



GMS Flash Alert

Immigration Edition

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United States - Limited Injunction Issued on Enforcing June 22 Visa Ban

On October 1, 2020, a federal judge in the Northern District of California issued a limited preliminary injunction preventing the Department of Homeland Security (DHS) from enforcing President Trump's June 22 proclamation suspending the entry into the United States of certain H-1B, L-1, H-2B, and J-1 nonimmigrants, and their dependents.¹

On its face, the limited injunction only benefits the plaintiffs and organizations that are parties to the case and members of plaintiff trade groups.

WHY THIS MATTERS

Unless overturned on appeal, foreign nationals sponsored by the plaintiffs or plaintiff member organizations needing visas to enter the United States for employment or to fulfil work-related assignments, should be able to apply for H, L or J visas at U.S. consulates and enter the United States while the June 22 entry ban remains in effect. The limited injunction however does not change the application of the ongoing regional COVID-19 travel restrictions on travelers from the Schengen area, People's Republic of China, Iran, Brazil, the U.K. and Ireland, which continue to prevent many from seeking admission to the United States.

Background

On June 22, 2020, President Trump issued a presidential proclamation suspending the entry of H-1B, H-2B, L-1A, L-1B, certain J-1s, and their dependents and spouses through December 31, 2020. (For prior coverage, please see [GMS *Flash Alert* 2020-294](#), June 23, 2020.)

The entry ban applies to individuals who meet the criteria below.

- 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;
- Were outside of the U.S. as of 12:01am EDT on June 24, 2020 – the effective date of the suspension;
- 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., 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.

In response to legal proceedings challenging the June 22 proclamation, Judge Jeffrey S. White ruled the proclamation exceeded President Trump’s presidential authority and “unlawfully eviscerates” portions of the *Immigration & Nationality Act* by declaring statutorily-established visa categories as invalid for the remainder of the calendar year. As such, Judge White has enjoined the Departments of State (DOS) and DHS from enforcing the proclamation against the plaintiffs.

The DOS and DHS are expected to appeal the ruling. However, the injunction remains in effect while ongoing legal challenges continue to advance through the courts.

KPMG NOTE

In response to the limited injunction, it is anticipated that the DHS and DOS will release updated guidance and procedures directing consular posts globally to resume visa processing in the impacted categories. KPMG Law LLP 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.

FOOTNOTES:

1 U.S. District Court for the Northern District of California Case No. 20-cv-04887-JSW (October 1, 2020) [*National Association of Manufacturers et al. v. DHS.*](#) For an October 2 news report of the ruling, see S. Anderson, “Judge Rules Against Trump’s H-1B Visa Ban: President Is Not A Monarch,” *Forbes* (online) at: <https://www.forbes.com/sites/stuartanderson/2020/10/02/judge-rules-against-trumps-h-1b-visa-ban-president-is-not-a-monarch/#5b3a46f951cc>. (Note that the above are 3rd party (non-governmental, non-KPMG) websites. Providing these links does not represent an endorsement of the websites by KPMG.)

2 These include: the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Retail Federation, Technet, and Intrax, Inc.

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