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Subject: (SBU) NEW EXECUTIVE ORDER 13780: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES - GUIDANCE TO VISA-ISSUING POSTS

1. (SBU) Summary: On March 6, 2017, the President issued a new Executive Order, E.O. 13780, (new E.O.), entitled Protecting the Nation from Foreign Terrorist Entry into the United States. The new E.O. contains provisions that will impact visa adjudication and issuance procedures beginning on the new E.O.'s effective date, 12:01 a.m. Eastern Daylight Time (EDT) March 16, 2017. The new E.O. rescinds its predecessor, E.O. 13769 ("old E.O."). We are working with the Department of Justice to determine when and how we may proceed with implementing the new E.O., in light of pending litigation. All visa issuing posts should carefully review and prepare to implement this guidance effective 12:01 a.m. EDT March 16, 2017. Although posts should be prepared to implement this guidance as of that date and time, do not begin implementation until you receive authorization to do so; such authorization will be sent in a subsequent cable. Any modifications to this guidance, due to litigation or other reasons, will also be sent in a subsequent cable. Public talking points and additional operational resources will be updated and available on CA Web. The full text of the E.O. is available here.

2. (SBU) Suspension of entry into the United States for aliens from certain countries: The new E.O. exercises the President's authority under sections 212(f) and 215(a)(1) of the Immigration and Nationality Act (INA) to suspend entry into the United States of certain aliens from the following countries for 90 days as of the new E.O.'s effective date, 12:01 a.m. EDT March 16, 2017: Iran, Libya, Somalia, Sudan, Syria, and Yemen. Additionally, posts must complete required additional visa screening steps for nationals of Iraq. Guidance will be sent septel outlining the new issuance procedures for Iraqi nationals. The suspension of entry in the new E.O. does not apply to individuals who are inside the United States on the effective date of the new E.O. (i.e., 12:01 a.m. EDT March 16, 2017), who have a valid visa on the effective date of the new E.O. or who had a valid visa at 5:00 p.m. EDT January 27, 2017, even after their visas expire or they leave the United States. The suspension of entry also does not apply to other categories of individuals, as detailed below. The new E.O. states that no visas will be revoked based on the new E.O. New applicants will be reviewed on a case-by-case basis, with consular officers taking into account the scope and exception provisions in the new E.O. and the applicant's qualification for a discretionary waiver. End summary.

Nonimmigrant Visas

3. (SBU) GSS vendors and posts should continue scheduling NIV applicants of the six indicated nationalities. The new E.O. provides for a number of exemptions from its scope and includes waiver provisions, and whether an applicant is exempt or qualified for a waiver can only be determined on a case-by-case basis during the course of a visa interview.

4. (SBU) After the Department sends the cable instructing posts to begin implementing the new E.O., NIV applicants presenting passports from any of the six countries included in the new E.O. should be interviewed and adjudicated following these procedures:

- a.) Officers should first determine whether the applicant is eligible for a visa under the INA, without regard to the new E.O. If the applicant is not eligible, the appropriate refusal code should be entered into the Consular Lookout and Support System (CLASS). See 9 FAM 303.3-4(A). Posts must follow existing FAM guidance in 9 FAM 304.2 to determine whether an SAO must be submitted. Applicants found ineligible for grounds unrelated to the new E.O. should be refused according to standard procedures.
- b.) If an applicant is found otherwise eligible for the visa, the consular officer will need to determine during the interview whether the applicant is exempt from the new E.O.'s suspension of entry provision (see paragraphs 8-9), and if not, whether the individual qualifies for a waiver (see paragraphs 10-14).
- c.) Applicants who are not exempt from the new E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused by entering the code "EO17" into the Consular Lookout and Support System (CLASS). As coordinated with DHS, this code represents a Section 212(f) denial under the new E.O. Immigrant Visas

5. (SBU) The National Visa Center (NVC) will continue to schedule immigrant visa (IV) appointments for all categories and all nationalities. However, NVC will not send any V93 cases to posts. After receiving cable instructions to begin implementing the new E.O., posts should halt the issuance of V93 foils immediately and cancel any scheduled V93 appointments (please see refugee paragraph below). Posts should continue to interview all other IV applicants presenting passports from any of the six countries included in the new E.O., following these procedures:

- a.) Officers should first determine whether the applicant is eligible for the visa, without regard to the new E.O. If the applicant is not eligible, the application should be refused according to standard procedures.
- b.) If an applicant is found otherwise eligible for the visa, the consular officer will need to determine during the interview whether the applicant is exempt from the new E.O.'s suspension of entry provision (see paragraphs 8-9), and if not, whether the applicant qualifies for a waiver (paragraphs 10-14).
- c.) Immigrant visa applicants who are not exempt from the new E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused 221(g) and the consular officer should request an advisory opinion from VO/L/A. Diversity Visas

6. (SBU) For Diversity Visa (DV) applicants already scheduled for interviews falling after the new E.O. effective date of 12:01 a.m. EDT March 16, 2017, post should interview the applicants. After receiving cable instructions to implement the new E.O., posts should interview applicants following these procedures:

- a.) Officers should first determine whether the applicant is eligible for the DV, without regard to the new E.O. If the applicant is not eligible, the application should be refused according to standard

procedures.

b.) If an applicant is found otherwise eligible, the consular officer will need to determine during the interview whether the applicant is exempt from the new E.O.'s suspension of entry provision (see paragraphs 8-9), and if not, whether the applicant qualifies for a waiver (paragraphs 10-14). Based on the Department's experience with the DV program, we anticipate that very few DV applicants are likely to be exempt from the E.O.'s suspension of entry or to qualify for a waiver. If a scheduled applicant is not exempt and does not qualify for a waiver, please request an advisory opinion from VO/L/A.

7. (SBU) The Kentucky Consular Center (KCC) will schedule additional DV appointments on dates after the period of suspension ends for cases in which the principal applicant is from one of these six nationalities. If a derivative applicant appears qualified but is subject to the new E.O., KCC will enter a case note in the DS-260 to alert post. If post becomes aware of a DV case that has not been scheduled from one of these six countries due to this guidance, but which may not be covered by the new E.O., or may qualify for a waiver, coordinate with KCC to schedule the case for an interview (if the case is current) and a determination by a consular officer of whether or not the E.O. applies.

Individuals Who Are Exempt from the New E.O.'s Suspension of Entry

8. (SBU) The new E.O.'s suspension of entry does not apply to the following:

- a.) Any applicant who was in the United States on the new E.O.'s effective date of March 16, 2017;
- b.) Any applicant who had a valid visa at 5:00 p.m. EST on January 27, 2017, the day the old E.O. 13769 was signed;
- c.) Any applicant who had a valid visa on the new E.O.'s effective date of March 16, 2017.
- d.) Any lawful permanent resident of the United States;
- e.) Any applicant who is admitted to or paroled into the United States on or after the effective date of the new E.O.;
- f.) Any applicant who has a document other than a visa, valid on the effective date of the new E.O. or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;
- g.) Any dual national of a country designated under the order when traveling on a passport issued by a non-designated country;
- h.) Any applicant traveling on an A-1, A-2, NATO-1 through NATO-6 visa, C-2 for travel to the United Nations, C-3, G-1, G-2, G-3, or G-4 visa, or a diplomatic-type visa of any classification; and
- i.) Any applicant who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

9. (SBU) When issuing an IV or an NIV to an individual who falls into one of the categories listed in paragraph 8, the visa should be annotated to state, "Exempt from E.O. 13780." Interviewing officers must also enter a clear case note stating the specific reason why the applicant is exempt from the new E.O.'s suspension of entry.

#### Qualification for a Waiver and Process

10. (SBU) The new E.O. permits consular officers to grant waivers and authorize the issuance of a visa on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that:

- a.) Denying entry during the 90-day suspension would cause undue hardship;
- b.) His or her entry would not pose a threat to national security; and
- c.) His or her entry would be in the national interest.

11. (SBU) The new E.O. lists the following examples of circumstances in which an applicant may be considered for a waiver, subject to meeting the three requirements above. Unless the adjudicating consular officer has particular concerns about a case, determining that a case falls under any circumstance listed in this paragraph is a sufficient basis for concluding a waiver is in the national interest. Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship:

- a.) The applicant had 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 effective date of this order, seeks to reenter the United States to resume that activity, and the denial of reentry during the suspension period would impair that activity;
- b.) The applicant has previously established significant contacts with the United States but is outside the United States on the effective date of the new E.O. for work, study, or other lawful activity;
- c.) The applicant seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;
- d.) The applicant 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 U.S. citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;
- e.) The applicant 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 applicant has been employed by, or on behalf of, the United States government (or is the eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States government;
- g.) The applicant is traveling for purposes related to an international organization designated under the International Organizations Immunities Act, 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 applicant is a legal resident of Canada who applies for a visa at a location within Canada; or
- i.) The applicant is traveling as a U.S. government-sponsored exchange visitor.

12. (SBU) Listed in this paragraph are other circumstances in which an applicant may be considered for a waiver, subject to meeting the three requirements in paragraph 10. Unless the adjudicating consular officer has particular concerns about a case, determining that a case falls under any circumstance listed in this paragraph is a sufficient basis for concluding a waiver is in the national interest. Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship:

- a.) The applicant is a high-level government official traveling on official business who is not eligible for the diplomatic visa normally accorded to foreign officials of national governments (A or G visa). Examples include governors and other appropriate members of sub-national (state/local/regional) governments; and members of subnational and regional security forces;
- b.) The applicant is traveling to participate in a Department of Defense (DoD) program that DoD

deems mission critical;

c.) The applicant is traveling to participate in a major cultural, media, and other national event such as a U.S. Olympic Committee sponsored competition that would support U.S. government objectives; and

d.) Cases where all three criteria in paragraph 10 are met and the Chief of Mission or Assistant Secretary of a Bureau supports the waiver.

13. (SBU) If the applicant qualifies for a waiver based on criteria in paragraph 11 or 12, the consular officer may issue the visa with the concurrence of the Visa Chief (IV or NIV) or the Consular Section Chief. The visa should be annotated to read, "Waiver of Executive Order Approved." Case notes must reflect the basis for the waiver; the undue hardship that would be caused by denying entry during the suspension; the national interest; and the position title of the manager concurring with the waiver. To document national interest in case notes in circumstances falling under paragraph 11 or paragraph 12(a), (b), or (c), the consular officer may write, "National interest was established by the applicant demonstrating satisfaction of the requirements for the waiver based on [insert brief description of category of waiver]."

14. (SBU) If the applicant does not qualify under one of the listed waiver categories in paragraphs 11 or 12, but the interviewing officer and consular manager believe that the applicant meets the requirements in paragraph 10 above and therefore should qualify for a waiver, then the case should be submitted to the Visa Office for consideration. These cases should be submitted via email to [countries-of-concern-inquiries@state.gov](mailto:countries-of-concern-inquiries@state.gov). The Visa Office will review these requests and reply to posts within two business days. Consular officers should be able to approve the majority of waiver cases without review by the Visa Office due to the broad authority granted in the new E.O.

#### Special Visa Issuance Procedures for Nationals of Iraq

15. (SBU) Guidance will be sent septel outlining new issuance procedures for Iraqi nationals.  
Refugees

16. (SBU) The U.S. Refugee Admissions Program (USRAP) is suspended for 120 days. This includes the processing of boarding foils for any V93 cases, regardless of nationality, since those follow-to-join cases are admitted to the United States as refugees. After receiving cable instructions to implement the new E.O., posts should halt the issuance of these cases immediately and cancel any scheduled V93 appointments. NVC will halt the processing of all V93 cases and will not forward these cases to posts. The Department will notify posts when the suspension is lifted.

#### V92 Cases

17. (SBU) Guidance on V92 cases will follow.

#### Revocations or Cancellations Under E.O. 13769

18. (SBU) The new E.O. states that any individual whose visa was marked revoked or marked canceled as a result of the old E.O. shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry. CA has already begun working

with CBP to issue travel documents for certain individuals whose visas were either cancelled or revoked. Please contact your VO/F post liaison officer for instructions if you are contacted by any individual requesting a travel document under Section 12(d) of the new E.O.

#### Interview Waiver Program

19. (SBU) The Interview Waiver Program guidance in ref A remains unchanged, except that posts may now continue waiving interviews using current guidance for TECRO E-1 visa applicants, in addition to the categories listed in ref A.

in CA/VO/F.

21. (U) Minimize considered.

Signature: Tillerson