



The Workplace Implications Of President Trump's Latest Immigration Executive Order

Insights

1.30.17

Late Friday afternoon, President Trump signed a controversial executive order focusing on immigration issues. The executive order, titled “Protecting the Nation from Terrorist Entry into the United States by Foreign Nationals” and signed on January 27, 2017, created an immediate freeze on all entry for individuals from Syria, Iran, Libya, Somalia, Yemen, Iraq, and Sudan. Both immigrant and non-immigrant visa holders were impacted by the executive order.

What Does The Executive Order Say?

Citizens from the seven listed countries already faced heightened scrutiny when obtaining visas, gaining refugee status, or immigrating to the United States. This executive order establishes a total suspension of entry from all immigrant and nonimmigrants from the listed countries for at least 90 days. The executive order also halts all refugee admission processing for at least 120 days and halts the entry of Syrian refugees for the foreseeable future. This entry suspension will impact current visa holders returning from travel abroad, as well as U.S. permanent residents who are currently outside of the United States.

Recent updates from White House Chief of Staff Reince Priebus indicate that the White House may be changing course about whether the order bans entry for U.S. Permanent Residents. As of the time of publication, the White House has not made any official changes to the executive order, but the Department of Homeland Security has stated that “the entry of lawful permanent residents is in the national interest. Accordingly, absent 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.” Despite this statement, it appears that federal immigration officials will subject such individuals to further screening if they have traveled to one of the banned countries.

What Should Employers Do?

At this time, we would encourage all employers to suspend all work-related international travel for non-U.S. citizen employees from Syria, Iran, Libya, Somalia, Yemen, Iraq, and Sudan. Similarly, you should encourage them to remain in the United States and to indefinitely postpone any personal travel plans outside of the United States if possible, even if they have a valid H-1B visa or green card.

If you employ individuals from the seven countries listed in the order who are currently working outside of the United States, they may not be allowed to re-enter the U.S. at the present time – even if they possess valid travel authorization and nonimmigrant or immigrant status in the United States, such as a green card or H-1B visa.

For all other foreign nationals not covered in this order, you might consider encouraging them to postpone all visa appointments for the time being unless absolutely necessary. Based on the suspension of the Visa Interview Waiver Program included in this order, we anticipate visa wait times will significantly increase. If a visa application is necessary, you should be prepared for your employees to remain outside of the United States for an extended period of time.

You should advise all foreign nationals entering the U.S. at the Mexican border about the importance of carrying all the necessary paperwork to enter the country. They should expect to experience long delays at border crossing points and heightened scrutiny by U.S. Customs and Border Protection officers. If they have been charged with any criminal matters, such as DUI (either in the U.S. or abroad), we recommend that you advise them to carry original certified copies of the court documents providing details on the charges, the resolution, and evidence that the matter was satisfactorily resolved.

Foreign nationals in the U.S. should carry originals or clear copies of their legal authorization to be in the U.S. at all times (e.g., copies of the identifying page of their passports, visa stamps and I-94 electronic cards, Permanent Resident Cards, Employment Authorization Cards, Travel Documents, Re-entry Permits, etc.). If stopped by a U.S. Immigration and Customs Enforcement agent, or any other law enforcement officer, you should instruct them to be prepared to cooperate and present evidence of their U.S. immigration documentation and legal status. However, the foreign national should not sign any forms or other paperwork without consulting with an immigration attorney.

More Detail About The Executive Order

The executive order tasks various government officials, such as the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence, to conduct a detailed review of the data provided by any country in connection with the adjudication of visa applications or other benefits under the Immigration and Nationality Act. This review is aimed at determining whether the applicant requesting the immigration benefit is valid and is not a security or public safety risk.

The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, is instructed to prepare a list of countries that do not provide adequate information for processing. The president will utilize this information to determine if any additional countries need to be added to the exclusionary list, and whether entry by foreign nationals from those countries will also be prohibited.

The executive order also requests the development and implementation of “Uniform Screening Standards for all Immigration Programs,” including but not limited to in-person interviews, the creation of a database of identity documents provided by applicants, and the amending of application

creation of a database of identity documents provided by applicants, and the amending of application forms with the intent of identifying fraudulent answers or malicious intent. The goal of the uniform processing standards is to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to "make contributions to the national interest." The order requests the development of a mechanism to assess whether the applicant has the intent to commit criminal or terrorist acts upon entry to the United States, but does not provide guidance on what type of evaluation could be utilized to accomplish this goal.

Finally, the executive order instructs the Secretary of Homeland Security to expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States. A timeline is not provided for when this system will be implemented. However, the order requires the Secretary of State to immediately suspend the Visa Interview Waiver Program, which allows travelers from 38 countries to obtain a renewed travel authorization without requiring a second or subsequent in-person interview. The Secretary of State is also tasked with reviewing all nonimmigrant visa reciprocity agreements to ensure true reciprocity with respect to visa validity periods and fees.

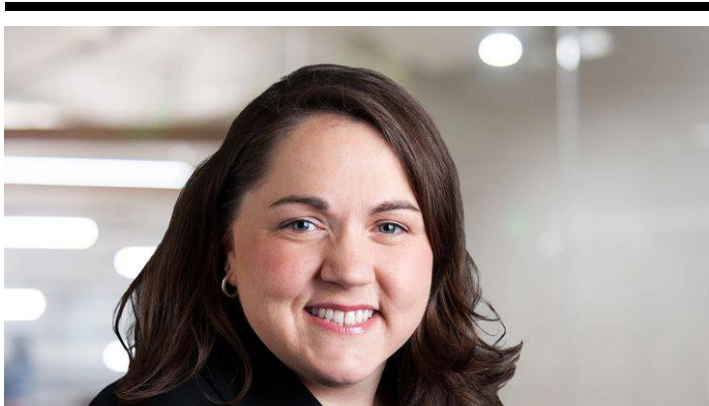
What's Next?

Over the last several days, multiple federal courts have granted temporary injunctions halting various aspects of the executive order. Each case focuses on a unique set of circumstances, however, and is not applicable to all the individuals impacted by the executive order. We will continue to monitor the status of all immigration-related executive order activity, including ongoing and future litigation, and publish updates as additional actions are taken, or information is provided, by the White House or the judicial system.

If you have any questions about these developments or how they may affect your business, please contact any member of our [Global Immigration Practice Group](#), or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of recent executive action. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People





Cynthia J. Yarbrough

Partner

404.240.5845

Email

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