

IMMIGRATION ALERT:

Update on President Trump's Executive Order and its Implementation

We are continuing to monitor developments regarding President Trump's Executive Order ("EO"), which halted the current U.S. refugee admission program and temporarily banned from the U.S. all foreign nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. The most notable development took place this weekend when a Federal judge in Washington state issued a Temporary Restraining Order ("TRO"), which blocks the U.S. government from enforcing portions of the EO. Importantly, it allows foreign nationals from the banned countries to once again apply for admission to the U.S.

We note that this is just a "Temporary" Restraining Order and there will likely be a lot of movement in the next few weeks on this matter in the federal courts. As of today, the TRO remains in effect, so foreign nationals from banned countries with valid visas should be able to board planes and apply for admission to the United States. However, this situation is still fluid, and we strongly recommend that foreign nationals born in, or holding a passport from the affected countries remain in the U.S. If outside the U.S., foreign nationals should contact a member of our immigration practice group immediately for further information, as the situation is changing on a daily basis.

In addition to the TRO mentioned above, the White House, Customs and Border Protection ("CBP"), and the Department of State, have issued clarifications on the EO and its reach. This includes the following:

- CBP rolled out a "Questions and Answers" webpage on the EO: (<https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states>).
 - The Questions and Answers webpage states that dual nationals of the seven banned countries may present a passport from a different country to apply for admission to the U.S. in nonimmigrant statuses, such as F-1, H-1B, or TN status. For example, if a dual Yemeni and Canadian national presents a Canadian passport to CBP, they are processed for entry to the U.S. as a Canadian. Therefore, if you carry two passports, one of which is from a banned country, you should use the passport from the non-banned country to apply for admission to the United States.
 - The webpage also states that Canadian permanent residents, who hold passports of a banned country, can apply for admission to the United States with a valid U.S. immigrant or nonimmigrant visa, proof of their Canadian permanent resident status, and only if the travel both originates in Canada and is through a land border or pre-clearance location, which are located in Canadian international airports. Currently, due to the TRO discussed above, Canadian permanent residents should be able to apply for admission to the United States without proving their Canadian permanent residency status. However, we mention this should the EO once again go into effect, as it will provide Canadian permanent residents from the banned countries with a means to enter the United States.
- On February 1, 2017, the White House issued a memorandum stating that U.S. permanent residents (green card holders) are not subject to the EO, and do not need a waiver to enter the U.S. This differs from the White House's previous statement, which was that legal permanent residents could obtain "waivers" to enter the U.S. "absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare." It appears that lawful U.S. permanent residents from the seven banned countries are being allowed to enter the U.S., although some are reporting delays and added questioning. We are still recommending that permanent residents from the banned countries exercise caution and speak to counsel prior to traveling outside of the United States.

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- The Department of State informed the American Immigration Lawyers Association that there are no current plans to expand visa revocations or the travel ban to additional countries. Despite this information, we note that the EO has a provision allowing the Department of Homeland Security or Secretary of State to add additional countries at a later time.

We will continue to monitor the situation closely, and provide updates as they become available. As noted in our previous LEGALcurrents, there are statutory limits preventing discrimination on the basis of national origin, and these limits will likely be tested in the coming months as courts are actively reviewing challenges to this EO.

If you have any questions regarding this LEGALcurrents®, please do not hesitate to contact any member of our firm's Immigration Practice Area at (585) 232-6500. ■



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