

## Resources

### Judge Halts Presidential Proclamation Suspending Visas for Immigrants Without Health Insurance

November 6, 2019

The U.S. District Court in Portland, Oregon, issued a 28-day temporary restraining order (TRO) in an unusual weekend session just before the “Presidential Proclamation on Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System” was to go into effect on November 3, 2019. Judge Michael H. Simon agreed to “freeze things the way they are” so a determination can be made on the merits of the case. A hearing on a preliminary injunction has been set for November 22, 2019.

On October 4, 2019, The White House released a presidential proclamation suspending the entry of immigrants who “Will Financially Burden the United States Healthcare System.” This order would bar entry to the United States of immigrants unless they (a) “will be covered by approved health insurance” within 30 days of entry, or (b) possess “the financial resources to pay for reasonably foreseeable medical costs.”

The order was scheduled to go into effect on November 3, 2019, and would only apply to individuals applying for immigrant visas at a U.S. Consulate or Embassy abroad.

These applicants would be required to provide proof they will be covered by approved health insurance within 30 days of their entry into the United States. Applicants would be required to provide documentation to the U.S. consular officer showing they will not financially burden the U.S. healthcare system, to the satisfaction of the consular officer before an immigrant visa would be issued.

Approved health insurance includes coverage under any of the following plans or programs:

- an employer-sponsored plan including a retiree plan, association health plan, and coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1985;
- an unsubsidized health plan offered in the individual market within a State;
- short-term limited duration health policy effective for a minimum of 364 days or until a planned departure from the United States;
- a catastrophic plan;
- a family member’s plan;
- a medical plan under chapter 55 of title 10 USC, including coverage under the TRICARE program;
- a visitor health insurance plan effective for a minimum of 364 days or until a planned departure from the United States;
- a medical plan under the Medicare program; or
- any other health plan that provides adequate coverage for medical care as determined by the Secretary of Health and Human Services.

This order would not apply to individuals currently in the U.S. applying for “adjustment of status” to permanent resident through the Department of Homeland Security, U.S. Citizenship and Immigration Service. The order also would not apply to:

- children of U.S. citizens (natural or adopted);
- any person holding a valid immigrant visa issued before November 3, 2019;

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- applicants for a Special Immigrant Visa in either SI or SQ classification who are also nationals of Afghanistan or Iraq (including spouse and children);
- applicants under IR-5 investor category, provided their sponsor demonstrates they would not impose a substantial burden on the U.S. healthcare system;
- applicants under SB-1 Returning Resident category; and
- children under the age of 18 unless they are accompanying a parent who would be subject to the order.

Further, the Proclamation would not affect an individual's eligibility for asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This is different from the DHS's public charge rule, which was scheduled to go into effect on October 15, 2019. On October 11, 2019, this rule was enjoined by multiple courts stopping the rule from taking effect.

The U.S. Department of State (DOS) published its new public charge rule on October 11, 2019, which was set to take effect at U.S. Consulates abroad on October 15, 2019. It is not clear what public charge standard will apply to immigration cases where the interview will be held outside the U.S. because the new DOS rule is related to the DHS rule that the courts just blocked. Currently, DOS has not yet implemented the new rule.

For more information about this and other immigration issues, please contact the author of this alert, James G. Aldrich, Jr., at [jaldrich@dykema.com](mailto:jaldrich@dykema.com) or 248-203-0583.

## Attorneys

James G. Aldrich

## Practice Areas

Immigration

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