

## Round Two of President Trump's Executive Order on Immigration: What's Changed and What Hasn't Changed

We have entered round two of the bout between President Trump's administration and various challengers over the legality of the President's Executive Order titled "Protecting the Nation from Foreign Terrorist Entry into the United States," originally issued on January 27, 2017 (the "Order"). In round one, the Ninth Circuit upheld a lower court's decision halting enforcement of the original Order during the pendency of litigation. In an effort to bypass the delayed implementation of the original Order, President Trump signed a new, scaled-back version of the Order on March 6, 2017, which is set to go into effect on March 16, 2017. Leading the second round of litigation over the new Order are Hawaii and Washington with Massachusetts, Minnesota, New York, and Oregon joining in the Washington suit with respect to the original Order. As was the case with the original Order, the new Order includes two key provisions that have the potential to affect your workforce.

- (1) Beginning March 16, 2017, 90-Day Suspension of Entry for Citizens and Nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen Who Do Not Have a Valid Visa

The new Order significantly changes the original Order's "travel ban." Under the new Order, beginning on March 16, 2017, individuals who are citizens or nationals of six designated countries (Iran, Libya, Somalia, Sudan, Syria, and Yemen) are temporarily suspended from travelling to the United States for at least 90 days or until June 14, 2017 if they did not have a valid visa at 5:00 p.m. EST on January 27, 2017 (the effective date of the original Order) and do not have a valid visa on March 16, 2017 (the effective date of the new Order). Notably, Iraq is no longer included on the list of designated countries, but Iraqis will be subjected to additional scrutiny.

The new Order and other official guidance expressly exempt certain categories of individuals from the temporary suspension even if they are a citizen or national of one of the six designated countries. Specifically, individuals who already possess a valid immigrant visa or nonimmigrant visa (*e.g.*, F-1, H-1B, L-1) will not be prevented from travelling to the United States, and visas issued before March 16, 2017 will not be revoked as a result of the new Order. At this time, U.S. embassies and consulates will continue to process visa applications, but visa processing is expected to cease on March 16, 2017. Likewise, individuals travelling with a document other than a visa that permits travel to the United States, such as an advance parole document, will not be affected by the temporary suspension. Also not affected by the temporary suspension are naturalized U.S. citizens, lawful permanent residents (*i.e.*, green-card holders), refugees and asylees, certain diplomats, and dual nationals of a designated country when traveling on a passport issued by a non-designated country. Visas which were provisionally revoked solely as a result of enforcement of the original Order are valid for purposes of the new Order.

In short, the temporary suspension does not affect individuals from a designated country that already possess (or will possess prior to March 16, 2017) a visa or other lawful means of travelling to the United States. Nor does it affect individuals from a designated country who are already in the United States. Rather, the temporary suspension affects those individuals from a designated country that seek to obtain a visa after March 16, 2017.

The new Order also authorizes a waiver of the temporary suspension on a case-by-case basis if an individual can demonstrate that his or her entry is in the national interest, will not pose a threat to national security, and denial of entry would cause undue hardship. The new Order sets forth several circumstances in which case-by-case waivers could be appropriate. One circumstance could be a foreign national who previously was admitted to the United States for a continuous period of work, study, or other long-term activity but is outside the United States on March 16, 2017, if denial of reentry would impair the activity. Other circumstances could be a foreign national who previously established significant contacts with the United States but is outside the United States on March 16, 2017 for work, study, or other lawful activity, or a foreign national who seeks to enter the United States for significant business or professional obligations or to visit or reside with a close family member who lawfully resides in the United States.

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

The new Order does not change the original Order's suspension of the Visa Interview Waiver Program. As covered in our previous article, 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. Additional information regarding the Visa Interview Waiver Program can be found in our previous article. Click [here](#) to read the full article.

If you have questions about the new Order 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.