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ATTORNEYS AT LAW, A LAW CORPORATION

**MEMORANDUM**

TO: RCUH Human Resources Department  
FROM: Vaughn G.T. Cook  
Newton J. Chu  
DATE: January 31, 2017  
RE: Executive Order Dated January 27, 2017

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As requested, we are providing you with our assessment of and recommendations based on the Executive Order dated January 27, 2017.

On Friday, January 27, 2017, President Donald Trump issued an Executive Order (“EO”), entitled Protecting the Nation From Foreign Terrorist Entry Into the United States, which went into immediate effect upon signing. The EO suspends the entry into the United States of most immigrants and nonimmigrants from seven (7) countries for 90 days, and indefinitely suspends the entry of Syrian refugees.

The relevant portions of the EO are as follows:

**Section 3(c)**

[P]ursuant to section 212(f) of the INA [Immigration and Nationality Act], 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

**Section 5(c)**

Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP [U.S. Refugee Admissions Program] to ensure that admission of Syrian refugees is consistent with the national interest.

Section 212(f) of the INA, which was cited as the authority for issuing the EO provides as follows:

INA § 212(f) [8 U.S.C. § 1182(f)] Suspension of entry or imposition of restrictions by President.--

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

Currently, there are seven (7) countries designated under the provisions of INA § 217(a)(12) (8 U.S.C. § 1187(a)(12)).<sup>1</sup> These countries are: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Therefore, the order on its face applies only to nationals of those seven countries. The EO refers to individuals “from” the affected countries, which appears to include both individuals born in the affected countries and individuals who hold dual nationality with one of those countries. There have been mixed reports of how the EO will be applied (if at all) to dual citizens who hold the nationality of at least one of the affected seven countries.

It is currently unclear how the EO is being applied to U.S. lawful permanent residents (“LPR”) who are nationals of the affected seven countries. There have been multiple reports of returning LPRs being detained at airports. However, on January 29, 2017, the Department of Homeland Security (“DHS”) issued a summary of the EO which stated that LPR of the U.S. “will be allowed to board U.S. bound aircraft and will be assessed for exceptions at arrival ports of entry, as appropriate. The entry of these individuals, subject to national security checks, is in

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<sup>1</sup> INA § 217(a)(12) provides for an exception to the Visa Waiver Program for nationals of certain designated countries. This provision, which was enacted in 2015 and first implemented in January 2016, H.R. 2029, Consolidated Appropriations Act, 2016, P.L. 114-116 (2015), excludes from the Visa Waiver Program individuals who are nationals of designated countries or who had visited those countries on or after March 1, 2011, and *requires them to seek advance consular approval before traveling to the United States*. The EO references INA § 217(a)(12) solely for the list of countries designated and does not appear to affect the operation of the provision.

the national interest. Therefore, we expect swift entry for these individuals.” It is unclear how this summary will be put into practice.

### **RECOMMENDATIONS**

**Lawful Permanent Resident aliens from the affected countries who are physically present in the United States should be discouraged from traveling outside the country until U.S. Customs and Border Protection (“CBP”) provides explicit guidance on their ability to reenter.** LPRs who *must* travel should be aware that they will likely be referred to secondary inspection upon returning to the United States and subject to enhanced screening. Such screening may include questions about their religious beliefs and their political views, as well as requests for access to their social media accounts (e.g. Facebook or Twitter usernames and passwords).

If travel cannot be avoided, we suggest providing such individuals with a copy of a signed Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) of an immigration attorney, along with a legal opinion letter specifying the basis for reentry into the United States. LPR aliens should also be made aware that CBP officials COULD POSSIBLY encourage them to relinquish LPR status, and they should be advised not to sign any forms before consulting with an immigration attorney.

**Aliens from affected countries who are outside the United States and seek to enter (or reenter) on nonimmigrant visas are currently not permitted to enter and will likely be turned away at the airport.** See EO ¶ 3(c).

**Aliens from affected countries who are currently in the United States and have valid nonimmigrant visa status should *not* travel outside the country during their authorized periods of stay.** The EO dictates that individuals in this category will not be permitted to reenter, even if their visas have not expired. See EO ¶ 3(c). Such aliens should also be advised of the risks of overstaying their validity period.

**Aliens from affected countries with pending applications for adjustment of status who are currently in the United States and not maintaining nonimmigrant status should be discouraged from traveling outside the country.** While the EO does not explicitly address such individuals, the bar on entry would appear to apply to a pending adjustment applicant seeking to return to the United States based on an advance parole document.

**Aliens from affected countries who are applicants for either nonimmigrant or immigrant visas (i.e. those who are consular processing abroad) should be advised of the State Department’s recently issued guidance, which states:**

If you are a citizen of one of these countries, please do not schedule a visa appointment or pay any visa fees at this time. If you already have an appointment scheduled, please **DO NOT ATTEND**. You will not be permitted entry to the Embassy/Consulate.

Source, <https://travel.state.gov/content/visas/en/visit/visitor.html> (visited on January 31, 2017).

**Although not directly addressed in the EO, naturalized U.S. Citizens who are NOT dual citizens but are originally from affected countries MAY also be referred to secondary inspection upon returning to the United States and subject to enhanced screening.** Such screening may include questions about their religious beliefs and their political views, as well as requests for access to their social media accounts (e.g. Facebook or Twitter usernames and passwords).

This information is being provided as general recommendations. Each individual case is different. Should legal questions arise, we recommend that affected individuals contact their own immigration counsel for case-specific questions and advice.