



GMS Flash Alert

Immigration Edition

2019-168 | November 8, 2019

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> .

* * * *

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:



Anna Molberg
Manager/Attorney, U.S. Immigration
KPMG Law LLP – Tax + Immigration,
Canada
Tel. +1-604-673-4427
amolberg@kpmg.ca



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

** Please note that KPMG LLP (U.S.) does not provide any immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

The information contained in this newsletter was submitted by the KPMG International member firm in Canada.

© 2019 KPMG Law LLP, a tax and immigration law firm affiliated with KPMG LLP, each of which is a Canadian limited liability partnership. KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2019 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP’s Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.