# Practice Alert: DHS and DOS Implementation of Presidential Proclamation and Executive Orders Imposing Restrictions on Travel and Refugees

(*updated* December 8, 2017)

**DECEMBER 8, 2017:** In light of the U.S. Supreme Court's December 4, 2017 ruling, which allows the U.S. government to fully implement President Trump's September 24, 2017 Presidential Proclamation, the U.S. Department of State (DOS) has recently issued guidance regarding the implementation of the Proclamation. The Proclamation imposes country-specific travel restrictions on eight countries: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. In addition, pursuant to the Proclamation, nationals of Iraq will be subject to extra screening measures. Per the DOS guidance, these restrictions will be implemented fully, in accordance with the Proclamation, around the world, beginning December 8, 2017. Note that the Supreme Court's December 4, 2017 ruling did not affect the implementation of entry restrictions against nationals from North Korea and Venezuela. For nationals of those two countries, the restrictions and limitations listed in the proclamation went into effect at 12:01 a.m. eastern time on October 18, 2017.

Some of the key highlights from the DOS guidance include:

- **Previously Scheduled Visa Appointments**

The guidance confirms that the DOS will *not* cancel previously scheduled visa application appointments. For nationals of the eight designated countries, a consular officer will make a determination whether an applicant who is otherwise eligible for a visa is exempt from the proclamation, or, if not, may be eligible for a waiver under the Proclamation and therefore issued a visa.

- **Previously Issued Visas**

The guidance also indicates that no visas will be revoked pursuant to the Proclamation. The guidance further states that individuals subject to the Proclamation who possess a valid visa or valid travel document generally will be permitted to travel to the U.S., irrespective of when the visa was issued.

- **Waivers**

For individuals affected by the Proclamation who are seeking a waiver, the DOS guidance indicates that there is no separate application for a waiver. Per the guidance, an individual who



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seeks to travel to the U.S. should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver.

For purposes of determining if someone is eligible for the waiver based on a "close family member," the guidance indicates that, in the context of the Proclamation, the term "close family member" only includes spouses, children under the age of 21, and parents of U.S. citizens, of lawful permanent residents, and of aliens lawfully admitted to the U.S. on a valid nonimmigrant visa.

- **Immigrant Visa Petitions Processing at the National Visa Center**

Individuals working on a case with the National Visa Center (NVC) should continue to pay fees, complete the DS-260 immigrant visa application, and submit financial and civil supporting documents to the NVC. The NVC will continue to review cases and schedule visa interview appointments overseas. During the interview, a consular officer will review the case to determine whether the applicant is affected by the proclamation and, if so, whether the case qualifies for an exception or may qualify for a waiver.

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**DECEMBER 5, 2017:** On December 4, 2017, the U.S. Supreme Court issued two orders staying the preliminary injunctions issued against President Trump's September 24, 2017 Presidential Proclamation by the U.S. District Court for the District of Hawaii in the case *Hawaii v. Trump* and by the U.S. District Court for the District of Maryland in the case *IRAP v. Trump*, pending the disposition of the administration's appeals of these District Court rulings to the U.S. Court of the Appeals for the Ninth Circuit and Fourth Circuit, and any subsequent writs of certiorari.

The Supreme Court's December 4, 2017 ruling means that the administration may fully implement President Trump's September 24, 2017 Presidential Proclamation. The proclamation imposes country-specific travel restrictions on eight countries: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. In addition, nationals of Iraq will be subject to extra screening measures. The Supreme Court ruling did not affect the implementation of entry restrictions against nationals from North Korea and Venezuela. Those individuals remain subject to the restrictions and limitations listed in the Presidential Proclamation, which went into effect at 12:01 a.m. eastern time on October 18, 2017, with respect to the nationals of those countries. For more information regarding the country-specific travel restrictions for each of these countries, including exemptions and waivers, please see AILA's Practice Alert: Proclamation Sets Forth Rules for New Travel Ban.

The U.S. Department of Homeland Security provides a fact sheet on its website published on September 25, 2017, regarding the Presidential Proclamation and its implementation. The U.S. Department of State previously issued guidance on November 17, 2017, regarding the implementation of the proclamation and is anticipated to update its guidance in light of the Supreme Court's December 4, 2017 ruling.

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**NOVEMBER 21, 2017:** On Monday, November 13, 2017, the U.S. Court of Appeals for the Ninth Circuit issued an order staying the U.S. District Court for the District of Hawaii's October 20, 2017 preliminary injunction against entry restrictions on nationals of Chad, Iran, Libya, Syria,

Somalia, and Yemen, except as to "foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States." The Ninth Circuit confirmed that a qualifying family relationship includes grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins. As for entities, the Ninth Circuit stated that the relationship must be "formal, documented, and formed in the ordinary course," and not formed for the purpose of evading President Trump's September 24, 2017 Presidential Proclamation.

In light of the Ninth Circuit's ruling, nationals of Chad, Iran, Libya, Syria, Somalia, and Yemen who do not have a credible claim of a bona fide relationship with a person or entity in the United States are subject to the applicable travel restrictions under the September 24, 2017 Presidential Proclamation. The Ninth Circuit's ruling did not affect Sections (d) and (f) of the Presidential Proclamation, thus nationals from North Korea and certain nationals of Venezuela continue to be subject to the travel restrictions set forth in the Proclamation.

On November 17, 2017, the U.S. Department of State (DOS) issued guidance providing additional clarification regarding the implementation of the September 24, 2017 Presidential Proclamation following the Ninth Circuit's November 13, 2017, order. Pursuant to the DOS guidance, any visa applicant who is a national of Chad, Iran, Libya, Syria, Somalia, and Yemen who lacks a credible claim of a bona fide relationship with a person or entity in the United States, if found otherwise eligible for a visa, will be denied a visa under the Presidential Proclamation, unless the foreign national is exempt or qualifies for a waiver under the Proclamation. The DOS guidance further provides that if the requirements for a particular visa classification include that the applicant have a bona fide relationship with a person or entity in the United States, then applicants qualifying for visas in those classifications are exempt from the Proclamation, based on the Ninth Circuit's order.

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**OCTOBER 18, 2017:** On Tuesday, October 17, 2017, U.S. District Court Judge Derrick Watson of Hawaii issued a nationwide temporary restraining order (TRO) in the case *Hawaii v. Trump*, blocking the majority of the travel restrictions set forth in President Trump's September 24, 2017 proclamation.[1] The TRO temporarily enjoins the implementation and enforcement of sections 2(a), (b), (c), (e), (g), and (h) of the proclamation and applies to nationals from six of the eight designated countries: Iran, Libya, Syria, Yemen, Somalia, and Chad. The TRO does not, however, enjoin the proclamation's travel restrictions on nationals from North Korea and Venezuela as the plaintiffs in *Hawaii v. Trump* did not seek to enjoin the travel ban with respect to these two countries.

Also on October 17, U.S. District Court Judge Theodore Chuang of Maryland issued a nationwide preliminary injunction in the case *IRAP v. Trump*[2] prohibiting the enforcement of section 2 of the President's proclamation, except with regard to (1) nationals of North Korea and Venezuela and (2) individuals lacking a credible claim of a bona fide relationship with a person or entity in the United States.

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[1] Subsequently, on October 20, 2017, U.S. District Court Judge Derrick Watson of Hawaii converted the October 17, 2017 nationwide temporary restraining order to a nationwide preliminary injunction.

[2] By way of background, on October 10, 2017, the U.S. Supreme Court dismissed the pending appeal of *Trump v. IRAP* as moot, citing the expiration of EO 13780 on September 24, 2017 and stating that the appeal "no longer presents a live case or controversy." Meanwhile, on October 5, 2017, the plaintiffs in the IRAP case filed an amended complaint in the U.S. District Court for the District of Maryland challenging President Trump's September 24, 2017 presidential proclamation.

In light of these rulings, nationals of Chad, Iran, Libya, Syria, Somalia, and Yemen will not be restricted from traveling to the United States. On the other hand, all immigrants and nonimmigrants from North Korea and certain government officials and their family members from Venezuela traveling on business or tourist visas (B-1/B-2) will continue to be restricted from travel to the U.S. pursuant to the presidential proclamation.

The U.S. Department of Justice has stated that it will appeal these rulings. In the meantime, the U.S. State Department has reportedly confirmed that officials will "resume regular processing of visas" for nationals of Chad, Iran, Libya, Somalia, Syria and Yemen.

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**SEPTEMBER 27, 2017:** On September 24, 2017, President Trump issued a proclamation entitled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public Safety Threats." The proclamation, commonly known as Travel Ban 3.0, imposes new country-specific travel restrictions on eight countries: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. In addition, nationals of Iraq will be subject to extra screening measures.

In light of the President's September 24, 2017 proclamation, the U.S. Supreme Court cancelled oral arguments for the two cases (Trump v. IRAP and Trump v. Hawaii) challenging the President's previous travel and refugee ban under Executive Order (EO) 13870, which were scheduled for October 10, 2017. The Supreme Court has instead directed the parties to file briefs by October 5, 2017, addressing whether, or to what extent, the President's September 24, 2017 proclamation may render the two cases moot.

For more information regarding the country-specific restrictions imposed by President Trump's September 24, 2017 proclamation, including effective dates, waivers, and exemptions, please see AILA's Practice Alert: Proclamation Sets Forth Rules for New Travel Ban.

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**SEPTEMBER 15, 2017:** On September 12, 2017, the U.S. Supreme Court issued an order blocking the Ninth Circuit Court of Appeal's September 7, 2017 ruling that would have exempted from the travel ban refugees who have a formal assurance from a refugee resettlement agency. In light of the Supreme Court's September 12, 2017 order, refugees will be barred from entry to the U.S. under EO 13780 if their sole basis for establishing a "bona fide relationship" with a person or entity in the U.S. is based on a formal assurance from a refugee resettlement agency. Refugees who are part of the Lautenberg program should be permitted to travel and enter the U.S., as the Lautenberg program requires a relationship with a close family member in the U.S. in order to qualify for the program.

In its September 12, 2017 order, the Supreme Court did not disturb the Ninth Circuit's September 7, 2017 ruling with respect to grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the U.S. These individuals remain exempt from EO 13780 as they fall within the definition of "close familial relationship" per the U.S. District Court for the District of Hawaii's July 13, 2017 ruling, which was upheld by the Ninth Circuit on September 7, 2017.

The Supreme Court will hear arguments on the merits of the challenge to the travel and refugee ban on October 10, 2017.

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**JULY 19, 2017 ALERT:** On July 19, 2017, the U.S. Supreme Court issued an order staying in part, and upholding in part, the U.S. District Court for the District of Hawaii's July 13, 2017 decision that broadened the scope of individuals who are exempt from the EO 13780 travel and refugee ban.

Specifically, the Supreme Court stayed the District Court in Hawaii's July 13, 2017 order modifying the preliminary injunction with respect to refugees covered by a formal assurance from a resettlement agency in the U.S., pending resolution of the Administration's appeal of the District Court's ruling to the Ninth Circuit. This effectively means that refugees who have a formal assurance from a U.S. resettlement agency may be banned, as they are unable to establish a "bona fide relationship" with an entity in the United States. Refugees who are part of the Lautenberg program, however, should be permitted to travel and enter the United States, as the Lautenberg program requires a relationship with a close family member in U.S. in order to qualify for the program.

On the other hand, the Supreme Court denied the Administration's Motion for Clarification and refused to stay the District Court's order modifying the preliminary injunction with respect to grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States. Accordingly, these individuals remain exempt from the EO 13780 travel ban as they fall within the definition of "close familial relationship" per the District Court's July 13, 2017 ruling.

Recently, the State Department issued a cable with revised guidance to U.S. embassies and consulates instructing them to implement the District Court's expanded definition of "close family" to include grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts and uncles, nephews and nieces, and cousins.

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**JULY 17, 2017:** The DOS has recently updated its Frequently Asked Questions to take into account the U.S. District Court for the District of Hawaii's ruling on Thursday July 13, 2017 regarding the definition of "close familial relationship" as that phrase was used in the Supreme Court's June 26, 2017 order on implementing Section 2(c) of Executive Order (EO) 13780.

A "close familial relationship" for that purpose was previously defined under U.S. government guidance as a parent (including parent-in-law), spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half, and including step relationships. The District Court in Hawaii ruled on Thursday, July 13, 2017 that, in addition to those relationships, grandparents, grandchildren, brothers-in-law, sisters-in-law, aunt and uncles, nephews and nieces, and cousins are also be included in the definition of "close familial relationship."

As of 2pm (EST) on July 17, 2017, the DOS FAQ now reflects the District Court of Hawaii's ruling regarding the definition of "close familial relationship," as follows:

***What is a close familial relationship for the purposes of determining if someone is subject to the E.O.?***

*In light of the July 13, 2017 U.S. District Court of Hawaii ruling regarding the definition of "close familial relationship" as that phrase was used in the Supreme Court's June 26, 2017 order on implementing Section 2(c) of E.O. 13780, a close familial relationship is defined as a parent (including parent-in-law), spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts and uncles, nephews and nieces, and cousins. For this purpose, "cousins" are limited to first-cousins (i.e., each cousin has a parent who is a sibling of a parent of the other cousin). For all relationships, half or step status is included (e.g., "half-brother" or "step-sister"). "Close familial relations" does not include any other "extended" family members, such as second-cousins.*

The revised DOS FAQ now includes a new question and answer regarding visa refusals:

***My visa was refused under the Executive Order, but I have family members in the United States who I think may qualify as "close familial relations" for purposes of establishing a "bona fide" relationship with a person in the United States. What should I do?***

*Individuals whose applications for U.S. immigrant and nonimmigrant visas were refused solely based on Executive Order 13780, as informed in writing at the time of the visa interview, who believe they meet the requirement of having a credible claim of a bona fide relationship with a close familial relation in the United States should contact the U.S. embassy or consulate where they applied for a visa with this information. In light of the District Court's July 13, 2017 order, a close familial relationship is defined as a parent (including parent-in-law), spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts and uncles, nephews and nieces, and first cousins.*

In addition to these updates, the DOS has made a few minor tweaks to language in certain sections of its FAQ. Most notably, the DOS has made the following additions and subtractions:

- The DOS has **added** the following language to Question #2 regarding which nonimmigrant visa classes are exempted from the EO:

  *In all visa adjudications, consular officers may seek additional information, as warranted, to ensure underlying relationships are bona fide, rather than being established for the purpose of unlawfully obtaining a visa, including by evading the E.O.*

- The DOS has **removed** the following language from Question #3 regarding which immigrant visa classes are exempted from the EO:

*An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is exempt from section 2(c) of the Executive Order. A consular officer will carefully review each case to determine whether the applicant is affected by the E.O. and, if so, whether the case qualifies for a waiver.*

As of 2pm (EST) on July 17, 2017, the DHS has not yet updated its FAQs regarding the implementation of EO 13780 to take into account the District Court's July 13, 2017 ruling. The DHS FAQ, however, does now include a new question and answer regarding refugee cases:

***Q36. Can certain categories of refugee cases be considered to have a bona fide relationship with a person in the United States?***

*Yes, certain categories of refugee cases require relationships with close family members in the United States, specifically "Priority 3" cases, Form I-730 (following-to-join) cases and Iraqi and Syrian Priority 2 cases where access is based on an approved Form I-130 (family based petition). Therefore, because the relationship has been confirmed in order to fall within the categories listed above, the refugee will be determined to have a credible claim to a bona fide relationship to a person in the United States.*

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**JULY 13, 2017:** On July 13, 2017, the U.S. District Court for the District of Hawaii, modified the preliminary injunction that had previously been narrowed by the Supreme Court to prevent the government from enforcing the travel ban against individuals from the six affected countries who have a credible claim of a bona fide relationship with a person or entity in the United States.
The District Court overturned the DOS and DHS FAQs noted below and concluded that the travel ban *cannot* be enforced against:

- Grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States; and

- Refugees who have a formal assurance from a resettlement agency in the United States or who are part of the Lautenberg Program.

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**JUNE 30, 2017 (2:00PM):** On June 29, 2017, the Department of State (DOS) and the Department of Homeland Security (DHS) both released Frequently Asked Questions (FAQs) on its websites regarding the implementation of Executive Order 13780. Subsequent to the release of their FAQs, both agencies quietly revised its FAQs, without notifying stakeholders. This practice alert highlights some of the key changes to the DOS and DHS FAQs.

**Fiancés Qualify as "Close Family"**: On the evening of June 29th, 2017, without notifying stakeholders, DOS revised its FAQs to include "fiancé" within its definition of "close family" for purposes of determining if someone has a credible claim of a bona fide relationship with a person in the U.S. In its initial FAQ, the DOS had excluded a fiancé from its "close family" definition.

| 6/29/2017 DOS FAQs (Original Version) | 6/29/2017 DOS FAQs (Revised Version) |
|---|---|
| **What is a close familial relationship for the purposes of determining if someone is subject to the E.O. per the Supreme Court decision?**<br><br>*A close familial relationship is defined as a parent (including parent-in-law), spouse, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half, and including step relationships. "Close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, fiancé(e)s, brothers-in-law and sisters-in-law, and any other "extended" family members.* | **What is a close familial relationship for the purposes of determining if someone is subject to the E.O. per the Supreme Court decision?**<br><br>*A close familial relationship is defined as a parent (including parent-in-law), spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half, and including step relationships. "Close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law, and any other "extended" family members.* |

DHS also included a definition of what constitutes a "close family" relationship" in its FAQs issued on June 29, 2017. DHS's definition mirrors the DOS's definition. Notably, like the DOS, the DHS quietly revised its definition, after its initial FAQs were released, to include "fiancé" within its definition of a "close family" relationship. In its initial FAQs, the DHS had excluded a fiancé from its "close family" definition.

| 6/29/2017 DHS FAQs (Original Version) | 6/29/2017 DHS FAQs (Revised Version) |
|---|---|
| **How is USCIS determining whether a refugee applicant has a relationship to a person in the United States?**<br><br>*The Supreme Court explained, "For individuals, a close familial relationship is required. . . ." A "close family" relationship includes: a parent (including parent-in-law), spouse, child, adult son or daughter, son-in-law, daughter-in-law, and sibling, whether whole or half. This includes step relationships. However, "close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law, fiancés, and other "extended" family members…* | **Q29. How is USCIS determining whether a refugee applicant has a relationship to a person in the United States?**<br><br>*The Supreme Court explained, "For individuals, a close familial relationship is required. . . " A "close family relationship is defined as a parent (including parent-in-law), spouse, child, adult son or daughter, fiancé(e), son-in-law, daughter-in-law, and sibling, whether whole or half. This includes step relationships. However, "close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law and any other "extended" family members.* |

In light of this update, a fiancé will now be considered a qualifying relationship for individuals seeking to establish that they have a bona fide relationship with a person in the U.S.

**K visa applicants**: At the time of revising its FAQ to include fiancé within its "close family" definition, DOS also removed the explicit requirement that applicants for K visas (i.e., nonimmigrant *visas* for foreign-citizen fiancés) will need to demonstrate that they have the required bona fide relationship in order to be exempt from EO-2.

**Refugee Applicants**: DHS confirmed in its FAQ that USCIS will continue to interview refugee applicants for admission; however, USCIS will not approve a refugee application unless the officer is satisfied that the applicant's relationship complies with the requirement to have a "bona fide relationship" with a person or entity in the United States.

On June 29, 2017, DHS indicated in its FAQ that the fact that a resettlement agency in the United States has provided an assurance for a refugee seeking admission, or that an organization has engaged in representational activity for the purpose of assisting a refugee to seek admission **is <u>not</u> sufficient in and of itself to establish a bona fide relationship for that refugee with an entity in the United States**.

Subsequently, without notifying stakeholders, DHS removed that specific question and answer on resettlement agencies or attorneys that sponsor or represent a refugee for resettlement from its FAQ. DHS has not provided any additional guidance on this topic. AILA will continue to monitor this issue and notify AILA members as soon as more information comes available.

| **6/29/2017 DHS FAQs (Original Version)** | **6/29/2017 DHS FAQs (Revised Version)** |
|---|---|
| **Are resettlement agencies or attorneys that will sponsor or represent a refugee for resettlement deemed to satisfy the bona fide relationship with an entity in the United States?**<br>*The fact that a resettlement agency in the United States has provided an assurance for a refugee seeking admission, or that an organization has engaged in representational activity for the purpose of assisting a refugee to seek admission is not sufficient in and of itself to establish a bona fide relationship for that refugee with an entity in the United States.* | DHS removed this question. |

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**JUNE 29, 2017:** On the evening of June 28, 2017, the U.S. Department of State (DOS) issued a cable to all diplomatic and consular posts worldwide providing guidance on how visa-adjudicating posts are to implement Executive Order 13780 (EO-2), following the Supreme Court's June 26, 2017, ruling. The DOS subsequently updated its website today to address frequently asked questions regarding the agency's implementation of EO-2. A press conference call was also held today by senior administration officials at 3pm (EDT) to address how the government will implement EO-2 in light of Monday's Supreme Court ruling. Subsequently, on the evening of June 29th, the Department of Homeland Security (DHS) issued Frequently Asked Questions (FAQs) on the implementation of EO-2.

Sections of EO-2 for which injunctions were lifted by the Supreme Court will be implemented worldwide starting at **8:00pm (ET) on June 29, 2017.**

The following update provides guidance to AILA members on how the DOS and DHS will implement provisions of section 2(c) of EO-2 at U.S. Consulates abroad. Additional clarifications from other U.S. government agencies on how they will implement EO-2 in light of the Supreme Court's ruling are expected shortly. AILA will continue to monitor developments and provide updates as soon as additional guidance from other U.S. agencies becomes available.

## Highlights of DOS Cable and FAQs Regarding Implementation of EO-2

**Individuals Exempt from EO-2's Suspension of Entry Provisions in Section 2(c):** The DOS cable confirms that EO-2's suspension of entry to the United States for foreign nationals of six

designated countries (i.e. Iran, Libya, Somalia, Sudan, Syria, Yemen) will **not** apply to the following individuals:

- Any applicant who has a credible claim of a "bona fide relationship" with a person or entity in the United States.
    - Any such relationship with a "person" must be a close familial relationship, as defined below.
    - Any relationship with an entity must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO 103780.
    - Eligible derivatives of principal visa applicants who are either deemed to be exempt from the EO's suspension of entry or qualify for a waiver under the EO also receive the benefit of the exemption or waiver.
- Any applicant who was in the United States on June 26, 2017;
- Any applicant who had a valid visa at 5:00 p.m. EST on January 27, 2017, the day Executive Order 13769 was signed;
- Any applicant who had a valid visa on June 29, 2017;
- Any lawful permanent resident (LPR) of the United States;
- Any applicant who is admitted to or paroled into the United States on or after June 26, 2017;
- Any applicant who has a document other than a visa, valid on June 29, 2017, or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;
- Any dual national of a country designated under the order when traveling on a passport of a non-designated country and, if needed, holds a valid U.S. visa;
- Any applicant travelling on a diplomatic-type visa;
- Any applicant who has been granted asylum; has already been admitted as a refugee; granted withholding of removal, advance parole, or protection under the CAT; and
- Any asylee and refugee following-to-join spouse (V93) or child (V92) applicant.

**Visas Will Not Be Revoked:** DOS has confirmed that no visas issued before the EO's effective date of June 29, 2017 will be revoked pursuant to the Executive Order. Any individual whose visa was marked or cancelled solely as a result of the original EO issued on January 27, 2017 (EO 13769) will be entitled to a travel document permitting travel to the U.S., so that the individual may seek entry. Any individual in this situation should contact the closest U.S. Consulate to request a travel document.

**Visa Processing at U.S. Consulates Overseas Will Continue:** DOS has confirmed that it will continue to accept visa applications for nonimmigrants, immigrants, and diversity visa applicants from nationals of the six designated countries (i.e., Iran, Libya, Somalia, Sudan, Syria, and Yemen). Accordingly, visa applicants should continue to schedule their visa interview appointments at U.S. Consulates abroad. Previously scheduled visa application appointments will **not** be canceled; thus, individuals should continue attending their visa interviews as scheduled. The National Visa Center (NVC) will continue to schedule immigrant visa appointments and the Kentucky Consular Center (KCC) will continue to schedule additional diversity visa (DV) appointments for cases in which the principal applicant is from one of the six designated countries.

Consular officers have been given detailed instructions to make case-by-case determinations on whether individuals would qualify for visas. Specifically, Officers will first determine whether the

applicant qualifies for the visa class for which they are applying before considering whether an exemption to EO-2 applies or whether the applicant qualifies for a waiver. Applicants seeking B, C-1, C-3, D, I or K visas will need to demonstrate that they have the required "bona fide relationship," in order to be exempt, or they may qualify for a waiver pursuant to the terms of the EO. On the other hand, qualified applicants in other nonimmigrant visa categories (i.e., H-1B, L-1, F-1, etc.), as well as employment-based immigrant visa applicants will generally be exempt from the EO, since they have a bona fide formal, documented relationship with a U.S. entity formed in the ordinary course. Likewise, immediate-relative and family-based immigrant visa categories are considered exempt from the E.O., as the bona fide relationship to a person or entity is inherent in the requirements of the visa classification. On the other hand, certain self-petitioning employment-based first preference applicants with no job offer in the U.S. and special immigrant visas under INA section 101(a)(27) may be covered by the EO and, consequently, would need to demonstrate that they have a bona fide relationship with an entity in the U.S. or otherwise qualify for a waiver. Similarly, DV applicants will need to demonstrate a qualifying relationship or qualify for a waiver since a relationship with a person or entity in the U.S. is not required for such visas.

Notably, DOS anticipates that very few DV applicants are likely to be exempt from the E.O.'s suspension of entry or to qualify for a waiver. Accordingly, DV applicants from the affected nationalities with scheduled interviews will be notified by DOS to allow potential applicants to decide whether they wish to pursue their application.

Practitioners with clients from one of the six designated countries who will be applying for a visa at a U.S. consulate overseas should prepare their client(s) to address during their visa interview how they are exempt from EO-2's suspension of entry provision. If the individual is not exempt, practitioners should prepare their clients to address during the visa interview how they qualify for a waiver.

**Bona Fide Relationship with a Person or Entity in the U.S.:** The DOS cable and FAQs provides additional clarity regarding how Consular Officers will implement the "bona fide relationship" test with respect to visa adjudication and issuance procedures.

- **Bona Fide Relationship with a Person in the U.S.**: DOS will interpret "**close family**" as a parent (including parent-in-law), spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half, and including step relationships. Notably, "close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-laws and sisters-in-law, and any other "extended" family members.

  In light of the DOS' narrow definition of what constitutes a "close family" relationship, even if the visa applicant can demonstrate a close relationship with an individual from the list of excluded individuals, such as a grandparent, this relationship will not be deemed to qualify as a "close familial relationship" for purposes of establishing a bona fide relationship with a person in the United States.

- **Bona Fide Relationship with an Entity in the U.S.:** For purposes of DOS visa adjudications, a relationship with a U.S. entity "must be formal, documented and formed in the ordinary course," rather than for the purpose of evading the executive order. The DOS cable provides the following examples of a "bona fide relationship" to a U.S. entity that will qualify:

- An I visa applicant employed by foreign media that has a news office based in the U.S.;
- Students from designated countries who have been admitted to U.S. educational institutions;
- A worker who has accepted an offer of employment from a company in the U.S.; or
- Lecturer invited to address an audience in the U.S.

In contrast, the cable indicates that the following scenarios will not constitute a bona fide relationship with an entity in the U.S.:

- A nonprofit group who seeks out clients from the designated countries, adds them to their client list, and then claims injury from their inclusion in the EO.
- An individual whose only tie to the United States is a hotel reservation, whether paid or not.

Practitioners with clients from one of the six designated countries who will be applying for a visa at a U.S. consulate overseas should be prepared to help their client document the bona fide relationship with a person or entity in the U.S., as the applicant will be required to demonstrate this relationship during the visa interview at the U.S. consulate. Based on the examples provided in the DOS cable, documentation of a "bona fide relationship" should include evidence of ones ties to the United States, such as an acceptance letter to a U.S. university, an employment offer letter from a U.S. company, or an invitation from an organization in the U.S. to speak at a conference, among others.

**Waivers:** Individuals who are not exempt from EO-2's suspension of entry to the United States may seek a waiver.[3] The EO permits, and the cable further confirms, that Consular Officers are permitted to grant waivers and authorize the issuance of a visas on a case-by-case basis, if the applicant demonstrates to the Officer's satisfaction that **all** of the following three criteria are met:

a) Denying entry under the 90-day suspension would cause undue hardship;
b) His or her entry would not pose a threat to national security; and
c) His or her entry would be in the national interest.

Notably, Consular Officers are instructed to determine that if any individual falls under any of EO-2's criteria for when a waiver "could be appropriate", that individual should be granted a waiver. Specifically, the cable states:

> "Unless the adjudicating consular officer has particular concerns about a case that causes the officer to believe that that issuance may not be in the national interest, a determination that a case falls under [any of EO-2's criteria for when a waiver "could be appropriate"] is a sufficient basis for concluding a waiver is in the national interest. Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship."

**Refugees:** The U.S. Refugee Admissions Program (USRAP) is suspended for 120 days, except for

[3] Notably, some of the waiver examples listed in EO 13780 are now considered exemptions in light of the Supreme Court's June 26, 2017 ruling.

cases where an applicant has a credible claim of a "bona fide relationship" with a person or entity in the United States. The "bona fide relationship" test set forth by the Supreme Court to establish whether one has a qualifying with a person or entity in the United States is the same for a refugee as it is for a nonimmigrant, immigrant, or diversity visa applicant.

- **A Refugee's Bona Fide Relationship with a Person:** According to the DOS cable, almost all cases involving asylee and refugee following-to-join spouses (V93) will have a clear and credible close familial relationship with the Form I-730 petitioner in the United States and qualify for issuance under this exemption. The National Visa Center (NVC) will continue to schedule new V93 appointments as normal. Please note that the EO does not affect asylee and refugee following-to-join children (V92) applicants. Consular posts will adjudicate these cases per standard guidance.

- **A Refugee's Bona Fide Relationship with an Entity:** At this time, there is limited guidance as to what those entities are, but they have to be formal and documented relationships that were not created for the purposes of evading the EO. In a DOS press conference call on June 29, 2017, the DOS stated that the fact that a resettlement agency in the United States has provided a formal assurance for refugees seeking admission is **not** sufficient, in and of itself, to establish a bona fide relationship under the ruling. DOS has indicated that they will provide additional information to the field on this.

**Highlights of DHS FAQs Regarding Implementation of EO-2**

- An individual from one of the six designated countries who was present in the U.S. on June 26, 2017, who was admitted on a single-entry or a multiple-entry visa will not be subject to EO-2 when applying for a subsequent visa.

- Similarly, an individual from one of the six designated countries who was present in the U.S. on June 26, 2017, but whose visa will expire during travel abroad, will not be subject to EO-2 when applying for a new visa in order to return to the U.S.

- A U.S. lawful permanent resident who is a citizen of one of the designated countries and who is a member of the Trusted Traveler Program will not be subject to membership revocation based on the EO-2.

- The EO does not apply to refugees who were formally scheduled for transit prior to 8pm EDT on Thursday, June 29, 2017.

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**JUNE 27, 2017:** On June 26, 2017, the U.S. Supreme Court granted certiorari and consolidated two key cases in the travel and refugee ban litigation: Trump v. IRAP and Trump v. Hawaii. The case will be heard during the first session of the October 2017 term.

In addition to granting certiorari, the Supreme Court granted a partial stay of the injunctions that had been preventing implementation of the travel ban [**Section 2(c)**], the refugee ban [**Section 6(a)**], and the refugee cap [**Section 6(b)**]. The Court ruled as follows:

- **Travel and Refugee Ban**: The Court left in place the injunctions with respect to the plaintiffs in both cases and others in similar situations. It explained that, "[i]n practical terms, this means that [the travel and refugee bans] *may not be enforced* against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States." (Emphasis added). However, all other foreign nationals—i.e., those without such a bona fide relationship—are subject to the provisions of EO-2.

- **Refugee Cap**: The Court held that a refugee with a credible claim of a bona fide relationship with a U.S. person or entity may not be excluded, even if the 50,000 cap on refugees has been reached or exceeded.

**Bona Fide Relationship with a Person in the United States**: The Court noted that the facts of the cases at hand illustrate the type of relationships that would qualify as bona fide, stating, "For individuals, a close familial relationship is required." The Court stated that an individual who seeks to enter the United States to live with or visit a family member, such as a spouse or mother-in-law, "clearly has such a relationship."

**Bona Fide Relationship with an Entity in the United States**: With regard to entities, the Court stated, "the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2." The Court specifically stated that students who have been admitted to a U.S. university, a worker who has accepted an offer of employment from a U.S. company, or a lecturer invited to address a U.S. audience would have such a relationship.

The Court stated that a relationship with a U.S. entity or individual that was entered into for the purpose of avoiding the travel ban will not be recognized as bona fide.

## IMPLEMENTATION

**Effective Date**: A June 14, 2017 presidential memorandum directs the government to implement the travel ban "72 hours after all applicable injunctions are lifted or stayed with respect to that provision." Therefore, we can expect the government to implement the Court's decision on June 29, 2017.

On June 26, 2017, DHS issued a statement confirming that it would provide details on implementation after consultation with DOJ and DOS. DHS states that implementation "will be done professionally, with clear and sufficient public notice, particularly to potentially affected travelers, and in coordination with partners in the travel industry." In the meantime, AILA members with clients who may be impacted by today's decision should interpret today's ruling as very narrow, impacting only a limited number of travelers. For example:

- **Individuals with Currently Valid Visas**: As noted in the March 6, 2017 Executive Order (EO-2), "Individuals [from the six affected countries] who currently hold a valid, unexpired visa may use the visa to travel to the United States." Thus, an individual with a valid nonimmigrant or immigrant visa should be permitted to board a plane and present themselves for inspection at a U.S. airport or land port of entry.

    - **Lawful Permanent Residents, Asylees, and Others Exempted from EO2:** EO-2 exempts from coverage LPRs, individuals who have been granted asylum, those

already admitted as refugees, individuals traveling on advance parole, and those granted withholding of removal and/or CAT. All of these individuals should be permitted to travel freely without having to demonstrate a bona fide relationship with a person or entity in the United States.

- **Diplomats and Dual Nationals**: Also exempt from the EO-2 travel ban are individuals traveling on diplomatic and related visas [NATO, C-2, G-1, G-2, G-3, or G-4] and dual nationals traveling on a passport issued by a non-designated country. These individuals should still be permitted to travel freely without having to demonstrate a bona fide relationship with a person or entity in the United States.

- **Business Visas (H, L, E, I, O, P, Q, R, and Employment-Based Immigrant Visas)**: The Court stated that a worker who has accepted an offer of employment from a U.S. company would have a bona fide relationship to a U.S. entity. What is not clear is whether individuals with employment-based visas that do not require a petitioning employer (EB-1, National Interest Waiver) would be able to demonstrate a relationship to a U.S. entity.

- **Family-Related Visas (K, V, and Family-Based Immigrant Visas)**: The Court's order is clear that individuals who "wish[] to enter the United States to live with or visit a family member" have close familial relationships. A spouse and a mother-in-law were included by the Court as examples of relationships that would qualify, and it should be argued that a fiancé would similarly qualify. It is unclear at this time if more distant relationships would qualify.

- **Students and Trainees (F, M, J)**: The Court stated that students who have been admitted to a U.S. university would have such a relationship. Presumably, the same would apply for vocational students and J-1 exchange visitors who would have a relationship to a U.S. program sponsor.

- **Visitor for Business (B-1)**: The Court stated that a lecturer invited to address a U.S. audience would have a bona fide relationship to a U.S. entity. It is unclear at this time how individuals traveling to the United States for business conferences or other short-term, non-contractual business interactions will be treated, however, to the extent possible, attorneys should equip such individuals with evidence of a "formal, documented" relationship with a U.S. entity "formed in the ordinary course" of business.

- **Visitor for Pleasure (B-2)**: As noted above, the Court recognized that individuals who wish to "visit a family member," such as a spouse or mother-in-law, have close familial relationships. It is unclear whether more distant relatives would qualify. Individuals from the six designated countries who are not planning to visit family members and who are coming for other reasons (such as sight-seeing and tourism) may be barred from entering.

- **Individuals Applying for Visas**: It appears that individuals from the six designated countries who do not have a valid visa will be required to demonstrate a credible claim of

a bona fide relationship with a person or entity in the United States during the visa interview.

- **Refugees**: All refugees authorized to enter the United States have a relationship with a refugee resettlement agency which *may* constitute a "formal, documented [relationship] formed in the ordinary course [of business]." However, the Court did *not* specifically mention refugee resettlement agencies as a qualifying entity. Therefore, the government may take the position that refugees without family connections in the United States are not covered by the narrowed injunction.

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**MARCH 15, 2017:** On March 15, 2017, the U.S. District Court for the District of Hawaii issued a temporary restraining order enjoining the government from enforcing or implementing Section 2 [90-day travel ban] and Section 6 [120-day ban on U.S. refugee program] of the March 6, 2017 Executive Order (EO13780) nationwide. For more information on that lawsuit, see AILA's webpage tracking the State of Hawaii's challenge.

The court granted the TRO and concluded that the plaintiffs are likely to succeed on the merits of their Establishment Clause claim. The court pointed to evidence of both discriminatory intent and impact, noting that there was "unrebutted evidence of religious animus," and a "dearth of evidence indicating a national security purpose." The court concluded that the government did not make "constitutionally significant" changes to the rewritten order. The court will set an expedited hearing schedule to determine whether the TRO should be extended.

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**MARCH 6, 2017:** On March 6, 2017, President Trump reissued the Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States," effective March 16, 2017. The previous Executive Order 13769 of January 27, 2017, will be revoked on March 16, 2017 and replaced with this reissued Order. DHS provided a fact sheet and Q&As. The White House also issued a memorandum to the Secretary of State, the Attorney General, and the Secretary of Homeland Security on the implementing of the Order issued on March 6, 2017.

The new Executive Order bans immigrant and nonimmigrant entries for nationals of six designated countries - Syria, Iran, Libya, Somalia, Sudan, and Yemen - for at least 90 days beginning on March 16, 2017. However, the new Order no longer includes Iraqi nationals in the 90-day travel ban; allows case-by-case waivers in certain situations; and exempts certain categories of individuals completely, including LPRs and current visa holders.

Additionally, the order suspends the USRAP for 120 days after March 16, 2017 (subject to certain case-by-case exceptions), suspends the Visa Interview Waiver Program, calls for heightened vetting and screening procedures, and directs DHS to expedite completion of a biometric entry-exit tracking system. Please review AILA's detailed section-by-section summary of the reissued Order for more information.

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**FEBRUARY 16, 2017:** The Department of Justice indicated in a February 16, 2017 court filing that President Trump intends to rescind the January 27, 2017 Executive Order and issue a new order in its place. DOJ urged the court to "hold its consideration of the case until the President issues the new Order," and the Ninth Circuit subsequently issued an order staying en banc proceedings, pending further order of the court. In a February 16, 2017 news conference, President Trump also stated that he plans to issue a new Executive Order on immigration next week to "protect our country."

The DOJ indicated in its Supplemental Brief that the revision is meant to "eliminate … constitutional concerns." However, we do not know what changes or additions will be in the new order, including whether additional countries will be added.

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**FEBRUARY 9, 2017:** 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.

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**FEBRUARY 4, 2017:** 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.

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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:

**Nonimmigrants**

**Immigrants**

**Lawful Permanent Residents (LPRs)**

**Special Immigrant Visas**

**Refugees**

**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.