



GMS Flash Alert

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United States - Updated Travel Ban for Nationals Noted in New Executive Order

A revised Executive Order, entitled "[Protecting the Nation from Foreign Terrorist Entry Into the United States](#)," was signed by U.S. President Donald Trump on March 6, 2017, impacting travel to the U.S. for nationals of Sudan, Syria, Libya, Somalia, Iran, and Yemen.¹ The new Executive Order is effective 12:01am EST on March 16, 2017.

This second Executive Order replaces the previous Executive Order signed January 27, 2017.²

WHY THIS MATTERS

1. Airlines, airport officials, and affected government agencies and departments are being informed and will have the next nine days to take steps to fulfill the requirements of the Executive Order.
2. Similar instructions are being issued to consular offices and ports-of-entry into the United States.
3. 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 an individual's ability to enter or re-enter the United States if they are among the categories of individuals covered under the Executive Order.
4. In limited circumstances where a visa application (or renewal) is refused or a visa is physically cancelled, it may be necessary to seek appropriate legal assistance about reapplying or discussing other alternatives.
5. The suspension of entry does not apply to lawful permanent residents of the United States.
6. The Visa Interview Waiver Program is immediately suspended (with some exceptions) requiring all individuals seeking a nonimmigrant visa to undergo an in-person interview, subject to specific statutory exceptions.

Who Is Affected?

Effective March 16, 2017, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who are outside the United States and who did not have a valid visa as of 5:00pm EST on January 27, 2017, and who do not have a valid visa on the effective date of the order, are not eligible to travel to the U.S. for a 90-day period. Moreover, as of March 16, 2017, for 90 days, affected foreign nationals will not be able to obtain a visa or renew a visa and travel to the U.S. unless a waiver is approved.

Who Is Not Affected?

Citizens of Iraq

Unlike the previous Executive Order, citizens and nationals of Iraq are not impacted by the new Executive Order. Therefore, citizens of Iraq may continue to travel to the U.S. and may be eligible to apply for visas at U.S. consulates abroad.

Current Visa Holders

Any individual who had a valid visa either on January 27, 2017 (prior to 5:00 PM) or holds a valid visa on the effective date of the Executive Order, is not barred from seeking entry to the United States. Therefore, even if a foreign national is from one of the six countries and is outside the U.S., if he or she holds a valid visa that meets the above criteria, then that individual is not affected by the Executive Order and will be permitted entry into the United States.

Individuals within the United States with valid multiple entry visas on the effective date of the order are eligible for travel to and from the United States, provided the visa remains valid and the traveler is otherwise admissible. If a foreign national holds a single-entry visa then he or she will only be permitted re-entry to the U.S. upon issuance of a new visa. Similarly, if a foreign national's visa will expire while he or she is outside the U.S., then that individual will be required to obtain a new visa prior to re-entry.

Dual Citizens

Dual nationals of one of the six countries travelling with a passport from an unrestricted country are not impacted by the Executive Order. The Department of State will continue to process visa applications of dual nationals "while applying all appropriate screening measures, as they have been."³

Lawful Permanent Residents

The suspension of entry does not apply to lawful permanent residents of the United States.

Applicants with Naturalization or Adjustment of Status Cases Pending

United States Citizenship and Immigration Services (USCIS) will continue to adjudicate *Applications for Naturalization* (Form N-400) and *Applications to Register Permanent Residence or Adjust Status* (Form I-485) and grant citizenship consistent with existing practices.

Landed Immigrants of Canada

Landed immigrants of Canada who hold passports from one of the six countries are eligible to apply for a visa, and coordinate a waiver, at a location within Canada.

Visa Revocation and Issuance

Revocation

Visas will not be revoked solely as a result of the Executive Order. The Department of State has broad authority under Section 221(i) of the Immigration and Nationality Act to revoke visas.

Issuance

The Department of State has confirmed that U.S. embassies and consulates will continue to process visa applications while applying all appropriate screening measures, as they have been.

KPMG NOTE

We are awaiting further guidance from the Department of State with respect to visa processing for individuals from the six affected countries, including dual nationals.

Interview Waiver Program

The Visa Interview Waiver Program is immediately suspended requiring all individuals seeking a nonimmigrant visa to undergo an in-person interview, subject to specific statutory exceptions.

This suspension shall not apply to any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; traveling for purposes related to an international organization designated under the IOIA; or traveling for purposes of conducting meetings or business with the United States government.

Waivers

Waivers for overseas travelers without a valid U.S. visa will be adjudicated by the Department of State in conjunction with a visa application.

The Department of State and Customs and Border Protection (CBP) have discretion, on a case-by-case basis, to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended. This authority can be exercised where the foreign national has demonstrated to the officer's satisfaction that denying entry during the suspension period would cause:

- 1) undue hardship, and
- 2) that his or her entry would not pose a threat to national security and would be in the national interest.

Any waiver issued by a consular officer as part of the visa issuance process will be effective both for the issuance of a visa and any subsequent entry on that visa, but will leave all other requirements for admission or entry unchanged.

Case-by-case waivers could be appropriate in circumstances such as the following:

- (i) The foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the effective date of this order, seeks to re-enter the United States to resume that activity, and the denial of re-entry during the suspension period would impair that activity;
- (ii) The foreign national has previously established significant contacts with the United States, but is outside the United States on the effective date of this order for work, study, or other lawful activity;
- (iii) The foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;
- (iv) The foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;
- (v) The foreign national is an infant, a young child, or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;
- (vi) The foreign national has been employed by, or on behalf of, the United States government;
- (vii) The foreign national is traveling for purposes related to an international organization;
- (viii) The foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada; or
- (ix) The foreign national is traveling as a United States government-sponsored exchange visitor.

KPMG NOTE: Guidance

1. Affected foreign nationals currently in the U.S. on a valid visa, should remain in the U.S. and refrain from international travel if their visa will expire in the next three months.
2. Affected foreign nationals with single entry visas, if eligible, should remain in the U.S. and refrain from travel until the travel ban has been lifted and regular visa processing resumes.
3. Affected foreign nationals who are outside the U.S. and have an expired visa and are looking to renew the same visa should seek the assistance of an attorney to discuss applying for a waiver.
4. All foreign nationals seeking entry to the U.S. should be prepared to provide evidence of their intended activities for ease of inspection by CBP.

KPMG Law LLP will continue to provide updates regarding the implementation of the new Executive Order as and when they become available.

FOOTNOTES:

- 1 See the March 6, 2017 White House [announcement](#).
- 2 For prior coverage, see GMS [Flash Alert 2017-027](#) (February 10, 2017).
- 3 See the March 6, 2017 "[Alert](#)" on the Executive Order on the Web site of the Department of State's Bureau of Consular Affairs.

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Thursday, March 9, 2017 – Tax Reform Thursdays: a Webcast on “The New Administration: What HR/Mobility Professionals Need to Consider”

Uncertainty, change, and opportunity are the headlines kicking off 2017. What does this mean for HR/Mobility professionals? This Webcast will focus on the potential legislative and regulatory changes that could affect:

- compensation and benefits programs (including the Affordable Care Act);
- immigration;
- mobile employees;
- additional areas of interest to the HR community.

Please join KPMG for this engaging panel discussion via Webcast, which will highlight what these potential changes could mean to the HR function, your employees, and your organization's overall talent management approach.

Date: Thursday, March 9, 2017

Time: 2:00 p.m. - 3:00 p.m. (U.S. EST; GMT -5)

To Register: Click [here](#).

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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