



The impact of Immigration: Economic and Tax Implications for Brazil and the United States

with

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Agenda

- USCIS Furlough
- Travel Bans
- Presidential Proclamations
- U.S. Consulates and visas issuance
- USCIS new filing fees and forms
- H-1B





USCIS Furlough

Federal Immigration Agency to Furlough Employees

- US Citizenship and Immigration Services, the federal agency responsible for visa and asylum processing, was expected to furlough part of its workforce this summer but with a new fee schedule (increase in filing fees) and various arrangements this drastic measure was mitigated and avoided.
- The immigration agency is primarily fee-funded and typically continues most operations during lapses in funding, such as last year's government shutdown. However, during the pandemic the agency suspended its in-person services, including all interviews and naturalization ceremonies for many months.



Travel Bans

Proclamation on Suspension of Entry

- “The potential for undetected transmission of the virus by infected individuals seeking to enter the United States from the Federative Republic of Brazil threatens the security of our transportation system and infrastructure and the national security...in the interests of the United States to take action to restrict and suspend the entry into the United States, as immigrants or nonimmigrants, **of all aliens who were physically present within the Federative Republic of Brazil during the 14-day period preceding their entry or attempted entry into the United States.**”
- Order Took Effect: May 28 at 11:59 pm ET.



Proclamation on Suspension of Entry

- **Exception:**
- (i) any lawful permanent resident of the United States;
- (ii) any alien who is the spouse of a U.S. citizen or lawful permanent resident;
- (iii) any alien who is the parent or legal guardian of a U.S. citizen or lawful permanent resident, provided that the U.S. citizen or lawful permanent resident is unmarried and under the age of 21;
- (iv) any alien who is the sibling of a U.S. citizen or lawful permanent resident, provided that both are unmarried and under the age of 21; (v) any alien who is the child, foster child, or ward of a U.S. citizen or lawful permanent resident, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;
- (vi) any alien traveling at the invitation of the United States Government for a purpose related to containment or mitigation of the virus;

And others..

Presidential Proclamations



Summary of the Presidential Proclamation Suspending Entry of Immigrants and Nonimmigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak

The Proclamation suspends the issuance of visas for those seeking entry pursuant to a(n):

- **H-1B visa** and any foreign national accompanying or following to join them;
- **H-2B visa** and any foreign national accompanying or following to join them;
- **J visa**, to the extent the foreign national is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any foreign national accompanying or following to join them; and
- **L visa**, and any foreign national accompanying or following to join them.

The Proclamation will only apply to an individual identified above if they are:

- Outside the United States on the effective date of the Proclamation;
- Do not have a nonimmigrant visa that is valid on the effective date of the Proclamation;
- Do not have an official travel document other than a visa (such as a transportation letter, boarding foil, or advance parole document), valid on the effective date of the Proclamation or issued thereafter permitting the individual to be admitted to the United States.

How each visa type will be affected?

Visa Type	USCIS "straight" Petition available?	USCIS Change of Status / Extension of Stay possible?	Visa Issuance by Consulate restricted by new proclamation?	Visa Issuance by Consulate available?	Bottom Line
E-1/E-2/E-3	N/A	Yes	No.	No. Can only schedule appointment. National Interest Exemption available.	If in the US in valid status, can apply for COS. Best to remain in the US in most cases.
F-1	N/A	Yes. Also, OPT eligible for H-1B Cap Gap	No.	No. Plus additional restrictions for some Chinese nationals.	F-1 students outside the US will need to wait for visa services to become available.
H-1B	Yes, but see consular limitations.	Yes. If a cap-subject H-1B, then current status must be valid through 9/30 or OPT Cap Gap eligible.	Yes.	No. National Interest Exemption available.	If in the US, then only depart if you already have a valid visa stamp in your passport.
H-1B1 Singapore / Chile	N/A	Yes.	Unclear. H-1B1 is separate sub-section of the Act, so will need to await further guidance from Singapore and Santiago.	No. National Interest Exemption available.	If in the US, then only depart if you already have a valid visa stamp in your passport.
H-2B	Yes	Yes	Yes. Exception for food supply chain.	No. National Interest Exemption available.	If in the US, then only depart if you already have a valid visa stamp in your passport.

Visa Type	USCIS "straight" Petition available?	USCIS Change of Status / Extension of Stay possible?	Visa Issuance by Consulate restricted by new proclamation?	Visa Issuance by Consulate available?	Bottom Line
J-1	N/A	Yes.	Yes (most J-1 sub-categories are impacted).	No. National Interest Exemption available.	If in the US, then evaluate whether eligible for a change of status or extension of stay.
L-1A / L-1B	Yes.	Yes.	Yes.	No. National Interest Exemption Available.	If in the US, then only depart if you already have a valid visa stamp in your passport.
"NAFTA" L	N/A	N/A	N/A	N/A	Awaiting guidance on whether CBP treats these as "visas". If yes, then impacted. Pre-proclamation, there was variation by port-of-entry.
L-1 Visa with Blanket	N/A	N/A	Yes.	No. National Interest Exemption Available.	If in the US, then only depart if you already have a valid visa stamp in your passport.
Corporate Blanket L	Yes.	N/A	No.	N/A	Corporate Blanket petitions can still be filed to amend the list of related entities.
O-1A / O-1B	Yes.	Yes.	No.	No. Can only schedule appointment. National Interest Exemption available.	If in the US in valid status, can apply for COS. Best to remain in the US in most cases.
P	Yes.	Yes.	No.	No. Can only schedule appointment. National Interest Exemption available.	If in the US in valid status, can apply for COS. Best to remain in the US in most cases.
TN (Canadian)	N/A	Yes.	N/A	N/A	US-Canada border travel is restricted by land. Travel by air is permitted.
TN (Mexican)	N/A	Yes.	No.	No. Can only schedule appointment. National Interest Exemption available.	If in the US in valid status, can apply for COS. Best to remain in the US in most cases.

EXEMPTIONS:

- **Visa Exempt Canadians Are Not Subject to the Proclamation**

AILA CBP-OFO Liaison Committee has received confirmation from CBP HQ that Canadians entering as H, L or J nonimmigrants are exempt from the Presidential Proclamation issued on June 22, 2020, and effective on June 24, 2020. Guidance has been provided to local CBP ports on this issue.

- **Individuals with Valid Visas Prior to Proclamation's Effective Date Are Not Subject to the Proclamation Regardless of Previous Entry (any type of visa).**

Additionally, AILA has received confirmation from an individual who spoke with a senior USCIS official that those with valid visas issued prior to the effective date of the Proclamation (June 24, 2020, at 12:01 am (ET)) will be allowed entry after the suspension goes into effect regardless of whether they have come in before or not on that visa.

- Certain healthcare professionals;
- Aliens seeking to enter the United States pursuant to an EB5 investor visa;
- Spouses and children (categories IR1, CR1, IR2, CR2, IR3, IH3, IR4, IH4) of U.S. citizens;
- Members of the United States Armed Forces and any spouse and children of a member of the United States Armed Forces;
- Aliens seeking to enter the United States pursuant to an Afghan and Iraqi Special Immigrant Visa (SQ or SI-SIV);
- Any alien seeking to provide temporary labor services essential the United States food supply chain; and
- Any individual whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

The proclamation explicitly states that cases involving a child applicant who may age out may be considered for a national interest exception;

Additional Measures:

- Issue regulations or take additional actions to ensure that those who have already been admitted, or are seeking admission, on an EB-2 immigrant visa, EB-3 immigrant visa, or H-1B nonimmigrant visa do not limit opportunity for U.S. workers.
- Undertake investigations of Labor Condition Application (LCA) violations pursuant to INA 212(n)(G)(i).
- Consider issuing regulations or other actions concerning the allocation of visas and ensuring that the presence of H-1B workers in the United States does not negatively affect U.S. workers. We understand that this would include prioritizing the highest paid H-1B workers in the numerical cap.
- Ensure that an individual will not be able to apply for a visa or admission to the United States until they have completed biometrics, including photographs, signatures, and fingerprints; and
- Take steps, consistent with law, to prevent certain individuals who have final orders of removal; who are inadmissible or deportable from the U.S.; have been arrested for, charged with or convicted of a criminal offense, from being able to work in the United States.

U.S. Consulates and visas issuance





**USCIS
new filing
fees and
forms**

USCIS Adjusts Fees to Help Meet Operational Needs – July 31, 2020

- USCIS is fee funded.
- DHS is adjusting USCIS fees by a weighted average increase of 20% to help recover its operational costs.

DHS dramatically increased filing fees for a broad range of benefit requests, reduced fee exemptions and restricted fee waivers - August 3, 2020

- Effective October 2, 2020.
- DHS: “no changes in this rule in response to its current budget shortfall or the pandemic.”



Key Aspects of the Final Rule

- Increases fees by a weighted average of 20 percent;
- Adds a \$50 fee for asylum applications;
- Removes the proposal to transfer money to ICE;
 - The Final Rule does not provide for the transfer of Immigration Examinations Fee Account (IEFA) funds collected by USCIS to U.S. Immigration and Customs Enforcement (ICE).
- Preserved some fee waiver.



Important Takeaways

- **Adjustment of Status:**

- Removes the reduced Form I-485 filing fee for children under the age of 14 filing with their parent.
- A standard Form I-485 fee of \$1,130 will apply to all applicants.
- Requires separate fees for Forms I-765 (\$550) and Forms I-131 (\$590) filed in connection with applications for adjustment of status.
- Principal applicants who pay the \$50 fee for Form I-589 and are subsequently granted asylum: provides a \$50 reduction in the fee for Form I-485 filed in the future.



Important Takeaways

- **Electronic Filing:**

- Fee for forms currently available for online filing with USCIS and filed online:
 - They will be \$10 lower than the fee for the same paper forms.

- **Biometrics:**

- \$30 biometrics fee for:
 - TPS (Temporary Protected Status) initial applicants and re-registrants
 - Asylum applicants; and
 - Long-term CNMI (Commonwealth of the Northern Mariana Islands) residents filing a Form I-765.
- Removes the \$85 biometrics fee for most other applications.

Important Takeaways

- **Employment Based Immigration:**
 - Creates separate fees and forms for each visa classification filed on Form I-129, with fees increasing 75 percent for an L-1 (Intracompany Transferee Executive or Manager/Intracompany Transferee Specialized Knowledge) petition.



USCIS Forms changed

- USCIS will post the new and revised forms online 30 days before the new rule goes into effect (October 2, 2020).
- These forms include:
 - Form I-129, Petition for a Nonimmigrant Worker;
 - Form I-600/I-600A, Supplement 3, Request for Action on Approved Form I-600/I-600A;
 - Form I-765, Application for Employment Authorization; and
 - Form I-912, Request for a Fee Waiver.

ADJUSTMENTS TO FEE SCHEDULE AND OTHER CHANGES

Form No.	Form Title	Current Fee	Proposed Fee	Difference	Percent Change	Draft Forms
I-129	Petition for a Nonimmigrant Worker	\$460	*DHS is proposing to separate Form I-129 into several forms. See below.			
I-129F	Petition for Alien Fiancé(e)	\$535	\$520	-\$15	-3 percent	Table of Changes - Instructions Instructions
I-129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker	\$460	\$705	\$245	53 percent	Table of Changes - Instructions Instructions
I-129E&TN (Proposed)	Application for Nonimmigrant Worker: E or TN Classification	\$460	\$705	\$245	53 percent	Instructions Form
I-129H1 (Proposed)	Petition for Nonimmigrant Worker: H-1 Classification	\$460	\$560	\$100	22 percent	Instructions Form

ADJUSTMENTS TO FEE SCHEDULE AND OTHER CHANGES

Form No.	Form Title	Current Fee	Proposed Fee	Difference	Percent Change	Draft Forms
I-129H2A (Proposed)	Petition for Nonimmigrant Worker: H-2A Classification	\$460	\$860 (named); \$425 (unnamed)	\$400 (named)	87 percent	Instructions Form
I-129H2B (Proposed)	Petition for Nonimmigrant Worker: H-2B Classification	\$460	\$725 (named); \$395 (unnamed)	\$265 (named)	58 percent	Instructions Form
I-129L (Proposed)	Petition for Nonimmigrant Worker: L Classification	\$460	\$815	\$355	77 percent	Instructions Form
I-129MISC (Proposed)	Petition for Nonimmigrant Worker: H-3, P, Q, or R Classification	\$460	\$705	\$245	53 percent	Instructions Form
I-129O (Proposed)	Petition for Nonimmigrant Worker: O Classification	\$460	\$715	\$255	55 percent	Instructions Form

ADJUSTMENTS TO FEE SCHEDULE AND OTHER CHANGES

Form No.	Form Title	Current Fee	Proposed Fee	Difference	Percent Change	Draft Forms
I-131	Application for Travel Document	\$575	\$585	\$10	2 percent	Table of Changes - Instructions Instructions
I-140	Immigrant Petition for Alien Worker	\$700	\$545	-\$155	-22 percent	Table of Changes - Instructions Instructions
I-290B	Notice of Appeal or Motion	\$675	\$705	\$30	4 percent	Table of Changes - Instructions Instructions
I-485	Application to Register Permanent Residence or Adjust Status	\$1,140	\$1,120	-\$20	-2 percent	Table of Changes - Instructions Supplement A - Instructions Table of Changes - Supplement A Instructions Table of Changes - Supplement J Instructions Supplement J - Instructions

ADJUSTMENTS TO FEE SCHEDULE AND OTHER CHANGES

Form No.	Form Title	Current Fee	Proposed Fee	Difference	Percent Change	Draft Forms
I-526	Immigrant Petition by Alien Entrepreneur	\$3,675	\$4,015	\$340	9 percent	Table of Changes - Instructions Instructions
I-539	Application to Extend/Change Nonimmigrant Status	\$370	\$400	\$30	8 percent	Table of Changes - Instructions Instructions
I-765	Application for Employment Authorization	\$410	\$490	\$80	20 percent	Table of Changes - Instructions Instructions
I-907	Request for Premium Processing Service	\$1,410 (increases to \$1,440 on 12/2/19)	N/A	N/A	N/A	Table of Changes - Instructions Instructions



H-IB

NEW H1B WORKFLOW – The new lottery toll

- USCIS may issue up to **85,000** H-1B cap-subject visas each year.
- **20,000** visas are reserved for individuals who have earned a U.S Master's or high degree.
- 2021 cap season – the lottery process selection will be carried out by an electronic registration prior to the lottery. Some of the announced changes are:
 - Firstly is necessary to electronically register and pay the associated \$10 H-1B registration fee to determine if you may file an H1-B cap-subject petition.
 - If an employer is registering for multiple beneficiaries the employer can pay for all of their registrations at one time. The Registrants and Form-G28 representatives will be able to pay the registration fee via the Pay.gov portal.
 - Petitioners will have at least 90 days from the date of registration selection to submit a complete H-1B petition.
 - Eligibility for the advanced degree exemption may need to be established at the time of the registration.
 - Paper filed registrations will not be accepted through postal service.

NEW H1B WORKFLOW – The new lottery toll

Preparing your staff and lawyers for a New H-1B Workflow

1- CONSIDER NEW FEES FOR THE NEW PROCESS.

Is there a way to do a partially prepared file, where you will charge part of the fee up front and the other portion only if they win a slot?

Will you charge a different fee for a client who comes with a lottery slot, but nothing prepared, where everything must be completed within the 90-day filing window? Or will you insist your clients engage your pre-lottery filing?

There may still be good a reason to do some information collection and due diligence work before you register clients, in order to give good advice and weed out unsuitable clients.

NEW H1B WORKFLOW – The new lottery toll

Preparing your staff and lawyers for a New H-1B Workflow

2- STRATEGY WITH THE CLIENT

Discuss with your ongoing and long-term clients about what makes the most sense in their case. If you file right after lottery results, you can potentially get an early response without paying the fee for priority processing. Is preparing the entire petition before the registration the best strategy?

3- PREPARE AND PLAN WHAT YOU CAN

Estimate staffing needs. There may be potential business in preparing new clients petitions in the 90-day window after the lottery results, which can overwhelm the employees. Brainstorm what you will do if you need to outsource to non-employees and research your options. If you an employers gap, investigate outsourcing options such as Lawyer Exchange and LAWCLERK.

NEW H1B WORKFLOW – The new lottery toll

Preparing your staff and lawyers for a New H-1B Workflow

4- SIGN UP FOR AN [myUSCIS account](#) AND BECOME FAMILIAR WITH THE PLATFORM

So you can beat the rush and get one step of the plan out of your way.

5- KEEP UP WITH THE INFORMATIONS RELEASED BY THE USCIS AND AILA.

They might be doing trainings on December 2019 or January 2020 at the platform you and your staff will need to use—myUSCIS.

AILA is also planning roundtables over video conferencing, where we can share your questions and experiences with other AILA members working through the same issues.

NEW H1B WORKFLOW

Frequently asked questions regarding the New Electronic H-1B

1- The platform used to host the electronic H-1B registration process will be:

- myUSCIS online portal

2- Information required for the registration process:

- Basic information about the prospective petitioning company or organization and employee. Only these specific topics were already released (November 2019):

REGISTRANT INFORMATION:

- Legal name of the prospective petitioning company or organization
- The Doing Business As names of the prospective petitioning company or organization, if applicable
- Employer identification number (EIN) of the prospective petitioning company or organization
- Primary U.S. office address of the prospective petitioning company or organization
- Legal name, title, and contact information (daytime phone number and email address) of the authorized signatory

BENEFICIARY INFORMATION:

- Beneficiary's legal name
- Beneficiary's gender
- Does the beneficiary have a master's or higher degree from a U.S. institution of higher education such that the beneficiary is eligible for the advanced degree exemption under INA 214(g)(5)(C) and requesting consideration under the advanced degree exemption?
- Beneficiary's date of birth
- Beneficiary's country of birth Beneficiary's country of citizenship
- Beneficiary's passport number

3- Will any information regarding the offered position need to be provided as part of the electronic H-1B registration process?

No. Nevertheless, some members indicate that they plan to evaluate the offered position and the credentials of the beneficiary in advance of submitting an electronic registration to ensure that the registration submitted is bona fide (com bona-fé) and non-frivolous.

Frequently asked questions regarding the New Electronic H-1B

4- Will a Labour Condition Application (LCA) be required as part of the electronic registration process?

- No. However, some practitioners plan to prepare and submit LCAs for beneficiaries in advance of the electronic registration process. We may strategize with the clients whether or not to file LCAs for you H-1B cap-subject beneficiaries in advance of the registration process or, do it after the registration is selected to file an H-1B petition.

5- May attorneys or law firms submit electronic registrations on behalf of clients?

- Yes. With the submission of a Form G-28 for the client.

6- On what date will the registration process open?

- USCIS will open an initial registration period on March 1.

7- How long will the initial registration filing window remain open?

- March 1 to March 30, 2020.

8- Once a registration has been selected, how long will the petitioner have to submit the complete petition?

- At least 90 days from the date of a registration selection.

9- How will the waitlist be implemented?

- If USCIS receives more than enough registrations than needed to meet the regular H-1B cap and advanced degree exemption, all registrations that were not selected in the lottery will remain on reserve for the applicable fiscal year. If USCIS needs to select more registrants to meet the regular cap and/or the advanced degree exemption, USCIS would select from among the registrations that are on reserve a sufficient number to meet the cap or advanced degree exemption, or re-open the registration period if additional registrations are needed to meet the new projected amount.

Nonimmigrant Visa Issuances by Post August 2020 (FY 2020)

Post	Visa Class	Issuances
Sao Paulo	A2	1
Sao Paulo	B1/B2	5
Sao Paulo	C1/D	4
Sao Paulo	C3	3
Sao Paulo	F1	1
Sao Paulo	G4	2
Sao Paulo	H1B	3
Sao Paulo	H4	5
Sao Paulo	J1	26
Sao Paulo	J2	2
Sao Paulo	O1	2
Sao Paulo	P1	6
Sao Paulo	P4	4

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