

The Impact of the Executive Order Travel Ban on Physicians and Patients

By Greg Siskind, Siskind Susser PC

On January 27, 2017, President Trump signed an Executive Order that, among other things, barred the entry of non-immigrants and immigrants from seven countries—Iran, Iraq, Libya, Syria, Somalia, Sudan, and Yemen. The order also covers refugee admissions, a subject not covered in this article.

The travel ban has several key components:

- It suspends the issuance of visas and other immigration benefits for people from the seven countries.
- It suspends entry to the U.S. of immigrant or non-immigrant persons from the seven countries for 90 days.
- It demands certain information from all foreign governments within 60 days.
- Citizens of the countries that don't comply will be banned from entering the U.S.
- The order leaves open the possibility for case-by-case exceptions for people from banned countries.
- Mandatory interviews at consulates will now be required.

Since the Executive Order was released, there have been numerous developments and contradictory information. The following are key developments since last Friday's release of the order:

- After initially applying the order to green card holders, the Department of Homeland Security (DHS) has now officially listed green card holders as an exempt category; however, individuals with approved immigrant visas who had not yet entered the U.S. are still affected.
- The State Department has announced that it has provisionally revoked the non-immigrant and immigrant visas of all individuals from the affected countries.
- The State Department and Customs and Border Protection have issued contradictory information but now appear to agree that dual nationals are not affected as long as one of their nationalities is not on the affected list and the individual travels with a passport from the non-banned country. Also, Canadian Landed Immigrants are now being permitted to travel to the U.S. with valid visas.
- Several United States Citizenship and Immigration Services (USCIS) officials have unofficially confirmed that the agency has suspended all benefits adjudications except citizenship applications for nationals of the affected countries. The agency is apparently accepting applications and, on an office by office basis, interviewing individuals. But final decisions on applications are being held in abeyance.
- Contradictory information coming out advises delaying travel until official notice is provided by DHS and Department of State on the policy.

The Executive Order will have many negative consequences, particularly as it affects physicians. Per the Educational Commission on Foreign Medical Graduates' (ECFMG's) latest annual report, Iran was the fourth highest recipient of ECFMG certificates which are necessary to enter U.S. graduate medical training programs. Syria was also in the top ten.^[1] More than 8,400 doctors working in the U.S. are from Syria and Iran, according to the American Medical Association.^[2]

While the ban is for 90 days and it is still unclear whether it will be extended, hospitals could choose to not select nationals from ban countries in the National Residency Match Program which takes place in March. This could potentially raise nationality discrimination questions as well if hospitals choose to bypass these physicians.

Doctors from ban countries who are selected could face difficulty getting a visa. However, details are starting to emerge regarding the process for applying for case-by-case waivers and it is possible physicians will be prioritized for such requests. For doctors in the U.S. in medical school or on work visas, USCIS' suspension of processing applications could be problematic. For example, a medical student on an F-1 visa who is entitled to get a one-year employment authorization document upon graduation may not be able to get the necessary work document if USCIS refuses to complete work on the application.

Doctors who are completing residency training may also encounter problems. More than 80% of doctors in training use J-1 visas. To remain in the U.S., doctors need to secure a waiver of the requirement to return to their home countries for two years. After securing a waiver, the doctor must then receive a change of status to H-1B status. Both the waiver and the change of status require USCIS approval, neither of which are apparently possible now.

The ban may also have an impact on physician recruiting more broadly. Atul Grover, the executive vice president of the Association of American Medical Colleges told Scientific American "The majority of our foreign doctors come from India and Pakistan, and while they're not on the list I think when the environment feels this uncertain and this inhospitable, they'll go to Canada and the U.K."^[3]

Doctors in the U.S. from the ban countries are avoiding travel, which could impact career development, particularly doctors working in academic medical centers who travel to international conferences. Doctors from countries not on the list are also nervous about traveling. The Executive Order leaves open the possibility of expanding the list to other countries and, as was seen with the initial roll out of the ban, new countries can be added without notice. Doctors from majority-Muslim countries are being warned by immigration lawyers to limit travel.

Hospitals that receive patients from abroad could be impacted. For example, St. Jude Children's Research Hospital in Memphis has strong affiliations with institutions in Amman and Beirut. Its founder was a Lebanese-American and its major fundraising arm is the American Lebanese Syrian Associated Charities (ALSAC). Other hospitals around the U.S. have long focused on treating patients from abroad and an estimated 300,000 people come to the U.S. each year for treatment.^[4]

International medical conferences destined for the U.S. may also feel the impact. Already, many academics from non-affected countries are calling for boycotts of conferences in the United States.^[5]

The ban on travel from these countries has created enormous controversy and widespread condemnation from several corporations, institutions, and organizations. The American Medical Association issued a detailed letter expressing concern about how the roll out of the order will affect doctors.^[6] The American Hospital Association noted "President Trump's executive order on immigration could adversely impact patient care, education and research."^[7] The Association of American Medical Colleges also issued a statement and said "We are deeply concerned that

the Jan. 27 executive order will disrupt education and research and have a damaging long-term impact on patients and health care." [8]

Finally, whether the ban remains in effect will most likely be decided by the courts. There are at least 12 lawsuits pending in courts around the country challenging the travel ban and several more are being prepared. [9] There have been at least a half-dozen preliminary decisions reached in filed cases and all have gone against the government. In each published decision, the judge found that the plaintiffs showed they were likely to succeed on the merits.

The plaintiffs are arguing the government is violating: the Establishment Clause of the Constitution; the Equal Protection Clause; the Immigration and Nationality Act; the Fifth Amendment's Due Process requirements; and the Religious Freedom Restoration Act.

The first decision reached was in the Eastern District of New York which issued a nationwide order barring the government from denying admission to individuals with valid visas who had landed at airports over the weekend. By Saturday, most airlines were denying boarding for passengers, however. Another case in Boston barred the government from implementing the order at Logan Airport and passengers are now being permitted to board Boston-bound flights if they have a valid visa. The American Civil Liberties Union is seeking a more extensive order which would require the government to resume issuing visas and groups are also considering filing suits to require USCIS to adjudicate benefits again.

[1] See <http://www.ecfm.org/about/annual-report.html>.

[2] <https://www.scientificamerican.com/article/trump-immigration-ban-can-worsen-u-s-doctor-shortage-hurt-hospitals/>.

[3] <https://www.scientificamerican.com/article/trump-immigration-ban-can-worsen-u-s-doctor-shortage-hurt-hospitals/>.

[4] See <http://patientsbeyondborders.com/united-states#sthash.Elv49qZ0.dpuf>.

[5] <http://thehill.com/blogs/blog-briefing-room/news/317620-scientists-boycott-journals-conferences-in-protest-of-trump>.

[6] <https://www.ama-assn.org/ama-urges-trump-administration-clarify-immigration-executive-order>.

[7] <http://news.aha.org/article/170130-aha-expresses-concern-over-immigration-order>.

[8] <https://news.aamc.org/press-releases/article/executive-order-immigration-013017/>.

[9] Links to each case are *available at* www.clearinghouse.net/results.php?searchSpecialCollection=44.