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# Immigration turmoil affects physicians

As even a casual observer would notice, the Trump administration has prioritized immigration issues in its first months after taking office. Many of the administration's actions may have serious repercussions for physicians seeking to enter or remain in the United States, as well as for their potential employers and residency programs.

Although the so-called "travel ban" has drawn the greatest attention and controversy, a less-publicized action would temporarily lengthen the time for processing H-1B visa petitions, commonly used by foreign physicians seeking placement in health professional shortage areas as well as residency and fellowship matches in the United States. The H-1B is a non-immigrant visa status which allows U.S. employers to temporarily employ foreign workers in specialty occupations, including medicine.

On March 3, 2017, the United States Citizenship and Immigration Services (USCIS) announced that the use of premium processing for H-1B petitions would be suspended, effective April 3, 2017. The suspension may last "up to 6 months." USCIS will notify the public before premium processing is resumed.

The temporary suspension applies to all H-1B petitions filed on or after

April 3, 2017, which is the date FY2018 cap-subject H-1B petition filings begin. As such, the suspension applies to all petitions filed on or after April 3 for the FY2018 H-1B regular cap and master's advanced degree cap exemption (the "master's cap") as well as to petitions that may be cap-exempt.

During the time that premium processing is suspended, which may last up until Oct. 3, 2017, USCIS will reject any Form I-907 Request for Premium Processing that is filed with an H-1B petition. USCIS also will reject H-1B petitions filed on or after April 3, which contain a combined filing fee check for both the Form I-907 and Form I-129 H-1B Petition.

USCIS will continue to premium process H-1B petitions properly filed before April 3, 2017; however, as usual, USCIS will refund the premium processing fee if the petitioner filed the Form I-907 for an H-1B petition before April 3, 2017, and USCIS did not take adjudicative action on the case within the 15-calendar-day processing period.

The suspension of premium processing falls directly in the sweet spot of filings for residents and fellows who seek to join training programs starting on July 1 after matching to a program.

In addition, premium processing

is typically used when a J-1 Waiver sponsor seeks H-1B status for a J-1 Exchange Visitor Physician with an in-country change of status. Efforts are under way to carve out an exception to the suspension of premium processing for J-1 waived physicians who will practice in designated shortage areas. If that fails, while premium processing is suspended, petitioners may submit a request to expedite an H-1B petition if they meet the criteria. It is of course the petitioner's responsibility to demonstrate that they meet at least one of the expedite criteria.

USCIS decides expedite requests on a discretionary, case-by-case basis and may expedite processing of an H-1B petition if it meets at least one of the following criteria:

- 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.

## New travel order

After President Trump's Jan. 27, 2017, Executive Order restricting travel from seven countries was enjoined by the U.S. Court of Appeals for the Ninth Circuit, the president issued a new Executive Order on Monday, March 6, 2017, with an effective date of Thursday, March 16, 2017. In the new Executive Order, the president imposed a "temporary pause" (i.e., 90 days from the effective date) on entry into the United States by nationals from Iran, Libya, Somalia, Sudan, Syria and Yemen "subject to (certain) categorical

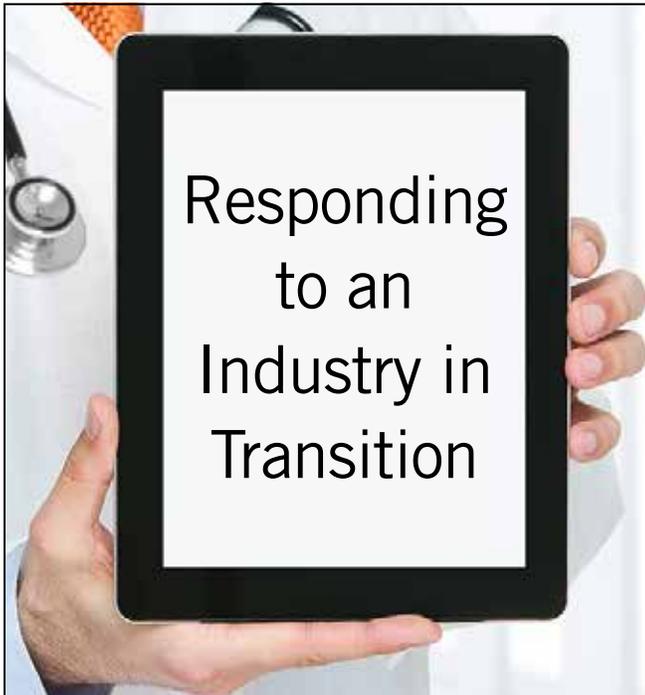
exceptions and case-by-case waivers." The travel ban applies to those who: 1) are outside the United States on the effective date, Thursday, March 16; 2) did not have a valid visa by 5 p.m. (EST) on Jan. 27, 2017; and 3) do not have a valid visa on Thursday, March 16. "Additional scrutiny" also will apply to those from Iraq.

Nationals of the six countries who are excepted from the ban include: 1) U.S. lawful permanent residents; 2) any foreign national admitted to or paroled into the United States on or after the effective date, Thursday, March 16; 3) any foreign national who has a document (other than a visa) that is valid on or issued on any date after the effective date, that permits the

holder to travel to, and seek entry or admission to, the United States such as an advance parole travel document; 4) any dual national of one of the six countries when travelling on a passport issued by a non-designated country; 5) any foreign national travelling on a diplomatic-type visa, NATO visa, C-2 for UN travel, or G-1-4 visa; or 6) any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

The travel ban may have implications for residency matching programs.

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# Legal Report

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Questions have been raised as to whether training programs that decline to offer positions to nationals from the listed countries could risk charges of discrimination under the Immigration Reform and Control Act.

And, as described earlier, physician shortages in rural and underserved areas may well be exacerbated by the travel ban. More than 6,000 medical trainees from foreign countries participate in medical residency programs each year through J-1 non-immigrant visas, according to the American Association of Medical Colleges (AAMC). J-1 visa holders from the listed countries

who were outside the United States when the ban went into effect may be prevented from returning, and the supply of J-1 applicants may dry up due to the uncertainties created by the ban.

As this article is written, the courts have not yet ruled on the new Executive Order. Although it was crafted to remove or modify elements which led to the successful challenge of the first order, it is uncertain whether those changes will be sufficient to withstand future litigation.

You also should be aware that the March 6 Executive Order leaves open the possibility that restrictions may be placed on nationals of other countries at some point in the future. For now,

we caution that even for those who are NOT nationals of the six listed countries, options that involve traveling abroad may NOT be prudent in all situations. We advise that you remain current with the news and contact immigration counsel if you plan to travel abroad and have questions.

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