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Acting Citizenship and Immigration Services Ombudsman Gary N. Merson began the listening session by explaining the office's statutory mission: to assist individuals and employers experiencing problems with U.S. Citizenship and Immigration

AILA Doc. No. 17020230. (Posted 3/9/17)

Services (USCIS). The Ombudsman's Office is an independent Department of Homeland Security (DHS) Headquarters component and is not part of USCIS. The Ombudsman's Office does not have jurisdiction over issues related to Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP). As a part of its regular outreach activities, the office conducts monthly stakeholder engagement sessions.

USCIS confirmed that implementation of Executive Order 13,769, titled "Protecting the Nation From Foreign Terrorist Entry Into the United States," was halted in accordance with a federal court Temporary Restraining Order (TRO) and that it has restarted processing of affected petitions and applications. *Washington v. Trump*, ___ F.3d ___, 2017 WL 526497 (9th Cir. 2017). The Ombudsman does not comment on ongoing litigation.

The listening session provided a forum for stakeholders to raise issues relating to USCIS implementation of the Executive Order should the TRO be lifted. The Ombudsman's Office continues its mission to handle case inquiries and review USCIS processes. The Ombudsman's Office does not provide legal advice. Acting Ombudsman Merson provided contact information for the DHS Office of Inspector General (1-800-323-8603 and www.oig.dhs.gov (<http://www.oig.dhs.gov/>)) and the DHS Office of Civil Rights and Civil Liberties (1-866-844-8360 and CRCL@dhs.gov (<mailto:CRCL@dhs.gov>)). Media inquiries should be directed to the DHS Office of Public Affairs (mediainquiry@dhs.gov (<mailto:mediainquiry@dhs.gov>)). Callers were able to participate anonymously by providing their location only.

1) Is USCIS processing re-entry permits for lawful permanent residents from the seven countries named in the Executive Order? Will re-entry permits be honored by CBP for individuals who have been outside the country?

Ombudsman: In accordance with the judge's ruling, DHS has suspended any and all actions implementing the affected sections of the Executive Order. USCIS is continuing to process applications and petitions in accordance with standard policy

and procedure. We will pose these questions to DHS/USCIS in the event the TRO is lifted.

2) A Yemeni national with two U.S. citizen children, employed by the University of Iowa, has an adjustment of status application pending since April 2016, and his Employment Authorization Document (EAD) is about to expire (May 2017). Will the work permit be processed? If the TRO is lifted, will pending applications be processed?

Ombudsman: Under the TRO, USCIS is continuing to process applications and petitions in accordance with standard policy and procedure. Individuals and employers may contact the Ombudsman's Office for case assistance at www.dhs.gov/CISOmbudsman (<http://www.dhs.gov/CISOmbudsman>) using the online intake form. Individuals should first try first to resolve the issues with USCIS through the agency's customer service channels and wait 60 days past processing time before submitting requests for case assistance, absent exigent circumstances.

3) Would an individual born in Iran, who resided in Armenia for 30 years (since the age of 6), and in the United States for the past 15 years be deemed to be an Iranian citizen for purposes of implementation of the Executive Order, despite limited ties to Iran?

Ombudsman: We will pose this question to DHS/USCIS.

4) A caller inquired about a sibling who recently arrived in the United States on an immigrant visa. The caller asked whether there is any hope for him to get his green card? How long will it take to receive his Form I-551, permanent resident card?

Ombudsman: There are sometimes mailing issues, but there should not be any processing delays due to the Executive Order. The caller was instructed to wait 90 days, then contact USCIS for assistance. Then if the permanent resident card still has not been received, contact the Ombudsman's Office for help.

5) Does the Executive Order and the TRO apply to all USCIS cases outside the United States, for example at consulates?

Ombudsman: Visas are issued by the Department of State at U.S.

consulates abroad; USCIS adjudicates applications and petitions. USCIS is continuing to process applications and petitions in accordance with standard policy and procedure while the TRO is in place.

6) An applicant inquired about her case, which has been under administrative processing for seven months, with no information despite contacting the U.S. consulate multiple times.

Ombudsman: While immigration processing is moving forward since the TRO has been issued, regular background checks are still being conducted. For inquiries related to visa issuance, contact the Department of State.

7) A caller who works for a university inquired about USCIS adjudication of optional practical training employment authorization applications for Iranian nationals.

Ombudsman: We will pose this question to DHS/USCIS.

8) A caller from a defense contracting company inquired about an employee who is from one of the seven countries and awaiting processing of Form I-90, Application to Replace Permanent Resident Card. The application has been pending for four months, which is currently within the processing time frame. The individual is temporarily out of the country. Would USCIS expedite the I-90 application if the TRO is lifted and he is stranded outside of the country, essentially becoming stateless?

Ombudsman: Individuals and employers should look to the USCIS expedite criteria, which is available at <https://www.uscis.gov/forms/expedite-criteria> (<https://www.uscis.gov/forms/expedite-criteria>). The Ombudsman's Office also uses these criteria in determining whether to provide expedited assistance.

9) If the TRO is lifted what happens to pending cases? Was processing halted prior to issuance of the TRO?

Ombudsman: Prior to issuance of the TRO, USCIS issued guidance, dated February 2, 2017, that was posted to the USCIS website. The guidance stated that USCIS would move forward with processing of applications and petitions that do not immediately confer travel authorization.

10) A caller commented that there seems to be 12-month processing and security check delays for Iranian nationals, and asked whether processing is taking longer as a result of the Executive Order, even with the TRO?

Ombudsman: It would be premature at this time to comment on whether the Executive Order affected processing times.

11) Will USCIS accept expedited applications for optional practical training from students from the seven countries? How will USCIS handle all other benefits and change of status process for students in F-1 status, should the TRO be lifted?

Ombudsman: We will pose these questions to DHS/USCIS.

12) If the TRO is lifted, how will a dual citizen of another country (e.g. Canada) and one of the seven countries be treated? What if an individual renounces citizenship from one of the seven countries? What impact will this have on entering the United States?

Ombudsman: CBP announced that the admissibility determination will be based upon the passport presented by the applicant and whether it had a valid visa. Information is available online on renouncing citizenship from foreign countries; it may not be an easy process. We will pose these questions to DHS/USCIS.

13) Individuals filing for a waiver often have to leave the country and obtain the visa abroad before returning to the United States, but then they may be barred entry if they are from one of the seven countries. Is that process going to remain in place?

Ombudsman: We will pose to DHS/USCIS the question of how waiver processing will be handled if the TRO is lifted.

14) The caller began by commenting that the Executive Order rollout has caused extreme chaos and anxiety. The caller then asked whether extension petitions will be adjudicated for H-1B visa holders from one of the seven countries. If not, what happens to the individual's I-94 Arrival/Departure Record?

Ombudsman: We will pose these questions to DHS/USCIS.

15) The caller asked how USCIS is implementing the Executive Order for those currently in the United States. Why would the Executive Order apply if entry is not an issue?

Ombudsman: We will pose this question to DHS/USCIS.

16) Regarding adjustment of status for refugees already in the United States, will these applications be accepted and adjudicated?

Ombudsman: We will pose this question to DHS/USCIS.

17) With benefits applications, presumably USCIS will not process advance parole, but what about applications for EADs, assuming the TRO is lifted.

Ombudsman: Callers are directed to the USCIS guidance issued prior to the TRO; we will pose this question to DHS/USCIS.

18) How does the TRO affect fiancé/fiancée visas and the overseas visa processing for these visas?

Ombudsman: With the TRO in place, they will be processed according to standard policy and procedure.

19) A caller commented that the Department of State has not been re-scheduling appointments that were canceled after the issuance of the Executive Order.

Ombudsman: Our jurisdiction is limited to USCIS. Given how much has changed so quickly, please contact the State Department again regarding appointment scheduling.

20) Is there any restriction on domestic travel?

Ombudsman: There is no restriction on domestic travel in the Executive Order or otherwise.

21) My green card application has been pending for some time, and now my EAD will expire in May. Can I approach your office for help?

Ombudsman: In the Ombudsman's Office, we consider loss of employment to be a situation that warrants expedited processing. You may seek assistance from the Ombudsman's Office by completing the online form (www.dhs.gov/CISOmbudsman (<http://www.dhs.gov/CISOmbudsman>)).

Please note that there is a new rule, effective January 17, 2017, AILA Doc. No. 17020230. (Posted 3/9/17)

under which certain timely filed applications for renewal of employment authorization will be extended for 180 days. See USCIS Website, “Automatic Employment Authorization Document (EAD) Extension,” <https://www.uscis.gov/working-united-states/automatic-employment-authorization-document-ead-extension> (<https://www.uscis.gov/working-united-states/automatic-employment-authorization-document-ead-extension>).

22) If the Executive Order is reinstated, will USCIS adjudicate applications to renew employment authorization, change of status, and other benefits that do not involve entry?

Ombudsman: We will pose this question to DHS/USCIS.

23) A caller inquired about a Syrian refugee family that has been in the United States for four months. Will the wife’s father and mother, who were cleared for travel, now be able to come to the United States?

Ombudsman: With the TRO currently in place, immigration processing and inspection of travelers has resumed in accordance with standard policy and procedure.

24) If the TRO is lifted, will refugees who have already been resettled in the United States but are traveling overseas with U.S. travel documents be allowed to reenter?

Ombudsman: We will pose this question to DHS/USCIS.

25) Last year, the Administration announced that Syrians could utilize the Priority 3 refugee resettlement program. If the TRO is lifted, and refugees have already been approved, can they come in after the 90-day period that suspends refugee processing, or will they be denied since the Executive Order contemplates an indefinite halt to Syrian refugee processing?

Ombudsman: We will pose this question to DHS/USCIS.

26) One caller inquired about processing delays for individuals from Iran.

Ombudsman: At this time, we are unable to comment on processing times by country of nationality.

27) Is the USCIS guidance from before the TRO still available online?

Ombudsman: It was previously posted to the USCIS website, but as of yesterday, it was replaced with guidance based on the TRO.

28) Will USCIS solicit comments from the public should the TRO be lifted?

Ombudsman: We cannot speak for USCIS, but the Ombudsman's Office will continue to engage with stakeholders and relay questions to the agency and share answers as we receive them.

29) A caller from a legal non-profit inquired whether, if the TRO is lifted, South Sudan will be included under the Executive Order, and whether the CAM program will continue.

Ombudsman: We will pose these questions to DHS/USCIS.

30) Do you know how many people have entered the United States under the TRO who would have been processed through USCIS?

Ombudsman: The number of individuals entering the United States is a question for CBP or the DHS Office of Immigration Statistics, and the number of applications processed by USCIS would be a subset of this statistic. The Ombudsman's Office does not have this data.

31) Does USCIS have current data on the number of visa holders from those seven countries who are in the United States?

Ombudsman: The Ombudsman's Office does not have this data.

32) In reference to the exceptions listed in the Executive Order, how does the waiver process work for individuals whose admission is in the national interest? What is the process to request a public interest or national security waiver?

Ombudsman: We will pose these questions to DHS/USCIS.

33) Will humanitarian parole and Requests for Review of refugee application denials continue to be adjudicated if the TRO is lifted?

Ombudsman: We will pose this question to DHS/USCIS.

34) A caller inquired about seeking assistance from the Ombudsman's Office for employment authorization applications.

Ombudsman: A new regulation, effective January 17, 2017, includes a provision for automatic extension of certain EADs for 180 days, if the renewal application is timely filed. For initial requests, we accept inquiries at 75 days after filing.

35) A caller asked whether an individual on a K visa, if the Executive Order is in place, may adjust status to permanent residence. Will USCIS be providing information about K visa processing under the order or how long people have to depart the United States?

Ombudsman: We will pose this question to DHS/USCIS.

36) If the TRO is lifted, if a medical residency program were to match with someone on a J-research visa, could the individual change status to a J-clinical visa without leaving the country?

Ombudsman: We will pose this question to DHS/USCIS.

37) If a person has already filed a petition for a spouse in one of the seven countries, after the TRO is lifted, will the petitioner have to restart the process? What would be required?

Ombudsman: Prior to issuance of TRO, USCIS said it would continue to move forward with petitions that do not confer travel authorization.

Acting Ombudsman Merson closed the call by thanking stakeholders for their participation. The Ombudsman's Office will compile the questions raised and submit them to the agency, and share the feedback when we receive it.

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