

THOUGHT LEADERSHIP

LEGAL UPDATES

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Service

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Understanding the Executive Order on Immigration

On January 27, 2017, the White House handed down an Executive Order suspending entry into the United States, as well as issuance of visas, for individuals “from countries of particular concern.” The Order also directs the implementation of additional screening mechanisms for all foreign national travelers to the United States. Organizations that employ foreign national workers should be cognizant of the Order and its impact on the ability of their foreign national workers to travel to the United States and obtain a visa.

Uncertain Times for Foreign National Workers

Though the Executive Order, titled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” is wide-ranging, its most controversial part is the suspension of the admission of, and issuance of visas to, foreign nationals “from countries of particular concern” for at least 90 days. These designated countries currently include Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen, but the Order raises the possibility of adding others later.

The reach of this Executive Order is unclear, as it does not define precisely the affected class of people or what it means to be a national or alien “from” one of those countries. Pending clarification, U.S. visa holders and U.S. lawful permanent residents (or “green card” holders) who are current citizens of, who hold a passport from, or who were born in the designated countries should refrain from traveling to the United States, or from leaving the United States if they wish to return. Customs and Border Protection has clarified that dual nationals of the designated countries who seek to enter the United States from a country not on the list will be processed for entry based on the nationality of their passport or travel document.

On January 29, 2017, Secretary of Homeland Security John Kelly issued a statement that the Executive Order applies to U.S. lawful permanent residents

“from” the designated countries but that they may enter the United States on a case-by-case basis. On February 1, 2017, a District Court enjoined enforcement of the Executive Order against those who have been approved for permanent residence.

Based on experience to date, it is expected that inconsistent determinations may be made as to the ability of travelers to board U.S.-bound aircraft or to be admitted to the United States; enforcement of the Order has varied from place to place. Arriving individuals should expect additional screening at the airport.

Anticipate Processing and Travel Delays

The Visa Interview Waiver Program allows foreign nationals who meet eligibility requirements and who are applying to renew a temporary visa to request a waiver of an in-person interview at a U.S. consulate or embassy. The program will be suspended under this Order to the extent permitted by statute. The suspension will slow the consular processing times for all U.S. visas. Foreign national workers planning on traveling outside the United States who will apply for a U.S. visa at a consulate abroad should plan for additional travel time due to expected long consular delays. Additionally, organizations should plan for the continuation of business operations in the event of lengthy absences caused by the visa issuing process.

The Executive Order also calls for the implementation of a program to identify individuals who seek to enter the United States on a fraudulent basis with the intent to cause harm or who are at a risk of causing harm after admission to the United States; the expedited completion and implementation of the biometric entry-exit system for all travelers to the United States; and the review of all visa reciprocity agreements with foreign countries to ensure U.S. nationals are treated equally.

Certain news media are reporting that the adjudication of immigration benefits by U.S. Citizenship and Immigration Services or other agencies has been suspended for people “from” the affected countries. While no confirmation of this claim has been received, employers should be aware of the possibility.

What This Means to You

The parameters of the Executive Order are as yet unclear, and its implementation has been marked by continuing confusion. However, organizations that have sponsored employees for work authorization or permanent residence should be aware of the Executive Order’s known and potential ramifications for their current workforces. Foreign national employees “from” the designated countries who are currently outside of the United States may not be permitted to return, even if they are lawful permanent U.S. residents. It is possible those who are currently in the United States may not be eligible for an extension of work authorization, change in immigration status or any other

immigration benefit. All foreign national employees who travel between the United States and a foreign country should be prepared for long delays and possible lengthy secondary detention at airports upon arrival in the United States.

While the Executive Order is currently being challenged in federal court, and several injunctions of limited scope have been issued, the Executive Order is still in place and is being enforced to the extent possible.

Contact Us

We will provide updates as we learn more about implementation of the Executive Order. This situation is highly fluid and dynamic, and employers should check with counsel to confirm current guidance. If you have questions about immigration or how the Executive Order could affect your organization, please contact Toni Blackwood or Kelli Stout of Husch Blackwell's Immigration team.