

## Employment-Based Immigration Implications of President Trump's Executive Orders

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On Friday, January 27<sup>th</sup>, President Trump issued an Executive Order titled “Protecting the Nation from Foreign Terrorist Entry into the United States.” Two days earlier, on Wednesday, January 25<sup>th</sup>, President Trump issued two other Executive Orders titled “Border Security and Immigration Enforcement Improvements” and “Enhancing Public Safety in the Interior of the United States.” Collectively, the three Executive Orders affect many aspects of the immigration system. Thus far, employment-based immigration, specifically, has been affected to a lesser extent, although that may change if President Trump signs a recently-leaked draft Executive Order. Please be aware that the situation is still fluid as practical tweaks and adjustments are being implemented and legal challenges are working their way through the courts. Below is a summary of two key provisions that have the potential to immediately affect your workforce.

### (1) 90-Day Travel Ban on Individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen

Individuals from seven designated countries (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen) are banned from travelling to the United States for at least 90 days or until April 27, 2017. Although seemingly straightforward, the impact of this order ultimately depends on one's underlying immigration status. Specifically, the travel ban most clearly applies to individuals with nonimmigrant visas (*e.g.*, F-1, H-1B, L-1). After some initial back and forth, the U.S. Department of Homeland Security confirmed that the travel ban will not affect permanent residents (*i.e.*, green card holders) from the designated countries in the same manner as nonimmigrant visa holders absent “significant derogatory information indicating a serious threat to public safety and welfare.” Notably, the travel ban applies to individuals who are dual citizens of one of the seven designated countries and another country, although officials have indicated that individuals will be treated according to the travel document presented. For example, if an individual presents a Canadian passport for entry, the individual will be processed with the Canadian passport, even if the the individual also has a passport from one of the designated countries. The travel ban does not affect naturalized U.S. citizens who are originally from one of the designated countries.

In accordance with the travel ban, the U.S. Department of State has suspended visa issuance to individuals from the designated countries. U.S. Citizenship and Immigration Services also has reportedly stopped making final decisions on immigration petitions and applications for individuals from these countries. Petitions and applications for these individuals may still be filed, and Field Offices may still process and interview these individuals, but Field Offices may not make final decisions until further notice. Naturalization applications are reportedly not affected.

Absent an immediate emergency, individuals from the designated countries (especially individuals with nonimmigrant visas) should avoid international travel. If travel is absolutely necessary, individuals should be prepared for the reality that they will not be allowed re-admittance to the United States at least until the end of the 90-day period. There is also the possibility that the travel ban could be extended beyond the initial limit of 90 days. Immigration petitions and applications for individuals from these countries may still be filed, but a delay in final adjudication should be expected.

## (2) Suspension of the Visa Interview Waiver Program

The Visa Interview Waiver Program (not to be confused with the Visa Waiver Program) permits qualified low-risk foreign nationals who were interviewed and screened in conjunction with a prior visa application to renew their visas without another interview. The suspension of this program effectively means that all visa applicants must go through an in-person interview process, which will likely lead to increased delays in obtaining appointments and in visa processing times, especially at busy consular posts.

If international travel is necessary, foreign nationals should plan for a longer visa renewal process. The process should be largely consistent with the initial in-person interview the foreign national would have attended, but the Executive Order also refers to a review of current screening mechanisms to ensure uniform application. This could ultimately change certain parts of the interview process, but this is yet to be seen. If advance scheduling is permitted at the consulate, the interview should be scheduled at the earliest possible opportunity so that trips and interviews can be planned accordingly.

Finally, another option to consider is processing of visa renewals in other countries with shorter wait times (*e.g.*, an Indian national applying for a renewal visa at a consulate in Canada). Before pursuing this option, individual circumstances should be examined to assess whether this is allowable (some consulates do not permit this process), what information needs to be provided (some consulates require “extra” documentation in these cases), and the level of risk that the foreign national could be required to return to his/her home country to process in any event.

If you have questions about these Executive Orders or other general questions about employment-based immigration, please contact one of the immigration specialists in Koley Jessen’s Employment, Labor and Benefits Practice Group.