



Immigration Law Alert
February 2017

**A Synopsis: Evolving Changes in Immigration Law
and Its Impact on Your Employees / Students**

The federal government has released a number of Executive Orders (“Orders”) that are directly affecting immigration policies, procedures and practice in the United States. Some of these Orders may have a direct impact on employers, especially employers who employ foreign nationals and conduct business abroad that requires foreign travel. Here is a brief synopsis on the state of these Orders as of now:

Executive Order: “Protecting The Nation From Foreign Terrorist Entry Into The United States”

On January 27, 2017, an Executive Order was signed in an effort to limit the entry of foreign nationals into the United States. This Order, among other things, does the following:

- Suspends the entrance of foreign nationals into the United States from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen for a period of 90 days.
 - This ban applies to individuals with visas (*e.g.*, H-1B, B-1, F-1), and it also apparently applies to lawful permanent residents (greencard holders).
 - Notwithstanding the foregoing travel ban, visas and/or immigration benefits may be issued to an individual from one of these seven designated countries “on a case-by-case basis, and when in the national interest[.]”
 - After this 90 day period, the travel ban will not necessarily be lifted. The future of this Order after the 90 day period is currently uncertain.
- Suspends the U.S. Refugee Admissions Program (USRAP) for 120 days and also imposes an indefinite ban on the entrance of Syrian refugees into the United States.
 - The USRAP is a program that identifies and admits qualified refugees for resettlement into the United States, and as of now, the program is suspended for 120 days. The number of refugees who can enter the United States has also been reduced from 110,000 to no more than 50,000.
 - The entry of Syrian refugees into the United States has been suspended indefinitely.



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Restraining Order Issued By The Massachusetts District Court And Other U.S. Courts

Courts in Massachusetts, New York, Washington and Virginia have issued decisions limiting the breadth of the Order. There are also many lawsuits challenging this Order throughout the country and we anticipate that it will continue being challenged.

On January 29, 2017, the United States District Court for Massachusetts issued a **7-day** temporary restraining order on the enforcement of the Executive Order. The District Court noted that the petitioners “met their burden of establishing a strong likelihood of success in establishing that the detention and/or removal of the petitioners and others similarly situated would violate their rights to Due Process and Equal Protection as guaranteed by the United States Constitution[.]” Pursuant to this temporary restraining order:

- The secondary screening of individuals entering the United States must comply with the laws and regulations that existed before the issuance of the Executive Order.
- Individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen should not be detained or removed from the United States if he/she:
 - Has an approved refugee application.
 - Is a lawful permanent resident (has a greencard).
 - Has a valid immigrant or nonimmigrant visa.
 - Would otherwise be legally authorized to enter the United States.
- The United States Marshal must take necessary actions to assure compliance with the court order.
- Customs and Border Patrol must notify airlines that have flights arriving at Boston’s Logan Airport of the temporary restraining order, and must also inform such airlines that individuals on those flights will not be subject to detention or removal from the United States solely because of the Executive Order.

Statement from the Department of Homeland Security

Given the confusion following the issuance of the Executive Order and the litigation ensuing around the country, on January 29, 2017, the Department of Homeland Security issued a statement that legal permanent residents (greencard holders) from the seven designated countries are not subject to the travel ban. That said, the entrance of legal permanent residents into the United States is being assessed on a case-by-case basis.



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The issuance of this statement from the Department of Homeland Security, along with the temporary restraining order from the Massachusetts District Court, has eased some tension surrounding those who are legal permanent residents, including many university professors and students. However, much confusion and uncertainty still remains.

What does this mean for employers, employees, and students in Massachusetts?

- The restraining order from the Federal District Court in Boston is enforceable through February 5, 2017. What will happen after February 5th is yet to be determined.
- As a matter of precaution, it is suggested that individuals, who are currently in the United States and are from any of the seven designated countries—regardless of their immigration status—avoid international travel while this ban is in effect. This includes greencard holders.
- A question remains as to whether the travel ban applies to individuals with dual citizenship. That being the case, it is suggested that even U.S. Citizens from any of the seven designated countries refrain from international travel for the time being.
- U.S. Citizens and greencard holders who are currently abroad should seek advice immediately to discuss their return into the United States.

Additional Executive Orders

The executive government has also issued additional Executive Orders, directly targeting immigration. A brief overview is as follows:

- On January 25, 2017, the administration signed an Executive Order, *Border Security and Immigration Enforcement Improvements*, that seeks to, among other things, require that the Secretary of Homeland Security engage with state governors and local officials so as to prepare to enter into agreements that will allow states and local officials to enforce federal immigration laws.
- Also on January 25, 2017, the administration signed an Executive Order, *Enhancing Public Safety in the Interior of the United States*, that seeks to, among other things:
 - Require that states and localities enforce immigration laws.
 - Cut certain federal funds from states and localities that refuse to enforce immigration laws, otherwise known as “sanctuary jurisdictions.”
 - Expand the immigration enforcement priorities to include individuals who:
 - a) Have been convicted of any criminal offense;



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- b) Have been charged with any criminal offense, where such charge has not been resolved;
- c) Have committed acts that constitute a chargeable criminal offense;
- d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- e) Have abused any program related to receipt of public benefits;
- f) Are subject to a final order of removal, have not left the United States; or
- g) In the judgement of an immigration officer, otherwise pose a risk to the public safety or national security.

Looking Ahead

Changes to immigration law can have a significant impact on employers and it is important for employers and individuals to stay on top of the changes. We will continue to provide updates on the changes as they occur. News sources have indicated that other possible changes that the administration may be implementing will impact the manner in which work visas are issued and how employers fill positions with foreign nationals who have nonimmigrant work visas (e.g., H-1Bs). At this stage, it is difficult to predict the additional changes that will be implemented and how these changes may play out in court. Should you have any questions, please contact the attorney on your account or the drafters of this client alert.

This Alert was prepared by Attorney Michelle De Oliveira and Attorney Kier Wachterhauser, who are primarily responsible for handling immigration questions, and who may be reached at (617) 479-5000. The firm advises employers and individuals on immigration law.

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