



U.S. DEPARTMENT OF STATE GUIDANCE ON NATIONAL INTEREST EXCEPTIONS TO NON-IMMIGRANT VISA BAN

On 12th August 2020, the U.S. Department of State (DoS) issued [guidance](#) on “National Interest Exemptions” to the Presidential Proclamations suspending entry of certain immigrant and nonimmigrant (H-1B, H-2B, and L-1) visa holders into the United States, issued in April-2020 and June-2020 (P.P. 10014 and 10052). Both Proclamations included exceptions for individuals whose entry to the U.S. would be in “national interest”, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

The National Interest Exceptions includes potential carve-outs/ exemptions for technology workers on H-1B/ L-1 visas providing critical infrastructure services, per the DHS CISA guidance; a key ask by NASSCOM and the Indian tech industry. It also includes exceptions for H-1B/ L-1 visa-holders who would be returning to the U.S. in the same position with the same employer and visa classification. NASSCOM has consistently raised the importance of visa holders working within the tech sector, particularly those who would be delivering services designated essential per the DHS CISA “Guidance on the Essential Critical Infrastructure Workforce”, particularly those who would be returning to the U.S. in the same position with the same employer and visa classification.

NASSCOM welcomes this move and believes it will help U.S. businesses access talent critical to the economic recovery phase in the post-COVID world. However, we remain “cautiously optimistic” – as caveats in the DoS guidance about seniority, unique and significant contributions and/or other factors that go along with the exceptions still allow a lot of leeway in interpretation of the new guidance. The impact can only be gauged in course of time. That said, we believe this is a step in the right direction and encourage the implementing agencies to ensure U.S. businesses’ access to critical talent is not hampered.
