

SHUMAKER[®]
Shumaker, Loop & Kendrick, LLP

SHUMAKER[®]
ADVISORS

**BUSINESS TRAVEL
CONSIDERATIONS
DURING COVID-19**

**MEHELLE ZAROU
SHUMAKER, LOOP & KENDRICK, LLP**

Travel Restrictions

Since March 2020, travel has been restricted both internationally and regionally within the United States to deter the spread of COVID-19.

Travel restrictions—

- Travelers attempting to enter the U.S. for non-essential business or pleasure.
- Travelers seeking visas to begin work or school in the U.S. and those seeking entry as immigrants.
- U.S. residents traveling outside the U.S. for both business and pleasure.
- Employees traveling within the U.S. for both business and pleasure.

Presidential Proclamations

- Travelers **from** certain countries suspended to slow spread of COVID-19
 - **China** – suspends entry of all immigrants, nonimmigrants and other non-U.S. citizens physically present in China (excluding Hong Kong and Macau) during the 14-day period preceding entry. Effective from February 2, 2020.
 - **Iran** – suspends entry of all immigrants, nonimmigrants, and other non-U.S. citizens physically present in Iran during the 14-day period preceding entry. Effective from March 2, 2020.

Presidential Proclamations

- Travelers from certain countries suspended to slow spread of COVID-19
 - **Europe (Schengen Area)**– suspends entry of all immigrants, nonimmigrants and other non-U.S. citizens physically present in the Schengen area during the 14-day period preceding entry. Effective from 11:59 p.m. ET on March 13, 2020.
 - Schengen Area includes Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

Presidential Proclamations

- Travelers from certain countries suspended to slow spread of COVID-19
 - **Ireland and United Kingdom** -- suspends entry of all immigrants, nonimmigrants and other non-U.S. citizens physically present in the United Kingdom (excluding the overseas territories) during the 14-day period preceding entry. Effective from 11:59 p.m. ET on March 16, 2020. Includes England, Wales, Scotland, Northern Ireland and Republic of Ireland.
 - **Brazil** -- suspends entry of all immigrants, nonimmigrants and other non-U.S. citizens physically present in Brazil (excluding the overseas territories) during the 14-day period preceding entry. Effective from 11:59 p.m. ET on May 28, 2020.

Presidential Proclamations

All **consular services** suspended on **March 20, 2020**

- Even without these bans, consular processing ceased for everyone needing a visa abroad.
- Most consulates remain closed for most work visas and immigrant visa interviews, even in countries with low COVID risk.
- Consulates are starting to open to foreign students who need to resume classes in the fall.
- Some individual visa applications have been processed in certain work visa categories – some athletes and extraordinary ability workers.
- Emergency workers are available – primarily for health care workers.
- Those who paid visa fees will be able to use the fee throughout the next year without having to repay.
- Expecting enormous delays when consulates do reopen. In some cases, appointments are being scheduled and then moved when necessary. In other cases, no appointments are available.

Presidential Proclamations

Travel Proclamations do not apply to

- U.S. citizens and spouses, parents, sibling, or children
- Lawful permanent residents and spouses, parents (as long as U.S. citizen or permanent resident is unmarried and under 21), and unmarried siblings or children under age 21.
- Prospective adoptees
- Government-related travel for COVID mitigation
- Certain crewmembers, foreign government officials, and military members.
- Those who would not pose a risk of introducing COVID as determined by the CDC.
- Those whose entry would further important law enforcement objectives.
- Those whose entry would be in the national interest as determined by U.S. officials.

Presidential Proclamations

Suspension of Immigrant Visa Processing

- Became effective at 11:59 p.m. on **April 23, 2020**
- Does not affect those who are seeking green cards within the U.S., whatever the process
- Does not apply to nonimmigrant visa process (but more to come on that)
- Originally scheduled to end on June 22, 2020, now ends **December 31, 2020**, but could be extended.
- Must be reviewed within 30 days of June 24 and every 60 days thereafter.

Presidential Proclamations

Exemptions

- Immediate relatives (spouses, children (under 21 and unmarried) and prospective adoptees of U.S. citizens).
- Lawful Permanent Residents who already have a green card.
- Immigrant visa applicants who hold a visa stamp but has not yet entered the U.S., or who hold a valid travel document.
- EB-5 immigrant investors.
- Applications filed by military members on behalf of spouses and children.
- Special Immigrants (Iraqi and Afghani translators, though very few approved ever).
- Immigrants serving the “National Interest”
- Immigrant health care workers and researchers combatting COVID

Presidential Proclamations

Suspension of Non-Immigrant Visa Processing

- Became effective at 11:59 p.m. on **June 22, 2020**
- Extended the Immigrant Visa Ban, effective immediately.
- Became effective on **June 24, 2020**.
- Expires on **December 31, 2020**, but could be extended.
- Must be reviewed within 30 days of June 24 and every 60 days thereafter.

Presidential Proclamations

Applies to

- H-1B or H-2B workers (H-2A agricultural workers exempt) and any family member accompanying them.
- J-1 visas for interns/trainees, teachers, camp counselors, au pairs, or summer work and family.
- L-1 visa for multinational transferees – even managers and executives and specialized knowledge workers and family.

Presidential Proclamations

Exemptions

- Any Lawful Permanent Residents.
- Spouse or children (unmarried and under 21) of U.S. citizen.
- Foreign national seeking to enter to provide temporary labor to the U.S. food supply chain.
- Foreign national serving the “National Interest,” as determined by U.S. government.

Presidential Proclamations

National Interest

- Individuals critical to defense, law enforcement, diplomacy or national security of the U.S.
- Individuals involved in the provision of medical care to COVID-19 patients
- Individuals involved with the provision of medical research at U.S. facilities to combat COVID-19.
- Individuals necessary to facilitate the immediate and continued economic recovery of the U.S.
- Children who would age out of visa eligibility because of either proclamation.

Presidential Proclamations

National Interest – Process to Request

- Each consulate is setting up their own process.
- Usually, send an email or make an electronic request through the visa appointment system.
- Submit documents in advance confirming the national interest impacted.
- Attend visa interview.
- Single entry visa supposed to be issued for short duration – no continued travel.

Presidential Proclamations

Clarification of the Proclamation

- Does not apply to Canadians as they are visa exempt (per informal CBP announcement)
- As of June 29, only applies to individuals who are outside the U.S. on June 24 AND **does not have a valid nonimmigrant visa in one of the categories listed in the proclamation.** Prior language just referred to ANY valid visa. A valid travel document would be effective as well.
- Initially believed that if the visa was valid on June 24 but will expire before December 31, could renew. Now it seems you cannot.

Presidential Proclamations

Clarification of the Proclamation

- Spouses of H, L, or J nonimmigrants may obtain visas to enter and rejoin if the principal visa holder has a valid visa and was inside the U.S. on the effective date.
- Those outside the U.S. on effective date but holding valid H, L, or J visa may be admitted to the U.S.
- Those inside the U.S. on effective date but holding valid H, L, or J visa may be admitted **as long as the visa is valid.**
- Physicians apply for J-1 visa for graduate medical education can apply, as can those seeking H-1B or L-1 to provide medical care or research related to COVID.

Presidential Proclamations

Additional measures in the Proclamation—

- Directs Homeland Security and State Department to collect biometric information of all travelers as required.
- Directs DHS not to take necessary steps to prevent aliens in removal, who are inadmissible or deportable, or who have been arrested or charged (not just convicted) from obtaining employment authorization.
- Orders the issuance of regulations to ensure that those admitted as H-1B workers or immigrants in employment-based categories do not limit opportunities for U.S. workers. So we expect more scrutiny of these cases.
- HHS will implement measures to reduce the risk of transmission of COVID by foreign travelers, perhaps by COVID testing.

Presidential Proclamations

Newest Proclamation – August 3 for Federal Contractors

- Head of each department and agency entering into contracts must review the performance of prior contracts in 2018 and 2019 to assess whether contractors used foreign workers in the U.S. or offshore workers, as well as the nature of the work performed and whether such workers affected opportunities for U.S. workers.
- Whether contractors in foreign countries perform services previously performed by U.S. workers, whether U.S. workers were affected by such offshoring and whether such workers are eligible for Trade Adjustment Assistance.

Canadian – U.S. Border

All **land ports of entry** between U.S. and Canada closed for non-essential travel

- Travelers who are taking flights from Canada are still being permitted to enter without having an essential purpose.
- Canadian border officers are issuing TN and L-1 visas currently, even at land ports. But in some cases, must show the business is essential and that the work is essential.
- Canada requires those who enter to have a 14-day mandatory quarantine – attempting to obtain a visa by entering and immediately exiting Canada (i.e. “flagpoling”) is a risk. May be required to remain in Canada or be rejected due to non-essential nature of services.

Canadian – U.S. Border

What is **essential travel** between U.S. and Canada?

- Generally, business travel is essential and pleasure travel is not.
- At the border, however, officers are asking the purpose of the travel and will deny entry if the need is not “deemed essential.”
- Working for a business that was allowed to stay open during Stay At Home order is not sufficient.
- Travel for humanitarian reasons or for the national interest will be permitted in CBP’s discretion, even if not engaged in essential travel.
- Those foreign nationals who have committed to living, working or studying in Canada will be permitted to travel to Canada as their travel is considered essential.

Canadian – U.S. Border

Who is an **essential worker** allowed to travel by land port between U.S. and Canada?

- U.S. citizens and lawful permanent residents;
- Individuals receiving medical treatment;
- Individuals traveling to study (not sure if online studies sufficient);
- Individuals traveling to work in the U.S. when travel is required as part of the work (CBP will consider the necessity of travel)
- Individuals traveling for emergency response/public health
- Individuals engaged in lawful cross-border trade (e.g. truck drivers with cargo).
- Official government of diplomatic travel, and military members.

Regional U.S. Travel

- Lawful for an employer to attempt to limit travel that is for personal reasons on non-work time?
 - In Ohio, yes, but be careful of need for medical leave as an accommodation or FMLA leave (to care for out of state family member, for instance).
 - Public employers should contact counsel to assess any free speech implications.
 - Need to also consider employee morale and mental health.
 - Can educate and encourage, rather than prohibit.
 - Ohio employers can require employees to notify employer of travel plans. OSHA obligations mandate this.
- Risks?
 - Mandatory quarantine upon arrival at destination.
 - Limited and cancelled flights.
 - Additional time off work to self-isolate (recommended 14-day quarantine by CDC)
 - Discrimination claims – depending on protected category and location of travel (if international)
- Risks of continuing business travel and liability for COVID claims?
- Families First Coronavirus Response Act Leave upon return?

Regional U.S. Travel

Best Practices –

- Continued monitoring of employees after return from travel.
- Obtain fitness for duty from doctor (if applied equally).
- Require self-isolation, especially if symptomatic.
- Allow the use of PTO or vacation during this time.
- Probably best not to discipline – just impose self-isolation/quarantine from the workplace.