

Latest Presidential Proclamation Limits U.S. Entry by Certain Chinese Students and Exchange Visitors

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On Friday, May 29th, President Trump issued his latest Presidential Proclamation impacting U.S. immigration. This time, the proclamation limits entry into the U.S. as a nonimmigrant of certain nationals of the People's Republic of China (PRC) in F (student) or J (exchange visitor) status to study or conduct research in the U.S. This proclamation will go into effect at 12:00pm EST on Monday, June 1, 2020.

Specifically, the proclamation states:

"The PRC authorities use some Chinese students, mostly post-graduate students and post-doctorate researchers, to operate as non-traditional collectors of intellectual property. Thus, students or researchers from the PRC studying or researching beyond the undergraduate level who are or have been associated with the PLA are at high risk of being exploited or co-opted by the PRC authorities and provide particular cause for concern."

There is an important exemption for most undergraduate students, as they are apparently viewed as not having been as complicit as graduate-level students in passing on sensitive United States technologies and intellectual property (to modernize the PRC's military) to the PRC government. However, undergraduate students who are seeking to pursue U.S. studies and who either:

- Receive funding from or are currently employed by, study at or conduct research at or on behalf of an entity in the People's Republic of China that implements or supports the PRC's "military civil fusion strategy"; or
- Have been employed by, studied at or conducted research at or on behalf of an entity in the People's Republic of China that implements or supports the PRC's "military civil fusion strategy"

will also be unable to enter the U.S. for the purposes of study once the proclamation comes into force. The proclamation will remain in place until removed by the President.

Who is Not Impacted?

The proclamation carves out several categories of PRC citizens who are not subject to this suspension, including:

1. Lawful permanent residents of the United States;
2. Spouses of a United States citizen or lawful permanent resident;
3. Members of the United States Armed Forces, and spouses and children of members of the United States Armed Forces;

- i. Any alien whose travel falls within the scope of section 11 of the United Nations Headquarters Agreement or who would otherwise be allowed entry into the United States pursuant to United States obligations under applicable international agreements;
- ii. Any alien who is studying or conducting research in a field involving information that would not contribute to the PRC's military-civil fusion strategy, as determined by the Secretary of State and the Secretary of Homeland Security, in consultation with the appropriate executive departments and agencies (agencies);
- iii. Any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee; and
- iv. Any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Additionally, the proclamation does not limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

What's Next for Citizens of the PRC in the United States?

Citizens of the PRC currently in the U.S. may also be at risk of losing their visas and/or status. The proclamation specifically stated that the Secretary of State may also consider "whether nationals of the PRC currently in the United States pursuant to F or J visas and who otherwise meet the criteria described above should have their visas revoked pursuant to section 221(i) of the INA, 8 U.S.C. 1201(i)."

This latest proclamation also echoed an earlier statement affirming that the U.S. Secretary of State will continue reviewing nonimmigrant and immigrant programs, and stated that he will make recommendations to the President on "other measures requiring Presidential action that would mitigate the risk posed by the PRC's acquisition of sensitive United States technologies and intellectual property." As such, immigrant visas and additional types of nonimmigrant visas to the U.S. for citizens of the PRC may also be under the microscope.

Please contact your LMWF immigration team member with questions or concerns regarding how this latest Presidential Proclamation may impact you or your business.

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