

IMMIGRATION**SUPREME COURT PERMITS NARROW TRAVEL AND REFUGEE BAN ON TRUMP'S EXECUTIVE ORDERS**

by *Elise S. Levasseur, Esq.*

On June 26, 2017, the U.S. Supreme Court granted certiorari and consolidated two key lower court cases related to the Trump Administration's Executive Orders ("EO's") on travel and refugees issued earlier in 2017. The consolidated case will be heard during the Court's first session of the October 2017 term. The Court also granted a partial stay of the injunctions preventing implementation of the travel ban of nationals of affected countries and ban on refugees from all countries but seemingly, the new order will not apply to many people while the Court case proceeds. The order does permit the Trump Administration to proceed with its planned review of world-wide visa security and screening procedures.

The Court-permitted ban is much narrower than the Trump Administration's EO's. Under the court order, officers of the Department of Homeland Security ("DHS"), the US. Department of State ("DOS") and others are authorized to ban for a period of 90 days travelers from the six affected countries: Libya, Iran, Sudan, Syria, Yemen and Somalia, but only if those in question cannot demonstrate a bona fide relationship with a U.S.-based family member or entity. Refugees without a bona fide relationship with a U.S. individual or entity will be banned for a period of 120 days. Also, travelers cannot seek to establish a relationship with an entity solely for the purpose of evading the EO's.

For individuals, a close family relationship is needed to overcome the ban. An individual who seeks to enter the U.S. to live with or visit a family member, such as a spouse or mother-in-law, "clearly" has such a relationship in specific examples outlined by the court order. With regard to entities, the relationship must be formal, documented and formed in the ordinary course of business. The Court cited examples of an offer of employment from a U.S. company, or a lecturer invited to address a U.S. audience as having a relationship with a U.S. entity.

On June 26, 2017, the DHS issued a statement confirming that it would later provide details on implementation after consultation with the Department of Justice ("DOJ") and the DOS. The DHS further advised that implementation of the Court order "will be done professionally with clear and sufficient public notice, particular to potentially affected travelers, and in coordination with partners in the travel industry."

The new ruling appears to affect only a very small number of travelers to the U.S. and should not affect the following depending on instructions coming from the DHS:

- Individuals with current valid visas (from the six affected countries) may continue to use their visas to travel to the U.S.
- Those who are applying for visas will need to demonstrate a bona fide relationship with a person or entity in the U.S. during their visa interview.
- Lawful Permanent Residents of the U.S., Asylees and others exempted from the EO's including those already admitted as refugees, individuals traveling on advance parole and those granted withholding of removal and/or CAT (Convention Against Torture) are not included in the ban.
- Diplomats holding NATO, C-2, G-1, G-2 and G-3 or G-4 visas as well as dual nationals traveling on a passport issued by a non-affected country will be able to travel freely without having to demonstrate a bona fide relationship with a person or entity in the U.S.
- Refugees who are authorized to enter the U.S. have a bona fide relationship with refugee agency may have a bona fide relationship with a U.S. entity.
- Temporary workers from affected countries applying for an H, L, E, I, O P, Q or R nonimmigrant visas who have accepted an offer of employment from a U.S. company should be able to demonstrate a bona fide relationship with a U.S. entity.

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