



GMS Flash Alert

Immigration Edition

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United States - Supreme Court Amends Temporary Injunction of President's Travel Ban

On June 26, 2017, the U.S. Supreme Court agreed to review President Trump's revised travel ban Executive Order when the Court reconvenes in October.¹ In the interim however, the Court has allowed parts of the travel ban to go into effect. Although the Court's 6-3 opinion will allow foreign nationals from the affected countries to enter the U.S. in certain circumstances, in some situations, as outlined by the Court, foreign nationals without any ties to the U.S. may be barred entry into the United States.

WHY THIS MATTERS

Under the revised Executive Order², issued in early March 2017, as of 12:00 am on March 16, foreign nationals from Sudan, Syria, Libya, Somalia, Iran, and Yemen would not have been permitted entry to the U.S. unless they had a visa valid on January 27, 2017 (prior to 5:00 pm) or they held a valid visa on the effective date of the Executive Order, March 16, 2017. However, due to various court decisions that effectively blocked the implementation of the Executive Order, these foreign nationals were allowed to legally enter the United States.

The Court's opinion yesterday now allows some parts of the Executive Order to take effect. Specifically, foreign nationals from Sudan, Syria, Libya, Somalia, Iran, or Yemen who have no ties to American people or institutions are subject to the travel ban. Foreign nationals from the specified countries who have close relatives in the U.S. or a relationship with an American business (e.g., an employment offer) or educational institution, for example, are not subject to the ban.

Therefore, from a global mobility perspective, if a U.S.-based organization has made a documented offer of employment or offer of matriculation/admission, in the case of students, to nationals from the six aforementioned countries, then those nationals will be granted a visa (should one not already be secured) and permitted to enter the United States.

Background

Prior to the travel ban being implemented, several courts ruled for various reasons that the Executive Order was unlawful and therefore enjoined the government from enforcing it.² (For prior coverage, see [GMS Flash Alert 2017-102](#),

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June 13, 2017.) As a result of the numerous injunctions, foreign nationals from the six affected countries were permitted to continue to apply for visas and travel to the U.S. without restriction.

Court's June 26th Opinion and Next Steps

As of yesterday however, the Court has amended the injunction to exclude certain classes of foreign nationals from the protection of the injunction. Specifically, foreign nationals from Sudan, Syria, Libya, Somalia, Iran, or Yemen who "... lack any bona fide relationship with a person or entity in the United States..." – in other words, without any ties to American people or institutions – are subject to the terms of the Executive Order that effectively block their ability to secure a visa and enter the United States. Foreign nationals from the specified countries who have close relatives in the U.S. or a relationship with an American business (e.g., an employment offer) or educational institution, for example, are not subject to the ban.

To sum it up, the Court has stayed in part and granted in part the injunction. This means that the ban affects certain individuals and not others, until the Court can make an official ruling on the merits of the case in October 2017.

KPMG NOTE

Although the Court provided guidelines for what constitutes a qualifying relationship with an American person or institution that would allow an individual from the affected countries to continue to travel to the U.S., we anticipate some contested cases to come forward in the consulates, embassies, and U.S. ports of entry. Therefore, individuals from the affected countries outside the U.S. should seek immediate advice from their qualified U.S. immigration counsel to determine eligibility to enter the United States.

Further guidance on the application of the "permitted" parts of the Executive Order is awaited. President Trump had signed a memorandum³ earlier this month which appeared to suggest that the order would take effect within 72 hours of when the injunctions on his ban were lifted or stayed.

And the Department of Homeland Security in its reaction to the Court's opinion, stated in a press release: "The Department will provide additional details on implementation after consultation with the Departments of Justice and State. The implementation of the Executive Order will be done professionally, with clear and sufficient public notice, particularly to potentially affected travelers, and in coordination with partners in the travel industry."⁴

KPMG Law LLP will endeavor to provide updates regarding the implementation of the permitted parts of the Executive Order as information becomes available.

FOOTNOTES:

- 1 For the Supreme Court's opinion, click [here](#).
- 2 See GMS [Flash Alert 2017-045](#), March 7, 2017.
- 3 For the President's memorandum, click [here](#).
- 4 For the June 26, 2017 Department of Homeland Security press release, click [here](#).

Contact us

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