White House’s Parade of Immigration Restrictions, Sanctions

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On April 23, 2020, at 11:59 p.m., President Donald Trump’s new proclamation limiting immigrant visa applications from foreign nationals living abroad became effective. That proclamation is hardly the only way the Administration is limiting immigration. Other restrictions on individuals include travel bans, the suspension of visa services, enhanced scrutiny of nonimmigrant visa petitions, and continued increased enforcement by ICE. New visa sanctions on particular countries are yet another way the Administration is limiting immigration during the pandemic.

President Trump has directed the Secretaries of State and Homeland Security to implement a plan that would penalize countries that “deny or unreasonably delay” the repatriation of their citizens, subjects, nationals, or residents who are subject to removal orders during the ongoing pandemic . . . .” Pointing to the “unacceptable health risks for Americans” caused by repatriation delays, Secretary of State Mike Pompeo must act expeditiously to “discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents” of any recalcitrant country.

Visa sanctions came into the news in January 2017, when President Trump issued his
Enhancing Public Safety in the Interior of the United States Executive Order (EO). That EO focused on immigration enforcement and directed the imposition of visa sanctions and made the acceptance of foreign nationals who were subject to removal from the U.S. a prior condition for diplomatic negotiations, among other things. Since 2017, a handful of countries have been subject to these specific visa sanctions: Burma, Cambodia, Eritrea, Ghana, Guinea, Laos, Pakistan, and Sierra Leone. The sanctions generally prevented certain government officials (and their families, in some cases) from obtaining B visas. Some restrictions were lifted when the countries cooperated with repatriation. These sanctions are above and beyond the sanctions imposed by President Trump’s travel bans on countries that were not in compliance with identity management practices and information-sharing on national security and public threats.

ICE maintains lists of recalcitrant or uncooperative 10 countries and 23 countries at risk of non-compliance. At least in the past, visa sanctions were considered a last step to encourage compliance because they can backfire and lead to reciprocal sanctions and other forms of retaliation. In addition, visa sanctions are not very effective if the country itself restricts the mobility of its citizens. If imposing sanctions fails in forcing a resolution, there may be a call to withhold aid or other funding.

Although the recent Memorandum does not mention any specific countries, it comes on the heels of the CDC’s order suspending entry of certain person from countries where a communicable disease exists. In its order, CDC stated that due to COVID-19, CBP could not keep large numbers of aliens in congregant settings at ports of entry or border posts on the northern or southern borders and that repatriation needed to be as fast as possible.

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