2016 PRESIDENTIAL ELECTION: EFFECT ON IMMIGRATION LAW AND POLICY
BRANDEIS UNIVERSITY
FEBRUARY 1, 2017
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Immigration law is complex and nuanced. This presentation provides information in general terms. Therefore, please seek individualized guidance from a competent professional before taking any action.
AGENDA

- Basic Structure of U.S. Immigration Law
- Actions on Immigration by New Administration
- Know Your Rights
- Advocacy
SOURCES OF U.S. IMMIGRATION LAW

- U.S. Constitution
  - Citizenship by birth established in 14th Amendment
  - Congress has plenary authority over immigration
  - Congress can make distinctions in the immigration arena that would be unconstitutional in any other area
- Immigration and Nationality Act (I.N.A.) of 1952 as amended
- Other Public Laws
- Codified Agency Regulations and Executive Orders
- Precedent Decisions of the Attorney General, Board of Immigration Appeals (BIA), and DHS Secretary
- USCIS Adopted Decisions—binds USCIS personnel only
- Agency Guidance Memoranda
- Agency FAQs

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PRIMARY AGENCIES CHARGED WITH IMPLEMENTATION OF IMMIGRATION LAWS

- Department of Homeland Security
  - U.S. Citizenship and Immigration Services
  - Customs and Border Protection
  - Immigration and Customs Enforcement
- Department of Justice
  - Attorney General
  - Executive Office for Immigration Review
    - Board of Immigration Appeals
    - Immigration Courts
- Department of Labor
- Department of State
  - U.S. Embassies and Consulates
CATEGORIES OF INDIVIDUALS ACCORDING TO U.S. IMMIGRATION LAW

- **US CITIZENS: By Birth or By Naturalization**
- **FOREIGN NATIONALS:**
  - Lawful Permanent Residents – Immigrants (“Green Card” or “Immigrant Visa” holders)
  - Nonimmigrants – Individuals temporarily admitted for a specific purpose
  - Refugees/Asylees
  - Temporary Protected Status (TPS)
  - Parolees
  - DACA and other Individuals with Deferred Action
  - Persons present without lawful status
- Individual’s inclusion in particular category informs numerous rights, privileges, and responsibilities

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U.S. Constitution guarantees all individuals within the U.S. certain basic rights
  - Bill of Rights
  - 14th Amendment
  - Access to Federal Courts through Writ of Habeas Corpus
  - Change to Constitution is rare, extremely difficult, and time consuming

Immigration & Nationality Act (I.N.A.) establishes system of naturalization, immigration, and removal
  - Change is difficult and requires both houses of Congress

Codified Agency Regulations
  - Change requires public notice and comment

Executive Orders, Agency Guidance Memoranda and Agency FAQs
  - Can change very quickly
  - Courts give limited deference to Guidance Memoranda and FAQs
Fundamental change to any of these visa categories requires Congress to enact legislation

- B-1: Visitors for business
- F-1: Students
- E-1/E-2: Treaty traders/investors
- E-3: Professionals from Australia
- H-1B: Professional workers
- H-1B1: Professionals from Chile and Singapore
- J-1: Exchange visitors
- L-1: Intra-company transferees
- O-1: Persons of extraordinary ability
- R-1: Religious workers
- TN: Professionals from Canada and Mexico
Executive Actions have been signed on January 25 & 27, 2017:

i. Border Security and Immigration Enforcement Improvements (Jan 27)

ii. Enhancing Public Safety in the Interior of the U.S. (Jan 25)
PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES”

• Suspends US Refugee Admissions Program (USRAP) for 120 days
• Exceptions: National interest; person not posing a risk; person a religious “minority” facing persecution; or required to conform to international agreement; or when person in transit and hardship if not admitted
• Reduces number of refugees by more than half to 50,000 lowest in a decade
• Halts processing and admission of all Syrian refugees indefinitely until President determines that sufficient changes have been made to ensure in national interest to admit refugees

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PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

- Bans immigrants (green card holders) and nonimmigrants from entering the US for at least 90 days for Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen per INA §217(a)(12) NOTE: Other countries may be added (applies to dual nationals)
- Also calls for exclusion of people who “would place violent ideologies over American law,” or “who engage in acts of bigotry or hatred (honor killings or other violence against women, or persecute those who practice religions different from their own)
- Suspends the visa interview waiver program (VIWP) Requires in-person interviews for most Nonimmigrant visa applicants
- Orders DHS, Sec’y of State & Director of National Intelligence to review information needed from any country for adjudication of any visa admission or other benefit under the INA.
- Green Card holders have presumption of admissibility, pending evidence that not a security risk
PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

- Secretary of State shall request all foreign governments that do not supply such information regarding their nationals within 60 days of notification.
- A list of countries that do not provide information will be included on a presidential proclamation that would prohibit entry of foreign nationals that do not provide information (certain exceptions apply).
- Public database regarding number of foreign-born individuals who have been radicalized after entry or supported terrorism-related organizations.
TEMPORARY RESTRAINING ORDER

- Suits filed in these courts:
  New York District Court
  Massachusetts District Court
  Virginia District Court
  Washington District Court
- Temporary Restraining Orders (TROs) issued based upon likelihood of success on Constitutional grounds:
- New York: Nationwide stay of removal preventing deportation for individuals with valid visas and approved refugee applications affected by Executive Order
- Massachusetts: Barred federal officials from detaining and removing individuals subject to the TRO
- Virginia: Specifically ordered federal officials to allow lawyers access to “all legal permanent residents detained at Dulles International Airport.”
- Washington State: Barred federal officials from deporting two unnamed individuals from the U.S.
- CBP ordered to inform airlines that Executive Order will not be enforced against passengers
TEMPORARY RESTRAINING ORDERS
WHAT IS NEXT?

- ORDERS ARE VALID FOR 7 DAYS FROM TIME OF ISSUANCE (FOR MASSACHUSETTS)
- REPORTS OF PEOPLE HELD AT AIRPORTS
- BOSTON HAS BROADEST TERMS, SO ENCOURAGING PEOPLE TO FLY INTO BOSTON’S LOGAN AIRPORT BEFORE FEB. 4
- COURTS WILL SCHEDULE A HEARING PRIOR TO THE EXPIRATION OF THE ORDER
CURRENT RAMIFICATIONS

- Do not travel if you are dual national of one of seven countries, even if you are a legal permanent resident.
- If reentering the U.S. and asked to relinquish U.S. permanent residence, burden on green card holder to establish no abandonment of residence.
- Do not sign Form I-407 relinquishing residence as you are permitted to have a hearing regarding your intention.
- Within the U.S., applications by nationals from the seven countries is suspended, unclear about other countries.
- Expect delays of adjudication that can affect employment authorization and other benefits.
SECURITY MEASURES SINCE 9/11

- THE EXECUTIVE ORDER PRIMARILY AFFECTS MUSLIM MAJORITY COUNTRIES, DISCRIMINATORY
- REFUGEES ARE ALREADY MOST STRINGENTLY VETTED GROUP OF IMMIGRANTS (TAKES 18-24 MONTHS), PEOPLE FLEEING FOR THEIR LIVES AND LIVES OF THEIR CHILDREN
- NONE OF THE 9/11 HIJACKERS WERE REFUGEES, NOR FROM LIST OF 7 COUNTRIES
- NO REFUGEES HAVE BEEN THE BASIS OF A TERRORIST ATTACK, EVER
OTHER EXECUTIVE ORDERS

- Three Executive Orders signed
  - Interior Enforcement – EO 13768
  - Border – the “Wall” EO 13767
- Three leaked drafts released by press
  - DACA
  - Nonimmigrant Employment Visas and Status
  - Lawful Immigrants of Limited Means
OTHER POTENTIAL EXECUTIVE ACTION AREAS:

TPS

- Potential for lapse or withdrawal of TPS protection for certain nationals
  - Syria-- March 31, 2018
  - Yemen-- March 3, 2017
  - Somalia-- March 17, 2017
  - Sudan-- November 2, 2017
  - South Sudan-- November 2, 2017
  - El Salvador-- March 9, 2018
  - Honduras-- January 5, 2018
  - Nicaragua-- January 5, 2018

- TPS may be withdrawn by Secretary of Homeland Security
  - After consultation with appropriate agencies
  - Must find that conditions leading to designation no longer exist
  - Must provide at least 60 days notice in Federal Register
INCREASED ENFORCEMENT ACTIVITY

- Increase in Removal and Deportation Activity possible

- Activity is already at unprecedented levels
  - Obama administration has deported more individuals than all previous presidents of the 20th century combined
  - DHS is the largest law enforcement agency
  - Budget for immigration enforcement is larger than that of the FBI, DEA, Secret Service, US Marshalls, and ATF combined*

- Increased enforcement will require additional money

- Immigration courts have multi-year backlogs

SANCTUARY MOVEMENTS

- Sanctuary Movements are not based in law

- Sanctuary Churches: history of shelter of asylum seekers seeking refuge from Central American wars of the 1970s and 80s--form of civil disobedience

- Municipal Governments: Generally city police are instructed to provide service to all members of the community:
  - Without inquiring about immigration status
  - Not to honor ICE’s voluntary detainers (voluntary requests by ICE to local law enforcement to hold individual for ICE questioning)
  - Not to enforce immigration laws

- Governors of New York and California have proposed state-wide protection

- University and College Campuses
  - Family Educational Rights and Privacy Act protects student records
    - Subpoena required for disclosure for most student records
    - Students records for F and J more readily available to DHS
  - Must comply with lawful warrants and regulatory orders
KNOW YOUR RIGHTS: WHAT TO DO WHEN CONFRONTED BY AN IMMIGRATION OFFICER

At home:
- Not required to open door unless officer provides warrant
- Ask to review warrant
- Read warrant carefully—must be signed
- If warrant appears valid, must allow entry: do not resist
- Ask to call attorney

Outside of your home:
- Stay calm, do not run or resist arrest
- Keep your hands where the officer can see them
- Ask if you are under arrest or free to leave
  - If you are free to leave, ask to leave
- You have the right to remain silent
  - Say “I want to remain silent”
- If you are detained or arrested: you have the right to hire an attorney
  - Ask to call an attorney
  - Attorney not provided for immigration violations
HOW CAN I BE PREPARED?

- Know your rights in case an officer asks you questions, or comes to your home

- Memorize phone numbers for your family members and your attorney or an attorney you trust

- Think of a U.S. citizen or someone with immigration status that you trust who can pay a bond if you are granted one by an immigration judge
Advocacy

- Campus community can monitor progress in Senate and House of efforts to preserve DACA

- Contact local representatives in support of legislative efforts

- 578 College and University Presidents, including Chancellor Moloney, have signed a statement supporting DACA and undocumented students
  - “To our country’s leaders we say that DACA should be upheld, continued, and expanded. We are prepared to meet with you to present our case. This is both a moral imperative and a national necessity. …”

Source:
ADVOCACY & RESOURCES

Free Consultations with Immigration Attorneys:

- Irish International Immigrant Center: (617) 542-7654
- Catholic Charities: (617) 464-8100
- PAIR Project: (617) 742-9296
- ImmigrationLawHelp.org
- MIRA: (617) 350-5480
- ACLU of Massachusetts: (617) 482-3170 x100
- International Institute of New England at Lowell: (978) 459-9031

Beware of Notarios