



STATE DEPT. EXEMPTS CERTAIN TRAVELERS FROM RESTRICTIONS: IS THERE A BETTER WAY SO THAT THE LEAST NUMBER GET IMPACTED?

Posted on February 16, 2021 by Cyrus Mehta

On February 10, 2021, the Department of State (DOS) [announced](#) that certain business travelers, investors, treaty traders, academics, students, and journalists may qualify for national interest exceptions under the Presidential Proclamation (PP) covering travelers from the Schengen Area, United Kingdom (UK), and Ireland. Qualified travelers who are applying for or have valid visas or Electronic System for Travel Authorization (ESTA) may travel to the United States while the PP remains in effect following the procedures below, DOS said.

Also, on January 28, 2021, DOS [announced](#) that certain H-2 travelers from South Africa may qualify for national interest exceptions.

Students traveling from the Schengen Area, the UK, and Ireland with valid F-1 and M-1 visas do not need to contact an embassy or consulate to seek an individual national interest exception to travel. Students seeking to apply for new F-1 or M-1 visas should check the status of visa services at the nearest embassy or consulate. Applicants who are otherwise qualified for an F-1 or M-1 visa will automatically be considered for a national interest exception to travel.

Business travelers, investors, academics, J-1 students, journalists, and treaty traders who have a valid visa in the appropriate class or an ESTA authorization issued before the PP's effective date, or who are seeking to apply for a visa, and believe they may qualify for a national interest exception should contact the nearest U.S. embassy or consulate before traveling. If a national interest exception is approved, they may travel on either a valid visa or ESTA authorization, as appropriate.

"Granting national interest exceptions for this travel to the United States from

the Schengen area, UK, and Ireland, will assist with the economic recovery from the COVID-19 pandemic and bolster key components of our transatlantic relationship," DOS said.

H-2A and certain H-2B travelers who have been present in South Africa may qualify for national interest exceptions "if they are providing temporary labor or services essential to the United States food supply chain." A non-exhaustive list of covered occupations includes seafood processors, fish cutters, salmon roe technicians, farm equipment mechanics, and agriculture equipment operators. Applicants applying for a visa will be considered for an exception at the time of interview, DOS said. "Travelers who already hold valid H-2A or food-supply-chain related H-2B visas and believe they meet the exception criteria should follow the procedures set forth on the Embassy/Consulate website where their visa was processed for consideration for an exception," DOS said. The exception criteria only apply to H-2 travelers and applicants subject to a January 25, 2021, Presidential Proclamation due to physical presence in South Africa.

DOS said it continues to grant national interest exceptions for qualified travelers seeking to enter the United States for purposes related to humanitarian travel, public health response, and national security.

Is There a Better Way?

While these exceptions are indeed salutary, the Covid-related proclamations instituted by Trump and [continued](#) by Biden still cause untold hardship. Moreover, nothing has been done to alleviate the hardship of those impacted by Trump's immigrant visa ban, Proclamation 10014, and work visa ban, Proclamation 10052, that were instituted by Trump under the cover of Covid-19 but were actually based on the erroneous theory that noncitizens entering the US on legitimate visas threatened the jobs of US workers during the pandemic. Although these two proclamations were [extended](#) by Trump at the end of December 2020 with a validity date of March 31, 2021, that end period is too far away and continues to separate noncitizens from family members and employers in the US. Biden should immediately rescind these two proclamations.

While I am not a health expert, all these proclamations inherently have exceptions. For instance, US citizens and lawful permanent residents are exempted from the travel ban. These travelers could also potentially have

Covid-19 when they come to the US. Does it not make more sense for all travelers to demonstrate that they are Covid negative before they travel to the US through a test result? The US has already [imposed this requirement](#) as of January 26, 2021. If there is concern that one who tests negative may still contract the infection after the test and while travelling to the US, then there could also be a few days of quarantine imposed on the traveler upon entering the US. As the vaccine gets more prevalent, then one who has had the vaccine could also be allowed to travel to the US, although there will be many, especially from poorer countries, who may not have the same access to the vaccine as those from richer countries. Some may not be able to take the vaccine for medical or personal reasons. Therefore, rather than require a mandatory "[vaccine passport](#)" in the near future, a traveler ought to be allowed entry into the US based on either a negative test result or upon proving they have have been vaccinated.

These safeguards would eliminate the need to have area wide and country bans related to Covid-19. Proclamations 10014 and 10052 are in any event not based on concerns of spreading Covid-19 in the US. There must be a more scientific way of preventing the spread of Covid-19 by ensuring negative test results, and subsequently being vaccinated, rather than use the immigration system to block legitimate noncitizen travelers to the US and thus eliminate the needless hardship to them.