

OCT 17 2017



**U.S. Customs and
Border Protection**

MEMORANDUM FOR: Deputy Executive Assistant Commissioner
Executive Director, Admissibility Passenger and Programs
Executive Director, Operations
Executive Director, (b) (7)(E)
Director, (b) (7)(E)
(b) (6), (b) (7)(C)
FROM: Executive Assistant Commissioner
Office of Field Operations

SUBJECT: Guidance on Implementation of Waivers for Presidential
Proclamation, "Enhancing Vetting Capabilities and Processes for
Detecting Attempted Entry Into the United States by Terrorists or
other Public Safety Threats"

Pursuant to Presidential Proclamation, "*Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or other Public Safety Threats*," there will be a suspension of entry of certain foreign nationals into the United States, under section 212(f) and 215(a) of the Immigration and Nationality Act (INA), 8 United States Code (U.S.C.) 1182(f) and 1185(a), and 3 U.S.C. 301, whose entry would be detrimental to the interests of the United States.

The Proclamation was issued September 24, 2017. On October 17, 2017, a federal district court judge in Hawaii issued a temporary restraining order prohibiting implementation of those sections of the Proclamation pertaining to nationals of Iran, Libya, Syria, Yemen, Somalia, and Chad. The court prohibited enforcement of the Proclamation against nationals of those countries regardless of whether those nationals have a credible claim of a bona fide relationship with a U.S. person or entity.

The sections of the Proclamation relating to nationals of North Korea and Venezuela were not included in the court's temporary restraining order. As a result, the portions of the Proclamation which will take effect, as described below, **only** address certain nationals of **North Korea and Venezuela** who are physically outside the United States and do not possess valid documents for entry to the United States on the Proclamation's effective date. **This guidance supersedes all previously issued guidance regarding the scope of the Proclamation.**

The authority to approve waivers, consistent with Section 3(c) of the Proclamation was delegated by the Commissioner on September 24, 2017. This guidance is provided consistent with that delegation.

Aliens who may be subject to the Proclamation will be processed consistent with the Muster (attached) issued on October 17, 2017. No immigrant or non-immigrant visa issued before the effective date of this Proclamation will be revoked solely pursuant to the Proclamation. Visas that were revoked or cancelled solely as a result of the enforcement of EO 13769 may not be considered as a basis for inadmissibility.

The Restrictions On Entry Do Not Apply To:

- (a) Lawful permanent residents;
- (b) Any foreign national who was within scope of the Proclamation and was admitted to or paroled into the United States on or after October 17, 2017 for certain aliens who are from North Korea and Venezuela. To the extent that this guidance changes based on future court orders, subsequent guidance will be issued;
- (c) Any foreign national who has a document other than a visa, valid on the applicable effective date under this proclamation, or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document;
- (d) Any dual national of North Korea or Venezuela when the individual is traveling on a passport issued by a country not currently subject to entry restrictions;
- (e) Alien traveling on or seeking entry into the following classifications: A-1, A-2, NATO, C-2 visa for travel to the United Nations, G-1, G-2, G-3, and G-4; or,
- (f) Individuals granted asylum, returning refugees, or any individual who has been granted withholding of removal, advanced parole, or protection under the Convention Against Torture.

Aliens Referred for Waiver Consideration:

When field management recommends an alien for a waiver of the restrictions on entry of the Proclamation the following steps should be taken to determine whether a person may be in scope:

Due to court order, the Proclamation is **not** effective for any nationals of **Chad, Iran, Libya, Syria, Yemen, or Somalia**.

For nationals of **Venezuela and North Korea** the Proclamation is effective for the categories listed below on **October 18, 2017 at 12:01AM EDT**.

Country Name	Immigrant	Non-Immigrant Categories
North Korea	Yes	All
Venezuela	No	Individuals identified by DOS

~~Law Enforcement Sensitive~~
~~For Official Use Only~~

1. Ensure that (b) (7)(E) is completed to include (b) (7)(E) and the person's identity has been affirmatively established.
2. Ensure that the field has demonstrated denying entry during the suspension period would: 1) cause the foreign national undue hardship; 2) that his or her entry would not pose a threat to national security or public safety; and 3) be in the national interest. Case by case waivers may be appropriate in the following circumstances:
 - (A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date under section 6 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;
 - (B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date under section 6 of this proclamation for work, study, or other lawful activity;
 - (C) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;
 - (D) the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;
 - (E) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;
 - (F) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the foreign national can document that he or she has provided faithful and valuable service to the United States Government;
 - (G) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 et seq., traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;
 - (H) the foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada;

~~Law Enforcement Sensitive~~
~~For Official Use Only~~

- (I) the foreign national is traveling as a United States Government-sponsored exchange visitor
 - (J) the foreign national is traveling to the United States for legitimate law enforcement or national security purposes at the request of a United States Government agency.
3. Consult with counsel to ensure that the alien is, in fact in scope and is not subject to any applicable court order.
 4. Direct the port to complete inspection by providing a written confirmation, copying (b) (7)(E) of each step of this process for the waiver approval. The port should be directed that if a 212(f) waiver of the travel restriction is granted, then the alien should be processed for entry or admission under the normal processes and procedures, including any appropriate I-193 waiver or parole.

To the extent that an alien is not granted a 212(f) waiver, the port should be directed to process the alien as appropriate.

~~Law Enforcement Sensitive~~
~~For Official Use Only~~