

New U.S. Executive Order issued on immigration: potential impact on vessel crews

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As reported in our Client Alerts of January 30th and February 10th, Executive Order (“E.O.”) 13769 issued by President Trump on January 27, 2017, and entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States”, banned for 90 days any immigrant or nonimmigrant entry into the U.S. of foreign citizens from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen, and would have impacted vessels with crewmembers from those countries. However, that E.O. was suspended by a Federal district court judge on February 3rd and his ruling was upheld by the 9th Circuit Court of Appeals on February 9th.

Today President Trump signed E.O. 13780 entitled “Executive Order Protecting the Nation From Foreign Terrorist Entry Into The United States.” This E.O. rescinds E.O. 13769 and introduces new restrictions on travel to the U.S. from Iran, Libya, Somalia, Sudan, Syria and Yemen. Note that immigration from Iraq is not targeted in this latest E.O. The E.O. has an effective date of March 16, 2017 at 12:01AM, eastern daylight time.

Provisions of E.O. 13780

E.O. 13780 issued today revokes and replaces E.O. 13769 and “...expressly excludes from the suspensions categories of aliens that have prompted judicial concern....”

Section 2 of the new E.O. directs that the entry into to the United States of nationals from Iran, Libya, Somalia, Sudan, Syria and Yemen shall be suspended for 90 days from the effective date of the E.O., March 16, 2017. However, Section 3, dealing with the “Scope and Implementation of Suspension”, provides that the suspension of entry under Section 2 shall only apply to nationals of the designated countries who are outside the U.S. on March 16, 2017 and who did not hold a valid visa as of January 27, 2017 or do not hold one on March 16, 2017.

Section 2 also directs the U.S. Secretary of Homeland Security to conduct a worldwide review to identify what additional information is required from each foreign country to adjudicate an application by a national of that country for a visa “...in order to determine that the individual is not a security or public-safety threat.” The Secretary of Homeland Security is to report to the President within 20 days of the effective date of the E.O., providing a list of the countries that do not provide adequate information. Once the aforementioned report is received, foreign governments that do not currently provide the information deemed necessary will be asked to begin doing so within 50 days. After the 50 day period expires, the Secretary of Homeland Security is to provide the President with a list of non-complying countries for inclusion in a

Presidential proclamation which would prohibit the entry into the U.S. of “appropriate categories of foreign nationals” from those countries until such time as the country provides the required information.

As stated above, during the pendency of the worldwide review process, nationals from Iran, Libya, Somalia, Sudan, Syria and Yemen will be denied entry to the U.S. for 90 days from March 16th. However, as also stated above, they will only be denied entry if they were outside the U.S. on March 16, 2017 and did not hold a valid visa as of January 27, 2017 or do not hold a valid visa on March 16, 2017. The E.O. provides that no immigrant or nonimmigrant visa issued before March 16, 2017 shall be revoked pursuant to the E.O. Any individual whose visa was revoked or marked canceled as a result of the earlier E.O. 13769 shall receive a travel document entitling that person to travel to the U.S. and seek entry.

Section 3 of the E.O. also directs that the E.O. shall not apply to six categories of individuals, including, among others, permanent residents of the U.S., dual nationals of any of the designated countries (when the individual is traveling on the passport of a non-designated country), any foreign national traveling on a diplomatic visa, and foreign nationals who have been granted asylum.

In addition, Section 3(c) of the E.O. authorizes the issuance of visas on a case-by-case basis to foreign nationals whose entry is otherwise suspended by the E.O. Section 4 of the E.O. calls for a thorough review of any Iraqi national who applies for a visa, with an emphasis on investigating for any connection to ISIS or any other terrorist organization, and assessing whether the applicant may be a threat to commit acts of terrorism. Section 5 calls for a heightened vetting and screening standard for all U.S. immigration programs. Section 6 suspends all travel of refugees to the U.S., and all decisions on refugee status, for 120 days from the effective date of the E.O., and caps the number of refugees to be admitted in fiscal year 2017 at 50,000. As with visas, certain refugees may be admitted on a case-by-case basis if they are deemed to meet certain criteria.

Impact of the E.O. Crew from the Six Designated Countries

Crewmembers from Iran, Libya, Somalia, Sudan, Syria and Yemen will not be able to enter the U.S. unless they hold valid visas prior to March 16th, and they will not be able to obtain visas until 90 days after March 16th. If a crewmember holds a valid visa he or she will be free to enter the United States. In a statement issued on March 6th the Secretary of Homeland Security, John Kelly, wrote:

“The Executive Order signed today is prospective in nature – applying only to foreign nationals outside of the United States who do not have a valid visa. It is important to note that nothing in this executive order affects current lawful permanent residents or persons with current authorization to enter our country. If you have a current valid visa to travel, we welcome you.”

However, if a vessel arrives at a U.S. port with crew from any of the six designated countries who do not have valid visas, those crewmembers will not be permitted to leave the vessel and it can be anticipated that the U.S. authorities may well order that armed guards be placed at the vessel's gangway to prevent any such crew from departing the vessel. In addition, if any crewmember's visa expires after March 16, the crewmember must apply for a new visa.

Summary

E.O. 13780 has a more limited impact on immediate entry to the U.S. than did the revoked E.O. 13769. However, it will still prevent crewmembers from any of the six designated countries from entering the U.S. unless they hold a valid visa. For a Department of Homeland Security Fact Sheet on the new E.O., [click here](#); and for FAQs, [click here](#).

Disclaimer: This Client Alert provides only a general summary of the March 6, 2017 Executive Order on immigration, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the Executive Order. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).