

## Client Alert

### New Executive Action Restricting Entry to the U.S. Creates New Challenges for Educators

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On January 31, 2020, the Trump Administration issued Proclamation 9983, entitled *Improving Enhanced Vetting Capability and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats*. This executive action expands the “travel ban” issued in September 2017, via Presidential Proclamation 9645, to cover six new countries: Burma/Myanmar, Eritrea, Kyrgyzstan, Nigeria, Sudan, and Tanzania. The stated justification for the new restrictions is that these countries do not “engage in reliable identity management practices” (for example, by issuing electronic passports and reporting lost or stolen passports) or sufficiently share information about their nationals. In other words, the six newly identified countries do not, in the view of the Administration, adequately vet potential immigrants to the United States or provide sufficient information to allow the U.S. to ensure that persons entering from those countries do not pose a national security or public safety risk.

The new ban restricts immigration from the six identified countries to varying degrees. For some, like Tanzania, only “Diversity Immigrants” (persons awarded visas through a lottery process for individuals coming from countries with low rates of immigration to the United States) are now barred. For others, perhaps most notably Nigeria, the entry of all persons from that nation as immigrants has been suspended, except for “Special Immigrants” (persons who have “advanced United States interests” by, for example, working for the U.S. government). But importantly for institutions of higher education, the new ban does *not* bar the grant of, or entry to the U.S. under, the visa types most frequently used by foreign students and university employees. More specifically, the new travel ban does not prohibit the grant of non-immigrant visas—including F and M student visas, J “exchange visitor” visas (covering professors and scholars, among others), and H-1B visas for workers with highly specialized knowledge—nor does it bar the admission into the U.S. of persons from the six countries already holding such visas.

While this is good news for students and university employees from those countries, the new travel ban may still have the effect of reducing the number of foreign nationals seeking to study or work at a U.S. institution of higher education who are actually granted visas. That was the observed impact of the September 2017 travel ban; although it ostensibly permitted the grant of student and some professional visas for individuals from some of the countries at issue (Iran, Libya, Somalia, Venezuela and Yemen), fewer such visas were actually issued to nationals of those countries after the ban. Such effect may be due to the enhanced screening and vetting requirements introduced with the 2017 ban—or to the chilling effect that it had on potential students and employees from those countries. The new ban may have a similar practical effect.

In the short term, institutions of higher education should ensure that students, applicants, and employees from the affected countries are provided with accurate and up to date information, including that non-immigrant

visas, such as those referenced above, are not covered by the new ban. Longer term, institutions may want to try to track the actual impact of the travel bans on student enrollment from covered nations, and consider how they might communicate any concerns regarding the impacts to Administration officials. In Proclamation 9983, the President conveyed that the Administration would continue to consider the propriety of the limits imposed, removing or revising them when appropriate, and/or expanding them to cover additional visa types or new countries. Either individually or collectively, institutions of higher education should consider how they can make their voices heard during that ongoing process.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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