

## UPDATE: COVID-19 Vaccine Requirement Remains in Place for Immigration and Travel to the U.S.



# Immigration Blog

By [Elizabeth M. Klarin](#)

February 7, 2023 | **IMMIGRATION**

Foreign travelers entering the United States continue to be required to [present proof of being fully vaccinated for COVID-19](#) before travel, after the U.S. Transportation Security Administration (TSA) issued an extension of vaccine mandates earlier this month that will last until April 10, 2023.

These restrictions apply to non-U.S. individuals who are traveling for both essential and non-essential reasons; they do not apply to U.S. citizens, Lawful Permanent Residents, or U.S. nationals. There are currently no legal or official policy-related exceptions to the travel restrictions if you are not vaccinated for COVID-19.

While the U.S. has generally removed its prior requirement that travelers entering the U.S. present a negative COVID-19 test—largely in line with similar removal of testing requirements by countries around the world in the latter half of 2022—a new order put in place in January 2023 does require certain travelers to continue to test for COVID-19 before being admitted to the U.S.

Specifically, air passengers two years of age and older traveling to the United States from China, Hong Kong, or Macau, and those traveling from Seoul, Toronto, and Vancouver who have been in China, Hong Kong, or Macau in the past 10 days, are required to show a negative COVID-19 test result taken no more than 2 days before their flight departs. Those who had COVID-19 in the 90 days before their travel to the United States can instead show documentation of recovery from COVID-19.

### **Is anyone getting into the country without being vaccinated?**

In addition to widespread mainstream media reports that thousands are entering the U.S. across the U.S.-Mexico border without being vaccinated, several of our clients have entered the country along the northern border with Canada without having received the vaccine. This comes down to whether the individual is asked by the admitting U.S. Customs and Border Protection (CBP) officer whether they have been vaccinated. If they are asked about their COVID-19 vaccination status, and lie, this can come with some blistering consequences down the road if they apply for a different status (such as permanent resident). It's possible that during their interview for status, they would be asked how they entered the country without being vaccinated for COVID-19, during a time when the government was requiring the vaccine to enter—and an officer may presume that the individual lied upon entry even if this did not occur. It would be difficult to prove that they did not lie, since there could easily be a presumption that the admitting CBP officer must have asked about vaccination status when the person entered, and that the individual could only have been admitted because they answered in the affirmative.

We have also had some clients answer “yes” to the question “Have you been vaccinated”, because they have received other vaccines, but not the COVID-19 shot(s)—since technically, they were not asked specifically about the COVID-19 vaccine. Again, this approach comes with similar risk, if applying for certain types of status in the U.S. down the road.

### **How do I change status if I have successfully entered the U.S. without having received the COVID-19 shot?**

Individuals applying to change their status from visitor to a non-immigrant work authorized status (such as E, L, O, P, TN, etc.) in the U.S. are generally not required to show proof of having received the COVID-19 shot(s).

For intending immigrants already in the U.S. who remain unvaccinated for COVID-19, or those seeking entry as immigrants without having received the shot(s), a waiver of inadmissibility may be available, based on individual circumstances. Immigrants wishing to receive permanent residence without having received the COVID-19 shot(s) can file an I-601 application for waiver of grounds of inadmissibility. These waivers are granted at the discretion of the officer adjudicating them and can result in the individual receiving an exemption from the COVID-19 vaccination requirement.

However, intending immigrants should prepare for a long wait. Current processing times for these types of waiver requests are more than two years, and certain applicants cannot even apply until they have had their interview with a U.S. Consular officer for their immigrant visa. Applicants for permanent residence applying from within the U.S. can apply for the waiver concurrent with their application for permanent residence.

Please check the [U.S. Department of Homeland Security](#) and [CDC](#) websites for the latest updates on COVID-related travel restrictions and requirements.

For more information on this topic, please contact [Elizabeth Klarin](mailto:eklarin@lippes.com); ([eklarin@lippes.com](mailto:eklarin@lippes.com), 716.853.5100, ext. 1288) or a member of the Lippes Mathias [Immigration](#) practice team.

*This article was originally published by The Lawyer's Daily ( [www.thelawyersdaily.ca](http://www.thelawyersdaily.ca)), part of LexisNexis Canada Inc.*

## Related Team



**Elizabeth M. Klarin**  
Partner



**Nisha V. Fontaine  
(Jagtiani)**  
Partner



**Eileen M. Martin**  
Partner | Team Co-  
Leader - Immigration  
| Team Leader -  
Canada-U.S. Cross  
Border



**Andrew M. Wilson**  
Partner | Chief  
Advisory Officer |  
Team Co-Leader -  
Immigration

**Disclaimer:** The information in this post is provided for general informational purposes only, and may not reflect the current law in your jurisdiction. No information contained in this post should be construed as legal advice from our firm or the individual author, nor is it intended to be a substitute for legal counsel on any subject matter. No reader of this post should act or refrain from acting on the basis of any information included in, or accessible through, this post without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a lawyer licensed in the recipient's state, country or other appropriate licensing jurisdiction.