FBT Immigration Update: Revised Executive Order and H-1B Premium Processing

Mar 08, 2017

Categories:

Publications

New Executive Order Temporarily Halting Entry of Foreign Nationals from Certain Countries

President Trump issued a new executive order ("EO") on Monday, March 6, that rescinded and replaced his embattled executive order of January 27, which had been halted by federal courts. The new EO goes into effect on March 16, and targets citizens of six countries: Iran, Syria, Somalia, Libya, Sudan and Yemen. Citizens of the affected countries that (1) are outside the United States on March 16, 2017; (2) did not have a valid visa on January 27, 2017; and (3) and do not have a valid visa on March 16, 2017 may not, for at least 90 days from the effective date of the EO, enter the United States. The EO specifically exempts several categories of persons who might otherwise be impacted by the travel ban, including all lawful permanent residents of the United States (green card holders) and persons in possession of advance parole documents or who have been paroled into the United States (which may frequently be the case for persons with pending green card applications). The EO also provides a mechanism for United States consular officers and Customs officers to make case-by-case exceptions to the travel ban. The EO describes some categories of persons who might qualify for a case-by-case exception, including persons previously lawfully admitted into the U.S. who are caught traveling abroad for work during the effective date of the travel ban, or persons with strong family ties to the U.S.

Iraq, which had been included in the January 27 EO, has been removed from the list of affected countries following public criticism that the EO punished Iraqi nationals who had assisted U.S. forces during prior and recent military operations in Iraq. The new EO directs immigration officials to "scrutinize" visa applications by Iraqi citizens, but otherwise imposes no new restrictions on Iraqi citizens.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

In addition to the travel ban, the EO halts all admission of refugees for 120 days, lowers the number of refugees that the U.S. will accept annually to 50,000 from 110,000, and orders the Department of State to review all reciprocity agreements with foreign countries to ensure foreign citizens are not being treated more favorably by the U.S. in terms of visa issuance than U.S. citizens are by foreign countries. The EO orders the Department of Homeland Security to publish data about foreign nationals arrested or charged with, or deported because of, committing criminal offenses related to terrorism or providing material support to terrorists. The EO also leaves open the possibility that travel and visa bans might be imposed on a more permanent basis against citizens whose countries refuse to sufficiently cooperate with U.S. immigration authorities in facilitating background checks and gathering information about visa applicants.

USCIS Will Temporarily Suspend H-1B Premium Processing Starting April 3, 2017

On March 3, 2017, USCIS announced it will suspend H-1B premium processing for a period that could last up to six months starting on April 3, 2017. As a result, employers that would like to utilize premium processing for currently pending H-1B petitions will need to submit their request before April 3, 2017. For H-1B petitions that employers were intending to file via premium processing over the next few months, they will need to expedite processing and file both the H-1B petition and premium processing request before the suspension takes effect. Due to the timing of the suspension, which coincides with the opening of the H-1B cap, all H-1B cap-subject petitions will be processed through regular processing until the suspension is lifted. USCIS also instituted a similar (although shorter) moratorium on premium processing of H-1B cap-subject petitions in April 2016, due to the high volume of H-1B petitions received during the 2016 cap season.

Through premium processing, which entails a $1,225 government filing fee, employers can request USCIS to adjudicate an H-1B petition within 15 calendar days. As regular processing times have lengthened considerably over the past few years, the use of

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

premium processing has increased significantly. According to USCIS, the suspension will permit USCIS to shift resources away from premium processing and focus on long-delayed H-1B petitions filed via regular processing. The two main USCIS service centers that adjudicate H-1B petitions are the California Service Center (CSC) and Vermont Service Center (VSC) and, per USCIS regular processing times, CSC is working on H-1B petitions filed on July 2, 2016 and VSC is working on H-1B petitions filed on April 11, 2016.

Long-delayed H-1B petitions can create complications for employers. For example, H-1B employees may encounter difficulties in renewing driver's licenses, making international travel plans, or renewing EADs for eligible spouses. The delays could take an H-1B employee close, if not beyond, the end of the automatic 240-day extension of work authorization that is activated after their H-1B expiration date has passed and while the H-1B petition is pending. Once the H-1B premium processing suspension is in place and for a period that may last up to six months, employers cannot utilize premium processing to avoid some of these issues.

For more information on the EO and how it may impact your business, please contact Matt Wagner or Dave Janklow in Frost Brown Todd's Labor and Employment Practice Group.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons