



**Practice Alert: DHS and DOS Implementation of Executive Order
Imposing Travel and Refugee Ban**
(updated February 9, 2017)

FEBRUARY 9, 2017 ALERT: On February 9, 2017, [the Ninth Circuit Court of Appeals, in a per curiam order, denied the federal government's motion for an emergency stay](#), finding that it failed to show a likelihood of success on the merits of its appeal, and that it also failed to show that the lack of a stay would cause irreparable injury. Therefore, until further action by a court, the order barring implementation of the travel and refugee ban remains in place, and all individuals may apply for visas and admission to the United States without regard to nationality.

In terms of next steps, the U.S. District Court for the Western District of Washington has ordered all briefing associated with Plaintiffs' motion for preliminary injunction to be completed by Friday, February 17, 2017. A hearing on the preliminary injunction has not yet been scheduled.

In the meantime, the federal government could seek Supreme Court intervention though five of the current 8 justices would need to vote to overturn the panel decision.

FEBRUARY 4, 2017 ALERT: On February 3, 2017, [the United States District Court for the Western District of Washington issued a temporary restraining order](#), prohibiting the federal government from enforcing Sections 3(c) [90-day travel ban on "immigrants and nonimmigrants" from designated countries], 5(a) [120-day ban on U.S. refugee program], 5(b) [prioritization of certain refugee claims], 5(c) [indefinite suspension of Syrian refugee admissions], and 5(e) [case-by-case refugee admissions] of the January 27, 2017 Executive Order *on a nationwide basis*. All U.S. land and air ports of entry are prohibited from enforcing these portions of the EO until further order from the court.

DOS: DOS has confirmed that assuming there are no other issues in the case, *provisionally revoked* visas have been reversed and are once again valid for travel.

CBP: All CBP Field Offices have been instructed to immediately resume inspection of travelers under standard policies and procedures. All airlines and terminal operators have been notified to permit boarding of all passengers without regard to nationality.

AILA has also confirmed with CBP that individuals who arrived last weekend and had their visas *physically cancelled* as a result of the EO will not need to reapply for a new visa and

absent any other admissibility issues will receive an I-193 waiver (Application for Waiver of Passport and/or Visa) upon arrival to the U.S. For those traveling by air, airlines have been instructed to contact CBP to receive authorization to permit boarding.

On January 27, 2017, President Trump signed an Executive Order (EO), “[Protecting the Nation from Foreign Terrorist Entry into the United States](#).” For more information on this and other anticipated or signed Executive Actions, please see AILA’s website, [Immigration 2017 - A New President and Congress](#). Though the EO covers a number of issues and topics, this document focuses only on the implementation of the travel and entry ban for foreign nationals from the seven affected countries (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen) and the suspension of the refugee program. This document will be updated on an ongoing basis as new information is obtained, as noted by the date above. **However, interpretations and implementation remain fluid and are subject to change.**

Please also note that litigation is pending or in process in multiple jurisdictions around the country that may affect individual clients. For more information, please see the American Immigration Council Practice Advisory, [Challenging President Trump's Ban on Entry](#), which offers resources and practice tips for attorneys with affected clients, and outlines legal challenges that have been filed to date.

(As of February 2, 2017) In response to rumors of plans to expand the travel ban to other countries, DOS informed AILA that there is no addendum, annex, or amendment now being worked on to expand visa revocations or the travel ban to countries other than those currently implicated in the Executive Order entitled, "Protecting the Nation From Foreign Terrorist Entry into the United States." This includes Columbia and Venezuela which have been widely rumored to be under consideration. DOS confirmed that there is no information that supports such a rumor and asked that AILA members help end the spread of this false information.

Click on the following links for additional information:

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Nonimmigrants

- **Generally.** Citing INA §212(f), section 3(c) of the EO imposes a 90 day suspension on the entry into the United States of immigrants and nonimmigrants from the seven designated countries, excluding those traveling on diplomatic visas, NATO visas, U.N. transit visas, and international organization visas.

- **Suspension of Nonimmigrant Visa Processing.** On January 27, 2017, [the Department of State \(DOS\) announced](#) the immediate suspension of visa issuance to nationals of the affected countries “until further notification.” Citizens of the named countries are advised not to schedule visa appointments or pay any visa fees. Individuals for whom an appointment has been scheduled are advised not to attend the appointment as they will not be permitted to enter the Embassy or Consulate. Consular posts are attempting to contact applicants with pending appointments to advise them that their interviews have been cancelled and must be rebooked after the suspension is lifted. Not every applicant is being contacted directly; therefore, it is prudent to communicate with clients to ensure they are aware that they should not appear for their interviews.
- **Revocation of Nonimmigrant Visas.** On [January 27, 2017, DOS announced](#) that pursuant to INA §212(f) and §221(i), as well as 22 CFR §41.122, “all valid nonimmigrant visas” issued to nationals of the seven affected countries are “hereby provisionally revoke[d]” with the exception of A-1, A-2 [diplomats], G-1, G-2, G-3, G-4 [international organizations], NATO, C-2 [U.N. transits], “or certain diplomatic visas.”

Provisional Revocation. Under 22 CFR §41.122(b)(2), DOS may “provisionally” revoke a visa while it considers information to determine whether an individual is eligible for a visa. A provisional revocation has the same force and effect as any other visa revocation under INA §221(i). Though the Foreign Affairs Manual does not contain guidance on “provisional” revocations, the process appears similar to the “prudential” revocation process described in [9 FAM 403.11-5\(B\)\(U\)](#). Provisional revocations are discussed at length in [the DOS Final Rule on EVUS](#) that was published in the Federal Register on October 20, 2016.

Notice of Revocation. Under 22 CFR §41.122(c), consular officers shall, “if practicable,” and “unless otherwise instructed” by DOS, provide notice to an individual whose visa has been provisionally revoked. AILA is seeking guidance from DOS regarding what, if any, steps it has taken or is taking to provide notice of revocation to affected individuals or whether and how they can proactively obtain this information.

Impact on Nonimmigrants in the United States. Although it is still unclear whether and how nonimmigrants that were in the United States when the EO was signed will be treated, [the language in the January 27, 2017 directive](#) is broad enough to encompass them. Until confirmation is received from DOS, it is important to note that provisional revocation of a “nonimmigrant visa” should not, in and of itself, impact the validity of an individual’s “nonimmigrant status” in the United States. As [confirmed by DOS in a liaison meeting with AILA](#), “CBP determines an alien’s status upon his or her admission into the United States. Revoking the visa does not impact that status.” In addition, [the CBP FAQs](#) indicate, at least with respect to international students, “[i]ndividuals who were in the U.S. at the time of the signing of the executive order are not affected by the order.” While presence in the U.S. with a visa that has been revoked can render one deportable under INA §237(a)(1)(B), it is unclear whether DHS will elect to take enforcement actions against individuals with “provisionally revoked” visas as opposed to revoked visas.

- **Reinstatement of Nonimmigrant Visa.** Provisionally revoked visas are subject to reversal, and if reversed, “the visa immediately resumes the validity period provided for on its face.” 22 CFR §41.122(b)(1). Therefore, it appears that when and if the travel suspension is lifted for one or more of the affected countries, provisionally revoked nonimmigrant visas would be automatically reinstated as required by the regulation.
- **Boarding.** Individuals with a nonimmigrant visa in a passport from a restricted country will generally not be allowed to board a plane to the U.S., and the visa will likely be deemed provisionally revoked. Dual nationals with a valid nonimmigrant visa in a passport from an unrestricted country will generally be permitted to board.
- **Admission.** According to [DHS guidance issued on January 29, 2017](#), the entry ban applies to individuals “traveling on passports” from the designated countries. DHS confirmed to AILA that anyone who holds a passport from a designated country is considered to be “from” the designated country. Though boarding should be restricted, as noted above, nonimmigrants who manage to board a plane and arrive at a port of entry but who are subject to the travel ban should be allowed to withdraw their application for admission. According to comments made by CBP to AILA, expedited removal will generally only be used for those individuals who do not wish to withdraw their application for admission.
- **National Interest Exemption: Issuance of Visa/Entry on a Case-by-Case Basis.** [DOS and DHS have the authority](#) “on a case-by-case basis, to issue visas or allow the entry of nationals of [the designated countries] into the United States when it serves the national interest.” CBP has advised AILA that individuals whose visas have been revoked, or who would like to obtain a visa or seek admission to the United States under the national interest waiver exemption should contact a U.S. consulate to request the exemption prior to attempting to board a plane or apply for admission at a land port of entry. AILA is seeking additional information on the process for requesting a national interest exemption.

Canadian Landed Immigrants. Canadian Landed Immigrants whose travel originates in Canada and who: (1) are also nationals of a restricted country; (2) have a currently valid visa for travel to the U.S.; (3) arrive at a CBP Preclearance Office (PCO) or land border crossing do not require preauthorization from DOS and [may make a request for a national interest exemption directly to CBP](#). Such travelers are advised to check with DOS prior to traveling to ensure their visa has not been revoked and to bring proof of Canadian Landed Immigrant status. AILA is seeking clarification on how that can be accomplished.

- **Dual Nationals.** On [February 2, 2017, DOS issued a news alert](#) confirming that travel for “dual nationals from any country with a valid U.S. visa in a passport of an unrestricted country” is not restricted.” Embassies and Consulates will continue to process visa applications and issue nonimmigrant visas to otherwise eligible applicants who apply with a passport from an unrestricted country, even if they hold dual nationality from a restricted country. What is still unclear is whether visas contained in the unrestricted passports of dual nationals remain valid or have been provisionally revoked and how one can determine whether his or her visa has been provisionally revoked.

[According to CBP FAQs](#), the EO applies to dual nationals, but “travelers are being treated according to the travel document they present. For example, if they present a Canadian passport, that is how they are processed for entry.” Dual nationals should be advised to present only an unrestricted passport at the port of entry.

Immigrants

- **Generally.** Citing INA §212(f), section 3(c) of the EO imposes a 90 day suspension on the entry into the United States of “immigrants” from the seven designated countries.
- On February 1, 2017, DHS confirmed that the travel ban does not apply to LPRs. In order to be exempted from the travel ban, the person must already have been admitted to the U.S. as an LPR (or have adjusted status), as immigrant visas that have not yet been used to enter the U.S. appear to have been provisionally revoked. See “[Lawful Permanent Residents \(LPRs\)](#)” for further information.
- **Suspension of Immigrant Visa Processing and Interview Cancellation.** On January 27, 2017, [the Department of State \(DOS\) announced](#) the immediate suspension of visa issuance to nationals of the affected countries “until further notification.” In addition, [the National Visa Center \(NVC\) announced on February 1, 2017](#), that the processing of immigrant visa (IV) applications for individuals who are nationals **and dual nationals** of one of the designated countries has been halted, and all February 2017 immigrant visa interviews (including fiancée visas) for these individuals have been cancelled. NVC noted it would continue work on “in-process” cases up to the point of the interview but that IV cases would not receive interview appointment notices until further notice. In the meantime, IV applicants in-process should continue to pay IV fees, complete the DS-260, and submit financial and civil supporting documents. Emergency IV appointments for individuals from restricted countries are not being considered at this time.
- **Revocation of Immigrant Visas.** On [January 27, 2017, DOS announced](#) that pursuant to INA §212(f) and §221(i), as well as 22 CFR §42.82, “all valid...immigrant visas” of the seven affected countries are “hereby provisionally revoke[d].”

Provisional Revocation. Under 22 CFR §42.82, DOS may “provisionally” revoke an immigrant visa while it considers information relating to whether an individual is eligible for the visa. A provisional revocation has the same force and effect as any other visa revocation under INA §221(i).

Notice of Revocation. Under 22 CFR §42.82(c), consular officers shall, “if practicable,” and “unless otherwise instructed” by DOS, provide notice to an individual whose visa is provisionally revoked. Regardless of delivery of such notice, once the visa revocation has been entered in CLASS, the visa is no longer valid for travel to the United States. AILA is seeking guidance from DOS regarding what, if any, steps it has taken or is taking to provide notice of revocation to affected individuals and if and how such individuals can proactively obtain this information.

Impact on Immigrants in the United States. When immigrant visa holders enter the United States as LPRs their immigrant visas have been used and they are no longer visa holders. Thus, individuals who were already admitted to the United States on immigrant visas prior to the signing of the EO should not be impacted.

Issuance of Visa/Entry on a Case-by-Case Basis. [DOS and DHS have the authority](#) “on a case-by-case basis, to issue visas or allow the entry of nationals of [the designated countries] into the United States when it serves the national interest.” CBP has advised AILA that individuals whose visas have been revoked, or who would like to obtain a visa or seek admission to the United States under the national interest waiver exemption should contact a U.S. consulate to request an exemption prior to attempting to board a plane or apply for admission at a land port of entry. AILA is seeking additional information on the process for requesting a national interest exemption.

- **Reinstatement of Immigrant Visa.** AILA is seeking clarification on the process for seeking reinstatement of an immigrant visa when and if the travel ban is lifted. The process, if any, for reinstatement may differ for those with expired IVs than for those with IVs that have not yet expired.
- **Boarding.** Individuals from restricted countries who are not dual citizens will generally not be allowed to board a plane to the U.S. and their visas will likely be provisionally revoked. Dual nationals with an immigrant visa in a passport from an unrestricted country should generally be permitted to board.
- **Admission.** According to [DHS guidance issued on January 29, 2017](#), the entry ban applies to individuals “traveling on passports” “from” designated countries. DHS advised AILA that anyone traveling on a passport of a designated country is considered to be “from” the designated country. Though boarding should be restricted, as noted above, immigrants who manage to board a plane and arrive at a port of entry but who are subject to the travel ban should be allowed to withdraw their application for admission. According to comments made by CBP to AILA, expedited removal will generally only be used for those individuals who do not wish to withdraw their application for admission.
- **National Interest Exemption: Issuance of Visa/Entry on a Case-by-Case Basis.** [DOS and DHS have the authority](#) “on a case-by-case basis, to issue visas or allow the entry of nationals of [the designated countries] into the United States when it serves the national interest.” CBP has advised AILA that individuals whose visas have been revoked, or who would like to obtain a visa or seek admission to the United States under the national interest waiver exemption should contact a U.S. consulate to request the exemption prior to attempting to board a plane or apply for admission at a land port of entry. AILA is seeking additional information on the process for requesting a national interest exemption.
- **Dual Nationals.** On [February 2, 2017, DOS issued a news alert](#) confirming that travel for “dual nationals from any country with a valid U.S. visa in a passport of an unrestricted country” is not restricted. Embassies and Consulates will continue to process visa applications and issue immigrant visas to otherwise eligible applicants who apply with a

passport from an unrestricted country, even if they hold dual nationality from a restricted country. However, the [NVC has explicitly stated](#) that IV processing for dual nationals will be halted and their IV appointments will be cancelled. What is still unclear is whether visas contained in the unrestricted passports of dual nationals remain valid or have been provisionally revoked and how one can determine whether his or her visa has been provisionally revoked. AILA is seeking clarification on the treatment of dual nationals in the immigrant visa context.

[According to CBP FAQs](#), the EO applies to dual nationals, but “travelers are being treated according to the travel document they present. For example, if they present a Canadian passport, that is how they are processed for entry.”

Lawful Permanent Residents (LPRs)

- **Generally:** Citing INA §212(f), section 3(c) of the EO imposes a 90 day suspension on the entry into the United States of immigrants and nonimmigrants from the seven designated countries, excluding those traveling on diplomatic visas, NATO visas, U.N. transit visas, and international organization visas. While LPRs were originally included in the ban, [DHS issued guidance on January 29, 2017](#) deeming “the entry of lawful permanent residents to be in the national interest” and thus, “absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in [DHS] case-by-case determinations.” On February 1, 2017, DHS and the White House clarified in [FAQs posted to the CBP website](#) that the EO does not apply to the entry of LPRs, so a waiver (or exemption) will not be necessary. As a result, LPRs from restricted countries should generally be allowed to board airplanes and enter the United States.
- **Relinquishment of Lawful Permanent Resident Status.** If you have a client who was asked to relinquish his or her green card, or if you have an LPR client who is about to travel, read AILA’s Practice Alert, [“What to Do If Clients are Asked to Relinquish Their Green Cards and Sign Form I-407, Abandonment of LPR Status.”](#)
- **Global Entry:** CBP confirmed with AILA that the “Trusted Traveler” status of individuals subject to the travel ban was cancelled in the immediate days following the signing of the EO. Though the cancellation initially included LPRs from affected countries, with the recently announced change in the treatment of LPRs seeking admission to the United States, CBP has stated it is working to reinstate Trusted Traveler status for those individuals.

Special Immigrant Visas. According to [CBP FAQs updated on February 2, 2017](#), “[t]he entry of Iraqi nationals with a valid Special Immigrant Visa (SIV) to the United States is deemed to be in the national interest and such individuals can apply for admission to the United States. Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, possession of [an SIV] will be a dispositive factor in case-by-case determinations. Iraqi nationals can also apply to a consular officer for Special Immigrant Visas, and, if otherwise qualified, can be issued a Special Immigrant Visa.” This information was reportedly confirmed in a DOS cable issued to Posts on Tuesday, January 31, 2017.

Refugees

- **Generally:** Section 5 of the EO suspends the U.S. Refugee Admissions Program (USRAP) for 120 days and suspends the entry of all Syrian refugees indefinitely, until the President determines their admission would be in the national interest. [DHS has stated that during the 120 days](#), it will “review screening procedures to ensure refugees admitted in the future do not pose a security risk” to the United States.
- **Refugees in Transit.** The exception for refugees that are currently “in transit” found in Section 5(e) of the EO does not apply to people from the designated countries. [CBP FAQs](#) state that (as of 2/2/17), there are 872 refugees who are considered to be in transit and scheduled to arrive in the U.S. the week of January 30, 2017. DOS and DHS will coordinate and process these individuals “consistent with the terms of the Executive Order, which we’ve operationalized by assessing each traveler on a case-by-case basis.”
- **Returning Refugees and Asylees:** Returning refugees and asylees from designated countries are also included in the ban generally will not be allowed to board airplanes or enter the U.S. unless they qualify for an exception.
- **Derivative Family Members of Asylees and Refugees:** [CBP FAQs](#) state that individuals who have an approved Form I-730 and who are following-to-join refugee and asylee family members in the United States will be evaluated for entry on a case-by-case basis.
- **Emergencies and Other Exceptions:** [CBP FAQs](#) currently state that DHS will coordinate with DOS to process individual refugee cases which may be appropriate for travel consistent with the EO.