

Alert

OCTOBER 17, 2017

# Court Order on Presidential Proclamation on Visas

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## Court Order on Presidential Proclamation on Visas (October 17, 2017)

On October 17, 2017, the U.S. District Court for the District of Hawaii ordered that the government not enforce or implement Sections 2(a), (b), (c), (e), (g), and (h) of Presidential Proclamation 9645 (P.P.) titled “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats.”

In light of this order, visa applicants who are nationals of Chad, Iran, Libya, Syria, Yemen, and Somalia are not subject to any of the restrictions or limitations under the Presidential Proclamation, regardless of whether they have a credible claim of a bona fide relationship with a person or entity in the United States. Their visa applications will be adjudicated in accordance with the INA, any other applicable immigration laws, and generally applicable visa processing standards, without regard to the Presidential Proclamation or related implementing procedures. Note that the entry restrictions in Executive Order 13780 have expired by their terms.

The order did not affect Sections (d) and (f) of the Proclamation, so nationals from North Korea and Venezuela are subject to the restrictions and limitations listed in the Presidential Proclamation, which went into effect at 12:01 a.m. EDT on Wednesday, October 18, 2017, with respect to nationals of those countries.

We will keep those traveling to the United States and partners in the travel industry informed as we implement the Proclamation, to the extent permitted by applicable court orders, in a professional, organized, and timely way.

## Presidential Proclamation on Visas

On September 24, 2017, the President issued a Presidential Proclamation titled “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats.” Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were classified as “inadequate” and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the “special concerns” it presented. These restrictions are considered important to addressing the threat these existing information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

Nationals of the eight countries are subject to various travel restrictions per the following table as outlined in the P.P.

Country	Nonimmigrant Visas	Immigrant and Diversity Visas
AILA Doc. No. 17102302. (Posted 10/23/17)		

Chad	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
Iran	No nonimmigrant visas except F, M, and J student visas	No immigrant or diversity visas
Libya	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
North Korea	No nonimmigrant visas	No immigrant or diversity visas
Syria	No nonimmigrant visas	No immigrant or diversity visas
Venezuela	No B-1, B-2 or B-1/B-2 visas of any kind for officials of the following government agencies Ministry of Interior, Justice, and Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People's Power Ministry of Foreign Affairs, and their immediate family members.	No restrictions
Yemen	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
Somalia		No immigrant or diversity visas

The implementation of the Presidential Proclamation (P.P.) at our embassies and consulates abroad pursuant to the proclamation is as follows:

**Phase 1:** From 3:30 p.m. EDT on Sunday, September 24, 2017 until 12:01 a.m. EDT on Wednesday, October 18, 2017:

**a) Nationals of Iran, Libya, Syria, Yemen, and Somalia.** Nationals of these five countries will generally remain under suspension of travel except for those individuals who have credible claim of a "bona fide relationship" with a close family member or entity in the United States. "Close family" is defined as a parent, including parent-in-law, spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, and first-cousin. For all relationships, half or step status is included (e.g., "half-brother" or "step-sister"). "Close family" does not include any other "extended" family members. A credible claim of a bona fide relationship with a "U.S. entity" must be formal, documented, and formed in the ordinary course rather than for the purpose of evading suspension of entry under the P.P. If the national does not qualify for this exemption, they may be eligible for other exceptions or waivers listed in the P. P.

**b) Nationals of Sudan.** As of 3:30 p.m. EDT on Sunday, September 24, 2017, Sudanese nationals are no longer subject to travel restrictions.

**AILA Doc. No. 17102302. (Posted 10/23/17)**

**Phase 2:** Beginning 12:01 a.m. EDT on Wednesday, October 18, 2017:

**c) Nationals of Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen and Somalia:** The exceptions and waivers listed in the P.P. are applicable for qualified applicants, but the bona fide relationship exception is no longer applicable.

We will not cancel previously scheduled visa application appointments. In accordance with all applicable court orders, executive orders, and proclamations, for nationals of the eight designated countries, a consular officer will make a determination in the course of the interview whether an applicant otherwise eligible for a visa is exempt from the P.P. or, if not, is eligible for a waiver under the P.P., and may be issued a visa.

The P.P. provides specifically that no visas issued before its effective date will be revoked pursuant to the P.P.

We will keep those traveling to the United States and partners in the travel industry informed as we implement the order in a professional, organized, and timely way.

#### [FAQs on the Presidential Proclamation - Department of Homeland Security](#)

#### [The President's Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats](#)

### Frequently Asked Questions

#### What are the exceptions in the P.P.?

**For both Phase 1 and 2 of implementation:** The following exceptions apply to nationals from all eight countries and will not be subject to any travel restrictions listed in the P.P.:

- a) Any national who was in the United States on the applicable effective date of the P.P. for that national, regardless of immigration status;
- b) Any national who had a valid visa on the applicable effective date of the P.P. for that national;
- c) Any national whose visa was marked revoked or marked canceled as a result of Executive Order 13769 who qualifies for a visa or other valid travel document under section 6(d) of the P.P.;
- d) Any lawful permanent resident (LPR) of the United States;
- e) Any national who is admitted to or paroled into the United States on or after the applicable effective date of the P.P. for that national;
- f) Any applicant who has a document other than a visa, valid on the applicable effective date of the P.P. for that applicant or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;
- g) Any dual national of a country designated under the P.P. when traveling on a passport issued by a non-designated country;
- h) Any applicant traveling on a diplomatic (A-1 or A-2) or diplomatic-type visa (of any classification), NATO-1 -6 visas, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; except certain Venezuelan government officials and their family members traveling on a diplomatic-type B-1, B-2, or B1/B2 visas
- i) Any applicant who has been granted asylum; admitted to the United States as a refugee; or has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

**In Phase 1 of implementation only:** The P.P. is immediately effective for nationals of countries who were generally subject to the 90-day travel suspension in E.O. 13780 with the exception of Sudan. The P.P. has allowed an exception for applicants from these five countries who have a credible claim of a bona fide relationship with a person or entity in the United States.

Exceptions and waivers listed in the P.P. are applicable for qualified applicants. In all visa adjudications, consular officers may seek additional information, as warranted, to ensure underlying relationships are bona fide, rather than being established for the purpose of unlawfully obtaining a visa, including by evading the P.P.

**In Phase 2 of implementation:** Qualified applicants from the eight countries may qualify for an exception or waiver however, the exception for those claiming close relationships with U.S. persons or entities is no longer available.

**If a principal visa applicant qualifies for an exception or a waiver under the P.P. in either phase of implementation, does a derivative also get the benefit of the exception or waiver?**

Each applicant, who is otherwise eligible, can only benefit from an exception or a waiver if he or she individually meets the conditions of the exception or waiver.

**Does the P.P. apply to dual nationals?**

This P.P. does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country.

Our embassies and consulates around the world will process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants who apply with a passport from a non-designated country, even if they hold dual nationality from one of the eight restricted countries.

**Does this apply to U.S. Lawful Permanent Residents?**

No. As stated in the P.P., lawful permanent residents of the United States are not affected by the P.P.

**Are there special rules for permanent residents of Canada?**

Case-by-case waivers may not be granted categorically to nationals of the eight countries who are subject to visa restrictions pursuant to the P.P. but may be appropriate in individual circumstances. One of the individual circumstances listed in the P.P. is Canadian permanent residents who apply for visas at a U.S. consular section in Canada. Canadian permanent residents should bring proof of their status to a consular officer.

A consular officer will carefully review each case to determine whether the applicant is affected by the P.P. during each phase of the implementation and, if so, whether the applicant qualifies for an exception or a waiver.

**Will you process waivers for those affected by the P.P.? How do I qualify for a waiver to be issued a visa?**

As specified in the P.P., consular officers may issue visas based on a listed waiver category to nationals of countries identified in the PP on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security or public safety threat to the United States, and denial of the visa would cause undue hardship.

**What is a close familial relationship for the purposes of determining if someone is subject to the P.P. during Phase 1 of implementation?**

"Close family" is defined as a parent, including parent-in-law, spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, and first-cousin. For all relationships, half or step status is included (e.g., "half-brother" or "step-sister"). "Close family" does not include any other "extended" family members. A credible claim of a bona fide relationship with a "U.S. entity" must be formal, documented, and formed in the ordinary course rather than for the purpose of evading suspension of entry under the P.P.

**Can those needing urgent medical care in the United States still qualify for a visa?**

In both phases of implementation, applicants who are otherwise qualified and seeking urgent medical care in the United States may be eligible for an exception or a waiver. An applicant who wishes to apply for an exception or a waiver should apply for a visa and disclose during the visa interview any information that might qualify the individual for an exception or a waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the P.P., and if so, whether the case qualifies for an exception or a waiver.

The P.P. provides several examples of categories of cases that may qualify for a waiver, to be considered on a case-by-case basis when in the national interest, when entry would not threaten national security or public safety, and denial would cause undue hardship. Among the examples provided, a foreign national who seeks to enter the United States for urgent medical care may be considered for a waiver.

**I'm a student or short-term employee that was temporarily outside of the United States when the P.P. went into effect. Can I return to school/work?**

If you have a valid, unexpired visa and are outside the United States, you can return to school or work per the exception noted in the P.P.

**In Phase 1 implementation only:** If you do not have a valid, unexpired visa, the P.P. has allowed a delayed implementation for applicants who a credible claim of a bona fide relationship with a person or entity in the United States. One example cited in the Supreme Court's decision was a student from a designated country who had been admitted to a U.S. university, thereby demonstrating a credible claim of a bona fide relationship with an entity in the United States. An individual who wishes to apply for a nonimmigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for this exception.

**In Phase 2 implementation:** If you do not have a valid, unexpired visa and do not qualify for an exception you will need to qualify for the visa and a waiver. The bona fide relationship exception is not applicable. An individual who wishes to apply for a nonimmigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver per the P.P. A consular officer will carefully review each case to determine whether the applicant is affected by the P.P. and, if so, whether the case qualifies for a waiver.

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