

Legal Update

Guidance for Visa Holders and Visitors to Seek Additional Time in the United States Because of COVID-19 Travel Restrictions

Background. Visitors and temporary workers in foreign countries are facing the expiration of their authorized periods of stay at a time when departure and return to their home countries may not be possible given the many travel restrictions imposed across the globe. Governments are closing borders or shutting down airports to commercial traffic, with travel discouraged in an effort to stem the spread of the COVID-19 pandemic. Visitors and temporary workers seeking to return or travel to the United States are encountering additional restrictions, including embassy closures that have delayed visa applications and visa issuance. While this issue arises in many countries, this update focuses on the United States.

Restrictions Impacting Travel and the Grant of Immigration Benefits. The US Departments of State (DOS) and Homeland Security (DHS) have taken steps to limit in-person interactions to protect the health and welfare of agency staff and visa applicants. Examples of the emergency measures taken by these agencies include:

1. **Suspension of in-person appointments at all US embassies and consulates** around the world, except in emergency circumstances as resources allow.

2. **Suspension of all in-person appointments at USCIS offices** within the United States, including routine interviews for applicants for permanent residency, as well as for the collection of biometrics.
3. **Suspension of the USCIS Premium Processing Service**, which offers expedited processing for certain benefits within 15 calendar days. As a result, many filings, including Form I-129 and I-140 petitions, will now be processed on a lengthier timeframe.

Based on the combination of these measures being implemented in the United States and around the globe, travelers and visa holders may now find themselves stranded in the United States or stuck abroad without the ability to travel to the United States. Employers and their employees must re-assess strategy for submissions of requests for immigration benefits. We provide the following examples of circumstances that require the development of new visa strategies, as well as potential solutions.

Candidate in US?	Visa Strategy That May No Longer Be Available Because of Travel Restrictions	Alternative Strategy (<i>Availability Based on Individual Facts</i>)	Key Considerations
A. ACTIVATE USCIS-APPROVED VISA PETITION			
Yes	<ol style="list-style-type: none"> 1. Depart the US 2. Apply for visa (if required) at US embassy/consulate 3. Reenter the US in new or extended status 	<ol style="list-style-type: none"> 1. Remain in the United States 2. File change-of-status petition with USCIS 	With premium processing suspended, an employer seeking to change the employee's visa status must give careful consideration to the individual facts (such as the expiration date of the current status) to avoid a potential gap in work authorization.
No	<ol style="list-style-type: none"> 1. Apply for visa (if required) at US embassy/consulate 2. Reenter the US in new or extended status 	No alternative; wait until US embassy/consulate resumes visa appointments	The wait time is indefinite, given the COVID-19 pandemic.

Candidate in US?	Visa Strategy That May No Longer Be Available Because of Travel Restrictions	Alternative Strategy (<i>Availability Based on Individual Facts</i>)	Key Considerations
B. EXTENSION OF STATUS FOR L-1, E-1/2, E-3, TN, H-1B1			
Note: Employees who have reached their maximum period of stay (e.g., H-1B or L-1) may apply for a change of status, for example, to that of a business visitor (B-1) or tourist (B-2) to allow some time for the travel restrictions to ease before they are in a position to depart.			
Yes	<p>Typically, 2 options available:</p> <ol style="list-style-type: none"> 1. Depart the US 2. Apply for visa, if required (or present I-129S, for L blanket visa holders) at US embassy/consulate 3. Reenter the US in extended status. <p><i>Or</i></p> <ol style="list-style-type: none"> 1. Remain in the United States 2. File extension-of-status petition with USCIS 	<ol style="list-style-type: none"> 1. Remain in the United States 2. File extension-of-status petition with USCIS, before the I-94 expiration date <p><u>Note:</u> If late-filed, a nunc pro tunc request may be made, as USCIS has the discretion to excuse a reasonable delay in requesting an extension or change of status occasioned by extraordinary circumstances beyond the requestor's control</p>	<p>With premium processing suspended, the USCIS processing time may be several months. Because the employer is seeking to extend the employee's visa status, the employee will receive an automatic, 240-day extension beyond the expiration date, with work authorization, so long as the extension is filed before the I-94 expiration date.</p> <p>In limited cases, the employee may depart the United States and re-enter on a currently valid visa (e.g., E-2 employee with a valid visa but expiring I-94); however, fluid and changing travel restrictions create risk of denial of exit or entry.</p>
No	<ol style="list-style-type: none"> 1. Apply for visa (if required) at US embassy/consulate 2. Reenter the US in new or extended status 	No alternative; wait until US embassy/consulate resumes visa appointments	The wait time is indefinite, given the COVID-19 pandemic.

Candidate in US?	Visa Strategy That May No Longer Be Available Because of Travel Restrictions	Alternative Strategy (<i>Availability Based on Individual Facts</i>)	Key Considerations
C. EXTENSION OF STATUS FOR H-1B			
Note: Employees who have reached their maximum period of stay (e.g., H-1B or L-1) may apply for a change of status, for example, to that of a business visitor (B-1) or tourist (B-2) to allow some time for the travel restrictions to ease before they are in a position to depart.			
Yes	<ol style="list-style-type: none"> 1. Remain in the United States 2. File extension-of-status petition with USCIS 	Continue with same strategy <u>Note:</u> If late-filed, a nunc pro tunc request may be made, as USCIS has the discretion to excuse a reasonable delay in requesting an extension or change of status occasioned by extraordinary circumstances beyond the requestor's control	With premium processing suspended, the USCIS processing time may several months. Because the employer is seeking to extend the employee's visa status, the employee will receive an automatic, 240-day extension beyond the expiration date, with work authorization, so long as the extension is filed before the I-94 expiration date.
No	<ol style="list-style-type: none"> 1. File petition with USCIS 2. Apply for visa (if required) at US embassy/consulate 3. Reenter the US in new or extended status 	Continue with same strategy; wait until US embassy/consulate resumes visa appointments	Note premium processing comment above. The wait time is indefinite, given the COVID-19 pandemic.
D. INITIAL REQUEST FOR L-1, E-1/2, E-3, TN, H-1B1 STATUS FOR EMPLOYEE WHO IS ABROAD			
No	<ol style="list-style-type: none"> 1. Apply for visa (if required) 2. Enter the US in new status 	No alternative; wait until US embassy/consulate resumes visa appointments	The wait time is indefinite, given the COVID-19 pandemic.

Candidate in US?	Visa Strategy That May No Longer Be Available Because of Travel Restrictions	Alternative Strategy (<i>Availability Based on Individual Facts</i>)	Key Considerations
E. INITIAL REQUEST FOR H-1B STATUS FOR EMPLOYEE WHO IS ABROAD			
No	<ol style="list-style-type: none"> 1. File petition with USCIS 2. Apply for visa (if required), and enter the US in new status, no more than 10 days prior to H-1B start date (typically October 1 of fiscal year) 	Continue with same strategy; wait until US embassy/consulate resumes visa appointments	
F. SATISFACTORY DEPARTURE FOR VISA WAIVER PROGRAM (VWP) TRAVELERS			
Yes	VWP visitors may enter the United States visa-free for 90 days, after which they must depart (because extensions of stay and change of status are not available to VWP visitors).	<ol style="list-style-type: none"> 1. If a VWP visitor cannot depart the United States within the 90-day period of authorized stay, DHS may grant a period of satisfactory departure not to exceed 30 days 2. If the visitor departs during that additional 30-day period, the visitor will be regarded as having satisfactorily departed without overstaying the allotted time 	Ordinarily, the VWP visitor must make an appointment at their local USCIS office to request satisfactory departure. In response to the COVID-19 pandemic, the visitor may contact CBP Deferred Inspection by telephone or e-mail and request Satisfactory Departure for up to 30 days.

For more information about the topics raised in this Legal Update, please contact any of the following lawyers.

Elizabeth Stern

+1 202 263 3825

estern@mayerbrown.com

Grace Shie

+1 202 263 3845

gshie@mayerbrown.com

Paul Virtue

+1 202 263 3875

pvirtue@mayerbrown.com

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our "one-firm" culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

Any tax advice expressed above by Mayer Brown LLP was not intended or written to be used, and cannot be used, by any taxpayer to avoid U.S. federal tax penalties. If such advice was written or used to support the promotion or marketing of the matter addressed above, then each offeree should seek advice from an independent tax advisor.

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the "Mayer Brown Practices") and non-legal service providers, which provide consultancy services (the "Mayer Brown Consultancies"). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website.

"Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2020 Mayer Brown. All rights reserved.