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Frequently Asked Questions: Executive Actions Restricting Entry to the United States

Last Updated: September 28, 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 6-8.

Presidential Proclamation of September 24, 2017

What is the relationship between the Proclamation and the prior Executive Orders suspending entry of individuals from specific countries into the United States?

The prior Executive Orders suspended entry for individuals from specific countries for a limited period and directed the Government to undertake a review and assessment of its immigration screening and vetting systems. The Proclamation relies on that review and assessment to direct suspension of entry for individuals from specific countries for an indefinite period, with some variation depending on visa status, subject to future reviews and recommendations by the Department of Homeland Security.

Whose entry into the United States is directly affected by the Proclamation?

The Proclamation directly affects entry into the United States by individuals from Iran, Libya, Syria, Yemen, Somalia, Chad, North Korea, and Venezuela. The restrictions vary by country of origin. Sudan is no longer included on the list of affected countries.

What are the country-specific restrictions on entering the United States?

- Iran:** Entry as immigrants and nonimmigrants is suspended, except for those entering under student (F, M) and exchange visitor (J) visas who will be subject to enhanced screening.
- Libya:** Entry as immigrants and as temporary visitors on business or tourist visas is suspended.
- Syria:** Entry of all immigrants and nonimmigrants is suspended.
- Yemen:** Entry as immigrants and as temporary visitors on business or tourist visas is suspended.
- Somalia:** Entry as immigrants is suspended. Nonimmigrants will be subject to enhanced screening.
- Chad:** Entry as immigrants and as temporary visitors on business or tourist visas is suspended.
- North Korea:** Entry of all immigrants and nonimmigrants is suspended.
- Venezuela:** Entry of specific government officials and their families as visitors on business or tourist visas is suspended.

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What is the difference between an immigrant and a nonimmigrant?

An immigrant is an individual seeking entry to the United States on a permanent basis. A nonimmigrant is an individual seeking entry to the United States on a temporary basis, such as business visitors, tourists, students, exchange visitors, scholars, and temporary workers.

How will the restrictions apply to the most common visas held by aspiring and practicing physicians and scientists from the affected countries?

The following table shows effects on the most common visa categories for individuals in academic medicine:

Country	Student (F, M)	Exchange Visitor (J)	Professional (H1B)	Conference Attendee (B)
Iran	Enhanced screening	Enhanced screening	Entry suspended	Entry suspended
Libya	No restrictions in Proclamation	No restrictions in Proclamation	No restrictions in Proclamation	Entry suspended
Somalia	Enhanced screening	Enhanced screening	Enhanced screening	Enhanced screening
Syria	Entry suspended	Entry suspended	Entry suspended	Entry suspended
Yemen	No restrictions in Proclamation	No restrictions in Proclamation	No restrictions in Proclamation	Entry suspended
Chad	No restrictions in Proclamation	No restrictions in Proclamation	No restrictions in Proclamation	Entry suspended
North Korea	Entry suspended	Entry suspended	Entry suspended	Entry suspended
Venezuela*	No restrictions in Proclamation	No restrictions in Proclamation	No restrictions in Proclamation	Entry suspended

*Suspension of B-1/B-2 entry for Venezuelan nationals is limited to specified officials of Venezuelan government agencies (and their immediate family members) only. All Venezuelan visa holders could be subject to additional screening measures to ensure currency of traveler information.

	No restrictions in Proclamation
	Enhanced screening
	Entry suspended

How long will the restriction on entry be in force?

Unlike the prior Executive Orders which provided for 90-day suspension periods, the Proclamation's restrictions on entry are indefinite. The Secretary of Homeland Security is to make periodic re-assessments and recommendations to the President as to whether to continue or modify the restrictions.

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When does the Proclamation take effect?

There are two different effective dates.

For individuals barred from entry under Executive Order 13780 (except Sudanese nationals) who lack a credible claim of a bona fide relationship with a person or entity in the United States, the effective date is September 24, 2017.

For all other individuals subject to the Proclamation, including nationals of Iran, Libya, Syria, Yemen and Somalia who have a credible claim of a bona fide relationship to a U.S. person or entity, and nationals of Chad and North Korea, and specific Venezuelan nationals, the restrictions on entry are effective October 18, 2017.

What is a qualifying “bona fide relationship” with an individual?

The Supreme Court stated that for relationships between individuals, a close familial relationship is required. The Department of State adopted the following criteria for meeting the definition of a “close familial relationship” to persons in the United States:

- Parent (including in-law and step)
- Spouse or fiancée
- Child and adult son or daughter (including son- or daughter-in-law and step)
- Sibling (including whole, half, and step)

Thereafter on July 19, 2017, the Supreme Court declined to disturb an order of the District Court of Hawaii extending the definition of a “close familial relationship” to also include:

- Grandparents
- Grandchildren
- Brothers- or sisters-in-law
- Aunts or uncles
- Nieces or nephews
- Cousins

What is a qualifying “bona fide relationship” with an entity?

The Supreme Court stated that for relationships between a foreign national applicant and an entity, the relationship must be formal, documented, and formed in the ordinary course. The Court provided the following examples of such a relationship:

- Students who have been admitted to a university located in the United States
- Workers who have accepted an offer of employment from an American company
- Lecturers invited to address an American audience.

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The Department of State guidance provides that if an applicant met the requirements for most nonimmigrant visas not otherwise excepted, then the applicant would have satisfied the requirement that the relationship be formal, documented, and in the ordinary course.

Who is exempt from the Proclamation?

The following individuals who are nationals of the countries identified are exempt from the Proclamation:

- Lawful permanent residents of the United States (“green card” holders).
- Those admitted (or paroled) after the Proclamation’s effective date.
- Those with an otherwise valid entry document (transportation letter, boarding foil, advance parole document) on the Proclamation’s effective date.
- Dual nationals when traveling on a passport issued by an unaffected country.
- Those traveling on a diplomatic visa.
- Those granted asylum, admitted as a refugee, or granted withholding of removal, advance parole, or protection under the Convention Against Torture.
- Those who have a valid visa on the Proclamation’s effective date.
- Those who are inside the United States on the Proclamation’s effective date.

Will visas be revoked under the Proclamation?

No, the Proclamation is expressly limited to individuals who do not have a valid visa on the effective date of the Proclamation.

Who may be admitted under a waiver?

The Proclamation authorizes a consular official or the Commissioner of Customs and Border Protection or the Commissioner’s designee, in their discretion, to grant waivers on a case-by-case basis if an individual demonstrates 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 United States; and (C) entry would be in the national interest.

What circumstances does the Proclamation recognize as potential grounds for a waiver?

The following are among those listed as potential grounds for a waiver:

- Those previously admitted for a continuous period of work, study, or other long-term activity;

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- Those with previously established significant contacts with the United States but who were outside the United States for work, study, or other lawful activity on the effective date;
- Those seeking to enter for significant business or professional obligations;
- Those seeking to visit or reside with a close family member in lawful U.S. immigration status and the denial would cause the individual undue hardship;
- Those who are an infant, a young child, an adoptee, or in need of urgent medical care or those whose entry is otherwise justified by the special circumstances of the case;
- Those employed by the U.S. Government and eligible dependent family members;
- Those traveling with purposes related to business with the U.S. Government, or at the request of the U.S. Government for legitimate law enforcement, foreign policy, or national security purposes, or those traveling on behalf of certain international organizations;
- Those traveling as a U.S. Government-sponsored exchange visitor.

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

The cases challenging Executive Order 13780 were initially scheduled for oral argument on October 10, 2017, but the Court removed the cases from its oral argument calendar on September 25, 2017. The parties were ordered to submit briefings on whether the cases challenging the Executive Orders are moot, based on the issuance of the Proclamation and the concurrent expiration of the challenged provisions of Executive Order 13780.

Where may I access official U.S. Supreme Court and Federal agency information on these topics?

<i>Supreme Court</i>	https://www.supremecourt.gov/
6/26/17 Decision	https://www.supremecourt.gov/opinions/16pdf/16-1436_16hc.pdf
9/25/17 Order	https://www.supremecourt.gov/orders/ordersofthecourt/16
<i>White House</i>	https://www.whitehouse.gov/
9/24/17 Proclamation	https://www.whitehouse.gov/the-press-office/2017/09/24/enhancing-vetting-capabilities-and-processes-detecting-attempted-entry
<i>Department of Homeland Security</i>	www.dhs.gov
9/24/2017 Fact Sheet/FAQs	https://www.dhs.gov/news/2017/09/24/fact-sheet-president-s-proclamation-enhancing-vetting-capabilities-and-processes
<i>Department of State</i>	www.state.gov

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9/24/2017 Announcement <https://travel.state.gov/content/travel/en/news/important-announcement.html>

Where may I find resources designed for IMGs potentially affected by these executive actions?

ECFMG www.ecfm.org

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

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.

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 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.

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.

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.

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.

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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.