

# Article

## Executive Order on U.S. Immigration: Solution or Problem?

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On April 22, 2020, an executive order was signed pertaining to the suspension of immigrants' entry into the U.S. during the period of post-COVID-19 recovery. The executive order significantly limits the ability of immigrants (i.e., individuals intending to permanently immigrate to the U.S.) to enter this country over the following 60-day period unless they are in possession of a valid immigrant visa or an official travel document. Importantly, the order does not apply to U.S. permanent residents (Green Card holders), immigrant healthcare workers, immigrant investors, spouses and children (under age 21) of U.S. citizens, foreign nationals whose entry is important to accomplish U.S. law enforcement objectives, members of the U.S. Armed Forces and their spouses and children, individuals seeking to enter the U.S. pursuant to a Special Immigrant Visa, and any aliens whose entry would be in the national interest.

The current order does not affect nonimmigrant workers (e.g., individuals in H-1B, L, E, TN and other nonimmigrant statuses), although there is an expectation that a subsequent review of nonimmigrant programs will occur and measures affecting nonimmigrants may be recommended in the future, if the government determines they are necessary to stimulate the U.S. economic recovery. Also importantly, foreign nationals who are currently in the U.S. and are in the process of Green Card attainment should not be affected by the executive order and should be able to continue pursuing their permanent residence in the U.S.

Notably, irrespective of whether a foreign national is affected by the executive order (which is somewhat confusingly called a "ban") most individuals currently in need of a U.S. visa are affected by what can be referred to as a "de facto ban", with U.S. consular offices abroad closed and visa appointments unavailable. But no matter its moniker, is the executive order a solution to a U.S. economic recovery? Or will it further complicate problems our economy is already facing—and will likely continue to face, post-pandemic?

History tells us that during critical times for the U.S., immigrants have provided the much-needed push for economic progress—via both intellectual and manual labor contributions—in virtually all industries. And unfortunately, the absence or shortage of immigrant workforce is likely to slow our recovery. Per the experts' estimates as the executive order stands, approximately 26,000 immigrants will be unable to enter the U.S. each month. Furthermore, recent measures (such as "The Final Rule on Public Charge Ground of Inadmissibility" adopted in August 2019) have ensured intending immigrants are self-sufficient and do not rely on any public funds. All immigrant and nonimmigrant visa applicants are screened to ensure they will not burden the U.S. welfare system, including any state-provided health care benefits. These measures, coupled with other recent immigrant policies, have significantly reduced the flow of immigration to the U.S. In 2019, there were 462,422 immigrant visas issued to applicants abroad. This is a significant reduction compared to 2016, when 617,752 were issued.

We can expect that with the slowing economy, we're likely to see a further decline in legal immigration to the U.S., including critically needed workers for various sectors of our economy. In essence, we may be losing valuable contributors for our key industries, including engineering, technology, health care, agriculture, and hospitality.

None would compete with U.S. workers for public benefits, but could provide much-needed workforce resources benefitting our national economic recovery and growth.

The recent executive order addresses permanent immigration to the U.S., but an ominous promise of the order to consider steps limiting legal employment-based nonimmigrants' (i.e., temporary workers) is already wreaking havoc among U.S. companies. It will affect those in need of these workers' services, as well as foreign workers interested in employment opportunities in this country. These U.S. companies have concerns that, in the name of reserving employment opportunities for unemployed U.S. workers, any new executive order would severely limit availability of a highly qualified foreign workforce for specialized jobs in this country. Before touting this as a step towards protecting our national labor market, it's important to consider that simply clearing employment "slots" for U.S. workers at the expense of immigrants is a fairly counterproductive proposition. Preventing a researcher, an inventor, an engineer with a highly specialized knowledge base, or a scientist from coming to the U.S. is not going to provide a job to a restaurateur, waiter, factory worker, farmer, or any others with job losses related to COVID-19. In fact, a foreign scientist or an inventor is likely to create new jobs in the U.S. to potentially benefit all, including those whose jobs have been destroyed by the pandemic.

While steps to limit immigration are often popular at times of cataclysms and dire economic predictions, the approach that has historically worked well for major economies and strong democracies has been market self-regulation—not measures to artificially stymie the flow of legal immigration. Economic slowdowns tend to naturally reduce the number of immigrants, due to both their own fears of failure and absence of employment opportunities in the target country. To confirm this, one does not need to look further than the 2008-2009 recession and the number of unused nonimmigrant H-1B visas that were left in its wake. At the same time, immigrants arriving during hard times tend to be particularly resilient, resourceful, and—in the end—of greatest benefit to the economy of their new home country. Remembering our history is particularly challenging during hard times, but it would serve us well. And it just might help us get back on our feet a bit faster.

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