



# U.S. Immigration Update: COVID-19

August 2021

FRAGOMEN

# AGENDA

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# COVID-19 Immigration Measures



# ► COVID-19 Immigration Update


- For the latest information related to the virus' impact on immigration-related matters worldwide, visit Fragomen's [Coronavirus Update Page](https://www.fragomen.com/about/news/immigration-update-coronavirus)

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### Immigration Update: Coronavirus

The spread of the coronavirus has caused entry and exit bans, quarantines and travel restrictions throughout the world. Check this page for up-to-date information on this fluid situation.

# EXECUTIVE/REGULATORY INITIATIVES



# COVID-19 Travel Ban

- ▶ On April 30, 2021, President Biden added **India** to the regional COVID-19 ban list, with ban effective starting May 4, 2021
- ▶ U.S. entry ban for foreign nationals who have been physically present in the following countries within 14 days of seeking admission to the United States (with exceptions):
  - ▶ **China** (effective February 2, 2020)
  - ▶ **Iran** (effective March 2, 2020)
  - ▶ **European Schengen countries** (effective March 13, 2020)
  - ▶ **United Kingdom and Ireland** (effective March 16, 2020)
  - ▶ **Brazil** (effective May 26, 2020)
  - ▶ **South Africa** (effective January 30, 2021)
  - ▶ **India** (effective May 4, 2021)



# COVID-19 Travel Ban, cont'd

**Exceptions to the COVID-19 public health ban:** The following travelers are exempt from the ban but may be subject to screening and other possible measures governed by U.S. States upon arrival:

- ▶ U.S. citizens (USCs) and lawful permanent residents (LPRs) and their spouses;
  - ▶ Though exempt from the entry bans, they are advised to follow CDC recommendations after U.S. arrival
- ▶ Parent/legal guardian of an unmarried USC or LPR under the age of 21;
- ▶ Sibling of a USC or LPR, provided they are both unmarried and under 21;
- ▶ Child, foster child or ward of a USC or LPR, or who is a prospective adoptee seeking to enter the United States on an IR-4 or IH-4 visa;
- ▶ A foreign national traveling at the invitation of the U.S. government for a purpose related to containment or mitigation of the COVID-19 virus;
- ▶ A foreign air or sea crewmember and certain A, C, E-1 (TECRO or TECO), G, and NATO nonimmigrants;
- ▶ A foreign national whose entry would further important U.S. law enforcement objectives;
- ▶ A foreign national whose entry would be in the *national interest* (in practice, could be humanitarian, COVID-related, or in some instances economic impact); and
- ▶ Members of the U.S. armed forces and their spouses and children



# COVID-19 Travel Ban, cont'd

**National interest exceptions (NIE)** may be granted on a discretionary basis due to humanitarian situations, travel to assist with COVID-19 mitigation/treatment, or in some cases, economic impact. State Department NIE guidance is continually changing but currently states the following may be eligible for NIEs:

- ▶ **Immigrants** of all categories (not applicable to India ban, which only covers nonimmigrant travel)
- ▶ **Fiancé(e)s**
- ▶ **Certain exchange visitors**
- ▶ **F, M, and certain J visa students.** Students present in China, Brazil, Iran, South Africa, or India may arrive no earlier than 30 days before the start of an academic program beginning August 1, 2021 or after, including optional practical training (OPT);
- ▶ **Academics** (certain J visas to include those in the professor, research scholar, short-term scholar, or specialist categories);
- ▶ **Journalists** (I visas);
- ▶ **Travelers providing executive direction or vital support for critical infrastructure sectors, or directly linked supply chains**
- ▶ **Travelers providing executive direction or vital support for significant economic activity in the United States**
- ▶ **Pilots and aircrew** traveling for training or aircraft pickup, delivery, or maintenance;
- ▶ Those whose purpose of travel falls within one of these categories:
  - ▶ Lifesaving medical treatment for the principal applicant and accompanying close family members;
  - ▶ Public health for those travelling to alleviate the effects of the COVID-19 pandemic, or to continue ongoing research in an area with substantial public health benefit (e.g., cancer or communicable disease research);
  - ▶ Humanitarian to include those providing care for a U.S. citizen, LPR, or other nonimmigrant-in-lawful-status close family member;
  - ▶ Medical escorts, legal guardians, or other escorts required by an airline or legally required by a foreign medial or law enforcement entity accompanying a U.S. citizen being repatriated to the United States;
  - ▶ National security; and
  - ▶ **Derivative family members** accompanying or following to join a noncitizen who has been granted or would be reasonably expected to receive an NIE, or is otherwise not subject to the Proclamations, and who is engaging in certain types of long-term employment, studies, or research lasting four weeks or more.
- ▶ Temporary workers present in South Africa whose travel is essential to food supply chain (H-2A and certain H-2B visas)



# COVID-19 Travel Ban, cont'd

## National interest exception (NIE) validity

- ▶ Effective June 29, 2021, the State Department has extended the validity of its NIEs to the regional COVID-19 travel bans to a 12-month, multiple-entry validity
- ▶ The new policy also applies to NIEs issued by the State Department in the last 12 months as long as the foreign national's purpose of travel remains the same as when the NIE was initially issued
- ▶ At present, U.S. Customs and Border Protection (CBP) has not changed the validity of NIEs issued at CBP ports of entry and pre-flight inspection sites
  - ▶ CBP-issued NIEs appear to remain valid for 30 days and a single entry for now
  - ▶ Stakeholders are seeking clarity on CBP's position following the State Department change



# Other COVID-19 Travel Considerations

## COVID testing for all international air travel to the United States

- ▶ Effective January 26, 2021, airline passengers departing from any foreign country to the United States will be permitted to board an aircraft only if they have received a negative COVID test result within three calendar days prior to departure, or if they can provide documentation of recovery from COVID within 90 days and clearance for travel, according to an order of the Centers for Disease Control and Prevention (CDC)
- ▶ The CDC order:
  - ▶ applies to passengers ages 2 and older, including U.S. citizens and lawful permanent residents
  - ▶ expires on the earliest of the following: 1) the end of the COVID national public health emergency; 2) revision or rescission of the testing order by the CDC; or 3) December 31, 2021
- ▶ Testing is in addition to – not instead of – COVID-19 public health ban restrictions



# U.S.-Canada / U.S.-Mexico Travel Restrictions

- ▶ Effective March 21, 2020, only “essential travel” has been permitted across the U.S.-Mexico and U.S.-Canada land borders and ferry travel, which includes travel by U.S. citizens, lawful permanent residents, foreign nationals traveling to work in the United States, and those using the Visa Waiver Program (VWP) for business travel, among others; air travelers are not subject to these restrictions
- ▶ VWP and other business travelers could face additional scrutiny at the border
- ▶ “Non-essential travel” at land borders is not permitted, which includes travel that is considered tourism or recreational in nature
- ▶ The bar on non-essential land border travel will remain in effect until at least **August 21, 2021**. It was originally scheduled to expire on April 20, 2020 but has been extended several times
- ▶ Separately, effective August 9, 2021, the Canadian government is permitting non-essential travel from the United States to Canada for fully vaccinated U.S. nationals and permanent residents who reside in the U.S. If COVID conditions remain favorable, all fully vaccinated travelers may be permitted to enter Canada starting September 7.



# U.S.-Canada / U.S.-Mexico Travel Restrictions, cont'd

- ▶ “Non-essential” travel is defined as travel that is considered tourism or recreational in nature, which includes sightseeing, gambling and attending cultural events
- ▶ “Essential” travel that may continue across the borders under the new restrictions includes, but is not limited to:
  - ▶ U.S. citizens and lawful permanent residents returning to the United States
  - ▶ Travel for lawful cross-border trade (e.g., truck drivers carrying cargo)
  - ▶ **Travel to work in the United States**
  - ▶ Travel for medical purposes (e.g., to receive medical treatment in the United States)
  - ▶ Travel to attend educational institutions
  - ▶ Travel for emergency response and public health purposes (e.g., government officials or emergency responders entering the United States to assist government efforts to respond to COVID-19 or other emergencies)
  - ▶ Travel by members of the U.S. Armed Forces, and their spouses and children, returning to the United States
  - ▶ Other forms of travel as determined by the CBP on a case-by-case basis
- ▶ Trade and business travel continues across borders, but with additional screening at some locations

# AGENCY UPDATES



# DHS Postpones REAL ID Deadline to May 3, 2023

- ▶ Due to the impact of COVID-19 on states' ability to issue REAL ID-compliant documents, DHS has extended REAL ID Act compliance to May 3, 2023, from October 1, 2021
- ▶ Airlines and federal agencies will continue to accept non-REAL ID compliant driver's licenses and identification cards for domestic air travel and admission to federal facilities until May 3, 2023
- ▶ Beginning May 3, 2023, individuals will need a REAL ID-compliant identification to board domestic flights and to enter federal facilities. On that date, a traveler must present:
  - ▶ The state-issued driver's license or identification card that meets REAL ID requirements; OR
  - ▶ An acceptable alternative form of identification. The following documents, among others, are approved by the Transportation Security Administration (TSA):
    - ▶ An unexpired U.S. or foreign passport
    - ▶ A DHS trusted traveler card (Global Entry, NEXUS, SENTRI or FAST)
    - ▶ A USCIS employment authorization document (EAD) or
    - ▶ A DHS-designated enhanced driver's license (EDL)
- ▶ For additional acceptable documents, see the TSA's full [list](#)



# State Department

## Phased resumption of consular services, but still significant closures/slowdown

- ▶ Following the suspension of routine visa services worldwide in March 2020 due to COVID-19, U.S. Embassies and Consulates announced a phased resumption of routine visa services in July 2020 according to certain parameters
- ▶ In November 2020, the State Department confirmed that as post-specific conditions permit, the missions may phase in some routine immigrant (IV) and nonimmigrant visa (NIV) cases, as follows:
  - ▶ Posts that process IV applications will prioritize Immediate Relative family members of U.S. citizens including intercountry adoptions, fiancé(e)s of U.S. citizens, and certain Special Immigrant Visa applications
  - ▶ Posts processing NIV applications will continue to prioritize travelers with urgent travel needs, foreign diplomats, and certain mission critical categories of travelers such as those coming to assist with the U.S. response to the pandemic, followed by students (F-1, M-1, and certain J-1) and temporary employment visas
  - ▶ Posts are also given discretion to depart from the guidelines as necessitated by local conditions and resources.
  - ▶ Consular closures and significant reduction in consulate staffing and visa services persist worldwide. Volume and type of visa cases each post will process will depend on local circumstances.
- ▶ Validity of Machine Readable Visa (MRV) fees extended until September 30, 2022. The MRV fee is typically valid within one year of the date of payment and may be used to schedule a visa appointment in the country where it was purchased
- ▶ Consular operations are fluid and responsive to COVID conditions in the host country. Even scheduled appointments may be cancelled with little notice. Refer to individual embassy and consular websites for information on a particular post at <https://www.usembassy.gov/>



# State Department, cont'd

## NIV interview waiver extension

- ▶ The State Department, in consultation with DHS, has extended until December 31, 2021, the temporary expansion of the NIV interview waiver program
- ▶ Only certain U.S. consular posts offer the interview waiver program (sometimes called the “dropbox”)
- ▶ The expanded program enables consular officers at these posts to waive the in-person interview requirement in certain instances for individuals applying for a nonimmigrant visa in the same classification and whose visa expired within 48 months
- ▶ Under the standard program, only applicants whose nonimmigrant visa expired within 12 months were eligible for an interview waiver with participating posts
- ▶ According to the agency, this expansion will allow consular officers to continue processing certain nonimmigrant visa applications while limiting the number of applicants who must appear at a consular section, thereby reducing the risk of COVID-19 transmission to applicants and consular staff

# COMPLIANCE UPDATES



# Flexibility in I-9 Verification Requirements

- ▶ **DHS (ICE) interim guidelines permit remote I-9 verification in some circumstances during the COVID-19 emergency**
  - ▶ ICE extended until August 31, 2021 its relaxed enforcement of the normal requirement to physically inspect the original documents presented by certain new hires during the I-9 process and continued a variation of the remote I-9 policy for employees who are hired on or after April 1, 2021 and are working remotely due to COVID-related precautions (discussed in next slide).
    - ▶ Eligible employers operating entirely remotely will continue to be permitted to review I-9 identity and employment authorization documents remotely until the interim policy expires or until three days after the COVID-19 emergency is over, whichever comes first
    - ▶ Employees onboarded remotely on or after April 1, 2021, must have their documents inspected in person once they begin working non-remotely on a “regular, consistent, or predictable basis.”
  - ▶ Employers eligible for and who elect to use the remote I-9 policy will be able to inspect Section 2 documents remotely, by video, fax or email, and must retain copies of the documents
  - ▶ The ordinary timelines for I-9 completion remain in effect
  - ▶ Employers taking advantage of these relaxed procedures must provide written documentation of their remote onboarding and telework policy to each employee



# Flexibility in I-9 Verification Requirements, cont'd

## ▶ **Pre-April 1 policy and its limits**

- ▶ For employees onboarded between March 20, 2020 and March 31, 2021, employers were permitted to use the interim I-9 accommodations for employees working remotely due to COVID-19 but only if the workplace was operating entirely remotely
- ▶ Once normal operations resumed, employers need to physically inspect documents within 3 days

## ▶ **Remote I-9 policies for employees hired on/after April 1, 2021**

Employers may use remote I-9 procedures for employees hired on or after April 1, 2021 who are working fully remotely as a COVID-19 precaution, even if employer has employees working non-remotely on the premises

- ▶ For these employees, employers are not required to have all employees working remotely in order to use the remote I-9 accommodation
- ▶ However, the employer is required to use standard I-9 procedures for new hires who are working non-remotely on a “regular, consistent, or predictable basis”
- ▶ If an eligible new hire completes the I-9 process remotely on or after April 1, the employer is not required to inspect the employee’s I-9 documentation in person until the earlier of (1) three days after the employee begin working non-remotely on a regular, consistent, or predictable basis; or (2) within three days after the COVID-19 emergency has ended or ICE has terminated the remote policy



# E-Verify Guidance for Employers

- ▶ **E-Verify has provided guidelines for employers and employees whose fulfillment of E-Verify obligations may be delayed due to the COVID-19 emergency**
  - ▶ E-Verify is not relaxing the three-day deadline for initiating an E-Verify case
  - ▶ Participating employers are still required to create E-Verify cases for their new hires within three business dates from the date of hire as indicated on the employee's I-9 form
    - ▶ If E-Verify case creation is delayed because of COVID-19 precautions, employers are instructed to enter "COVID-19" as the reason for the delay after selecting "other" in the date-field dropdown menu
  - ▶ Where an E-Verify query is delayed due to the COVID-19 crisis, employers are instructed to write in "COVID-19" as the basis for the delay in the system
  - ▶ E-Verify is extending the timeframe for affected employees to resolve Tentative Nonconfirmation responses
  - ▶ Employers may not take adverse action against an employee whose E-Verify case is in interim status



# I-9 Verification

- ▶ **Expired accommodation: USCIS issued temporary I-9 verification accommodations due to EAD production delays in connection with a litigation settlement, valid August 2020 through February 1, 2021**
  - ▶ Specifically, certain foreign nationals were able to use an EAD approval notice to establish employment authorization during the I-9 verification process, even though such notices explicitly state that they do not establish such authorization
  - ▶ Through February 1, 2021, employers were able to accept from employees a Form I-797, Notice of Action, dated on or after December 1, 2019 and through and including August 20, 2020 and indicating that their EAD application has been approved, as a Form I-9, Employment Eligibility Verification, List C #7 document establishing employment authorization
  - ▶ Typically, employers may only accept the issued EAD card, and only as a List A document, under normal I-9 rules



**Thank You**

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