sec. 123.
[7] See INA § 214(b), 8 U.S.C. § 1184(b), as added by Pub. L. No. 101-649 Sec. 205(b).
[8] U.S. Department of State Foreign Affairs Manual, Volume 9, section 41.54, note 4.
[9] See INA § 214(c)(2)(D)(i), 8 U.S.C. § 1184(c)(2)(D)(i), as added by Pub. L. No. 101-649 Sec. 206(b)(2).
[10] See INA § 214(c)(2)(D)(ii), 8 U.S.C. § 1184(c)(2)(D)(ii) as added by Pub. L. No. 101-649 Sec. 206(b)(2).
[11] See INA § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L) and 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C), as added by Pub. L. No. 101-649 Sec. 206(a).
[12] See INA § 214(c)(2)(A), 8 U.S.C. § 1184(c)(2)(A), as added by Pub. L. No. 101-649 Sec. 206(b)(2).
[13] See INA § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L), as added by Pub. L. No. 101-649 Sec. 206(c)).

USCIS describes intracompany transferees as belonging to one of two subcategories:[14]

- L-1A is an alien coming temporarily to perform services in a managerial or executive capacity.
- L-1B is an alien coming temporarily to perform services that entail specialized knowledge. Specialized knowledge is special knowledge of the employer's product or its application in international markets or an advanced level of knowledge of the employer's processes and procedures.

L-1 beneficiaries[15] must have worked abroad for the petitioning corporation or firm, or for a branch, subsidiary, or affiliate of the petitioning company for one continuous year within a three-year period immediately preceding the filing of the petition. These time-of-service limitations are intended to limit the L-visa to existing foreign employees, sent to the United States temporarily, and to preclude companies from hiring abroad for U.S. vacancies. Other temporary worker visa programs, such as the E, H, J, O and P, are designed to accommodate other kinds of employment: entrepreneur investors; business trainees; aliens of extraordinary ability in arts, science, education, business, or athletics; internationally recognized athletes, entertainers, and fashion models; and aliens coming temporarily to participate in an international cultural exchange program. Both the entertainment industry and professional sports employ many temporary workers, and a number of business executives playing leading roles in U.S. companies were initially transferred to the United States on temporary worker visas.

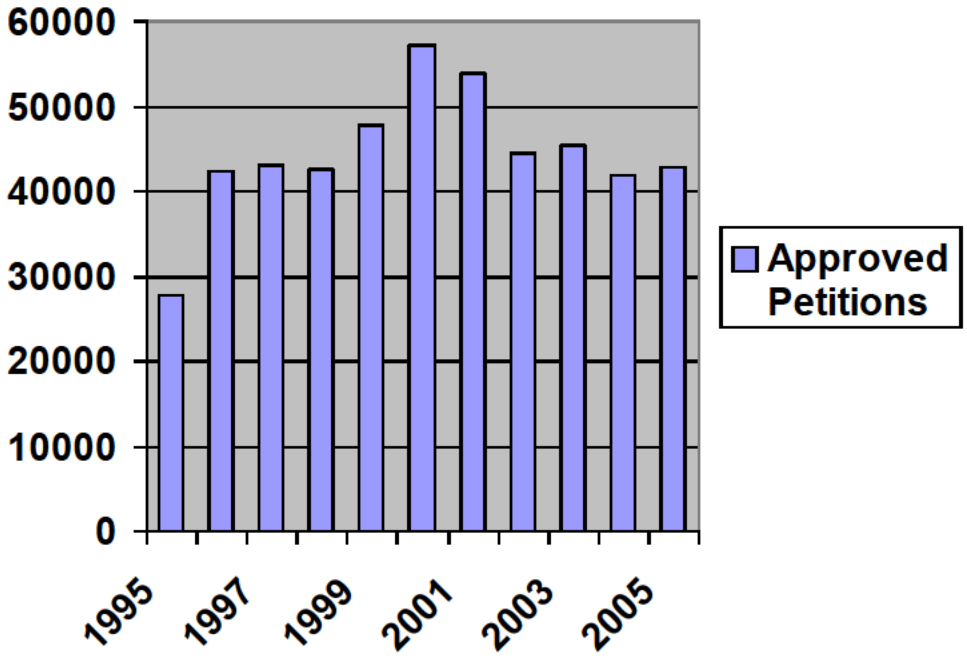
To receive an L-1 visa, a petition (Form I-129) must be filed with USCIS on behalf of the worker by a sponsoring firm. An L-1 petition, when approved, is used by a beneficiary to apply for an L-1 visa if abroad, or to change status if already in the United States. Canadian beneficiaries are reviewed for admission when they arrive at the border, because Canadians are exempt from most nonimmigrant visa requirements.

USCIS adjudicators examine many factors before approving an L-1 petition. Both the position that is going to be filled and the worker who will be hired must meet many criteria. Petitions that are complete and clearly meet the standards can be promptly approved. Other petitions require correspondence - a Request For Evidence (RFE) - between the service center and the petitioner to resolve unclear or incomplete submissions.

[14] While immigration law and consular procedure make no division of the L-1 category into L-1A and L-1B, USCIS does internally, and we will use their terms in our report. Petitioners select A or B when completing the "L Classification Supplement to Form I-129" depending on whether the beneficiary is A) coming to perform services in a managerial or executive capacity, or B) coming to perform services that entail specialized knowledge.

[15] Immigration petitions are submitted by a "petitioner," who requests that some particular status be accorded to a named "beneficiary." In the context of employment-based visas, the petitioner is usually the employing company, and the beneficiary is the named foreign worker. Once the beneficiary has been deemed by USCIS to be entitled to the requested classification, he or she can apply for an appropriate visa at a U.S. embassy.

Receipts and approvals of L-1 petitions increased dramatically (almost tripling) in the late 1990s. There has been a slight decline since 2001.



Source: US Citizenship and Immigration Services (January 11, 2006)

Is the L-1 "The Computer Visa"?

Though the L-1 visa program is not specifically tailored for the computer or information technology (IT) industries, the positions L-1 applicants are filling are most often related to computers and IT. From 1999 to 2004, nine of the ten firms that petitioned for the most L-1 workers were computer and IT related outsourcing service firms that specialize in labor from India.[16] And although the L-1 visa program was not intended to benefit any one country, almost 50 percent of the L-1B (specialized knowledge) petitions submitted in FY 2005 named beneficiaries who were born in India.

[16] These firms were Tata Consultancy, Cognizant Technology Solutions, Wipro Technologies, Hewlett Packard, I-Flex Solutions, IBM Global Services, Information Systems Technology, Syntel Incorporated, and Satyam Computer Services. The exception was Honda.

Top Five Approved L-1B (Specialized Knowledge) Petition Source Countries and Share of Total L-1B[17]

2002		2005	
Canada	25%	India	48%
Japan	12%	Canada	15%
India	10%	UK	5%
UK	5%	Japan	4%
Germany	5%	Germany	3%

Source: US Citizenship and Immigration Services (January 11, 2006)

There is no similar concentration among L-1A beneficiaries. The top five L-1A countries together represent only 48 percent of the FY 2005 total.

Top Five Approved L-1A (Manager) Petition Source Countries and Share of Total L-1A

2002		2005	
Canada	20%	Canada	17%
UK	7%	India	11%
Japan	6%	UK	11%
India	5%	Japan	5%
Argentina	5%	Mexico	4%

Source: US Citizenship and Immigration Services (January 11, 2006)

Results of Inspection

USCIS adjudicators we interviewed expressed a desire for more written guidance on how to adjudicate L-1 petitions. When questioned in more detail, however, it became clear that the underlying issue troubling them is their perception that the category is subject to fraud and abuse, rather than lack of guidance. Chapter 32 of the USCIS Adjudicator's Field Manual covers L requirements in considerable detail.

Many immigration benefits are based upon facts that can be verified. For example, an immigrant beneficiary either is or is not the lawful spouse of a U.S. citizen. An adjudicator can examine civil records, or interview the husband and wife, to confirm or disprove the claimed relationship. Likewise, a would-be student either has or has not been accepted by an accredited American educational institution. An adjudicator can check with the school.

Employment-based visas – and there are both nonimmigrant and immigrant visa classes that are employment-based – are perceived as more susceptible to fraud

[17] Only proportions are given and absolute numbers are omitted because country breakdown data provided by USCIS is not reconcilable with total L-1 approval data.

because they are more difficult or impossible to verify. An adjudicator cannot be certain that a beneficiary will work as a personnel manager if approved, or as just another salesperson. No document can be requested that will prove the future activities of the beneficiary. A beneficiary's entitlement to the classification is based on, among other factors, their future conduct. Additionally, adjudicators told us that employment-based petitions were usually professionally prepared by experienced attorneys, and were either too vague, or conversely too technical, for the adjudicator to make appropriate decisions. The adjudicators we interviewed felt unanimously that three vulnerabilities were the most significant they face, and these made their job extremely difficult with regard to adjudicating L-1 petitions:

- managerial status is difficult to verify,
- the definition of specialized knowledge is very broad, and
- foreign companies may be illegitimate.

DOS consular officers expressed identical concerns in their responses to our survey questions.[18]

Adjudicators Need Additional Information to Verify Managerial Status

The adjudicators we interviewed reported that one vulnerability of the L-1A program involved verification of the managerial status of the petitioned workers.[19] Though a petitioning firm may claim in their application that a worker will be performing managerial functions, once the worker arrives in the United States there is nothing to prevent the firm from employing the employee in a different capacity. Adjudicators are aware that there is sometimes a fine line between a senior worker, even a team leader, and a true manager. As an example, they discussed a busy and growing import-export firm. Typically starting as a solo activity, the one person at the one-person firm may not be a manager in the L-visa sense of the word if the work they do is selling products and filling out customs documents. When business grows and the founder hires someone else to answer the phone, but otherwise continues to do the product selection and importing, that person is still not a manager. Much later, when the growing firm has an employee who does nothing related to import-export at all, but who is responsible for personnel, "management" appears in the firm.

One complication that the adjudicators mentioned was that it is possible for a formerly successful firm to suffer commercial reverses and to shrink in size. When this happens the firm might no longer need a layer of management that was formerly useful. Shifting an L-1 manager to a non-management position for economic reasons such as this is allowed under the program.

[18] A full description of the questionnaire given to DOS is provided in Appendix D.
[19] Almost half of the L-1 petitions received and approved by USCIS are for L-1A managers and executives. For definitions of “manager” and “executive,” see Appendix B.

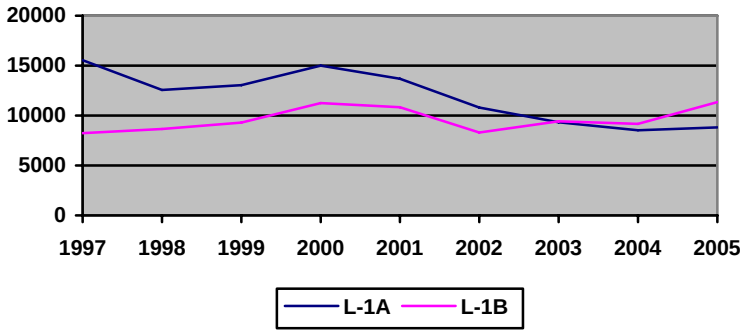
Adjudicators had varying techniques to attempt to determine whether a petitioning firm genuinely intended to employ a worker as a manager. At the request of USCIS, these fraud detection techniques will not be discussed in detail. Some adjudicators told us that they felt some of these techniques were difficult to use because they were insufficiently precise and failed to give the adjudicator a "bright-line" test. Adjudicators examine the credibility of the claims made in the petition in a variety of ways. Some adjudicators expressed hesitancy to accept at face value documentation from abroad, and pointed out that these self-serving documents could not be verified.

DOS consular officers who responded to our survey expressed similar concerns when L-1 applicants apply for visas. One southeast Asian consular section reported: "We suspect, but find it very difficult to prove, that some employees are actually doing different work than claimed in the application once they get to the United States, and that the employer-employee relationship with the U.S. subsidiary of the sending firm may not be as clear cut as the applicant claims."

Definition of the Term "Specialized Knowledge" May Not Be Sufficiently Restrictive

The number of L-1B "specialized knowledge" petitions approved by USCIS has risen steadily for several years, and in FY 2004 exceeded for the first time the number of L-1A petitions approved for managers and executives.

L-1B Overtakes L-1A



Source: US Citizenship and Immigration Services. Data as of January 12, 2006

L-1B positions are designated for workers who perform services that involve specialized knowledge.[20] The prior regulatory definition required that the beneficiary possess an advanced level of expertise and proprietary knowledge not available in the United States labor market. In 1990, Congress enacted section 214(c)(2)(B) of the Immigration and Nationality Act, as amended, 8 U.S.C.

[20] DHS USCIS I-129 Instruction Manual, page 6.

1184(c)(2)(B), which specifically provided for a less stringent definition of the term "specialized knowledge" for L-1 purposes.

Aware of the existing regulatory requirement that the alien's specialized knowledge be "proprietary" to the petitioning company, Congress, in enacting section 214(c)(2)(B) of the Act, set forth two different means for determining when an alien has specialized knowledge. Section 214(c)(2)(B) provides that: (a) the alien must have special (as opposed to proprietary) knowledge of the company product and its application in international markets or (b) the alien has an advanced level of knowledge of the processes and procedures of the company.

Following enactment of section 214(c)(2)(B), the former Immigration and Naturalization Service (INS) issued a policy memorandum on March 9, 1994, to all offices clarifying what is or is not specialized knowledge. This memorandum, entitled "Interpretation of Specialized Knowledge," is included in the Adjudicator's Field Manual as Appendix 32-1, and is still valid. In 2003, USCIS issued a second memorandum ("Interpretation of Specialized Knowledge for Chefs and Specialty Cooks Seeking L-1B Status") that, among other things, clarified certain general points made in the 1994 memorandum.

The 1994 memorandum makes clear that, in light of the enactment of section 214(c)(2)(B) of the Act, there is no longer any requirement that the alien's knowledge be unique or proprietary. The 1994 memorandum further clarifies that the beneficiary's specialized knowledge can have been gained outside of the petitioning company, and in fact, might even be knowledge that, over time, could be transferable to a worker already in the United States through training.

The 1994 memorandum contains several important caveats, however, which are reiterated in the 2003 memorandum. The mere fact that an alien's knowledge is somehow different from those of others in the industry does not, in itself, establish that the alien possesses specialized knowledge. The knowledge must be uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor.

According to the manual, adjudication requires the understanding of key terms, the meaning of which "have been defined over the years through various documents, including statutes, regulations, precedent decisions, and policy memoranda." The manual even lists which precedent decisions shape the meaning of each of several terms, including specialized knowledge.

While the current criteria for determining whether an alien is eligible for L-1B classification are not lax, given the 1990 amendment to the statute which effectively overruled INS's requirement that the alien's knowledge be proprietary, there is little room, absent new legislation, to further tighten the standards for L-1B classification. A bill to eliminate specialized knowledge as the basis for

obtaining an L visa, H.R. 4415, was introduced in the 108th Congress but did not pass.[21] That so many foreign workers seem to qualify as possessing specialized knowledge appears to have led to the displacement of American workers, and to what is sometimes called the "body shop" problem.

Displaced American Workers

There has been considerable media attention regarding the L-1 program over the past few years. Articles have focused on the increase in L-1 visa issuance in the IT sector and on the potential for the L-1 program to be used as a substitute to the H-1B program.[22] Articles also have focused on firms' abilities to use the program for labor outsourcing, and on supposed cuts to the American labor force and wages.[23]

Witnesses testifying at congressional hearings have repeated these concerns. Labor advocates felt the L-1 program was growing because of insufficient limitations, and that "the absence of these and other protections and limitations make the L-1 program far more attractive to employers than H-1B, and is a major reason for the explosive growth in this visa category."[24] Workers told of training their own replacements and implied that the L-1 program was driving down salaries and stealing American jobs; "Every H1-B and L-1 visa given to outsourcing companies like Tata is a job an American should have."[25]

DOS foreign service officers also expressed concern about substitution. One southeast Asian post we surveyed reported: "Host country software companies appear to be using the L visa to get around H quotas, and relocate individuals who may not meet the specialized knowledge requirement."

Most of the discussion of the job losses American workers have experienced as a result of L visas is focused on L-1B specialized knowledge workers, not L-1A managers and executives.[26] Simultaneously, there has been much public

[21] "The Save American Jobs Through L Visa Reform Act" was introduced by Rep. Henry Hyde.
[22] See INA § 101(a)(15)(H), 8 U.S.C. § 1101(a)(15)(H).
[23] New York Times, "Special Visa's Use for Tech Workers Is Challenged," May 30, 2003; Business Week, "A Mainframe-Size Visa Loophole," March 6, 2003; San Francisco Chronicle, "Visa's Use Provokes Opposition by Techies, L-1 Regarded as Threat to Workers," May 25, 2003.
[24] Testimony of Michael W. Gildea, Executive Director, Department for Professional Employees, AFL-CIO Before the Senate Committee on the Judiciary Subcommittee on Immigration and Border Security Regarding the L-1 Visa Program, July 29, 2003.
[25] Testimony by Former Siemens Technology Employee, Pat Fluno, on L-1 Visas Before the Senate Committee on the Judiciary Subcommittee on Immigration and Border Security Regarding the L-1 Visa Program, July 29, 2003.
[26] Testimony of Beth R. Verman President, Systems Staffing Group, Inc. on behalf of National Association of Computer Consultant Businesses (NACCB) Before The Senate Committee on the Judiciary Subcommittee on Immigration and Border Security Regarding the L-1 Visa Program, July 29, 2003; Testimony of Austin T. Fragomen, Managing Partner, Fragomen, Del Rey, Bernsen & Loewy, P.C., on behalf of the American Council on International Personnel (ACIP) Before The Senate Committee on the Judiciary Subcommittee on Subcommittee on Immigration and Border Security Regarding the L-1 Visa Program, July 29, 2003.

discussion of the threat to American workers posed by a similar visa, the H-1B.[27] The two temporary worker visas have much in common: the L-1B program is designed for workers with "specialized knowledge"[28] and the H-1B program is designed for workers in "specialty occupations."[29] But there are also several significant differences between the two visa categories. An American company with no overseas operations can submit an H petition, and the beneficiary need not and usually has not previously worked for the petitioner.

To manage the displacement of American workers, Congress has imposed a statutory limit on the number of H-1B petitions for workers in specialty occupations that can be approved each year.[30] There is some concern that the L-1B visa for workers with specialized knowledge, which has no such numerical limit, might serve as a way to avoid the H-1B cap for some employers.

The L-1 visa has other advantages over the H-1B, too, besides being numerically unrestricted. One is that unlike the H-1B, the L-1 has no labor certification requirement to ensure that recipients are paid the prevailing wage and that American workers are not displaced.[31] The L-1 has another advantage over the H-1B for those who might qualify for either category, such as IT workers: the permissibility of spousal employment. The accompanying spouses of L-1 recipients are given L-2 visas; the spouses of H-1B recipients are given H-4 visas. It is generally lawful for an L-2, but not an H-4, to accept gainful employment.[32]

While many of the claims that appear in the media about L-1 workers displacing American workers and testimony may have merit, they do not seem to represent a significant national trend. While L-1 visa issuance has generally increased in the decades since the category was created, issuance has abated in recent years. And while it is possible for the L-1B program to be used by some individuals who are also eligible for H-1B program, we could not establish how often this occurs. In 2004, only 1,975 applicants applied for both the L-1 and H-1B.[33] Adjudicators pointed out to us that it sometimes occurs that a foreign student about to graduate might receive multiple legitimate job offers and be the beneficiary of two or more petitions filed during the same period. Such an event does not indicate that either of the petitioners, or the beneficiary, is trying to take advantage of the system. Another possible indication that L-1s are not widely used as alternatives to the H-1B is that in fiscal year 2004 the congressional numerical limit on H-1B status

[27] Ibid, plus Testimony of Stephen Yale-Loehr Adjunct Professor of Law, Cornell Law School Before the Senate Committee on the Judiciary Subcommittee on Immigration and Border Security Regarding the L-1 Visa Program, July 29, 2003.
[28] See INA § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L) and INA § 214(c)(2)(B), 8 U.S.C. § 1184(c)(2)(B).
[29] See INA § 101(a)(15)(H), 8 U.S.C. § 1101(a)(15)(H) and INA § 214(i)(3), 8 U.S.C. § 1184(i)(3).
[30] See INA § 214(g)(1)(A), 8 U.S.C. § 1184(g)(1)(A), as added by Pub. L. No. 101-649 Sec 205(a).
[31] DHS USCIS I-129 Instruction Manual, page 3.
[32] "Immigrant Wives' Visa Status Keeps Them Out of Workplace," Washington Post, October 3, 2005, Page A01.
[33] Source: US Citizens and Immigration Services.

was significantly reduced,[34] but no increase in L receipts or approvals was observed.

On the whole, the demand for computer and IT related positions also seems to be strong. From 1999 to 2004, computer and IT related employment averaged 1.4 percent annual real wage growth, compared to 1.3 percent growth for production workers, and a 3.5 percent increase in the number of positions annually compared to 0.7 percent annually for production workers.

There may be a perception that the L-1 program is larger and more significant than it is because beneficiaries are grouped together in certain areas of the country. L-1 positions tend to be concentrated in a few states. For four of the last five years, California has received the most L visa workers.

USCIS adjudicators said the L-1B program had the potential to be easily exploited for two major reasons. First, adjudicators said that without a more restrictive and more precise definition of "specialized knowledge," their denials tended to be subjective. Subjective decisions, they said, are more easily appealed. Because of their desire to do their jobs correctly, successful appeals are seen as a kind of failure that they strive to avoid. They were therefore inclined to approve ambiguous petitions rather than denying them. Second, they reported to us that because many petitions were for employment in the rapidly evolving high technology sector, they did not have sufficient technical expertise to determine whether the beneficiary's knowledge is specialized or general. And the petitions often contain highly technical language that is not readily comprehensible to an adjudicator.

The DOS consular professionals we surveyed echoed many of the comments of the adjudicators. One Southeast Asian visa section reported "officers do not have the knowledge or the guidance necessary to determine whether such work involves specialized knowledge, except in the most clear cut cases."

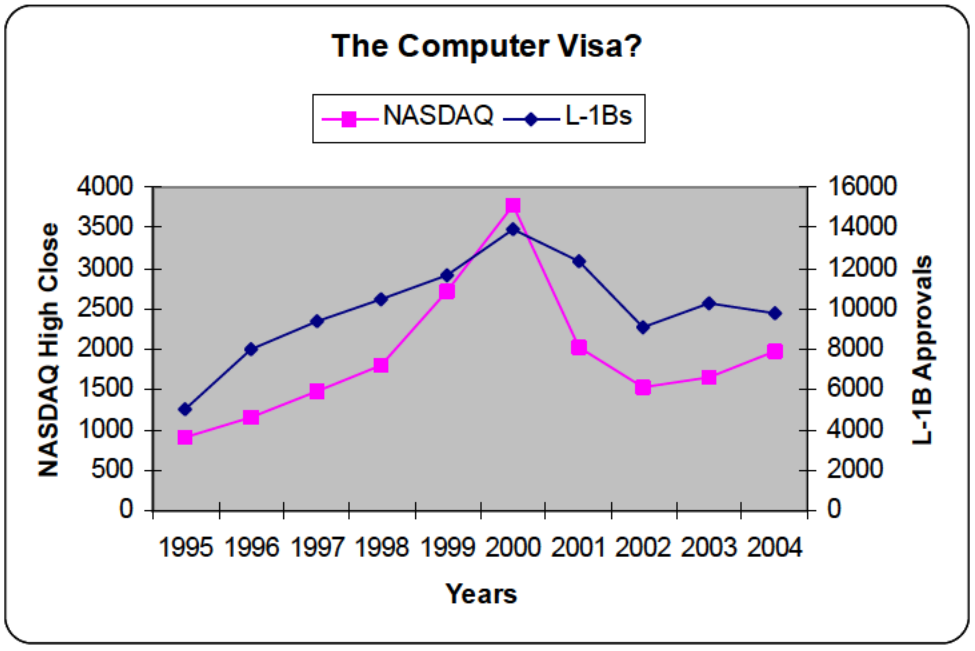
The "Body Shop" Problem

Of the many actual and potential vulnerabilities of the L-1 visa, the body shop problem has received the most attention in the press, and during congressional hearings.

Briefly, there are companies whose business involves providing the services of their own employees to other companies for a fee. Some of these companies are general purpose temporary employment agencies that provide both blue collar workers, such as laborers, and white collar staff, such as accountants. Newer on the scene are high-tech information technology (IT) service providers that

[34] See INA § 214(g)(1)(A)(vi), 8 U.S.C. § 1184(g)(1)(A)(vi), as added by Pub. L. No. 101-649 Sec 205(a).

specialize in computer operators, network managers, systems analysts, and programmers. During the boom years for the U.S. tech industry in the 1990s, there was a growing demand for these kinds of high-tech workers. Foreign IT service providers could transfer more and more of their foreign workers to the U.S. branch of the company – and place them with their U.S. clients. The ebb and flow of L-1B workers correlates closely with the general health of the U.S. high-tech industry, as the following chart illustrates.



NASDAQ levels: *The Economic Report of the President, 2005.*

L-1B data: U.S. Citizenship and Immigration Services

According to press accounts, many unemployed American IT workers saw themselves as displaced by a rising tide of foreign IT workers. The great majority of the new foreign IT employees entered the United States using the H-1B temporary worker visa, not the L-1. There is considerable room for overlapping of the two categories, but the most important distinction is that H-1B workers are petitioned for directly by U.S. companies, and are usually new hires, whereas L-1s are being transferred from a foreign company. The H-1B visa is so popular that Congress has placed explicit limits on the number of petitions that can be issued in any one year. In fiscal year 1998, that limit was 65,000 beneficiaries.[35] For 1999 and 2000, the limit was raised to 115,000. In 2001 and 2002, the limit was raised even higher, to 195,000. Since 2003, the limit has since been lowered to 65,000 again. L-1 foreign IT workers represented only a small component of a much larger wave of foreign IT workers that came to the United States on

[35] The limitation on H-1B status is actually rather complicated, with several exceptions to the limit that make counting difficult. For more information about H-1B limits, see our recent report "USCIS Approval of H-1B Petitions Exceeded 65,000 Cap in Fiscal Year 2005, OIG-05-49, released in September 2005.

temporary worker visas. The busiest year for L-1B visas, fiscal year 2000, saw more than ten H-1B workers for every one L-1B worker. In FY 2002, the ratio was twenty to one. Foreign IT workers may indeed have affected employment opportunities for American IT workers, but the L-1B visa would appear to be only a very small element of the problem.

Nevertheless, the appearance of foreign companies establishing branches in the United States and then driving American workers out of their jobs with transplanted competitors led Congress to address the body shop issue in the L-1 Visa Reform Act of 2004, signed into law December 8, 2004.[36]

> SEC. 412. NONIMMIGRANT L-1 VISA CATEGORY.
>
> (a) IN GENERAL- Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:
>
> > (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
> > (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
> > (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

It is too soon for the effects of this legislative change to be determined.

Adjudicators Need Additional Information to Verify a Foreign Company's Legitimacy

The L-1 program allows qualifying workers who have been employed abroad by the petitioner continuously for one year of the last three to be transferred to the United States. In order for the petitioning company to be eligible, it must be "the same firm, corporation, or other legal entity, or parent, branch, affiliate or subsidiary thereof, for whom the beneficiary has been employed abroad."[37]

---

[36] See INA § 214(c)(2)(F), 8 U.S.C. § 1184(c)(2)(F), as added by Pub. L. No. 108-649, Sec 412(a).
[37] U.S. Department of State Foreign Affairs Manual, Volume 9, section 41.54, note 2.1.

There is a widespread belief that the L visa was created so that large American companies with international operations could move foreign executive talent into the pre-existing U.S. offices of those companies. The Department of State Foreign Affairs Manual contains the following background information in its guidance for consular officers adjudicating L visas:

> The L nonimmigrant classification was created to permit international companies to temporarily transfer qualified employees to the United States for the purpose of improving management effectiveness, expanding U.S. exports, and enhancing competitiveness in markets abroad. Prior to the enactment of Public Law 91-225, no nonimmigrant classification existed which fully met the needs of intracompany transferees. Those who did not qualify as E nonimmigrants were forced to apply for immigrant visas to the United States, even if there was no intent to reside permanently.[38]

Whether or not the L visa was created to serve the needs of multinational corporations, the law creating the category does not require that the petitioning company have any operations in the United States, or even operate in more than one country, at the time of the filing of the petition. It merely requires that the alien comes to the United States to continue to serve the petitioning employer, or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.[39] Any foreign company can use the L visa to send employees to the United States to open a new office. This opens a window of opportunity for the owners of a business abroad to send themselves and their families to the United States to live, work, and study. The INA permits the spouses of L beneficiaries to work in the United States, and the children may attend public school.

Once the first beneficiary has arrived in the United States, the foreign company effectively has a U.S. branch. The new U.S. office, not the parent company abroad, typically files subsequent petitions on behalf of the company. Because of this, and because many of the petitions USCIS receives are from existing U.S. companies, the "new office" petition is a small percentage of the total. Most L petitioners have both U.S. and foreign offices at the time the petition is submitted.

USCIS adjudicators must determine whether the U.S. and foreign entities truly exist, and have the required commercial interrelationship. This process is designed to prevent individuals or groups from creating shell companies in one

[38] U.S. Department of State Foreign Affairs Manual, Volume 9, section 41.54, note 1.b.
[39] See INA § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L) and 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

country or the other, or falsifying the relationship between two legitimate companies, to transfer otherwise ineligible aliens to the United States.

To make their decisions, adjudicators use evidence supplied by the petitioning company of the qualifying relationship between the U.S. and foreign entities. The adjudicator must analyze the ownership and control of the two entities. Evidence often includes an annual report, the articles of incorporation, financial statements, and copies of stock certificates. Unless the company is well known, adjudicators might find the submitted evidence insufficient to establish the facts. They will then send the petitioner an RFE. Typically, the request will ask for quarterly wage reports and state business tax returns to prove that the firm is actually conducting business in the United States. This RFE, though, slows the adjudication process. Many adjudicators we spoke with expressed a desire that quarterly wage reports and tax returns be made required documents, to be submitted with all L petitions. They felt this would reduce the need to issue so many RFEs.

It can be a very difficult task for an adjudicator to verify that a business exists abroad. Adjudicators said they did not place much confidence in documents from abroad because they are easy to counterfeit in a fashion that the adjudicator would not be able to detect. As an example, they related that their familiarity with California state employment tax documents makes it possible for them to spot forged or altered versions submitted with fraudulent petitions. This sometimes occurs, they said, when a petitioner seeks to exaggerate the number of current employees to sustain a claim that an additional manager is required. They also pointed out that any suspicions they might have about a U.S. document can likely be resolved with a telephone call to the issuing authority. With respect to firms abroad, however, they have vastly less ability to detect bogus documents, or to resolve suspicions if any arise. There is little information available publicly in the United States that would assist the adjudicator in determining whether a business abroad is legitimate.

On occasion an adjudicator will seek assistance from the U.S. embassy in the foreign country, and ask them to conduct an investigation as to the legitimacy of the claimed business. Verifying businesses for USCIS is a routine task for many consular officers in countries like India and China, but officers in those countries expressed concern in our survey about businesses located in small or far-away cities that they could not verify first-hand. USCIS petitions in which the adjudicator suspects fraud can be referred to the service center's own Fraud Detection Center. These offices not only have advanced tools for detecting petition fraud, but also serve a valuable role as a liaison to Immigration and Customs Enforcement (ICE).

DOS foreign service officers expressed parallel concerns when the beneficiaries apply for visas. One very large embassy reported, “L-1 applicants claim they are

being sent to open new offices or subsidiaries in the United States. It is impossible to verify these claims as the new company need only show to DHS that it has a leased business space and possesses company registration. When we subsequently investigate "existing" U.S. entities, we often find that the U.S. office never actually existed in the true sense, or that it is no longer doing business."

USCIS plans to establish a standard mechanism to request overseas verification of pending H and L petitions by Department of State officers in the related countries. State, for its part, plans to use its one-third share of the new $500 Fraud Prevention and Detection Fee to expand its anti-fraud staffing abroad. They would be able to verify education, experience, relationships, and other information provided in support of H and L petitions. This initiative will, if implemented, reduce successful L petition fraud.

Recommendations

We recommend that U.S. Citizenship and Immigration Services:

Recommendation 1: Establish a procedure to obtain overseas verification of pending H and L petitions by Department of State officers in the related countries.

Recommendation 2: Explore with ICE whether ICE Visa Security Officers, experienced criminal investigators assigned abroad in compliance with Section 428(e) of the Homeland Security Act, could assist in checking the bona fides of L petitions submitted by petitioners in the countries in which the officers are assigned.

Recommendation 3: In cooperation with "L Visa Interagency Task Force," which consists of representatives from the Departments of Homeland Security, Justice, and State, seek legislative clarification relative to:

a) applying the concepts of manager and executive to L-1A visas and verifying that the beneficiary will be so used;
b) the term "specialized knowledge," as altered in the Immigration Act of 1990, and according to USCIS guidance issued in March 1994; and
c) the criteria and proof required when a foreign company seeks to use an L petition to open a new office in the United States. That almost any foreign business proprietor can effectively petition himself and his family into the United States may not be in accord with congressional intent.

Management Comments and OIG Analysis

We issued our draft report on November 30, 2005, and met with USCIS officials on January 4, 2006 to discuss the report. The draft was also circulated to CA for

its comments, which are attached at Appendix F. USCIS was invited to provide us with technical comments about and corrections to the draft; these were submitted to us separately for our consideration, and have been incorporated into our final report as appropriate. We also requested, and received, up-to-date FY 2005 petition counts to improve the quality of our charts. We thank USCIS and CA for their assistance at all stages of our work.

The USCIS response to our draft has added a wealth of legal background to our analysis of the fraud and potential abuse of the L-1 Intracompany Transferee Visa program. A copy of these comments is attached at Appendix E. Below is our summary of USCIS' comments about our recommendations and our analysis of its response.

The draft version of our report that was circulated for comment contained a recommendation that USCIS expand its anti-fraud activities abroad by stationing FDNS anti-fraud immigration officers at embassies and consulates general in countries that present the highest risk of petition and benefit fraud. While several USCIS officials we interviewed during our research had commended such an approach, at this time neither USCIS managers nor the Department of State endorse this idea. USCIS states in its comments that it has thoroughly reviewed the option to station anti-fraud immigration officers in overseas locations but determined that it would be more effective and efficient to rely on the current structure and establish a standard mechanism to request overseas verifications through the Department of State (DOS). In their comments, both USCIS and CA pledge better future cooperation to combat fraud.

CA advised that its fraud prevention officers investigate L visa fraud already. We believe that the vast majority of CA's anti-fraud activities in this area (petition fraud) involve questionable petitions that have already been approved by USCIS. These efforts suggest to us that more anti-fraud work should be done before questionable petitions are approved and sent to embassies for processing. CA also states that the Fraud Prevention and Detection Fee enacted in Section 426 of the 2004 Visa Reform Act (Title IV of the Omnibus Appropriations Act, P. L. 108-447) will be used by the Department of State to increase the number of Diplomatic Security (DS) bureau officers assigned to such duty at embassies and consulates abroad. The Department of State OIG recently studied the current CA–DS anti fraud program (*Report of Management Review of Visa and Passport Fraud Prevention Programs*, Report Number ISP-CA-05-52, November 2004). The report contained 28 recommendations to improve the program and stated that "most posts ... lack the resources to address fraud effectively." CA's larger point, that with CA and DS already conducting some fraud detection efforts abroad, and with the new Visa Security Officer positions staffed abroad by DHS's bureau of Immigration and Customs Enforcement (ICE) adding to the mix, the field is getting crowded and inefficiencies and redundancies will occur. We fully agree with CA that this redundancy of functions may become wasteful in the future.

Given the position taken by both USCIS and CA to oppose any USCIS FDNS expansion abroad, however, and considering their declared intention to instead expand State's role in detecting and preventing H and L visa fraud before questionable petitions are approved, we have reconstituted our recommendation accordingly.

Recommendation 1: We recommend that USCIS establish a procedure to obtain overseas verification of pending H and L petitions by Department of State officers in the related countries.

As indicated, this recommendation has been formulated to be consistent with current USCIS initiatives. We request a report from FDNS within 90 days of actions taken by USCIS to comply.

Recommendation 1 is Resolved – Open.

Recommendation 2: We recommend that USCIS explore with ICE whether ICE Visa Security Officers, experienced criminal investigators assigned abroad in compliance with Section 428(e) of the Homeland Security Act, could assist in checking the bona fides of L petitions submitted by petitioners in the countries in which the officers are assigned.

USCIS indicates in its comments that it is pursuing this recommendation with ICE's Visa Security Unit. USCIS points out that even if such assistance can be obtained, it will only be useful in the few countries in which ICE operates VSUs. We request a report from USCIS within 90 days of their efforts to obtain ICE assistance in those countries.

Recommendation 2 is Resolved – Open.

Recommendation 3: We recommend that USCIS, in the framework of its participation in the "L Visa Interagency Task Force," which consists of representatives from the Departments of Homeland Security, Justice, and State, seek legislative clarification relative to:

a) applying the concepts of manager and executive to L-1A visas and verifying that the beneficiary will be so used;

b) the term "specialized knowledge," as altered in the Immigration Act of 1990, and according to USCIS guidance issued in March 1994; and,

c) the criteria and proof required when a foreign company seeks to use an L petition to open a new office in the United States.

USCIS responds that any legislative recommendation to Congress requires Department of Homeland Security and interagency review and clearance through the Office of Management and Budget to ensure that it is consistent with the Administration's program. There are many hurdles to the consideration and enactment of new law. These hurdles do not preclude an agency from considering legislative changes recommended by an OIG and stemming from the OIG's responsibility to review existing law and to make recommendations concerning the impact of such legislation. See Inspector General Act of 1978, 5 U.S.C.A., § 4(a)(2), (5). USCIS states that it will carefully review the matters raised by the Inspector General, but does not agree that any legislative recommendations regarding the L-l visa program are necessary or appropriate.

Section 416 of the Visa Reform Act requires the establishment of an L Visa Interagency Task Force that consists of representatives from the Department of Homeland Security, the Department of Justice, and the Department of State. The law further requires that the Task Force report to the Committees on the Judiciary of the House of Representatives and the Senate on the efforts to implement the recommendations set forth by this report. The Task Force will note specific areas of agreement and disagreement, and make recommendations to Congress on the findings of the Task Force, including any suggestions for legislation.

It would therefore appear that our recommendation must necessarily be considered by the Task Force through the operation of the law, and specific compliance action by USCIS is unnecessary.

Recommendation 3 is Closed.

Purpose, Scope, and Methodology

The objective of this review was to determine the extent of vulnerabilities and potential abuses of the L-1 visa program. We conducted fieldwork from April 2005 to June 2005.

We interviewed USCIS officials from the Office of Service Center Operations, the Office of Fraud Detection and National Security. We also interviewed officials at the DHS Management Directorate's Office of Immigration Statistics.

We observed L-1 petition processing at the California Service Center in Laguna Niguel, California, and interviewed adjudicators and managers.

With the cooperation of the Department of State, we visited the Kentucky Consular Center in Williamsburg, Kentucky, where questionable L petitions are returned for review. The Department of State also facilitated a written survey of consular officers and foreign national fraud prevention specialists at the 20 largest L-visa processing posts (see Appendix D).

This review was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

Section 101(a)(15)(L) of the Immigration and Nationality Act

(L) subject to section 214(c)(2), an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

Section 101(a)(44) of the Immigration and Nationality Act

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily-

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day- to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily- For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Section 214(c)(2)(B) of the Immigration and Nationality Act

(B) For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

USCIS Adjudicator's Field Manual, Appendix 32-1 Interpretation of Specialized Knowledge.

Editor's Note: The following is the text of a memorandum issued March 9, 1994, to all offices by the Acting Executive Associate Commissioner for Programs:

The Immigration Act of 1990 contains a definition of the term "specialized knowledge" which is different in many respects than the prior regulatory definition. The purpose of this memorandum is to provide field offices with guidance on the proper interpretation of the new statutory definition.

The prior regulatory definition required that the beneficiary possess an advanced level of expertise and proprietary knowledge not available in the United States labor market. The current definition of specialized knowledge contains two separate criteria and, obviously, involves a lesser, but still high, standard. The statute states that the alien has specialized knowledge if he/she has special knowledge of the company product and its application in international markets or has an advanced level of knowledge of the processes and procedures of the company.

Since the statutory definitions and legislative history do not provide any further guidelines or insight as to the interpretation of the terms "advanced" or "special," officers should utilize the common dictionary definitions of the two terms as provided below.

Webster's II New Riverside University Dictionary defines the term "special" as "surpassing the usual; distinct among others of a kind." Also, Webster's Third New International Dictionary defines the term "special" as "distinguished by some unusual quality; uncommon; noteworthy."

Based on the above definition, an alien would possess specialized knowledge if it was shown that the knowledge is different from that generally found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

The following are provided as general examples of situations where an alien possesses specialized knowledge.

- The foreign company manufactures a product which no other firm manufactures. The alien is familiar with the various procedures involved in the manufacture, use, or service of the product.

- The foreign company manufactures a product which is significantly different from other products in the industry. Although there may be similarities between products, the knowledge required to sell, manufacture, or service the product is different from the other products to the extent that the United States or foreign firm would experience a significance interruption of business in order to train a new worker to assume those duties.

- The alien beneficiary has knowledge of a foreign firm's business procedures or methods of operation to the extent that the United States firm would experience a significant interruption of business in order to train a United States worker to assume those duties.

A specific example of a situation involving specialized knowledge would be if a foreign firm in the business of purchasing used automobiles for the purpose of repairing and reselling them, some for export to the United States, petitions for an alien to come to the United States as a staff officer. The beneficiary has knowledge of the firm's operational procedures, e.g., knowledge of the expenses the firm would entail in order to repair the car as well in selling the car. The beneficiary has knowledge of the firm's cost structure for various activities which serves as a basis for determining the proper price to be paid for the vehicle. The beneficiary also has knowledge of various United States customs laws and EPA regulations in order to determine what modifications must be made to import the vehicles into the United States. In this case it can be concluded that the alien has advanced knowledge of the firm's procedures because a substantial amount of time would be required for the foreign or United States employer to teach another employee the firm's procedures. Although it can be argued that a good portion of what the beneficiary knows is general knowledge, i.e. customs and EPA regulations, the combination of the procedures which the beneficiary has knowledge of renders him essential to the firm. Specifically, the firm would have a difficult time in training another employee to assume these duties because of the inter-relationship of the beneficiary's general knowledge with the firm's method of doing business. The beneficiary therefore possesses specialized knowledge.

Further, Webster's II New Riverside University Dictionary defines the term "advanced" as "highly developed or complex; at a higher level than others." Also, Webster's Third New International Dictionary defines the term “advanced” as "beyond the elementary or introductory; greatly developed beyond the initial stage."

Again, based on the above definition, the alien's knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout the company, only that the knowledge be advanced.

The determination of whether an alien possesses specialized knowledge does not involve a test of the United States labor market. Whether or not there are United States workers available to perform the duties in the United States is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the alien, not whether there are similarly employed United States workers. However, officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized. There is no requirement in current legislation that the alien's knowledge be unique, proprietary, or not commonly found in the United States labor market.

The following are some of the possible characteristics of an alien who possesses specialized knowledge. They are not all inclusive. The alien:

- Possesses knowledge that is valuable to the employer's competitiveness in the market place;

- Is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;

- Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position;

- Possesses knowledge which, normally, can be gained only through prior experience with that employer;

- Possesses knowledge of a product or process, which cannot be easily transferred or taught to another individual.

- An alien beneficiary has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States.

A specific example of the above is if a firm involved in processing certain shellfish desires to petition for a beneficiary to work in the United States in order to catch and process the shellfish. The beneficiary learned the process from his employment from an unrelated firm but has been utilizing that knowledge for the foreign firm for the past year. However, the knowledge required to process the shellfish is unknown in the United States. In this instance, the beneficiary possesses specialized knowledge since his knowledge of processing the shellfish must be considered advanced.

The common theme, which runs through these examples is that the knowledge which the beneficiary possesses, whether it is knowledge of a process or a product, would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm. The knowledge is not generally known and is of some complexity.

The above examples and scenarios are presented as general guidelines for officers involved in the adjudication of petitions involving specialized knowledge. The examples are not all inclusive and there are many other examples of aliens who possess specialized knowledge, which are not covered in this memorandum.

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

In closing, this memorandum is designed solely as a guide. It must be noted that specialized knowledge can apply to any industry, including service and manufacturing firms, and can involve any type of position.

The Consular Survey

With the assistance of the Department of State Bureau of Consular Affairs, a brief questionnaire was sent to twenty-four embassies and consulates general that are among those that processed the greatest number of L-1 visa applications. The posts surveyed were:

Visa-issuing Post	Number of L-1 Visa Applications Processed	
	Fiscal Year 2004	Fiscal Year 2005
Chennai, India	12,185	13,222
London, United Kingdom	5,836	5,903
New Delhi, India	2,574	5,664
Mumbai, India	3,356	4,602
Calcutta, India	2,040	3,146
Tokyo, Japan	2,774	2,991
Frankfurt, Germany	2,430	2,468
Paris, France	1,812	1,854
Sao Paulo, Brazil	1,154	1,484
Osaka Kobe, Japan	1,306	1,321
Seoul, Korea	992	1,204
Mexico City, Mexico	1,235	1,163
Manila, Philippines	690	944
Caracas, Venezuela	1,092	906
Tel Aviv, Israel	780	863
Amsterdam, the Netherlands	794	835
Dublin, Ireland	781	773
Sydney, Australia	624	730
Beijing, China	410	648
Buenos Aires, Argentina	573	646
Shanghai, China	500	635
Berlin, Germany	465	600
Kuala Lumpur, Malaysia	748	520
Johannesburg, South Africa	557	502

The survey instrument asked six questions:

1) What experience has post had with abuse of the L-visa?

2) Does the post find many L beneficiaries unqualified? What are the common reasons?

3) What abuse has the post observed by host-country petitioning companies?

4) Has the post observed false claims to derivative status? How many cases?

5) Does the post have any anti-fraud checklists, tools, or techniques that are used to screen L cases?

6) The October 2003 issue of Consular Affairs Fraud Prevention Program's "Fraud Digest" has an article on L fraud. It states in part that posts can use the Internet and field investigations to verify questionable L cases. Does post regularly do this? If so, please describe typical activities, and some of the fraud uncovered?

Half of the posts surveyed indicated in their replies that they typically saw little or even no evidence of fraud or abuse among the L-1 applications they received. They added that large, well-known local corporations had submitted almost all the petitions they saw, and that the beneficiaries – the visa applicants - were in fact managers and executives with several years experience at the petitioning firms. The other half of the posts surveyed commonly found fraud or potential abuse among their L-1 cases.

Appendix E
Management Response to Draft Report

U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

U.S. Citizenship and Immigration Services

To: Robert L. Ashbaugh
Assistant Inspector General
Inspections and Special Reviews

From: Robert C. Divine
Acting Deputy Director

Date: January 10, 2006

Re: Comments on OIG Draft Report: A Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program

We appreciate the opportunity to review and comment on the subject report. The report accurately notes that adjudication of L-1 visa petitions is difficult and that this category has the potential of being exploited to fraud and abuse. Below we have provided additional information on the guidance, both within the Immigration and Nationality Act (INA), regulations and internally, that are in use in an attempt to minimize such vulnerabilities. In addition, in 2006, we plan to conduct a benefit fraud assessment to determine the nature and extent of fraud in the L-1A non-immigrant classification.

What Constitutes an L-1A Manager – Executive: The report focuses on the need for verification that the alien will in fact be engaged as a manager or executive, without devoting much time to discussing the statutory definition for these positions. Based on the statutory definition of manager and executive, USCIS adjudication officers review the documentary evidence presented in each L-1 petition, including the petitioner's description of the job duties, to determine whether the beneficiary will be employed in a qualifying manner. USCIS adjudication officers at times must rely solely on the paper evidence to make this determination, particularly if they cannot point to any specific flaw or question regarding the petition itself that would justify a request for further evidence.

The statute's definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Immigration Act, as amended (the "Act"), 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common use of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(ii)(B)((2). If a beneficiary directly supervises other employees, the beneficiary must also

have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(ii)(B)(3).

The term "function manager" applies generally when a manager does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). The term "essential function" is not defined by statute or regulation. As with any claim of managerial duties, if a petitioner asserts that the beneficiary is managing an essential function, the petitioner must furnish a detailed description of the services to be performed. See 8 C.F.R. § 214.2(l)(3)(ii). USCIS adjudication officers review the description of the job duties to ensure that it identifies the function with specificity, articulates the "essential" nature of the function, and establishes what proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the description of the job duties must demonstrate that the beneficiary "primarily" manages the function rather than performs the duties related to the function. Section 101(a)(44)(A)(ii) of the Act.

The term "executive capacity" focuses on a person's position within an organizational hierarchy, including major components or functions of the organization, and the person's authority to direct that organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct" the management of an organization and "establish the goals and policies" of that organization. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." Id.

When considering these definitions, USCIS does not discriminate against or discount the claims made by small companies. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the "reasonable needs" of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, USCIS adjudication officers expect a petitioner to specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In this regard, it is always appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner.

Finally, both the definition of managerial and executive capacity emphasize that the beneficiary must "primarily" engage in these qualifying duties. See 8 C.F.R. § 214.2(l)(ii)(B) and (C). The petitioner must prove that the beneficiary "primarily" performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions or otherwise non-qualifying duties, such as sales or the supervision of non-professional staff. Where an individual is "primarily" performing the basic tasks necessary to produce a product or to provide a service, that individual cannot also be "primarily" performing managerial or executive duties.

As acknowledged in the report, USCIS adjudication officers can not be absolutely certain whether a beneficiary will ultimately be employed as represented in an L-1 petition. USCIS adjudication officers

must rely on documentary evidence, such as the required description of the services to be performed and organizational charts, as well as the overall credibility of the petition and underlying supporting documentation submitted with the petition. In this regard, however, this is no different than in the case of other employment-based nonimmigrant or immigrant petitions. However, if fraud is suspected the adjudicator can refer the case to FDNS for further review. FDNS will conduct additional systems checks and/or an administrative field inquiry.

Many L-1 petitioners and their attorneys are knowledgeable about the law and USCIS adjudication practices. Consequently, L-1 petitions may appear approvable on their face, but, upon closer review, fail to pass muster. The problem is that, even when a USCIS adjudication officer suspects that an employment claim is not credible, it is often difficult and time consuming for the officer to identify any particular deficiencies in a given petition and therefore provide a sufficiently specific written denial that will stand up to judicial scrutiny. For example, USCIS adjudication officers have received a number of petitions that inflate the value or importance of job duties, paraphrase statutory standards in the job description, and contain organizational charts with artificial tiers that represent simple organizations as more complex. To deduce the truth of the matter, a USCIS adjudication officer must often compare the written description of the job duties and the organizational charts with the actual employment records and evidence of business transactions to discover what the beneficiary is actually doing on a daily basis. Given the competing demands of providing timely customer service and ensuring that only those petitions which meet the statutory standards be approved, adjudicators, at the time of adjudication, may not have more to go on than mere suspicion of ineligibility, since the true facts may come to light only after the petition has been approved. As a result, some petitions that appear to meet or exceed statutory standards, when in actuality they do not, may be approved in error. In such cases, when USCIS becomes aware of the error, it may initiate proceedings to revoke the L-1 petition, or deny a subsequently filed L-1 extension.

Finally, the report discusses how a petitioning organization may grow or develop to the point that it can support a managerial or executive employee. As an example, the report discusses a "busy and growing import-export firm" and how a founder may start off as a sales person but ultimately hire someone to perform those duties. It must be emphasized that the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year "start up" period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension of L-1 status. 8 C.F.R. § 214.2(l)(14)(ii).

Standards for Classification of L-1B Specialized Knowledge Workers: The report correctly notes that, in enacting the Immigration Act of 1990 (IMMACT) and attempting to clarify the meaning of "specialized knowledge," Congress indicated its intention not to adopt legacy Immigration and Naturalization Service's (INS) then-existing bright-line test for determining whether an alien was eligible for classification as a specialized knowledge employee. Specifically, in addressing the need to reconcile "[v]arying interpretations [of the term "specialized knowledge" adopted] by INS" in the past, Congress, in providing the current statutory definition of "specialized knowledge," specifically declined to include any requirement that the alien's knowledge be propriety or exclusive to the

petitioning company. See House Committee Report, H.R. Rep. No. 101-723(I) at 69, 1990 U.S.C.C.A.N. at 6749. Citing the March 9, 1994, INS policy memorandum, CO-214L-P (entitled "Interpretation of Specialized Knowledge") the report suggests that, due to passage of IMMACT, the standard for adjudicating L-1B petitions has become more subjective and therefore more difficult to apply. The report also suggests that the definition of the term "specialized knowledge" may not be sufficiently restrictive. While we agree that there is no bright-line test for determining when a beneficiary is classifiable as a specialized knowledge worker, we wish to emphasize that there exist certain specific guidelines for adjudicating L-1B petitions.

In broadening the scope of the specialized knowledge category, Congress did not render irrelevant the requirement that the degree of knowledge possessed by the alien beneficiary must be different from that generally held by a person in the particular profession or industry, nor did it make less important the specific role and use the beneficiary's knowledge plays within the petitioning organization. In a memorandum dated September 9, 2004, "Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L-1B Status," the USCIS Director of Service Center Operations reaffirmed the principles stated in the March 9, 1994, policy memorandum, making clear that L-1B petitioners must demonstrate: (a) the complexity of the prospective employee's knowledge; (b) that the beneficiary's knowledge is not generally found in the industry, and, (c) that the petitioning company (or its overseas affiliate) would suffer economic disruption to its U.S. or foreign-based operations if it had to hire someone other than the particular overseas employee on whose behalf the petition was filed. In other words, a critical consideration in adjudicating an L-1B petition is the degree to which the alien's knowledge would contribute to the uninterrupted operation of the specific business for which the alien's services are sought.

In short, Congress, in enacting IMMACT, did away with a bright-line test for determining which aliens possess specialized knowledge. In enacting this law, Congress created a standard that requires the determination as to whether an alien is classifiable as an L-1B specialized knowledge worker to be made on a case-by-case basis. In doing so, however, Congress did not intend that there be no controls on the category, or that the standards for classification be purely subjective. There is no indication in the legislative history of IMMACT to indicate that Congress intended to depart from its previous position that the L-1B classification was intended for "key employees" and that the number of admissions under the L-1 classification "will not be large" or that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated . . . ." See *Matter of Penner*, 18 I&N Dec. 49, 51 (Comm. 1982) (citing to the 1970 House Report, H.R. No. 91-851).

Notwithstanding certain widely publicized abuses to the L-1B program, as your draft report demonstrates, and despite recent increases in the usage of the L-1B category, there continues to be a relatively low number of aliens granted L-1B classification annually. Moreover, as the report notes, there does not appear to be any significant trend toward using the L-1B classification to circumvent the normal requirements of the H-1B category. We believe that this is due, in significant part, to the fact that USCIS and legacy-INS have fashioned reasonable standards designed to ensure that only those persons that meet the statutory requirements be classified as L-1B specialized knowledge workers.

Displaced American Workers - L-1 Visa Reform Act of 2004 – Anti-Job/Body Shop Legislation: As the draft report correctly notes, certain foreign-based companies have misused the L-1

category to bring in otherwise unqualified workers. In response to widely reported "job shop" abuses, on December 8, 2004, Congress specifically addressed the issue of "outsourcing" by enacting the L-1 Visa Reform Act of 2004. While, the report notes, it is too soon to determine the impact of this anti-job shop legislation, it is worth noting that USCIS issued guidance implementing the new law shortly after it went into effect.

New section 214(c)(2)(F) of the INA explicitly renders aliens ineligible for L-1B classification if: (1) they will be stationed primarily at a worksite other than their petitioning employer and the work will be controlled and supervised by a different employer or, alternatively, (2) the off-site arrangement is essentially one to provide labor for hire to a company not affiliated with the petitioning company, rather than service related to the specialized knowledge of the petitioning employer.

On July 28, 2005, USCIS amended its Adjudicator's Field Manual to implement section 214(c)(2)(F). The guidance makes it clear that the new ground for ineligibility for L-1B classification applies to all petitions (initial, amended, or extended) filed on or after June 6, 2005. In its guidance, USCIS makes clear that, as a threshold matter, in order for the bar to apply, a majority of the alien's work-related activities must occur at a location other than that of the petitioner or its affiliates. Even if the majority of the alien's time is spent with the petitioning employer, however, the alien might still be subject to the bar, if the time spent at the site of the petitioning employer is primarily "down time," or non-work time between off-site assignments.

Assuming this threshold requirement has been met, USCIS then may apply the bar if the alien is under the day-to-day control and supervision of the non-petitioning unaffiliated entity; that is, in determining whether to apply the bar, USCIS must ask whether the alien is actually employed by the petitioning company or the unaffiliated company. In this regard, the fact that there may be some intervening third party supervision or input between the worker and the L organization would not necessarily render the worker ineligible for L-1B classification.

Alternatively, if the threshold requirement has been met, the bar to L-1B classification will apply if the placement of the alien at the unaffiliated worksite is "essentially an arrangement to provide labor for hire" rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. As explained in the July 28, 2005, guidance, what constitutes "essentially" such an arrangement is inherently a fact question. USCIS adjudication officers therefore are instructed to look at all aspects of the activity or activities in which the alien will be engaged while away from the petitioner's worksite. If the alien's specialized knowledge is only tangentially related to the performance of such off-site activities (or not related at all to them), then the bar would apply. The focus is on whether the alien's specialized knowledge is tied to the services offered by the petitioning company, and not to those of the off-site company.

Concerns Regarding L-1 Petitions Involving New Offices: The statute, section 101(a)(15)(L), does not specifically address the situation whereby an entity abroad may transfer an employee to a new office it will be opening in the U.S.. Nevertheless, Congress' intent in enacting the nonimmigrant intracompany transferee category was to encourage and facilitate the opening of viable

and legitimate business entities within the U.S., permitting the use of the L nonimmigrant classification in such instances has long been recognized as consistent with the statute.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation, that allows for a somewhat different treatment of managers or executives that are entering the U.S. to open a new office. In creating the "new office" accommodation, legacy INS recognized that the proposed definitions of manager and executive created an "anomaly" with respect to the opening of new offices in the U.S. since "foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition." 52 Fed. Reg. 5738, 5740 (February 26, 1987) (available at 1987 WL 127799). Accordingly, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Nevertheless, USCIS, and legacy INS, have recognized that the new office situation is different than that involving an established U.S. company. In the case of the latter, the company has an established track record, and there exist benchmarks by which the agency can determine the bona fides of the job offer and the viability of the company. The analysis in a new office situation, on the other hand, is inherently prospective. USCIS must ask, among other things: (a) whether the new office will be viable within one year of approval; (b) whether the new office will be able to sustain the employment of the beneficiary; (c) whether the alien (especially in the case of a specialized knowledge employee) will have a company to which to return at the end of his or her assignment in the U.S.; and (d) what concrete steps, if any, the petitioner has taken with respect to creating and/or opening the U.S.-based entity. See 8 C.F.R. §§ 214.2(l)(3)(v) and (l)(14)(ii). Obviously, since there is no track record to go on, much depends on the promises and projections of the petitioner.

The report notes that "any foreign company" can use the L visa to send employees to the U.S. to open a new office. This statement is not accurate; the kinds of companies that may avail themselves of the L-1 new office option are limited by the terms of USCIS' implementing regulations. Those regulations are designed to provide safeguards against the concerns the report has raised, in particular, use of the L-1 category as a backdoor means for individuals who are not true intra-company transferees to obtain admission to the U.S.

As a preliminary matter, USCIS regulations require that the petitioning company is or will be doing business in the U.S., and that the foreign entity will remain in business during the period the L-1 employee is in the U.S.. See 8 C.F.R. § 214.2(l)(1)(ii)(G). A petitioner unable to satisfy USCIS on these points will not obtain approval of its L-1 petition.

Further, USCIS regulations require that, in the case of the transfer of a specialized knowledge L-1 employee to a new office, the petitioner must show, among other things, that it has the financial ability to remunerate the beneficiary and commence doing business in the U.S. 8 C.F.R. § 214.2(l)(3)(vi)(C). Moreover, in the case where the beneficiary is an owner or major shareholder of the transferring company, the petitioner must show that the beneficiary's services will be used for a temporary period only and that the beneficiary will be transferred back upon the completion of the temporary services in the U.S.. 8 C.F.R. § 214.2(l)(3)(vii). The reason for this requirement is to ensure that the foreign entity remains in business while the beneficiary is in the U.S.; it is specifically

designed to prevent individual aliens from using the L-1 category as a means of obtaining admission to the U.S. with an intent of closing down the business abroad. For this reason, USCIS adjudication officers will scrutinize new office petitions to ensure that the business is still ongoing in the foreign country before approving any such petition. Finally, and not insignificantly, USCIS regulations specifically allow the agency to request any other evidence it deems, in its discretion, necessary to adjudicate the petition. 8 C.F.R. § 214.2(l)(3)(viii).

The report also notes that the law creating the category does not require that the petitioning company have any "operations" in the U.S., or even operate in more than one country, at the time of the filing of the petition. While the U.S. entity may not be fully operational at the time a petition is filed (indeed, it may only become so only after the beneficiary arrives in the U.S.), the petitioner must demonstrate that a qualifying relationship exists at the time of filing the new office petition, by meeting exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary. USCIS regulations further require that the petitioner demonstrate that the U.S. entity will be viable and that, as noted, the petitioner has taken certain concrete steps to ensure this, among other things, by showing that a lease or other physical space has been secured to commence operations.

Another built-in safeguard with respect to ensuring that only legitimate multinational intracompany transferees benefit from L-1 new office-based petitions, such petitions, (unlike other L petitions, which are typically granted for periods of up to three years), are valid only for one year. Despite the new office provisions, the L-1A nonimmigrant visa is not an entrepreneurial visa classification (such as the E-2 nonimmigrant treaty investor classification) that would allow an alien a prolonged stay in the U.S. in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. 8 C.F.R. § 214.2(l)(3)(v)(C). At the time of filing for an extension, the petitioner must demonstrate that it has been doing business in a regular, systematic, and continuous manner for the previous year since the approval of its new office petition. 8 C.F.R. § 214.2(l)(14)(ii)(B).

Finally, in adjudicating any extension of stay/second petition following the approval of an L-1 "new office" petition, USCIS adjudication officers have the ability to compare the business plan presented in the new office petition with the company's track record during this one-year start-up period, and require the petitioner to explain to the agency's satisfaction any deviations from the business plan presented in the original L-1 new office petition. This review process, while designed to ensure compliance with the statute, can, like all processes, be improved. USCIS is exploring ways to improve this review process and will continue to do so, including the context of the L-1 interagency group.

We have assessed the report recommendations and will take the following corrective actions as discussed below.

Recommendation 1: Station anti-fraud immigration officers, and hire local staff, at embassies and consulates general in countries that present the highest risk of petition and benefit fraud.

Response: We have thoroughly reviewed the option to station anti-fraud immigration officers and local staff in overseas locations. After careful review, it was determined that it would be more effective and efficient to rely on the current structure and establish a standard mechanism to request overseas verifications through the Department of State (DOS). USCIS will immediately pursue establishing this mechanism with DOS.

In addition, during 2006, the Office of Fraud Detection National Security (FDNS) plans to conduct a benefit fraud assessment to determine the nature and extent of fraud in the L-1A non-immigrant classification. Based on the results of the assessment, FDNS will prepare recommendations to combat fraud within this classification

Recommendation 2: Explore with ICE whether ICE Visa Security Officers could assist in checking the bonafides of L-petitions submitted by petitioners in the countries in which the officers are assigned.

Response: We are pursuing this recommendation with ICE's Visa Security Unit. However, if implemented this recommendation may not immediately yield the desired results since ICE's Visa Security Unit does not currently have offices in the top 5 countries with nationals filing for L-1 status.

Recommendation 3: In cooperation with the "L Visa Interagency Task Force," seek legislative clarification to a) applying the concepts of manager and executive to L-1A visas and verifying that the beneficiary will be so used; b) the term "specialized knowledge"; and, c) the criteria and proof required when a foreign company seeks to use an L petition to open a new office in the U.S.

Response: Any USCIS legislative recommendation to Congress requires Department of Homeland Security and interagency review and clearance through the Office of Management and Budget to ensure that it is consistent with the Administration's program. USCIS will carefully review the matters raised by the Inspector General, but is not in a position at this time to agree that any legislative recommendations regarding the L-1 visa program are necessary or appropriate.

As noted, USCIS has taken measures to clarify the adjudication and definitions of the three L-1 visa subcategories, including issuance of field guidance and the issuance of non-precedent decision by USCIS' Administrative Appeals Office.

Further, as discussed earlier, on July 28, 2005, USCIS amended its Adjudicator's Field Manual to implement section 214(c)(2)(F). The guidance makes it clear that the new ground for ineligibility for L-1B classification applies to all petitions (initial, amended, or extended) filed on or after June 6, 2005. We will provide a copy of the July 28, 2005 guidance along with copies of other cited internal guidance as well as other technical comments under separate cover.

If you have any questions please contact Kathleen Stanley, USCIS Audit Liaison, at 202-272-1982.

DEPARTMENT OF STATE
ASSISTANT SECRETARY FOR CONSULAR AFFAIRS
WASHINGTON

JAN 3 2006

Dear Mr. Ellice:

We have reviewed the DHS OIG draft report, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program* and found it to be a thorough and useful document that will advance the cooperative effort to combat fraud in this visa category. We have, however, an objection to Recommendation #1, which states, "USCIS station anti-fraud immigration officers, and hire local staff, at embassies and consulates general in countries that present the highest risk of petition and benefit fraud."

An increase in USCIS presence at our overseas posts for the purposes you recommend would create an inefficient overlap of duties with the State Department. Moreover, USCIS would need to obtain approval thru the NSDD 38 process to post personnel overseas for this purpose—something that might not be easily obtained given the inefficiencies of such an approach. The Omnibus Appropriations Act that created the H and L fraud fund envisioned that the Bureau of Diplomatic Security would investigate L-1 fraud overseas and provided that part of the fraud fund be used to increase the number diplomatic security personnel assigned to this duty. In addition, our Fraud Prevention Managers also investigate L visa fraud, as well as fraud associated with other petitions.

Rather than create the possibility of overlapping areas of responsibility in overseas investigations, and recognizing how important it is that State and USCIS cooperate and collaborate on such matters, we recommend the development of a standard operating procedure (SOP) for requesting investigations between the agencies; this will prevent redundancies and ensure sharing of information on fraud trends and practices. The SOP would also address the delineation of authority and the relationship between DHS' Office of Fraud Detection and National Security and the State Department, procedure for investigative requests, methodology and processes, and the reporting requirements regarding specific allegations of fraud.

Doug Ellice
Chief Inspector,
Office of Inspections and Special Review,
Department of Homeland Security,
Washington, DC 20528.

If you have any further comments or need clarification, please feel free to contact me.

Sincerely,

Maura Harty

Douglas Ellice, Chief Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

Randall Bibby, Chief Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

M. Faizul Islam, Ph.D., Senior Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

W. Preston Jacobs, Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
General Counsel
Executive Secretariat
Citizenship and Immigration Services, Acting Deputy Director
Citizenship and Immigration Services, Audit Liaison
Assistant Secretary, Legislative Affairs
Assistant Secretary, Policy
Assistant Secretary, Public Affairs
Chief of Security
DHS OIG Liaison

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Department of State

Assistant Secretary for Consular Affairs
Office of Inspector General

Congress

Appropriate Congressional Oversight and Appropriations Committees

Additional Information and Copies

To obtain additional copies of this report, call the Office of Inspector General (OIG) at (202) 254-4100, fax your request to (202) 254-4285, or visit the OIG web site at www.dhs.gov/oig.

OIG Hotline

To report alleged fraud, waste, abuse or mismanagement, or any other kind of criminal or noncriminal misconduct relative to department programs or operations, call the OIG Hotline at 1-800-323-8603; write to Department of Homeland Security, Washington, DC 20528, Attn: Office of Inspector General, Investigations Division – Hotline. The OIG seeks to protect the identity of each writer and caller.

Hughes Declaration

Exhibit 14