

TRAVEL ADVISORY FOR EMPLOYEES WHO ARE ON NON-IMMIGRANT WORK VISAS OR LAWFUL PERMANENT RESIDENT EMPLOYEES

The current Administration has made it clear that non-immigrants in the United States are not automatically entitled to enter the United States or re-enter the United States, even if they have a valid I-797 non-immigrant approval notice AND valid corresponding visa stamp in their passport.

It has also stated that lawful permanent residents in the United States are also not automatically entitled to re-enter the United States if it determines the lawful permanent resident is inadmissible due to any grounds of inadmissibility (arrest/charge/or conviction of certain crimes) or engaged in activities the Administration considers as aligning with terrorists.

In light of the current Administration's heightened scrutiny of travelers seeking entry into the United States who are not U.S. citizens, all nonimmigrant employees (i.e. H-1B, TN, Ls, Os, etc.), foreign students/scholars and their dependents, should take the following into consideration when determining whether they should travel outside of the United States and/ or as they make their international travel plans:

a. Make Sure You Have a Valid Visa Stamp and a Copy of the I-797 Approval Notice to Re-Enter the United States After Travel Abroad

Nonimmigrants, except citizens of Canada, who return home or travel to another country, must have a valid visa (preferably a multiple-entry visa) in their passport to accompany their I-797 Approval Notice to re-enter the United States. Your passport should also be at least valid for the period of the requested period of employment/period of stay in the United States.

Non-immigrant visas are obtained at U.S. Consulates abroad and each U.S. Consulate varies in its procedures and processing times. Nonimmigrant travelers should double-check travel and visa restrictions before traveling and allow sufficient time for the visa process.

Due to the increased security and mandatory interviews at all Consulates, visa issuance processing times are unpredictable. We recommend you allow a minimum of 3 to 4 weeks for the visa process. We strongly recommend scheduling any consular visa appointments before traveling outside the United States to ensure you are able to schedule a timely visa appointment.

Please note, however, that consular appointments can be cancelled or rescheduled with little advance notice, and this could significantly impact your ability to promptly return to the United States. Furthermore, it is possible that travel restrictions could be imposed with little advance notice, and that any such travel bans or restrictions may also complicate your ability to return to the United States.

Nonimmigrants in the United States who travel to Canada or Mexico for fewer than 30 days are only required to show a valid I-94 record: a visa is not required to re-enter the United States. This rule allows individuals to keep the I-94 record and re-enter based on the I-94 record and the I-797 Approval Notice. Please note that individuals who have applied for a new visa while abroad and are denied, may not benefit from this process, and in fact, may not be allowed to re-enter the United States. Before traveling outside the United States, without a valid visa, anyone in non-immigrant status should carefully review all requirements and eligibility.

b. Plan for Visa Issuance Delays

Non-immigrants who will need to apply for a visa to reenter the United States should be aware of delays in visa issuance. The delays may be caused when a visa application is subject to administrative processing, where the U.S. consulate needs additional time to process a visa application. There has been an uptick in administrative processing delays in recent months at U.S. consulates.

c. Limited or Lack of Visa Appointments

Non-immigrants who need to apply for a visa to re-enter the United States should schedule a visa appointment before departing the United States to confirm their ability to obtain a visa appointment that aligns with their planned return trip to the United States. Visa applicants across the world have experienced technical difficulties in recent months, with consulates' visa appointment scheduling systems that have prevented them from securing an appointment (in many cases, for weeks to months).

d. Potential Travel Bans or Heightened Review for Certain Countries

The current Administration has announced that it intends to issue travel bans similar to the travel ban implemented during his first administration. The implementation of any travel ban will cause turmoil and challenges for U.S. Consulates and Embassies worldwide and could reduce appointment availability or increase wait times for appointments.

The targeted groups who may be subject to such travel bans have not been clearly defined, nor do we know when the travel bans might commence. Please check whether the country from which you may be returning from to the United States or your country of nationality is on the list of proposed travel ban countries or similar list.

e. Do You Need to Travel Abroad? Be Aware That You Can Be Denied Entry into the U.S.

We cannot guarantee you will be allowed to re-enter the U.S. when you travel abroad. The heightened scrutiny by the current administration makes it more precarious than ever for non-immigrants who travel abroad and seek re-entry to the U.S.

When requesting entry to the United States at a Port of Entry or airport, Customs and Border Protection (CBP) may ask questions regarding the length of your visit, the nature of your visit, whether you plan to work in the United States, the terms and conditions of that employment (including the name of your employer, your job title, salary, and worksite location), and any intent to remain in the United States. It is essential that your

answers be truthful and responsive to the questions asked by CBP, and your answers should be consistent with the visa or status you are requesting (including your non-immigrant application).

CBP retains the authority to conduct searches of electronic devices during the inspection process at a Port of Entry or in an airport. This includes physical inspection of any electronic devices in your possession at the time of entry, including your cell phone, iPad, and laptop. Note that CBP also retains the authority to conduct a search of your social media accounts and postings.

The decision by CBP or the U.S. government to allow a foreign national to re-enter the United States is discretionary.

f. Consult with Immigration Counsel Prior to Travel

Prior to any foreign travel it is critical for nonimmigrant travelers to consult with immigration counsel to ensure they have sufficient information to make an informed choice about departure, to make contingency plans if their readmission is delayed, and to ensure they have the documentation and information needed to apply for readmission into the United States.

For more information or specific legal advice,, visit the Fredrikson Immigration Group's website at Fredlaw.com/Immigration or contact us via email at immigration@fredlaw.com or (612) 492-7648.

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