



**Consulate General of the United States of America
Frankfurt am Main, Germany**

March 8, 2021

On behalf of the U.S. Mission to Germany, we would like to alert German businesses to changes to the National Interest Exception (NIE) policy for travelers to the United States.¹ The changes are significant and will impact business travelers in Germany. In particular, we expect that fewer individuals will be able to travel to the United States from the Schengen zone, and some travelers who previously received NIEs will no longer be eligible.

We hope the detailed information below will be helpful to you in planning business travel for your employees, but if you do have additional questions please email us at Frankfurtvisainquiries@state.gov. We look forward to assisting you!

I. Key Changes for Business Travelers

- On March 2, 2021, the Secretary rescinded the previous national interest determination that allowed certain technical experts and specialists, senior-level managers and executives, treaty-traders and investors, professional athletes, and their dependents to enter the United States.
- The Secretary has made a new national interest determination covering certain travelers seeking to provide “vital support of critical infrastructure sectors as defined by the Department of Homeland Security or critical infrastructure linked supply chain.”
- The change aims to combat the spread of COVID-19 by further reducing non-essential international travel. The new guidance will result in fewer NIE approvals if the travel does not provide vital support of critical infrastructure sectors or qualify for another available exception.
- All other NIE criteria remain in place. For example, these determinations do not apply to travelers subject to PP 10052 regarding the U.S. labor market (see Part III below for an overview of employment-based NIEs). Similarly, academics, students, and journalists for

¹ Presidential Proclamation (PP) 10143 is the U.S. travel restriction that suspends the entry of noncitizens who were physically present within the Schengen Area during the 14-day period preceding their entry or attempted entry into the United States. This guidance also refers to Presidential Proclamations 10052, 9984, 9992, 9993, 9996, 10041, and is subject to modification in accordance with *National Association of Manufacturers v. Department of Homeland Security*, No. 20-cv -04887-JSW, Order (N.D. Cal, Oct. 1, 2020).

whom National Interest Exception (NIE) criteria has not changed may continue to apply for NIEs to PP 10143 as related to the Schengen Area, United Kingdom, and Ireland.

- No previously issued visas or NIEs will be revoked due to the new policy. Those NIEs were generally valid for travel within 30 days of issuance and allowed one entry into the United States.
- Many travelers who are now in the United States entered with an NIE that was approved under the former criteria and will likely not qualify for another NIE under the new criteria. Accordingly, travelers who are already working temporarily in the United States should closely review the new guidance when considering return trips to Europe.

II. Travel that DOES NOT Qualify for an NIE

Effective immediately, embassies and consulates can no longer approve NIEs for the following purposes of business travel:

- Senior executives traveling to observe operations, hold regular meetings, or conduct routine operational travel.
- Senior-level employees, investors and treaty traders (including individuals with valid E-1 and E-2 nonimmigrant visas or applications) whose travel does not provide vital support of critical infrastructure sectors or critical infrastructure linked supply chain.

In compelling circumstances, travel that does not provide vital support of critical infrastructure sectors may still be considered in the national interest if it will directly support the creation or retention of U.S. jobs. Individuals making such requests must demonstrate that their personal travel is vital, that the personal travel directly supports the creation or retention of U.S. jobs, and that the proposed activity must physically take place in the United States and cannot be postponed or conducted remotely. Embassies and consulates are not authorized to approve such requests. These cases require significant justification and must be approved in Washington, D.C.

III. Travel That DOES Qualify for an NIE

NIEs are still available to travelers holding a current visa or ESTA registration, as well as new visa applicants, in the following categories. Approvals are based on the traveler's *function* and *visa classification* as noted below.

1. Individuals who provide vital support of critical infrastructure sectors as defined by the Department of Homeland Security or critical infrastructure linked supply chain.

Vital support, for example, pertains to the installation, acquisition, maintenance, and essential safety training necessary to sustain the supply and production chains in the referenced sectors, as well as other functions performed by specialists or other individuals that are essential to continuity within a given sector.²

² The DHS-defined critical infrastructure sectors are: chemical, commercial facilities, communications, critical manufacturing, dams, defense industrial base, emergency services,

2. **Public Health Professionals:** Travel as a public health or healthcare professional or researcher to alleviate the effects of the COVID-19 pandemic, or to continue ongoing research in an area with substantial public health benefit.
3. **Foreign Policy or U.S. Government Invitation:** Travel based on a request from a U.S. government agency or entity to meet foreign policy objectives or to satisfy treaty or contractual obligations.
4. **H-1B, L-1A and L-1B Applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification.**
5. **Certain New Applications for H-1Bs:** Technical specialists, senior-level managers, and other workers whose travel is necessary to facilitate the immediate and continued economic recovery of the United States.³ To qualify, applicants must meet at least two of the following five criteria:
 - The petitioning employer has a continued need for the services or labor to be performed by the H-1B nonimmigrant in the United States.
 - The applicant's proposed job duties or position within the petitioning company indicate the individual will provide significant and unique contributions to an employer meeting a critical infrastructure⁴ need.
 - The wage rate paid to the H-1B applicant meaningfully exceeds the prevailing wage rate (see Part F, Questions 10 and 11 of the Labor Condition Application) by at least 15 percent.
 - The H-1B applicant's education, training, and/or experience demonstrate unusual expertise in the specialty occupation in which the applicant will be employed.
 - Denial of the visa pursuant to P.P. 10052 will cause financial hardship to the U.S. employer.
6. **Travel by Journalists** from Schengen area countries.
7. **Certain New Applications for L1-As:** Senior-level executives and managers filling a critical business need of an employer meeting a critical infrastructure⁵ need. To qualify,

energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water/wastewater systems.

³ There are separate NIE qualifications for H-2B (Temporary Non-Agricultural Workers) visa holders and applicants. Travelers and companies in Bavaria do not typically use this visa classification.

⁴ Critical infrastructure sectors are chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems. For more information consult www.cisa.gov/critical-infrastructure-sectors.

⁵ See footnote 3 for list of critical infrastructure sectors.

applicants must meet at least two of the following three criteria and, unless certain conditions apply,⁶ cannot be traveling to establish a new office in the United States.

- The applicant is a senior-level executive or manager.
- The applicant has spent multiple years with the company overseas, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship.
- The applicants will fill a critical business need for a company meeting a critical infrastructure need.

8. L1-B Applicant traveling temporarily as a technical expert or specialist meeting a critical infrastructure⁷ need. An L-1B applicant falls into this category if all three of the following indicators are present:

- The applicant's proposed job duties and specialized knowledge indicate the individual will provide significant and unique contributions to the petitioning company.
- The applicant's specialized knowledge is specifically related to a critical infrastructure⁸ need.
- The applicant has spent multiple years with the company overseas, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship.

9. Spouses and/or children who will accompany or follow a principal applicant who is exempted from, or not subject to, the Presidential Proclamations, for travel that would reasonably be expected to include family members.

Travelers in Germany with current visas/ESTA registrations can request an NIE by emailing Frankfurtvisainquiries@state.com and indicating the NIE category that applies to their travel. There is no fee. The consular section will respond with instructions based on the traveler's purpose, duration, and visa classification. If approved, national interest exceptions are valid only for a single entry to the United States within 30 days of the approval. Please plan the timing of your request and itinerary accordingly as we expect processing times to grow.

⁶ L-1A applicants seeking to establish a new office in the United States likely do not fall into this category, unless two of the three criteria are met and the new office will employ, directly or indirectly, five or more U.S. workers.

⁷ Critical infrastructure sectors are chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems.

⁸ See footnote 7.

Travelers applying for visas can, for most visa classifications, schedule appointments through the routine scheduling function at www.ustraveldocs.com/de. At present, a small number of routine appointments for B-1 applicants are available; travelers can also use the emergency appointment request function. Due to COVID-19 restrictions and our continued priority of providing services to U.S. citizens, the number and type of visa appointments remains limited.

As a condition of receiving an NIE, travelers must agree to comply with all applicable federal, state, and local health regulations as they relate to the requirements for self-isolation and preventing the spread of COVID-19 upon arrival in the United States. Check the state and local public health websites of your destination for information before you travel.

Again, if you have specific questions about NIEs, please email us at Frankfurtvisainquiries@state.gov. We look forward to assisting you!

U.S. Consulate General—Frankfurt am
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