

Business or employment related travel to the USA during ban

Synopsis

Bear in mind that the travel ban requirements and exceptions are likely to keep changing based upon the state of the pandemic. Thus, before traveling, it would be prudent to check the latest developments on the consular websites.



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Khanna is a member of the Virginia and D.C. Bars and the principal of the Law Offices of Rajiv S. Khanna, PC. Since 1993, he has focused his and the firm's practice on employment and business-based immigration and related administrative and federal audits, investigations and litigation. The firm represents individuals and businesses from every major city in the US and internationally.

The travel bans necessitated by the COVID pandemic have created much flux and uncertainty. Synthesizing the information now finally available from various US government sources, it is clearer now that many intending travelers can seek and obtain an exemption from the ban under a series of provisions for a National Interest Exception (NIE).

Do you Qualify for an NIE?

You should be able to apply for an NIE to overcome the ban on travel to the USA if you meet any one or more of the following categories:

- Travelers providing vital support or executive direction for significant economic activity in the United States
- Those traveling to alleviate the effects of the COVID-19 pandemic or to continue ongoing research in an area with substantial public health benefit (e.g., cancer or communicable disease research)
- Students (F, M, and certain J visas) as described here. New or returning students present in China, Brazil, Iran, South Africa, or India may arrive no earlier than 30 days before the start of an academic program beginning August 1, 2021, or after, including optional practical training (OPT)
- Academics (certain J visas to include those in the professor, research scholar, short-term scholar, or specialist categories)
- Journalists (I visas)
- Pilots and aircrew traveling for training or aircraft pickup, delivery, or maintenance
- Medical escorts, legal guardians, or other escorts required by an airline or legally required by a foreign medical or law enforcement entity accompanying a US citizen being repatriated to the United States
- Travelers contributing to US national security
- Travelers providing executive direction or vital support for one of the following 16 critical infrastructure sectors, their directly linked supply chains, or for work on their assets, systems, and networks, whether physical or virtual:

1. Chemical Sector includes

- Basic chemicals
- Specialty chemicals

- Agricultural chemicals
- Pharmaceuticals
- Consumer products

2. Commercial Facilities Sector

The Commercial Facilities Sector includes a diverse range of sites that draw large crowds of people for shopping, business, entertainment, or lodging. The Commercial Facilities Sector consists of eight subsectors:

- Entertainment and Media (e.g., motion picture studios, broadcast media).
- Gaming (e.g., casinos).
- Lodging (e.g., hotels, motels, conference centers).
- Outdoor Events (e.g., theme and amusement parks, fairs, campgrounds, parades).
- Public Assembly (e.g., arenas, stadiums, aquariums, zoos, museums, convention centers).
- Real Estate (e.g., office and apartment buildings, condominiums, mixed-use facilities, self-storage).
- Retail (e.g., retail centers and districts, shopping malls).
- Sports Leagues (e.g., professional sports leagues and federations).

3. Communications Sector (often is interconnected with several other sectors)

4. Critical Manufacturing Sector

The Critical Manufacturing Sector includes the following nationally significant manufacturing industries: Primary Metals Manufacturing, Machinery Manufacturing, Electrical Equipment, Appliance, and Component Manufacturing, and Transportation Equipment Manufacturing)

5. Dams Sector (comprises dam projects, navigation locks, levees, hurricane barriers, mine tailings impoundments, and other similar water retention and/or control facilities)

6. Defense Industrial Base Sector (enabling research, development, design, production, delivery, and maintenance of military weapons systems, subsystems, and components or parts to meet US military requirements)

7. Emergency Services Sector (providing a wide range of prevention, preparedness, response, and recovery services during both day-to-day operations and incident response)

8. Energy Sector (electricity, oil, and natural gas)

9. Financial Services Sector (depository institutions, providers of investment products, insurance companies, other credit and financing organizations, and the providers of the critical financial utilities and services that support these functions.)

10. Food and Agriculture Sector (farms, restaurants, and food manufacturing, processing, and storage facilities)

11. Government Facilities Sector (buildings, located in the US and overseas, that are owned or leased by federal, state, local, and tribal governments. This sector includes cyber elements that contribute to the protection of sector assets (e.g., access control systems and closed-circuit television systems) as well as individuals who perform essential functions or

possess tactical, operational, or strategic knowledge.)

12. Healthcare and Public Health Sector

13. Information Technology Sector

14. Nuclear Reactors, Materials, and Waste Sector

15. Transportation Systems Sector (includes pipelines, postal and shipping services, and all modes of transportation for people and materials)

16. Water and Wastewater Systems Sector

How to apply for an NIE

To apply in India, contact the Embassy or Consulate that issued your visa to request a national interest exception prior to travel:

- U.S. Embassy New Delhi: NewDelhiNIE@state.gov
- U.S. Consulate General Chennai: ChennaiNIE@state.gov
- U.S. Consulate General Hyderabad: HyderabadNIE@state.gov
- U.S. Consulate General Kolkata: KolkataNIE@state.gov
- U.S. Consulate General Mumbai: MumbaiNIE@state.gov

You can also apply for NIE concurrently with a visa. See: <https://in.usembassy.gov/visas/national-interest-exception-frequently-asked-questions/>

The consulate instructions provide in their FAQ that you must provide in an email “Travel purpose and national interest category, including a clear justification for receipt of an NIE.”

Note that an NIE does not dispense with the need to possess a valid visa. You will need both. Once granted, an NIE is valid for only 30 days and is available only for a single entry into the US. Visiting a third country even with an NIE in hand could create the need for another NIE.

Do you need to specifically apply for an NIE?

Certain travelers are not subject to the Proclamation and do not need to specifically request a National Interest Exception. These include (there are several other exceptions):

- F and M students who already possess a valid student visa and who will begin their studies on or after August 1, 2021, and
- Holders of nonimmigrant visas in the following categories:

1. C-1, D, C-1/D air and sea crew, and
2. Diplomats and officials: A-1, A-2, C-2, C-3, E-1, G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6

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