

EXECUTIVE PROCLAMATION IMPOSES \$100,000 FEE ON H- 1B NONIMMIGRANT VISA HOLDERS ENTERING THE U.S.

On Sept. 19, 2025, President Trump issued a proclamation titled “Restriction on Entry of Certain Nonimmigrant Workers.” The proclamation restricts the entry of new H-1B nonimmigrant workers into the United States unless the \$100,000 fee is paid, or a national interest exception applies. The proclamation mandates a coordinated effort between the Department of Homeland Security and the Department of State for enforcement.

Effective Sept. 21, 2025 (the Effective Date), the proclamation imposes a 12-month restriction (through Sept. 20, 2026) on the entry of a new H-1B nonimmigrant workers into the U.S. unless the \$100,000 fee has been paid.

WHO IS IMPACTED BY THE PROCLAMATION?

The proclamation is to restrict the entry into the U.S. of certain H-1B workers who are outside the U.S. unless they make a \$100,000 payment to accompany or supplement H-1B petitions filed after the Effective Date. The proclamation directs USCIS to restrict approvals for H-1B petitions from foreign nationals who are currently outside the U.S. that are not accompanied by the \$100,000 payment. The payment of the fee is to curb abuses that displace U.S. workers and undermine national security. The restriction shall not apply to any individual, all foreign nationals working for a company, or all foreign nationals working in an industry, if DHS determines, in its discretion, that the hiring of such foreign nationals in H-1B status is in the national interest and does not pose a threat to the security or welfare of the U.S.

WHO IS NOT IMPACTED BY THE PROCLAMATION?

On Sept. 20, 2025, the U.S. Citizenship and Immigration Services (USCIS) issued a guidance memorandum explaining who is not impacted by the proclamation. The memorandum clearly states that the proclamation does not apply to foreign nationals who: are beneficiaries of petitions that were filed prior to the effective date of the proclamation; are the beneficiaries of currently approved petitions; or are in possession of validly issued H-1B nonimmigrant visas. H-1B employees already in the U.S. as of the Effective Date, even if their I-129

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petition is still pending with the USCIS, are not required to pay the \$100,000 fee at this time. The fee also does not apply to any H-1B employee whose I-129 petition for an H-1B visa was approved before the Effective Date. The proclamation also does not apply to H-1B visa holders who are currently out of the country and seek to enter the U.S. following international travel.

GENERAL RECOMMENDATIONS TO H-1B EMPLOYERS

It is unclear as to the full impact of the proclamation. The proclamation is focused on restricting entry into the U.S. by targeting foreign nationals who are currently outside of the country seeking an H-1B visa for the first time through consular processing. The USCIS guidance, on the other hand, states the proclamation applies to H-1B employment-based petitions filed after the Effective Date, which include petitions for foreign nationals currently in the U.S. as well as for foreign nationals who are currently outside the U.S. Therefore, we anticipate the Secretary of Homeland Security will issue additional guidance on the impact the proclamation will have on foreign nationals in the U.S. who are seeking an extension, a change of status, or an amendment to their current H-1B petition, and those seeking an H-1B through the annual H-1B lottery. The USCIS guidance is silent on how the proclamation will impact H-1B employees who are exempt from the H-1B lottery.

Until we receive more guidance, employers should advise H-1B employees and their H-4 dependents to cautiously plan international travel and confirm with the employer any anticipated international travel plans so that the employer can confirm the H-1B employee and H-4 dependents possess the necessary documentation to reenter the U.S.

Should you require any assistance in light of this proclamation, please contact your regular AT attorney or one of the listed authors.