

Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People's Republic of China

Summary:

On May 29, 2020, President Trump announced through a Presidential Proclamation further restrictions on certain foreign nationals affiliated with the People's Republic of China (PRC) who have also been affiliated with the People's Liberation Army (PLA). Discretion in carrying out the Presidential Proclamation is given to the U.S. Department of State (DOS). In the broadest sense, this proclamation could potentially ban all Chinese STEM graduate students and J-visa researchers. The burden to prove that an individual has no affiliation or support from a (PLA) connected institution or entity would fall on the visa applicant.

Visa revocations would greatly disrupt ongoing study and research in the U.S., forcing students and researchers to leave the country before completing their degree and research programs, and they may still be denied based on general inadmissibility. The number of individuals affected by the Proclamation is greatly dependent on the DOS' discretion, but even if the scope is narrow, it will likely have an impact on UC's education, research and health missions.

Analysis:

Section 1: Suspension and Limitation on Entry

Applies to all F- and J- visas except for undergraduates

- Specifies studies and research (postdocs)
- Applies to:
 - People's Republic of China (PRC) nationals
 - Any student or scholar affiliated with an entity that implements or supports the "military-civil fusion strategy" (MCS)
 - Conditions now or in the past.
 - Receives funding from;
 - Employed by;
 - Studies at; or
 - Conducts research at or on behalf of;
- Suspends entry into the U.S. (visa issuance and entry)

Section 2: Scope of Suspension and Limitation on Entry

Exempted individuals:

- U.S. permanent residents
- Spouse or children of U.S. residents or citizens
- Members of U.S. Armed Forces
- Those subject to international agreements
- *"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"*
- Those benefiting law enforcement
- Those benefiting U.S. national interests

Section 3: Implementation and Enforcement

- DOS to establish criteria and procedure for implementation of the Proclamation.
- DOS and U.S. Department of Homeland Security (DHS) given authority to enforce.
- Fraud warrants priority removal

Section 4: Termination

- In effect until terminated by the President.

Section 5: Effective Date

- June 1, 2020

Section 6: Additional Measures

- DOS will initiate a review of current F- and J- visa holders under the criteria and has the power to revoke existing visas.
- Within 60 days, DOS and DHS will recommend other PRC programs for additional measures.
- DOS and DHS will have authority to determine and initiate additional actions (without additional proclamations).
- DOS and DHS directed to develop supporting regulations and policies.

Impact & Proclamation FAQ: [Wolfsdorf Rosenthal LLP](#)

The proclamation suspends the entry of Chinese citizens into the U. S. pursuant to F-1 or J-1 visas seeking to study or conduct research in the U.S. at the graduate level, if the individual either currently or in the past:

- **Receives funding from;**
- **Is employed by;**
- **Studies at; or**
- **Conducts research for;**

Any entity in China that implements or supports the PRC's "military-civil fusion strategy." The term "military-civil fusion strategy" is defined as "actions by or at the behest of the PRC to acquire and divert foreign technologies, specifically critical and emerging technologies, to incorporate into and advance the PRC's military capabilities."

What about individuals who are already in the United States?

At this time, the Order only affects individuals seeking entry into the U.S., not those already present in the U.S. However, there is a provision which directs the Secretary of State to consider whether nationals of China currently in the U.S. pursuant to F or J visas and who otherwise meet the criteria should have their visas revoked.

What about undergraduate students?

The Order does not apply to undergraduate students. The Order specifically exempts F or J visa holders seeking to pursue undergraduate study in the U.S.

Who will determine whether an F or J visa holder is subject to the ban?

The Secretary of State (Mike Pompeo) or his designee, in his sole discretion. In reality, this means that consular officers at U.S. consular posts worldwide will be charged with this determination.

What about immigrant visas?

At this time, this order does not apply to immigrant visas, or other classifications of nonimmigrant visas. However, the Order directs the Secretaries of State and Homeland Security, within 60 days, to review nonimmigrant and immigrant programs and recommend to the President any other measures that "would mitigate the risk posed by the PRC's acquisition of sensitive United States technologies and intellectual property."

Does the Order impact immigration filings for Chinese nationals with USCIS in the United States?

No, not at this time.

Who does the Order exempt?

The proclamation does NOT apply to:

- Students pursuing undergraduate education
- Lawful permanent residents of the US
- Spouses of US citizens or US Lawful Permanent Residents
- Members of the United States Armed Forces, their spouses or children
- Individuals whose travel falls within the scope of the United Nations Headquarters Agreement
- Individuals 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 Departments of State and Homeland Security
- Individuals whose entry would further US law enforcement objectives as determined by the Departments of State and Homeland Security, and based on a recommendation of the Attorney General
- Individuals whose entry would be in the national interest, as determined by the Departments of State and Homeland Security, and based on a recommendation of the Attorney General

This proclamation does not limit the ability for individuals to seek asylum, refugee status, withholding of removal or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.