

# GMS Flash Alert

Immigration Edition

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## United States - Presidential Proclamation Further Restricts Entry to the Country

On June 22, 2020, U.S. President Donald Trump issued a proclamation to temporarily suspend the entry of certain nonimmigrants to the United States (U.S.).<sup>1</sup> The proclamation prevents the entry of individuals who would be coming into the country under the H-1B, H-2B, J-1, and L-1 categories and their dependents until December 31, 2020, with limited exceptions. The proclamation also extends the previous suspension on entry of certain immigrants.<sup>2</sup>

The U.S. suspension of entry for certain H-1B, H-2B, J-1, and L-1 nonimmigrants announced on June 22, 2020, was drafted in response to the COVID-19 pandemic. In his proclamation, President Trump indicated that the suspension on entry of certain nonimmigrants aims to protect U.S. workers while the country recovers economically.

In addition to restricting entry to the U.S., the proclamation of June 22, 2020 orders the Department of Homeland Security and Department of Labor to promulgate regulations to make sure that nonimmigrants in the H-1B category, and immigrants in the EB-2 and EB-3 preference categories, do not displace U.S. workers.

The proclamation's extension of the suspension on entry for immigrants took effect immediately, while the restrictions on the entry of certain nonimmigrants will go into effect at 12:01AM EDT on June 24, 2020.

It is expected that the proclamation and any related regulatory changes will face legal challenge.

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### WHY THIS MATTERS

The full impact of the presidential proclamation is variable given that the COVID-19 pandemic has resulted in the general suspension of both U.S. immigrant and nonimmigrant visa services since mid-March 2020.<sup>3</sup> Once U.S. Embassies and Consulates resume normal operations, however, the newly-introduced suspension on the entry of certain nonimmigrants will undoubtedly affect many employees and their multinational employers, likely preventing or significantly delaying U.S. assignments and transfers.

Compared to other U.S. travel suspensions introduced as a result of the COVID-19 pandemic, the list of persons exempted from the instant entry suspension is more restrictive.

## Impact on Canadian Nonimmigrants

On June 24, 2020, U.S. Customs and Border Protection (CBP) Headquarters confirmed that Canadian citizens seeking admission to the U.S. in H, L, or J status are exempt from the presidential proclamation issued on June 22, 2020.<sup>4</sup>

## Suspension of H, L, and J Visa Entry

The newly-introduced entry restriction affects those who meet the below criteria:

- Seeking entry under one the following nonimmigrant visa classifications:
  - H-1B,
  - H-2B,
  - J-1 intern, trainee, teacher, camp counselor, au pair, or summer work travel program (note that J-1 physicians, research scholars, and students are exempt),
  - L-1A, or
  - L-1B;
- Are outside of the U.S. as of 12:01AM EDT on June 24, 2020;
- Do not have a nonimmigrant visa valid on the effective date of the suspension; and
- Do not have an official document other than a visa (e.g., transportation letter, boarding foil, or advance parole document) that is valid on or after the proclamation takes effect that would allow travel to the U.S. to seek entry or admission.

Dependents of those nonimmigrants who are subject to the restriction on entry are equally restricted.

An alert published by the American Immigration Lawyers Association (AILA) on June 24, 2020, cites confirmation by a senior official of U.S. Citizenship and Immigration Services (USCIS) that an individual with a valid visa in one of the impacted categories that was issued prior to the proclamation taking effect will be permitted to enter the country while the suspension is effective, regardless of whether or not the visa holder previously entered the U.S. pursuant to that visa.<sup>5</sup>

Compared to other U.S. travel suspensions introduced as a result of the COVID-19 pandemic, the list of persons exempted from the instant entry suspension is more restrictive, and includes only lawful permanent residents, spouses and children of U.S. citizens, foreign nationals providing temporary services essential to the U.S. food supply chain, and those whose entry would be in the national interest.

The entry suspension for certain H-1B, H-2B, J-1, and L-1 nonimmigrants may be reviewed and extended beyond December 31, 2020. The Administration is to review the suspension within 30 days of June 24, 2020, and every 60 days thereafter, in order to make any necessary modifications.

## Extension of Entry Suspension for Certain Immigrants

On April 22, 2020, President Trump implemented a 60-day suspension restricting the entry of immigrants who did not have a valid immigrant visa or an official travel document allowing entry to the U.S. by the effective date of the suspension.<sup>4</sup> This suspension was set to expire on June 22, 2020.

The June 22, 2020 proclamation extends the suspension on immigrants' entry until December 31, 2020, with the possibility of a further extension. The Administration is to review the suspension within 30 days of June 24, 2020, and every 60 days thereafter, to make any required changes.

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## KPMG NOTE

Prior to scheduling any international business travel between now and December 31, 2020, it is prudent that employers first confirm that impacted employees (H-1B, H-2B, J-1, and L-1 nonimmigrants) may re-enter the country. The ability of dependents to re-enter the U.S. should also be considered. In addition, employers must also try to ensure that new assignees/hires are not subject to the restrictions on entry and/or any previously implemented travel bans.<sup>5</sup>

Moreover, employers anticipating the U.S. entry of workers seeking an immigrant visa from a U.S. Embassy or Consulate should be prepared to wait much longer now that the general suspension on the admission of intending immigrants has been extended until December 31, 2020.

Given the overall fluidity of the circumstances, it is prudent for all nonimmigrants – not just those in the affected categories – and their dependents to remain in the U.S. and avoid international travel, where possible. This way, individuals in employment-based nonimmigrant visa categories and their dependents will not risk being unable to return to the U.S. should any further restrictions on entry be imposed by the Trump Administration unexpectedly.

KPMG LLP Law in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur. We will also guide employers and foreign national employees through the consequences of the presidential proclamation signed on June 22, 2020.

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## FOOTNOTES:

- 1 To review the presidential proclamation issued on June 22, 2020, [click here](#). See this [White House Factsheet](#) for additional details on the presidential proclamation.
- 2 For prior coverage on the Trump Administration's April 22, 2020 entry suspension for certain immigrants, read the following issue of *GMS Flash Alert*: [2020-198](#) (April 27, 2020).
- 3 For prior coverage on the suspension of routine services at U.S. Embassies and Consulates due to the COVID-19 pandemic, read the following issue of *GMS Flash Alert*: [2020-159](#) (April 8, 2020).
- 4 American Immigration Lawyers Association (AILA), "Practice Alert: Additional Information Concerning Implementation of the June 22 Presidential Proclamation Suspending Entry of Certain Nonimmigrants" (AILA Doc. No. 20062436), June 24, 2020.
- 5 *Ibid.*
- 6 *Supra* note 2.
- 7 For information on the travel restriction from Brazil to the United States, read the following issue of *GMS Flash Alert*: [2020-251](#) (May 27, 2020). On European countries to the United States, read the following issues of *GMS Flash Alert*: [2020-059](#) (March 15, 2020) and [2020-055](#) (March 12, 2020). To review the presidential proclamation issued on March 11, 2020, restricting entry of travelers from the European Union's Schengen Area, the United Kingdom, Ireland, People's Republic of China, and Iran, [click here](#).

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