



Immigration Update

National temporary restraining order granted suspending enforcement and implementation of latest executive order

March 17, 2017

On March 6, 2017, President Trump signed a new executive order, "Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States," which revoked the initial executive order signed on January 27, 2017 and provided for a 10-day period of time to coordinate implementation efforts.

On the day before the new executive order was to go into effect (March 16, 2017 at 12:01 a.m. EST), a federal judge in Hawaii issued a decision which suspends the implementation and enforcement of the new executive order. Similarly, on March 16, 2017, a federal judge in Maryland issued a decision

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which suspends the implementation and enforcement of one part of the new executive order.

Hawaii – entire order subject to nationwide temporary restraining order

On March 15, 2017, US District Court Judge Derrick Watson of the US District Court for the District of Hawaii granted a nationwide temporary restraining order (TRO) stopping the enforcement and implementation of section 2 and section 6 of the new executive order.

As a brief background, section 2 of the executive order imposed a temporary ban on the entry of nationals from Iran, Libya, Somalia, Sudan, Syria and Yemen for a period of 90 days from the effective date of the order, subject to certain limitations, waivers and exceptions. Section 6 of the executive order suspended the travel of refugees into the United States under the US Refugee Admissions Program and suspended decisions on refugee applications for 120 days after the effective date of the order.

The Court held that the plaintiffs, the State of Hawaii and Dr. Ismail Elshikh, a US citizen whose mother-in-law is a Syrian national without a visa for the United States, have shown a strong likelihood of succeeding on their claim that the executive order violates their First Amendment rights under the Establishment Clause of the Constitution. In reaching the decision, the Court referenced the historical context, public statements from the Administration and specific events leading up to the issuance of the executive order to conclude that the executive order was “issued with the purpose to disfavor a particular religion, in spite of its stated, religiously-neutral purpose.”

The Department of Justice defended the executive order by pointing to the executive order’s religiously neutral text – specifically, the executive order applies to all individuals in the six countries, including non-Muslim individuals. The District Court of Hawaii, referencing the Ninth Circuit’s decision which resulted in a nationwide TRO suspending enforcement of the first executive order, concluded that it could consider the purpose of the law to evaluate the First Amendment claim.

Maryland – section 2 of the executive order subject to nationwide TRO

Similarly, on March 16, 2017, US District Court Judge Theodore D. Chuang of the US District Court for the District of Maryland issued a nationwide TRO blocking enforcement of section 2(c) of the executive order. It was the Judge’s opinion that the executive order was “the realization of the long-envisioned Muslim ban.”

What does this mean practically?

This means that foreign nationals who may have been subject to the executive order should be able to apply for a visa or an immigration benefit under the US Refugee Admissions Program. Foreign nationals who are not in possession of a valid visa for the United States and who have imminent travel plans should consider obtaining a visa and entering the United States while the TRO remains in effect. Foreign nationals are encouraged to contact their immigration counsel to determine whether there are any future legal actions that may impact their ability to travel as this situation remains fluid as legal challenges continue.

Further, foreign nationals applying for visas and/or entering the United States should be prepared for increased scrutiny at consulates and ports of entry.

Have questions?

As always, if you have any questions or concerns, please contact your immigration lawyer at Guberman Garson LLP (416 363 1234).

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