



United States Department of State

Washington, D.C. 20520

September 8, 2022

Ref: DOS Case: R-2022-00017
DHS Case: DHS-20-21442

Austin Evers
America Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

Dear Mr. Evers:

This letter responds to your above referenced request submitted to the Department of Homeland Security (DHS), pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. On March 10, 2021, the U.S. Department of State's Office of Information Programs and Services ("the Department") received the enclosed pages for review and direct response. The Department and DHS determined that the withheld information in the enclosed pages is exempt from release pursuant to the following FOIA exemptions:

- 5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential;
- 5 U.S.C. § 552(b)(5), which concerns inter- and intra-agency communications protected by the deliberative process privilege;
- 5 U.S.C. § 552(b)(6), which concerns material that, if released, would constitute a clearly unwarranted invasion of an individual's personal privacy;
- 5 U.S.C. Section 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes, which if released, would divulge techniques and procedures for law enforcement investigations or prosecutions;
- 5 U.S.C. Section 552 (b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

This action closes your request in this office. For further assistance or to discuss any aspect of your request, you may contact our FOIA Requester Service Center or our FOIA Public Liaison at FOIAstatus@state.gov or by telephone at (202) 261-8484. Please include the DOS case number in all communications concerning this FOIA request.

If you are not satisfied with the Department's determination in response to your FOIA request, you may administratively appeal by writing to: Appeals Officer, Office of Information Programs

and Services, U.S. Department of State, A/GIS/IPS, HST Room B266, 2201 C Street, NW, Washington, D.C. 20520, by email to FOIArequest@state.gov, or by fax to 202-485-1718. Appeals must be postmarked within 90 calendar days and include a copy of this letter, clearly stating why you disagree with the determination set forth in this response.

Additionally, if you are not satisfied with this determination in response to your request, you may contact the Office of Government Information Services at the National Archives and Records Administration to inquire about the FOIA Mediation Services they offer. The contact information is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email address: ogis@nara.gov; telephone: (202) 741-5770; toll free number: 1-877-684-6448; fax: (202) 741-5769.

Sincerely,

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Ennelle Debrosse
Acting Branch Chief
Office of Information Programs and Services

Enclosures:

As stated

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Subject:	Labor Proc guidance
Date:	2020/07/14 12:18:33
Priority:	Normal
Type:	Note

All,

Two cables related to the Labor Market Proclamation attached.

The first, sent out on June 30, entitled "Implementation Procedures and Guidance for President Proclamation 10052 Suspending Entry of Aliens who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak."

The second, sent out July 13, entitled (b)(7)(C) under the COVID and Labor-Related Presidential Proclamations 9984, 9992, 9996, 10014, 10041, and 10052 for visa applicants."

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Delivered Date:	2020/07/14 12:18:33
From:	SMART Core (b)(6)
CC:	(b)(6)

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Subject:	National Interest Exceptions under the COVID and Labor- Related Presidential Proclamations 9984, 9992, 9993, 9996, 10014, 10041, and 10052 for visa applicants	
Date:	2020/07/13 21:37:11	
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STATE SEAL

Info Office: L, ALDAC, A, R, W

MRN: 20 STATE 66820
Date/DTG: Jul 14, 2020 / 140127Z JUL 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *ROUTINE*
E.O.: 13526
TAGS: CVIS, CMGT
Captions: SENSITIVE
Reference: A) 20 STATE 41350
B) 20 STATE 42180
C) 20 STATE 61886
D) 20 STATE 62808
E) 20 STATE 66326

Pass Line: PASS TO DEPARTMENT OF HOMELAND SECURITY
Subject: National Interest Exceptions under the COVID and Labor- Related Presidential Proclamations 9984, 9992, 9993, 9996, 10014, 10041, and 10052 for visa applicants

1. (SBU) SUMMARY: On March 19, 2020, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority under Presidential Proclamations (b)(7)(C) 9984, 9992, 9993, 9996, and 10041 relating to the suspension of entry of immigrant and nonimmigrants of certain persons who pose a risk of transmitting 2019 novel coronavirus (COVID-19 (b)(7)(E) to determine that an alien's entry into the United States would be in the national interest. On May 6, 2020, the Secretary of State also delegated to the Assistant Secretary for Consular Affairs the authority under (b)(7) 10014 relating to the suspension of entry of certain immigrants to determine that an alien's entry into the United States would be in the national interest under that (b)(7)(C) and its successor proclamations, which includes (b)(7)(C) 10052 (Labor Market (b)(7)(E) Effective immediately, The Assistant Secretary for Consular Affairs has determined that immigrant visa cases involving applicants who are subject to aging out before the COVID-19 and Labor Market (b)(7)(E) expire or within two weeks thereafter are in the national interest, for purpose of an exception under the Labor Marke (b)(7)(E) Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception for applicants aging out and family members applying for an immigrant visa on the same petition and traveling with the applicant subject to aging out (see para 2-5). In addition, The Assistant Secretary has determined that Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception for certain nonimmigrant visa applications subject to the (b)(7)(C) 10052 suspension, as described in paragraphs 6-10). END SUMMARY.

2. (U) **Immigrant Visa Applicants (Age-Out):** On April 22, 2020, the President issued (b)(7)(E) 10014, suspending the entry of certain aliens as immigrants for 60 days. On June 22, 2020, the President issued (b)(7)(C) 10052, extending the suspension of entry of certain immigrant visa categories previously suspended under (b)(7)(C) 10014 until December 31, 2020. The exceptions in (b)(7)(C) 10014 are still applicable and officers should continue to follow the guidance in Ref A. Under (b)(7)(E) 10014, consular officers may continue to process visa applications for individuals who are expressly excepted from the Proclamation to include an alien who:

- a. held a valid immigrant visa on April 23, 2020;
- b. is a lawful permanent resident of the United States;
- c. has a valid I-140 and is seeking to enter the United States as a physician, nurse, or other healthcare professional; or to perform medical research or other research intended to combat the spread of COVID-19; and any spouse and unmarried children under 21 years old of any such alien who are accompanying or following to join the alien;
- d. is applying for a visa to enter the United States pursuant to the EB-5 Immigrant Investor Program;

- e. is the spouse of a U.S. citizen (IR/CR-1);
- f. is the child of a U.S. citizen (IR/CR-2 or IR/IH-3), or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications, AND is also under the age of 21;
- g. is a member of the U.S. Armed Forces and any spouse and children of a member of the U.S. Armed Forces; or
- h. is seeking to enter the United States pursuant to a Special Immigrant Visa in the SI or SQ classification, subject to such conditions as the Secretary of State may impose, and any spouse and children of any such individual.

3. (SBU) In addition, in light of the national interest determination by the Assistant Secretary for Consular Affairs on June 30, 2020, Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception in an immigrant visa case covered by (b)(7)(C) 9984, 9992, 9993, 9996, 10014, or 10041 upon concluding that the applicant is subject to aging out of his or her current immigrant visa classification before the relevant (b)(7)(C) expire or within two weeks thereafter. To benefit from this determination, the applicant subject to aging out may be a principal applicant or a derivative beneficiary accompanying or following to join a principal applicant. Consular Section Chiefs may also approve a national interest exception, based on the Assistant Secretary's determination, in an immigrant visa case for a family member of an applicant subject to aging out before (b)(7)(C) 10014, 9984, 9992, 9993, 9996, or 10041 expire or within two weeks thereafter, if the family member is applying for an immigrant visa on the same petition and will be traveling to the United States with the applicant subject to aging out. For example, (b)(7)(E)

(b)(7)(E)

(b)(7)(C)

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Consular sections must notify visa applicants that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival.

4. (SBU) Application of CSPA: The national interest exception for applicants who are subject to aging out does not include those individuals protected by the Child Status Protection Act ("CSPA") as a "child" and thus would not actually age out of visa eligibility if not granted a national interest exception. An applicant who is protected as a "child" under CSPA is already excepted from (b)(7)(C) 9984, 9992, 9993, 9996, 10041 as an "alien who is the child, foster child, or ward of a U.S. citizen or lawful permanent resident." However, under (b)(7)(C) 10014 an applicant must be under 21 years old and the child of a United States citizen to be excepted from the Proclamation. This guidance keeps a similar limitation in place for the national interest exception based on aging out. Therefore, an applicant with a biological age of 21 or over or who is protected as a "child" under CSPA is unlikely to age out, and therefore does not qualify

for the national interest exception under (b)(7) 10014 as set forth in this cable; these applicants may qualify for a different exception under (b)(7) 10014 or may qualify for a national interest exception on some basis other than aging out, in order to be issued a visa while the Proclamation is in effect.

5. (SBU) Consular officers may continue to follow the guidance set forth in Ref A paragraphs 6 and 7 to submit immigrant visa cases to the Assistant Secretary for consideration of additional national interest exceptions such as:

- a) aliens who are immigrating on any petition to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak;
- b) principal applicants and accompanying close family members requiring lifesaving medical treatment; or
- c) aliens who will provide care for a U.S. citizen, legal permanent resident, to include alleviating the burden of care from a medical or other institution.

6. (SBU) **Nonimmigrant Visa Applications:** (b)(7) 10052 provides an exception for “any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.” Sec. 3(b)(iv). The proclamation separately notes that “[t]he consular officer shall determine in his or her discretion, whether a nonimmigrant has established his or her eligibility” for an exception to this proclamation, including a national interest exception. The below framework identifies categories of visa applicants who should, at this time, be considered for a national interest exception based on an agreement in principle regarding the use of the national interest exception coordinated by the White House with the Departments of State, Labor, and Homeland Security. **Further guidance expanding on who may also qualify for a national exception will be transmitted by SEPTEL.**

7. (SBU) Implementation Procedures for Applicants for H-1B Visas

At this time, consular officers can consider H-1B applicants for national interest exceptions who will:

- Travel as a public health or healthcare professional, or researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research). This includes those traveling to alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic (e.g., travel by a public health or healthcare professional, or researcher in an area of public health or healthcare that is not directly related to COVID-19, but which has been adversely impacted by the COVID-19 pandemic). (b)(7)(E)
(b)(7)(E)
(b)(7)(E)
- Travel supported by a request from a U.S. government agency or entity to meet critical U.S. foreign policy objectives or to satisfy treaty or contractual obligations. This would

(b)(7)(E)

8. (SBU) Implementation Procedures for Applicants for H-2B Visas

- Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or to satisfy treaty or contractual obligations.

9. (SBU) Implementation Procedures for Applicants for J-1 Visas to Participate in Exchange Visitor Program

Consular officers can consider J-1 applicants for national interest exceptions who will:

Childcare

- Travel to provide care for a minor U.S. citizen, lawful permanent resident, or nonimmigrant in lawful status by an au pair possessing special skills required for a child with particular needs (e.g., medical, special education, or sign language)). Childcare services provided for a child with medical issues diagnosed by a qualified medical professional by an individual who possesses skills to care for such child will be considered to be in the national interest.
- Travel by an au pair that prevents a U.S. citizen, lawful permanent resident, or other nonimmigrant in lawful status from becoming a public health charge or ward of the state of a medical or other public funded institution. Childcare services provided for a child whose parents are involved with the provision of medical care to individuals to individuals who have contracted COVID-19 or medical research at United States facilities to help the United State combat COVID-19.

Other Exchange Programs

- Travel to participate in an exchange visitor program for interns, summer work travel, camp counselors, trainees, or teachers only if described below:

An exchange program conducted pursuant to a bilateral agreement or other arrangement with a foreign government: An exchange program conducted pursuant to an MOU, Statement of Intent, or other valid agreement or arrangement between a foreign

government and any federal, state, or local government entity in the United States that is designed to promote U.S. national interests if the agreement or arrangement with the foreign government was in effect prior to the effective date of the Presidential Proclamation. In order to identify such programs, consular sections should work closely with post's Public Affairs section. CA/VO/F (in consultation with ECA) will serve as a resource for consular sections that are unsure of whether a specific program meets this criteria.

Interns and Trainees on U.S. government agency-sponsored programs (those with a program number beginning with "G-3" on Form DS-2019): An exchange visitor participating in an exchange visitor program in which he or she will be hosted by a U.S. government agency and the program supports the immediate and continued economic recovery of the United States.

Specialized Teachers in Accredited Educational Institutions with a program number beginning with "G-5" on Form DS-2019: An exchange visitor participating in an exchange program in which he or she will teach full-time, including a substantial portion that is in person, in a publicly or privately operated primary or secondary accredited educational institution where the applicant demonstrates ability to make a specialized contribution to the education of students in the United States. A "specialized teacher" applicant must demonstrate native or near-native foreign language proficiency and the ability to teach his/her assigned subject(s) in that language (e.g., teaching math in German, or teaching the Spanish language).

Critical foreign policy objectives: This only includes programs where an exchange visitor participating in an exchange program that fulfills critical and time sensitive foreign policy objectives. In order to identify such programs, consular sections should work closely with their cultural and public affairs offices. CA/VO/F (in consultation with ECA) will serve as a resource for consular sections that are unsure of whether a specific program meets this criteria.

10. (SBU) Implementation Procedures for Applicants for L Visas

- Travel as a public health or healthcare professional, or researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (b)(7)(E). This includes those traveling to alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic (b)(7)(E)

(b)(7)(E)

11. (SBU) Implementation Procedures for Applicants for H-4, L-2, and J-2 Visas

Consular officers can consider derivative applicants for national interest exceptions who will

accompany or follow to join a principal applicant who is a spouse or parent and who is excepted from, or not subject to, (b)(7) 10052. This exception can be extended to derivative applicants when the principal is currently in the United States or has a valid visa.

12. (SBU) (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

13. (SBU) **Individuals Subject to Multiple Suspensions:** Individuals who qualify for a national interest exception to (b)(7) 10052 under criteria discussed in this cable should also be considered as qualifying for national interest exceptions under Presidential Proclamations 9984 (China), 9992 (Iran), 9993 (Schengen), 9996 United Kingdom/Ireland, and 10041 (Brazil) should the traveler be subject to the provisions of such regional proclamations. Travelers who do not qualify for a national interest exception under the criteria in this cable must qualify for an NIE for the regional PPs via the guidance in 20 State 49966 or 20 State 66326 (b)(7)(E)

(b)(7)(E)

14. (SBU) Please refer to the Presidential Proclamations Adjudication Guidance page in [CA Web Portal](#) for a complete listing of the Presidential Proclamations and associated ALDAC guidance. This website will continue to be populated with useful links and flow charts. Consular sections should reach out to their VO/F analyst or email (b)(6) with any questions regarding this guidance.

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Signature:

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Drafted By:

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Cleared By:

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AMEMBASSY; ST PETERSBURG, AMCONSUL; VLADIVOSTOK,
AMCONSUL; ALEXANDRIA, AMCONSUL

Action Post: NONE
Dissemination Rule: DIS_VO_ALDACS, DIS_ALDAC, DIS_A_CONS

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Sent Date: 2020/07/13 21:37:06	
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MRN: 20 STATE 76312
Date/DTG: Aug 07, 2020 / 070004Z AUG 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *IMMEDIATE*
E.O.: 13526
TAGS: CMGT, CVIS
Captions: SENSITIVE
Reference: A) 20 STATE 61886
B) 20 STATE 66820
C) 20 STATE 62808
D) 20 STATE 42180
E) 20 STATE 65080
F) 20 STATE 40968
Subject: FURTHER IMPLEMENTATION PROCEDURES AND GUIDANCE FOR
(b)(7)(C) 10052 SUSPENDING ENTRY OF IMMIGRANTS AND
NONIMMIGRANTS WHO PRESENT RISK TO THE U.S. LABOR
MARKET DURING THE ECONOMIC RECOVERY FOLLOWING THE
COVID-19 OUTBREAK (NATIONAL INTEREST EXCEPTIONS)

1. (SBU) SUMMARY: On May 6, 2020, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority under (b)(7)(C) 10014 to determine that an alien's entry into the United States would be in the national interest under that (b)(7)(C) and its successor proclamations, including Presidential Proclamation (b)(7)(E) 10052 (Labor Market (b)(7)(E)). Effective immediately, the Assistant Secretary has determined that Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception for certain nonimmigrant visa applications subject to the (b)(7)(C) 10052 suspension upon concluding that the applicant's travel falls within the scope of one of the categories described in paragraph 3, as described below. END SUMMARY.

2. (U) Background: Presidential Proclamations (b)(7)(E) 10014 and 10052 suspend the entry of certain persons who pose a risk of displacing and disadvantaging United States workers during the current economic recovery. These actions were based on the President's determinations that unrestricted entry of certain aliens as nonimmigrants and immigrants would be detrimental to the interests of the United States (REF A). Section 3 of (b)(7)(E) 10052 excepts a range of individuals from visa and entry restrictions, including aliens whose travel would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security (DHS), or their designees. On May 6, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority to except individuals whose travel is in the U.S. national interest. Following consultation with DHS and the Department of Labor (DOL), the Assistant

Secretary authorized consular section chiefs to approve national interest exceptions under PP 10052 to applicants whose travel falls within one of the categories described in the Assistant Secretary's determination. See REF B. REF B also advised consular officers that "[f]urther guidance expanding on who may also qualify for a national exception will be transmitted by SEPTTEL." Following further consultation with DOL and DHS, the Assistant Secretary has determined that temporary travel by nonimmigrants in the following additional categories is in the national interest.

3. (SBU) **National Interest Exceptions-Nonimmigrants:** (b)(7) 10052 provides an exception for "any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees." Sec. 3(b)(iv). The proclamation separately notes that "[t]he consular officer shall determine in his or her discretion, whether a nonimmigrant has established his or her eligibility" for an exception to this proclamation, including a national interest exception. The below framework, supplementing and NOT replacing initial guidance (REF B), identifies categories of visa applicants who should, at this time, also be considered for a national interest exception based on the Assistant Secretary's determinations. These determinations are consistent with an interagency Agreement in Principle, regarding the use of the national interest exception authority, coordinated by the White House with the Departments of State, Labor, and Homeland Security.

4. (SBU) **Applicants for H-1B Visas:** Travel by H-1B applicants is in the national interest when the applicant falls within one of the following categories:

A. (SBU) Applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause financial hardship. (b)(7)(E)

(b)(7)(E)

B. (SBU) Technical specialists, senior level managers, and other workers whose travel is necessary to facilitate the immediate and continued economic recovery of the United States. Consular officers may determine that an H-1B applicant falls into this category when at least **two** of the following five indicators are present:

1. The petitioning employer has a continued need for the services or labor to be performed by the H-1B nonimmigrant in the United States. Labor Condition Applications (LCAs) approved by DOL during or after July 2020 are more likely to account for the effects of the COVID-19 pandemic on the U.S. labor market and the petitioner's business; therefore, this indicator is only present for cases with an LCA approved during or after July 2020 as there is an indication that the petitioner still has a

need for the H-1B worker. For LCAs approved by DOL before July 2020, this indicator is only met if the consular officer is able to determine from the visa application the continuing need of petitioned workers with the U.S. employer. Regardless of when the LCA was approved, if an applicant is currently performing or is able to perform the essential functions of the position for the prospective employer remotely from outside the United States, then this indicator is not present. (b)(7)(E)

(b)(7)(E)

2. The applicant's proposed job duties or position within the petitioning company indicate the individual will provide significant and unique contributions to an **employer meeting a critical infrastructure need**. Critical infrastructure sectors are chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems. Employment in a critical infrastructure sector alone is not sufficient; the consular officer must also establish that the applicant holds one of the two types of positions noted below:

a.) **Senior level placement** within the petitioning organization or job duties reflecting performance of functions that are both unique and vital to the management and success of the overall business enterprise; OR

b.) The applicant's **proposed job duties and specialized qualifications** indicate the individual will provide significant and unique contributions to the petitioning company.

3. The wage rate paid to the H-1B applicant meaningfully exceeds the prevailing wage rate (see Part F, Questions 10 and 11 of the LCA) by at least 15 percent. (b)(7)(E)

(b)(7)(E)

4. The H-1B applicant's education, training and/or experience demonstrate unusual expertise in the specialty occupation in which the applicant will be employed. For

(b)(7)(E)

(b)(7)(E)

5. Denial of the visa pursuant to (b)(7)(E) 10052 will cause financial hardship to the U.S. employer. The following examples, to be assessed based on information from the visa application, are illustrative of what may constitute a financial hardship for an employer if a visa is denied: (b)(7)(E)

(b)(7)(E)

5. (SBU) **Applicants for H-2B Visas:** Travel by H-2B applicants is in the national interest when necessary to facilitate the immediate and continued economic recovery of the United States. Consular officers may determine that an H-2B applicant falls into this category when **TWO** of the following three indicators are present:

- A. The applicant was previously employed and trained by the petitioning U.S. employer. The applicant must have previously worked for the petitioning U.S. employer under **two or more H-2B (named or unnamed) petitions**. U.S. employers dedicate substantial time and resources to training seasonal/temporary staff, and denying visas to the most experienced returning workers may cause financial hardship to the U.S. business.
- B. The applicant is traveling based on a TLC that reflects continued need for the worker. TLCs approved by DOL during or after July 2020 are more likely to account for the effects of the COVID-19 pandemic on the U.S. labor market and the petitioner's business, and therefore this indicator is only present for cases with a TLC approved during or after July 2020 as there is an indication that the petitioner still has a need for the H-2B worker. For TLCs approved by DOL before July 2020, this indicator is only met if the consular officer is able to determine from the visa application the continuing need of petitioned workers with the U.S. employer. (b)(7)(E)

(b)(7)(E)

(b)(6) of the visa pursuant to (b)(7)(E) 10052 will cause financial hardship to the U.S.

employer. The following examples, to be assessed based on information from the visa application, are illustrative of what may constitute a financial hardship for an employer if a visa is denied: the employer's inability to meet financial or contractual obligations; the employer's inability to continue its business; or a delay or other impediment to the employer's ability to return to its pre-COVID-19 level of operations. (b)(7)(E)

(b)(7)(E)

6. (SBU) **Applicants for L-1A Visas:** Travel by L-1A applicants is in the national interest when the applicant falls within one of the following categories:

(b)(6) associated with the United States Government: Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base construction or IT infrastructure.

B. Applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause undue financial hardship. (b)(7)(E)

(b)(7)(E)

C. Applicants travelling temporarily as a senior level executive or manager filling a critical business need of an employer meeting a **critical infrastructure** need. Critical infrastructure sectors include chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems. The consular officer may determine that an L-1A applicant falls into this category when at least two of the following three indicators are present AND the applicant is not establishing a new office in the United States:

1. Will be a senior-level executive or manager;

2. Has spent multiple years with the company overseas, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship; OR
3. Will fill a critical business need for a company meeting a critical infrastructure need.

L-1A applicants seeking to establish a new office in the United States likely do NOT fall into this category, unless two of the three criteria are met AND the new office will employ, directly or indirectly, five or more U.S. workers.

7. (SBU) **Applicants for L-1B Visas:** Travel by L-1B applicants is in the national interest when the applicant falls within one of the following categories:

(b)(6) associated with the United States Government: Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base construction or IT infrastructure.

B. Applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause undue financial hardship. (b)(7)(E)

(b)(7)(E)

C. Applicants travelling temporarily as a technical expert or specialist meeting a critical infrastructure need. The consular officer may determine that an L-1B applicant falls into this category if all three of the following indicators are present:

1. The applicant's proposed job duties and specialized knowledge indicate the individual will provide significant and unique contributions to the petitioning company;
2. The applicant's specialized knowledge is specifically related to a critical infrastructure need (b)(7)(E)

(b)(7)(E)

3. The applicant has spent multiple years with the company overseas, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship.

(b)(7)(E)

(b)(6)

(b)(7)(E)

12. (SBU) (b)(7)(E)

(b)(7)(E)

13. (SBU) **GSS and Post website language:** CA/VO/F is developing cleared language for use on GSS websites as well as embassy/consulate public webpages. CA/VO/F will transmit this information to consular sections by email in the near future, but for now, consular sections should refrain from publicly posting any guidance included in this ALDAC. Please consult your CA/VO/F analyst for further questions.

14. (SBU) (b)(7)(E)

(b)(7)(E)

15. (SBU) **Clarification on how (b)(7) 10052 impacts individuals who have previously received NIVs in the suspended classifications:** On June 29, 2020, the President issued a Proclamation on Amendment to Proclamation 10052, which provided that the suspension of entry, which generally bars visa issuance in the specified visa classifications, shall apply only to an alien who is outside of the United States on the effective date of the Proclamation (June 24, 2020), and who “does not have a nonimmigrant visa, of any of the classifications specified in section 2 of this proclamation and pursuant to which the alien is seeking entry, that is valid on the effective date [June 24, 2020] of this proclamation,” or other official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date. This means that, absent eligibility for an exception, including an NIE, individuals outside the United States on June 24, with or without a valid visa, cannot be reissued a new visa in one of the suspended classifications. If an applicant outside of the United States had a valid H-1B, H-2B, J-1, L or derivative visa on June 24, they are not subject to PP 10052 for the purposes of seeking admission to the United State until the visa expires, at which point the applicant would become subject to the proclamation. Individuals who were in the United States on June 24 are not subject to the proclamation.

16. (SBU) Consular sections should reach out to their VO/F analyst or the (b)(6)

(b)(6) email with any questions.

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MRN: 20 STATE 49966
Date/DTG: May 27, 2020 / 262313Z MAY 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *IMMEDIATE*
E.O.: 13526
TAGS: CVIS, CMGT, CASC, SHLH, CDC, DHS, BR
Captions: SENSITIVE
Reference: 20 STATE 28420
Correction Reason: CORRECTED COPY: Correct text
Subject: PRESIDENTIAL PROCLAMATION ON SUSPENSION OF ENTRY AS IMMIGRANTS AND NONIMMIGRANTS OF CERTAIN ADDITIONAL PERSONS WHO POSE A RISK OF TRANSMITTING 2019 NOVEL CORONAVIRUS (BRAZIL)

1. (U) SUMMARY: On May 24, 2020, the President issued a Presidential Proclamation (b)(7)(C) titled "Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus." This proclamation suspends entry as nonimmigrants or immigrants for aliens who were physically present within Brazil during the 14-day period preceding their entry or attempted entry to the United States. This includes individuals transiting Brazil. Consistent with the earlier ALDACs on coronavirus-related (b)(7)(C) (refel), the proclamation contains multiple exceptions, including for lawful permanent residents (LPRs) and certain family members of U.S. citizens and LPRs. The earlier coronavirus related proclamations – (b)(7)(C) 9984, issued on January 31, 2020, (b)(7)(C) 9992 issued on February 29, 2020, (b)(7)(C) 9993 issued on March 11, 2020, and (b)(7)(C) 9996 issued on March 14, 2020, remain in effect. End Summary.

2. (SBU) The President issued (b)(7)(C) 9984, (b)(7)(C) 9992, (b)(7)(C) 9993, (b)(7)(C) 9996 and this latest proclamation pursuant to his authority under sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) and other authorities, to suspend the entry into the United States, as immigrants or nonimmigrants, of all aliens who were physically present within Brazil during the 14-day period preceding their entry or attempted entry into the United States. These restrictions are in addition to those previously outlined for the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the People's Republic of China (China), excluding the Special Administrative Regions of Hong Kong and Macau, the Islamic Republic of Iran (Iran), and those for the Schengen Area. The new proclamation takes effect midnight, Eastern Standard Time, May 26, 2020. The proclamation remains in effect until terminated by the President.

3. (SBU) Posts in Brazil should continue to suspend routine NIV and IV services . Posts should provide NIV and IV services for applicants meeting the criteria for an exception to the coronavirus P.P.s as described below, if the case also falls within the scope of mission critical cases, unless local conditions dictate otherwise. As always, the top priority for consular sections remains the provision of emergency services to U.S. citizens.

4. (SBU) All posts should instruct all visa applicants who: reside in Brazil and other subject areas described in previous guidance; have recently been to the subject areas; are traveling to the United States from one of those areas; or plan to travel to or transit the subject areas prior to their travel to the United States, to reschedule their visa interview appointments until more than 14 days after they depart from Brazil, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Schengen Area, China, or Iran. Applicants using a GSS-supported appointment system after May 26, 2020 will see a banner to this effect. For posts where there is likely to be a significant population of travelers with recent travel to Brazil, post should include this notice on its website or modify the previously posted notices: "Entry is suspended, per Presidential Proclamation, of non-LPR foreign nationals who were present in the People's Republic of China, not including the Special Administrative Regions of Hong Kong and Macau, the Islamic Republic of Iran, the 26 countries that comprise the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, or Brazil within 14 days prior to their arrival at the port of entry in the United States. If you reside in, have traveled recently to, or intend to transit or travel to China, Iran, the Schengen Area (which includes Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland), the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, or Brazil prior to your planned trip to the United States, we recommend you postpone your visa interview appointment until 14 days subsequent to your departure from the subject country(ies)." Posts likely to see large numbers of affected applicants may also consider sending this notice to all applicants with interviews scheduled in the next 30 days.

5. (SBU) For otherwise eligible applicants, consular officers must establish whether an applicant has been present in Brazil, the United Kingdom (excluding overseas territories outside of Europe), Republic of Ireland, Schengen Area, China, or Iran within the last 14 days, intends to depart directly from Brazil, the United Kingdom (excluding overseas territories outside of Europe), Republic of Ireland, the Schengen Area, China, or Iran, or intends to travel to the United States less than 14 days after departing from a subject area. (b)(7)(E)

(b)(7)(E)

6. (SBU) (b)(7)(E)

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7. (SBU) (b)(7)(E)

(b)(7)(E)

8. (SBU) Under all proclamations, the suspension of entry does not apply to:

- a. Any lawful permanent resident;
- b. Any alien who is the spouse of a U.S. citizen or lawful permanent resident;
- c. 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;
- d. 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;
- e. Any alien who is the child, foster child, or ward of a U.S. citizen or lawful permanent resident, or any prospective adoptee who is seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;
- f. Any alien traveling at the invitation of the U.S. government for a purpose related to containment or mitigation of the virus;
- g. Any alien traveling as a nonimmigrant pursuant to a C-1, D, or C-1/D visa as a crewmember or any alien otherwise traveling to the United States as air or sea crew;
- h. Any alien seeking entry into or transiting the United States pursuant to A-1, A-2, C-2, C-3 (as a foreign national government official or immediate family member of an official), E-1 (as an employee of TECRO or TECO and their immediate family members), G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6 visa (or seeking to enter as a nonimmigrant in one of these categories), as well as any other alien whose travel to the United Nations headquarters district falls within the scope of Section 11 of the Headquarters Agreement;
- i. Any alien whose entry would not pose a significant risk of introducing, transmitting,

or spreading the virus, as determined by the Director of the Centers for Disease Control and Prevention, or his designee;

- j. Any alien whose entry would further important U.S. law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees based on a recommendation of the Attorney General or his designee; or
- k. Any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees;

9. (SBU) Members of the U.S. Armed Forces and spouses and children of members of the U.S. Armed Forces traveling from Brazil, the United Kingdom, Ireland, Iran, and the Schengen Area are also excepted. There is no such exception for those traveling from China under the China-related coronavirus proclamation. However, spouses and unmarried, minor children of all U.S. citizens and lawful permanent residents are excepted under the China-related coronavirus proclamation.)

10. (U) Consular Officers are reminded that INA 212(f) does not apply to U.S. citizens.

11. (SBU) (b)(7)(E)

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12. (SBU) (b)(7)(E)

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13. (SBU) (b)(7)(E)

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14. (SBU) (b)(7)(E)

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15. (SBU) Posts with questions regarding this guidance should contact their post liaison officer in VO/F. The PP exceptions are broader than the list of mission critical services in the suspension cable.

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MRN: 20 STATE 61886
Date/DTG: Jun 30, 2020 / 302128Z JUN 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *ROUTINE*
E.O.: 13526
TAGS: CMGT, CVIS
Captions: SENSITIVE
Reference: A) 20 STATE 41350
 B) 20 STATE 22420
 C) 20 STATE 27936
 D) 20 STATE 28420
 E) 20 STATE 30920
 F) 20 STATE 34630
 G) 20 STATE 37592
 H) 20 STATE 49966
 I) 20 STATE 40968
Subject: IMPLEMENTATION PROCEDURES AND GUIDANCE FOR
 PRESIDENTIAL PROCLAMATION 10052 SUSPENDING ENTRY OF
 ALIENS WHO PRESENT A RISK TO THE U.S. LABOR MARKET
 FOLLOWING THE CORONAVIRUS OUTBREAK

1. (U) SUMMARY: On June 22, 2020, the President issued Presidential Proclamation 10052 (b)(7)(C) 10052) titled "Suspension of Entry of Aliens Who Present A Risk to the U.S. Labor Market Following the Coronavirus Outbreak." (b)(7)(C) 10052 extended the suspension of entry for certain immigrant visa (IV) categories previously suspended under Presidential Proclamation 10014, see Ref A, until December 31, 2020. The guidance provided in Ref A remains in effect and is supplemented by IV-specific guidance included in this cable. The provisions of (b)(7)(C) 10052 related to nonimmigrant (NIV) categories became effective at 12:01 a.m. EDT on June 24, 2020, and expire on December 31, 2020, unless continued by the President. This (b)(7)(C) effectively suspends issuance of certain H-1B, H-2B, J (for certain categories within the Exchange Visitor Program), and L (b)(7)(C). No valid visas will be revoked under the proclamation. The earlier COVID-19-related proclamations, (b)(7)(C) 9984, 9992, 9993, and 9996 related to suspension of entry of individuals who were physically present in certain foreign jurisdictions with significant COVID-19 outbreaks, as well as the COVID-19-related guidance set forth in Refs B through H, remain in effect, subject to the additional guidance below. All posts and AIT have already suspended routine NIV and IV services due to the COVID-19 pandemic, but continue to provide mission-critical and emergency visa services. Posts should continue to provide mission-critical and emergency visa services for applicants meeting the exception criteria to the COVID-19 (b)(7)(C) including this new (b)(7)(C) to the extent they are able under conditions and restrictions. Providing emergency services to U.S. citizens remains the top

priority for consular sections. END SUMMARY.

2. (U) **Immigrant Visas Applicants:** On April 22, 2020, the President issued (b)(7)10014 pursuant to his authority under sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) and other authorities, to suspend the entry into the United States of aliens as immigrants, except those set forth in paragraph 3 of REF A. This new proclamation, (b)(7)(E)10052, extended (b)(7)10014's suspension of entry for certain immigrants through December 31, 2020, and may be continued. Consular officers should continue to refer to REF A for guidance on applying the proclamation to IV applicants, as well as the following paragraph:

UPDATES to Guidance in 20 STATE 41350 (REF A): Consular officers may issue replacement visas to aliens whose original IV was valid on April 23, 2020, in accordance with the guidance in 9 FAM 504.10-5. Further, (b)(7)(E)10014 only excepts children of U.S. citizens under the age of 21; therefore IR/CR-2s who benefit from CSPA but are 21 years of age or older cannot be issued an IV while (b)(7)10014 is in effect unless the applicant meets another exception. NVC will continue to schedule IR/CR-2 cases despite this fact, as there is no easy way for NVC to differentiate a CSPA case in the system. (b)(7)(E)10052 requires that IV applicants who would "age-out" of visa eligibility as a result of (b)(7)(E)10014 to be considered for a national interest exception. Accordingly, Posts should continue to submit for consideration potential age out cases where the applicant is within two-months or less of his or her 21st birthday using the guidance in paragraph 7 of REF (b)(7)(E) the suspension on routine visa processing, posts may only schedule emergency and mission-critical IV cases which include (IR/CR1, IR/CR2, IR/IH3, IR/IH4, SQ/SI-SIVs, certain employment-based healthcare professionals, and cases involving an applicant who is aging out of eligibility).

3. (U) **Nonimmigrant Visa Applicants:** In addition, in (b)(7)(E)10052, the President determined that the admission of certain workers, including certain cultural and educational program participants, within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery, and therefore effectively suspended issuance of **H-1B, H-2B, J (only for certain categories within the Exchange Visitor Program (EVP), and L visas, including derivative family members.** The suspension of issuance of J visas applies to those applicants who will be participating in au pair, intern, trainee, teacher, camp counselor, or summer work travel programs, as well as accompanying derivative family members. (b)(7)(E)10052 does NOT suspend processing of J visa applications associated with any other J program. The EVP categories NOT affected by (b)(7)(E)10052 are: alien physician, government visitor, international visitor, professor, research scholar, short-term scholar, specialist, secondary school student and college/university student. Consular officers can identify a J visa applicant's program category by referring to block 4 of the DS-2019. Any J visa applicant with a program category beginning with "Student" in block 4 of the DS-2019 - including program category "Student Intern" - is NOT affected by PP10052. The suspension also does not apply to H-1B1 applicants under the Chile and Singapore Free Trade Agreements. [Note: This Proclamation is not expected to affect exchange programs funded by the Bureau of Educational and Cultural Affairs (ECA), which generally do not fall into the program categories listed for suspension. Questions regarding specific ECA programs and their corresponding exchange visitor categories may be directed to post's Public Affairs Section or ECA's Office of Policy (b)(6) End Note.]

4. (U) The effective date of the (b)(7)(C) 0052's restrictions on these NIV categories is 12:01 a.m., Eastern Daylight Time, June 24, 2020. (b)(7)(C) 0052 will expire on December 31, 2020, unless continued by the President. Visas issued prior to June 24, 2020, are not subject to this Proclamation. The suspension and limitation on entry only applies to an alien who meets all three conditions set out in section 3(a) of the proclamation. The second of those conditions, at section 3(a)(ii), was amended by a proclamation updating (b)(7)(C) 0052 that was signed by the President on June 29, 2020. In accordance with that amendment, the three conditions that must be met for an alien to be covered by (b)(7)(C) 0052 are that the alien: (a) is outside the United States on June 24, 2020; (b) does not have a nonimmigrant visa, of any of the classifications specified in section 2 of (b)(7)(C) 0052 (H-1B, H-2B, J [specified categories of the EVP], and L visas classification) and pursuant to which the alien is seeking entry, that is valid on June 24, 2020; and (c) does not have an official travel document other than a visa (such as a transportation letter, boarding foil, or advance parole document) that is valid on June 24, 2020, or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission. When issuing an otherwise suspended NIV because the applicant does not meet all three of the above conditions, please thoroughly document the reason for your finding in your case notes. Unlike some other proclamations where individuals with valid visas on the effective date were not subject to the proclamation, individuals with valid visas on the effective date are only not subject to the Proclamation when applying for entry on a visa that is in one of the categories of NIVs suspended by the PP. In other words, someone with a valid H-1B, H-2B, L, or J visa can re-enter the United States until the expiration date of the visa. Any future applications in those categories falls under the suspension applications (unless an exception applies).

5. (U) NIV Exceptions: After a consular officer determines that an applicant is applying for one of the visa categories covered by (b)(7)(C) 0052 (see paragraph 3) and is subject to (b)(7)(C) 0052 (i.e. does not meet one of the three conditions listed at paragraph 4), then officers must consider whether the applicant may be eligible for an exception. (b)(7)(C) 0052 exceptions from the suspension of entry are listed in section 3(b) of the proclamation:

- a. Any lawful permanent resident of the United States;
- b. Any alien who is the spouse or child, as defined in section 101(b)(1) of the INA of a United States citizen;
- c. Any nonimmigrant alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; or
- d. Any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

6. (SBU) (b)(7)(C) 0052 specifies that the consular officer shall determine, in his or her discretion, whether an NIV applicant has established eligibility for an exception. When issuing an NIV pursuant to an exception listed above (b)(7)(E)
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7. (SBU) **Essential to U.S. Food Supply:** Paragraph 5.c., above, describes the exception for aliens “seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain.” (b)(7)(E)

(b)(7)(E)

You may determine eligibility for this exception through one of two documents scanned into the relevant petition application uploaded in PIMS:

- a.) the USCIS-approved I-129 petition (see Part 5 under Job Title)
- b.) the Form ETA-9142A, temporary labor certification approved by the U.S. Department of Labor (see the listed Job Title or SOC Occupation Title)

(b)(7)(E)

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8. (SBU) Section 3(b)(iv) of (b)(7)(C) 10052 excepts aliens from the proclamation if the Secretary of State, Secretary of Homeland Security, or their respective designees determine that the alien's entry would be in the national interest. (b)(7)(C) 0052 also requires the Secretaries of Labor, Homeland Security, and State to establish standards to define categories of aliens covered by the national interest exception, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Department is coordinating with the Departments of Homeland Security and Labor on these standards and consulting these and other agencies on appropriate procedures for documenting the standards. Guidance on when a visa applicant's entry into the United States will be considered to be in the national interest is forthcoming by SEPTTEL. (b)(7)(E)

(b)(7)(E)

9. (SBU) (b)(7)(E)

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10. (SBU) **Appointment Scheduling:** Posts may continue to schedule mission critical and emergency immigrant and nonimmigrant visa interviews as resources allow and as described in REF E, but should applicants not qualify for an exception under the relevant presidential proclamation, including in the national interest (b)(7)(E)

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(b)(7)(E) GSS vendors at supported posts will continue to provide visa services, including collecting fees, website support, and call center services. Posts and AIT should also review expedited appointment requests through their GSS system and public email and determine whether a case meets one of the exceptions set forth in this new (b)(7)(C) and the prior COVID-19-related (b)(7)(C). Posts and AIT may contact their NVC post liaison at (b)(6) to make adjustments to NVC expedite and scheduling procedures as needed.

11. (SBU) **Renewals:** Posts and AIT should not pursue revocations for individuals who have already been issued immigrant and nonimmigrant visas; however, current visa holders applying for a visa renewal after June 24 are still subject to the Presidential Proclamation, absent an exception under the proclamation. Individuals subject to multiple proclamations would have to

be excepted from all applicable presidential proclamations, prior to issuance.

12. (SBU) Posts with questions regarding this guidance should contact their post liaison officer in VO/F.

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AMCONSUL; ALEXANDRIA, AMCONSUL

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MRN: 20 STATE 62808
Date/DTG: Jul 02, 2020 / 022206Z JUL 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *ROUTINE*
E.O.: 13526
TAGS: CVIS, (b)(7)(C)
Captions: SENSITIVE
Reference: A) 20 STATE 49966
B) 20 STATE 42180
Pass Line: PASS TO DEPARTMENT OF HOMELAND SECURITY
Subject: Authorization for Consular Section Chiefs to Grant National Interest Exceptions for Certain Categories of Travel Under the Presidential Proclamations Regarding Persons Who Pose a Risk of Transmitting COVID-19

1. (SBU) SUMMARY: On March 19, 2020, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority under the Presidential Proclamations suspending entry as immigrant and nonimmigrants of certain persons who pose a risk of transmitting 2019 novel coronavirus (COVID-19 PPs) to determine that an alien's entry into the United States would be in the national interest. Effective immediately, Assistant Secretary (b)(6) has identified categories of travel that are in the national interest, for purposes of exceptions under the COVID-19 PPs (these exceptions do not apply to Presidential Proclamations 10014 and 10052 regarding the U.S. labor market). Responsibility for determining whether an individual's travel falls within the scope of a category of travel listed in paragraph 4 below is vested in the relevant Consular Section Chief. As detailed below, travel in the national interest includes travel for purposes related to humanitarian needs, urgent medical treatment, U.S. national security, and direct COVID-19 mitigation. END SUMMARY.

2. (SBU) In light of the national interest determination by the Assistant Secretary for Consular Affairs, Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception in a case covered by a COVID-19 (b)(7)(C) upon concluding that the applicant's travel falls within the scope of paragraph 4. This includes individuals applying for a visa as well as individuals traveling under the terms of the Visa Waiver Program (VWP) or with a previously issued valid visa.

3. (U) Background: Presidential Proclamations (b)(7)(C) 9984, 9992, 9993, 9996, and 10041 (COVID-19 (b)(7)(C)) suspend the entry of all aliens who were physically present within the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and

Macau), Iran, the Schengen Area, the United Kingdom, excluding overseas territories outside of Europe, the Republic of Ireland, and the Federative States of Brazil during the 14-day period preceding their entry or attempted entry into the United States. These actions were based on the President's determinations that unrestricted entry of aliens from these affected areas would be detrimental to the interests of the United States (REF A). Section 2 of the P.P.s excepts a range of individuals from visa and entry restrictions, including aliens whose travel would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees. On March 19, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority to except individuals whose travel is in the U.S. national interest.

4. (SBU) (b)(6) and consular sections must notify individuals that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival. Consular Section Chiefs may approve a national interest exception for otherwise eligible individuals based on the national interest determination made by the Assistant Secretary for Consular Affairs, after concluding the travel falls within one of the categories below:

- a) **Urgent Medical:** Lifesaving medical treatment for the principal applicant and accompanying close family members.
- b) **Members of Household (MOH)** of Foreign Service Employees and all others under Chief of Mission Authority, per the definition in 3 FAM 4181.
- c) **Public Health:** Travel as a public health or healthcare professional or researcher to alleviate the effects of the COVID-19 pandemic, or to continue ongoing research in an area with substantial public health benefit (e.g. cancer or communicable disease research).
- d) **Humanitarian:** Travel to the United States to provide care for a U.S. citizen, legal permanent resident, or other nonimmigrant-in-lawful-status close family member, to include alleviating the burden of care from a medical or other institution. Humanitarian travel in the U.S. national interest can also include that which prevents a U.S. citizen, legal permanent resident, or other nonimmigrant in lawful status from becoming a public charge or ward of the state or the ward of a medical or other institution, for example, in the case of the intending parents of a child born through surrogacy.
- e) **Repatriation Flights:** Medical professionals or other essential staff aboard a foreign government sponsored repatriation flight not part of the regular crew component. This should be closely coordinated with the relevant regional bureau.

f) **Medical escorts, legal guardians, or other escorts** required by an airline or legally required by a foreign medical or law enforcement entity accompanying a U.S. citizen being repatriated to the United States.

g) **National Security:** Travel based on a request from a U.S. government agency or entity to meet foreign policy objectives or to satisfy treaty or contractual obligations.

5. (SBU) Travel that may advance U.S. economic interests, including work on critical infrastructure projects or other business travel, does not constitute travel in the national interest under this determination.

6. (SBU) This determination applies to individuals applying for a visa as well as those traveling with a valid previously issued visa, and those traveling under the terms of the Visa Waiver Program.

7. (SBU) Consular Section Chiefs are responsible for establishing and documenting a process under which they will assess whether an individual's travel falls within the scope of the Assistant Secretary's determination relating to travel in the U.S. national interest. The process should be developed in appropriate consultation with Chiefs of Mission, the senior consular officer in-country (MCCA or CCC, if at a constituent post), other relevant agencies at post, and the regional bureau. A Visa Referral or Priority Appointment request (PAR) may be useful in flagging urgent travel for a visa applicant but is insufficient on its own to establish that a case is covered by the Assistant Secretary's national interest determination. The Visa Referral and PAR process are only appropriate for visa applicants (not ESTA and existing visa holders) and all other FAM guidance regarding the referral process still applies.

8. (SBU) A national interest exception is valid for 30 days from the date of approval and is valid for a single entry to the United States. An individual who departs the United States and wishes to return must be re-assessed for a national interest exception. Full validity visas should be issued and should not be limited to a single-entry, 30-day validity. However, Consular Section Chiefs must approve a national interest exception for each trip, following post's process for an individual traveling with a valid previously issued visa as applicable.

9. (SBU) Consular Section Chiefs assessing individuals for travel in the U.S. national interest must follow the steps below for all travelers including those traveling on VWP, with a valid, previously issued visa, or who is the subject of a current visa application. Consular sections should note the requirement in step C for current visa applicants only.

- a) Carefully consider how the travel meets the U.S. national interest and under what category (see paragraph 3).
- b) Ensure the individual understands the need to self-quarantine subject to local requirements.

(b)(7)(E)

(b)(7)(E)

- e) Ensure the individual understands that the national interest exception is valid for one entry within 30 days from the date of approval and that any future travel to the United States will require another national interest exception.

10. (SBU) The March 20 suspension of all routine visa services remains in effect and posts should only process those visa applicants in categories which are considered emergency or mission-critical (REF B) if local conditions and resources allow. Visa applications for individuals with travel in the U.S. national interest can be considered mission critical.

11. (SBU) This guidance applies to a consular district subject to one of the P.P.s cited in paragraph 2 and those based on a request from an individual(s) who must transit an area affected by a Presidential Proclamation.

12. (SBU) Consular sections should reach out to their VO/F analyst or the (b)(6)

(b)(6) with any questions.

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Signature:

(b)(6)

Drafted By:

(b)(6)

Cleared By:

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MRN: 20 STATE 66326
Date/DTG: Jul 10, 2020 / 102316Z JUL 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *ROUTINE*
E.O.: 13526
TAGS: CVIS, (b)(6)
Captions: SENSITIVE
Reference: A) 20 STATE 49966
B) 20 STATE 42180
C) 20 STATE 62808
D) 20 STATE 65080
E) 20 STATE 61886

Pass Line: PASS TO DEPARTMENT OF HOMELAND SECURITY
Subject: Determination of National Interest Exceptions for Economic-Related Cases and Academic Travel Under Certain Presidential Proclamations Regarding Persons Who Pose a Risk of Transmitting COVID-19

1. (SBU) Summary. On March 19, 2020, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority under the Presidential Proclamations suspending entry as immigrant and nonimmigrants of certain persons who pose a risk of transmitting 2019 novel coronavirus (COVID-19 (b)(7)) to determine that an alien's entry into the United States would be in the national interest. Effective immediately, in accord with the White House interagency task force, the Assistant Secretary for Consular Affairs has identified categories of travel that he has determined are in the national interest, for purposes of exceptions under the COVID-19 (b)(7) 9993 (Schengen Area) and 9996 (United Kingdom and Ireland). These determinations do not apply to Presidential Proclamations 9984 (China), 9992 (Iran), 10041 (Brazil), or to Proclamations 10014 and 10052 regarding the U.S. labor market. Effective immediately, responsibility for determining whether an individual's travel falls within the scope of a category of travel listed in paragraph 4 below is vested in the relevant Consular Section Chief. As detailed below, travel in the national interest includes travel that provides a substantial benefit to the U.S. economy including certain business travelers, investors, treaty traders, and academics as well as certain categories of students.

2. (SBU) In light of the national interest determination by the Assistant Secretary for Consular Affairs, Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception in a case covered by a COVID-19 PP upon concluding that the applicant's travel falls within the scope of paragraph 4. This includes individuals applying for a visa as well as individuals traveling under the terms of the Visa Waiver Program (VWP) or with a

previously issued valid visa.

3. (U) Background: Presidential Proclamations (b)(7)(C) 9993 and 9996 suspend the entry of all aliens who were physically present within the Schengen Area, the United Kingdom, excluding overseas territories outside of Europe, and the Republic of Ireland during the 14-day period preceding their entry or attempted entry into the United States. These actions were based on the President's determinations that unrestricted entry of aliens from these affected areas would be detrimental to the interests of the United States (REF A). Section 2 of the (b)(7)(C) excepts a range of individuals from visa and entry restrictions, including aliens whose travel would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees. On March 19, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority to except individuals whose travel is in the U.S. national interest. On July 2, the Assistant Secretary determined that certain travel related to humanitarian, public health, and national security is in the national interest for purposes of the COVID-19 proclamations, permitting Consular Section Chiefs to approve national interest exceptions in cases under refel A.

4. (SBU) The Assistant Secretary determined on July 10 that certain travel related to economic activity, including investors and students, would be in the national interest. Accordingly, Consular Section Chiefs may approve a national interest exception under (b)(7)(C) 9993 or 9996 only for an otherwise eligible individual based on the national interest determination made by the Assistant Secretary for Consular Affairs, after concluding the travel from the Schengen area, UK, or Ireland falls within one of the categories below:

- a) **Economic:** Temporary travel that provides a substantial economic benefit to the U.S. economy. Examples may include:
 - **Technical experts and specialists** to install, service, maintain, or receive training for vessels, machinery and other specialized equipment used by U.S. and foreign firms with a substantial investment in the United States. Travel is temporary in nature and of a defined period of time.
 - **Senior-level managers and executives**, and their dependents, who provide strategic direction necessary for the success of the company or venture.
 - **Professional athletes, dependents, and essential staff** who enter the United States to participate in major sporting events, which bolster the U.S. economy.
- b) **Investors:** Travel in connection with investment or trade in the U.S. economy that generates a substantial economic impact, including **investors** and **treaty-traders** and the senior-level employees who provide strategic direction or

expertise essential to the success of the investment, and their dependents.

c) **Students:** All students, and their dependents, traveling to the United States to:

- Pursue a full course of study per INA 101(a)(15)(F);
- Pursue a full course of study per INA 101(a)(15)(M); or
- Participate in an exchange program as a bona fide student per INA (101)(a)(15)(J).

d) **Academics:** All exchange visitors and their dependents traveling to the United States under INA 101(a)(15)(J) in the following categories:

- Professors ;
- Research Scholars;
- Short Term Scholars; or
- Specialists

5. (SBU) This determination applies to individuals applying for a visa as well as those traveling with a valid previously issued visa, and those traveling under the terms of the Visa Waiver Program. This determination does not/not apply to J-1 visa applicants who will be participating in au pair, intern, trainee, teacher, camp counselor, or summer work travel programs, as well as accompanying derivative family members, as their travel is suspended under (b)(1)10052 (ref E).

6. (SBU) Consular Section Chiefs are responsible for establishing and documenting a process under which they will assess whether an individual's travel falls within the scope of the Assistant Secretary's determination relating to travel in the U.S. national interest. The process should be developed in appropriate consultation with the Chief of Mission, the senior consular officer in-country (MCCA or CCC, if at a constituent post), other relevant agencies at post, and the regional bureau. A Visa Referral or Priority Appointment request (PAR) may be useful in flagging urgent travel for a visa applicant but is insufficient on its own to establish that a case is covered by the Assistant Secretary's national interest determination. The Visa Referral and PAR process are only appropriate for visa applicants (not ESTA and existing visa holders) and all other FAM guidance regarding the referral process still applies.

7. (SBU) Although full validity visas should be issued to eligible applicants approved for a national interest exception for economic and investor related travel, the exception is valid only for 30 days from the date of approval and is valid for a single entry to the United States. An individual who departs the United States and wishes to return must be re-assessed for a national interest exception. In the course of a visa adjudication, student and exchange visitor visa

applicants should be reminded that departing the United States during the course of their studies and attempting to return may subject them to additional quarantine or COVID-related restrictions on re-entry. Consular Section Chiefs must approve a national interest exception for economic and investor related travel for each trip, following post's process for an individual traveling with a valid previously issued visa as applicable. Consular sections must notify all individuals that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival. They should also be advised that DHS requires travelers using a NIE waiver to fly into one of 15 specifically designated airports. F and J visa travelers should also be reminded that they must still meet all Student and Exchange Visitor Program (SEVP) requirements.

8. (SBU) Consular Section Chiefs assessing individuals for travel in the U.S. national interest for economic, investor, and exchange visitor-related purposes must follow the steps below for all travelers, including those traveling on VWP; those possessing a valid, previously issued visa; or those applying for a visa, except F-1/F-2 and M-1/M-2 as outlined in paragraph 9. Consular sections should note the requirement in step C for current visa applicants only.

- a) Carefully consider how the travel meets the U.S. national interest and under what category (see paragraph 4).
- b) Ensure the individual understands the need to self-quarantine subject to local requirements.

(b)(7)(F)
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- e) Ensure the individual understands that the national interest exception is valid for one entry within 30 days from the date of approval and that any future travel to the United States will require another national interest exception.
9. (SBU) Consular officers processing student visa applications (F-1, M-1 and their F-2, M-2 dependents should follow the process below:
- a) Ensure the student understands the need to self-quarantine subject to local requirements.

(b)(7)(E)

(b)(6)

10. (SBU) The March 20 suspension of all routine visa services is lifted as of July 15. Please refer to REF D for guidance on the phased resumption of routine visa services. Posts should

(b)(4), (b)(5); (b)(7)(E)

11. (SBU) This guidance applies to a consular district subject to one of the (b)(7)(C) cited in paragraph 3 and those based on a request from an individual(s) who must transit an area affected by a Presidential Proclamation.

12. (U) Consular sections should reach out to their VO/F analyst or (b)(6) with any questions.

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Signature:

(b)(6)

Drafted By:

CA/VO: (b)(6) (b)(6) (b)(6) (b)(6)

Cleared By:

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MRN: 20 STATE 66820
Date/DTG: Jul 14, 2020 / 140127Z JUL 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *ROUTINE*
E.O.: 13526
TAGS: CVIS, (b)(6)
Captions: SENSITIVE
Reference: A) 20 STATE 41350
 B) 20 STATE 42180
 C) 20 STATE 61886
 D) 20 STATE 62808
 E) 20 STATE 66326
Pass Line: PASS TO DEPARTMENT OF HOMELAND SECURITY
Subject: National Interest Exceptions under the COVID and Labor- Related
 Presidential Proclamations 9984, 9992, 9993, 9996, 10014, 10041, and
 10052 for visa applicants

1. (SBU) SUMMARY: On March 19, 2020, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority under Presidential Proclamations (b)(7)(C) 9984, 9992, 9993, 9996, and 10041 relating to the suspension of entry of immigrant and nonimmigrants of certain persons who pose a risk of transmitting 2019 novel coronavirus (COVID-19) (b)(7)(E) to determine that an alien's entry into the United States would be in the national interest. On May 6, 2020, the Secretary of State also delegated to the Assistant Secretary for Consular Affairs the authority under (b)(7)(C) 10014 relating to the suspension of entry of certain immigrants to determine that an alien's entry into the United States would be in the national interest under that (b)(7)(C) and its successor proclamations, which includes (b)(7)(C) 10052 (Labor Market (b)(7)(E)). Effective immediately, The Assistant Secretary for Consular Affairs has determined that immigrant visa cases involving applicants who are subject to aging out before the COVID-19 and Labor Market (b)(7)(C) expire or within two weeks thereafter are in the national interest, for purpose of an exception under the Labor Market (b)(7)(E). Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception for applicants aging out and family members applying for an immigrant visa on the same petition and traveling with the applicant subject to aging out (see para 2-5). In addition, The Assistant Secretary has determined that Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception for certain nonimmigrant visa applications subject to the (b)(7)(C) 10052 suspension, as described in paragraphs 6-10). END SUMMARY.

2. (U) **Immigrant Visa Applicants (Age-Out):** On April 22, 2020, the President issued (b)(7)(C) 10014, suspending the entry of certain aliens as immigrants for 60 days. On June 22, 2020, the President issued (b)(7)(C) 10052, extending the suspension of entry of certain immigrant visa categories previously suspended under (b)(7)(C) 10014 until December 31, 2020. The exceptions in (b)(7)(C) 10014 are still applicable and officers should continue to follow the guidance in Ref A. Under (b)(7)(C) 10014, consular officers may continue to process visa applications for individuals who are expressly excepted from the Proclamation to include an alien who:

- a. held a valid immigrant visa on April 23, 2020;
- b. is a lawful permanent resident of the United States;
- c. has a valid I-140 and is seeking to enter the United States as a physician, nurse, or other healthcare professional; or to perform medical research or other research intended to combat the spread of COVID-19; and any spouse and unmarried children under 21 years old of any such alien who are accompanying or following to join the alien;
- d. is applying for a visa to enter the United States pursuant to the EB-5 Immigrant Investor Program;
- e. is the spouse of a U.S. citizen (IR/CR-1);
- f. is the child of a U.S. citizen (IR/CR-2 or IR/IH-3), or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications, AND is also under the age of 21;
- g. is a member of the U.S. Armed Forces and any spouse and children of a member of the U.S. Armed Forces; or
- h. is seeking to enter the United States pursuant to a Special Immigrant Visa in the SI or SQ classification, subject to such conditions as the Secretary of State may impose, and any spouse and children of any such individual.

3. (SBU) In addition, in light of the national interest determination by the Assistant Secretary for Consular Affairs on June 30, 2020, Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception in an immigrant visa case covered by (b)(7)(C) 9984, 9992, 9993, 9996, 10014, or 10041 upon concluding that the applicant is subject to aging out of his or her current immigrant visa classification before the relevant (b)(7)(C) expire or within two weeks thereafter. To benefit from this determination, the applicant subject to aging out may be a principal applicant or a derivative beneficiary accompanying or following to join a principal applicant. Consular Section Chiefs may also approve a national interest exception, based on the Assistant Secretary's determination, in an immigrant visa case for a family member of an

applicant subject to aging out before (b)(7) 10014, 9984, 9992, 9993, 9996, or 10041 expire or within two weeks thereafter, if the family member is applying for an immigrant visa on the same petition and will be traveling to the United States with the applicant subject to aging out. For example, Consular Section Chiefs may approve a national interest exception for an F43 derivative child who will age out before the expiration of the applicable (b)(7)(C) and may also approve all other family members on the same petition (parents and siblings) so long as the family members will all be immigrating with the F43 age out applicant. Consular sections must notify visa applicants that their admission remains subject to a determination by Customs and Border Protection officers at ports of entry and that they may be subject to a 14-day quarantine upon arrival.

4. (SBU) Application of CSPA: The national interest exception for applicants who are subject to aging out does not include those individuals protected by the Child Status Protection Act ("CSPA") as a "child" and thus would not actually age out of visa eligibility if not granted a national interest exception. An applicant who is protected as a "child" under CSPA is already excepted from (b)(7) 9984, 9992, 9993, 9996, 10041 as an "alien who is the child, foster child, or ward of a U.S. citizen or lawful permanent resident." However, under (b)(7)(C) 10014 an applicant must be under 21 years old and the child of a United States citizen to be excepted from the Proclamation. This guidance keeps a similar limitation in place for the national interest exception based on aging out. Therefore, an applicant with a biological age of 21 or over or who is protected as a "child" under CSPA is unlikely to age out, and therefore does not qualify for the national interest exception under (b)(7)(C) 10014 as set forth in this cable; these applicants may qualify for a different exception under (b)(7)(C) 10014 or may qualify for a national interest exception on some basis other than aging out, in order to be issued a visa while the Proclamation is in effect.

5. (SBU) Consular officers may continue to follow the guidance set forth in Ref A paragraphs 6 and 7 to submit immigrant visa cases to the Assistant Secretary for consideration of additional national interest exceptions such as:

- a) aliens who are immigrating on any petition to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak;
- b) principal applicants and accompanying close family members requiring lifesaving medical treatment; or
- c) aliens who will provide care for a U.S. citizen, legal permanent resident, to include alleviating the burden of care from a medical or other institution.

6. (SBU) **Nonimmigrant Visa Applications:** (b)(7)(C) 10052 provides an exception for "any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees." Sec. 3(b)(iv). The proclamation separately notes that "[t]he consular officer shall determine in his or her discretion, whether a nonimmigrant has established his or her eligibility" for an exception to this proclamation, including a national interest exception. The below framework identifies categories of visa applicants who should, at this time, be considered for a national interest exception based on an agreement in principle regarding the use of the national interest exception

coordinated by the White House with the Departments of State, Labor, and Homeland Security. **Further guidance expanding on who may also qualify for a national exception will be transmitted by SEPTTEL.**

7. (SBU) Implementation Procedures for Applicants for H-1B Visas

At this time, consular officers can consider H-1B applicants for national interest exceptions who will:

- Travel as a public health or healthcare professional, or researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research). This includes those traveling to alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic (e.g., travel by a public health or healthcare professional, or researcher in an area of public health or healthcare that is not directly related to COVID-19, but which has been adversely impacted by the COVID-19 pandemic). (b)(7)(E)

(b)(7)(E)

- Travel supported by a request from a U.S. government agency or entity to meet critical U.S. foreign policy objectives or to satisfy treaty or contractual obligations. This would include individuals, identified by the Department of Defense or another U.S. government agency, performing research, providing IT support/services, or engaging other similar projects essential to a U.S. government agency. Officers should base approval of this exception through examining the I-129 petition file in PIMS, supporting documents provided by the applicant or petitioner, and/or the interview with the beneficiary

8. (SBU) Implementation Procedures for Applicants for H-2B Visas

- Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or to satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base construction (e.g. associated with the National Defense Authorization Act) or IT infrastructure. The Visa Office anticipates that this exception will mainly be used for H-2B visa applicants performing construction work at military bases in Guam and the Commonwealth of Northern Mariana Islands. (b)(7)(E)

(b)(7)(E)

9. (SBU) Implementation Procedures for Applicants for J-1 Visas to Participate in Exchange Visitor Program

Consular officers can consider J-1 applicants for national interest exceptions who will:

Childcare

- Travel to provide care for a minor U.S. citizen, lawful permanent resident, or nonimmigrant in lawful status by an au pair possessing special skills required for a child with particular needs (e.g., medical, special education, or sign language)). Childcare services provided for a child with medical issues diagnosed by a qualified medical professional by an individual who possesses skills to care for such child will be considered to be in the national interest.
- Travel by an au pair that prevents a U.S. citizen, lawful permanent resident, or other nonimmigrant in lawful status from becoming a public health charge or ward of the state of a medical or other public funded institution. Childcare services provided for a child whose parents are involved with the provision of medical care to individuals who have contracted COVID-19 or medical research at United States facilities to help the United States combat COVID-19.

Other Exchange Programs

- Travel to participate in an exchange visitor program for interns, summer work travel, camp counselors, trainees, or teachers only if described below:

An exchange program conducted pursuant to a bilateral agreement or other arrangement with a foreign government: An exchange program conducted pursuant to an MOU, Statement of Intent, or other valid agreement or arrangement between a foreign government and any federal, state, or local government entity in the United States that is designed to promote U.S. national interests if the agreement or arrangement with the foreign government was in effect prior to the effective date of the Presidential Proclamation. In order to identify such programs, consular sections should work closely with post's Public Affairs section. CA/VO/F (in consultation with ECA) will serve as a resource for consular sections that are unsure of whether a specific program meets this criteria.

Interns and Trainees on U.S. government agency-sponsored programs (those with a program number beginning with "G-3" on Form DS-2019): An exchange visitor participating in an exchange visitor program in which he or she will be hosted by a U.S. government agency and the program supports the immediate and continued economic recovery of the United States.

Specialized Teachers in Accredited Educational Institutions with a program number beginning with "G-5" on Form DS-2019: An exchange visitor participating in an exchange program in which he or she will teach full-time, including a substantial portion that is in person, in a publicly or privately operated primary or secondary accredited educational institution where the applicant demonstrates ability to make a specialized contribution to the education of students in the United States. A "specialized teacher" applicant must demonstrate native or near-native foreign language proficiency and the ability to teach his/her assigned subject(s) in that language (e.g., teaching math in German, or teaching the Spanish language).

Critical foreign policy objectives: This only includes programs where an exchange visitor participating in an exchange program that fulfills critical and time sensitive foreign policy

objectives. In order to identify such programs, consular sections should work closely with their cultural and public affairs offices. CA/VO/F (in consultation with ECA) will serve as a resource for consular sections that are unsure of whether a specific program meets this criteria.

10. (SBU) Implementation Procedures for Applicants for L Visas

- Travel as a public health or healthcare professional, or researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research). This includes those traveling to alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic (e.g., travel by a public health or healthcare professional, or researcher in an area of public health or healthcare that is not directly related to COVID-19, but which has been adversely impacted by the COVID-19 pandemic). (b)(7)(E)

(b)(7)(E)

11. (SBU) Implementation Procedures for Applicants for H-4, L-2, and J-2 Visas

Consular officers can consider derivative applicants for national interest exceptions who will accompany or follow to join a principal applicant who is a spouse or parent and who is excepted from, or not subject to, (b)(7) 10052. This exception can be extended to derivative applicants when the principal is currently in the United States or has a valid visa.

12. (SBU) Consular sections processing immigrant or nonimmigrant visa applications where a national interest exception was granted should also:

(b)(7)(E)



13. (SBU) (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

14. (SBU) Please refer to the Presidential Proclamations Adjudication Guidance page in [CA Web Portal](#) for a complete listing of the Presidential Proclamations and associated ALDAC guidance. This website will continue to be populated with useful links and flow charts. Consular sections should reach out to their VO/F analyst or email (b)(6) with any questions regarding this guidance.

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Signature:

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Approved By:

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From: SMART Core (b)(6)

Sent: Wednesday, August 12, 2020 12:48:38 AM

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Subject: FURTHER IMPLEMENTATION PROCEDURES AND GUIDANCE FOR (b)(6) 10052 SUSPENDING ENTRY OF IMMIGRANTS AND NONIMMIGRANTS WHO PRESENT RISK TO THE U.S. LABOR MARKET DURING THE ECONOMIC RECOVERY FOLLOWING THE COVID-19 OUTBREAK (NATIONAL INTEREST EXCEPTIONS)

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STATE SEAL

Action Office: ALDACS, CONS, CONGEN

MRN: 20 STATE 76312
Date/DTG: Aug 07, 2020 / 070004Z AUG 20
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *IMMEDIATE*
E.O.: 13526
TAGS: CMGT, CVIS
Captions: SENSITIVE
Reference: A) 20 STATE 61886
B) 20 STATE 66820
C) 20 STATE 62808
D) 20 STATE 42180
E) 20 STATE 65080
F) 20 STATE 40968

Correction Reason: CORRECTED COPY: Corrected Copy. Please see the addition of paragraph 16.

Subject: FURTHER IMPLEMENTATION PROCEDURES AND GUIDANCE FOR (b)(7)(C) 10052 SUSPENDING ENTRY OF IMMIGRANTS AND NONIMMIGRANTS WHO PRESENT RISK TO THE U.S. LABOR MARKET DURING THE ECONOMIC RECOVERY FOLLOWING THE COVID-19 OUTBREAK (NATIONAL INTEREST EXCEPTIONS)

1. (SBU) SUMMARY: On May 6, 2020, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority under (b)(7)(C) 10014 to determine that an alien's entry into the United States would be in the national interest under that (b)(7)(C) and its successor proclamations, including Presidential Proclamation (b)(7)(E) 10052 (Labor Market (b)(7)(E)). Effective immediately, the Assistant Secretary has determined that Consular Section Chiefs (or those acting as Consular Section Chief in an official capacity due to the extended absence of the Consular Section Chief) may approve a national interest exception for certain nonimmigrant visa applications subject to the (b)(7)(C) 10052 suspension upon concluding that the applicant's travel falls within the scope of one of the categories described in paragraph 3, as described below. END SUMMARY.

2. (U) Background: Presidential Proclamations (b)(7)(E) 10014 and 10052 suspend the entry of certain persons who pose a risk of displacing and disadvantaging United States workers during the current economic recovery. These actions were based on the President's determinations that unrestricted entry of certain aliens as nonimmigrants and immigrants would be detrimental to the interests of the United States (REF A). Section 3 of (b)(7)(C) 10052 excepts a range of individuals from visa and entry restrictions, including aliens whose travel would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security (DHS), or their designees. On May 6, the Secretary of State delegated to the Assistant Secretary for Consular Affairs the authority to except individuals whose travel is in the U.S. national

interest. Following consultation with DHS and the Department of Labor (DOL), the Assistant Secretary authorized consular section chiefs to approve national interest exceptions under PP 10052 to applicants whose travel falls within one of the categories described in the Assistant Secretary's determination. See REF B. REF B also advised consular officers that "[f]urther guidance expanding on who may also qualify for a national exception will be transmitted by SEPTTEL." Following further consultation with DOL and DHS, the Assistant Secretary has determined that temporary travel by nonimmigrants in the following additional categories is in the national interest.

3. (SBU) **National Interest Exceptions-Nonimmigrants:** (b)(7) 10052 provides an exception for "any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees." Sec. 3(b)(iv). The proclamation separately notes that "[t]he consular officer shall determine in his or her discretion, whether a nonimmigrant has established his or her eligibility" for an exception to this proclamation, including a national interest exception. The below framework, supplementing and NOT replacing initial guidance (REF B), identifies categories of visa applicants who should, at this time, also be considered for a national interest exception based on the Assistant Secretary's determinations. These determinations are consistent with an interagency Agreement in Principle, regarding the use of the national interest exception authority, coordinated by the White House with the Departments of State, Labor, and Homeland Security.

4. (SBU) **Applicants for H-1B Visas:** Travel by H-1B applicants is in the national interest when the applicant falls within one of the following categories:

- A. • (SBU) Applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause financial hardship. (b)(7)(E)

(b)(7)(E)

- B. • (SBU) Technical specialists, senior level managers, and other workers whose travel is necessary to facilitate the immediate and continued economic recovery of the United States. Consular officers may determine that an H-1B applicant falls into this category when at least **two** of the following five indicators are present:

1. The petitioning employer has a continued need for the services or labor to be performed by the H-1B nonimmigrant in the United States. Labor Condition Applications (LCAs) approved by DOL during or after July 2020 are more likely to account for the effects of the COVID-19 pandemic on the U.S. labor market and the

petitioner's business; therefore, this indicator is only present for cases with an LCA approved during or after July 2020 as there is an indication that the petitioner still has a need for the H-1B worker. For LCAs approved by DOL before July 2020, this indicator is only met if the consular officer is able to determine from the visa application the continuing need of petitioned workers with the U.S. employer. Regardless of when the LCA was approved, if an applicant is currently performing or is able to perform the essential functions of the position for the prospective employer remotely from outside the United States, then this indicator is not present. (b)(7)(E)

(b)(7)(E)

2. The applicant's proposed job duties or position within the petitioning company indicate the individual will provide significant and unique contributions to an **employer meeting a critical infrastructure need**. Critical infrastructure sectors are chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems. Employment in a critical infrastructure sector alone is not sufficient; the consular officer must also establish that the applicant holds one of the two types of positions noted below:

a.) **Senior level placement** within the petitioning organization or job duties reflecting performance of functions that are both unique and vital to the management and success of the overall business enterprise; OR

b.) The applicant's **proposed job duties and specialized qualifications** indicate the individual will provide significant and unique contributions to the petitioning company.

3. The wage rate paid to the H-1B applicant meaningfully exceeds the prevailing wage rate (see Part F, Questions 10 and 11 of the LCA) by at least 15 percent. When an H-1B applicant will receive a wage that meaningfully exceeds the prevailing wage, it suggests that the employee fills an important business need where an U.S. worker is not available. (b)(7)(E)

4. The H-1B applicant's education, training and/or experience demonstrate unusual expertise in the specialty occupation in which the applicant will be employed. For

example, an H-1B applicant with a doctorate or professional degree, or many years of relevant work experience, may have such advanced expertise in the relevant occupation as to make it more likely that he or she will perform critically important work for the petitioning employer.

5. Denial of the visa pursuant to (b)(7) 10052 will cause financial hardship to the U.S. employer. (b)(7)(E)

(b)(7)(E)

5. (SBU) **Applicants for H-2B Visas:** Travel by H-2B applicants is in the national interest when necessary to facilitate the immediate and continued economic recovery of the United States. Consular officers may determine that an H-2B applicant falls into this category when **TWO** of the following three indicators are present:

A. The applicant was previously employed and trained by the petitioning U.S. employer. The applicant must have previously worked for the petitioning U.S. employer under **two or more H-2B (named or unnamed) petitions**. U.S. employers dedicate substantial time and resources to training seasonal/temporary staff, and denying visas to the most experienced returning workers may cause financial hardship to the U.S. business.

B. The applicant is traveling based on a TLC that reflects continued need for the worker. TLCs approved by DOL during or after July 2020 are more likely to account for the effects of the COVID-19 pandemic on the U.S. labor market and the petitioner's business, and therefore this indicator is only present for cases with a TLC approved during or after July 2020 as there is an indication that the petitioner still has a need for the H-2B worker. For TLCs approved by DOL before July 2020, this indicator is only met if the consular officer is able to determine from the visa application the continuing need of petitioned workers with the U.S. employer. (b)(7)(E)

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6. (SBU) **Applicants for L-1A Visas:** Travel by L-1A applicants is in the national interest when the applicant falls within one of the following categories:

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associated with the United States Government: Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base construction or IT infrastructure.

B. Applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause undue financial hardship. (b)(7)(E)

(b)(7)(E)

C. Applicants travelling temporarily as a senior level executive or manager filling a critical business need of an employer meeting a **critical infrastructure** need. Critical infrastructure sectors include chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems. The consular officer may determine that an L-1A applicant falls into this category when at least two of the following three indicators are present AND the applicant is not establishing a new office in the United States:

1. Will be a senior-level executive or manager;
2. Has spent multiple years with the company overseas, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship; OR
3. Will fill a critical business need for a company meeting a critical infrastructure need.

L-1A applicants seeking to establish a new office in the United States likely do NOT fall into this category, unless two of the three criteria are met AND the new office will employ, directly or indirectly, five or more U.S. workers.

7. (SBU) **Applicants for L-1B Visas:** Travel by L-1B applicants is in the national interest when the applicant falls within one of the following categories:

- A. • Employers associated with the United States Government: Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base construction or IT infrastructure.
- B. • Applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause undue financial hardship. (b)(7)(E)
(b)(7)(E)
- C. • Applicants travelling temporarily as a technical expert or specialist meeting a critical infrastructure need. The consular officer may determine that an L-1B applicant falls into this category if all three of the following indicators are present:
 1. The applicant's proposed job duties and specialized knowledge indicate the individual will provide significant and unique contributions to the petitioning company;

2. The applicant's specialized knowledge is specifically related to a critical infrastructure need (**Note: Unlike for H-1B and L-1A applicants, the position must be related to a critical infrastructure need**); AND
3. The applicant has spent multiple years with the company overseas, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship.

(b)(7)(E)

(b)(6)

12. (SBU) Consular Section Chiefs are responsible for establishing and documenting a process under which they will assess whether an individual's travel falls within the scope of the Assistant Secretary's determination relating to travel in the U.S. national interest. Case notes should clearly state the criteria that was met for the applicant to be covered by the Assistant Secretary's national interest determination. A Visa Referral or Priority Appointment request (PAR) may be useful in flagging urgent travel for a visa applicant but is insufficient on its own

to establish that a case is covered by the Assistant Secretary's national interest determination. All other FAM guidance regarding the referral process still applies. (b)(7)(E)

(b)(7)(E)

13. (SBU) **GSS and Post website language:** CA/VO/F is developing cleared language for use on GSS websites as well as embassy/consulate public webpages. CA/VO/F will transmit this information to consular sections by email in the near future, but for now, consular sections should refrain from publicly posting any guidance included in this ALDAC. Please consult your CA/VO/F analyst for further questions.

14. (SBU) (b)(7)(E)

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15. (SBU) **Clarification on how (b)(7) 10052 impacts individuals who have previously received NIVs in the suspended classifications:** On June 29, 2020, the President issued a Proclamation on Amendment to Proclamation 10052, which provided that the suspension of entry, which generally bars visa issuance in the specified visa classifications, shall apply only to an alien who is outside of the United States on the effective date of the Proclamation (June 24, 2020), and who "does not have a nonimmigrant visa, of any of the classifications specified in section 2 of this proclamation and pursuant to which the alien is seeking entry, that is valid on the effective date [June 24, 2020] of this proclamation," or other official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date. This means that, absent eligibility for an exception, including an NIE, individuals outside the United States on June 24, with or without a valid visa, cannot be reissued a new visa in one of the suspended classifications. If an applicant outside of the United States had a valid H-1B, H-2B, J-1, L or derivative visa on June 24, they are not subject to PP 10052 for the purposes of seeking admission to the United State until the visa expires, at which point the applicant would become subject to the proclamation. Individuals who were in the United States on June 24 are not subject to the proclamation.

16. (SBU) **Individuals Subject to Multiple Suspensions:** Individuals who qualify for a national interest exception to (b)(7) 10052 under criteria discussed in this cable should also be considered as qualifying for national interest exceptions under Presidential Proclamations 9984 (China), 9992 (Iran), 9993 (Schengen), 9996 (United Kingdom/Ireland), and 10041 (Brazil) should the traveler be subject to the provisions of such regional proclamations. Travelers who do not qualify for a national interest exception under the criteria in this cable must qualify for an NIE for the regional PPs via the guidance in 20 State 49966 or 20 State 66326. (b)(7)(E)

(b)(7)(E)

17.(SBU) Consular sections should reach out to their VO/F analyst or the (b)(6) (b)(6) email with any questions.

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Signature:

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CA/VO (b)(6) (b)(6)

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