

CLIENT ALERT

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1

PAUSE IN IMMIGRANT VISA PROCESSING IMPOSED BY PRESIDENTIAL PROCLAMATION - EFFECTIVE APRIL 23 FOR SIXTY DAYS AT CONSULAR POSTS

by Kathleen Campbell Walker¹

After numerous rumors in the past few days regarding the suspension of immigration to the United States (U.S.), President Trump's Proclamation ([Suspension Proclamation](#)) was finally published on April 22. The Proclamation references the disruption of the economy post COVID-19 as a basis for the Proclamation. The Proclamation does not address the current dichotomy between family-based and employment-based legal paths to permanent residency or the inadmissibility ground related to public charge, which has been subject to extensive changes to increase the level of difficulty to immigrate to the United States (U.S.). In addition, most employment-based cases require a test of the U.S. labor market, but due to government delays and the lack of visa availability, applicants using the employment-based and family-based paths to permanent residence [can wait in line](#) to immigrate legally for more than ten to twenty years in some cases. The Suspension Proclamation also [ignores the important role](#) that immigrants play in caring for the sick and in essential industries during the pandemic.

Immigrant visa processing to obtain lawful permanent residence (LPR) in the U.S. occurs outside of the U.S. at consular posts or inside of the U.S. at offices of U.S. Citizenship and Immigration Services (USCIS). So, what does the Suspension Proclamation not do?

The Suspension Proclamation DOES NOT apply to immigrant visa processing for adjustment of status to become an LPR in the U.S.

In addition, the Suspension Proclamation DOES NOT apply to nonimmigrant visa processing at U.S. consular posts abroad (e.g. H-1B, H-1B1, L-1, E-1, E-2, E-3, F-1, J, TN, O, P, etc.). Please read about the potential review of this point in the future below.

WHAT IS THE SIGNIFICANT IMPACT OF THE SUSPENSION PROCLAMATION?

Many applicants for [immigrant visas at consular posts outside of the U.S.](#) will face a suspension of consular applications to obtain immigrant visas, which will cause further delays in their ability to immigrate legally to the U.S. after following a long and bureaucratically challenging path. Of course, consular posts suspended most consular services back in March due to COVID-19, [as announced](#) by the U.S. Department of State (DOS).

WHAT IS THE EFFECTIVE DATE OF THE SUSPENSION PROCLAMATION?

April 23, 2020 at 11:59 p.m. Eastern Daylight Time.

HOW LONG WILL THE SUSPENSION PROCLAMATION REMAIN IN EFFECT?

60 days from April 23, 2020 (June 22), subject to review for an extension no later than 50 days from April 23 (June 12).

WILL THE SUSPENSION PROCLAMATION AFFECT PERM LABOR CERTIFICATION APPLICATIONS?

No, the Labor Certification process is governed by the Department of Labor and is completed prior to immigrant visa processing as a separate, independent process.

WHAT IMMIGRANT VISA APPLICANTS AT U.S. CONSULAR POSTS ARE EXEMPT FROM THE SUSPENSION PROCLAMATION BUT ARE STILL SUBJECT TO DOS CONSULAR SERVICES SUSPENSIONS IN EFFECT?

1. Immediate Relatives (spouses, children, and prospective adoptees of U.S. citizens under [IR-4](#) or [IH-4](#)). Note that the Suspension Proclamation DOES apply to those immediate relatives who qualify as parents of U.S. citizens.
2. EB-5 Immigrant Investor Visa applicants.
3. Immigrant visa applicants who are members of the U.S. Armed Forces, and their spouses and children.
4. Immigrant visa applicants for Special Immigrant Visas ([SI/SQ](#)), which relates to certain Iraqi and Afghan Translators/Interpreters and Iraqis who worked for/on behalf of the U.S. government.) and their spouses and children; subject to conditions imposed by the U.S. Secretary of State.
5. Immigrants whose entry would be in the national interest as determined by the U.S. Secretary of State.
6. Immigrants who are seeking immigrant visas to enter the U.S. to perform services as a physician, nurse, or other healthcare professional to perform medical research or other research to combat the spread of COVID-19 or to perform work essential to combating, recovering from, or otherwise alleviating the effect of COVID-19, as determined by the U.S. Secretary of State, in addition to their spouses and any unmarried children under 21 of the immigrant visa applicants.
7. Lawful Permanent Residents, who, of course, already have their immigrant visas and have entered the U.S. to become an LPR.
8. Immigrant Visa Applicants already issued an Immigrant Visa at the consular post.
9. Immigrant Visa Holders or Applicants with a travel document such as a transportation letter, boarding foil, or advance parole document.

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CLIENT ALERT

WILL THE SUSPENSION PROCLAMATION AFFECT NONIMMIGRANT VISAS AT CONSULAR POSTS?

No...but, there is a notice that within 30 days of April 23 (May 23), the Secretary of Labor and the Secretary of Homeland Security will review nonimmigrant visa programs and recommend measures to stimulate the U.S. economy and ensure the prioritization, hiring, and employment of U.S. workers.

Since nonimmigrant consular services are not currently addressed by the Suspension Proclamation and consular appointments for nonimmigrant visas are practically impossible to schedule over the next 60 days, applicants needing nonimmigrant visas will often be forced to apply to extend or change their nonimmigrant status in the U.S. with U.S. Citizenship and Immigration Services and face the [increasing number](#) of Requests for Evidence (RFEs), even in simple extension cases with the same employer, in addition to facing long wait times due to the current suspension of premium processing. – Stuck between a rock and a hard place comes to mind.

ABOUT THE AUTHOR



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