



—2017 UT SYSTEM— LEGAL CONFERENCE

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Session 3a

Immigration: Hot Topics

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Immigration: Hot Topics

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Agencies and Acronyms

Department of Homeland Security (DHS)

- **Customs and Border Protection (CBP):** responsible for immigration inspection and enforcement at airports, ports of entry and the border
- **Immigration and Customs Enforcement (ICE):** responsible for immigration enforcement within the U.S., including detention and removal, worksite enforcement (I-9) and oversight of F-1 student visas
- **U.S. Citizenship and Immigration Services (USCIS):** administers applications for immigration benefits, including work visa petitions and applications for permanent residence and citizenship

Agencies and Acronyms

Department of State (DOS)

- **U.S. Embassies and Consulates** process visa applications for foreign nationals seeking to travel to the U.S., including tourists, business visitors, students, exchange visitors and temporary workers
- **DOS** also administers the J-1 exchange visitor program, commonly used by universities for researchers and other scholars, and by academic medicine for physicians in training (among others)

Department of Labor (DOL)

- **Employment & Training Administration (ETA) Office of Foreign Labor Certification (OFLC)**: administers part of the H-1B visa program, permanent labor certification (for green card), and issues prevailing wage determinations for them
- **Wage and Hour Division (WHD)**: enforcement of wage requirements for H-1B and labor certification cases

Travel Ban 3.0

On September 24, 2017, a new set of indefinite travel restrictions replaced the temporary bans from the earlier executive orders.

- Revised list of designated countries: Sudan was removed. Chad and North Korea were added. Venezuela added but only affects specific government officials and their families.
- Restrictions vary by country and are much more specific
- Exceptions include:
 - Lawful permanent residents (“green card” holders)
 - Individuals in U.S. on effective date
 - Individuals with valid visas
 - Dual nationals with passport from non-designated country
- Waivers available, but real-world implementation TBD

Travel Ban 3.0

Country	Entry Restrictions
Chad	No immigrants or nonimmigrants with B visas (tourists and business visitors)
Iran	No immigrants or nonimmigrants *Exception: students and exchange visitors (F, M and J visas)
Libya	No immigrants or nonimmigrants with B visas
North Korea	No immigrants or nonimmigrants
Somalia	No immigrants Enhanced screening of all nonimmigrants
Syria	No immigrants or nonimmigrants
Venezuela	No B visas for certain government officials and their families
Yemen	No immigrants or nonimmigrants with B visas

Consular Complications

Alongside the more publicized travel ban, consulates have quietly implemented several policy changes that may impede visa issuance:

- Personal interviews for all applicants, including renewals
- Additional vetting questions, social media scrutiny
- Stricter requirements for F-1 students to prove their ties to home country, that they will not immigrate, etc.
- Stricter scrutiny of “inconsistent conduct” (e.g. marriage, unauthorized work, enrolling in school) within 90 days of admission may result in presumption of misrepresentation
- Cumulative impact will be to delay visa issuance and increase denials at consulates, which are largely immune to legal challenges even if unsupported by law or arbitrary and capricious

H-1B on the Hot Seat

H-1B visas: most common nonimmigrant visa for skilled work. Available for occupations that require at least a bachelor's degree or greater in a related field. H-1Bs can simultaneously seek green card.

Extensive statutory and regulatory provisions govern, so less amenable to major change by executive order alone

“Buy American, Hire American” executive order directed agencies to:

- Ensure the integrity of the immigration system in order to “Hire American”
- Propose new rules and issue guidance to protect U.S. workers
- Suggest reforms to ensure that H-1B visas are awarded to the most-skilled or highest-paid individuals

H-1B on the Hot Seat

Agency responses:

DOL

- Increase coordination with other agencies to more aggressively investigate H-1B program violations

USCIS

- Significantly increased volume of site visits for compliance reviews of approved H-1Bs
- 50% increase in requests for additional evidence, particularly targeting wage issues in entry-level positions

Other Trends

Other trends we will likely see:

- Increased audits of I-9 forms by ICE, seeking to confirm employers are verifying and re-verifying employment authorization correctly
- Increased scrutiny by DOL and USCIS relating to any apparent inconsistencies between H-1B and permanent labor certification applications relating to the same individual/position
- Slower processing times all around, and more requests for Congressional assistance with prolonged delays
- Increased difficulties with applications to change status, particularly those involving B-2 visitors changing to F-1 or J-1