



## **Special Immigration Alert: Update on the President's Executive Order Banning Selected Travel**

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On January 27, 2017, President Donald J. Trump issued an executive order entitled "Protecting the Nation from Foreign Terrorist Entry into the United States" ("EO"). In pertinent part, the EO:

- imposed a 90-day suspension on entry into the United States of immigrants and nonimmigrants from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen;
- suspended admissions under the U.S. Refugee Admissions Program ("USRAP") for at least 120 days;
- barred Syrian refugees from participating in the USRAP; and
- upon resumption of the USRAP, prioritized the admission of foreign nationals ("FNs") whose religion beliefs were a minority religion in their country of nationality.

Since the EO was issued, the U.S. Department of State ("DOS") provisionally revoked all visas issued to FNs from the seven restricted countries. Although the affected FNs can stay in the United States, the DOS's action prevented them from returning if they left the country. At the same time, the Department of Homeland Security ("DHS") has issued guidance on the EO, and several courts have issued temporary restraining orders ("TROs") blocking enforcement of portions of the EO.

In this Special Alert, we will summarize guidance by DHS (and two of its component agencies) and DOS and highlight the current litigation landscape.

## **DHS Guidance**

On February 1, 2017, DHS and the White House issued guidance that clarified how portions of the EO will be enforced. In this guidance, DHS confirmed the following:

- The EO does not apply to the entry of lawful permanent residents (“LPRs”), regardless of their nationality. Thus, LPRs from the seven restricted countries generally should be allowed to board airplanes and enter the United States.
- LPRs from the seven restricted countries who are already in the United States should not be impacted and should be able to travel as if the EO did not exist.
- FNs holding dual citizenship, including dual citizens with nationality from one of the seven restricted countries, will be permitted to enter the United States as long as they present a passport or other travel document that is not from one of those seven countries.
- DHS has not identified any other countries that warrant inclusion in this “pause on entry” at this time.
- Landed immigrants in Canada who are from one of the seven restricted countries will be allowed to apply for admission to the United States as long as they have a valid immigrant or nonimmigrant visa, their travel originates in Canada, and they seek to enter through a land border or preclearance location.
- The United States will admit Iraqi nationals with special immigrant visas issued due to their assistance in the war effort, as long as there is no derogatory information about them.
- The United States will continue to process for admission the 872 refugees deemed “in transit” at the time that the EO was issued.

## **CBP Guidance**

U.S. Customs and Border Protection (“CBP”) has confirmed that the “Trusted Traveler” status of FNs subject to the travel ban, including LPRs from the seven restricted countries, was cancelled when the EO was signed. Since that time, CBP has started working on the reinstatement of the “Trusted Traveler” status for the affected LPRs, but those FNs should check on their status before leaving the country.

## **USCIS Guidance**

The U.S. Citizenship and Immigration Services (“USCIS”) also issued guidance on February 2, 2017, indicating that the EO does not affect the processing of immigrant or nonimmigrant applications or petitions that do not directly confer travel authorization; does not preclude adjudication of permanent residence applications, even those submitted by FNs from the seven restricted countries; and will not curtail processing of refugee and asylum cases.

## DOS Guidance

DOS announced on February 4, 2017, that it had lifted its directive provisionally revoking visas issued to FNs from any of the seven restricted countries, and that these FNs now were permitted to use those visas to return to the United States.

## Current Litigation Landscape

Multiple lawsuits have been filed around the country that challenge various provisions of the EO. For the most part, however, these cases have been filed on behalf of specific FNs affected by the EO, and the TROs may not be extended because their situations have been resolved. The most significant exception is the action filed by the States of Washington and Minnesota in the U.S. District Court for the Western District of Washington. See *Washington v. Trump*, 2:17-cv-00141 (W.D. Wash. 2017).

In the *Washington* case, the district court issued a *nationwide* injunction on February 3, 2017, that prohibited the federal government from enforcing:

- the 90-day travel ban on FNs from the seven restricted countries,
- the 120-day ban on FNs entering under the USRAP,
- the indefinite suspension of the admission of Syrian refugees under USRAP, and
- the prioritization of certain refugee claims based upon religious beliefs.

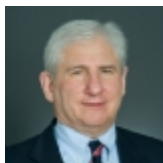
On February 5, 2017, DHS announced that (i) it would comply with the district court's order, (ii) DHS personnel would resume inspecting travelers in accordance with standard policy and procedure, and (iii) all airlines and terminal operators had been notified to permit boarding of all passengers without regard to nationality.

The Trump administration immediately appealed the order in the *Washington* case to the U.S. Court of Appeals for the Ninth Circuit. On February 4, 2017, the Ninth Circuit refused to issue an emergency stay of this order and directed the parties to file their respective positions on the stay application by February 6, 2017. A decision is expected later this week. Depending on the results, U.S. Supreme Court review may follow.

As a result of the order in the *Washington* case, all U.S. land and airports of entry are currently prohibited from enforcing the affected portions of the EO. This does not mean, however, that the stay will last indefinitely. DHS and the Trump administration have filed motions with the Ninth Circuit to lift the lower court's nationwide stay. Therefore, this situation remains extremely fluid.

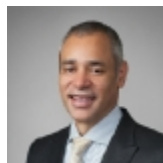
Epstein Becker Green's Immigration Law Group will be closely monitoring all developments in this area.

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