

The Trump Administration Contemplates an Executive Order Affecting Advance Parole

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It has been reported that President Trump's administration is likely preparing to effectuate additional changes affecting immigration issues. Specifically, in addition to the Executive Order executed on Jan. 27, 2017, the administration is reportedly working on additional Executive Orders, a released draft of which addresses the availability and use of advance parole, among other issues which pertain to employment-based immigration. Advance parole enables return to the United States after international travel for those who are in the process of applying for permanent residence while living in the United States. Parole is also available to other classes of foreign nationals, including asylees, as well as those granted this ability via the Deferred Action for Childhood Arrivals program. Based on the released drafts of the Order, it is possible that, when signed and implemented, it could severely curtail the ability of foreign nationals to be able to re-enter the United States after international travel using Advance Parole. Therefore, until further information is available, employers may consider advising their foreign national employees fitting the above description to refrain from international travel at this time. Likewise, foreign nationals who have applied for or currently have valid advance parole should consider remaining in the United States until further information regarding the Order is available.

Importantly, those individuals who are maintaining temporary visa status such as H-1B, L-1A, or L-1B are not subject to this caution. In fact, because the H-1B and L-1 regulations specifically allow for permanent intent while in the United States, foreign nationals are able to continue to maintain and extend these visa statuses even while their green card applications are pending in the United States. Therefore, they have the ability to utilize their valid H-1B and L-1 visas for international travel, rather than the advance parole issued as part of the green card application process. Based on this, as well as on the draft language of the administration's Executive Order, foreign nationals and employers may wish to consider ensuring that, where possible, H-1B or L-1 visa status is extended throughout the green card application process and until green card approval. Notably, those foreign nationals in the United States who were in F-1, J-1, O-1, H-1B1, E-1, E-2, E-3, TN, or a number of other visa statuses at the time of their green card applications will not be able to maintain their visa status throughout the green card application travel if they intend on traveling internationally, because of the temporary intent requirements of these visas.

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