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U.S. Immigration Law Considerations for Employers

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Introduction



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- Ieva advises corporate and individual clients on all aspects of U.S. immigration and nationality law.
- Ieva has over 10 years of experience handling employment-based immigration matters, including E-2, E-1, E-3, H-1B, TN, L-1, O-1, and other non-immigrant visa categories, as well as PERM labor certification and PERM-exempt processing for both large and small employers in a wide variety of industries.
- Based in Seattle.

Introduction and Overview



- **Current Status of International Travel Bans and Consulate Closures**
- **Developments at the U.S.-Canadian Border and other CBP Updates**
- **U.S. Citizenship and Immigration Service's Procedural Changes & Updates**
- **Tips for Cross-Border Travelers and Their Employers**

Headlines from The New York Times, The Washington Post and Bloomberg.com

Trump Says He Will Halt Immigration; States Start to Reopen Businesses



Donald J. Trump 
@realDonaldTrump

In light of the attack from the Invisible Enemy, as well as the need to protect the jobs of our GREAT American Citizens, I will be signing an Executive Order to temporarily suspend immigration into the United States!

7:06 PM - 20 Apr 2020

Source: <https://twitter.com/realDonaldTrump>

**Trump Says He'll Suspend
Immigration to U.S. on Virus
Risks**

Trump says he will sign an executive order to temporarily suspend immigration to the U.S. amid pandemic

Department of State (DOS): COVID-19 Response

- **U.S. Consulates and Embassies around the world are closed for most business other than assisting U.S. citizens:**
<https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>
- **U.S. Consulates and Embassies have suspended routine issuance of VISAS:** <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>
- **DOS Advisory to U.S. citizens: Do not travel internationally.**
<https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html>

Department of Homeland Security (DHS): COVID-19 Response: U.S. Customs and Border Protection (CBP)

- **Border Closures**

- **The United States has made agreements with Canada and Mexico to limit entries at their shared borders. The Northern and Southern borders are closed to “non-essential” travel.**
<https://www.dhs.gov/news/2020/03/23/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus>

- **Satisfactory Departure**

- **Individuals admitted under the VWP/ESTA program who are unable to depart the U.S. before their authorized period of admission ends because of COVID-19 related issues should contact the CBP’s Deferred Inspections office and request Satisfactory Departure for up to 30 days.**

- **Trusted Travelers**

- **All Trusted Traveler Program Enrollment Centers are suspended until at least May 1, 2020 (this includes Global Entry, NEXUS, SENTRI, and FAST enrollment locations).**

Department of Homeland Security (DHS): COVID-19 Response: U.S. Citizenship and Immigration Services (USCIS)

U.S. Citizenship and Immigration Services (USCIS):

- **USCIS Field Offices and Application Support Centers (ASC) closed**
 - The closure will continue until on or about June 4, 2020 when USCIS hopes to re-open to the public.
 - USCIS sending cancellation notices to applicants with previously scheduled interview appointments or naturalization ceremonies affected by the office closures.
 - ASC appointments to be automatically rescheduled by USCIS for applicants affected by the center closures.
 - USCIS to continue providing limited emergency services field offices. For assistance with an emergency service, please call the USCIS Contact Center.
<https://www.uscis.gov/contactcenter>

Department of Homeland Security (DHS): COVID-19 Response: U.S. Citizenship and Immigration Services (USCIS)

- **USCIS has suspended Premium Processing for all I-129 and I-140 petitions due to COVID-19 crisis.**
- **USCIS is allowing Request for Evidence (RFE) and Notice of Intent to Deny (NOID) response deadline flexibility.**
- **USCIS has relaxed the original / “wet” signature requirement, though it does require those submitting petitions or applications to retain the original documents for submission via mail/courier if it requests them at a later time.**

Department of Labor (DOL)

- **The DOL has issued guidance on how employers can comply with LCA posting requirements and other issues:** https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf
- **H-1B/LCA prevailing wage rules continue to apply during the COVID-19 crisis period.**
- **The DOL is now issuing electronic approval materials for Certified PERM applications to be sent to the employer/applicant in the case via email:** https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf
- **Employers should be sensitive to the implication of furloughs and layoffs on PERM applications.**

Department of Homeland Security (DHS): COVID-19 Response

Other Actions Taken by DHS:

- **Form I-9, Employment Eligibility Verification during COVID-19:**
 - **DHS will exercise discretion to defer the physical presence requirements associated with Form I-9 by not requiring employers to review the employee's identity and employment authorization documents in the employee's physical presence.**
- **E-Verify Extends Timeframe for taking action to resolve Tentative Confirmations:**
 - **The timeframe to take action to resolve SSA and DHS Tentative Nonconfirmations (TNCs) extended by E-Verify due to private and public office closures.**

Tips for Cross-Border Travelers and Their Employers



- **Plan ahead & act early!**
- **Ensure that workers traveling internationally carry complete paperwork.**
- **When sponsoring a worker for a U.S. work visa, carefully review the position description, terms of employment and the beneficiary's qualifications.**
- **Maintain good compliance practices.**