



## FEBRUARY 2017 IMMIGRATION UPDATE

*Posted on February 1, 2017 by Cyrus Mehta*

### Headlines:

1. [\*\*Trump Era Begins With Tumultuous First Week, Entry Ban\*\*](#) – President Donald Trump's tumultuous first week included a series of executive orders on immigration, refugees, and other issues. Among them was a temporary and immediate entry ban on people traveling to the United States from certain countries.
2. [\*\*Entry Ban: Frequently Asked Questions\*\*](#) – Our firm has published frequently asked questions and answers based on ABIL member firm Maggio & Kattar in response to President Trump's executive order banning entry to the United States by individuals traveling from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen.
3. [\*\*Reminder: USCIS Will Accept H-1B Petitions for FY 2018 Beginning April 1, 2017\*\*](#) – The Alliance of Business Immigration Lawyers recommends filing during the first five business days in April.
4. [\*\*USCIS Issues Final Rule on International Entrepreneurs\*\*](#) – The final rule, effective July 17, 2017, adds new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities who can demonstrate through evidence of substantial and demonstrated potential for rapid business growth and job creation that they would provide a significant public benefit to the United States.
5. [\*\*USCIS Extends TPS for Somalia\*\*](#) – USCIS extended TPS for eligible nationals of Somalia for an additional 18 months, through September 17, 2018.
6. [\*\*USCIS Issues Guidance on Interpreters Brought to Domestic Field Office Interviews\*\*](#) - USCIS issued new guidance on January 18, 2017, on the role and use of interpreters in domestic field office interviews, to be implemented May 1, 2017. USCIS said the policy memorandum is

intended to help ensure that those who bring interpreters to certain interviews have competent language assistance.

7. **[ABIL Global: Canada](#)** – Express Entry brings to the Canadian immigration world a new system designed to improve processing times and to give immigration officers the means to select from a large pool of candidates the top applicants for Canadian permanent residence, from among foreign nationals wishing to settle in a Canadian province other than Québec.

8. **Firm In The News...**

### **Details:**

1. **Trump Era Begins With Tumultuous First Week, Entry Ban**

President Donald Trump's tumultuous first week included a series of executive orders on immigration, refugees, and other issues. Among them was a temporary and immediate entry ban on people traveling to the United States from certain countries that resulted in unexpected detentions at U.S. airports; people blocked from boarding planes bound for the United States; confusion and contradictions among travelers, border agents, airline personnel, White House staff, and reporters; thousands protesting at U.S. airports; legal filings; and related court decisions.

Highlights follow of the immigration-related portions of the orders, and reaction:

Entry ban, refugee ban. President Trump signed an executive order on January 27, 2017, directing the Department of State to suspend refugee admissions for 120 days and impose an entry ban on individuals from certain countries. The order specifically suspends the entry of Syrian refugees as "detrimental to the interests of the United States," and orders the suspension to continue "until such time as I have determined that sufficient changes have been made" to the refugee program to ensure that admission of Syrian refugees "is consistent with the national interest." The order also cuts from 110,000 to 50,000 the number of refugees the United States will accept in this budget year, with exceptions for those claiming religious persecution who are of minority faiths in their countries. In the previous budget year, the United States accepted 84,995 refugees, which included 12,587 Syrians. The order allows some leeway for admissions "on a case-by-case basis."

The order also suspends for 90 days entry to the United States of individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen. The order cites as a rationale "foreign-born individuals" who "have been convicted of or implicated in terrorism-related crimes since September 11, 2001," as a basis for the entry ban.

As a result of the order, dozens of people were initially detained at U.S. airports, including JFK International and others. Some received waivers to enter the United States, while others continued to be held, in what remained a fluid situation as of press time. Protests occurred at major airports around the country. There were reports of green card holders not being allowed back into the United States, and people with visas being stopped or turned back at international airports and not allowed to board their flights to the United States. On January 29, 2017, new Department of Homeland Secretary John Kelly issued a statement that green card holders from the seven affected countries would be granted waivers to return to the United States.

Emergency stay. One of those detained at JFK Airport was Hameed Khalid Darweesh, who had worked as an interpreter for the U.S. Army's 101<sup>st</sup> Airborne Division and "saved countless U.S. service members' lives," according to the American Civil Liberties Union (ACLU). The ACLU and other organizations challenged the executive order on constitutional grounds. Although Mr. Darweesh and another plaintiff were released, Judge Ann Donnelly of the U.S. District Court for the Eastern District of New York issued a decision late on January 28, 2017, ordering that individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen who are in the United States not be removed who have approved refugee applications, valid immigrant and nonimmigrant visas, and other legal authorizations to enter the United States. She said this was because the petitioners had a strong likelihood of success in establishing that their removal and "others similarly situated" would violate their rights to due process and equal protection under the U.S. Constitution and that there was imminent danger that, absent the stay of removal, there would be "substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to the January 27, 2017 Executive Order."

The White House subsequently issued a statement in reaction: "Saturday's ruling does not undercut the President's executive order. All stopped visas will remain stopped. All halted admissions will remain halted. All restricted travel

will remain prohibited. The executive order is a vital action toward strengthening America's borders.... The order remains in place." President Trump told reporters that the ban was going "very nicely."

Removal priorities, sanctuary penalties. President Trump signed a separate executive order on January 25, 2017, entitled "Enhancing Public Safety in the Interior of the United States." The order directs agencies to employ "all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens." The order prioritizes for removal those who have been convicted of, or charged with, any criminal offense; have committed acts that constitute a chargeable criminal offense; have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency; have "abused" any program related to receipt of public benefits; are subject to a final order of removal but have not complied; or, in the judgment of an immigration officer, "otherwise pose a risk to public safety or national security."

Reaction. Reaction to the executive orders worldwide, especially to the entry ban, was overwhelmingly negative. Twenty Nobel laureates and thousands of academics signed a letter of protest denouncing the executive order imposing the entry ban. Among other things, the letter says that the executive order "significantly damages American leadership in higher education and research." The letter notes that research institutes host a significant number of researchers from the nations subjected to the restrictions. From Iran alone, for example, more than 3,000 students have received PhDs from U.S. universities in the past three years, the letter states. The executive order "limits collaborations with researchers from these nations by restricting entry of these researchers to the U.S. and can potentially lead to departure of many talented individuals who are current and future researchers and entrepreneurs in the U.S.," the letter says, adding that the signers "strongly believe" that the immediate and long-term consequences of the order "do not serve our national interests."

Technology companies also reacted, including Google, Apple, and others. Apple CEO Tim Cook sent a memo to employees that was circulated widely. In the memo, Mr. Cook said the entry ban "is not a policy we support," and noted that Apple "reached out to the White House to explain the negative effect on our coworkers and our company." The memo also said that "Apple would not exist without immigration, let alone thrive and innovate the way we do." Netflix CEO

Reed Hastings said on Facebook, "Trump's actions are hurting Netflix employees around the world."

Google CEO Sundar Pichai told employees to cancel travel outside of the United States and to get in touch with Google's human resources department if they are not in the United States. A Google spokesperson said, " We're concerned about the impact of this order and any proposals that could impose restrictions on Googlers and their families, or that could create barriers to bringing great talent to the U.S."

Reactions from governments worldwide continued to pour in. On January 28, 2017, Iran announced that all U.S. citizens, other than those with valid visas, would be barred from entering Iran. British Prime Minister Theresa May, who had just visited the United States and came under heavy criticism for not immediately denouncing the ban, said she did not agree with it. Canadian Prime Minister Justin Trudeau tweeted, "To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength." Ahmed Hussen, Canada's recently appointed Immigration Minister, came to Canada as a Somali refugee and is a dual national.

The Executive Order is at

<https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>. The order from the U.S.

District Court for the Eastern District of New York is at

[http://i2.cdn.turner.com/cnn/2017/images/01/28/darweesh.v.trump\\_decision\\_and\\_order.document-3.pdf](http://i2.cdn.turner.com/cnn/2017/images/01/28/darweesh.v.trump_decision_and_order.document-3.pdf). President Trump's executive order on public safety is

at

<https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>. His statement of policies

related to immigration is at

<https://www.donaldjtrump.com/policies/immigration/>.

For advice on specific situations, contact your local member of the Alliance of Business Immigration Lawyers. For more general information, see the frequently asked questions and answers, below.

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## 2. **Entry Ban: Frequently Asked Questions**

The following is adapted from frequently asked questions (FAQs) published by

ABIL member firm Maggio & Kattar in response to President Trump's executive order, "Protecting the Nation From Terrorist Attacks by Foreign Nations," banning entry to the United States by individuals traveling from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen. These FAQs reflect the situation as of January 31, 2017. New developments continued to rapidly change implementation of the order.

#### 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:

- A 90-day ban on the issuance of U.S. 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 U.S. 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 U.S. Refugee Admissions Program (USRAP) for 120 days.
- The implementation of "uniform screening standards for all immigration programs" including reinstating "in person" interviews.
- A requirement that all individuals who need visas apply for them in person at U.S. consulates, rather than allowing "mail-in" or drop-box applications.

#### 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, 2017, U.S. 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.

### 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 U.S. 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, and H-1Bs, *and* immigrant visas for those seeking to become U.S. permanent residents.

U.S. Customs and Border Protection (CBP) officers at border crossings, U.S. 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 ban include "dual" nationals? What if the individual was born in one of the seven countries but is now a citizen of another country (e.g., Canada) and only holds that passport?**

It is not entirely clear. The EO, as written, does appear to include 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, on the afternoon of January 31, 2017, DHS Secretary Kelly held a press conference on the travel ban or, as he described it, a "temporary pause" on visa issuance and admission. On the question of the impact of dual nationality, acting CBP Commissioner Kevin McAleenan indicated that the individual would be evaluated based upon the passport presented and not on his or her "dual national" status. Presumably, an individual presenting a passport from a non-designated country would not be impacted by the EO's restrictions, even if he or she also holds nationality in a designated country.

Statements by U.S. embassies (e.g., in London) and the governments of Canada and Australia are consistent with Secretary Kelly's indication that the restriction does *not* apply to dual nationals who present a passport from a non-designated country. For example, the U.S. embassy in London has stated on its website that "dual nationals of the United Kingdom and one of countries are exempt from the Executive Order when travelling on a valid United Kingdom passport and U.S. visa." Anecdotal reports from U.S.-Canada land border entry points also show that CBP is not applying the ban to Canadian dual nationals from the designated countries.

This "clarification," however, may conflict with a recent DOS cable to embassies and consulates worldwide in which the DOS provides the following guidance on who is considered to be a dual national: those who "possess a current passport from the restricted country, have been denied based on nationality in a designated country (but not on travel to the country without being a national of that country), or who have otherwise identified themselves as nationals of a restricted country including on a previous application or in an interview,



including as a dual national."

Also, as of press time, some airlines reportedly were not allowing people in these situations to board, and not issuing airline tickets. Those traveling on non-covered passports may still be unable to get visas if they are known to be dual nationals of a covered country, and there is some risk that non-Canadian dual nationals with nonimmigrant visas (NIVs) might not be admitted if CBP realizes their NIVs have technically been provisionally revoked.

Therefore, there may be exceptions to the manner in which dual nationals are treated upon entry to the United States dependent upon a number of circumstances. Until there is amended guidance from the DOS, dual nationals should assume the ban could apply to them under the circumstances noted in the DOS cable discussed above.

### **Does the ban include permanent residents ("green card" holders)?**

The Executive Order as written did ban the entry of affected lawful permanent residents (LPRs). As discussed below in the question about "exceptions" to the ban, the EO does include a provision that allows the issuance of "visas or other immigration benefits" to affected individuals on a "case-by-case basis, and when in the national interest." On Sunday, January 29, 2017, DHS Secretary John Kelly issued a statement that attempts to clarify this provision as relates to lawful permanent residents. In this statement, Secretary Kelly notes, "Absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations."

### **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 seven countries. Travel to one of the seven 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., as already provided for in the December 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act. Such individuals may be placed in secondary inspection on arrival at a U.S. 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 U.S. 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 U.S. 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 and the risks involved, and to develop a strategy based upon his or her individual circumstances.

## **What will happen to those who are refused entry 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 U.S. 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 issued an emergency stay of certain provisions of the EO. Thus, the U.S. 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 seven 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 United States, 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, 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 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. There are credible reports that CBP is still detaining LPRs notwithstanding the court cases and Secretary Kelly's statement of January 29, 2017 . 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.

Any affected individual thinking of traveling to the United States should consult with an immigration attorney about his or her individual circumstances. The EO does not change the existing immigration law, including the right to apply for

asylum.

### **How are the U.S. consulates implementing the ban on visas?**

According to credible sources, the DOS issued a cable to all embassies and consular posts to suspend the issuance of nonimmigrant and immigrant visas for nationals of designated countries. The EO has an exception for nationals of the seven 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.

Consulates will stop scheduling and conducting interviews of affected individuals. They also will stop issuing (printing) visas for anyone who was already interviewed but who has not yet received the visa. Courier services will be instructed to return the unadjudicated applications to the affected individuals. Consular posts are beginning to post alerts on their websites to advise individuals of the suspension of visa issuance "effective immediately and until further notification." It is unclear whether DOS will refund visa fees (which are normally valid for one year), although refunds appear unlikely.

The DOS, through this cable, has reiterated that the ban applies to "dual nationals," which DOS notes includes those who "possess a current passport from the restricted country, having been denied ESTA based on nationality in a designated country (but not on travel to the country without being a national of that country), or who have otherwise identified themselves as nationals of a restricted country including on a previous application or in an interview, including as a dual national." Please see item above on conflicting reports on the application of the ban to dual nationals.

With regard to immigrant visas for those affected by the ban, the DOS will cancel currently scheduled interviews and will not schedule immigrant visa interviews for March or April.

### **How will the EO affect applications pending before U.S. Citizenship and Immigration Services (USCIS)?**

According to credible reports, including conversations with USCIS officers at local USCIS Field Offices, DHS leadership received email instructions over the weekend to suspend the adjudication of immigration applications by affected individuals from any of the seven designated countries. The Associate Director of Field Operations at USCIS apparently informed DHS employees that

"effectively immediately and until additional guidance is received, you may not take final action on any petition or application where the applicant is a citizen of ...Field offices may interview applicants for adjustment of status and other benefits according to current processing guidance and may process petitions and applications for individuals from these countries up to the point where a decision would be made. At that point, cases shall be placed on hold until further notice and will be shelved ...Offices are not permitted make any final decision on affected cases to include approval, denial, withdrawal, or revocation." This directive indicated that further guidance would be forthcoming on naturalization (citizenship) applications "in the coming days."

This hold on adjudications presumably includes asylum applications, adjustment of status applications (I-485), and applications for employment authorization documents (EADs, or work permits) (I-765), among others. While the directive appears to focus on applications pending at *local* USCIS Field Offices given its reference to "interviews," it would be reasonable to assume that it also prohibits adjudications at the USCIS *regional service centers* where the agency normally reviews and adjudicates applications for other benefits, including adjustment of status applications, applications or petitions to change or extend nonimmigrant status, applications for employment authorization, advance parole travel documents, and applications for temporary protected status (TPS).

The January 31, 2017 guidance from CBP, however, indicates that the USCIS will continue to adjudicate N-400, as it did before the EO.

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

The EO only affects 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).

### **Might the 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 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 U.S. 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 U.S. 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 U.S. government.

#### Suspension of the U.S. Refugee Admissions Program (USRAP)

### **Who is affected by the suspension of USRAP?**

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

For most refugees, the suspension is at least 120 days. For Syrian refugees, the ban on admission is indeterminate. The EO states that 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 refugee 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 resume refugee admissions only for nationals of countries that are found to have sufficient safeguards to ensure

the 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 subsets or minority groups within a country's predominant religion.

### **How many refugees will be let into the United States?**

The EO states that DOS and DHS may 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 United States will admit any refugees during the 2017 fiscal year.

### **Are there any exceptions to this ban on refugee admissions?**

Yes. As mentioned above, 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 U.S. 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 seven 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 a U.S. 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 U.S. 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 U.S. visa will be required to make an appointment at

a U.S. 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. U.S. employers who await the arrival or return of employees may also be negatively affected given these anticipated slowdowns in the process to obtain U.S. 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.

The Executive Order is at

<https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>. There may be further updates to these FAQs as the situation develops. See <http://www.maggio-kattar.com/blog/white-house-executive-orders-us-travel-ban-faqs>.

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### **3. Reminder: USCIS Will Accept H-1B Petitions for FY 2018 Beginning April 1, 2017**

On April 1, 2017, U.S. Citizenship and Immigration Services (USCIS) will begin accepting H-1B petitions subject to the fiscal year (FY) 2018 cap. U.S. businesses use the H-1B program to employ foreign workers in occupations that require highly specialized knowledge in fields such as science, engineering, and computer programming.

The congressionally mandated cap on H-1B visas for FY 2018 is 65,000. The first 20,000 H-1B petitions filed for individuals with a U.S. master's degree or higher are exempt from the 65,000 cap.

The Alliance of Business Immigration Lawyers (ABIL) recommends filing during the first five business days in April. Contact your ABIL member for help with



H-1B applications.

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#### 4. USCIS Issues Final Rule on International Entrepreneurs

U.S. Citizenship and Immigration Services (USCIS) issued a final rule on January 17, 2017, implementing the Secretary of Homeland Security's discretionary parole authority "to increase and enhance entrepreneurship, innovation, and job creation in the United States." The rule adds new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities who can demonstrate through evidence of substantial and demonstrated potential for rapid business growth and job creation that they would provide a significant public benefit to the United States. The rule states that such potential would be indicated by, among other things, the receipt of significant capital investment from U.S. investors with established records of successful investments, or obtaining significant awards or grants from certain federal, state or local government entities. If granted, parole would provide a temporary initial stay of up to 30 months to facilitate the applicant's ability to oversee and grow his or her start-up entity in the United States. Extensions are possible for an additional 30 months.

An individual seeking to operate and grow a start-up entity in the United States generally would need to demonstrate the following to be considered for a discretionary grant of parole under the final rule: (1) the applicant has formed a new start-up entity; (2) the applicant is an entrepreneur; and (3) the applicant has received significant U.S. capital investment or government funding, which may include investments from established U.S. investors, government grants, or meeting alternative criteria. Under the alternative criteria requirement, an applicant who partially meets the above criteria related to capital investment or government funding may be considered for parole if he or she provides additional "reliable and compelling evidence" that he or she would "provide a significant public benefit" to the United States. "Such evidence must serve as a compelling validation of the entity's substantial potential for rapid growth and job creation," the final rule states, noting that USCIS adjudicators will consider the totality of the evidence.

The final rule, which takes effect July 17, 2017, is at

<https://www.federalregister.gov/documents/2017/01/17/2017-00481/internatio>

[nal-entrepreneur-rule.](#)

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## 5. USCIS Extends TPS for Somalia

On January 17, 2017, U.S. Citizenship and Immigration Services (USCIS) extended temporary protected status (TPS) for eligible nationals of Somalia for an additional 18 months, effective March 18, 2017, through September 17, 2018. Current Somali TPS beneficiaries seeking to extend their TPS must re-register during the 60-day re-registration period that began January 17, 2017, and runs through March 20, 2017. USCIS said it encouraged beneficiaries to re-register as soon as possible once the 60-day re-registration period began.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible TPS Somalia beneficiaries who re-register during the 60-day period and request a new EAD will receive one with an expiration date of September 17, 2018. USCIS said it recognizes that some re-registrants may not receive their new EADs until after their current work permits expire. Therefore, USCIS automatically extended the validity of current TPS Somalia EADs with an expiration date of March 17, 2017, for an additional six months. These existing EADs are now valid through September 17, 2017.

The announcement is at

<https://www.uscis.gov/news/temporary-protected-status-extended-somalia-0>. It is unclear what effect, if any, the new Trump administration will have on this extension or other TPS issues.

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## 6. USCIS Issues Guidance on Interpreters Brought to Domestic Field Office Interviews

U.S. Citizenship and Immigration Services (USCIS) issued new guidance on January 18, 2017, on the role and use of interpreters in domestic field office interviews, to be implemented May 1, 2017. USCIS said the policy memorandum is intended to help ensure that those who bring interpreters to certain interviews have competent language assistance.

USCIS said the guidance applies to interviews at domestic field offices except in cases where USCIS provides interpreters or has other policies, such as:

- Asylum and refugee interviews
- Credible fear and reasonable fear screening interviews;
- Interviews to determine eligibility for relief under the Nicaraguan Adjustment and Central American Relief Act; and
- Naturalization interviews, unless the interviewee qualifies for an exception to demonstrating adequate proficiency in reading, writing, and speaking English.

USCIS said it will introduce Form G-1256, Declaration for Interpreted USCIS Interview. Both the interviewee and interpreter must sign the new form at the beginning of the interview in the presence of the USCIS officer.

The memo states that the standards include being sufficiently fluent in both English and the interviewee's language; able to interpret competently between English and the interviewee's language; and able to interpret impartially and without bias. Those restricted from serving as interpreters include minors under age 18, except for good cause for those ages 14-17; witnesses, except for good cause; and attorneys and accredited representatives of the interviewee.

The memo is at

<https://www.uscis.gov/news/alerts/role-and-use-interpreters-domestic-field-office-interviews>.

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## 7. ABIL Global: Canada

*This article discusses obtaining permanent residence in Canada through the Express Entry system.*

Introduced on January 1, 2015, Express Entry is an online application system used by Immigration, Refugees and Citizenship Canada (IRCC) to manage, assess, and approve Canadian permanent residence applications under the Federal Skilled Worker program, the Federal Skilled Trades program, and the Canadian Experience Class program. In addition to these economic immigration programs, Express Entry is currently being used by certain Canadian provinces as a gateway to apply for their Provincial Nominee programs. Express Entry applications are intended for foreign nationals wishing to settle in a Canadian province other than Québec (because Québec operates its own distinct permanent immigration program). While the core requirements of each

program remain unchanged, Express Entry brings to the Canadian immigration world a new system designed to improve processing times and to give immigration officers the means to select from a large pool of candidates the top applicants for Canadian permanent residence.

The Express Entry system operates under a two-step process. First, a candidate wishing to apply for Canadian permanent residence must submit his or her application "profile" in the Express Entry pool of candidates, where the application is evaluated against other candidates in the pool. The Express Entry system assesses a candidate's desirability by ranking all applications received according to Comprehensive Ranking System (CRS) points, and provides each candidate with an overall CRS points score. Under the Express Entry system, CRS points are awarded to candidates based on the value of their education, their English and French language skills, their Canadian work experience, and their Canadian offer of employment, if applicable. Moreover, points are given to candidates based on a broader skills transferability category, which awards points based on a combination of English and French language proficiency, education credentials, and Canadian and foreign work experience.

Following the assessment of each candidate's qualifications in the Express Entry system, candidates with the highest number of CRS points receive an "Invitation to Apply" for Canadian permanent residence. This "Invitation to Apply" is a mandatory step in the process, without which it is impossible to apply for Canadian permanent residence under the economic immigration programs listed above. Once the "Invitation to Apply" is received, a candidate has 90 days to submit a Canadian permanent residence application along with all supporting documents.

Pursuant to the "Ministerial Instructions Amending the Ministerial Instructions Respecting the Express Entry System," effective November 19, 2016, significant changes were introduced to the way points are awarded in the Express Entry system. Until recently, candidates who held a Labour Market Impact Assessment (LMIA)—a favorable opinion issued by Service Canada confirming a temporary job offer in Canada—were awarded 600 CRS points, virtually guaranteeing an "Invitation to Apply." With the newly announced changes of November 19, 2016, candidates with a valid LMIA are no longer awarded these 600 CRS points and must now be satisfied with only 50 CRS points. While this is a major disadvantage to candidates who before November 19, 2016, depended on their LMIA's to secure an "Invitation to Apply," other skilled candidates who

hold valid work permits under LMIA-exempt categories (such as Intra-Company Transferees or NAFTA Professionals) will now be awarded 50 CRS points or 200 CRS points, depending on their occupation (200 CRS points are awarded for an offer of employment in an occupation contained in Major Group 00 (senior management occupations) of the National Occupation Classification (NOC)). It is expected that these candidates will become more competitive in the Express Entry pool of candidates and will decrease the overall CRS score a candidate must reach to receive the sought-after "Invitation to Apply." As an example, with the January 4, 2017 "draw," the candidate with the lowest score to receive an "Invitation to Apply" had a total of 468 CRS points. The November 2016 changes also provide new points for Canadian study credentials.

Once a candidate receives the "Invitation to Apply" for Canadian permanent residence and submits a complete application to IRCC, he or she may become eligible to file an application for a Bridging Open Work Permit (BOWP). This work permit, valid for 12 months, allows a candidate to renew a current Work Permit (if expiring within 4 months) while the Express Entry Application for permanent residence is being processed.

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## 8. Firm In The News...

**Cyrus Mehta** was a Panelist, *Breaking the Silos: How Employment Law, Privacy, and The Affordable Care Act (ACA) Impact Immigration Decision Making*, 2017 AILA Midwinter Conference, Phillipsburg, St. Maarten, January 20, 2017.

**Cyrus Mehta** has co-authored with Alan Goldfarb *Up Against A Wall: Post-Election Ethical Challenges for Immigration Lawyers* under aegis of AILA Ethics Committee, published on AILA InfoNet at AILA Doc. No. 17011200 (posted January 11, 2017). [Back to Top](#)