



## COVID-19 Immigration Updates

In less than three months, COVID-19 has gone from an underreported varietal of severe acute respiratory syndrome (SARS) to a global pandemic affecting international markets and municipal economies, local and national health systems, and interpersonal relationships, at an unprecedented and expanding rate. As the U.S. (and the rest of the world) continues to limit the free movement of people across our national borders and considers doing so within our own country, individuals and organizations must strategize how to navigate these restrictions on their personal and corporate mobility. The following factsheet will help outline some of the most common issues that are arising with COVID-19 as it relates to the U.S. immigration system.

### **Entering the U.S. – Travel Restrictions, Consular Closures, and ESTA Cancellations**

*The first step the U.S. government took to combat COVID-19 was to limit travelers who had recently been in [mainland China](#) from entering the U.S. In the 6 weeks since these initial restrictions went into effect, [29 other countries](#) have been added to the list. Consular services have also been interrupted while airlines are running fewer and fewer flights to and from the U.S., and passengers on those flights should expect excessive delays and significant risk of exposure.*

- [The U.S. Department of State has advised](#) against all international travel and that all U.S. Citizens abroad to return to the U.S. or be prepared to stay where they are indefinitely. All U.S. Citizens abroad should enroll in [Smart Traveler Enrollment Program](#) and, in the event of emergency, [contact the U.S. Department of State at 1-888-407-4747 \(U.S. or Canada\) or 202-501-4444 \(overseas\)](#).
- Foreign nationals (i.e. non-U.S. citizens) who have been physically present in China, Iran, the Republic of Ireland, the United Kingdom, and the 26 Schengen Area countries within 14 days of traveling to the U.S. will not be allowed to board a flight.
- Exceptions include U.S. green card holders, spouses of U.S. citizens/green card holders, certain parents/siblings of U.S. citizens/green card holders, and diplomatic workers.
- U.S. borders with Canada and Mexico have been closed to “non-essential” travel. Appears to mostly apply to travel/tourism, and that travel for trade/work still permitted.
- U.S. citizens/exempted foreign nationals still may be subjected to quarantine after enduring long waits that increase risk of exposure.
- [Routine consular services have been suspended around the world](#). U.S. Passport services and emergency appointments still available.
- Even though he/she could self-quarantine in a third-country for 2 weeks before returning to the U.S., CBP has begun cancelling existing ESTA registrations to ban potential travel. Cancellations performed without prejudice (future effect on subsequent ESTA registrations).



### **Maintaining Status – ESTA Extensions, USCIS/Consular Services, & the Many Issues of Going Remote**

Non-U.S. citizens and non-green card holders physically present in the U.S. must abide by the terms of their admission to this country – or, “maintain” their nonimmigrant status. This mandate entails not only engaging in activities that are permitted under the terms of the benefit they have received, but departing the U.S. or taking an affirmative action to change and/or extend their period of stay by a prescribed date.

But what do you do when you cannot return to your country of origin, your school cancels in-person classes for the semester, you begin working remotely from home due to office closures, your long-pending request goes un-adjudicated due to agency cutbacks, or you are benched or fired?

As these and additional questions – some of which we have answers for, while we await guidance on others – potentially trigger prohibitions on returning to the U.S., individuals and entities must pay close attention.

- **VISA WAIVER (ESTA):** Customs and Border Protection (CBP) have started allowing ESTA holders to request extensions if they cannot depart the U.S. due to coronavirus-created complications. Absent agency-wide guidance on this topic, individual Ports of Entry have developed site-specific procedures for requesting such an extension which, as of right now, is limited to 30 days.
- **FOREIGN STUDENTS:** F-1 students are typically forbidden from taking on-line classes as doing so would be a violation of their status. On Friday March 13, the [USCIS announced](#) that F-1 students WILL BE permitted to maintain status as universities cancel in-person classes and close campuses. This announcement also confirmed F-1 students attending universities without telelearning will maintain their status so long as they intend to resume their studies upon their university’s reopening. F-1 students with work authorization may be permitted to work remotely, but post-completion OPT carries unemployment limits (90 days over 1 year or 150 days over 3 years) that could be tested if closures become long-term.
- **USCIS SUSPENDS PREMIUM PROCESSING:** As of March 20, [USCIS will no longer accept new requests for Premium Processing](#), though it will fulfill pending requests for same. [Expedited Processing](#) is still available under the appropriate circumstances.
- **USCIS FIELD OFFICES CLOSE FOR IN-PERSON SERVICES:** USCIS has [cancelled in-person appointments through at least the end of the month](#). Field Offices in the San Francisco Bay Area have fully closed in compliance with local Shelter in Place orders. Applicants should expect new appointment notices from USCIS once the pertinent Field Office has resumed operations.
- **H-1B WORKERS:** H-1B employment is designated for a specific job in a specific location. As offices across the nation are moving to remote work and telecommuting, where the work is performed might become an issue. As long as the work from home is in the same metropolitan area as the worksite listed on the H-1B petition, there should not be an issue. However, specific cases where

a worker is remoting from a distance, could cause issues with H-1B validity. Under the letter of the law an amended filing might be needed. There has been no guidance from USCIS in this regard.

- **INTERNALLY FILING EXTENSIONS:** A timely-filed extension or renewal must arrive before the current benefit's expiration. With respect to the ability to work in the U.S., such an extension or renewal may automatically prolong work authorization for 180 or 240 days while the request is pending (depending on the underlying status). USCIS' remote work, along with planned and potential changes to Premium Processing (where available), may lead these filings to go undecided before their automatic extensions expire. There has been no guidance from USCIS in this regard.
- **LAYOFFS AND OFFICE CLOSURES:** Office closures and other disruptions in the economy may lead employers to consider benching or firing foreign workers. Benching, especially for Labor Condition Application-Based Petitions and Applications (i.e. H-1B, E-3, and H-1B1), is prohibited in most circumstances, and terminating a foreign worker creates obligations for the employer and employee.
  - Employer → Notify USCIS of termination and for H-1B employees, pay for cost of return flight.
  - Employee → Enter grace period that is 60 days or remaining portion of current status, whichever is shorter. Must have submit new filing or depart the U.S. within the grace period.
- **NEW HIRES AND EMPLOYMENT VERIFICATIONS:** [I-9 enforcement](#) has been a strong initiative for the Trump administration. I-9 Verification requires in person review of material to prove eligibility to work. When work move remotely, fulfilling this obligation can be a challenge. As of March 20, 2020, [the U.S. Department of Homeland Security has waived the physical inspection of original documents.](#)
- **NEW PUBLIC CHARGE REQUIREMENTS:** On February 24, 2020, USCIS implemented a new rule aimed at preventing individuals who have or may access certain cash and non-cash public benefits from obtaining permanent residence or even a work visa. On March 13, 2020, [USCIS confirmed](#) that testing, screening, or treatment for a communicable disease such as COVID-19 will not be considered in this determination.
- **REMEDIES FOR MISSING EXPIRATION DATES AND DATES OF DEPARTURE:** A *nunc pro tunc* ("now for then") filing can remedy late submissions or a loss of status for reasons outside of a foreign national's control. It is our position that any delay due to the Coronavirus would be considered a viable justification for a late submission.



### **Updates on Removal Proceedings and Related Procedures**

Effective March 18, 2020, all Master Calendar Hearings and Individual Merits Hearings are postponed for *non-detained* Immigration Court dockets nationwide.

Additionally, the following courts will be closed completely:

- Sacramento;
- Los Angeles (Olive Street);
- Charlotte; Atlanta
- (Peachtree);
- Houston;
- New York (both locations);
- Newark;
- Louisville; and
- Memphis.

*Immigration Courts not listed as closed are still accepting filings for ongoing cases by mail and electronic filing.* Locally, the York Immigration Court's detained docket continues to operate. Attorneys have been advised, by a Standing Order of Immigration Judge Weil, that they may appear telephonically for all Master Calendar Hearings.

Immigration and Customs Enforcement (ICE) has modified their Enforcement and Removal (ERO) operations procedures during the COVID-19 outbreak, as follows:

- *Reporting for Orders of Supervision:* ERO Philadelphia will temporarily change in-person reporting requirements to telephonic reporting. Individuals who are required to report to a deportation case officer will be able to report telephonically. The numbers for reporting to Philadelphia, PA, Pittsburgh, PA, Charleston, WV, and Dover, DE as follows: Philadelphia Field Office (215) 656-7164; Pittsburgh Office (412) 485-1037; Charleston Office (304) 308-1491; and, Dover Office (302) 730-9315. Individuals with report dates must contact the office in their location and provide his or her alien registration number, birthdate, address and any updates about their status/case.
- *Bond Payment:* ERO Philadelphia will continue to accept bonds at the Philadelphia Field Office and the Pittsburgh Sub-office; however, no bond payment will be processed at the York sub-office.
- *Stay of Removal:* ERO Philadelphia will temporarily permit the filing of Form I-246, Application for Stay of Deportation or Removal, through the mail accompanied by money orders, certified funds, or request for fee waivers only. This applies only to individuals who are in compliance with their reporting requirements to ICE.

It is our hope that the USCIS, the DOL, CBP, and ICE will take extraordinary steps to ensure that the status of foreign nationals will be considered and automatic remedies will be provided in the coming days.



However, and regardless, for the next few weeks, at least, we are going to have to work together like never before. It will take mutual understanding and most importantly mutual respect. Things will change as the response from our communities as well as the federal government changes and we have to be able to adapt quickly. Together we can continue to maintain our ability to do our work and also protect the foreign nationals most affected by this global pandemic.

We encourage to you sign up for our [E-Alerts](#) to get real time interpretations of any changes that occur, and [contact us](#) should you have any questions or concerns.