

GMS Flash Alert

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United States – Travel Ban Suspension Upheld by Federal Court of Appeals

After oral arguments on February 7, 2017, a U.S. federal Court of Appeals¹ has denied the government's motion to overturn the stay on President Trump's travel "ban." Therefore, it's "business as usual" for nationals of the seven affected countries (Sudan, Syria, Libya, Somalia, Iran, Iraq, and Yemen).

Pursuant to the Temporary Restraining Order (TRO) issued by a U.S. federal judge², all nationals from the seven affected countries listed in the president's January 27, 2017 Executive Order have been permitted to board aircraft bound to the U.S. and apply for entry based on their valid nonimmigrant and immigrant visas. Subsequent to the Court of Appeal's decision, they may continue to do so. (For prior coverage, see GMS [Flash Alert 2017-023](#), February 6, 2017.)

WHY THIS MATTERS

1. There has been considerable confusion regarding the legal effect of the ban and the TRO. It is expected that the government will appeal to the Supreme Court. Until such time however, it's business as usual for nationals from the seven affected countries.
2. Airlines have been advised by the Department of Homeland Security that the holders of valid visas by individuals of one of the seven countries should be allowed to board aircraft.
3. Similar instructions have now been issued to consular offices – to which nationals of the seven affected countries may turn with a view to securing entry in the United States – and to ports of entry that are charged with permitting these nationals to enter the United States.
4. It is critical that employers and employees monitor the status of this situation as any change in the legal position could have dramatic consequences on a temporary visa holder's ability to re-enter the United States.
5. In limited circumstances where a visa has been physically cancelled, it is necessary to seek appropriate legal assistance with having the visa re-issued at the earliest possible opportunity.

What You Need to Know Now

1. Individuals from the seven affected countries holding temporary status who are currently in the United States are advised to remain in the United States until this matter is ultimately resolved. If travel is essential, consultation with qualified U.S. immigration counsel prior to travel is advised.
2. Individuals holding temporary status currently outside the United States should seek advice from their qualified U.S. immigration counsel to determine the appropriate opportunity to return to the United States – there is currently no impediment to returning to the United States, and this course of action should be carefully considered. Note that a valid U.S. visa is required and if the individual's current visa has been cancelled, there may be a need for its physical re-issuance. U.S. visas that have been provisionally cancelled may be electronically reinstated.
3. At this time, there is no impediment to a U.S. lawful permanent resident returning to the United States, as is the case with a dual national holding a passport from a non-restricted country with a valid U.S. visa. In the event that the Executive Order is reinstated (either in whole or in part), following a Supreme Court ruling, the appropriate legal advice should be obtained prior to returning to the United States to determine that there has been no change in this position.

FOOTNOTES:

- 1 See the decision of the [9th Circuit Court of Appeals](#).
- 2 See the [federal judge's ruling](#).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in Canada:

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