
Executive Order Restricting Immigration From Certain Countries

By Patrick Taurel, Thomas K. Ragland, Michael P. Nowlan, James E. Morrison / Jan 30, 2017

On January 27, 2017, President Donald Trump issued an Executive Order ("Order") that brings about a number of sweeping changes to U.S. refugee policy and immigration benefits adjudications, and outright suspends immigration of individuals from the following countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.

Travel Advisory

We advise Clark Hill clients who are nationals of the countries listed above to avoid traveling internationally and to contact us with questions or concerns. We advise Clark Hill clients from these countries who are currently abroad to consider contacting us prior to returning to the United States. This advisory extends to any non-U.S. citizen who was born in one of the specified countries, even if he or she is also a citizen of third country (i.e., person born in Iraq but has a Canadian passport). According to a [press release](#) issued on January 29, 2017 by the Secretary of the Department of Homeland Security, lawful permanent residents (i.e. green card holders) who are nationals of the specified countries will be permitted to return to the United States "absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare." Thus, lawful permanent residents from the specified countries may be able to travel abroad and safely return to the United States, but for the time being, we would advise against all non-emergency travel.

Litigation Update

There is ongoing litigation regarding the legality of certain provisions of the Order. As of this posting, five courts have temporarily blocked application of the Order as to certain individuals. At this time, pursuant to a [temporary restraining order](#) issued on January 29, 2017 by the United States District Court for the District of Massachusetts, individuals with valid entry documents - including individuals from the specified countries - cannot be detained, refused entry into the United States, or questioned in a manner inconsistent with pre-Order regulations, on the basis of the Order. This order applies nationwide. Moreover, pursuant to a [temporary restraining order](#) issued by the United States District Court for the Eastern District of Virginia on January 28, 2017, lawful permanent residents held at Dulles International Airport must be given access to their lawyers. We will provide updates as appropriate.

A summary of the Order's most significant provisions follows:

Suspension of Visas and Immigration Benefits to Nationals of Certain Countries

- Bars entry for 90 days to individuals - immigrants (i.e. green card holders) and non-immigrants (i.e. short-term visa holders) alike - from the following countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Initial 90-day bar could be extended and, as noted below, it could be broadened to include other countries. The Order vests the Secretaries of State and Homeland Security with the authority to issue visas or other immigration benefits (including entry into the United States) on a "case-by-case basis, and when in the national interest" to nationals of countries for which visas and benefits are otherwise blocked. And on January 29, 2017, the Secretary of Homeland Security issued a [press release](#) in which he declared that he deemed the entry of lawful permanent residents to be "in the national interest" and indicated that they would be permitted to enter the United States "absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare."
- Orders the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, to submit a report on whether additional information is needed from any country for adjudication of any visa, admission, or other benefit, to confirm the applicant's identity and assess whether he or she poses a threat.
- Orders the Secretary of Homeland Security, in consultation with the Secretary of State, to submit to the President a list of countries whose nationals will be barred from the U.S. unless and until that country provides information needed to confirm the applicant's identity and assess whether he or she poses a threat.

Note: It is unclear whether the 90-day bar applies not just to entry, but also to visa issuance and adjudication of other immigration benefits. We have received unconfirmed reports that the Department of Homeland Security is suspending adjudication of immigration benefits filed by individuals from the specified countries.

New and Heightened Screening Standards for All Immigration Programs

- Directs agency heads to implement an enhanced screening program to identify applicants for visas or other immigration benefits who seek to enter the U.S. through fraud, who intend to cause harm, or who are at risk of causing harm after admission.
- Enhanced screening program requires agencies to, among other things, evaluate an applicant's "likelihood of becoming a positive contributing member of society," "ability to make contributions to national interest," and "whether or not applicant has the intent to commit criminal or terrorist acts" after admission.

Suspension of Refugee Admissions and Other Changes to U.S. Refugee Admissions Programs

- Suspends all refugee admissions for 120 days, except for "refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality."
- Suspends admission of Syrian refugees until the President determines that "sufficient changes have been made to the U.S. Refugee Admissions

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- Program to ensure its alignment with the national interest."
 - At the end of the 120-day suspension period, refugee processing will resume only for nationals of countries where the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence have jointly determined that "sufficient safeguards are in place to ensure the security and welfare of the United States."
 - Authorizes the Secretaries of State and Homeland Security to waive application of the temporary ban on a case-by-case basis "when in the national interest."
 - At the end of the 120-day suspension period, the Secretaries of State and Homeland Security are to "prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality."
 - Reduces the number of refugees to be admitted in FY 2017 from 110,000 (President Obama's limit) to 50,000.

Planning for Establishment of Safe Zones for Displaced Syrians

- Directs the Secretary of State, in conjunction with the Secretary of Defense, to produce a "plan to provide safe areas in Syria and in the surrounding region in which Syrian nationals displaced from their homeland can await firm settlement, such as repatriation or potential third-country resettlement."

Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility

- Directs the Secretaries of State and Homeland Security to "consider rescinding" the [terrorism-related inadmissibility grounds \(TRIG\)](#) exemptions exercised by previous administrations. These exemptions allow, for example, U.S. officials to grant immigration benefits to individuals who had past associations with certain groups or who, under duress, provided material support to a terrorist organization.

Expedited Completion of the Biometric Entry-Exit Tracking System

- Directs the Secretary of Homeland Security to expedite completion and implementation of a biometric entry-exit tracking system for all travelers.

Termination of Visa Interview Waiver Program

- Terminates the Visa Interview Waiver Program, which waived the visa interview requirement for three groups of visa applicants: those under the age of 14, those over the age of 79, and a group of non-immigrant visa holders who are seeking routine visa extension in their home country. The Order also calls for the hiring of more individuals to adjudicate visas for foreign nationals.

Visa Validity Reciprocity

- Orders the Secretary of State to review visa reciprocity agreements (length of temporary U.S. visas to foreign nationals) with foreign countries to ensure true reciprocity.

Collection and Publication of Certain Data Relating to Noncitizens Suspected of Terrorism-Related Activity & Gender-Based Violence

- Orders the Secretary of Homeland Security to collect and make publicly available on a six-month basis:
 - Certain data regarding noncitizens charged with, convicted of, or removed for terrorism-related activity or any other national security reason.
 - Certain data regarding noncitizens in the U.S. who have been radicalized after entry and have engaged in terrorism-related acts or provided material support to terrorism-related organizations abroad.
 - Certain data regarding acts of gender-based violence against women or "honor killings" by noncitizens.
 - "Any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses."

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