



GMS Flash Alert

Immigration Edition

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United States - President Narrows Exemption from June 22 Proclamation

On June 29, 2020, United States President Donald Trump amended his Proclamation of June 22, 2020, which suspended the entry of certain H-1B, H-2B, L-1, and J-1 nonimmigrants and their dependents in H-4, L-2, and J-2 status to the U.S. closing an exemption loophole.¹

For prior coverage, see GMS [Flash Alert 2020-294](#), June 23, 2020.

WHY THIS MATTERS

The amendment reversed course and clarified that only individuals with H-1B, H-2B, L-1, or J-1 visas valid on June 24, 2020 are exempt from the travel ban, closing a loophole that exempted individuals with valid visas in other categories who were outside the U.S. on June 24, 2020. For example, an F-1 student who departed the U.S. prior to June 24, 2020, held an F-1 visa that was valid on June 24, 2020, and planned to re-enter the U.S. on an H-1B visa to be issued based on an H-1B approval notice issued before June 24, 2020, will now be barred from entering the U.S. in H-1B status until after December 31, 2020.

Some persons holding a valid nonimmigrant visa in a category not referenced in the proclamation of June 22, 2020 departed the U.S. in full confidence that they would be able to later apply for a visa in the H-1B, H-2B, L-1, or J-1 category and enter the country in the corresponding visa classification without restriction. The amendment of June 29, 2020, makes clear that this is no longer an option except for those who meet the previously outlined exemption criteria, leaving many foreign nationals unable to return to the U.S. until at least January 1, 2021.

Background

The text of the proclamation issued on June 22, 2020 suggested that an individual with a nonimmigrant visa in *any* category (i.e., F-1 student, B-1 business visitor, B-2 visitor for pleasure, etc.) that was valid as of June 24, 2020 would be exempt from the restrictions on entry imposed by the proclamation.

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Changes under Recent Revision

President Trump's recent amendment narrows the ban's "valid nonimmigrant visa" exemption to apply only to those individuals who held a valid visa in one of the affected nonimmigrant visa categories (i.e. H-1B, H-2B, L-1, and J-1) as of June 24, 2020.

Specifically, Section 3(a)(ii) of the original proclamation referenced any alien who "does not have a nonimmigrant visa that is valid on the effective date of this proclamation" is amended to read as follows:

- (ii) does not have a nonimmigrant visa, of any of the classifications specified in section 2 of this proclamation and pursuant to which the alien is seeking entry, that is valid on the effective date of this proclamation;

Thus, under the amendment, a person who was outside the U.S. on June 24, 2020, is exempt from the travel ban ONLY if the person:

1. held a valid, unexpired visa in one of the classifications listed in the proclamation (i.e. H-1B, H-2B, J-1, or L-1) on June 24, 2020, and is seeking to re-enter the U.S. with the same visa that was valid on June 24, 2020.

OR

2. holds Advance Parole or other U.S. travel document that was valid on June 24, 2020, or issued after this date.

Government agencies, including the Department of State, Department of Homeland Security, and the Department of Labor, are expected to issue additional guidance on the implementation of the entry restrictions, the national interest exemption criteria, and other procedures. The guidance is expected to clarify a number of issues, including the proclamation's impact on automatic visa revalidation.

Foreign nationals who are exempt from the new proclamation remain subject to the ongoing COVID-19 travel restrictions, which could also affect their ability to enter the United States.

KPMG NOTE

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 and amended on June 29, 2020.

FOOTNOTE:

- 1 See "Proclamation on Amendment to Proclamation 10052" (June 29, 2020): <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>.

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Contact us

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



Mira Khalid
Associate/Attorney, U.S. Immigration
KPMG Law LLP – Tax + Immigration, Canada
Tel. +1 416-943-7830
mirakhalid@kpmg.ca



Beth Nanton
Partner/U.S. Immigration, Practice Leader
KPMG Law LLP – Tax + Immigration, Canada
Tel. +1 604-691-3316
bnanton@kpmg.ca

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