

President Trump Signs New Executive Order Temporarily Restricting Travel for Six Countries and Halting Refugee Admissions

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On March 6, 2017, President Trump signed a new Executive Order ("EO"), Protecting the Nation from Terrorist Attacks by Foreign Nationals, revoking the prior EO 13679 signed on January 27, 2017. EO 13679 included, among other provisions, a 90 day suspension of U.S. visa issuance and entry into the U.S. for individuals from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. EO 13679 also suspended the U.S. Refugee Admissions Program (USRAP) for 120 days, suspended Syrian refugee admissions indefinitely, and reduced the number of refugee admissions to 50,000 during Fiscal Year 2017.

EO 13679 was successfully challenged in the federal courts and enforcement of portions remain halted. See our previous alerts relating to EO 13679 and subsequent updates here. This new EO is more narrowly drawn than EO 13679, restricting travel for individuals from certain countries identified as posing potential national security risks.

The March 6 Executive Order, which will become effective on March 16, 2017, revokes EO 13679 and implements the following measures:

- Restricts for 90 days the entry of individuals from Iran, Libya, Somalia, Sudan, Syria and Yemen if they are outside of the U.S. on the effective date, do not possess a valid U.S. visa on the effective date, and did not possess a valid U.S. visa at 5:00PM Eastern Standard Time on January 27, 2017, the date of the earlier EO.
- Provides the U.S. Department of Homeland Security (DHS) and the U.S. Department of State with discretionary authority, on a case-by-case basis, to issue visas or waive visa requirements and allow entry of nationals of the six affected countries if the individual can demonstrate that the denial of entry would cause undue hardship, that his or her entry would not pose a national security threat, and that his or her entry would be in the national interest of the United States.
- Suspends for 120 days the Refugee Admissions Program and upon resumption of the program, limits the number of refugee admissions to 50,000 for the fiscal year 2017. Refugees already formally scheduled for transit by the U.S. Department of State are not impacted. As in the case of visas, DHS and the State Department will have discretionary authority to waive the restriction for individuals whose entry the government determines to be in the national interest and who would not pose a threat to the security or welfare of the United States.
- Confirms that no visas issued before the effective date will be revoked pursuant to the EO.
- Confirms that any individual whose visa was revoked or cancelled pursuant to the January 27 EO 13679 shall be entitled to a travel document confirming that the individual is permitted to travel to the U.S. and seek entry.
- Mandates the development of uniform screening standards for all immigration programs as appropriate and in the national interest.
- Mandates expedited completion and implementation of a biometric entry-exit system for travelers within the scope of the EO.
- Restricts the visa interview waiver program and requires most nonimmigrant visa applicants to undergo an in-person interview.

The following individuals are specifically exempt from the order restricting travel:

- U.S. Permanent Residents (i.e., "green card" holders) and those who hold valid U.S. visas on the effective date, March 16, 2017.
- Citizens of the affected countries who are admitted or paroled into the U.S. on or after the effective date of the order [Note that a valid visa is still required for reentry, so departing the U.S. without a still-valid visa could result in a restriction on reentry. Citizens of the affected countries should consult with

counsel prior to departure from the U.S. to assess the effect of this EO on ability to reenter the United States.]

- Dual nationals of the affected countries when traveling on a passport issued by a non-designated country.
- Individuals traveling on diplomatic, NATO, C-2 for travel to the United Nations, G-2, G-2, G-3 and G-4 visas.
- Individuals already granted asylum or refugee status in the United States, or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.
- Citizens of Iraq: Iraq has been removed from the list of restricted countries, and only individuals from Iran, Libya, Somalia, Sudan, Syria and Yemen are affected by the new travel restriction. The EO points to the Iraqi government's efforts to "enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal" as part of the justification for removing Iraq from the list of designated countries.
- The indefinite suspension of Syrian refugees has also been removed from the new EO, although Syrian refugees would remain subject to the temporary 120 day suspension of refugee processing.

The new EO provides the following examples of situations where case-by-case waivers of the restriction might be appropriate:

1. the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the effective date of this order, seeks to reenter the United States to resume that activity, and the denial of reentry during the suspension period would impair that activity;
2. the foreign national has previously established significant contacts with the United States but is outside the United States on the effective date of this order for work, study, or other lawful activity;
3. the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;
4. the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;
5. the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;
6. the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;
7. the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 et seq., traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;
8. the foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada; or
9. the foreign national is traveling as a United States Government-sponsored exchange visitor.

The more limited scope of this new Executive Order, coupled with its delayed implementation, and expanded availability of waivers, should substantially reduce the number of travelers caught off-guard, as happened following the January EO. Nevertheless, it is not yet clear how waivers will be processed, and there may be circumstances where the applicability of the EO is unclear. Accordingly, we urge individuals from the designated countries who are in the U.S. to consult with counsel prior to international travel to review their eligibility for readmission.

Mintz Levin will monitor this situation and provide updates as they become available.

Authors