
State Department Rescinds Travel Ban Exceptions for Many Travelers from the European Schengen Area, UK, and Ireland

On March 2, 2021, the U.S. State Department rescinded guidance that had permitted some non-citizens to travel to the U.S. despite the COVID-19 related ban on travel from the Schengen Region, UK and Ireland. The State Department replaced it with new guidance that is effective immediately and is more restrictive. The previous and new guidance allow travelers who meet certain criteria to request an exception under the “National Interest” category, which allows them to fly directly to the United States without having to travel to a non-impacted country for fourteen (14) days. Following this update from the State Department, only travelers who fall within a few specific categories will qualify for a National Interest Exception, including travelers who provide vital support for critical infrastructure sectors.

As a result of this new policy from the State Department, we expect to see widespread cancellations of applications for new visa applications and much more limited approval of National Interest Exceptions. Travelers with valid visas looking to return to the U.S. from affected regions may elect to return to the U.S. by way of a non-impacted country. However, they must plan to remain for at least 14 days outside of the impacted region before proceeding to the U.S.

Individuals who were exempt from these travel restrictions as a U.S. citizen, green card holder, qualifying family member, including the spouse or minor child, of a U.S. citizen or green card holder, or the parent of a minor U.S. citizen or green card holder are still able to return to the United States.

Background

As a result of the coronavirus pandemic, various presidential proclamations have suspended routine travel from the Schengen Area, the United Kingdom and Ireland in an effort to reduce the spread of COVID-19. These proclamations are designed to limit non-essential travel from the impacted areas to the United States, with very limited exceptions built in for U.S. citizens and their families, legal permanent residents and their immediate family members, certain health care workers, and those whose travel is deemed to be in the U.S. national interest.

Under the proclamations, affected individuals are unable to travel to the U.S., or be issued a visa, if they have been in one of the designated regions within the 14 days prior to their arrival in the U.S.

In June 2020, the State Department issued updated guidance, providing some relief through “national interest exceptions” for certain categories of travelers. Through this national interest exception, or “NIE,” individuals were able to request a travel exception through a U.S. Consulate

in order to return directly to the U.S. following their stay in an affected region. Included in the new exceptions were professional athletes, treaty investors and traders, and business travelers engaged in “significant business” that would be beneficial to the U.S. economic recovery. This expanded availability of exceptions created much greater opportunity for travel, and while we have encouraged our clients to limit international travel throughout the pandemic, NIE availability has permitted them to carry out crucial business activities to some degree when absolutely necessary.

March 2, 2021, Revision

On March 2, 2021 the State Department rescinded this NIE expansion and limited the categories under which individuals could apply for a travel exception. Under the new guidelines, NIE waivers will be limited to those categories identified in the original proclamation and limited additional categories:

Automatic Exemptions – can board flights to the U.S. without prior authorization from an Embassy or U.S. customs (CBP):

- U.S. Citizens and lawful permanent residents (green card holders);
- Spouses and children (under age 21) of U.S. citizens and lawful permanent residents;
- Parents or legal guardians of U.S. citizens or lawful permanent residents, as long as the child is unmarried and under age 21
- Siblings of U.S. citizens or lawful permanent residents, provided both are unmarried and under age 21;
- Students (F and M visa holders);
- Crew members traveling on C1/D visas;
- Invitees of the U.S. government traveling for purposes of virus mitigation;
- Diplomats and employees of international organizations on certain A, C, G and NATO visas;
- Travelers whose activities would be in the U.S. national interest.

Categories who may apply for a NIE through an Embassy or Consulate:

- J-1 academic and Research Scholars;
- Journalists;
- Workers who directly offer “vital support” of U.S. critical infrastructure sectors;
- Travelers engaged in activities related to humanitarian relief, public health response and national security.

Categories that no longer automatically qualify for NIE waivers:

- Professional athletes;
- Technical Experts and Specialists;
- Senior managers and executives;
- Treaty traders and investors;
- Dependents of the above.

NIEs, where granted, will continue to be valid for one entry and thirty days. Thus, each trip requires a new justification and NIE.

Recommendations

Given this new guidance, we strongly recommend that employers and individuals postpone international travel to any of the impacted areas at this time, unless the individuals traveling falls clearly within one of the identified exceptions from the travel ban. The State Department announcement of March 2, 2021 specifically applies to NIEs for travel from the United Kingdom, Ireland and the Schengen Area (comprising 26 European states, including: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland). There are also currently travel restrictions in place for travel from Brazil, China, Iran and South Africa. Any individuals who travel to one of these regions should anticipate having to return via a third country, after spending 14 days outside of the impacted region.

Additionally, we anticipate that most new visa applications will be cancelled or denied, unless the applicant can make a clear showing that they are eligible for the NIE under these new guidelines. This includes applications for visa renewals. Visa denials under the travel ban will

be entered as “212(f)” refusals, which should allow for issuance upon conclusion of the travel ban without a new application being made.

If you have questions about whether your employees or family members may be eligible for an NIE under the new limitations, or would like advice on utilizing the third-country option for traveling while these restrictions remain in place, please contact your account manager or normal point-of-contact at Pryor Cashman.

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