

Management Alert



Executive Order Immediately Suspends Travel into the U.S. for Certain Foreign Nationals

By Jason E. Burritt

On Friday, January 27, President Trump signed an Executive Order that suspended travel into the United States for nationals from certain designated countries, specifically Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. This suspension in travel is already in place. If nationals from these countries, including those who are lawful permanent residents (i.e. green card holders), are currently present in the United States, they can remain here lawfully but should not travel outside the U.S. at this time.

This suspension will remain in place for at least 90 days -- until April 27, 2017 -- during which time the Department of Homeland Security ("DHS") must assess and identify any countries that do not currently provide adequate information to enable proper screening of nationals from those countries; the affected countries would thereafter have 60 days within which to begin providing the necessary information. Presumably, if a country failed to adequately provide the requested information, the travel ban would then become indefinite.

The Executive Order does not clearly define the circumstances under which an individual is considered to be "from a designated" country. However, the language and subsequent actions by Customs and Border Protection ("CBP") at the border suggests that the travel ban will apply to nationals from the seven countries, and may include lawful permanent residents.

Following actions by CBP, several lawsuits have been filed and subsequent rulings have been made, starting with an emergency ruling issued in Brooklyn, New York on January 28, 2017. As of this writing, at least four temporary restraining orders ("TROs") are in place, each with varying specificity and reach. We have highlighted the key points of the three most prominent orders below:

- Massachusetts - On Sunday, January 29, 2017, U.S. District Judge Allison Burroughs and Magistrate Judge Judith G. Dein of the U.S. District Court of Massachusetts issued a seven-day stay on removal, detention and additional screening. Perhaps the most far reaching order to date, the TRO is in effect for seven days and applies to lawful permanent residents, citizens, visa holders, approved refugees, and other individuals from the identified countries subject to the Executive Order. The ruling also (1) limits secondary inspection screening; (2) bars DHS from detaining or removing foreign nationals who would otherwise be legally authorized to enter the U.S. in the absence of the Executive Order with approved refugees applications, immigrant and nonimmigrant visas; (3) requires CBP to notify airlines that individuals on flights to Logan Airport will not be detained or returned based solely on the basis of the Executive Order.
- New York- On Saturday, January 28, 2017, Judge Ann M. Donnelly of the U.S. District Court in Brooklyn enjoined and restrained DHS from "removing individuals with refugee applications . . . , holders of valid immigrant and non-immigrant

visas, and other individuals . . . legally authorized to enter the United States.” The Court orders the U.S. Marshal for the Eastern District of New York to enforce the ruling. While the ruling blocks removal of the individuals, it does not order the release of any segment of the affected population.

- Virginia - On Saturday, January 28, 2017, U.S. District Court Judge Leinie Brinkeman for the Eastern District of Virginia has issued an order blocking removal of lawful permanent residents detained at Dulles International Airport. The order remains in effect for seven days and does not require release of lawful permanent residents, but does require that all lawful permanent residents detained at Dulles International Airport be given access to lawyers.

The President’s Executive Order is not the first time in the post-9/11 era that the U.S. has focused on citizens of particular nations to try and identify and eliminate potential threats to homeland security. In 2002, the George W. Bush administration created a program of special vetting of foreign citizens, known as the National Security Entry-Exit Registration System (“NSEERS”), to record and monitor the arrival, stay, and departure of certain foreign citizens from the very same seven countries named in the most recent Executive Order.

NSEERS, however, was far broader. It also applied to categories of foreign citizens from several other countries, namely, Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Jordan, Kuwait, Lebanon, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Tunisia, United Arab Emirates, and Yemen. DHS suspended NSEERS in 2011, however, and President Obama formally terminated it on December 22, 2016.

Given this history, as a precautionary measure, U.S. lawful permanent residents and foreign nationals from countries not included in President Trump’s Executive Order but included in the NSEERS list of countries should consider postponing all non-emergency travel from, and accelerating their return travel to the United States. In addition, employers of U.S. lawful permanent residents and foreign nationals who are from Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Jordan, Kuwait, Lebanon, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Tunisia, United Arab Emirates, and Yemen, should consider (a) canceling all trips abroad for these employees, and (b) instructing them to return as soon as possible to the United States.

In light of these developments, and in response to the rapidly changing immigration climate, employers should strongly consider the following actions:

- Advise any foreign national employees from the seven designated countries listed above -- this includes U.S. lawful permanent residents who are nationals from these countries -- to avoid travel outside of the United States. If a U.S. lawful permanent resident from these countries is currently outside of the U.S., s/he should seek to return as soon as possible.
- Advise any affected individuals from the seven designated countries, other than lawful permanent residents, who are currently outside of the United States that they should not return to the U.S. at this time. Seyfarth Shaw attorneys have first-hand knowledge of individuals being detained upon arrival to the United States.
- Consider advising U.S. lawful permanent residents and foreign national employees from countries not included in the Executive Order but included in NSEERS to postpone non-emergency international travel.
- Identify all employees currently holding any nonimmigrant visa status (this includes L-2s, H-4s, and TNs) and consider sponsoring these employees for H-1B status under the April 1 H-1B lottery.
- Advise caution to all foreign national employees who may be traveling internationally to renew a visa at a United States consular post. Individuals who are employed, or who hold academic degrees, in a field that appears on the government’s Technology Alert List, should delay their visa appointments at U.S. consular posts in order to avoid potentially lengthy administrative processing or related screening delays. Click [here](#) for more information on the Department of State’s Technology Alert List.
- For any affected employees who have current green card priority dates and are able to file Adjustment of Status applications, file the applications as soon as possible.

Please bear in mind, however, that each employer's and affected employee's situation may present special circumstances that may warrant consideration of an alternative approach in lieu of the recommended strategy above.

We will continue to monitor the situation and will reach out with additional details as they become available.

If you would like further information, please contact your Seyfarth attorney, or [Jason E. Burritt](mailto:jburritt@seyfarth.com) at jburritt@seyfarth.com.

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