



AAMC

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Frequently Asked Questions Related to U.S. Executive Orders 13769 & 13780

Last Updated: June 15, 2017

Note: This document is intended for informational purposes only and should not be understood as providing legal advice. Background information is provided at pages 9-11.

Update on Implementation of Executive Order 13780

How are lower court lawsuits impacting implementation of Executive Order 13780?

Multiple lawsuits are challenging the implementation of Executive Order 13780. Among the cases, two (Hawai‘i and Maryland) have resulted in injunctions against full implementation.

Hawai‘i

On March 15, 2017, the U.S. District Court for the District of Hawai‘i entered a temporary restraining order (TRO) in a case filed by the State of Hawai‘i and an individual plaintiff. The TRO enjoins the enforcement, on a temporary basis and pending further court proceedings, of Section 2 (six-country entry suspension) and Section 6 (suspension of U.S. refugee admissions program). The TRO is a nationwide order, and expressly covers all U.S. borders and ports of entry.

On March 29, 2017, the U.S. District Court for the District of Hawai‘i extended the nationwide TRO until the state’s lawsuit is resolved. After the U.S. Government appealed, the U.S. Court of Appeals for the Ninth Circuit held a hearing and on June 12, 2017 substantially affirmed the district court’s injunction on statutory grounds.

Maryland

On March 16, 2017, the U.S. District Court for the District of Maryland issued a preliminary injunction in a case filed by the International Refugee Assistance Project and others, prohibiting enforcement of Section 2 (six-country entry suspension) on a nationwide basis. After the U.S. Government appealed, the U.S. Court of Appeals for the Fourth Circuit, sitting en banc, held a hearing and on May 25, 2017 substantially affirmed the district court’s injunction under the Establishment Clause.

What is the status of the U.S. Supreme Court review of Executive Order 13780?

On June 1, 2017, the U.S. Government petitioned the Supreme Court for a writ of certiorari to challenge the Fourth Circuit’s decision, and has applied for a stay of both the Maryland and Hawai‘i district court injunctions while the Court considers its challenge.

Applications for a Stay

By applying for a stay, the Government has asked the Court to allow the six-country suspension of entry and suspension of the U.S. refugee program to take effect while the Court considers the Government’s certiorari petition. Briefing on the stay applications will be complete June 21, 2017. The Court is expected to make a decision on the Government’s applications for a stay before it concludes its current term in late June. It takes five votes to grant a stay.

Petition for Certiorari

By filing a petition for a writ of certiorari, the Government is asking the Court to exercise its discretion and review the Fourth Circuit's decision. The briefing on the certiorari petition for the Court to review the Fourth Circuit's decision is complete for the Court to decide whether to grant the petition. The Court is expected to grant or deny the petition before it concludes its current term in late June. It takes four votes to grant a petition for a writ of certiorari. If the Court grants the petition, it will set a schedule for briefing and argument on the merits of the case, on a timetable as yet to be determined.

What is the current implementation status of Executive Order 13780?

Based on these court challenges, as of March 16, 2017, the suspension of entry for individuals from the six designated countries and the suspension of the U.S. refugee admissions program are not in effect (Section 2 and 6, respectively). According an announcement posted to the State Department's website on March 22, 2017, "U.S. embassies and consulates continue to process visas for nationals of the six countries as before."

Other provisions of Executive Order 13780, including the directive to develop uniform screening and vetting standards for all immigration programs (Section 5) and the suspension of the Visa Interview Waiver Program (Section 9) went into effect on March 16, 2017.

Where may I access official Federal agency information on these topics?

Department of Homeland Security www.dhs.gov

Executive Order In Focus: www.dhs.gov/executive-orders-protecting-homeland

Executive Order Q/A: www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states

Executive Order Fact Sheet: www.dhs.gov/news/2017/03/06/fact-sheet-protecting-nation-foreign-terrorist-entry-united-states

Department of State www.state.gov

Important Announcements: travel.state.gov/content/travel/en/news/important-announcement.html

Where may I find resources designed for IMGs potentially affected by the Executive Order?

ECFMG www.ecfm.org

Executive Order: www.ecfm.org/news/executive-order

Executive Order 13679

What happened to Executive Order 13769 and the related lawsuits?

Executive Order 13769 was revoked by Executive Order 13780, effective March 16, 2017. The parties to cases challenging Executive Order 13769 have made various filings as to how and whether the cases should proceed; those filings are pending in the courts.

Executive Order 13780

Implementation

When did Executive Order 13780 take effect?

Executive Order 13780 went into effect on Thursday, March 16, 2017, except with respect to Section 2 and 6 which have been the subject of court injunctions.

Whose travel would be suspended under Executive Order 13780?

Travel to the United States by nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen was to be suspended beginning March 16, 2017, for at least 90 days, or until at least June 14, 2017. Iraq, which was included in the first order, is not included, although Iraqi nationals could be subject to additional scrutiny.

Executive Order 13780 applies to foreign nationals of the six countries who: (i) are outside the United States as of March 16, 2017; (ii) did not have a valid visa to enter the United States on January 27, 2017 at 5pm EST, AND (iii) do not have a valid visa to enter the United States on or after March 16, 2017.

Whose travel is not suspended under Executive Order 13780, even if they are from one of the six designated countries?

Executive Order 13780 did not maintain the prior order's suspension of travel by individuals who have travelled recently to one of the six countries.

Among other exceptions, Executive Order 13780 exempts lawful permanent residents (green card holders) and dual nationals traveling on a passport from a country that is not one of the six affected by the order.

Waivers

Section 3 of Executive Order 13780 permits a consular officer or U.S. Customs and Border Protection official to issue a waiver to an otherwise affected individual on a case-by-case basis. Executive Order 13780 provides a non-exhaustive list of circumstances in which a waiver may be granted. The burden is on the individual applicant to demonstrate to the officer's satisfaction that: (a) the waiver should be granted

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to avoid causing undue hardship; (b) the requesting individual would not pose a threat to U.S. national security; and (c) the individual's entry would be in the national interest of the United States.

Some of the waiver circumstances enumerated in the order include: if the individual...

- Has previously been admitted to the United States for a continuous period of work, study, or other long-term activity and seeks to reenter the United States to resume that activity;
- Has previously established significant contacts with the United States but is outside the United States on March 16, 2017 for work, study or other lawful activity abroad;
- Seeks to enter for significant business or professional obligations, and denial of entry during the 90-day period would impair those obligations;
- Seeks to visit or reside with a close family member who is lawfully in the United States;
- Is an infant, young child or adoptee, an individual needing urgent medical care, or other special circumstance;
- Is a landed Canadian immigrant who applies for a visa at a location within Canada; or
- Is traveling as a United States Government-sponsored exchange visitor.

The AAMC is exploring how agencies and consular officers would implement and apply these waivers, specifically as it relates to medical residents seeking to start programs on or around July 1, 2017.

What is the impact on an individual from one of the six countries who has a valid visa?

Executive Order 13780 confirmed that no visa issued before March 16, 2017 will be revoked as a result of the order. Therefore, if an individual already had a valid visa – including H-1B (temporary employment in a specialty occupation), J-1 (exchange visitor), or F-1 (student) – there should be no immediate change for that individual, provided that the visa is not expiring or a change of status or visa category is not needed.

However, the State Department has broad authority to revoke visas. All foreign nationals traveling with a visa must satisfy all admissibility requirements for entry or re-entry into the United States.

Traveling abroad for individuals from one of the affected countries under Executive Order 13769 was generally discouraged, even for those with valid visas. Is traveling abroad under Executive Order 13780 also discouraged?

All foreign nationals traveling with a valid visa or green card must satisfy all admissibility requirements for entry or re-entry into the United States. Admissibility is determined by the U.S. Customs and Border Protection, www.cbp.gov. Executive Order 13780 does not include policy statements or guidance as to admissibility requirements.

Travelers who do not have a valid visa due to its expiration while abroad must obtain a new valid visa prior to returning to the United States.

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May individuals from one of the six designated countries apply for a new visa at a consulate abroad during the 90-day suspension?

Executive Order 13780 does not include policy statements or guidance as to whether individuals from one of the six designated countries, not otherwise exempted from the scope of the suspension, could successfully apply for and be issued a new visa during the 90-day suspension. However, in light of a recent court filing made by the administration, and the waiver language in the order itself, there is reason to believe such visa applications may be accepted and adjudicated on a case-by-case basis. In the event there is authoritative clarification, we will update this information.

ECFMG has posted guidance as to how it will support such applications at www.ecfm.org/news/executive-order.

May individuals from one of the six designated countries apply for a change of status or extension of status within the United States during the 90-day suspension?

Executive Order 13780 does not include policy statements or guidance as to whether individuals from one of the six designated countries, not otherwise exempted from the scope of the suspension provisions, could successfully apply for and be granted a change of status or extension of status during the 90-day suspension. However, based upon a recent court filing made by the administration, and based on the suspension of *entry*, specifically, rather than other immigration benefits, there is reason to believe such petitions may be accepted and adjudicated on a case-by-case basis. In the event there is authoritative clarification, we will update this information.

ECFMG has posted guidance as to how it will support such applications at www.ecfm.org/news/executive-order.

Why those six countries? And could more be added to the list?

Executive Order 13780 provides information, taken in part from the State Department's Country Reports on Terrorism 2015 (June 2016), as to why the countries of Iran, Libya, Somalia, Sudan, Syria, and Sudan are included in the current suspension. It also provides a brief explanation as to why Iraq is not included.

The Executive Order authorizes relevant members of the Cabinet to recommend adding countries to the list in the event a country does not comply with requests for information regarding its nationals who are seeking entry into the United States.

Are there other provisions of Executive Order 13780 that apply to immigrants and nonimmigrants from countries other than the six countries designated in the order?

Yes. Although much of the attention has been focused on the suspension of entry of the six identified countries (Section 2), the Executive Order also includes other provisions of interest to our community.

Uniform Screening Standard

Both Executive Order 13769 (Section 4) and Executive Order 13780 (Section 5) direct administration officials to make changes to the adjudication process for immigration benefits to identify individuals who have the intent to cause harm. The adjudication process would appear to apply to extension of status petitions for a vastly greater number of individuals than are subject to the 90-day suspension of entry to the United States. Several federal agencies will work together to develop and implement uniform screening and vetting standards for all immigration programs. This could have the effect of slower processing times for change of status petitions and extension of status petitions for those individuals already in the United States in nonimmigrant status.

Suspension of the Visa Waiver Interview Program

In addition, both the prior and current Executive Order (in Sections 8 and 9, respectively) immediately suspend the Visa Waiver Interview Program subject to “specific statutory exceptions” for all foreign nationals, regardless of nationality. This change is anticipated to result in visa appointment backlogs due to increased demand for visa interviews. The Visa Waiver Interview Program in place immediately prior to the Executive Order 13769 had permitted consular officers to waive the in-person interview requirement for certain visa applicants whose visa had expired within the immediately prior 48 months. Per the Executive Orders, this program is no longer in place. However, prior to the program, statutory provisions had been enacted and corresponding regulations adopted that remain in place permitting waiver of in-person interview for certain applicants whose visas have expired within the immediately prior 12 months. This provisions remain in place. The State Department has not issued guidance as to whether it will deem the existing 12-month period to constitute a “specific statutory exception”.

Impact on Academic Medicine

Why are fair, predictable, and reasonably efficient immigration processes critical to academic medicine’s ability to prepare a healthcare workforce to meet the nation’s needs?

The nation’s medical schools, teaching hospitals, and other institutions sponsoring programs in graduate medical education are responsible for preparing a healthcare workforce drawn from around the world to care for an increasingly diverse population both in the United States and abroad. Additionally, medical researchers are relied upon to discover cures for diseases that know no national boundary.

Historically, our healthcare institutions have drawn the best and brightest from around the world as learners, trainees, researchers, and faculty, some of whom ultimately provide care to underserved communities throughout the country. Nearly one in four physicians in the United States is an IMG. IMGs who are not U.S. citizens must comply with a variety of U.S. immigration processes, and academic medicine as a whole relies on a reasonably efficient and predictable immigration system. The changes made by Executive Order 13780, including its directive to make further modifications to the visa issuance process (Section 5) have caused uncertainty about the future vibrancy of the medical and research workforces in the United States.

How many individuals in the academic medicine community are directly subject to the Executive Order 13780's suspension of entry to the United States?

We believe that the Executive Order directly affects thousands of medical students, residents, fellows, faculty members, physicians, scientists, and others employed by the academic medicine community.

What parts of Executive Order 13780 most directly and immediately impact the academic medicine community?

The Executive Order directly affects medical students, residents, fellows, faculty members, physicians, scientists, and others associated with the six specified countries, as well as their family members. And in particular, the March-July timeframe is a critical time for the selection and visa processing (either application or change of status) of residents and fellows in advance of the July 1 start date for most GME programs.

How might Executive Order 13780 affect the selection of applicants to GME residency and fellowship programs?

Executive Order 13769 was issued weeks before the submission of rank order lists by residency applicants and programs. Executive Order 13780 was issued immediately before the Supplemental Offer and Acceptance Program (SOAP) which fills positions left open after the Match. Accordingly, whether and how the recent order will impact the availability of applicants to begin a program on July 1, 2017, is not yet known. Each institution with a GME program should work with its legal counsel and leadership in evaluating how to proceed amid this uncertainty.

What is the typical immigration-related process for non-U.S. citizens applying to medical school and residency?

For medical school, non-U.S. citizens who do not have a green card typically obtain a student visa (F-1 visa) which allows them to remain in the United States while they are attending medical school.

For residency and fellowship programs, non-U.S. citizens who are not lawful permanent residents (LPRs) typically secure a nonimmigrant visa status that allows for clinical training activities, such as H-1B (specialty occupation) status sponsored by a petitioning GME program, or J-1 (exchange visitor) status sponsored by ECFMG.

If Section 2 of Executive Order 13780 is enforced, would IMGs otherwise subject to the order, and who match to a U.S. residency position that begins July 1, 2017, qualify for a waiver?

As of yet, there is no authoritative guidance on how the waiver process would be implemented, or whether IMGs would qualify as a categorical matter. The AAMC is committed to supporting the process

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by which U.S. residency programs select physicians to train in their programs and provide medical care to their communities. We are currently seeking guidance from the relevant agencies and will update this information as it becomes available.

The AAMC is working with the ECFMG and the ACGME to support the efforts of physicians selected in the 2017 Match to begin their training as scheduled on or about July 1, 2017.

If I need individualized advice with whom should I consult?

We are not in a position to provide individualized advice or assistance. You should consult a support office within your institution if available and an attorney if you need legal advice or representation.

How can our institutions support those experiencing emotional distress (e.g., anxiety, fear, confusion, uncertainty, anger) related to Executive Order 13780?

Individual members of the medical community may experience the impact of the Executive Order on a profoundly personal level. Therefore, it is important to encourage students, faculty, researchers and staff to seek appropriate resources on campus or within their institution that can offer psychological support. For students, student mental health services should be made available with little to no wait-time. Faculty, researchers and staff should be referred to an Employee Assistance Program (EAP) if available or to the appropriate service provider in the particular community.

What questions remain in the academic medicine community about implementation of Executive Order 13780?

- a. What process and criteria will consular officers use in applying the definitions of “undue hardship”, “threat to national security” and “national interest” if requests for waivers are made by physicians approved for residency and fellowship training in U.S. GME programs?
- b. How will consular officers apply the definition of “significant contacts with the United States” in considering waiver requests made by physicians who have been selected to train in U.S. GME programs?
- c. Will consular officers consider visiting a family member or otherwise tending to personal or professional matters outside the United States to constitute “other lawful activity” under the waiver process?
- d. Will consular officers consider signed, mutually binding contractual obligation with a U.S. GME program, and the resulting requirements of a residency or fellowship program, to constitute a “significant professional obligation” under the waiver process?

- e. Will consular officers deem an absence/departure from the United States authorized by a physician's employer to be included as part of a "continuous period of work, study or other long-term activity" under the waiver process?
- f. What documentation will consular officers give consideration to in evaluating the questions noted above?
- g. To prevent disruption in patient care, will U.S. Citizenship and Immigration Services facilitate the timely consideration of a change of status application filed by a physician who has matched to a residency program with a start date of July 1, 2017?
- h. To prevent disruption in patient care, will the State Department facilitate the timely consideration of a visa application filed by a physician who has matched to a residency program with a start date of July 1, 2017?
- i. To prevent disruption in patient care, will U.S. Citizenship and Immigration Services facilitate the timely consideration of cap-exempt H-1B petitions filed on behalf of a physician who has matched to a residency program with a start date of July 1, 2017?

BACKGROUND

Academic Medicine Acronym Glossary

AAMC	Association of American Medical Colleges administers the MCAT exam and operates the centralized application service for medical school (AMCAS) and residency programs (ERAS).
ACGME	Accreditation Council for Graduate Medical Education sets standards (the Institutional and Program Requirements) for U.S. Graduate Medical Education (GME) programs (residency and fellowship) and the institutions that sponsor them, and makes accreditation decisions based on compliance with these standards.
ECFMG	Educational Commission for Foreign Medical Graduates certifies the readiness of international medical graduates (IMGs) for entry into U.S. graduate medical education by assessing their qualifications, including primary-source verifying certain credentials (ECFMG Certification). ECFMG is relied upon to provide authoritative information to residency programs, medical boards, and hospitals and serves as the Dean's Office for IMGs while they apply to residency programs through the ERAS system. Additionally, ECFMG sponsors physicians as participants in the J-1 Visa Exchange Visitor Program.
ERAS	Electronic Residency Application Service is the centralized online application service for obtaining a residency and is operated by the AAMC.

GME	Graduate Medical Education refers to medical training and education that occurs after the medical degree is awarded. This includes residencies and fellowships.
IMG	An International Medical Graduate is an individual who completed medical school in a country other than the United States and Canada. An IMG can be a U.S. citizen or a foreign national.
NRMP	National Resident Matching Program operates the Match for residency and fellowship positions.

Immigration Terminology

What are the different lawful statuses a person can have under U.S. immigration law?

A person can be in the United States in lawful status in one of three main categories: (1) nonimmigrant (such as J-1 or H-1B); (2) lawful permanent resident (LPR), or a “green card” holder; or (3) U.S. citizen.¹

What is the difference between a nonimmigrant and an LPR?

While both nonimmigrants and LPRs may be referred to as “aliens,” there are differences in how “permanent” their stay in the United States is expected to be.

Generally, a nonimmigrant has permission to stay in the United States only temporarily. An example of a nonimmigrant is someone with a visa, such as H-1B (temporary employment in a specialty occupation), J-1 (exchange visitor), or F-1 (student). In addition, J-1 status and F-1 status do not permit an individual to have “immigrant intent,” meaning the intent to reside in the United States permanently.

An LPR has been granted permission to live in the United States on a permanent basis. LPR status extends beyond the expiration date on a given LPR card, or “green card”. The government is required to take proactive measures if it seeks to revoke LPR status.

What do the terms “foreign national” and “alien” refer to?

A foreign national is a person without U.S. citizenship or nationality. An alien is any person who is not a citizen or national of the United States.

The terms as used in the Executive Order essentially mean the same thing. Each refers to an individual who is neither a citizen nor a national of the United States. Generally, the term “alien” is used in statutes and the term “foreign national” is used elsewhere.

¹ Some people are in the United States without accruing unlawful presence pursuant to alternative categories, such as Temporary Protected Status or a Period of Stay Authorized by the Attorney General (POSABAG). These categories are not typical of most non-U.S. citizens in GME.

What is the difference between citizenship and nationality?

Citizenship is a legal status reflecting a set of rights and duties as between an individual and a political unit, such as a country. Nationality refers to the country where an individual was born.

What are the differences between an H-1B visa and a J-1 visa?

An H-1B temporary employment visa allows a foreign national sponsored by an employer (such as a hospital) to work in a specialty occupation (such as medicine) in the United States for a specific period. An H-1B visaholder is permitted to have “dual intent”, meaning both an intent to carry out a temporary stay and a long-term intent to later remain in the United States permanently. It is not uncommon for H-1B visaholders to subsequently pursue lawful permanent residence and obtain a green card.

A J-1 training visa is designed to foster global understanding through educational and cultural exchanges, with the general expectation that the visaholder will return to his or her home country. Medical residents on a J-1 visa are sponsored by ECFMG to participate in approved GME programs conducted at ACGME-accredited host institutions.

What is the Conrad State 30 J Waiver Program?

All J-1 physicians sponsored for participation in U.S. GME are subject to a two-year “home country return requirement.” J-1 physicians must return to their home countries for a period of two years before being eligible to apply for certain other U.S. visa statuses. The Conrad State 30 J Waiver Program allows a limited number of J-1 physicians to obtain a waiver of that requirement if recommended by a state health department to practice medicine full-time in H-1B status in a medically underserved community [i.e., Medically Underserved Area (MUA), Health Professional Shortage Area (HPSA), or Medically Underserved Population (MUP)] for a minimum of three years. The Conrad 30 J Waiver program supports both primary care physicians and specialists.