WHITEMAN OSTERMAN & HANNA LLP
ATTORNEYS AT LAW

Immigration Briefing

July 2017

Travel Ban 2.0 Begins on Thursday Evening

The "Protecting the Nation from Foreign Terrorist Entry into the United States" Executive Order has once again been modified. From its original far-reaching, chaotic launch on January 26, to its initial limited injunctions, to its nationwide stay, withdrawal and replacement, to more injunctions, the Supreme Court added another twist when it granted certiorari on Monday.

On June 26, 2017, the U.S. Supreme Court granted certiorari and consolidated two key cases in the travel and refugee ban litigation: Trump v. IRAP and Trump v. Hawaii. The case will be heard during the first session of the October 2017 term, but in the meantime, the Court partially lifted the injunction on enforcement of the ban by allowing the government to ban U.S. travel by those nationals of **Iran, Libya, Somalia, Sudan, Syria and Yemen** who do not have a *"credible claim of a bona fide relationship with a person or entity in the U.S."*

In addition to granting certiorari, the Supreme Court granted a partial stay of the injunctions that had been preventing implementation of the travel ban [**Section 2(c)**], the refugee ban [**Section 6(a)**], and the refugee cap [**Section 6(b)**]. The Court ruled as follows:

- **Travel and Refugee Ban**: The Court left in place the injunctions with respect to the plaintiffs in both cases and others in similar situations. It explained that, "[i]n practical terms, this means that [the travel and refugee bans] *may not be enforced* against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States." (Emphasis added). However, all other foreign nationals—i.e., those without such a bona fide relationship—are subject to the provisions of EO-2.

- **Refugee Cap**: The Court held that a refugee with a credible claim of a bona fide relationship with a U.S. person or entity may not be excluded, even if the 50,000 cap on refugees has been reached or exceeded.

Bona Fide Relationship with a Person in the United States: The Court noted that the facts of the cases at hand illustrate the type of relationships that would qualify as bona fide, stating, “For individuals, a close familial relationship is required.” The Court stated that an individual who seeks to enter the United States to live with or visit a family member, such as a spouse or mother-in-law, “clearly has such a relationship.”

Bona Fide Relationship with an Entity in the United States: With regard to entities, the Court stated, “the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2.” The Court specifically stated that students who have been admitted to a U.S. university, a worker who has accepted an offer of employment from a U.S. company, or a lecturer invited to address a U.S. audience would have such a relationship and would therefore be permitted to obtain a visa to travel to the U.S.

The Court stated that a relationship with a U.S. entity or individual that was entered into for the purpose of avoiding the travel ban will not be recognized as bona fide.

Who is exempt from the ban?

The following categories of travelers will be excluded from the travel ban, according to the cable:

- US citizens
- Legal permanent residents (aka green card holders)
- Current visa holders
- Any visa applicant who was in the US as of June 26
- Dual nationals
- Anyone granted asylum
- Any refugee already admitted to the US
- Foreign nationals with "bona fide" family, educational or business ties to the US

Importantly, visas that have already been approved will not be revoked.

The executive order also permits the issuance of a visa to anyone who would otherwise be excluded on a case-by-case basis at the discretion of DHS and the State Department.

Executive Order 13802 Regarding Nonimmigrant Visa Interview Wait Times

On June 21, 2017, President Trump signed a new Executive Order (13802) that effectively directs that a portion of Executive Order 13597, issued on 1/19/12, be deleted. The deleted portion directed that 80 percent of nonimmigrant visa applicants should be interviewed within three weeks of receipt of their applications. According to the administration, the deletion of this provision was made in the interest of "vetting" and national security by removing the arbitrary three-week requirement. The end result could be an undefined increase in visa processing times at U.S. Consulates around the world.

USCIS Resumes H-1B Premium Processing for Physicians under the Conrad 30 Waiver Program

On June 23, 2017, USCIS announced that beginning Monday June 26th, it would resume premium processing for all H-1B petitions filed for medical doctors under the Conrad 30 Waiver program, as well as interested government agency waivers. The Conrad 30 program allows certain medical doctors to stay in the United States on a temporary visa after completing their medical training to work in rural and urban areas that have a shortage of physicians. "This program improves health care access for Americans living in underserved areas, and we are pleased to resume premium processing for these petitions," said USCIS Acting Director James McCament.

Starting June 26, eligible petitioners for medical doctors seeking H-1B status under the Conrad 30 program, or through an interested government agency waiver, can file Form I-907, Request for Premium Processing Service for Form I-129, Petition for a Nonimmigrant Worker. Form I-907 can be filed together with an H-1B petition or separately for a pending H-1B petition.

USCIS plans to resume premium processing of other H-1B petitions as workloads permit. Until then, premium processing remains temporarily suspended for all other H-1B petitions. USCIS will reject any Form I-907 filed for those petitions, and if the petitioner submitted one check combining the Form I-907 and Form I-129 fees, USCIS will have to reject both forms.

USCIS Revises Form I-485, Application to Adjust to Permanent Resident Status

On June 26, 2017, USCIS released a new version of Form I-485, Application to Adjust to Permanent Resident Status, which is filed in connection with both employment-based and family-based green card processes. The form is substantially more detailed, now requesting information about parents, prior marriages, and address and employment history.

Beginning June 26th, there will be a 60-day grace period during which USCIS will accept both the 01/17/17 and 06/26/17 editions of Form I-485 and Supplement A and J. Beginning August 25, USCIS will only accept the revised Form and Supplement A and J of Form I-485 and will no longer accept earlier versions of either form.

The revised form incorporates the biographic data information from Form G-325A, and therefore, the G-325A is no longer required with this application.

****The above information has been provided for educational purposes only and should not be construed as legal advice****