

Mobility: immigration alert

September 2017

United States

Summary and analysis of the "Presidential Proclamation on enhancing vetting capabilities and processes for detecting attempted entry into the United States by terrorists or other public-safety threats"

Executive summary

On 24 September 2017, President Trump issued a Proclamation that, among other things, imposes new travel restrictions on certain nationals from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen. Restrictions vary by country. The new restrictions follow a worldwide review of all immigration security measures as well as individual country information sharing and identity management protocols with the United States. The new Proclamation was issued the day the so-called "travel ban," established by Executive Order 13780, was set to expire. Nationals from Iraq and Sudan, who were included in the previous travel ban are not within the scope of the Proclamation, but the Department of Homeland Security (DHS) recommends those individuals be subject to additional scrutiny. US lawful permanent residents, dual nationals and holders of valid visas are exempt from the Proclamation's effects.

The worldwide review of country information-sharing practices assessed whether entry of foreign nationals to the United States could pose a national security or public safety threat. Forty-seven countries were initially identified as having "inadequate" or "at risk of becoming inadequate" identity-management protocols, information-sharing practices and risk factors. The US State Department (State) engaged with all countries in

those categories, which reportedly yielded significant improvements in most cases. Countries that did not meet the standards or refused to engage as part of the review were included in the final list subject to travel restrictions; hence the addition of Chad, North Korea and Venezuela. Restrictions are tailored to each country, and certain individuals may be eligible for exemptions or granted a waiver at the discretion of DHS and State. The restrictions will remain in place indefinitely but are subject to review. Within 180 days of the date of the Proclamation, and every 180 days thereafter, a process will be devised to assess whether any suspensions and limitations imposed by the proclamation should be continued, terminated, modified or supplemented.

Summary points

- ▶ The restrictions went into effect at 3:30p.m. Eastern on 24 September 2017 for foreign nationals from Iran, Libya, Somalia, Syria and Yemen, who were subject to entry restrictions under Executive Order 13780 and lack a credible claim to a bona fide relationship with a person or entity in the US.
- ▶ All others restrictions go into effect at 12:01 a.m. Eastern on 18 October 2017 unless an individual has obtained an exemption or been granted a waiver.



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- ▶ Nationals of Chad, Libya and Yemen are restricted from entry into the US as immigrants and as nonimmigrants on business (B-1) or tourist (B-2) visas.
- ▶ The entry into the US of nationals of Iran as immigrants and as nonimmigrants is suspended, except that entry by Iranian nationals under valid student (F and M) and exchange visitor (J) visas. However, such individuals will be subject to enhanced screening and vetting requirements.
- ▶ The entry into the US of nationals of North Korea as immigrants and nonimmigrants is suspended.
- ▶ The entry of nationals of Somalia as immigrants is suspended, and nonimmigrants traveling to the US will be subject to enhanced screening and vetting requirements.
- ▶ The entry of nationals of Syria as immigrants and nonimmigrants is suspended.
- ▶ The entry of certain Venezuelan government officials and their immediate family members as nonimmigrants on business (B-1) and tourist (B-2) visas is suspended. Nationals of Venezuela who are visa holders will be subject to enhanced screening and review measures to ensure traveler information remains current.
- ▶ Nationals of Iraq are not subject to a ban, but those who seek to enter the US will be subject to additional scrutiny to determine if they pose risks to the national security or public safety.
- ▶ The Proclamation **does not apply** to citizens or nationals of the designated countries who are:
 - ▶ Lawful Permanent Residents of the US.
 - ▶ Foreign nationals admitted or paroled into the US after the effective date of the Proclamation.
 - ▶ Foreign nationals with a document other than a visa (e.g. advance parole document) that is valid on or after the effective date of the Proclamation, or issued on any date thereafter, that permits travel to the US.
 - ▶ Dual nationals from a designated country, as long as they are traveling on a passport issued by a non-designated country (e.g., a naturalized British passport holder born in Iran).
 - ▶ Foreign nationals on diplomatic, NATO, C-2 for travel to the United Nations, G-1, G-2, G-3, or G-4 visas.
 - ▶ Foreign nationals already granted asylum status, refugees admitted to the United States, or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.
 - ▶ Individuals currently in the United States (however, departure from the US may result in an inability to return if they are from one of the countries noted in the Proclamation).
 - ▶ Visas issued prior to the effective date of the Proclamation will not be revoked pursuant to the Proclamation.
 - ▶ Provisions have been made for waivers to be granted where there is sufficient proof that restricting entry would cause "undue hardship", where admission to the US would not pose a threat to national security, and where it is in "the national interest."
 - ▶ Waivers may also be granted, on a case by case basis for:
 - ▶ Canadian permanent residents immigrants who applies for a visa at a location within Canada
 - ▶ Foreign nationals with significant business or professional obligations in the US or with previously established contacts
 - ▶ US government sponsored J-1 exchange visitors
 - ▶ Foreign nationals seeking to enter the US to visit or reside with a close family member who is a US citizen, lawful permanent resident or nonimmigrant if denial would cause undue hardship to the traveler
 - ▶ Infants, young children (including adoptees), and individuals needing urgent medical care
 - ▶ Foreign nationals who are or have been employed by the US government and can document "faithful and valuable service"
 - ▶ Foreign nationals traveling to the US at the request of the US government for legitimate law enforcement, foreign policy or national security purposes.
 - ▶ Unless impacted by the Proclamation, a foreign national whose visa was marked revoked or marked canceled as a result of the prior Executive Order 13769 is entitled to a travel document permitting travel to the US.
 - ▶ Any prior cancellation or revocation of a visa that was solely based on the prior Order shall not be the basis of inadmissibility for a future immigration benefit.

Impact and next steps

The newly issued Proclamation restricts the ability of certain foreign nationals to travel to the US. It will likely impact foreign nationals from designated countries whose visas expire after the effective date.

As the situation is fluid and guidance/interpretation of the Proclamation may evolve we caution you not to rely on pronouncements unless they are coming directly from US government authorities. We encourage you to stay connected to your EY Law LLP legal advisor for additional information on your foreign national population during the coming days and weeks. We are monitoring the Proclamation's implementation and will update you on any litigation or guidance provided. In the meantime, we recommend that you identify persons who may be affected by this Proclamation, and limit travel until greater certainty as to the rule and its effects are clarified.

How we can help

Those who believe they may be affected by this notice should contact one of our US immigration professionals to discuss in greater detail the effects of these new provisions.

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