



## ADVISORY: PRESIDENTIAL PROCLAMATION BARRING THE ENTRY OF CERTAIN CHINESE NATIONALS

On Friday, May 29, 2020, the White House issued a [Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People’s Republic of China](#) (“the Proclamation”). Citing the Administration’s concerns that the People’s Republic of China “is engaged in a wide-ranging and heavily resourced campaign to acquire sensitive United States technologies and intellectual property, in part to bolster the modernization and capability of its military,” and that Chinese state authorities “use some Chinese students, mostly post-graduate and post-doctorate researchers, to operate as non-traditional collectors of intellectual property,” the Proclamation institutes a limited ban on entry into the United States for certain Chinese nationals.

Scope of Entry Ban. — Specifically, the Proclamation suspends entry into the United States of any Chinese F-1 student or J-1 exchange visitor who meets one of the following conditions:

- (1) The student or scholar receives funding from “an entity in [China] that implements or supports [China’s] ‘military-civil fusion strategy’” (a “Barred Entity”); or
- (2) The student or scholar is employed by, studies at, or conducts research at or on behalf of a Barred Entity or has been employed by, studied at, or conducted research at or on behalf of a Barred Entity.

By “military-civil fusion strategy,” the Proclamation refers to Chinese state-directed efforts “to acquire and divert foreign technologies ... to incorporate into and advance [China’s] military capabilities.”

**Note:** The Proclamation does not apply to a scholar who would enter the country on an H-1B, O-1, or any other nonimmigrant visa outside of an F-1 or J-1 visa.

**Note:** The Proclamation does not presently instruct that anyone currently present in the U.S. must be removed. However, the Proclamation calls for the State Department to consider whether to revoke the F-1 or J-1 visas of Chinese nationals who are currently present and meet the above criteria. It is not fully clear what is meant here by visa revocation: it could simply mean revocation of visa stamps that allow foreign nationals to reenter the United States, should they leave it while still in F-1 or J-1 status, or it could mean outright revocation of F-1 and J-1 status, and with it the right of these students and exchange visitors to remain the country.

Exceptions and Allowances. — The Proclamation exempts from the entry ban:

- Undergraduate students;
- Lawful permanent residents of the United States (*i.e.*, green card holders);

- Spouses of U.S. citizens or lawful permanent residents;
- Members of the United States Armed Forces and their spouses and children;
- Inbound travelers entitled to enter the United States per the terms of an international agreement;
- Researchers “in a field involving information that would not contribute to [China’s] military-civil strategy” (as determined by the Secretary of State and Secretary of Homeland Security);
- Persons “whose entry would further important United States law enforcement objectives” (as determined by the State Department and Department of Homeland Security, at the Justice Department’s recommendation); and
- Persons “whose entry would be in the national interest” (as determined by State or DHS).

In addition, the Proclamation makes clear that the entry ban will not preclude any person from petitioning for asylum, refugee status, withholding of removal from the United States, or U.S. protection under the Convention Against Torture.

Implementation and Enforcement. — The Proclamation charges the State Department with implementing its directives, including by identifying which Chinese nationals meet the criteria for the entry ban. These determinations will be made in the visa application process, which is managed by the State Department. (The Proclamation notably does not assign any direct authority to DHS, United States Citizenship and Immigration Services, or Customs and Border Protection to rule any Chinese national ineligible for entry under the ban criteria. This fact may or may not preclude CBP in practice from denying entry to a Chinese national who presents with a valid visa issued by the State Department, for reasons all its own.)

Implications. — We do not expect the immediate impact of the Proclamation to be significant, given (1) the existing bans on entry that the Administration has imposed due to the public health conditions occasioned by the worldwide COVID-19 (coronavirus) pandemic, and (2) the general suspension of visa processing services at U.S. embassies and consulates abroad, in the wake of the pandemic.

Nevertheless, the Proclamation purports to suspend entries of covered Chinese nationals indefinitely. If the ban remains in place after visa processing reopens, it seems likely that some or all F-1 and J-1 visa applications for Chinese nationals could be significantly delayed, as the State Department applies closer scrutiny to the work history and affiliations of applicants, so that it can determine whether or not they are subject to the Proclamation.

We will continue to look out for new developments in this space, including any position the State Department may take regarding F-1 and J-1 students currently present in the United States. In the meantime, if you have specific questions or concerns, we urge you to reach out to Brad Abruzzi in our Office ((617)495-0876; [bradley\\_abruzzo@harvard.edu](mailto:bradley_abruzzo@harvard.edu)) or Maureen Martin in the Harvard International Office ((617)496-2820; [maureen\\_martin@harvard.edu](mailto:maureen_martin@harvard.edu)).

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