

President Trump's Travel Ban and Its Impact on Your Employees

On January 27, 2017, President Trump signed an Executive Order (EO) entitled "Protecting the Nation from Foreign Terrorist Entry Into the United States." The EO suspends the entire U.S. refugee admission system for 120 days and the Syrian refugee program indefinitely. In addition, the EO suspends the entry of immigrants and non-immigrants from certain designated countries of concern for an initial period of 90 days. It should be noted that after 90 days, travel is not automatically reinstated for foreign nationals from these countries of concern. Instead, the EO has mandated that the United States Department of Homeland Security (DHS) be 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 a country refuses to provide the requested information regarding its nationals to enable the United States to adjudicate visas, admissions, or other benefits provided under the INA, the EO states that foreign nationals from that country will be prohibited from entering the United States until compliance has been achieved. The EO currently applies to individuals from seven designated countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.

There has been significant confusion regarding the scope and implementation of the EO's travel ban. Currently, it appears that the travel ban includes and applies to the following groups of individuals: non-immigrant visa holders, immigrant visa holders, refugees, derivative asylees, Special Immigrant Visas (SIVs), etc. Moreover, any foreign national holding a passport from one of the seven designated countries is considered to be "from" the designated country. Accordingly, dual citizens who hold passports issued by both a designated country and non-designated country may also be subject to the travel ban. Further adding to the confusion regarding the scope of this EO, the DHS Secretary John Kelly issued a [clarification statement](#) on January 29, 2017 which noted that status as a lawful U.S. permanent resident (a.k.a. "green card holder") "will be a dispositive factor" used in the case-by-case analysis for determining re-entry and/or admission into the United States.

Based on the information set forth in the EO, employers would be well-served to advise employees who are from any of these seven designated countries to refrain from traveling outside of the United States until further notice. While the EO has specifically identified seven countries of concern, there is speculation that this list may evolve and expand in the future. Therefore, foreign nationals who hold immigrant and/or non-immigrant visas and who are presently in the United States from other Middle Eastern countries should strongly consider avoiding any international travel, where possible.

Legal challenges to this EO have already been filed on constitutional grounds. We anticipate that more lawsuits by various stakeholders will be initiated in the coming days and weeks. On Saturday, January 28, 2017, a federal judge in New York granted an emergency stay for citizens of seven Muslim-majority countries who have already arrived in the United States and those foreign nationals who are already in transit (with valid visas). The court ruled that these foreign nationals cannot be removed from the United States. In addition, on January 29, 2017, two district court judges in Massachusetts issued a 7-day restraining order on the enforcement of the EO. The restraining order permits

individuals traveling to Boston from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen who are legally authorized to enter the United States to do so — at least for the next seven days. Even though these court decisions do not overrule or invalidate the EO on its face, they do send two messages: (1) the subject matter contained in the EO will be subject to legal challenges; and (2) given the gravity of the situation, the courts will likely address these legal challenges in an expeditious manner.

As suggested above, until more practical guidance is issued from the courts, the DHS, and/or the White House, employers should advise their foreign national employees who could potentially be impacted by this EO not to travel abroad.

If you have questions, contact [Kseniya Premo](#), [Caroline M. Westover](#), any of the [attorneys](#) in our [Immigration Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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