

Immigration Changes and You

Immigration

The Effects of the Trump Administration's New Policies

On March 22, 2018, the American Immigration Lawyers Association published "Deconstructing the Invisible Wall: How Policy Changes by the Trump Administration Are Slowing and Restricting Legal Immigration."

The changes are reflected in several broad categories: travel ban and extreme vetting, admission of temporary skilled workers and entrepreneurs; programs for compelling populations; naturalization of foreign-born soldiers in the U.S. military; the growing backlog of immigration benefits applications, increasing processing times, and increasing fees; and decreasing focus on stakeholder input and customer service.

RIAA Barker Gillette (USA) has summarized the policy report and has outlined the ways that the policy changes may affect you as you go through the immigration process.

Travel Ban and Extreme Vetting

One of the first actions undertaken by the new administration was to sign Executive Order 13769, "Protecting the Nation from Foreign Terrorist Entry into the United States," – more commonly known as the "Travel Ban." The order had to be modified from its original form, but it has effectively added more procedures to the visa process – even though the United States already had one of the most comprehensive and thorough visa screening processes in the world.

Under the Trump Administration, there are even more screening procedures in place. The procedures – described below – were implemented without

explanation why they are necessary or pointing to inadequacies in the older procedures.

The procedures are explained below:

- Impeding the admission of people from Iran, Libya, Somalia, Sudan, Syria, and Yemen
- Pausing the Refugee Resettlement Program for 120 Days.
- Reducing the Number of Refugee Resettlement for the 2017 fiscal year by half.
- The New Form DS-5535.
 - DS-5535 was created to allow for additional screening for people who may have ties to terrorism, however, it can be used for any person requesting a visa regardless of where they are from.
 - Requirements include: Applicant's travel, address, and employment history from the last fifteen years and Applicant's travel, address, and employment history from the last fifteen years.
 - This has caused several issues ranging on the chance of denial based on a mistaken omission and the issue of the invasion of privacy (both of immigrants and U.S. citizens) as the Customs and Border Protection has increased its search of



social media information as people enter the United States.¹

- Suspension of the Interview Waiver Program
 - Under the Obama administration, interviews for visa renewals were not necessary for visa holders who had already been vetted and who presented low security concerns (i.e. student and travel visas for people from places like China and Argentina).²
 - As of March 6, 2017, the interview waiver program is now only applied to a select group of people: diplomats, representatives of foreign countries, representatives of the United Nations, employees of certain international organizations (such as NATO), individuals who are either under the age of 14 or over the age of 79, and individuals who are seeking to renew their visas within one year of a previous visa expiring.³
- Administrative Processing
 - This term is used by the Department of State whenever an applicant has gone through the appropriate channels to get a visa, but now requires additional review and screening. Applicants are not made aware of why additional security checks are necessary and they are not given any predictive timeline of how long the screening might take.
 - While the average delay for administrative processing is 60 Days, applicants from the Middle East frequently had delays of six months or more (sometimes up to a year).⁴
- Domestic Interview
 - As of October 2017, the following people must also go through an in-person interview in the United States U.S. Citizenship and Immigration Services Field Office: employed-based green

card applicants and the children and spouses of refugees and asylees.

- Those affected by this rule include individuals who have lawfully lived in the United States for a number of years.
- National Vetting Center
 - In February of 2018, President Trump signed an official memorandum to create a National Vetting Center with the established purpose of communication and information sharing between the various agencies which play a role in immigration procedures.

In January of 2018, the Department of Homeland Security published a report providing justification for the new procedures, however, it has been stated as being “misleading” and “used to perpetuate Trump’s anti-immigrant views.” The report has been characterized as being a tool to extend the myths that immigrants (especially Muslim immigrants) present a danger to the United States.⁵

Admission of Temporary Skilled Workers and Entrepreneurs

Since the first month of the administration, there have been several policies enacted which make it more difficult for Americans to hire foreign workers. Many of the policies were enacted by Executive Order 13788, “Buy American and Hire American” (BAHA).⁶ There have been several changes resulting:

- Federal agencies have been directed to make reforms so that H-1B visas are awarded to the “most-skilled and highest-paid beneficiaries.”⁷
- The Department of Labor and Department of Justice have both increased the scrutinizing and enforcement of H-1B employers.
- Communicated the goal to end the Obama-era “International Entrepreneur Rule”, which was aimed

¹ Carrie DeCell, ‘Dehumanized’ at the Border, Travelers Push Back, Just Security (Feb. 2, 2018), <https://www.justsecurity.org/51759/dehumanized-border-travelers-push/>.

² Former 9 FAM 403.5-4(A)(4)

³ 9 FAM 403.5-4.

⁴ Administrative Processing Information, U.S. Dept. of State, available at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html>.

⁵ U.S. Congressman Bennie G. Thompson, Press Release: Thompson & Nadler: New DHS/DOJ Terrorism Report is Misleading and Perpetuates Trump’s Anti-Immigrant Views (Jan. 16, 2018), <https://benniethompson.house.gov/media/press-releases/thompson-nadler-new-dhsdoj-terrorism-report-misleading-perpetuates-trump-s-anti>.

⁶ Exec. Order No. 13788, 82 Red. Reg. 18837 (Apr. 18, 2017).

⁷ Id.

at created a route for individuals who hold promise in creating innovations or pursuing important research.

- Rescinded the memorandum that a computer-programmer position made an individual eligible for an H-1B.
- Restricted the ability of Canadian and Mexican nationals seeking to practice as economists in the United States, pursuant to their status as “Treaty Nationals” under the North American Free Trade Agreement.
- Increased the amount of evidence necessary for H-1B petitions involving third-party sites.
- Communicated intent to terminate the H-4 work authorization; therefore, the spouses of individuals who are in the U.S. through an H-1B visa will no longer be able to work themselves.

Programs for Compelling Populations

- Termination of the Deferred Action for Childhood Arrivals (DACA) Program.
- The fate of DACA remains unclear at the present. In September 2017, the President announced that the program would no longer accept applications and no solution has been effectively put into place for prior enrollees.
- Removing Temporary Protected Status (TPS) Designation for Specific Nationals
 - TPS status had been previously provided for individuals who are fleeing countries due to natural disaster, prolonged armed conflict or other unsafe conditions.
 - In January 2017, the administration removed TPS status for people from El Salvador, Sudan, Nicaragua, and Haiti. The administration may soon terminate TPS for people from Honduras. The termination of their status recognition

means that people who previously were designated as TPS are facing deportation.

- Currently, TPS status is still available for people from Nepal, Somalia, South Sudan, Syria, and Yemen.
- Ending the Central American Minors (CAM) Program
 - CAM was created as an answer to the influx of unaccompanied minors making the dangerous journey from Guatemala, El Salvador, and Honduras alone.
 - In August 2017, the Department of Homeland Security ended the program and stopped any approved applicants from entering the country. As of November 2017, the Department of State no longer accepts refugee applications through CAM.⁸⁹
- Cutting Refugee Acceptances
 - For the fiscal year 2018, 45,000 refugees will be accepted into the United States (the previous administration admitted 110,000 refugees).¹⁰
 - Nationals from 11 “high-risk” countries will undergo additional screening and scrutiny, including a 90-day review. The names of the countries have not been made public.¹¹¹²

Naturalization of Foreign-Born Soldiers in the U.S. Military

- In October 2017, the Department of Defense announced two changes to the policy creating a path to citizenship through serving in the armed forces.¹³
- One change is that all lawful permanent residents must go through a background check and receive Military Security Suitability Determination (MSSD)

⁸ Central American Minors Parole Program, 82 Fed. Reg. 38926 (Aug. 16, 2017).

⁹ See Status of the Central American Minors Program, U.S. Dept. of State (Nov. 8, 2017), <https://www.state.gov/r/pa/prs/ps/2017/11/275415.htm>.

¹⁰ U.S. Dept. of State, Report to the Congress, Proposed Refugee Admissions for Fiscal Year 2018 (Sept. 29, 2017), <https://www.state.gov/documents/organization/274857.pdf>

¹¹ Improved Security Procedures for Refugees Entering the United States, U.S. Dept. of Homeland Security (Oct. 24, 2017), <https://www.dhs.gov/news/2017/10/24/improved-security-procedures-refugees-entering-united-states>.

¹² DHS Announces Additional, Enhanced Security Procedures for Refugees Seeking Resettlement in the United States, U.S. Dept. of Homeland Security (Jan. 29, 2018), <https://www.dhs.gov/news/2018/01/29/dhs-announces-additional-enhanced-security-procedures-refugees-seeking-resettlement>

¹³ m Garamone, DOD Announces Policies Affecting Foreign Nationals Entering Military, U.S. Dept. of Defense (Oct. 13, 2017), <https://www.defense.gov/News/Article/Article/1342430/dod-announces-policies-affecting-foreign-nationals-entering-military/>.

and National Security Determination (NSD) – which can take up to a year.¹⁴

- Second, foreign-born recruits can only receive the certification necessary for naturalization (N-426) if they (1) go through all screening requirements and receive a favorable MSSD; (2) finish the compulsory military training; and (3) complete at least 180 consecutive days of active duty service (or one year of service in the Selected Reserve of the Ready Reserve.)¹⁵
- Previously certified individuals have been recalled to undergo background checks.¹⁶
- Currently, several lawsuits have put a hold on these policies – however, it is unclear whether they will be ultimately implemented and applied.¹⁷

The Growing Backlog of Immigration Benefits Applications, Increasing Processing Times, and Increasing Fees

- The time to process an application for many immigration benefits (including employment, travel, renewal of cards, among others) has increased. Some field offices have an average five months processing time while others have an average of one year. The overall average is 8.5 months.¹⁸
- There are many reasons for the backlog including the changes in policy which require screening for individuals who could previously be waived, additional interviews, and additional checks.¹⁹
- As of 2017, individuals who have a travel application pending must either cancel interim travel or file a new application – regardless of whether they have a legitimate visa. Those who are most affected by this

¹⁴ Office of the Undersecretary of Defense, Dept. of Defense, Memorandum, Military Service Suitability Determinations for Foreign Nationals Who Are Lawful Permanent Residents (Oct. 13, 2017), available at <https://www.defense.gov/Portals/1/Documents/pubs/Service-Suitability-Determinations-For-Foreign-Nationals.pdf>.

¹⁵ Office of the Undersecretary of Defense, Dept. of Defense, Memorandum, Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization (Oct. 13, 2017), available at <https://www.defense.gov/Portals/1/Documents/pubs/Naturalization-Honorable-Service-Certification.pdf>.

¹⁶ Id.

policy change are H-1B and L-1 employees who travel for work.

- USCIS now requires “bridge visas” for individuals transitioning from one nonimmigrant status to F-1 student status. People must file an application during that time – in case their nonimmigrant status expires during the F-1 processing time.
- Processing fees are likely to increase, as per the published regulatory agenda. Changes are likely to be announced in October 2018.

Decreasing Focus on Stakeholder Input and Customer Service

- The relationship between immigration professionals and agencies has shifted. It has become increasingly difficult to set-up meetings regarding policy shifts and to discuss the legal and real-world results of the administration’s changes.
- It is becoming more difficult to get information about specific cases.

Potential Changes

- There are several potential changes to immigration policies that may take place in the next year. As per the regulatory agenda, there may be changes to INA §212(e) Waivers, H-1B registration rules and a revised definition of both the specialty occupation and employer relationship, and changes for students in the U.S. on nonimmigrant visas.²⁰

¹⁷ See *Kirwa v. Department of Defense*, Civil Action No. 17-1793 (D.D.C.); *Nio v. Department of Homeland Security*, Civil Action No. 17-0998 (D.D.C.).

¹⁸ See generally USCIS Processing Time Information, U.S. Citizenship & Immigration Services, <https://egov.uscis.gov/cris/processTimesDisplayInit.do>. Historical processing time data is available at: <http://www.aila.org/infonet/processing-time-reports>.

¹⁹ Citizenship and Immigration Services Ombudsman, Annual Report 2017, (June 29, 2017), available at https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017_0.pdf

²⁰ See Office of Mgmt. & Budget, Exec. Office of the President, RIN 1653- AA76, Practical Training Reform, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1653-AA76>.

Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.



Contact Partner



Mohammad Ali Syed
Managing Partner
+ 1 202 503 1425
mohammad.syed@riaabg.com