

## FAQS

### **MARCH 6, 2017 EXECUTIVE ORDER ENTRY BAN AND RECENT SUSPENSION OF H-1B PREMIUM PROCESSING**

#### **Q. What are the effects of the March 6, 2017 Executive Order?**

Individuals from Iran, Syria, Sudan, Somalia, Libya and Yemen, who are outside of the U.S. and who did not have a valid visa at 5 p.m. EST on January 27, 2017, and did not have a valid visa on the effective date of the March 6 Executive Order, will not be able to secure a visa to enter the U.S. for 90 days beginning on March 16, 2017, unless they first obtain a waiver (discussed below).

In addition, the Visa Interview Waiver Program is suspended so virtually all individuals seeking a non-immigrant visa will have to undergo an in-person interview at a U.S. consulate abroad.

#### **Q. When does the revised Executive Order go into effect?**

The Executive Order was intended to go into effect on March 16, 2017 at 12:01am.

*\*However, on March 15th, the U.S. District Court in Hawaii issued a nationwide **temporary restraining order**, preventing the Government from enforcing the new executive order with respect the entry ban of individuals from the above mentioned countries.*

#### **Q. Who is exempt from the March 6, 2017 Executive Order's travel restrictions?**

- U.S. lawful permanent residents (green card holders).
- Holders of a valid U.S. visa. Visas that were provisionally revoked under the January 27, 2017 Executive Order should be valid for travel. Foreign nationals with a visa that was physically canceled under the January 27, 2017 Executive Order may be entitled to a new travel document for entry to the U.S.
- Dual nationals traveling on a valid passport from a non-restricted country. Dual nationals must hold a valid U.S. visa or be visa-exempt.
- A foreign national who is a landed Canadian immigrant who applies for a visa at a location within Canada;
- Foreign nationals holding a valid advance parole document.
- Most foreign nationals holding a valid A, C-2, G or NATO visa.
- Foreign nationals granted asylum.
- Refugees already admitted to the U.S. and those with travel formally scheduled by the State Department.

**Q. I was just admitted to the University. I am a citizen of one of the six countries identified in the Executive Order. Can I still apply for a visa to study at the University?**

The March 6, 2017 Executive Order takes effect on March 16, 2017. After March 16th, there will be a 90-day waiting period before the restrictions are lifted, during which time the Executive Order prohibits the issuance of visas (both first-time visas and visa renewals) to citizens and nationals of the six identified countries unless a waiver is granted at the time of the visa interview.

The Executive Order permits Departments of Homeland Security and State to grant discretionary waivers on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security threat to the U.S., and denial of the visa would cause undue hardship. Admitted students who wish to apply for a waiver should make and support the waiver request when they appear for their visa interview. There will not be a separate waiver process. This means that visa applicants seeking a waiver must be fully prepared to provide evidence, including relevant documentation, of their eligibility for a waiver at the time of their interview.

Students or faculty who need a visa in order to come to the University should request an immigration document from the University as soon as possible to ensure adequate time to apply for a visa.

**Q. I am a current student, scholar and/or faculty who is a citizen of one of the six countries identified in the March 6 Executive Order. My current visa is expiring. I hear I can request a waiver to the travel restrictions. How do I request the waiver?**

The Executive Order permits the Departments of Homeland Security and State to grant discretionary waivers of the entry restrictions. Waiver applicants must show that a denial of entry would cause undue hardship and that their entry is in the national interest and would not pose a threat to national security.

The Executive Order suggests that a waiver may be appropriate for several classes of foreign nationals, including Canadian landed immigrants applying for a visa in Canada, persons with significant business or professional obligations in the U.S., and nonimmigrants previously admitted to the U.S. for a continuous period of work, study or another long-term activity who are seeking to resume that activity. Individuals who wish to apply for a waiver should make and support the waiver request when they appear for their visa interview. There will not be a separate waiver process. This means that visa applicants seeking a waiver must be fully prepared to provide evidence, including relevant documentation, of their eligibility for a waiver at the time of their interview.

*At this time, the University recommends that students, scholars, and/or faculty who are citizens of these countries exercise caution and careful planning before finalizing international travel if their visa will no longer be valid on the desired return date.*

**Q. I am not a citizen or national of one of the six countries identified by the March 6 Executive Order and need to travel abroad. My visa is expiring. Should I make plans to renew the visa over the summer break?**

In addition to the entry restrictions, the President has issued a memorandum directing the Department of Homeland Security (DHS), the State Department and the Justice Department to implement more stringent vetting of applications and petitions for immigration benefits. Enhanced security screening could take effect quickly, and may delay processing at USCIS and at U.S. consulates. Please allow additional time for visa processing. Apply for the renewal as soon as you return home after the end of the current term. The visa interview waiver option is also no longer available, which will add to the additional wait times.

**Q. I am a current student but my visa has expired, will this affect my immigration status?**

No. A visa is only used to gain entry into the U.S. Once you have entered the U.S. your visa does not affect your immigration status. For more information about this you should contact International Student Services or the Office of Legal Counsel at the below referenced numbers.

**Q. Where can I find more information about the March 6 Executive Order?**

The Department of Homeland Security has developed a Fact Sheet and Q&A about the implementation of the revised Executive Order:

Fact Sheet: <https://www.dhs.gov/news/2017/03/06/fact-sheet-protecting-nation-foreign-terrorist-entry-united-states>

FAQs: <https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states>

The Center for International Education Services (901.678.2055) and the Office of Legal Counsel (901.678.1565) at the University are also available to answer questions about the impact of the executive order on the University community.

The University will continue to monitor developments with respect to any executive orders regarding immigration, and will continue to release information and analysis as it becomes available. We continue to caution all foreign nationals from the six countries listed in the Executive Order not to travel outside of the U.S. without consulting an immigration lawyer.

**Suspension of H-1B Premium Processing**

On March 3, 2017, the United States Citizenship and Immigration Services (USCIS) announced a temporary suspension of premium processing for all H-1B petitions. The temporary suspension began April 3, 2017, and could last up to six months.

**Q. What is Premium Processing?**

The Premium Processing Service allows a supplemental fee to be paid to get a guaranteed faster processing time for many employment-related visa petitions, including H-1B petitions. This process guarantees 15 calendar day processing.

**Q. What impact will the suspension of Premium Processing have on H-1B Petitions?**

The main impact will be on departments that want to change an employee from another non-immigrant category to the H-1B visa category. An individual wanting to change from another non-immigrant category (e.g., F-1) to H-1B must wait until he or she receives an H-1B approval notice before beginning work. Without premium processing, this means that an employee must follow the normal processing times to receive an approval notice, which can range anywhere from 4-8 months (see more information below).

**Q. What is the normal length of H-1B processing if premium processing is not used?**

USCIS processing times for the California Service Center show the following as of January 31, 2016:

<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B – Specialty occupation – Visa to be issued abroad	Currently processing petitions filed on: July 2, 2016
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B – Specialty occupation – Change of status in the U.S.	Currently processing petitions filed on: July 2, 2016
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B – Specialty occupation – Extension of stay in the U.S.	Currently processing petitions filed on: July 2, 2016

### **Q. Can I work for my employer while my H-1B application is processing?**

H-1B **extension applicants** can work for 240 days while the H-1B extension application is pending.

H-1B non-immigrants also benefit from “portability,” which allows them to work for a new-employer while a change of employer H-1B petition is pending.

Individuals changing from another non-immigrant category (e.g., F-1) to H-1B status, however, may not begin work for the new employer until the H-1B change of status has gone through processing and been approved.

### **Q. Will this affect my ability to be able to travel?**

Travel is likely to be disrupted even if an individual is authorized to continue working while an application for extension or change of status is pending. Reentering the US requires an H-1B approval if the individual’s initial visa has expired, the H-1B non-immigrant has not previously received an H-1B visa, or the H-1B non-immigrant’s I-94 has expired.

### **Q. Are there any other ways to obtain an expedited H-1B petition?**

USCIS has a process to request expedited processing in urgent cases, and will approve such requests on a case-by-case basis. USCIS has stated that the requester has the burden of showing one or more of the following:

- *Severe financial loss to company or person ;*
- *Emergency situation;*
- *Humanitarian reasons;*
- *Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States ;*
- *Department of Defense or national interest situation (These particular expedite requests must come from an official U.S. government entity and state that delay will be detrimental to the government.);*
- *USCIS error; or*
- *Compelling interest of USCIS.*

Departments must take into consideration this extended processing time for any employees that require an H-1B visa, or H-1B visa extension. It is important that you contact the Office of Legal Counsel at 901-678-1565 as soon as possible if an H-1B visa is required for a new employee, or if you anticipate that an H-1B visa extension is required.

For more information about H-1B premium processing, or any questions regarding employment visas at the University, please contact the Office of Legal Counsel at 901-678-1565.