



CLIENT ALERT:

IMMIGRATION SEE-SAW CONTINUES: NEW EXECUTIVE ORDER ON IMMIGRATION SUSPENDED

March 16, 2017

Introduction

As reported in our Client Alerts of January 30th, February 10th and March 6th, Executive Order (“E.O.”) 13769 issued by President Trump on January 27, 2017, banned for 90 days any immigrant or nonimmigrant entry into the U.S. of foreign citizens from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen, and would have impacted vessels with crewmembers from those countries. However, that E.O. was suspended by a Federal district court judge on February 3rd, and his ruling was upheld by the 9th Circuit Court of Appeals on February 9th.

On March 6th President Trump signed E.O. 13780 entitled “Executive Order Protecting the Nation From Foreign Terrorist Entry Into The United States.” That E.O. rescinded E.O. 13769 and introduced new restrictions on travel to the U.S. from Iran, Libya, Somalia, Sudan, Syria and Yemen. **Note** that immigration from Iraq was not targeted in this latest E.O. The E.O. had an effective date of March 16, 2017 at 12:01AM, eastern daylight time. However, the key provisions of E.O. 13780, banning the issuance of new visas to nationals of the six designated countries for 90 days, have now been suspended by two Federal district court judges, one in Hawaii and the other in Maryland. A ruling is awaited from a third Federal judge in the State of Washington (the same judge who struck down the original Executive Order 13769).

Judicial Actions

The conflict being addressed by the courts in response to challenges to the E.O. from the attorney generals of several states is whether President Trump, via E.O. 13780, has properly exercised the authority granted to the President in the U.S. Constitution to make foreign policy, including policies on immigration, or whether the temporary immigration ban amounts to religious discrimination, which is prohibited by the Constitution. The Federal judge in Hawaii found that those challenging the E.O. had established “a strong likelihood of success” of establishing religious discrimination and the judge in Maryland similarly found that the E.O.’s primary purpose was to effect a “Muslim ban,” as opposed to addressing national security issues.

The judge in Hawaii issued a nationwide temporary restraining order suspending Sections 2 and 6 of the E.O., which sections stopped the issuance of visas to nationals of the six designated countries for 90 days and which suspended the U.S. Refugee Admissions Program for 120 days. The judge indicated that he intended to set an expedited hearing to entertain arguments on whether the restraining order

should be extended. The Trump Administration has stated that it will defend the E.O. If the Hawaii judge extends the restraining order, and his ruling is appealed, the appeal would be heard by the 9th Circuit Court of Appeals, which upheld the suspension of the first immigration ban.

The judge in Maryland issued a preliminary injunction, a somewhat longer suspension of the E.O., which will remain in effect until there has been a trial on the merits of the case. However, the Maryland ruling only suspended that part of the E.O. which halted for 90 days the issuance of visas to citizens of the six designated Muslim majority countries.

Impact of the Court Orders on Shipping

The current suspensions of the E.O., in particular of the 90 day ban on the issuance of visas to nationals of Iran, Libya, Somalia, Sudan, Syria and Yemen, means that crewmembers from those countries can continue to apply for U.S. visas, until such time as there is a final ruling on the validity of the E.O. The E.O. did not prohibit entry into the U.S. of those crewmembers from the six countries who already held valid visas prior to March 16th, and that situation has not changed.

Summary

E.O. 13780 has been temporarily suspended by two Federal courts, with a third expected to rule shortly. Until the legal challenges have been concluded, the E.O. will remain suspended. Therefore, shipowners and their crews from the six designated countries remain in a state of uncertainty, which will ultimately only be resolved by the conclusion of the various court proceedings, which could make their way to the U.S. Supreme Court.

Disclaimer: This Client Alert provides only a general summary of the recent court decisions affecting the March 6, 2017 Executive Order on immigration, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the Executive Order. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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