On April 22, 2020, President Trump signed an Executive Order restricting immigration to the United States with the stated intent of protecting U.S. citizens from job competition and preserving medical resources as the economy aims to reopen following the COVID-19 crisis. The President initially indicated an intent to suspend all immigration, but the final Executive Order was much more limited.

Effective April 23, the order temporarily suspends the entry of those seeking to enter the United States as new Lawful Permanent Residents (more commonly known as Green Card holders) for 60 days with the potential for extension. The entry restriction applies to those who (1) are outside the United States, (2) do not have a valid Green Card, and (3) do not have some sort of travel document other than a visa, such as advance parole, on the effective date of the order. Foreign nationals already in the United States applying for green card status (i.e. adjustment of status) are unaffected by the order. Also, the order does not apply to current Green Card holders. Some have been exempted from the order including certain medical professionals performing work related to COVID-19; spouses and minor children of United States citizens; and those who received their Green Cards through the EB-5 investor program.

While Green Cards provide long-term employment strategies for foreign nationals, employers typically utilize temporary work visas to employ foreign nationals on a more immediate basis. Importantly, the order does not restrict temporary work visas such as H-1B, L-1, O-1 and E-2. However, it does require the Department of Homeland Security to review temporary visa programs and recommend additional measures to prioritize hiring and employment of U.S. citizens so additional orders could be coming.

While the order is in place, employers may need to rely on temporary immigration strategies for key foreign national employees. It is a good time for employers to review visa expirations and check the status of any pending green card applications (or plans to file green card applications) to avoid lapses in work authorization. Temporary visa extensions should be filed as early as possible since USCIS
has temporarily halted its fast-track premium processing program. Communication with foreign national employees about anticipated travel plans is also critical. The United States Consulates and Embassies have stopped visa processing except for emergency circumstances, which could result in long travel delays and processing backlogs once offices are reopened.

Burr & Forman LLP will continue to provide legal updates and post them at our Coronavirus Resource Center. If you have questions about the Executive Order or any other immigration issue, please contact Melissa Azallion (MAzallion@burr.com); Anna Scully (Ascully@burr.com); or Jon Eggert (JEggert@burr.com) on the Burr & Forman Immigration Team.

Authors

Melissa Azallion Kenny
Partner
Hilton Head Is., SC

Anna L. Scully
Partner
Mobile, AL

Jonathan C. Eggert
Partner
Hilton Head Is., SC