

Trump's COVID-19 Work Visa Restrictions To Expire

By **Dorothy Atkins**

Law360 (March 31, 2021, 5:03 PM EDT) -- Former President Donald Trump's presidential proclamation aimed at freeing up U.S. jobs during the pandemic by banning most new work visas expires Wednesday, and President Joe Biden has given no indication that he plans to extend the ban, which includes H-1B specialty occupation visas.

After declaring a national emergency last year, Trump signed the executive order in June barring foreign citizens from moving to the U.S. on a number of work visas, saying the measure would help support Americans who lost their jobs as a result of the COVID-19 pandemic.

The order, dubbed Proclamation 10052, specifically restricted H-1B visas for highly skilled workers, H-2B guest-worker visas, J trainee visas and L intracompany transferee visas, along with those for their spouses, in a purported effort to free up 525,000 jobs for Americans.

H-1B visas are capped at 65,000 annually, with another 20,000 reserved for individuals with U.S. master's degrees or higher, and last year, U.S. employers submitted around 275,000 visa requests for those slots.

But Trump's proclamation abruptly halted the government from processing visa applications for those workers in light of the coronavirus pandemic, and the former president extended the ban with it set to expire Wednesday.

On Wednesday, the White House didn't immediately respond to requests for comment on whether Biden planned to extend the proclamation, but multiple media outlets reported sources who confirmed the administration would not extend it.

Morgan Lewis partner Eleanor Pelta said Wednesday the decision to let Trump's proclamation expire is good news, particularly for multinational companies who have had key resources stranded abroad due to the restrictions since last summer.

"As U.S. consular posts around the world are still operating at reduced capacity, there will still be challenges to obtain visa issuance appointments for transferees, and those traveling from countries with which we have COVID-related entry restrictions will still have to deal with those barriers," Pelta said.

Susan Cohen, chair of Mintz Levin Cohn Ferris Glovsky & Popeo PC's immigration practice, told Law360

Wednesday that the visa ban didn't make sense as a mechanism to protect the U.S. labor market because the visa holders that were impacted had been hand-selected and sponsored by U.S. employers for specific jobs that need to be done in the U.S.

Cohen added that as a practical matter, many of these same visa holders are still impacted by other regional travel bans, including traveling from Europe's Schengen Area, and will need to show that they qualify for a National Interest Exemption from that ban in order to enter the country.

"But at least the lifting of this visa ban is one less obstacle that they and their U.S. employers now face," Cohen said.

Since Biden took office in January, he's revoked Trump's related Proclamation 10014 preventing foreigners from moving to the U.S. on new green cards and its two extensions ahead of their expected March 31 expiration date. Biden said the orders failed to advance American interests, but he didn't address the fate of work visa holders targeted under Trump's related Proclamation 10052.

Despite Biden rescinding the green card immigration restrictions earlier this year, a group of diversity visa winners who were blocked from entering the U.S. during the pandemic told a D.C. federal judge this week their "injuries linger" because they still haven't been allowed to immigrate. Litigation in that case is ongoing.

--Editing by Jay Jackson Jr.