CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: Trump Suspends Entry of Certain Foreign Nationals Outside of the United States

APRIL 23, 2020

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In response to rising domestic unemployment and reduced demand for labor due to the COVID-19 pandemic, President Trump issued an Executive Order effective at 11:59 pm tonight. The Executive Order seeks to reduce the impact of foreign workers on the US labor market. The Executive Order also seeks to focus Department of State and consular resources on US citizens abroad, rather than on processing visas for foreign nationals.

The Executive Order limits the issuance of **immigrant** visas to foreign nationals who are outside the US. It does not currently impact foreign nationals in the US with green card processes, or those outside the US already holding an immigrant visa or valid travel document as of the Executive Order's effective date. The Executive Order also exempts most physicians and their families, spouses and children (including adoptees) of US citizens, and foreign nationals applying for asylum, refugee status, withholding of removal or protection under the Convention Against Torture. Other categories not impacted by the Executive Order include SI or SQ special immigrants, members of the US military, EB-5 investors, those who further law enforcement objectives, and those whose entry is determined to be in the national interest.

Although this Executive Order does not apply to foreign nationals in the US with green card processes, or those outside the US with valid immigrant visas, it does raise questions about the current employment-based immigration process both inside and outside of the US. Notably, the Executive Order states that because labor certifications, which form the basis underlying employment-based immigration, are issued well before the related immigrant visa filing (oftentimes many years), they do not accurately reflect the needs of the labor market at the time of immigrant visa filing. Whether this could mean a second test of the labor market before immigrant visa issuance remains to be seen.

Although not currently applicable to **nonimmigrant** visas, the Executive Order directs the Department of Labor and Department of Homeland Security to recommend, within the next 30 days, changes to nonimmigrant visa programs in an effort to respond to the rise in unemployment due to COVID-19 and to prioritize US workers over foreign national workers. So while nonimmigrant workers are not currently impacted, it is likely there will be a push from some sectors on limiting these programs.

The Executive Order is effective for 60 days from 11:59 pm EDT, April 23, 2020, and directs the Departments of Labor and Homeland Security to recommend changes, extension or sunset within 50 days. As with other of President Trump's Executive Orders, it will likely be challenged in court.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

