

SUMMARY REGARDING MARCH 6, 2017 EXECUTIVE ORDER RESTRICTING TRAVEL AND FREQUENTLY ASKED QUESTIONS

On March 6, 2017, the White House issued a new Executive Order which imposed travel restrictions on nationals of certain Muslim-majority countries. The new Executive Order specifically revoked the prior Executive Order, which had been invalidated by the federal courts. The effective date of the new Executive Order is March 16, 2017.

This document will provide a summary of the restrictions imposed, based on guidance to date. For those not familiar with immigration terminology, below is a listing of common terms with relevance to the Executive Order.

GENERAL DEFINITIONS:

- **Immigrant** – A foreign national who intends to reside permanently in the United States
- **Nonimmigrant** – A foreign national who has the right to remain only temporarily in the United States for a specific purpose, and to return to an un-abandoned foreign residence abroad
- **National** – A person who owes allegiance to a particular nation and who is eligible for diplomatic protection by that nation, but not necessarily having full political rights; typically denoted by eligibility to hold a country's passport.
- **Green Card** – Form I-551 stamp or card which evidences an individual's permanent residence in the United States.
- **Nonimmigrant Visa** – Form placed in a passport by a U.S. Consulate abroad which allows the visa holder to board passage to the United States and to present him or herself for inspection by an officer of US Customs & Border Protection (CBP) at the port of entry into the U.S. for temporary entry to the U.S.
- **Immigrant Visa** – Form placed in a passport by a U.S. Consulate abroad which allows the visa holder to present him or herself for entry to the US as a permanent resident. A Green Card is issued after arrival.
- **Form I-94 – Arrival/Departure Document** – Document stored electronically by CBP at the port of entry authorizing an individual to enter the United States, stating the immigration status which the person is authorized to hold, and stating the date by which the individual must depart the United States. Individuals should print this document after entry to the US.
- **Immigration Status** – Status authorized by the type of visa used to enter the U.S. (i.e., H1B, F-1, etc.). A person's immigration status in the U.S. can exceed the validity period of the visa in his or her passport.
- **Citizenship & Immigration Services (CIS)** – The government agency which determines an individual's eligibility for certain immigration benefits.
- **Customs & Border Protection (CBP)** – The government agency which inspects individuals who apply at ports of entry for entry to the U.S.
- **Immigration & Customs Enforcement (ICE)** – The government agency charged with enforcing immigration law and policy within the U.S.

- **Department of State** – The government agency which operates U.S. embassies and consulates abroad, and is charged with issuing visas to foreign nationals wishing to travel to the United States.
- **Department of Homeland Security (DHS)** – The government agency formed after 9/11 to consolidate many functions related to national security. CIS, CBP, and ICE are agencies within DHS.

In general, U.S. immigration law divides all individuals seeking to enter the United States into two categories: immigrants and nonimmigrants. “Immigrants” are individuals who are intending to remain permanently in the United States. “Nonimmigrants” are individuals coming for only a temporary stay. Most international students initially enter the U.S. in a nonimmigrant status (e.g., F-1, J-1).

EXECUTIVE ORDER SUMMARY

The new Executive Order (“EO”) suspends entry into the United States for 90 days (and possibly longer) by nationals from the following six countries:

Iran
Libya
Somalia
Sudan
Syria
Yemen

(Iraq was removed from the list).

The EO prohibits entry to the US of the nationals of those countries who:

- (i) are outside the United States on the effective date of this order;
- (ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and
- (iii) do not have a valid visa on the effective date of the order (March 16).

Existing visas are not cancelled, as was the case in the prior EO. The EO takes effect on March 16, 2017.

The EO also suspends refugee processing for 120 days, and suspends refugee travel to the U.S. for 120 days, unless travel was already scheduled by the Department of State. The EO reduces the number of refugees the US will admit from 100,000 to 50,000.

Exceptions to travel prohibition for nationals of these countries

The following individuals are not subject to the travel ban:

- (i) any lawful permanent resident of the United States (i.e. a green card holder);
- (ii) any foreign national who is admitted to or paroled into the United States on or after the effective date of this order;

(iii) any foreign national who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, **such as an advance parole document**;

(iv) any dual national of one of the listed countries as long as the individual is traveling on a passport issued by a non-listed country;

(v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or

(vi) any foreign national who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

NOTE: Canadian Landed Immigrants from the 6 listed countries are not exempted from the EO. They can apply for visas only pursuant to the onerous “Waiver Process” described in the next section.

Waiver Process

The Executive Order permits “waivers” on a case-by-case basis, to allow the issuance of visas or other immigration benefits to nationals of the 6 countries if the foreign national demonstrates to a consular officer’s satisfaction (1) that denying entry would cause undue hardship, and (2) that his or her entry would not pose a threat to national security and (3) the person’s entry would be in the national interest. No details have been provided on the waiver process. Case-by-case waivers could be appropriate in circumstances such as the following:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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;

(viii) the foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada; or

(ix) the foreign national is traveling as a United States Government-sponsored exchange visitor.

Additional Issues for Individuals with ties to the Listed 6 Countries

- There is no indication in the memo that the CIS has suspended or will suspend adjudication of petitions or applications for immigration benefits filed by or on behalf of individuals from the listed 6 countries. DHS has specifically confirmed that US CIS will continue normal processing of Applications for Naturalization (Form N-400) and Applications to Adjust Status (Form I-485) filed by citizens of the 6 listed countries.
- Nationals of the 6 countries who are currently **in the U.S.** in valid immigration status will not see their status terminated or otherwise affected, even though they may not be permitted to reenter the U.S. after foreign travel.

Travel Issues for Citizens of Other Countries

- Nonimmigrant and immigrant visas for citizens of other countries remain valid for travel to the U.S.
- Immigration status in the U.S. for citizens of other countries is not impacted by the Executive Order.
- Additional screening should be expected by anyone traveling to the U.S. who has visited one of the 6 listed countries, or who was born in one of the 6 countries.
- Citizens of countries other than the listed 6 who are applying for visas at U.S. consulates should expect additional delays in processing, as more visa applicants will now need visa interviews. Previously, interview waivers were available to individuals who were applying for a new visa within 24 months of the expiration of the old visa. Under the EO, interviews are required unless the applicant applies within 12 months of expiration of the old visa.
- 90 day ESTA Visa Waiver for eligible countries is still in effect.
- Although travel is not restricted for citizens of Iraq, the EO indicates that Iraqi citizens will receive more extensive screening. Delays in visa processing and at the U.S. port of entry should be expected.

Predicting the Future

Several groups have already said they will challenge the new EO as a violation of the Establishment Clause for targeting the restrictions to Muslim-majority countries, when there is arguably no demonstrable evidence that they pose a threat to safety or security. The Establishment Clause prevents the U.S. government from favoring one religion over another. As a result, the situation is fluid, and subject to change at any time. Any individual who holds a passport from or is a national of one of the listed countries is advised not to travel outside the United States until they have consulted an immigration attorney.

The following is a series of Frequently Asked Questions regarding this EO, and answers based on current information:

FAQs

1. Does the order impact international students who are citizens of countries not on the list of 6 countries?

ANSWER: Citizens of other countries are not impacted by the ban on entry, unless you are a dual citizen of one of the 6 listed countries, you were born in one of those countries, or you have traveled to one of those countries.

2. I am a citizen of one of the 6 listed countries and I am already in the United States in a nonimmigrant status (F-1, J-1, H-4, etc.). Does the Executive Order affect my status in the United States?

ANSWER: If you are already in the United States, your current status is not affected by the Executive Order. You can remain in the U.S. for as long as your status allows. You should not depart the US without consulting an immigration attorney or your foreign student advisor.

3. I am a citizen of a country not on the list of 6, but I have dual citizenship with one of those countries. Can I travel out of the U.S. and reenter using my non-immigrant visa (F-1, J-1, H-4, etc.)?

ANSWER: If you are a dual citizen, you are permitted to travel using passports of a country OTHER than one of the list of 6 countries. You should expect additional screening upon your return to the US. If your nonimmigrant visa is in the passport of one of the listed countries, you should not travel outside the U.S. , unless you are prepared to apply for a visa in your other passport.

4. I am a citizen of a country not on the list of 6 countries, and I am not a dual citizen of any of those countries.

ANSWER: The Executive Order does not restrict travel by citizens of countries other than those on the list of 6 countries. However, if you have traveled to one of the 6 listed countries in the past, you should expect additional screening.

5. I am a citizen of one of the listed countries, but I am a Canadian Landed Immigrant. Can I travel out of the U.S. and reenter using my non-immigrant visa (F-1, J-1, H-4, etc.)?

ANSWER: You can travel if you have a valid visa. If you need to obtain a new visa, you will need to qualify for a “waiver” on the grounds stated in the EO. The procedure for requesting a waiver has not been released, but will likely cause delays in processing. Approval is not guaranteed. Applicants for waivers should plan for extended time outside the U.S. for waiver processing.

6. I am not a citizen of one of those countries, but I traveled to one of those countries in the past. Can I travel out of the U.S. and reenter using my non-immigrant visa (F-1, J-1, H-4, etc.)?

ANSWER: You can travel outside the U.S. and reenter, but you should expect additional screening upon reentry to the U.S.

7. I am a naturalized U.S. citizen, but I was born in or a citizen of one of the 6 listed countries. Can I travel out of the U.S. and reenter?

ANSWER: You can travel outside the U.S. and reenter, but you should expect additional screening upon reentry to the U.S. You should travel only using your U.S. passport.

8. I am a naturalized U.S. citizen not born in one of the 6 listed countries. Can I travel out of the U.S. and reenter?

ANSWER: You can travel outside the US and reenter.

9. I am a U.S. citizen but I visited one of the 6 listed countries in the past. Can I travel out of the U.S. and reenter?

ANSWER: You can travel outside the U.S. and reenter, but you should expect additional screening upon reentry to the U.S.

10. I am a legal permanent resident (green card holder) of the United States, but I was born in or a citizen of one of the listed 6 countries. Can I travel out of the U.S. and reenter?

ANSWER: You can travel outside the U.S. and reenter. You should expect additional screening upon reentry to the U.S.

11. I am a legal permanent resident (green card holder) of the United States. I was not born in or a citizen of one of the 6 listed countries, and I have never visited any of the 6 listed countries. Can I travel out of the U.S. and reenter?

ANSWER: You can travel outside the U.S. and reenter.

12. Is there anything in the order that impacts foreign nationals who do NOT have ties to the 6 countries?

ANSWER: Yes. The EO eliminated the ability for certain people renewing a nonimmigrant visa to skip the interview process. In the past, some applicants for nonimmigrant visas were able to skip an in person interview at the Consulate if they were applying to extend an existing visa. Under the EO, the circumstances under which a waiver of the interview may be granted are now more limited. However,

the State Department has confirmed that the interview waiver program still applies to applicants aged 14 and under and 79 and older. They have also confirmed that it still applies to applicants who were issued visas that expired less than 12 months ago in the same category as they are currently seeking. Individual consulates always reserve the ability to require an interview, even for individuals otherwise eligible for a waiver of the interview. Travel plans should be made accordingly.

13. I want to apply for H-1B after I graduate, and I am a citizen of one of the listed countries. Can my employer file an H-1B petition on my behalf?

ANSWER: Your employer can apply for H-1B on your behalf.

14. I want to apply for H-1B and I am a dual citizen of one of the listed countries. Can my employer file an H-1B petition on my behalf?

ANSWER: Your employer can apply for H-1B on your behalf.

15. I want to apply for H-1B after I graduate and I am not a citizen (or dual citizen) of one of those countries.

ANSWER: Your employer can apply for H-1B on your behalf.

16. I am an F-1 student from one of the listed countries. Can I apply for Curricular Practical Training (CPT)?

ANSWER: You can apply for CPT. This is authorized by the school. There is no indication that the US CIS will suspend immigration benefits pursuant to this Executive Order.

17. I am an F-1 student from one of the listed countries. Can I apply for Optional Practical Training?

ANSWER: You can apply for OPT. Applications for the OPT employment authorization document (EAD) are filed with the US CIS. There is no indication that the US CIS will suspend processing of immigration benefits pursuant to this EO.

18. I have heard that the new president will revoke the STEM extension of Optional Practical Training (OPT) for F-1 students. If I do not have any ties to any of the 6 countries, will my STEM extension be delayed?

ANSWER: STEM extensions of OPT are still available and were not part of any signed Executive Orders.