



FAQ ON TRAVEL BAN

Posted on January 30, 2017 by Cyrus Mehta

White House Executive Orders: U.S. Travel Ban FAQs

Monday, January 30, 2017 – 9:15am

Note: the information below is based on what we know as of the morning of January 30, 2017. New developments continue to rapidly change the implementation of President Trump's Executive Order: "Protecting The Nation From Terrorist Attacks By Foreign Nation," which includes a ban on entry to the U.S. for citizens of certain Muslim-majority countries. For individual advice or to know how this Executive Order may impact you, we advise that you consult with our firm.

What Is An Executive Order? Can It Be Challenged?

Does the EO change the law or regulations?

While the president has the authority to issue such orders if the administration deems the action to be in the public interest, the EO does not change, replace or repeal existing statutes (laws) or regulations.

Legal challenges have already been made to provisions of the EO. Many believe that wide sweeping bans such as those on refugee admissions and visa issuance effectively discriminate against individuals on a religious basis, as all the countries are predominantly Muslim.

On Saturday, January 28, US federal judge Ann Donnelly of the U.S. District Court for the Eastern District of New York in Brooklyn issued an [emergency "stay"](#) that temporarily blocks the government from sending people out of the country after they have landed at a U.S. airport with valid visas including green card holders. Several other federal courts have issued similar stays.

What Are The Key Points of This Executive Order?

President Trump signed an Executive Order (EO) the afternoon of Friday, January 27, 2017 which, according to its introduction, is intended to “protect Americans.” The EO became effective as of the date of signing. Among the EO’s key provisions are the following:

- A 90 day ban on the issuance of US visas to and entry to the United States of anyone who is a national of one of seven (7) “designated” countries – Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.
- An immediate review by the US Department of Homeland Security (DHS) of the information needed from any country to adequately determine the identity of any individual seeking a visa, admission or other immigration benefit and that they are not “security or public-safety threat. This report must be submitted within 30 days and must include a list of countries that do not provide adequate information.
- The suspension of the US Refugee Admissions Program (USRAP) for 120 days.
- The implementation of “uniform screening standards for all immigration programs” including reinstituting “in person” interviews.
- Requiring all individuals who need visas to apply for them in-person at US consulates, rather than allowing “mail-in” or drop-box applications.

The 90-Day Travel Ban

What exactly does the 90-day ban prohibit?

The ban halts visa issuance and entry to the United States for affected individuals.

The US Department of State’s (DOS) consulates around the world are not permitted to issue visas to individuals who are nationals of a designated country. Consulates will deny pending visa applications of any individuals who fall within the scope of the EO – both nonimmigrant (temporary) visas, such as Bs, Fs, H-1Bs, etc. *and* immigrant visas (green cards) for those seeking to become US permanent residents.

US Customs and Border Protection (CBP) officers at border crossings, US airports and pre-flight inspection at certain foreign airports are not permitted to admit individuals who are nationals of designated countries or allow them to enter the United States, even if they have a facially valid visa.

Who is affected by the 90-day ban?

This ban applies to nationals of the seven (7) designated countries - Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.

What does it mean to be a “national”?

A national is a citizen of a particular country, someone entitled to hold the country's passport. This encompasses someone born in the country or who is a citizen of the country. This may include individuals who were *not* born in the country but whose parents were, if such parentage entitles them to citizenship in that country. For example, someone born in Germany, but whose parents were born in Iran, may be considered an Iranian under Iranian law, and therefore may be considered subject to the ban.

Does the 90-day travel ban include “dual” nationals? What if the individual was born in one of the 7 countries but is now a citizen of another country (e.g., Canada) and only holds that passport?

Until more information becomes available, we must assume that the ban includes dual nationals in at least some instances. We should assume that it includes those born in one of the designated countries even if they do not currently hold a passport from that country or no longer consider themselves a citizen of that country. Keep in mind that “country of birth” is listed on permanent resident cards and is usually listed on one's passport and that CBP and DOS consular officers review these documents. However, certain countries appear to have secured exemptions from the ban for their citizens. [Canadian authorities have indicated that the ban will not apply to Canadian citizens traveling on a Canadian passport even if they are dual citizens of one of the 7 countries. It appears there is a similar arrangement in place for British citizens,](#) although some reports suggest it may apply only if those British citizens are coming to the US from the UK rather than directly from one of the 7 countries; other reports suggest that the exemption applies to all British citizens, though those coming directly to the US from one of the 7 countries may face extra scrutiny. Going forward, it is possible that additional countries with close relations with the United States may secure similar treatment for their dual nationals, but for the moment caution is advised for dual citizens of one of the 7 countries and any country other than Canada or Britain.

Does the ban include permanent residents (“green card” holders)?

Initially the ban was being applied to lawful permanent residents (LPRs), but [the](#)

[Secretary of Homeland Security has now indicated](#) that “absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare,” LPR status will be “a dispositive factor” in DHS’s determination whether to waive the ban. That is, except under unusual circumstances, the ban will not be applied to LPRs, although LPRs may still face additional questioning upon arrival.

Does the ban apply to someone who has just traveled to a designated country?

No. Unless the individual is a national of a designated country, the ban does not apply solely because he or she has visited one or more of the 7 countries. Travel to one of the 7 countries however may increase the likelihood of being questioned by CBP about the nature of the visit – why the person was in the country, for how long, etc. Such individuals may be placed in secondary inspection on arrival at a US airport so that CBP may question them about the purpose and nature of such travel.

Can an affected individual still board a plane and try to enter upon arrival at a US airport?

There have been reports of airlines refusing to board individuals who appear to be affected by the EO’s ban. Before making any travel plans, individuals should consult with an immigration attorney for individual counsel and advice.

Should affected individuals travel outside the United States?

Individuals who are affected by this ban must understand that if they depart the United States during the 90 day period, they will most likely not be able to return. The temporary halt in enforcing portions of the ban, discussed below, could end at any time. We caution affected individuals *not* to rely on the court’s temporary halt when making a decision to travel abroad.

What about individuals who are outside the United States and want to return?

Airlines may refuse to board anyone who appears to be affected by the ban. Those who are able to board a plane almost certainly will be refused admission (entry) to the United States on arrival at a US airport. Anyone affected by the ban who is currently outside the United States should consult with an immigration attorney before attempting to return in order to understand the

current state of affairs, the risks involved and to develop a strategy based upon his or her individual circumstances.

What will happen to travelers from the 7 countries who are refused entry to the U.S. by CBP?

Individuals who are refused admission by CBP will be instructed to make arrangements to return on the next outbound flight to the destination from which they arrived. While waiting to return abroad or for a decision on a waiver that would allow their entry (see below regarding exceptions to the ban), they will be held or detained by CBP. They will not necessarily be able to make phone calls or send emails or text messages. There is no right to an attorney for individuals who arrive at US airports or land ports-of-entry and seek admission to the United States. In practice, many CBP officers will agree to speak with lawyers representing such individuals. Keep in mind that CBP officers will be overwhelmed in the coming days in dealing with these arrivals and that it may be difficult – even for experienced immigration attorneys – to communicate quickly with CBP. Wherever possible, advance planning will be critical.

Are there any exceptions to the ban?

As of Saturday January 28, 2017, the U.S. District Court for the Eastern District of New York (LINK) issued [an emergency stay of certain provisions of the EO](#). Thus, the US government is restrained from barring the admission of refugees seeking admission as part of the USRAP, holders of valid immigrant and nonimmigrant visas and other individuals from the 7 designated countries. This stay applies nationwide. Several other federal courts have issued similar stays. At least [one of the stays, issued in the District of Massachusetts](#), may potentially allow future flights to the U.S., since CBP has been instructed by the court in that case to advise airlines with flights to Logan Airport that travelers who would otherwise be allowed into the United States will not be refused admission on account of the EO.

The EO as written permits DOS and DHS to issue visas, entry or other immigration benefits to affected individuals on a “case-by-case” basis and when in the “national interest.” It was this authority that DHS has used to allow admission of most LPRs, as discussed above. At this time, it is not clear how such waiver requests will be adjudicated in other contexts, or what factors the agencies will consider. Anyone seeking to make such a request is advised to

consult with an immigration attorney in order to prepare a strategy and supporting documentation.

Can CBP detain individuals?

Individuals who are refused admission, and who agree to return on an outbound flight, will be detained or held by CBP until they can depart.

At this time, we do not know how CBP will be dealing with those who seek to challenge the refusal of admission. CBP may detain or threaten detention of individuals in such cases. It is also possible that CBP may agree to defer the inspection of such individuals, which means that CBP will give them an appointment to return to CBP at a later date to review their case. At this time, it is not known how CBP will be handling such situations; different CBP officers and airports may take different actions.

How are the US consulates implementing the ban on visas?

There are reports that US consulates are cancelling the nonimmigrant and immigrant visa interviews of anyone subject to the ban.

The American Immigration Lawyers Association (AILA) has received reports that as of the evening of January 27, 2017, all U.S. embassies and consular posts received instructions to immediately suspend the issuance of nonimmigrant and immigrant visas for nationals of designated countries. The EO has an exception for nationals of the 7 designated countries who are applying for A, G, NATO, C-2 and C-3 visas; presumably affected individuals seeking A, G, NATO, C-2 and C-3 visas may still apply for and expect to receive these visas, if otherwise eligible. In addition, contractors working with the US embassies and consular posts have been instructed to cancel visa interviews for affected individuals.

How will the EO affect applications pending before the US Citizenship and Immigration Services (USCIS)?

While we do not yet know how USCIS will implement this directive, we assume that the agency may suspend the review and adjudication of applications of affected individuals. This may include adjustment of status applications, applications or petitions to change or extend nonimmigrant status, applications for employment authorization and advance parole travel documents; naturalization applications; and applications for Temporary Protected Status

(TPS).

What does the EO mean for the immigration status of someone who is in the United States?

The EO only impacts those who are applying for visas (nonimmigrant and immigrant), seeking entry, or actively applying for an immigration benefit (e.g., change or extension of status, adjustment to permanent resident, naturalization, and other benefits noted above).

Could the travel ban be longer than 90 days?

The EO states that the ban on visa issuance and entry is in place for 90 days. The ban, however, will not be lifted automatically at the end of the 90 days (which would be April 27, 2017). Instead, DHS is required to report whether countries have provided information “needed ... for the adjudication of any ... benefit under the INA ... to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.” If the country does not report or presumably if any such reporting is not found to be adequate, the country then would have 60 days to comply in providing such information or the travel ban would become indefinite.

Will the travel ban be extended to include other countries?

The EO’s call for a DHS report based, in part, on information provided by other countries that the US government says it needs to properly review and vet individuals, appears to allow for DHS to recommend including additional countries in the ban, until they “comply” and provide the US government with information DHS is requesting of them. This certainly leaves open the possibility and even likelihood of additional countries being included in the ban, should the other countries either not cooperate or not provide information deemed to be adequate by the US government.

Suspension Of The US Refugee Admissions Program (USRAP)

Who is affected by the suspension of the USRAP?

All refugees being processed abroad and seeking admission to the United States are impacted.

For most refugees, the suspension is at least 120 days. For Syrian refugees, the ban on admission is indeterminate. The EO states refugee processing and admission of Syrian refugees shall cease until such time as the President has

determined that sufficient changes have been made to the program to ensure its alignment with the national interest. There is no further clarification of what may be deemed “sufficient” or “national interest.” This provision effectively eliminates the processing of refugees applications by and admission of Syrian refugees.

How long is the suspension of USRAP?

The USRAP is suspended for 120 days. During this time, the DOS and DHS are required to review the application and adjudication process to determine what additional procedures to take to ensure that refugees “do not pose a threat to the security and welfare of the United States” and to implement those procedures. After the 120 days, DOS can only resume refugee admissions for nationals of countries that are found to have sufficient safeguards to ensure security and welfare of the United States.

Are certain refugees or countries a priority?

The EO states that once the USRAP starts allowing refugees to enter, DOS is to prioritize refugees with religious-based claims, if the refugee’s religion is a minority religion in the individual’s country of nationality. The EO does not address the issue of sub-sects or minority groups within a country’s predominant religion.

How many refugees will be let in to the United States?

The EO states that DOS and DHS may only admit 50,000 refugees for fiscal year 2017 (after the suspension is lifted). This represents a more than 50% reduction in the number of refugee admissions. If the suspension continues for more than 120 days, it is questionable whether the US will admit any refugees during the 2017 fiscal year.

Are there any exceptions to this ban on refugee admissions?

Yes. As of Saturday January 28, 2017, the U.S. District Court for the Eastern District of New York issued an [emergency stay of the EO](#). Thus, the US government is restrained from barring the admission of refugees seeking admission as part of the USRAP, holders of valid immigrant and nonimmigrant visas and other individuals from the 7 designated countries. This stay applies nationwide. Several other federal courts have issued similar stays.

The EO as written permits DOS and DHS to admit individuals as refugees on a

case-by-case basis when in the national interest.

Even during the 120-day suspension period, the DOS and DHS may continue to process and admit refugees with religious-based claims, if the religion is a minority religion in the country of nationality.

Elimination of Mailed-In Visa Applications Or The “Drop-Box” Application

The EO eliminates the ability of some individuals who need visas to apply for their visas at US consulate *without* an in-person interview. Previously, some individuals - due to age, or the fact that they were repeat applicants - could mail-in their passports to the US consulate or use a “drop-box” system when applying for a visa. This visa interview waiver program has been suspended. Now, anyone who needs a US visa will be required to make an appointment at a US consulate and appear in-person for the visa interview.

The impact of this change may be significant, imposing increased burdens on consular staff, longer wait times to schedule visa appointments, and longer waits for individuals to receive their passports and visas back from the consulate. US employers who await the arrival or return of employees may also be negatively impacted given these anticipated slowdowns in the process to obtain US visas.

Does the Executive Order change the Visa Waiver Program or ESTA?

No. The “visa interview waiver program” is different from the [Visa Waiver Program](#) (VWP) which allows citizens of 38 named countries to travel to the United States. The VWP is still in effect. Citizens of most Western European countries, and others (e.g., Australia, New Zealand, Japan, Singapore) may still seek admission to the United States on the basis of their passports and an [ESTA clearance](#).