



ALERTS

Immigration Update: Travel Restrictions From India; Suspension Of Biometrics Requirement; And H-1B Lawsuit Decision

May 6, 2021

Highlights

India joins a growing list of countries that are subject to U.S. travel restrictions due to surges in COVID-19 cases and its variants; gaining travel exemptions is rigorous

The USCIS is expected to temporarily suspend biometrics requirement for certain I-539 applicants starting May 17, 2021, for a two-year period

Recent federal litigation leads to acceptance of wrongfully rejected H-1B petitions

There has been a flurry of activity surrounding immigration – in terms of travel restrictions, changes to requirements for certain visas, and a significant H-1B lottery court decision – from the Biden administration and in connection to the U.S. Citizenship and Immigration Services (USCIS).

Travel From India Restricted Due to COVID-19 Surge

In response to the surging number of COVID-19 cases in India, President

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Biden [signed a proclamation](#) – which was effective May 4, 2021 – suspending the entry of certain nonimmigrant travelers to the U.S. who had been present in India in the preceding 14 days.

As with other country-specific travel restrictions, U.S. citizens, legal permanent residents, and individuals entering with immigrant visas are exempted. Additionally, the following individuals are also exempt:

- Spouses, parents (of minor children), minor children, and siblings (provided the siblings are under 21) of U.S. citizens or legal permanent residents
- Individuals traveling on certain diplomatic visas
- Air and sea crew members

The U.S. Department of State has also issued guidance on March 6, 2021 on how individuals can qualify for a “national interest exception,” or NIE, to these travel restrictions. This was a more restrictive revision to prior guidance. Broadly, these exceptions are available where an individual is playing a “vital role” in an area of critical infrastructure as defined by the Department of Homeland Security. The individual and/or is providing services that are critical to functions within the supply chain or company in an area of critical infrastructure. These exceptions are also available to individuals who rely upon job creation; however, the process for such approvals is significantly lengthier and more restrictive; though executives and managers are not generally approved for the NIE under the new criteria.

The travel restrictions affecting those coming from India adds to the significant regions of the world now subject to restrictions on nonimmigrants entering the United States, which are:

- India
- China
- Brazil
- The EU/Schengen region
- The U.K./Ireland
- Iran
- South Africa

These restrictions are significantly impacting travel back and forth between the United States and these countries or regions. H-1B and other nonimmigrant status holders who are currently in the U.S. are strongly encouraged not to travel to India. They should carefully vet their eligibility for an exception to these restrictions if they must do so. In addition to these restrictions, the U.S. Consular section in India cancelled all appointments scheduled in the month of May. It is unclear when routine visa services will be restored. Similar slowdowns of consular services are ongoing worldwide, due to a reduction in consular personnel given local country conditions. These cancellations are also likely to



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impact F-1 visa applicants who anticipate enrolling in U.S. educational institutions for the 2021 fall semester.

Suspension of Biometrics Requirement for Certain I-539 Applicants

The USCIS is expected to temporarily suspend the biometrics or “fingerprinting” requirement for certain I-539 applicants for a two-year period starting May 17, 2021.

Under the prior presidential administration, the USCIS changed processing requirements for family members filing Form I-539, specifically collecting biometrics for H-4 and L-2 spouse and family members, along with many other visa holders. This added requirement caused significant delays in the overall processing of H-4 and L-2 petitions, which impacted countless immigrants and was further exasperated due to the COVID-19 pandemic.

Form I-539 allows those in the U.S. under nonimmigrant (temporary) visas to apply to switch to another type of visa or to extend their stay.

The expected temporary suspension of biometrics requirements for certain visa holders is thanks to an ongoing class action lawsuit filed by the American Immigration Lawyers Association and Wasden Baniyas, LLP. This suspension will apply to all H-4, L-2, E-1, E-2, and E-3 visa holders, and will be in effect for two years, hopefully to alleviate some of the hurdles many have faced, including a significant delay of H-4 and L-2 nonimmigrant spouses’ extensions of employment authorization documents (EAD).

In order to be excluded from the biometrics component, individuals must have a pending Form I-539 application and have not yet received a biometrics appointment. This same exclusion would apply to any new Form I-539 applications received by the Service Center between May 17, 2021 until May 23, 2022.

Victory for Plaintiffs Who Were Rejected in Second H-1B Lottery

On March 11, 2021, the American Immigration Council and several law firms, including Barnes & Thornburg, filed a [lawsuit](#) in the U.S. District Court for the District of Massachusetts on behalf of seven U.S. companies whose H-1B petitions were wrongfully rejected by the USCIS simply because they listed an employment start date after Oct. 1, 2020. On April 29, 2021, the plaintiffs voluntarily dismissed the lawsuit after USCIS allowed them to refile their H-1B petitions. This victory for plaintiffs demonstrates that litigation efforts to challenge unlawful agency conduct in immigration matters can be effective. The Council and Barnes & Thornburg co-counseled with Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; Joseph & Hall P.C.; Meyner and Landis LLP; and Driggs Immigration Law.

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