

IMMIGRATION ALERT - State Department Issues Guidance On Travel Ban

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Practices: Immigration

STATE DEPARTMENT ISSUES GUIDANCE ON TRAVEL BAN

On June 28, 2017, the State Department issued its guidance to all consular posts regarding the implementation of the 90-day travel ban for persons from Iran, Libya, Somalia, Sudan, Syria and Yemen. The travel ban, which will take effect at 8:00 p.m. EDT, on June 29, 2017 will ban persons from the aforementioned six countries from entering the United States unless they can establish a "bona fide relationship with a person or entity in the United States." The State Department memo provides guidance regarding what will constitute a bona fide relationship. In many instances, the definition of a bona fide relationship has been very narrowly drawn and persons who might otherwise be entitled to enter the United States could find themselves, in fact, barred from entering.

In determining a close family relationship, the State Department has defined the relationship as a parent (including parents-in-law), spouse, child, adult son or daughter, son-in-law, daughter-in-law or sibling, including step relationships. It should be noted that a close family relationship does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law, sisters-in-law or fiancé, including a fiancé who is in possession of a valid K-1 visa.

Persons who have been approved for an immigrant visa may also fall under the travel ban unless the person will qualify for an exemption or waiver. Most notably, persons who have been selected under the Diversity Visa lottery and have been approved are also subject to the travel ban.

In the case of a relationship with a United States business entity, it must be established that the relationship with the United States entity is "formal, documented and formed in the ordinary course." Persons who have been issued a work related visa (H-1B, L-1, etc.) should be exempt from the travel ban as would persons who have been issued F-1 student visas. While the State Department memo states that a person who has accepted an offer of employment from a United States entity is exempt from the ban, it is less clear as to whether a person who is seeking to enter the United States for a short term business trip or business negotiations, would be exempt.

Guest lecturers who have been invited to speak in the United States are listed as persons who would exempt from the travel ban.

The State Department memo establishes several grounds for waivers of the travel ban, including persons with previously established contacts in the United States who are outside the United States for work, study or other lawful activities; persons who seek to enter the United States for "significant business or professional obligation" infants, children or adoptees or persons who require urgent medical care; persons traveling to an international organization designated under the International Organization Immunities Act and Permanent Residents of Canada who are applying for a U.S. visa at a U.S. Consular post in Canada.

The State Department memo advises posts not to cancel existing visas and to continue with nonimmigrant and immigrant visa interviews in the ordinary course of business.

It should be noted that the State Department Memo, while providing guidance to all U.S. Consular posts, is not binding on U.S. Customs and Border Protection ("CBP") at the port of entry or on the U.S. Citizenship and Immigration Service ("USCIS") for persons in the United States. Therefore, it should be anticipated that, even if a person qualifies under an exemption or waiver of the travel ban, they could encounter additional questioning ("extreme vetting") by CBP and that the issuance of a visa at a consular post should not be considered a "guarantee" of admission to the United States. Similarly, persons in the United States who are seeking an immigration benefit from the USCIS should not rely on the State Department memo as a determination of whether their immigration benefit will be granted.

Once again, it is our recommendation that for persons from the six affected countries, if they are currently in the United States and lawful immigration status, they should not leave until at least the travel ban is lifted. If a person is currently outside of the United States and is seeking to re-enter, if the person qualifies for an exemption or waiver, then, in addition to the visa, the person should carry additional evidence of close relationships in the United States, including evidence of immediate family ties, invitation letters, employment confirmation letters and the like.