

IMMIGRATION

COVID-19 TRAVEL RESTRICTION IMPLICATIONS FOR FOREIGN NATIONALS

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TRAVEL ISSUES:

Employers should urge any foreign national employees currently abroad in Europe to return immediately to the U.S., before the new COVID-19-related travel restrictions take effect on March 13, 2020 at 11:59 pm EDT. Foreign nationals currently in the U.S. should avoid extended international travel, as the administration continues to impose new travel restrictions with minimal notice. On March 11, 2020, President Trump signed a Presidential Proclamation suspending travel to the U.S. by most foreign nationals present in certain European countries in the 14 days prior to their planned arrival in the U.S. This builds on two prior Proclamations imposing similar restrictions on travel from China and Iran.

These three Proclamations, issued in response to the COVID-19 pandemic, suspend the entry to the U.S. of most foreign nationals who were present in China, Iran, or the Schengen Area in the 14 days prior to their attempted entry to the U.S. The Schengen Area is comprised of 26 European states, but notably does not include the United Kingdom or Ireland.¹ The Proclamations do not restrict the entry of U.S. citizens, U.S. legal permanent residents (green card holders), immediate family members of U.S. citizens, or certain other narrow categories of excepted individuals.

While these restrictions are already in place with respect to China and Iran, travel from the Schengen Area remains permissible until March 13, 2020 at 11:59 pm EDT. Accordingly, any affected foreign nationals should make every effort to return to the U.S. immediately, before these new restrictions take effect. Affected foreign nationals unable to return to the U.S. before the travel restrictions take effect should prepare possibly to remain outside the U.S. for an extended period.

Foreign nationals currently in the U.S. should avoid extended international travel at this time, as the administration continues to impose new travel restrictions with minimal notice. Certain immigration circumstances can make such international travel particularly risky. For example, foreign nationals requiring a new visa at a U.S. consulate abroad must be especially careful. Visa applications are occasionally subject to additional processing delays, making it difficult to confirm a return travel date. As another example, foreign nationals with pending I-485 adjustment of status applications must have valid H or L status, or an advance parole document, valid for the entire duration of their trip. If H or L status or an advance parole document were to expire while a foreign national were outside of the U.S., leaving the foreign national without H, L or parole, it would greatly complicate the permanent residence sponsorship process and likely require a prolonged absence of many months from the U.S.

¹ The Schengen Area is comprised of 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.

EMPLOYMENT PLANNING:

Employers considering remote work policies or leaves of absence in response to the COVID-2019 pandemic should work with counsel to understand possible implications for their foreign national employees. For example, certain work visas are location-specific and advance planning may be needed to accommodate a remote work policy. Further, some visa categories require ongoing employment in order to maintain status, and do not generally allow for unpaid leave based on lack of work. In some cases, periods of unpaid leave may be permissible, such as for medical treatment. Employers should work with counsel to plan for any such work stoppages.

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