

# Mobility: immigration alert

June 2018

## United States

### Summary of the Supreme Court Decision upholding President Trump's Proclamation No. 9645: Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats

#### Executive summary

On June 26, 2018, the Supreme Court of the United States upheld President Trump's Proclamation No. 9645, which imposed travel restrictions on certain nationals from Iran, Libya, Somalia, Syria, Yemen, North Korea, and Venezuela (Chad, Sudan, Iraq have been removed from the original Executive Order).

Previously, President Trump signed Executive Order No. 13769 (EO-1) on January 27, 2017, suspending for 90 days the entry of foreign nationals from seven countries identified as presenting heightened terrorism risks. EO-1 was immediately challenged and a Federal District court entered an injunction enjoining the enforcement of several key provisions of EO-1. The White House revoked EO-1 and President Trump thereafter signed Executive Order No. 13780 (EO-2), on March 6, 2017. EO-2 was also challenged and a Federal court also entered an injunction order enjoining nationwide enforcement of EO-2. EO-2 originally was intended to only last 90 days, with an expiration of June 14, 2017. Prior to the expiration of EO-2, President Trump issued a new Proclamation effectively amending the original EO-2, removing the original 90-day suspension and imposing a permanent restriction on travel.

The Supreme Court affirmed the President's authority "to restrict the entry of aliens whenever he finds that their entry 'would be detrimental to the interests of the United States,'" but also recognizing that "an American individual who has a 'a bona fide relationship with a particular person seeking to enter the country... can legitimately claim concrete hardship if that person is excluded.'" Notably, the Supreme Court stated they "express no view on the soundness of the policy."

Based on the Supreme Court's decision, the Proclamation's 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 EO-2 should be continued, terminated, modified or supplemented.

#### Summary

The Supreme Court decision upholds the current travel restrictions for foreign nationals from Iran, Libya, Somalia, Syria, Yemen, North Korea, and Venezuela. Foreign nationals from the listed countries are subject to entry restrictions under the Proclamation if they lack a credible claim to a bona fide relationship with a person or entity in the US.



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### **Key provisions of the Proclamation are as follows:**

- ▶ Nationals of Libya and Yemen are restricted from entry into the US as immigrants and as nonimmigrants on business (B-1) or tourists (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.
- ▶ 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, transportation letter, or boarding foil) 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 apply 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 Executive Order 13769 shall not be the basis of inadmissibility for a future immigration benefit.

### **Impact and next steps**

The Supreme Court decision upholds the restriction of the ability of certain foreign nationals to travel to the US.

As the situation is fluid (based on the 180-day review provision in Proclamation No. 9645), 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.

### **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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