

IMMIGRATION ALERT - Highlights from Immigration Executive Order: Protecting the Nation from Terrorist Attacks by Foreign Nationals (as of 1/30/17)

1/30/2017

Practices: Immigration

- Suspends entry to the U.S. for 90 days (effective 1/27/17) for nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen who are traveling on nonimmigrant visas.
- Suspends visa processing for nationals of the affected countries applying for nonimmigrant and immigrant visas for 90 days.
 - A nonimmigrant is a foreign national who seeks temporary entry to the United States for a specific purpose such as visitors for business and pleasure (B-1), treaty traders and investors (E-1/E-2), students (F-1), temporary workers (H-1B), exchange visitors (J-1), fiancés of U.S. citizens (K-1), intracompany transferees (L-1), religious workers (R-1), etc.
 - An immigrant is a foreign national who is admitted to the U.S. as a lawful permanent resident (a/k/a green card holder).
- Mandates foreign governments to furnish security-related information regarding visa applicants within 60 day of notification. If the foreign government is not compliant, it will result in that country being added to the list of affected countries from which nationals are banned.
- Mandates that additional countries can be added to the list at any time.
- Suspends Visa Interview Waiver Program worldwide which previously waived in-person interviews for certain eligible foreign nationals. Now, all nonimmigrant visa applicants are required to attend in-person interviews
 - Please note that this is different than the Visa Waiver Program.
- Requires implementation of a biometric entry-exit tracking system for all travelers to the U.S.
- Requires review of all nonimmigrant visa reciprocity agreements to ensure that they are reciprocal.
- Implements Uniform Screening Standards for all Immigration Programs.
- Suspends the U.S. Refugee Admissions Program (USRAP) for 120 days.
- Indefinitely suspends refugee processing of Syrians.

SUMMARY OF THE EXECUTIVE ORDER

On January 27, 2017, President Trump signed an Executive Order (EO) suspending immigrant and nonimmigrant entry to the United States of individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen for at least 90 days from the date of issuance of the EO. Immediately following the issuance of the EO, hundreds of lawful permanent residents and nonimmigrant visa holders, some en route to the U.S., were denied admission upon arrival, refused boarding by airlines, deported without legal counsel, or were detained for hours for questioning.

On Saturday, lawyers across the nation began filing lawsuits on behalf of affected immigrants. A federal judge in New York issued a nationwide stay of removal preventing the deportation of individuals with valid visas and approved refugee applications impacted by the EO. Following that decision, a federal court in Massachusetts issued a Temporary Restraining Order which barred the government from detaining or deporting individuals subject to the EO, assured compliance with the court's order by directing the U.S. Marshal to take appropriate action to enforce the order and directed the U.S. Customs and Border Protection to notify airlines that individuals would not be detained or returned based on the EO for a period of seven days. Thereafter, a court in Virginia ordered the government to provide lawyers access to all lawful permanent residents detained at Dulles International Airport, and forbade the government from deporting lawful permanent residents for the next seven days. In Washington, a federal judge barred the government from deporting two individuals. By Sunday morning, Mr. Reince Priebus, President Trump's Chief of Staff stated on NBC's "Meet the Press," that the EO did not apply to Lawful Permanent Residents "going forward."

After the filing of the lawsuits, and due to immense opposition of Lawful Permanent Residents being included on the EO, the Secretary of the Department of Homeland Security, John Kelly, released a Press Statement on Sunday evening stating the following: "I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determination." Based on Secretary Kelly's statement, lawful permanent residents are not subject to the ban provided that they are not deemed a security threat. The provisions of the EO that continue to remain in effect are explained below.

The EO requires the government to determine, within 30 days, a list of countries that do not supply enough information to the U.S. to adjudicate visas, admission, or other benefits. Thereafter, the U.S. will inform those governments that do not supply sufficient information to the U.S. to furnish the requested information within 60 days of notification. If a country is not compliant with the request in 60 days, the U.S. will add non-compliant countries to the list of countries whose foreign nationals are banned from entering the U.S. Additional countries can be added to the list at any time.

The EO also states that the government will be developing uniform screening standards for immigration benefits, including: the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society

and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

Moreover, the EO permanently bans Syrian refugees until further notice, temporarily suspends the U.S. Refugee Admissions Program (USRAP) for 120 days, and caps refugee admission in Fiscal Year 2017 to 50,000. During the 120-day suspension period, the government will review the USRAP application and adjudication process to determine what additional security procedures should be taken. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of the revised procedures. When USRAP commences adjudication, only nationals of countries the U.S. government has determined do not pose a security threat will be permitted to participate. Refugee applications of individuals who apply on the basis of religious persecution in a country where the applicant's religion is a minority religion will be given priority.

Additional provisions include: implementation of a biometric entry-exit tracking system for all travelers to the U.S.; suspension of the Visa Interview Waiver Program requiring all nonimmigrant visa applicants to undergo an in-person interview; review all nonimmigrant visa reciprocity agreements to ensure that they are reciprocal; collection of information regarding terrorism-related offenses and convictions committed by foreign nationals in the U.S.; collection of information on the immigration status of foreign nationals charged with major offenses.