

# Trump's Revised Executive Order, "Protecting The Nation From Foreign Terrorist Entry Into The United States"

**March 7, 2017**

On March 6, 2017, President Trump signed the highly anticipated and revised Executive Order (EO), "Protecting The Nation From Foreign Terrorist Entry Into The United States." The new order rescinds the previous EO issued at the end of January and implements a number of significant changes and additions to address the legal challenges of the initial travel ban.

## **When does the order go into effect?**

The effective date of the new order is March 16, 2017. While the first travel ban was unexpectedly rolled out over a weekend, the new executive order gives travelers, the airports and U.S. Customs Border and Patrol a lead time of 10 days.

## **Is it still a travel ban?**

Yes. Under the travel provisions of the revised Executive Order, nationals of six countries, Iran, Libya, Somalia, Sudan, Syria and Yemen, are not permitted to enter the United States for 90 days from the effective date of the order, unless the individual meets the EO criteria for waivers or exceptions. The scope of the ban applies to foreign nationals who are from one of the designated countries and are currently outside of the U.S., and do not have valid visas. The Executive Order maintains that extra vetting procedures and government reporting protocols must be in place before the 90-day suspension of travel is lifted.

Iraq is notably left off the list this go round. Interestingly, the order goes into great detail to distinguish Iraq from the other countries by commending the democratic Iraqi government for its efforts to combat ISIS and for its work on improved information sharing with the U.S.

The Executive Order leaves room for the possibility of additional countries being added to the list at any time.

## **Waivers and Exceptions**

The biggest changes are reflected in the new provisions for waivers and exceptions.

The order expressly provides that travel restrictions will not apply to the following individuals:

- Lawful permanent residents of the U.S. (green card holders);
- Foreign nationals who have been issued a U.S. travel document other than a visa, such as an advance parole document;
- Dual nationals who are traveling to the U.S. on a passport from a non-designated country;
- Foreign nationals traveling on a diplomatic or diplomatic-type visa; and
- Individuals who have already been granted asylum or entered the United States as refugees.

In addition, the order provides that consular officers and CBP officers may grant waivers on a case-by-case basis. The waiver provisions seem to favor individuals who have some legitimate connection to the U.S. The EO provides an extensive list of sample circumstances that could rise to the level of a waiver, including but not limited to the following:

- The individual previously was admitted to the U.S. for work or study and the individual seeks to reenter the U.S. to resume that activity.
- The individual seeks to enter the U.S. for significant business or professional obligations.

- The individual seeks to visit a close family member such as a spouse, child or parent, who is a U.S. citizen, lawful permanent resident or lawful nonimmigrant, and the denial of entry would cause undue hardship.
- The foreign national is a child, adoptee, or individual needing urgent medical care.
- The foreign national has been employed by, or on behalf of, the U.S. Government.
- The foreign national had applied for a visa in Canada and is returning to the U.S.

### **Provisions Related to U.S. Entry and Exit Remain Largely Unchanged**

The Executive Order also addresses refugee admissions, a biometrics tracking system, and visa interview protocols, as the original EO did.

- **Changes to Refugee Processing:** Yesterday's EO orders the suspension of refugee admissions for at least 120 days. In addition, President Trump reduces the annual quota of refugee admission from 110,000 to 50,000. In contrast to the original EO, yesterday's version does not specifically ban Syrian refugees. The EO also makes clear that the suspension of refugee admissions does not apply to refugee applicants who were already approved and scheduled by the Department of State to travel to the U.S.
- **Additional Changes to U.S. Entry and Exit Procedures:** The EO continues to maintain that the U.S. must develop and implement an expedited biometrics entry and exit tracking program. These changes are ambitious and have been on the immigration agenda of prior administrations. It is difficult to judge how and when changes will take form.
- **Interviews required of ALL visa applicants.** The current version of the EO also maintains that in-person visa interviews can no longer be waived. The visa interview program allowed individuals to waive an in-person interview at the U.S. Consulate if s/he has previously been issued the same visa and met other eligibility criteria. This change in visa processing impacts foreign nationals from *all* countries who need a visa to enter the U.S. The Department of State has yet to announce how Consulates overseas will implement this new rule.

The revised order is the third executive action related to immigration under the Trump Administration. On January 25, 2017, President Trump issued two other Executive Orders related to illegal immigration and border security (*Enhancing Public Safety of the Interior of the United States* and *Border Security and Immigration Enforcement Improvements*).

The Proskauer Immigration Team will continue to provide updates on this developing area.