



# GMS Flash Alert

## Immigration Edition

2021-006 | January 5, 2021

# United States - Entry Bans Extended through March 31

On December 31, 2020, U.S. President Donald J. Trump extended his earlier proclamation temporarily suspending the entry of certain nonimmigrants to the United States (U.S.) through March 31, 2021.<sup>1</sup> The initial proclamation was issued on June 22, 2020, in response to the COVID-19 pandemic, and prevents the entry of foreign nationals who would be coming into the country under the H-1B, H-2B, J-1, and L-1 categories and their dependents, with limited exceptions.

The Administration also extended the existing suspension on entry of certain employment-based, family-based, and Diversity Lottery immigrants through March 31, 2021.<sup>2</sup> Both the nonimmigrant and immigrant entry bans were scheduled to expire on December 31, 2020.

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## WHY THIS MATTERS

The full impact of the extended entry bans continues to be variable as the COVID-19 pandemic has resulted in the general suspension of both U.S. nonimmigrant and immigrant visa services since mid-March 2020, and resumption of such services has been gradual and occurring on a post-by-post basis.<sup>3</sup> However, the recent extension will undoubtedly continue to affect many employees and their multinational employers, likely preventing or significantly delaying U.S. assignments, transfers, and permanent relocations.

Prior to scheduling any international business travel between now and March 31, 2021, 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.

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 March 31, 2021.

## Impact on Canadian Nonimmigrants

As with the initial June 22, 2020 proclamation, Canadian citizens seeking admission to the U.S. in H, L, or J status continue to be exempt from the extended nonimmigrant entry ban.<sup>4</sup>

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

The nonimmigrant entry ban, initially put into effect on June 22, 2020, continues to affect 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.

Individuals 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, regardless of whether or not the visa holder previously entered the U.S. pursuant to that visa.<sup>5</sup>

Exemptions to the extended nonimmigrant entry suspension continue to be limited to 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.<sup>6</sup> Additionally, some U.S. organizations and their employees may continue to benefit from the limited preliminary injunction prohibiting the U.S. Department of Homeland Security (DHS) from enforcing the nonimmigrant entry ban against the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Retail Federation, Intrax, Inc., and Technet.<sup>7</sup>

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### KPMG NOTE

The entry suspension for certain H-1B, H-2B, J-1, and L-1 nonimmigrants may be reviewed and extended beyond March 31, 2021. The Administration is scheduled to review the extended nonimmigrant entry suspension on January 15, 2021 and every 30 days thereafter, during which any necessary modifications may be made.

Please note that foreign nationals who are exempt from the extended nonimmigrant entry ban remain subject to other COVID-related U.S. travel restrictions, which could impede their ability to enter or reenter the United States.<sup>8</sup>

# Extension of Entry Suspension for Certain Immigrants

On April 22, 2020, the Trump Administration 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>9</sup>

The Administration later extended the suspension on immigrants' entry through December 31, 2020, with the possibility of a further extension.

The December 31, 2020 presidential proclamation further extends the immigrant entry ban through March 31, 2021, and the Administration is scheduled to review the extended entry ban on January 15, 2021, and every 30 days thereafter, to make necessary changes.

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## KPMG NOTE

Given the overall fluidity of the circumstances, it continues to be 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 U.S. Administration unexpectedly.

While the extended nonimmigrant and immigrant entry bans are set to be in effect through March 31, 2021, President-elect Joseph Biden has not yet addressed whether his administration will rescind or modify these bans after taking office on January 20, 2021.

KPMG LLP Law in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* apprised of any important developments as and when they occur.

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## FOOTNOTES:

1 To review the presidential proclamation issued on December 31, 2020, [click here](#). For prior coverage on the Trump Administration's April 22, 2020 entry suspension for certain immigrants and June 22, 2020 entry suspension for certain nonimmigrants, read the following issues of *GMS Flash Alert*: [2020-198](#) (April 27, 2020) and [2020-294](#) (June 23, 2020).

2 *Ibid.*

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 issues of *GMS Flash Alert*: [2020-460](#) (November 17, 2020) and [2020-159](#) (April 8, 2020).

4 *Supra* note 1. See also, 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 For guidance on national interest exceptions to the nonimmigrant entry restriction, read the following issue of *GMS Flash Alert*: [2020-363](#) (August 20, 2020).

## FOOTNOTES (cont'd):

7 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 details on the federal court decision, read the following issue of GMS *Flash Alert*: [2020-423](#) (October 7, 2020).

8 For the latest update on the U.S. border restrictions with Canada and Mexico, read the following issue of GMS *Flash Alert*: [2020-512](#) (December 23, 2020). 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](#).

9 *Supra* note 1.

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## Contact us

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