

GMS Flash Alert



Immigration Edition

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United States - Court Stalls Health Insurance Requirement for Immigrant Visa Applicants

As reported in our earlier [newsletter](#), on October 4, 2019, President Trump issued the "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System."¹ The proclamation was intended to take effect on November 3, 2019, and would require applicants for an immigrant visa to either provide evidence of unsubsidized health insurance within 30 days of entry to the U.S., or demonstrate sufficient financial resources to pay for reasonably foreseeable medical expenses.

On November 2, 2019, a federal judge in Portland, Oregon issued a temporary restraining order the day before the new requirement was to be implemented.²

The restraining order will remain in place for 28 days, during which time the plaintiffs (seven U.S. citizens and the Latino Network) and the government will present evidence to the court.

WHY THIS MATTERS

If the presidential proclamation of October 4, 2019, takes effect, immigrant visa applicants will be required to either provide evidence of unsubsidized health insurance within 30 days of entry to the U.S. or show sufficient funds to cover reasonably foreseeable medical expenses.

This is the first time such a requirement has been imposed on immigrant visa applicants. The change in policy, should it take effect, would present a hurdle to clear for many immigrant visa applicants and could impose hardship on them. Visa applicants should be prepared to secure appropriate health insurance or demonstrate they meet the financial resources criterion.

New Requirements under Presidential Proclamation

The health insurance requirement is directed at individuals applying for U.S. permanent residence through a U.S. Consulate or Embassy abroad. Certain applicants are exempt from the requirement, including refugees; asylum seekers; persons who already held a valid immigrant visa as of November 3, 2019; unmarried children of U.S. citizens under the age of 21 applying under certain immigrant visa classifications; all children under the age of 18, except those seeking to accompany a parent subject to the proclamation; parents of a U.S. citizen over 21 years of age, provided that the U.S. citizen child can prove that the parents' health-care needs would not impose a substantial burden on the U.S. health-care system; certain returning U.S. permanent residents; Iraqi and Afghan special immigrant visa applicants, along with their spouses and children; and intending immigrants whose presence in the U.S. is deemed to be in the national interest or in the interest of U.S. law enforcement objectives.

Acceptable health insurance plans include those that are employer-sponsored; family member plans that provide coverage for the immigrant visa applicant; unsubsidized plans obtained in the individual market within a state; Medicare plans (only approved for those under 18 years of age); U.S. military health plans, including TRICARE; catastrophic plans; and certain short-term and visitor health insurance plans. Subsidized health insurance obtained through the Affordable Care Act exchanges will not be considered acceptable.

Consequences If New Requirements Are Not Met and Expectations of Further Guidance

According to the proclamation, an inability to meet the health-care insurance requirement will result in denial of the immigrant visa application.

The U.S. State Department has not yet released clear guidelines regarding how Consular Officers will determine whether or not the new requirement is met. It is, however, confirmed that Consular Officers will review medical and financial documentation that is already part of an applicant's case file and request additional information and documentation as needed.³

The Court Case: What Is at Issue

The plaintiffs contend that the rule re-writes U.S. immigration and health-care laws by presidential fiat, and could bar up to two-thirds of all prospective immigrants. The U.S. government, on the other hand, argues that enforcement of the proclamation is critical to protecting the American health-care system.

The court imposed a 28-day restraining order which was put into effect on November 2, 2019, temporarily preventing the proclamation from being enforced.

Next Steps

Immigrant visa applicants should closely follow developments related to the potential implementation of the presidential proclamation made on October 4, 2019. As a proactive measure, immigrant visa applicants may research available options for coverage under an approved health insurance plan or determine the foreseeable costs relating to any existing medical condition(s) and determine how these costs would be covered following immigration to the United States.

FOOTNOTES:

1 "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System," President Donald Trump, October 4, 2019, at: <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/>.

2 For the court's restraining order decision, see: https://www.justsecurity.org/wp-content/uploads/2019/11/doe.trump_d.ore_tro.pdf. *Please note that this is a third-party (non-governmental, non-KPMG) website. Provision of this link does not represent endorsement of this website by KPMG.*

3 See the Department of State's travel.gov site regarding the proclamation: <https://travel.state.gov/content/travel/en/us-visas/immigrate/Presidential-Proclamation-on-Health-Care.html>.

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Contact us

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