

IMMIGRATION ALERT:

Please advise all foreign nationals born in or holding a passport from the following countries to avoid departing the U.S. for any reason: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.

On January 27, 2017, President Trump issued an Executive Order (EO) halting the current U.S. refugee admission program and banning temporarily from the U.S. all foreign nationals from seven largely Muslim countries. The ban applies, for example, to temporary nonimmigrants (including F-1, J-1, H-1B, L-1, etc.) as well as immigrant visa holders seeking initial entry as permanent residents. The Department of Homeland Security has clarified that the EO does not apply to those who have already obtained permanent residence (green card holders). The EO also provides that after 90 days, any country that refuses or is unable to provide the U.S. government with certain information deemed necessary for visa screening, will be added to the list of banned countries.

Implementation of the EO has been highly chaotic, as responsible agencies were not provided advance notice or an opportunity for prior legal review. While foreign nationals from the listed countries are now prevented from boarding flights to the U.S., many affected individuals were already en route to the U.S. when the EO was issued, and were detained upon arrival. A series of judicial orders granted by federal judges in New York, Massachusetts, and Virginia have prevented border officers from deporting these individuals. It is unclear whether these orders have any bearing on individuals currently outside the U.S.

While the situation is fluid, the EO is currently being implemented in the following ways:

- Foreign nationals born in or holding passports from Sudan, Somalia, Libya, Yemen, Syria, Iraq and Iran are currently banned from entering the U.S. The State Department has clarified that the ban also applies to dual nationals, such as a foreign national with both French and Libyan passports.
- As an exception to the above, U.S. permanent residents from the listed countries are not subject to the ban, absent significant derogatory information indicating a threat to the United States.
- While the ban is initially valid for 90 days, it will continue for all countries unable to provide the U.S. with certain information needed to process visa applications. Therefore, the ban may be indefinite, and other countries may be added if they are unable or unwilling to provide such information.
- Refugees worldwide are banned for at least 120 days, with refugees from Syria banned until further notice.
- The EO provides an individualized exception allowing admission of foreign nationals from the excluded countries on account of national interest. While the Pentagon released a list of Iraqi citizens it deemed exempt from the ban, there is no guidance on what might count as being in the national interest.
- There are reports that U.S. Citizenship and Immigration Services (USCIS) has suspended processing of immigration benefit requests filed on behalf of foreign nationals from the banned countries. USCIS has made no official pronouncement in this regard. Should this be true, many people could be forced out of the country.

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Please consider the following guidance regarding your travel and immigration planning:

- Foreign nationals born in or holding a passport from the affected countries currently in the U.S. should not depart the country under any circumstance. If outside the U.S., foreign nationals from these countries should contact a member of the immigration practice group for further information.
- Employers may wish to prioritize permanent residence applications for foreign nationals from the affected countries, particularly for jobs requiring travel. However, it remains unclear whether USCIS has suspended processing of such cases.
- The EO requires every visa applicant to appear for an in-person interview. While many consulates routinely waive interviews for straightforward visa renewals, this change could result in significant processing delays at consulates worldwide.
- Permanent residents from the listed countries should contact a member of the immigration practice group before departing the U.S. Upon reentering the U.S., permanent residents should under no circumstances agree to relinquish their green card or sign a Form I-407 if requested to do so by a border officer.

Harter Secrest & Emery's immigration practice group has reached out to affected individuals and organizations. We will continue to monitor the situation closely, and provide updates as they become available. While the executive branch has broad power with respect to immigration admissions, there are statutory limits preventing discrimination on the basis of national origin. These limits will likely be tested in the coming months as courts review inevitable challenges to this EO.

If you have any questions regarding this LEGALcurrents®, please do not hesitate to contact any member of our firm's Immigration Practice Area at (585) 232-6500. ■



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