



MEYER LAW GROUP

YOUR DREAMS.OUR EXPERTISE.TOGETHER.

August 17, 2020

CIENT ALERT: THE DEPARTMENT OF LABOR ANNOUNCES NEW EXEMPTIONS TO TRUMP'S RECENT WORK VISA BAN

Dear Valued Clients:

On June 24, 2020 President Trump signed a [proclamation](#) suspending H-1B, H-2B, J-1, and L-1 work visas and any spouses or children of covered applicants applying for H-4, L-2 and J-2 visas effective immediately until December 31, 2020.

Yesterday, the Department of Labor (DOL) updated [guidance](#) on the proclamation, carving out exemptions to the work visa ban:

1. Applicants in the United States on the effective date of the Proclamation, June 24, 2020.
2. Applicants with valid visas and plans to enter the United States on the visa or had a valid travel document valid on June 24, 2020.
3. Applicants whose travel would be in the national interest as determined by the Secretary of State, Secretary of homeland Security. Those who believe they may qualify for a national interest exception, must first apply at the nearest Consulate or Embassy Website for an emergency appointment request.

Of note, the following **H-1B and L-1A, L-1B visa holders are exempted:**

1. Those deemed **necessary to public health or healthcare professional or research to alleviate effects of COVID-19** or to conduct medical research in an area with **substantial public health benefit**;
2. At the **request of a U.S government agency** (e.g. projects essential to U.S. government agency) or entity to meet **critical U.S foreign policy** objectives or to satisfy treaty/contractual obligations; and
3. Those **resuming ongoing employment**, in the **same position**, with the **same employer** and in **same visa classification** in the U.S.

For the full, non-exhaustive list of national interest exemptions included in the policy update please see below:

H-1B Applicants:

- Necessary to public health or healthcare professional or research to **alleviate effects of COVID-19** or to **conduct medical research** in an area with substantial public health benefit.
- At the **request of a U.S government agency** (e.g. projects essential to U.S. government agency) or entity to meet **critical U.S foreign policy objectives** or to satisfy treaty/contractual obligations.
- Those **resuming ongoing** employment, in the **same position**, with the **same employer** and in **same visa classification** in the U.S.
- Technical **specialist, senior level managers** and other workers necessary to facilitate the **immediate and continued economy recovery** of the U.S. Applicants must meet **two** of the following **five** criteria:
 1. Petitioning employer has a **continued need for the service** or labor of the H-1B nonimmigrant **inside** the United States.
 2. The applicant will provide **significant and unique contributions** meeting a **critical infrastructure need** (e.g. chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems).
 - Applicant must hold either:
 - 1) a **senior level position** or have **job duties unique and** vital to the management and success of business; **OR**
 - 2) Job duties and **specialized qualifications** indicate applicant will provide significant and unique contributions to the petitioning company.
 3. Wage exceeds prevailing wage rate by **at least 15%**.
 4. Whose education, training and/or experience demonstrates **unusual expertise in the specialty occupation** (e.g. H-1B applicant with doctorate, professional degree or many years of work experience).

5. Whose denial of the visa will cause **financial hardship to the U.S. employer** (e.g. employer's inability to meet financial or contractual obligations; employer inability to continue business; or delay/impediment to employer's ability to return to pre-COVID-19 level of operations).

H-2B Applicants:

- At **request** from **U.S. government agency** or entity to meet **critical foreign policy** objectives or satisfy treaty or contractual obligations.
- Necessary to facilitate **immediate and continued economic recovery** to the U.S. Applicant must meet **two of three** criteria:
 1. **Previously employed** and trained by petitioning U.S employer under **two or more H-2B petitions**;
 2. Applicant is traveling on a temporary labor certification that reflects **continued need** for the worker;
 3. Denial of the visa would cause **financial hardship to employer** (e.g. inability to meet financial/contractual obligation; employer inability to continue business; delay/impediment to employer's ability to return to pre-COVID-19 level of operations).

J-1 Applicants:

- Au Pair with special **skills required** to care for for minor U.S. citizen, LPR or nonimmigrant in lawful status with **special needs**.
- Au Pair whose travel prevents a U.S. citizen, lawful permanent resident or other nonimmigrant in lawful status **from becoming a public charge or ward** of the state.
- Childcare services for **child whose parents** are involved with medical care to people with **COVID-19 or medical research** at United States.
- Exchange program pursuant to valid **agreement between foreign government** and federal, state or local government of the United States.
- Interns/trainees on U.S. government agency-sponsored programs; exchange visitors where he or she will be **hosted by a U.S. government agency** and the program supports **immediate and continued economic recovery** in the U.S.
- **Specialized Teachers in Accredited Educational Institution.**

- Those in exchange programs that fulfill **critical and time sensitive foreign policy** objectives.

L-1A Applicants:

- Public health or healthcare professional, researcher necessary to **alleviate effects of COVID-19** or to **conduct medical research** in an area with substantial public health benefit.
- At **request of U.S. government** to meet a **critical foreign policy** objective or treaty/contractual obligation.
- Applicants seeking to **resume ongoing** employment, in the **same position**, with the **same employer and visa classification**.
- **Senior level executive or manager** filing a **critical role** meeting a **critical infrastructure** need (e.g. chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems). Applicant must meet **two of three** criteria when *not seeking to establish a new office in the U.S.:*
 1. **Senior-level** executive or manager;
 2. Spent **multiple years with the company overseas**, showing **substantial knowledge** and expertise within the organization that can only be replaced by a new employee within the company following extensive training that would **cause employer financial hardship**;
 3. Will **fill critical business need** for company with **critical infrastructure** need.

** L-1A Applicants seeking to establish a new office in the U.S. will likely **not** fall into this category, unless **two of three** criteria are met **AND** the **new office will employ** directly or indirectly, **five or more U.S. workers**.

L-1B Applicants:

- Public health, healthcare professional or researcher assisting to **alleviate effects of COVID-19** or conduct **medical research** in area with **substantial public health benefit**.
- **Request from U.S. government agency** to meet **critical foreign policy objectives** or satisfy treaty/contractual obligations.

- Applicants seeking to resume **ongoing employment in the U.S.**, in the **same position**, with the **same employer and visa classification**.
- **Technical expert or specialist** meeting a **critical infrastructure** need. All three criteria must be met:
 1. Job duties and specialized knowledge show individual will provide **significant and unique contributions** to the petitioning company.
 2. Applicant's **specialized knowledge** is specifically related to a **critical infrastructure** need; **AND**
 3. Applicant has spent **multiple years with company overseas** showing **substantial knowledge and expertise** in organization that can only be replicated by new employee within company with extensive training that would **cause employer financial hardship**.

H-4, L-2 and J-2 Applicants:

- National interest exceptions **are** available to spouses or children of principal applicants who have been granted a national interest exception.

Meyer Law Group is committed to assisting employers with employees in any of the above circumstances, meeting the national interest exceptions. Please [contact Meyer Law Group](#) if you have any questions or concerns regarding this policy update.

Brandon Meyer
Managing Partner

Paul Chen
Partner

Jennielyn Alcarion
Senior Attorney