

President Trump's Executive Order on Suspending Entry of Select Foreign Nationals: The Seven Countries

February 1, 2017 (IN10642)

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On January 27, 2017, President Trump signed an executive order (EO) entitled "[Protecting the Nation from Foreign Terrorists Entry Into the United States](#)." Invoking [Immigration and Nationality Act \(INA\) §212\(f\)](#), the [President barred](#) citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen from entering the United States for 90 days, with limited exceptions for those traveling on diplomatic and certain other types of visas. The action has given rise to the question of how these seven countries were selected.

The EO does not specifically mention the seven countries. Instead, the EO suspends the entry of aliens from the countries referenced in [INA §217\(a\)\(12\)](#), which details certain persons who are restricted from traveling to the United States under the [Visa Waiver Program](#) (VWP). The VWP allows nationals from 38 countries, many of which are in Europe, to enter the United States as temporary visitors (nonimmigrants) for business or pleasure without first obtaining a visa from a U.S. consulate abroad. Temporary visitors for business or pleasure from non-VWP countries must obtain a visa from Department of State (DOS) officers at a consular post abroad before coming to the United States.

Visa Waiver Program Travel Restrictions

The VWP travel restrictions under INA §217(a)(12) were enacted as part of the FY2016 Consolidated Appropriations Act ([P.L. 114-113](#)), which was signed into law on December 18, 2015. They originated in [H.R. 158](#), the Visa Waiver Program Improvement Act of 2015, which was passed by the House on December 8, 2015, by a vote of 407 to 19. H.R. 158, as passed by the House, was included as Title II of P.L. 114-113.

Among other things, the new INA §217(a)(12) changed who may travel to and enter the United States under the VWP. It prohibits people who were present in certain countries on or after March 1, 2011, with limited exceptions, from traveling under the VWP. In addition, the provision makes anyone who is a dual national of a VWP country and one of these specified countries generally ineligible to travel under the VWP. INA §217(a)(12) specifies that the countries that trigger the prohibitions are

- **Iraq and Syria.** Congress specified these two countries in the legislation.
- "[A] country that is designated, at the time the alien applies for admission, by the Secretary of State under [section](#)

[4605\(j\) of title 50](#) (as continued in effect under the International Emergency Economic Powers Act ([50 U.S.C. 1701](#) et seq.)), [section 2780 of title 22](#), [section 2371 of title 22](#), or any other provision of law, as a country, the government of which has repeatedly provided support of acts of international terrorism." Currently, the countries so designated are **Iran, Sudan, and Syria**.

- Any other country or area of concern designated as such by the Secretary of the Department of Homeland Security (DHS). The criteria to make the determination include whether the presence of a foreign national in that area or country increases the likelihood that the foreign national is a credible threat to U.S. national security, whether a foreign terrorist organization has a significant presence in the area or country, and whether the country or area is deemed a safe haven for terrorists. On February 18, 2016, [DHS designated Libya, Somalia, and Yemen](#) as countries or areas of concern under INA §217(a)(12).

Notably, INA §217(a)(12) does not bar anyone from traveling or being admitted to the United States. Rather, it makes certain people ineligible to travel to the United States *under the VWP* based on their past or current presence in or citizenship of certain countries. Although such persons are ineligible to travel under the VWP they may, like citizens of non-VWP countries, apply for a visa and if it is approved, in absence of the EO bar, travel to the United States.