UPDATE: Additional Executive Order Issued with Immediate Impact on Travel to the United States

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On Friday January 27, 2017, the president issued an Executive Order (EO) entitled, Protecting the Nation from Terrorist Attacks By Foreign Nationals. The EO has yet to be posted on the White House website but the text can be found here.

The purpose of this Executive Order, as stated, is to “protect our citizens from foreign nationals who intend to commit terrorist attacks in the United States” and “prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.” As described below, one provision of the EO suspends the immigrant and nonimmigrant entry of nationals from certain designated countries for 90 days from the date of the order. Designated countries, thus far, include Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.

News organizations have reported the EO has already impacted travel to the United States and the travel ban is already in place! While DHS and other government agencies have yet to release any statements as to the implementation of this EO, the State Department has posted notice that US embassies and consular posts were instructed to immediately suspend issuance of nonimmigrant and immigrant visas for nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen. We have also received reports that DHS Customs and Border Protection (CBP) is now preventing entry to the US based on the following:
• Individuals “from” Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen. That includes Legal Permanent Residents (LPR or green card holders), nonimmigrant visa holders, immigrant visa holders, refugees, derivative (family member) asylees, or those with Special Immigrant Visas (SIVs). There is reportedly a hold on refugee travel for people from the designated countries. However, refugees traveling to the US from countries other than the designated countries may be allowed to enter.

• Dual Nationals: Anyone who holds a passport from a designated country is considered as being “from” the designated country. This includes dual citizens who hold passports from a designated country, as well as a non-designated country (i.e., someone born Iran but traveling with a passport from another country like Canada or France).

• With regard to impacted LPRs we understand some have been allowed to board planes bound for the US and DHS is exercising limited discretion in processing these green card holders on a case-by-case basis at the ports of entry.

• Impacted Nonimmigrants arriving at US ports of entry will be allowed to withdraw their application for admission and presumably will be returned to the country of embarkation. Expedited removal will generally only be used for those individuals who do not wish to withdraw their application for admission.

**UPDATE:** On January 28, 2017, a federal judge issued an emergency stay enjoining a portion of this Executive Order by preventing the government from removing refugees, holders of valid immigrant and nonimmigrant visas and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen legally authorized to enter the United States. At the moment, this stay only pertains to removal or returning individuals to their place of embarkation, not the other directives referenced in the EO. At least two similar temporary restraining orders have been issued by Federal District Courts in Massachusetts and the Eastern District of Virginia.

The major directives of the EO are:

**Visa Interview Waiver Program** – immediately suspends this program (also known as the “drop-box”) and requires all nonimmigrant visa applicants to undergo an in-person interview unless exempted by statute.

**Biometric Entry-Exit Tracking System** – directs DHS to expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States.

**Visa Issuance to Nationals of Certain Countries** – as detailed above, requires DHS to review and determine the information needed from any country for visa adjudications or other immigration benefits that will be adequate in determining the applicant is who he/she claims to be and not a security or public safety threat. It bans both the immigrant and nonimmigrant entry of nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen for 90-days from the date of this order while the DHS determines the information needed for adjudications.

**Uniform Screening Standards for Immigration Benefits** – directs the implementation of a program during the visa adjudication process to identify fraud and applicants with malicious intent. It will include the development of uniform screening standards and procedures such as in-person interviews and the creation of
a database of identity documents proffered by applicants.

**Visa Reciprocity** – directs a review of all nonimmigrant visa reciprocity agreements to ensure they are truly reciprocal with respect to validity period and fees. If US nationals are not treated in reciprocal manner by any country, these agreements will be adjusted accordingly to match the treatment of US nationals by the foreign country.

**Temporary Suspension of Refugees** – suspends the admission of refugees under the US Refugee Admissions Program (USRAP) for 120-days, but allows for exceptions on a case-by-case when in the national interest as well as for individuals claiming religious persecution, provided he/she belongs to a minority religion in his/her country of nationality. Directs a review of the refugee application and adjudication process to determine the additional procedures needed to ensure refugees are not a threat to US national security and welfare. Also, reduces total refugee admissions for Fiscal Year 2017 to 50,000 from as 110,000 directed by the previous administration.

**Syrian Refugees** – suspends processing and admission of Syrian refugees until the President determines that sufficient changes are made to USRAP that is aligned with national interest.

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