

Blog Post

Presidential Proclamation on H-1B Nonimmigrant Visas – Applicability, Exemptions & Next Steps for U.S. Employers

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This past Friday, President Donald J. Trump signed a sweeping Presidential Proclamation titled “Restriction on Entry of Certain Nonimmigrant Workers.” This latest executive action introduces major restrictions on the H-1B visa program, specifically targeting employers filing petitions for workers who are currently outside the United States.

The most impactful change? A \$100,000 fee per H-1B Petition required at the time of filing with USCIS unless an exemption is granted by the Secretary of Homeland Security. The Proclamation goes into effect on Sunday, September 21, 2025, at 12:01 a.m. EDT and is set to remain in place for 12 months, unless extended or rescinded. This order is issued under Sections 212(f) and 215(a) of the Immigration and Nationality Act (INA), which give the President broad authority to restrict entry of foreign nationals if deemed contrary to U.S. interests.

Who Is Affected? Legal Applicability:

According to the Proclamation text, the new \$100,000 payment requirement applies to: (1) new H-1B Petitions filed with USCIS on or after September 21, 2025, and (2) where the employee

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beneficiary is physically outside the U.S. at the time of filing.

The Proclamation does NOT apply to:

- H-1B extensions, amendments, or transfers for individuals already inside the U.S.
- H-1B change of status cases filed domestically (e.g., F-1 to H-1B).
- Previously approved H-1B petitions (regardless of visa stamp status).
- Petitions filed before September 21, 2025.

Understanding the H-1B Filing Process:

The H-1B Nonimmigrant Worker process involves two separate steps:

1. H-1B Petition filing with USCIS (Form I-129) - when an employer seeks H-1B Petition approval by USCIS.
2. Visa Stamping at a U.S. consulate - when an employee beneficiary abroad seeks a visa stamp at a U.S. consulate before entering the U.S.

The Proclamation targets Step 1, requiring payment of \$100,000 before filing the H-1B Petition for Nonimmigrant Worker for an employee beneficiary overseas. It does not appear to currently impact the consular visa issuance process for already-approved H-1B Petitions. As per Section 2(a) of the Proclamation: “Employers shall, *prior to filing* an H-1B petition on behalf of an alien outside the United States, obtain and retain documentation showing that the payment described in section 1 of this proclamation has been made.” [Emphasis added]

National Interest Exemption: A Narrow Path Forward:

Section 1(c) of the Proclamation authorizes the Secretary of Homeland Security to waive the \$100,000 fee requirement if: the employment is in

the national interest, and the foreign national does not pose a threat to U.S. security or welfare.

Exemptions can be granted:

- on a case-by-case basis,
- to all employees of a single employer, or
- to entire industries that meet the national interest standard.

Industries Likely to Qualify for Exemption:

Sectors with a historically compelling case for exemption include:

- Healthcare, emergency medical services, and public health.
- Critical infrastructure sectors (e.g., utilities, transportation, energy).
- Biotech, defense manufacturing, and industries tied to national security.

Caution for IT and Tech Employers:

While Information Technology (IT) is foundational to global business, the Proclamation appears to specifically target the tech industry. Employers in IT and software development may face increased scrutiny when requesting exemptions. Only positions clearly tied to cybersecurity, national infrastructure, or defense systems are expected to qualify under the national interest clause.

What Employers Should Do Now: Key Action Items:

To prepare for this immediate and momentous change, employers should act swiftly:

- 1. Restrict International Travel for H-1B Employees:**
Advise current H-1B workers inside the U.S. to defer non-essential international travel until further guidance is released.

- 2. Audit All Upcoming H-1B Petitions for Workers Abroad:** Identify all pending or planned H-1B filings involving beneficiaries outside the U.S., especially those scheduled on or after September 21, 2025. Evaluate case-by-case exemption eligibility.
- 3. Prioritize In-Country Change of Status Filings:** Where feasible, file change-of-status petitions (e.g., F-1 to H-1B) to avoid triggering the new fee for overseas candidates.
- 4. Begin Preparing National Interest Documentation:** For those impacted, engage Immigration counsel to prepare documentation for federal review. Begin gathering the following documentation, including:
 - Description of the position’s critical business function.
 - Internal reports showing talent shortages or failed recruitment efforts.
 - Letters of support from executives, regulators, or partners.
 - Any connections to national infrastructure, innovation, or economic security.

What’s Still Unclear - Awaiting Federal Guidance: Much remains unknown about how the Presidential Proclamation will be implemented. We anticipate further direction from U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and U.S. Department of State (DOS). Expected clarifications include:

- How “outside the United States” will be interpreted (e.g., physical presence vs. consular intent).
- The mechanism for submitting the \$100,000 payment.
- How to apply for national interest exemptions.
- How U.S. consulates abroad will treat already-approved H-1B Petitions.

The 2025 H-1B Proclamation is a seismic shift in the U.S. employment immigration landscape. While it introduces costly new barriers to global talent acquisition, a narrow exemption window remains available for high-priority roles and industries.

For questions about how this Proclamation affects your workforce, or help preparing exemption requests, please contact your immigration counsel or legal advisor.

Akerman will continue to monitor developments and provide updates as new agency guidance is released.

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