

News & Types: Immigration Update

IMMIGRATION ALERT - Travel Advisory & Visa Processing Guidelines (AS OF 2/6/17)

2/3/2017

Practices: Immigration

UPDATES ON EXECUTIVE ORDER BANNING TRAVEL FROM RESTRICTED COUNTRIES (UPDATED ON 02/06/2017)

DHS FOLLOWS JUDGE'S ORDER TO SUSPEND IMPLEMENTATION OF THE TRAVEL BAN

On February 4, 2017 the U.S. Department of Homeland Security ("DHS") announced that it would comply with the ruling from the United States District Court for the Western District of Washington which issued a Temporary Restraining Order prohibiting the federal government from enforcing certain sections of the Executive Order. The ruling, which applies nationwide, prohibits the enforcement of the 90-day travel ban on immigrants and nonimmigrants from the seven restricted countries, and select provisions of the refugee program. As a result of the Order, the U.S. Department of State ("DOS") confirmed that visas that were provisionally revoked as a result of the Executive Order were reinstated and valid for travel. The U.S. Customs and Border Protection ("CBP") was instructed to resume inspection of all travelers pursuant to standard policies and procedures and notify all airline carriers to board passengers pursuant to standard policy. Moreover, CBP confirmed that individuals who had arrived to the U.S. immediately following the execution of the Executive Order and had their visas physically cancelled would not need to reapply for a new visa and would be admitted with a waiver, assuming there was no other admissibility issue.

On the same date, the Justice Department appealed the District Court's decision to the Ninth Circuit Court of Appeals requesting an emergency motion to stay Judge James Robart's Order. However, the Ninth Circuit Court of Appeals denied the Justice Department's request.

In summary, CBP is currently admitting immigrants, nonimmigrants and refugees from the seven restricted countries pursuant to its standard admission policies and procedures. However, this policy can change at any time as the Trump Administration has announced that it will seek to overturn any decision prohibiting the execution of its Executive Order.

UPDATES ON EXECUTIVE ORDER BANNING TRAVEL FROM RESTRICTED COUNTRIES (UPDATED ON 02/03/2017)**DUAL NATIONALS NOT SUBJECT TO TRAVEL BAN**

On February 2, 2017, the State Department issued an announcement stating that the Executive Order does not restrict the travel of dual nationals from any country with a valid U.S. visa in a passport of an unrestricted country. Consulates will continue to process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants with a passport from an unrestricted country, even if they hold dual nationality from one of the seven restricted countries.

LUFTHANSA AIRLINES COMPLIES WITH BOSTON COURT ORDER

As a result of the Court Order entered by the District Court in Massachusetts suspending the implementation of the Executive Order in Boston, Lufthansa Airlines posted an announcement stating that it would board all passengers with flights to Boston with valid travel documents until February 5, 2017.

WHITE HOUSE PUBLISHES AUTHORITATIVE GUIDANCE ON GREEN CARD HOLDERS & TRAVEL BAN

On February 1, 2017, White House Counsel Donald F. McGhan II issued a memorandum which clarified that the Executive Order banning nationals of seven restricted countries does not apply to Lawful Permanent Residents of the United States.

NATIONAL VISA CENTER CANCELS ALL SCHEDULED IMMIGRANT VISA INTERVIEWS

The National Visa Center announced that it cancelled all scheduled immigrant visa interviews for those applicants scheduled in February 2017. This includes all immigrant visas categories, including family-based, employment-based and K-1 fiancé visas.

FALSE RUMORS CIRCULATE ABOUT ADDITIONAL COUNTRIES ADDED TO RESTRICTED LIST

During the week of January 30, 2017, false information had been circulating in the media and on immigration listservs stating that additional countries were being added to the restricted countries list. The Department of State confirmed that currently there are no additional countries being added to the list of restricted countries.

VISA INTERVIEW WAIVER PROGRAM CONTINUES TO BE AVAILABLE FOR CERTAIN APPLICANTS

The Department of State has confirmed that those applicants who are under the age of 14 and over the age of 79 are still eligible for a waiver of the in-person visa interview requirement. Moreover, any applicant who is reapplying for a visa within 12 months from the issuance of a previous visa in the same classification and at the same post, also continues to be eligible for a waiver of the in-person interview requirement. However, this may vary or change from post to post.

DHS STATES THAT DUAL CITIZENS ARE SUBJECT TO THE BAN IF THEY PRESENT RESTRICTED COUNTRY PASSPORT

On January 31, 2017, the U.S. Department of Homeland Security issued a Fact Sheet which clarified that travelers presenting passports from one of the restricted countries, who also possess a passport from an

unrestricted country, would not be subject to the ban. This was a reversal from the Executive Order, as initially implemented by many U.S. Customs and Border Protection ("CBP") ports which banned dual citizens who held two passports. Possession of the restricted passport was considered as being "from" one of the restricted countries notwithstanding possession of an unrestricted passport.

PROVISIONAL VISA REVOCATION

The Department of State released a directive, dated January 27, 2017, which provisionally revoked all valid nonimmigrant and immigrant visas for nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen, with the exception of certain diplomatic visas, based on President Trump's Executive Order signed on the same date.

UPDATES ON EXECUTIVE ORDER BANNING TRAVEL FROM RESTRICTED COUNTRIES (UPDATED ON 1/31/2017)

On 1/27/17, President Trump issued an Executive Order (EO) suspending immigrant and nonimmigrant entry to the U.S. of individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen ("affected countries") for at least 90 days. The implementation of the EO has an immediate impact on certain travelers to the U.S., including U.S. citizens, Lawful Permanent Residents (a/k/a green card holders) and nonimmigrants. Certain travelers, who are not nationals of the affected countries, may still be indirectly impacted by the EO. As a result, it is critical to seek legal counsel prior to travel. The following guidelines are suggested for those contemplating travel outside the U.S.

The following groups are directly impacted by the travel ban to the U.S. and should seek legal counsel:

- Nonimmigrant visa holders (i.e. B-1 or B-2, F-1, H-1B, J-1, L-1, etc.) who are nationals of the affected countries and are presently residing in the U.S. should seek legal counsel prior to traveling.
- Lawful Permanent Residents ("LPR") who are nationals of the affected countries should seek legal counsel prior to traveling.
- Dual citizens of a non-affected country (i.e. U.K., Germany, etc.) and one of the affected countries should seek legal counsel.

The following groups of individuals should exercise caution if they travel as they may be subject to increased scrutiny and questioning upon return to the U.S.:

- U.S. citizens and LPRs who are not nationals of the affected countries but who have traveled to one of the affected countries for business or pleasure in the past or seek to travel to one of the affected countries.
- U.S. citizens who are also citizens of the affected countries.
- Nonimmigrants who are not nationals of the affected countries but who have traveled to one of the affected countries for business or pleasure in the past or seek to travel to one of the affected countries.

Lawful Permanent Residents should NOT sign the Form I-407, Record of Abandonment of Lawful Permanent Resident Status

- The Form I-407 enables an LPR to voluntarily abandon status as an LPR of the United States.

- Upon signing the Form I-407, the LPR has formally abandoned his green card and gives up the rights and benefits that go with that status. If in the future the individual wants to return to the U.S. as a permanent resident, he/she will have to begin the process anew.
- There have been numerous reports of immigration officials ordering LPRs to sign the Form I-407.
- LPRs who are asked to sign the Form I-407 by an immigration official should not sign the document, even if threatened or strongly encouraged to.
- LPRs who are asked to sign the Form I-407 should insist on attending a hearing before an Immigration Judge.

THE IMPACT OF THE ADDITIONAL PROVISIONS OF THE EXECUTIVE ORDER

- Visa Interview Waiver Program Cancelled - The EO suspends the consular practice of waiving an in-person interview for a select group of eligible nonimmigrant visa applicants. The EO now requires all nonimmigrant visa applicants to undergo an in-person interview.
- Expect Delays at Consular Posts Worldwide – Whether a visa applicant is a national of the affected countries or not, as consulates begin implementation of the various provisions of the EO, there will likely be considerable delays in visa issuance.
- Suspension of Visa Processing and Adjudication of Visa Petitions and Naturalization Applications – U.S. consular posts worldwide have halted immigrant and nonimmigrant visa processing for nationals of the affected countries. The U.S. Citizenship and Immigration Services has suspended adjudication of petitions for benefits and naturalization applications that were previously filed for nationals of the affected countries.
- Foreign Nationals with Arrests or Convictions – The EO contains a provision specifying the collection of information on the immigration status of foreign nationals charged with major offenses. While it is unclear exactly what this means, it is anticipated that foreign nationals who are arrested and/or convicted will be immediately reported to immigration authorities.