



Department of State Announces New Restrictive Criteria for National Interest Exceptions for Travelers from the Schengen Area, the United Kingdom, and the Republic of Ireland

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In February 2020, as a result of the COVID-19 global pandemic, former President Trump signed a Presidential Proclamation that instituted travel restrictions on foreign nationals traveling to the U.S. from certain countries, unless those foreign nationals could establish that they met one of the enumerated exceptions. The list of exceptions included a National Interest Exception (NIE) whereby foreign nationals could enter the U.S. if they could establish that their entry would be in the national interest of the U.S., using broad criteria issued by the Department of State.

However, on March 2, 2021, the U.S. Department of State rescinded the previous NIE criteria and announced more restrictive requirements for the exceptions to entry. Recall that President Biden signed a Presidential Proclamation on January 25, 2021 that reinstated the travel restrictions for noncitizens of the U.S. who have been physically present in the **Schengen Area** (including 26 European countries), the United Kingdom, the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa, within the 14-day period preceding their entry or attempted entry into the U.S., unless the traveler qualified for one of the listed exceptions, including an NIE. The categories of travel that are considered in the "national interest" for purposes of seeking an exception to Biden's March 2, 2021 Proclamation have been narrowed significantly in scope.

Specifically, with respect to travelers from the Schengen Area, the United Kingdom, or the Republic of Ireland, this announcement now prohibits the issuance of NIEs for certain technical experts and specialists, senior-level managers and executives, treaty-traders and investors (E-1 and E-2 visas), professional athletes, and their dependents, all of whom were previously eligible for consideration for an NIE. The Department of State confirmed that previously issued visas or NIEs will not be revoked due to the new policy.

In addition, the Department of State added a new national interest determination covering certain

travelers seeking to provide vital support for **critical infrastructure** as defined by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency. Relevant guidance suggests that "vital support" pertains to the installation, acquisition, maintenance, and essential safety training necessary to sustain the supply and production chains in the referenced sectors, as well as other functions performed by specialists or other individuals that are essential to continuity within a given sector.

Relevant guidance also suggests that travel that would directly support the creation or retention of U.S. jobs may qualify for an NIE. The applicant will be required to demonstrate that the proposed activity must physically take place in the U.S. and cannot be postponed or conducted remotely. This exception is expected to be granted only rarely and is designed for substantial job creation or retention efforts.

The Department of State also confirmed that students traveling from the Schengen Area, the United Kingdom, or the Republic of Ireland with valid F-1 and M-1 visas do not need to seek an individual NIE to travel to the U.S. Students who apply for a new F-1 or M-1 visa and are found to be otherwise qualified for an F-1 or M-1 visa will automatically be considered for an NIE.

The Department of State also continues to grant NIEs for qualified travelers seeking to enter the U.S. for purposes related to humanitarian travel, public health response, and national security. We previously provided an alert regarding the groups exempt from these travel restrictions [here](#).

It should be noted that embassies and consulates are beginning to cancel previously scheduled nonimmigrant visa interview appointments as a result of this announcement. Williams Mullen is closely monitoring the situation and will provide updates as further information becomes available.

Employers should be prepared for the current disruption in immigration services to continue while the COVID-19 pandemic remains fluid. As a result, employers should consult immigration counsel to ensure that any extensions or changes of status for their foreign national employees are processed timely and can account for any unexpected delays. Furthermore, foreign nationals should communicate with their employers if they have any travel plans in the coming months. The current travel restrictions could result in foreign nationals being denied admission back into the U.S. should they depart.

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