

PUBLICATION

Trump Pares Down Travel Ban in Revised Executive Order

Authors: Robert C. Divine

March 07, 2017

On March 6, President Trump issued a revised Executive Order (EO), effective on March 16, 2017, to replace the prior order of January 27 with more limited and prospective restrictions on travel for nationals of six countries, along with suspension of visa interview waivers and refugee decisions for all countries. All people in the U.S. from the six countries should avoid international travel, and persons from all countries should anticipate possible visa processing delays.

Visa/Travel Ban for Six Countries

The EO mainly halts any new visas for nationals of Iran, Syria, Yemen, Libya, Sudan and Somalia (no longer Iraq) for 90 days while the Department of Homeland Security devises better screening, including what information is needed from other countries about their nationals.

The travel ban does **not** apply to U.S. permanent residents, to certain diplomats, to people who already hold a valid visa or who had a visa that was invalidated solely pursuant to the January 27 EO, to dual citizens who are using their other passport for visa and travel, to people already granted some kind of travel authorization such as asylum, refugee status, withholding of removal, advance parole, etc. before the EO, and to people admitted to the U.S. after the EO takes effect.

Agencies are authorized to issue visas and admission on a case-by-case basis with emphasis on various factors such as need to resume long-term authorized activity in the U.S., significant business or professional obligations that would be affected, close family members in the U.S., undue hardship to family members, faithful service to the U.S. Government, relationship to activities of an international organization under IOIA, landed immigrants of Canada applying in Canada, and travel as a U.S. Government sponsored exchange visitor. It remains to be seen how these factors will need to be presented and will be considered in trying to get past consular screening.

Visa Interview Waiver Program Suspended

Like the January 27 EO, the March 6 EO suspends immediately and indefinitely the waiver of interviews for visa applicants at U.S. consulates everywhere in the world. After the January 27 EO the State Department announced that certain waivers nevertheless would continue, such as for young children and very old adults as well as perhaps people seeking renewal of the same visa with no changes. It is not clear how complete the suspension will be this time, but it seems significant. The less waivers are allowed, the more clogged up the visa process could become for everyone. Thus, even though the State Department is instructed to expand the Consular Fellows program to add manpower, everyone should anticipate possible delays in getting visas when traveling, and some who would need a visa to return may choose to delay international travel from the U.S. until the impact subsides (hoping it will).

Refugee Program Suspended

The EO suspends decision-making on all refugee applications from all countries for 120 days, and it limits refugee admissions from 110,000 to 50,000 for fiscal year 2017 (which began October 1 and ends September 30).

Entry-Exit Program Emphasized

The EO directs the Department of Homeland Security to complete the development of its capabilities to track the entry and exit of visitors. This is a tall and expensive order, and the extent to which it can be carried out remains to be seen.

Other Provisions

The EO also requires the State Department to make sure that Americans are treated reciprocally with other countries in visa practices, certain data is to be collected and published to make the EO implications "transparent," and inadmissibility laws are to be enforced while claims of protection from persecution and torture are to be considered.

Litigation Expected

While this pared down EO is more likely than the last one to withstand judicial scrutiny, the litigants from the last round are sharpening their pencils to file new challenges to this one, focused again on discrimination in the absence of supporting evidence and on campaign statements of discriminatory intent.