

Latest Immigration Updates: H-1B Fees, Entry Restrictions, and Gold Card Launch



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Today's Discussion

- H-1B Proclamation: One Week Later
- H-1B Proclamation: National Interest + other exemptions, other options for employees.
- Gold Card Executive Order
- Litigation Updates and Analysis



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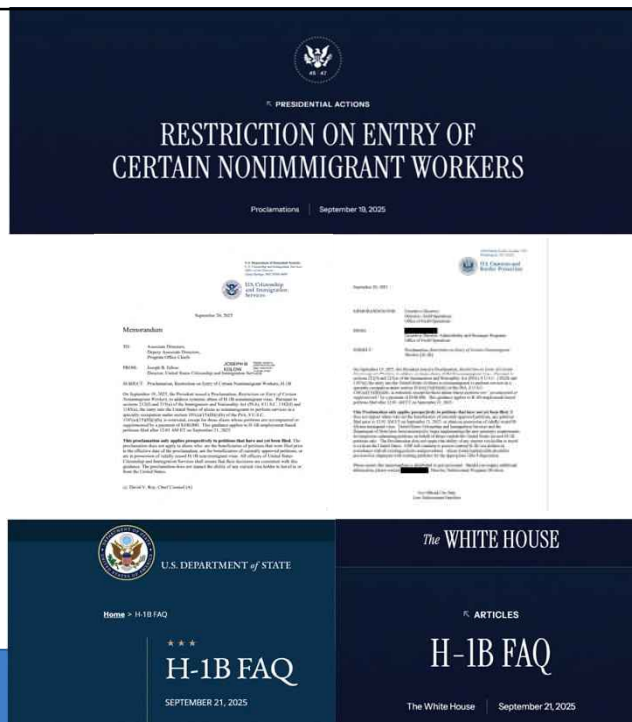
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H-1B Proclamation Timeline: What Did We Learn, When?

- On September 19, 2025, President Trump published a [Proclamation](#) titled, “Restriction on Entry of Certain Nonimmigrant Workers.”
- On September 20, 2025, USCIS released a [memorandum](#) seeking to clarify the Proclamation.
- Later that day, CBP also released a [memorandum](#).
- On September 21, 2025, the [DOS](#) and the [White House](#) released FAQ pages related to the Proclamation.



Current Status of the H-1B Proclamation



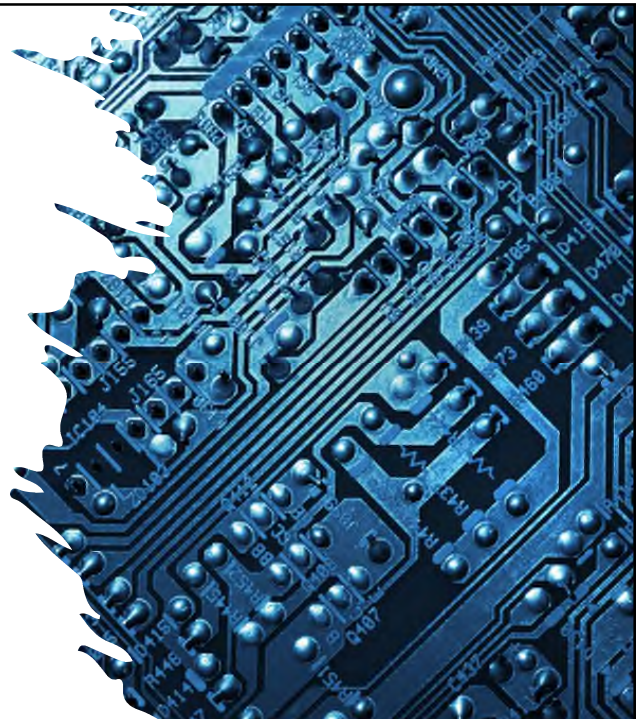
- The policy is in effect from September 21, 2025 through September 20, 2026.
- The new \$100,000 fee applies only to **new petitions** filed with the government on or after September 21.
- The fee also applies only to **international travel followed by reentry** to the United States.
- At present, the government has not provided a mechanism to pay the \$100,000 fee, even if a company wanted to.

Impact of the H-1B Proclamation

Location	Petition Status	Impact of Changes
Inside the U.S.	Approved Petition	Not impacted.
	Filed Petition (No Decision)	Not impacted.
	Not Yet Filed (new petition/never held H-1B previously)	Potential Future Impact. After travel outside US, must meet new requirements (\$100,000 payment or national interest exemption).
	Amendment / Extension / Change of Employer / Change of Status	Unclear.
Outside the U.S.	Approved Petition	Not impacted.
	Filed Petition (No Decision)	Not impacted.
	Not Yet Filed (new petition/never held H-1B previously)	Impacted. Must meet new requirements (\$100,000 payment or national interest exemption).
	Amendment / Extension / Change of Employer / Change of Status	Unclear

National Interest Exemptions

- “The restriction imposed pursuant to subsections (a) and (b) of this section shall not apply to any individual alien, all aliens working for a company, or all aliens working in an industry, if the Secretary of Homeland Security determines, in the Secretary’s discretion, that the hiring of such aliens to be employed as H-1B specialty occupation workers is in the national interest and does not pose a threat to the security or welfare of the United States.”



Framing National Interest Arguments

- **Public health & patient access (physicians/IMGs):** direct impact on continuity of care, coverage of shortage specialties, rural/underserved access, residency program stability, and surge capacity. Reference facility need, patient panels, and coverage gaps.
- **National security / critical infrastructure:** work tied to cybersecurity, defense, semiconductors, AI safety, or other sectors where disruption risks security or supply chains (document program linkage, contracts, or regulatory obligations).
- **Economic/operational necessity:** risk of service shutdowns, offshoring, or job loss for U.S. workers without the beneficiary; evidence of job retention/creation and inability to recruit U.S. workers at required skill level.



National Interest Exemptions and Arguments



- **Initial Read on Priorities:**

The Administration has signaled case-by-case exemptions, with physicians and medical students likely within scope (consistent with health-care access concerns).

Considerations for Potential Pathways

- Employer Company Type
- Employee Industry
- Employee Nationality
- Urgency of Timing

Common Alternative Pathways for Employees



O-1 Visa

- O-1A: Individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry).
- O-1B: Individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry.



E-1 / E-2 / E-3 Visa

- E-1 Treaty Trader: For substantial trade principally with the treaty country.
- E-2 Treaty Investor / Employee: Nationals of treaty countries investing in or working for a qualifying enterprise. Useful for founders, execs, essential employees.
- E-3 (Australia): Similar to H-1B for Australians; LCA/prevaling wage applies; renewable in 2-year increments.



L-1 Visa

Enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the U.S.



TN Visa

Permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level.



F-1 Visa

Optional practical training (OPT) is temporary employment that is directly related to an F-1 student's major area of study.

Eligible students can apply to receive up to 12 months of OPT employment authorization before completing their academic studies.



All that Glitters: Gold and Platinum Cards

- **Gold Card:**

- o Not a new visa; rather, it is a new pathway to qualify for two existing employment-based green card categories.
- o The EO instructs Commerce to collaborate with DHS to create a new standard of evidence for petitioners in the “extraordinary ability” (EB-1A) and “national interest waiver” (self-sponsored EB-2) green card categories.
- o The EO states that an unrestricted gift of \$1 million is to be considered evidence of qualification for a green card in those two categories.

- **Platinum Card:**

- o Details about the “forthcoming” Platinum card remain scarce, but the administration has indicated that potential applicants would pay a processing fee and make a \$5 million donation.
- o This would allow the investor to spend up to 270 days in the U.S. without being subject to U.S. taxes on non-U.S. income.



EB-5 Visa



The visa program designed to allow foreign, job creating investors to gain permanent residence status (a “green card”) in the U.S.



It requires a minimum investment of \$1,050,000, or \$800,000, if the investment is in a high unemployment area (where unemployment is 150% of the national average), rural area, or infrastructure project.



Investment made directly in a U.S. business.



The investment also must result in the creation of at least 10 jobs for U.S. workers.



Anticipated Litigation: Plaintiffs and Claims

Anticipated Plaintiffs:

- Employer coalitions, trade groups, universities/hospitals, and states AGs.

Core Claims:

- Challenge the \$100,000 “entry condition” as *ultra vires* under INA §212(f) (entry suspensions ≠ fee-setting);
- Violate fee statutes (e.g., 8 U.S.C. §1356(m)/IOAA);
- Arbitrary & capricious under the APA; and
- Major questions doctrine for a de facto tax without Congress.



Anticipated Litigation: Government Defense

Government Defenses: Expect reliance on *Trump v. Hawaii* breadth of §212(f) and framing the fee as an entry condition tied to national interest.

Trump v. Hawaii Recap:

- **Facts:** In January 2017, President Donald Trump signed Executive Order No. 13,769, which, among other things, suspended entry for 90 days of foreign nationals from seven countries identified as presenting heightened terrorism-related risks.
- **Question(s):**
 - Does the president have the statutory authority to issue the Proclamation?
 - Does the Proclamation violate the Establishment Clause of the Constitution?
- **Supreme Court Held:**
 - **Statutory Authority:** Under §212(f), the president has “broad discretion” to suspend the entry of non-citizens into the U.S. The Proclamation was the result of a “multi-agency review” that determined that entry by certain non-citizens would be detrimental to the interests of the U.S.
 - **Establishment Clause:** The Proclamation did not favor or disfavor any particular religion. Many majority-Muslim countries were not subject to restrictions and that some non-majority-Muslim countries were subject to the restrictions supported the government’s contention that the Proclamation was not based on anti-Muslim animus and was instead based on “a sufficient national security justification.”

Timeline and Next Steps



Court-Based Relief: Litigation against the Proclamation is likely in the next week or two. The lawsuit will ask for temporary/preliminary relief from the Proclamation, and a court may grant that relief in as little as a few days or a few weeks. A court may, however, decide that it cannot grant relief until its final decision, which might be several months or more.



Timeline for Clarifications: It appears that the agencies responsible for immigration were not aware of the Proclamation before it was signed. Immediate clarification for existing visa holders was issued over the weekend, but the government needs to provide guidance on open questions in the coming weeks. It may be a month or more before all of our questions are answered.

Next Steps for Employers



Active Travel Management

Employers can advise their employees to return to the U.S. and remain in the country until further government guidance is issued, even if they are not subject to the Proclamation.

Employers can also advise all sponsored employees and obtain written confirmation that they will not travel internationally.



Review Upcoming Schedule

The Proclamation may apply to promotions, job changes, or extension filings.

We are hopeful that, at least, renewals will not be subject to the Proclamation's \$100,000 fee for reentry into the United States in H-1B status. With that said, there remains inconsistent guidance from the government so we should be conservative at this time.



Planning Ahead

Coming Days: Litigation and potentially additional guidance from the Administration.

Coming Weeks: TROs, temporary fee pause, potential ability to renew/extend/change employer or status.

Coming Months: Clarity on upcoming lottery.

Questions?



For More Information



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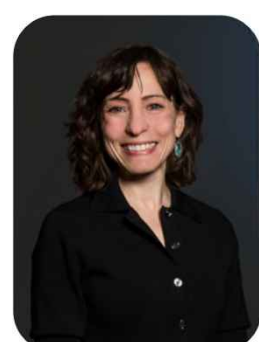
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