



News & Types: クライアント・アドバイザー

# 【移民法アラート】特定のH-1Bビザ保持者による米国入国を制限する大統領令が発令

9/22/2025

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Practices: 移民法

On September 19, 2025, President Trump issued a proclamation titled “Restriction on Entry of Certain Nonimmigrant Workers” focusing on the H-1B program. Citing abuses in the H-1B program and national security concerns, the proclamation restricts the entry of certain H-1B workers to the United States beginning on September 21, 2025, unless a fee of \$100,000 has been paid OR the H-1B worker and/or his/her company has been granted a national interest exemption (NIE). This restriction is to be in place for 12 months and may be extended. The government will make a first assessment of the impact of the H-1B program restriction within 30 days of the completion of the next H-1B lottery to decide whether the restrictions will continue.

Subsequent to the issuance, the White House issued an initial “fact sheet” that provided very little additional information about how the proclamation would be implemented. After the fact sheet was released, multiple updates were released by the Administration on various social media platforms.

The first was posted by the White House Press Secretary on X. Her post provided the following:

1. The \$100,000 is not an annual fee. It is a one-time fee.
2. Those who already hold H-1B visas and are currently outside the country will not be charged \$100,000 to re-enter. H-1B visa holders can leave and re-enter the country the same as they normally would.
3. The proclamation only applies to new visas, not renewals, and not current visa holders.
4. The proclamation will first apply in the next upcoming lottery cycle.

The next update was posted by the Administration on Truth Social and it stated:

1. The proclamation does not apply to anyone who has a current visa.
2. The proclamation only applies to future applicants in the lottery who are currently outside the US. It does not apply to anyone who participated in this year’s lottery.
3. The proclamation does not impact the ability of any current visa holder to travel to/from the U.S.

After these posts, Directors of U.S. Citizenship and Immigration Services (USCIS) and Customs and Border Protection (CBP) released their own updates. However, these updates were not as expansive or consistent with the Administration's social media posts. Both Directors confirmed in bold letters that the proclamation only applies prospectively to petitions that have not been filed yet. The CBP Director indicated that USCIS and Department of State (DOS) have been instructed to begin implementing the "new monetary requirements for employers submitting petitions on behalf of aliens outside the United States for new H-1B petitions only." The CBP Director then confirmed that the proclamation does not impact the ability of any current visa holder to or from the United States.

The USCIS Director stated that the proclamation "does not apply to aliens who: are the 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." Unlike the Administration's social media posts, the USCIS Director did not state that "the proclamation will first apply in the next upcoming lottery cycle" or that "the proclamation only applies to future applicants in the lottery who are currently outside the US".

After the Directors of USCIS and CBP released their guidance, the White House issued another Fact Sheet which, among other items, indicated that the proclamation directs the Secretary of DHS to "restrict approvals for petitions from aliens that are currently outside the United States that are not accompanied by the payment, and allows case-by-case exemptions if in the national interest."

After the White House released its Fact Sheet, the DOS indicated that the proclamation applies to H-1B workers seeking visa issuance or entry into the United States based on new H-1B petitions filed with USCIS after the Proclamation's effective date. DOS indicated that this includes the 2026 lottery and any other new H-1B petitions submitted on or after September 21, 2025. Unlike the White House guidance, the DOS guidance does not limit the proclamation to individuals that are currently outside the United States. Additionally, DOS confirmed that no visas have been revoked pursuant to the proclamation and that all exceptions to this proclamation will be determined by DHS (not DOS).

After the DOS issued its guidance, the USCIS issued H-1B proclamation Frequently Asked Questions (FAQs). Similar to the DOS guidance, the USCIS FAQs indicate that the \$100,000 payment (unless exempt) has to accompany any new H-1B visa petitions (regardless of whether the beneficiary is present in the United States or is currently outside the United States) submitted on or after September 21, 2025, including the 2026 lottery and any other new H-1B petitions.

## **SUMMARY OF CONSISTENT CLARIFICATIONS FROM THE ADMINISTRATION AS OF SUNDAY, SEPTEMBER 21ST**

A comparison of the Administration's social media posts and guidance provided by the CBP, USCIS and DOS provide the following consistencies:

1. The proclamation is not retroactive.

2. The proclamation does not affect H-1B workers who have previously had H-1B petitions approved. These workers will be able to extend or amend their H-1B status. They should also be able to change employers without the new employer having to pay the \$100,000 fee.
3. Current H-1B workers can continue to travel internationally without having to evidence the payment of the \$100,000 fee (or an exemption from the fee).

## **SUMMARY OF INCONSISTENT INFORMATION FROM THE ADMINISTRATION AS OF SUNDAY, SEPTEMBER 21ST**

A comparison of the Administration's social media posts and guidance provided by the CBP, USCIS and DOS show the following inconsistencies or omissions:

1. The proclamation only applies to future applicants in the next H-1B quota lottery.
  - a. It is unclear if the proclamation is currently effective for H-1B cap exempt employers filing H-1B petitions after September 21, 2025 for individuals who do not currently have H-1B status.
2. The \$100,000 fee is a one-time fee.
3. The proclamation will only apply to employers submitting new H-1B petitions on behalf of individuals outside the United States.

## **NEXT STEPS FOR IMPLEMENTATION**

The following are some of the next steps for the Administration to implement the proclamation:

1. The U.S. Department of Homeland Security (DHS) and the DOS will have to develop a procedure for the payment of the \$100,000 fee. This procedure should be announced in a Federal Register notice. Please remember that under the H-1B program, the employer must pay all costs related to the filing of the H-1B petition and employment of the H-1B worker.
2. DHS (not DOS) will have to issue guidance about the criteria and procedure for H-1B workers and/or their employers to qualify for a NIE from the fee. DHS will determine which workers and/or companies are eligible for NIE.
3. The proclamation requires the DOS to issue guidance to prevent the misuse of B visitor visas in order to circumvent the proclamation.
4. The proclamation requires the DHS to issue rulemaking to prioritize the admission of high-skilled and high-paid workers in the H-1B program.
  - a. A regulation titled "Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions" to modify the H-1B quota registration process cleared the Office of Management and Budget (OMB) on August 8, 2025 and is waiting to be released by DHS. It is unclear if DHS will make further changes to this regulation as part of the implementation of the proclamation.

5. The proclamation requires the U.S. Department of Labor (DOL) to issue rulemaking to revise the prevailing wage levels consistent with the policy goals of the proclamation. In 2020, the Trump administration introduced a regulation that would have basically doubled prevailing wages. The regulation was ultimately invalidated by the courts on technical grounds.

The exact timing of the next steps by the Administration is unknown. However, it is assumed that when the Administration proceeds with the next steps and attempts to implement the proclamation, there will be multiple lawsuits filed challenging the legality of various parts of the proclamation.

Additional information about the implementation of the proclamation, any further clarifications about who is (and is not) covered by the proclamation and lawsuits filed challenging the proclamation will be contained in future Masuda Funai Client Alerts when they become available.

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