



IMMIGRATION UPDATE - APRIL 27, 2020

Posted on April 27, 2020 by Cyrus Mehta

Headlines:

[President Bans Immigrants From Entry Into the United States for 60 Days, With Exceptions](#)

– The proclamation states that the rationale is to address "excess labor supply" and displacement of U.S. workers. Additional measures regarding nonimmigrant visas are possible.

[USCIS Offices Reopening 'On or After June 4'](#)

– After a shutdown that began March 18, 2020, of in-person services at its field offices, asylum offices, and application support centers due to the COVID-19 pandemic, USCIS said it is readying offices to reopen on or after June 4, 2020.

[Class Action Lawsuit Challenges USCIS' Denial of H-1B Petitions Filed by U.S. Businesses](#)

– A new nationwide class action lawsuit challenges USCIS' pattern and practice of denying H-1B nonimmigrant employment-based petitions for market research analysts positions filed by businesses in the United States.

[U.S.-Canada Border to Remain Closed for Additional 30 Days](#)

– Canadian Prime Minister Justin Trudeau recently announced a mutual agreement with the United States to extend current border restrictions between the two countries by an additional 30 days due to the COVID-19 pandemic.

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President Bans Immigrants From Entry Into the United States for 60 Days, With

Exceptions

President Trump issued a proclamation suspending the entry of immigrants into the United States for 60 days, with some exceptions. The proclamation notes that it may be extended or modified. The proclamation states that the rationale is to address "excess labor supply" and displacement of U.S. workers. The proclamation took effect late Thursday, April 23, 2020.

The entry ban applies to those who (1) are outside the United States as of April 22; (2) do not have an immigrant visa that is valid on the effective date; and (3) do 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 or issued on any date after the effective date that permits him or her to travel to the United States and seek entry or admission.

Excluded from the ban are lawful permanent residents; those seeking to enter the United States as physicians, nurses, or other healthcare professionals, to perform medical or other research intended to combat the spread of COVID-19; or to perform work essential to combating, recovering from, or otherwise alleviating the effects of, the COVID-19 pandemic; those applying for visas to enter the United States as EB-5 immigrant investors; spouses and children of U.S. citizens; members of the U.S. armed forces; and some others.

Other key points include:

- Additional measures regarding nonimmigrant visas are possible. The proclamation directs the Secretaries of Labor and Homeland Security, in consultation with the Secretary of State, to review nonimmigrant programs and recommend to the President "other measures appropriate to stimulate the United States economy and ensure the prioritization, hiring, and employment of United States workers."
- Stephen Miller, President Trump's senior policy adviser, confirmed to White House supporters on a private call that the proclamation is intended to open the door to additional restrictions for the longer term and that "the most important thing is to turn off the faucet of new immigrant labor." He also said, "In terms of dealing with some of these seasonal flows of guest workers and developing a strategy for that, that's what the president directed us to do."

Details:

- "Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak,"
<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>
- CNN, "Acting Homeland Security Chief Suggests Additional Immigration Measures Could Be Coming,"
<https://www.cnn.com/2020/04/23/politics/chad-wolf-immigration-coronavirus/index.html>
- CNN, "Trump Says Immigration Order Will Apply Only to Green Cards and Will Last 60 Days,"
<https://www.cnn.com/2020/04/21/politics/donald-trump-immigration-coronavirus/index.html>
- Washington Post, "Stephen Miller Has Long-Term Vision for Trump's 'Temporary' Immigration Order, According to Private Call With Supporters,"
https://www.washingtonpost.com/immigration/stephen-miller-audio-immigration-coronavirus/2020/04/24/8eaf59ba-8631-11ea-9728-c74380d9d410_story.html
- New York Times, "Trump's Temporary Halt to Immigration is Part of Broader Plan, Stephen Miller Says,"
<https://www.nytimes.com/2020/04/24/us/politics/coronavirus-trump-immigration-stephen-miller.html>

Cyrus Mehta's blog commentary "Building the Legal Case to Challenge Trump's Immigration Ban" is at
<http://blog.cyrusmehta.com/2020/04/building-the-legal-case-to-challenge-trumps-immigration-ban.html>.

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USCIS Offices Reopening 'On or After June 4'

After a shutdown that began March 18, 2020, of in-person services at its field offices, asylum offices, and application support centers (ASCs) due to the COVID-19 pandemic, U.S. Citizenship and Immigration Services (USCIS) said it is readying offices to reopen on or after June 4, 2020.

USCIS said that when it again resumes in-person operations, it will automatically reschedule ASC appointments that were canceled due to the temporary office closures. Those individuals will receive new appointment letters in the mail. Those who had InfoPass or other appointments must reschedule through the USCIS Contact Center once field offices are open to the public again.

Details:

- USCIS announcement, <https://www.uscis.gov/news/alerts/uscis-offices-preparing-reopen-june-4>
- USCIS Contact Center, <https://www.uscis.gov/contactcenter>
- USCIS coronavirus/COVID-19 updates, <https://www.uscis.gov/about-us/uscis-response-covid-19>
- USCIS Office Closings, <https://www.uscis.gov/about-us/uscis-office-closings>

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Class Action Lawsuit Challenges USCIS' Denial of H-1B Petitions Filed by U.S. Businesses

The American Immigration Council (Council), the American Immigration Lawyers Association (AILA), and the law firms Van Der Hout, LLP, Joseph & Hall P.C., and Kuck Baxter Immigration LLC filed a nationwide class action lawsuit on April 16, 2020, challenging U.S. Citizenship and Immigration Services' (USCIS) pattern and practice of denying H-1B nonimmigrant employment-based petitions for market research analysts positions filed by businesses in the United States.

The lawsuit, filed in federal court in the Northern District of California in San Jose, seeks to "rein in the unlawful adjudication practice USCIS uses in determining whether a market research analyst job qualifies as a 'specialty occupation,' and the agency's misinterpretation of the Occupational Outlook

Handbook —a publication of the U.S. Department of Labor's Bureau of Labor Statistics that profiles hundreds of occupations in the United States' job market," AILA said.

The complaint alleges that USCIS erroneously denies H-1B petitions for market research analysts by concluding that the OOH does not establish that the occupation is a specialty occupation. According to the complaint, USCIS denied at least 66 market research analyst H-1B petitions in the last three years and six petitions in the first two months of 2020, all of which used the same reasoning. Based upon these annual statistics, the complaint estimates that since January 2019, at least 40 U.S. businesses had H-1B petitions for market research analysts denied and that there likely would be hundreds more denials on the same basis in the future.

Details:

- AILA press release, <https://www.aila.org/advo-media/press-releases/2020/class-action-lawsuit-seeks-to-challenge-uscis>
- Complaint (*MadKudu, Inc., v. USCIS*), <https://www.aila.org/infonet/complaint-filed-in-district-court-challenging>

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U.S.-Canada Border to Remain Closed for Additional 30 Days

Canadian Prime Minister Justin Trudeau recently announced a mutual agreement with the United States to extend current border restrictions between the two countries by an additional 30 days due to the COVID-19 pandemic. The border was originally closed on March 21, 2020, restricting nonessential travel between Canada and the United States but allowing trade and commerce, emergency response, and public health-related travel. Mr. Trudeau commented that reopening the border would not happen "anytime soon."

Details:

- Canadian Broadcasting Corporation News, <https://www.cbc.ca/news/politics/trudeau-saturday-covid-19-update-1.5537251>

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Firm in the News

Mr. Mehta was quoted in the following publications on President Trump's order:

- Law360, "Can Trump End Immigration? Wording Matters, Scholars Say," <https://www.law360.com/articles/1265963/can-trump-end-immigration-wording-matters-scholars-say>
- Economic Times, "Trump's Plan to Suspend Immigration Would Affect Indians Waiting to Migrate to U.S.," <https://economictimes.indiatimes.com/nri/nris-in-news/trumps-plan-to-suspend-immigration-would-affect-indians-waiting-to-migrate-to-us/articleshow/75272497.cms>
- Times of India, "If U.S. Immigration is Temporarily Suspended, Legal Experts Foresee a Plethora of Lawsuit," <https://timesofindia.indiatimes.com/world/us/if-us-immigration-is-temporarily-suspended-legal-experts-foresee-a-plethora-of-lawsuit/articleshow/75266086.cms>
- India Times, "Trump Stops Green Cards for 60 Days Overseas. H-1B Visa Could Be Next," <https://www.newsindiatimes.com/trump-stops-green-cards-for-60-days-overseas-h-1b-visa-could-be-next/>
- Business Insider, "Trump's Executive Order Suspending Entry of Immigrants is 'Drastic and Damaging,' Says U.S. Immigration Attorney," <https://www.businessinsider.in/international/news/trumps-executive-order-suspending-entry-of-immigrants-is-drastic-and-damaging-says-us-immigration-attorney/articleshow/75310925.cms>
- South Asian Times, "Trump's Immigration Ban Not Affecting H-1B Visa," <https://thesouthasiatimes.info/vol-12-issue-51/> (see the next page of the newspaper)

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