



Practice Alert: Presidential Proclamation Sets Forth Rules for New Travel Ban

ENHANCING VETTING CAPABILITIES AND PROCESSES FOR DETECTING ATTEMPTED ENTRY INTO THE UNITED STATES BY TERRORISTS OR OTHER PUBLIC-SAFETY THREATS

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](#).” This proclamation was issued by President Trump following a worldwide review of information sharing practices between the U.S. and nearly 200 foreign nations to assess whether nationals of each country seeking to enter the United States pose a national security or public safety threat. As a result of this review, the following eight (8) countries have been deemed to have inadequate identity management protocols, information sharing practices, and risk factors: **Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen**. While it was also determined that **Iraq** did not meet the baseline requirements, nationals of **Iraq** will not be subject to any outright ban on travel, but will be subject to additional screening measures.

Country-specific travel restrictions apply to each of the following countries:

Chad	Suspends the entry of immigrants and temporary visitors on business or tourist visas (B-1/B-2)
Iran	Suspends the entry of immigrants and all nonimmigrants, except F (student), M (vocational student) and J (exchange visitor) visas, though they will be subject to enhanced screening.
Libya	Suspends the entry of immigrants and temporary visitors on business or tourist visas (B-1/B-2).
North Korea	Suspends the entry of all immigrants and nonimmigrants.
Somalia	Suspends the entry of immigrants, and requires enhanced screening of all nonimmigrants.
Syria	Suspends the entry of all immigrants and nonimmigrants.
Venezuela	Suspends the entry of certain government officials and their family members on business or tourist visas (B-1/B-2).
Yemen	Suspends the entry of immigrants and temporary visitors on business or tourist visas (B-1/B-2).

Travel restrictions for nationals of **Sudan**, who were impacted by earlier versions of the travel ban, have been lifted.

Effective Dates: The new restrictions are effective immediately for nationals of Iran, Libya, Somalia, Syria, and Yemen who do not have a bona fide relationship to a U.S. person or entity. The new restrictions will take effect on October 18, 2017, for all other persons subject to the proclamation, including nationals of Iran, Libya, Syria, Yemen, and Somalia who have a bona fide relationship with a U.S. person or entity, as well as nationals of Chad, North Korea, and Venezuela.

Scope: Unless an exemption applies or the individual is eligible for a waiver, the travel restrictions apply to foreign nationals of the designated countries who: (i) are outside the U.S. on the applicable effective date; (ii) do not have a valid visa on the applicable effective date; and (iii) do not qualify for a reinstated visa or other travel document that was revoked under EO 13769.

Exemptions: The travel restrictions in the proclamation do not apply to:

- lawful permanent residents (LPR);
- foreign nationals who are admitted to or paroled into the U.S. on or after the applicable effective date;
- foreign nationals who have a document other than a visa (e.g., transportation letter, boarding foil, advance parole document) valid on the applicable effective date or issued on any date thereafter;
- Dual nationals of a designated country who are traveling on a passport issued by a non-designated country;
- Foreign nationals traveling on diplomatic visas, NATO visas, C-2/U.N. visas, or G-1, G-2, G-3, or G-4 visa; or
- Foreign nationals who have been granted asylum in the U.S.; refugees who have been admitted to the U.S.; or individuals who have been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Waivers: A waiver may be granted if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

- (a) Denying entry would cause the foreign national undue hardship;
 - (b) Entry would not pose a threat to the national security or public safety of the U.S.; and
 - (c) Entry would be in the national interest.
- The Secretaries of State and Homeland Security shall adopt guidance addressing the circumstances in which waivers may be appropriate.
 - A waiver issued by a consular officer shall be valid for both the issuance of the visa and for any subsequent entry on that visa.
 - Waivers may not be granted categorically but may be appropriate in the following situations:

- The foreign national has previously been admitted to the U.S. for a continuous period of work, study, or other long-term activity, is outside the U.S. on the applicable effective date, seeks to reenter the U.S. to resume that activity, and the denial of reentry would impair that activity;
- The foreign national has previously established significant contacts with the U.S. but is outside the U.S. on the applicable effective date for work, study, or other lawful activity;
- The foreign national seeks to enter the U.S. for significant business or professional obligations and the denial of entry would impair those obligations;
- The foreign national seeks to enter the U.S. to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a U.S. citizen (USC), LPR or lawful nonimmigrant, and the denial of entry would cause undue hardship;
- The foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by special circumstances;
- The foreign national can document that he or she has provided faithful and valuable service to the U.S. Government;
- The foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), traveling for purposes of conducting meetings or business with the U.S. Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;
- The foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;
- The foreign national is traveling as a U.S. Government-sponsored exchange visitor; or
- The foreign national is traveling to the U.S. at the request of a U.S. Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

Changes to Travel Restrictions: The Secretaries of Homeland Security and State shall devise a process to assess whether the restrictions in the proclamation should be continued, terminated, modified, or supplemented, and shall be based on whether countries have improved their identity-management and information-sharing protocols and procedures. Federal agencies (DHS, DOS, DOJ, DNI) shall submit a report every 180 days with recommendations to the President. Restrictions can be removed or modified from existing countries upon recommendation of the DHS Secretary. Recommendations of restrictions or limitations on additional countries may be submitted to the President by the DHS Secretary, DOS Secretary or Attorney General (AG).

Reporting: The Secretaries of Homeland Security and State, the AG, and the Director of National Intelligence shall submit periodic reports (within 180 days of the proclamation, within 270 days of the first report, then annually thereafter) to the President that (i) describe the steps taken to improve vetting of all foreign nationals; (ii) describe the scope and magnitude of fraud, errors, false information, and unverifiable claims made in applications for immigration benefits; and (iii) evaluate the procedures related to screening and vetting established by the DOS Bureau of Consular Affairs.