

State Department Promulgates New Vetting Standards Required By President's Travel Ban Executive Order

July 28, 2017

On July 12, 2017, the State Department promulgated new vetting standards for visa applicants, as required by President Trump's March 6, 2017 Executive Order entitled "Protecting the Nation from Foreign Terrorist Entry Into The United States" ("EO-2").

EO-2 purported to "revok[e]" and "replac[e]" the President's prior January 27, 2017 Executive Order of the same name (the "EO-1"). The substance of the EO-1, the EO-2, and prior related litigation were previously addressed by our Immigration Alerts of January 30th, February 7th, 10th, and 17th, March 6th and 16th, May 25th, and June 26th. As explained in those alerts, EO-2 has resulted in litigation regarding the legality of the President's "travel ban" for certain majority-Muslim countries. That travel ban is largely enjoined, pending review in the United States Supreme Court.

EO-2's travel ban was purportedly ordered to assist a broader security review of immigration procedures. As part of that review, Section 2(a) of EO-2 ordered a "worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under [federal immigration law] in order to determine that the individual is not a security or public safety threat." According to Section 2(d), the Secretary of State is required upon completion of that review to request that "all foreign governments that do not supply such information regarding their nationals begin providing it within 50 days." Under Section 2(e), the United States may elect to prohibit the entry of nationals of countries that do not begin providing the requested information before that deadline.

Although the internal review procedure was initially enjoined as part of the broader "travel ban" litigation, the U.S. Court of Appeals lifted that portion of the injunction on May 15, 2017. The review evidently commenced at some point thereafter.

In a July 12, 2017 message to diplomatic posts worldwide, the Department of State promulgated the new standard for information-sharing for distribution to foreign governments. Those standards include:

1. Issuing, or planning to issue, electronic passports including a "facial biometric image", and providing exemplars of passports to improve fraud detection;
2. Regular reporting of lost or stolen passports;
3. Additional identifying information provided at U.S. request, including additional biometric data;
4. Sharing of biographic and biometric data on individuals known or believed to be terrorists;
5. Making available criminal history records for those applying for U.S. visas;
6. "Countries should not designate individuals for international watchlisting as national security threats or criminals solely based on their political or religious beliefs";
7. Countries "should take measures to ensure that they are not and do not have the potential to become a terrorist safe haven";
8. Countries "should accept the repatriation of their nationals who are subject to a final order of removal" and "provide travel documents to facilitate their removal";
9. Visa Waiver countries must continue to meet the statutory requirements for that program;

The message indicates that the U.S. government has prepared a classified list of countries it assesses either do not provide, or are at risk of

not providing, adequate information and which are therefore at risk of travel sanctions. It also provides embassy staff with a list of questions that certain foreign governments will be requested to answer in order to determine if these standards are met, and warns that “[f]ailure to provide this information in a timely manner will require [the U.S. government] to assume your country does not meet these standards.”

Based on this message, it appears that a significant number of countries may be targeted for additional travel sanctions, beyond the initial 90-day “travel ban” currently being litigated. We will continue to provide updates as new information becomes available.

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