
President Trump Signs Revised Immigration Executive Order

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On March 6, 2017, President Trump signed a substantially narrowed version of the January 27, 2017 Executive Order titled “Protecting the Nation from Foreign Terrorist Entry into the United States.” The revised Order, effective March 16, 2017, suspends travel to the United States for 90 days for certain foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen (Iraq has been dropped from the list). It also suspends refugee travel to the United States under the US Refugee Admissions Program (USRAP) and decisions on applications for refugee status for 120 days.

These suspensions are subject to case-by-case waiver, which consular officers or officials from Customs and Border Protection may grant during the visa application process or at a port of entry. In a departure from the initial Order, the revised Order provides a list of situations in which a waiver may be appropriate. For example, foreign nationals who seek to enter the United States for “significant business or professional obligations” that would be impaired by denial of entry may be entitled to a waiver. Foreign nationals traveling for business related to an international organization or for meetings with the US government may also be granted waivers.

Unlike the initial Order, the revised Order applies only to foreign nationals outside the United States who did not have a valid visa as of 5 p.m. on January 27 and do not have a valid visa as of March 16. It therefore does not restrict travel by lawful permanent residents or individuals who had a valid visa before the initial Order was signed and who still possess that visa. Additionally, the revised Order explains that dual nationals of the six designated countries traveling on a passport issued by a non-designated country will not be barred entry to the United States based on the Order.

The revised Order directs the Department of Homeland Security to undertake in the first 20 days after March 16 a worldwide review to determine whether and what additional information is needed from each foreign country in order to determine that a visa applicant from that country is not a security or public safety threat. At the close of this review, the State Department will have 50 days to convey requests for this additional information to the relevant countries. Once this 70-day review period is complete, the list of six designated countries may be revised.

In an apparent attempt to address judicial concern that the initial Order was not based on an expert assessment of any public safety risk, the revised Order includes several paragraphs justifying the

selection of the six designated countries. Section 1(h), for example, attempts to rebut the common argument that there have been no terrorist attacks on US soil committed by nationals of the designated countries by referencing two attempted attacks by foreign nationals, one of which involved Iraqi nationals and would not have been prevented by the new Order.

We expect that plaintiffs in the pending lawsuits will file amended complaints addressing the revised Order and will likely seek temporary restraining orders or preliminary injunctions preventing the revised Order from taking effect on March 16. We will continue to monitor the progress of the pending lawsuits, as well as the Trump administration's actions in this area. In the meantime, companies with affected workforces should feel free to contact WilmerHale to discuss the revised Order and related issues.

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