

One Minute Memo®



Revised Travel Ban: President Trump Signs New Executive Order

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Seyfarth Synopsis: On March 6, 2017, President Trump signed a new Executive Order temporarily restricting certain foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen from entry into the United States for 90 days. The new Executive Order aims to address issues and ambiguities cited in the litigation related to the previous travel restriction issued on January 27, 2017.

Following the challenges to the January 27, 2017 Executive Order titled *Protecting the Nation from Terrorist Attacks by Foreign Nationals*, on March 6, 2017 President Trump signed a new Executive Order titled *Protecting the Nation from Foreign Terrorist Entry Into the United States*. This new Executive Order will go into effect on March 16, 2017 and includes many changes to the original order, particularly with regard to who is subject to the temporary travel ban.

The New Executive Order

The new Executive Order suspends entry of foreign nationals from countries designated by President Trump as representing a recognized threat, warranting additional scrutiny of nationals seeking to enter the United States. The six countries included in the temporary ban are Iran, Libya, Somalia, Sudan, Syria, and Yemen. The new Executive Order removes Iraq from the list of impacted countries. In the Executive Order, President Trump indicates these countries were designated as countries of concern by the Obama administration and Congress, and he cites the Department of State's Country Reports on Terrorism 2015 (June 2016) to demonstrate the heightened risks posed by nationals of these countries. The Executive Order imposes a 90-day suspension on entry to the United States to allow the U.S. government to conduct a review and analysis of the national security risks. As with the previous order, this order leaves open the possibility of including additional countries on the list.

Specifically, the suspension of entry to the U.S. applies only to foreign nationals of the designated countries who are outside the United States on the effective date of the order (March 16, 2017), did not have a valid visa at 5:00 p.m. EST on January 27, 2017, and do not have a valid visa on the effective date of the order.

As for other aspects of the new Executive Order, the Visa Interview Waiver Program will again be suspended, as it was in the previous order. Visa applicants from all countries will need to apply in person at a U.S. Embassy or Consulate. The Executive Order confirms that no immigrant or nonimmigrant visa issued before March 16, 2017 should be revoked, and any individual whose visa was revoked or canceled as a result of the prior Executive Order should be entitled to a travel document confirming permission to travel to the U.S. and seek entry. In addition, United States Citizenship and Immigration

Services (“USCIS”) will continue to adjudicate all naturalization, immigrant, and non-immigrant visa petitions and applications regardless of nationality.

Exemption from the Travel Ban

The following groups of foreign nationals are exempt:

Lawful Permanent Residents -- also known as “LPRs” or “green card holders” -- are not subject to this temporary travel ban. This includes those individuals who hold passports from any of the six designated countries.

Dual nationals -- individuals from one of the six listed countries who are also a citizen of a non-designated country -- are not subject to the travel ban if they seek entry to the U.S. using a passport issued by a non-designated country.

Nonimmigrant Visa Holders -- provided that the visa stamp was issued prior to January 27, 2017 and remains valid.

Foreign nationals holding a valid Advance Parole document.

Waiver of the Executive Order

The new Executive Order states that the Department of Homeland Security and Department of State may review individual cases and grant waivers of the travel ban on a case-by-case basis. The criteria for a waiver will consider whether the traveler’s entry is in the national interest of the United States, will not pose a threat to national security, and that denying entry during the suspension period will cause undue hardship. The Executive Order states that waivers will be adjudicated by the Department of State in conjunction with the individual’s visa application.

Summary

The March 6, 2017 Executive Order clarifies some of the ambiguities that arose from the original January 27, 2017 order, specifically that dual nationals and Lawful Permanent Residents are not subject to the travel ban. In addition, the Executive Order does not include individuals from the six designated countries who were in possession of a valid visa as of the date of the original order. Seyfarth Shaw LLP will continue to monitor the implementation of the Executive Order and any subsequent legal challenges.

If you have any questions, please contact your Seyfarth attorney, Brian D. Potter at bpotter@seyfarth.com, Jason E. Burritt at jburrirt@seyfarth.com, Michelle Gergerian at mgergerian@seyfarth.com, Gabriel Mozes at gmozes@seyfarth.com.

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