Travel Advisory for Nationals of Certain Countries Pursuant to Executive Order

January 29, 2017

On January 27, 2017, President Trump signed an Executive Order entitled Protecting the Nation from Terrorist Entry into the United States by Foreign Nationals, Section 3 of that Executive Order will "suspend entry into the United States" of both nonimmigrants and immigrants from at least 7 countries, for 90 days from the date the Executive Order was signed, except for those traveling on diplomatic visas, NATO visas, and C-2 visas for travel to the United Nations. For now, these countries are:

1. Iran
2. Iraq
3. Libya
4. Somalia
5. Sudan
6. Syria
7. Yemen

Additional countries could also be included.

If you have students or scholars who are nationals of one of the above countries, they should get the advice of an experienced immigration lawyer if they had been planning to travel outside the United States, or if they are currently outside the United States, prior to making travel plans. The American Immigration Lawyers Association (AILA) has a brief practice advisory on this topic (AILA Doc. No. 17012670). Remember, the AILA advisory and this NAFSA web page do not constitute legal advice, and advisers should not be dispensing legal advice. Please counsel individuals to speak to an experienced immigration lawyer if they need legal advice.

Section 3(c) of the Executive Order reads:

"(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent the terrorist or criminal infiltration of foreign nationals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section
217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas)."

Here are some important structural aspects of this provision.

**Statutory authority invoked**

The authority invoked to issue this order is INA 212(f), codified at 8 USC 1182(f), a rarely used pre-existing law which gives any President the following broad authority:

(f) *Suspension of entry or imposition of restrictions by President.* Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

**Duration of the ban**

The final version of the Executive Order sets the duration of the ban to **90 days**. It was raised to 90 days from the 30 days that appeared in the draft version of the order that had circulated prior to January 27, 2017. Also note that **after 90 days, the entry ban is not automatically lifted.**

Rather:

- The Executive Order also requires DHS to specify what kind of information it needs from *any* country (not just the 7 countries) regarding an applicant for an immigration benefit, "to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat," and to determine which countries do and do not provide such information.
- **Within 30 days of January 27, 2017, DHS (in consultation with DOS and the Director of National Intelligence) must submit to the President a report on the results of the review, including the Secretary of Homeland Security’s determination of the information needed for adjudications and a list of countries that do not provide adequate information.**
- If DHS determines that a country does not provide such information, the country will be informed that it has 60 days to begin providing it.
- If after the 60 days the country does not begin providing such information, under Section 3(e) of the Executive Order it will be included in a future proclamation under INA 212(f) that would render nationals of that country ineligible for entry, until such time as the country begins providing the requested information. **This process could also expand the**
list beyond seven countries. By the same token, after the initial 90 days any country on the original list of seven could possibly be removed from the list if it begins providing the information requested by DHS.

The list "of aliens from countries" that would be affected by this order

The Executive Order takes the list established by INA 217(a)(12), a pre-existing law which restricts individuals from participating in the Visa Waiver Program (WB and WT categories), and:

- Applies the list of countries to "aliens from countries designated" under INA 217(a)(12)
  - It is unclear what it means to be "from" a country under the Executive Order, but it likely includes citizens, passport holders, dual citizens, and nationals of one of those countries.
  - Some examples of the "from" concept, which individuals should discuss with an immigration lawyer:
    - Example 1) An individual born in Iran but who later became a British citizen and who now seeks entry to the United States on the British passport, would still be subject to the entry ban.
    - Example 2) An individual born in Iran, who later became a British citizen, and who subsequently became a U.S. lawful permanent resident, would also likely be viewed as "from Iran," and thus subject to the ban.
    - Example 3) An individual born in Iran who subsequently becomes a U.S. citizen would not be subject to the ban, since the ban applies to "immigrants and nonimmigrants."
  - Note that INA 217(a)(12) leaves open the designation of other countries, and so the list of 7 countries could be expanded on that basis too.
  - Note that INA 217(a)(12) also restricts Visa Waiver Program entry for people who travel to the designated countries, even if they are not a citizen or national of those countries. The Executive Order does not appear to apply to someone who has only traveled to one of the countries, but anyone with questions should consult an experienced immigration lawyer.

- Extends the scope of the list to "suspend entry into the United States, as immigrants and nonimmigrants"
  - "Nonimmigrants" includes categories such as B, E, F, H, O, etc.
  - The term "Immigrants" encompasses both new immigrants as well as U.S. lawful permanent residents (green card holders); anyone with questions should consult an experienced immigration lawyer.

Waiver of and challenges to the entry ban provision

Section 3(g) of the Executive Order provides for the following "waiver" of the 3(c) or eventual 3(e) entry bans:
"(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked."

However, it is not clear what the mechanism for requesting such a waiver would be. Nor is it clear what type of facts could persuade DHS or DOS that such a waiver would be "in the national interest."

On a related note, on January 28, 2017 the ACLU and others filed suit in federal court to challenge the entry ban. ACLU states on its website that, "A federal judge granted the American Civil Liberties Union’s request for a nationwide temporary injunction that will block the deportation of all people stranded in U.S. airports under President Trump’s new Muslim ban." It is important to note that this temporary injunction arose in the context of two individuals with immigrant visas, who were being detained after arriving at a U.S. airport. Individuals who wish to inquire how this temporary injunction might apply to them specifically should seek experienced legal counsel.

**Seeking legal counsel**

The ambiguities and other unanswered questions of the Executive Order are cause for individuals to get advice from an experienced immigration lawyer if they have questions about whether their nationality, country of birth, country of residence, or travel history would make them subject to the Executive Order, or for questions about any possible relief from the consequences of the Executive Order.