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January 23, 2018

Operational Q&As on P.P. 9645 in light of the U.S. Supreme Court orders of December 4, 2017, lifting lower court injunctions and pursuant to guidance in 17 STATE 97682

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BASICS

Q1: Following the lifting by the U.S. Supreme Court of the injunctions issued by U.S. District Courts in Hawaii and Maryland against P.P. 9645, does anything change for the adjudication of IVs, DVs, and NIVs?

A: Yes, P.P. 9645 calls for a suspension of the issuance of visas for categories of nationals of eight countries, with the precise visa restrictions varying by country and visa classification. With the Supreme Court’s orders lifting the lower courts’ injunctions, the visa restrictions contained in the P.P. can now be applied to the relevant categories of nationals of all eight countries identified in the P.P., subject only to the exceptions and waivers provided for in the P.P. Specifically, as a result of the Supreme Court’s orders of December 4, 2017, the U.S. government may now fully apply the P.P.’s visa restrictions to individuals from Chad, Iran, Libya, Somalia, Syria, and Yemen. There is no longer an exemption for nationals of those countries with “a credible claim of a bona fide relationship with a person or entity in the United States.” Nationals of North Korea and Venezuela, who were not affected by the lower courts’ injunctions, continue to be subject to the visa restrictions in the P.P. There is also no exemption for nationals of these countries with a bona fide relationship.

Q2: What countries are affected by the Supreme Court’s lifting of the injunctions of P.P. 9645?

A: Chad, Iran, Libya, Syria, Yemen, and Somalia. Nationals of these countries are now fully subject to the visa restrictions in the P.P. The previous exemption for nationals of these countries with “a credible claim of a bona fide relationship with a person or entity in the United States” is no longer applicable.

Q3: Does anything change for visa applicants who are nationals of North Korea and/or Venezuela?

A: No. Nationals of North Korea and Venezuela were not affected by the lower courts’ injunctions, so the Supreme Court’s orders lifting the injunctions do not affect them. Nationals of North Korea and Venezuela continue to be subject to the visa restrictions in the P.P.

Q4: How does this P.P. affect adjudication standards for visas?

A: Nothing in the P.P. or guidance implementing the P.P. changes the legal standards or implementing guidance for adjudicating an applicant's eligibility for any visa category. In every case involving a national of one of the eight countries named in the P.P., the consular officer should first determine whether the applicant is otherwise eligible under the INA, without regard to the P.P. (b) (7)(E)

[REDACTED]

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(b) (7)(E)

[REDACTED]

SCOPE

Q1: What visa restrictions does the P.P. impose now that the preliminary injunctions have been lifted?

A: All the country-specific visa restrictions listed at paragraph 7 of 17 STATE 97682 are in effect. After determining that an applicant is otherwise eligible for the visa under the INA, you should then determine whether the applicant falls within the scope of the country-specific visa restrictions of the P.P., subject to applicable exceptions and waivers. Exceptions to the P.P. are found in paragraph 19 of 17 STATE 97682 and examples of circumstances in which a case-by-case waiver may be appropriate are found in paragraph 24 of 17 STATE 97682.

Q2: Are the travel suspensions under this P.P. temporary?

A: There is no end date for the visa restrictions in the P.P.; however, the P.P. requires a review every 180 days.

Q3: Should consular officers revoke visas based on the P.P.?

A: No. Previously issued visas should not be revoked based on the P.P. Posts should continue to follow existing revocation guidance.

Q4: In what situations may a consular officer approve a visa for an individual from one of the affected countries while the visa restrictions are in effect?

A: Applicants who are subject to the restrictions under the P.P. must be reviewed on a case-by-case basis. Consular officers may issue a visa to nationals covered by the P.P. only in cases where the applicant:

a) Is found otherwise eligible for the visa classification requested under the INA without regard to the P.P., following completion of all applicable screening requirements; and

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b) either

- i) Is excepted from the Proclamation; or
- ii) Qualifies for a waiver in accordance with the guidance on waivers below.

EXCEPTIONS

NEW Question (Q1): I understand that any national who had a valid visa on the applicable effective date of the P.P. qualifies for an exception under 19(b) of 17 STATE 97682. What about applicants who were issued visas after the applicable effective date and were either admitted or paroled into the United States? How should posts process their applications under the P.P.?

A: Paragraph 19 of 17 STATE 97682 lists an exception from the P.P.’s visa restrictions for “any national who is admitted to or paroled into the United States on or after the applicable effective date of the P.P. for that national.” If you can confirm that an applicant was admitted or paroled into the United States after the P.P. went into effect, then the applicant is excepted from the P.P. Issuance of a visa after the effective date without proof of subsequent admission to the United States will not trigger this exception.

(b) (7)(E) [Redacted]

Q3: How should consular officers annotate visas for applicants that are covered by an exception or qualify for a waiver?

A: “Exception under Proclamation” or “Presidential Proclamation Waived.”

Consular officers should annotate the visa “Exception under Proclamation” in all cases where the applicant is covered by the restrictions in the P.P. but meets an exception listed in paragraph 19 of 17 STATE 97682.

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Consular officers should annotate the visa “Presidential Proclamation Waived” in all cases where the applicant is covered by the restrictions in the P.P., does not qualify for an exception listed in paragraph 19 of 17 STATE 97682, but meets the waiver criteria listed in paragraphs 21-29 of 17 STATE 97682.

Interviewing officers must also enter clear case notes stating the specific reason why the applicant is excepted or waived from the P.P.’s visa restrictions.

Q4: For those who are dual nationals of a country not subject to the P.P. and who are applying for a visa with a travel document from a non-designated country, how should the visa be annotated?

A: A dual national of a country designated under P.P. 9645 and of a country not designated under the P.P. who is traveling on a passport issued by a non-designated country, is excepted from the P.P. If the applicant is otherwise eligible for a visa, the visa should be annotated “Exception under Proclamation” as the applicant meets the exception listed in paragraph 19 of 17 STATE 97682.

Q5: What are the exceptions for NIV, IV, and DV applicants?

A: The exceptions are listed in paragraph 19 of 17 STATE 97682. The following are excepted:

- a) Any national who was in the United States on applicable effective date in Section 7 of the P.P. for that national, regardless of immigration status;
- b) Any national who had a valid visa on the applicable effective date of the P.P. for that national;
- c) Any national whose visa was marked revoked or marked canceled as a result of Executive Order 13769 who qualifies for a visa or other valid travel document under section 6(d) of the P.P.;
- d) Any lawful permanent resident (LPR) of the United States;
- e) Any national who is admitted to or paroled into the United States on or after the applicable effective date of the P.P for that national;
- f) Any national who has a document other than a visa – such as a transportation letter, an appropriate boarding foil, or an advance parole document – valid on the applicable effective date of the P.P. for that national or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission;
- g) Any dual national of a country designated under the P.P. when traveling on a passport issued by a non-designated country;
- h) Any national traveling on a diplomatic (A-1 or A-2) or diplomatic-type visa (of any classification), NATO-1-6 visas, C-2 visa for travel to the United Nations, C-3 visas for individuals seeking to transit the U.S. on official travel, or G-1, G-2, G-3, or G-4 visa; except certain Venezuelan government officials and their family members traveling on a diplomatic-type B-1, B-2, or B1/B2 visas; or

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- i) Any national who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Q6: What are the applicable effective dates for applicants seeking to qualify for an exception under paragraph 19(a) & (b) of 17 STATE 97682?

A: Applicable effective dates are the dates that P.P.9645 affected nationals of the eight countries identified in the P.P. (i.e. applicable effective date for nationals of Somalia, Syria, Libya, Iran, and Yemen is September 24; applicable effective date for nationals of Chad, Venezuela, and North Korea is October 18).

Individuals covered by P.P. 9645 who possess a valid visa or valid travel document generally will be permitted to travel to the United States, irrespective of when the visa was issued. Paragraph 19(e) of 17 STATE 97682 lists an exception from the P.P.'s visa restrictions for "any national who is admitted to or paroled into the United States on or after the applicable effective date of the P.P. for that national." If you can confirm that an applicant was admitted or paroled into the United States after the P.P. went into effect, then the applicant is excepted from the P.P. Issuance of a visa after the effective date without proof of subsequent admission to the United States will not trigger this exception.

Q7: What is the difference between an exception from the P.P. and a waiver under the P.P.?

A: The P.P.'s visa restrictions do not apply to individuals who fall into one or more of the exception categories listed in paragraph 19 of 17 STATE 97682. In contrast, if an applicant would be subject to a country-specific restriction in the P.P. and does not fall within an exception, the P.P. permits waivers of the P.P.'s restrictions for applicants who qualify under the waiver criteria.

Q8: Do consular officers need a consular manager's approval, or Washington approval, to determine an exception applies?

A: No. A consular officer may make the determination that an applicant meets the qualifications for an exception from the P.P. Consular managers at post should determine the workflow that best suits post's specific circumstances.

Q9: How should a consular officer document an exception?

A: When issuing an IV or an NIV to an individual who falls into one of the exception categories, the visa should be annotated to state, "Exception under Proclamation." Interviewing officers must also enter a clear case note stating the specific reason why the applicant is excepted from the P.P.'s visa restrictions.

Q10: The guidance refers to "consular officers." How does this affect other consular adjudicators?

A: "Consular officers" refers to individuals duly authorized to adjudicate visa applications.

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Q11: If an applicant has family members traveling with them, does each applicant need to meet the exception criteria in the P.P.?

A: A derivative family member may only benefit from an exception if he or she individually meets the conditions of an exception in the P.P. If family members are traveling together and do not all benefit from an exception, consular officers should consider that factor in evaluating the applicants' waiver qualifications.

Q12: What should we tell the public about exceptions?

A: Public talking points can be found on [CA Web](#).

WAIVERS

Q1: The guidance in paragraph 25 of 17 STATE 97682, instructed officers to submit some waiver-related questions to VO/L/A for an Advisory Opinion while paragraph 28 instructed officers to submit other waiver-related questions to countries-of-concern-inquiries@state.gov. How does this process work?

A: If the applicant does not fit under one of the undue hardship and national interest waiver examples in paragraph 24 of [17 STATE 97682](#), but the interviewing consular officer and consular manager believe that the applicant meets the undue hardship and national interest requirements for the waiver for other reasons, the consular officer should email the "[countries-of-concern](#)" mailbox and include the facts they believe meet the undue hardship and national interest requirements. If the Visa Office concurs that a waiver may be justified, then post should determine if the national security/public safety requirement is met per 17 STATE 56801 and [\(b\) \(7\)\(E\)](#).

REVISED Q2: What are the waiver criteria for NIV, IV, and DV applicants?

A: Consular officers may grant waivers on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that the following criteria apply:

Criterion #1) Denying entry during the suspension period would cause undue hardship to the applicant –To establish that visa denial under the P.P. will cause **undue hardship**, the applicant must demonstrate to the consular officer's satisfaction that (1) an unusual situation exists that compels immediate travel by the applicant **and** (2) delaying visa issuance and the associated travel plans until after visa restrictions imposed with respect to nationals of that country are lifted would defeat the purpose of travel.

Criterion #2) His or her entry would be in the national interest – The requirement for issuance to be in the **national interest** may be met *if a U.S. person or entity* would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted. For the purpose of implementing the P.P., a U.S. person or entity includes a U.S. citizen, a lawful permanent resident, an alien who is lawfully present in the United States, and a corporation, partnership, or other organization

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active and operating within the United States.

Criterion #3) His or her entry would not pose a threat to national security or public safety of the United States. Additional information on satisfying this test was made available in 17 STATE 56801. (b) (7)(E)

[REDACTED]

Q3: Who can grant a waiver?

A: The P.P. permits consular officers, with the concurrence of the visa chief (NIV or IV) or consular section chief, and following required administrative processing, to grant waivers on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that the following criteria apply:

- a) denying entry would cause undue hardship to the applicant;
- b) his or her entry would be in the national interest; and
- c) his or her entry would not pose a threat to national security or public safety.

The P.P. also authorizes Customs and Border Protection (CBP) to grant waivers, but provides that any waiver issued by a consular officer is effective both for the issuance of a visa and for any subsequent entry on that visa. CBP has confirmed that it intends to honor waivers approved by consular officers during the adjudication of the visa application.

P.P. Section 3(c) identifies several examples of circumstances in which a waiver may be appropriate, subject to a case-by-case determination that the three requirements above have been met, if the applicant is found otherwise eligible for the visa requested following completion of all applicable screening requirements.

Q4: Does the consular officer have to consider a waiver for every applicant who is subject to the restrictions of the P.P., otherwise eligible for a visa and to which an exception does not apply?

A: Yes, each applicant who meets the conditions described in the question posed above must be considered for a waiver, based on the purpose of travel and any other information provided by the applicant. However, if the applicant fails to meet any one of the three waiver criteria outlined in PP 9645, the officer may proceed to refuse the case under refusal code EO17. Consular officers should check the appropriate box on the visa denial letter given to applicants subject to the P.P., indicating either that a waiver will not be granted or that waiver eligibility is being reviewed.

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Waivers: Definitions

REVISED Q1: How should consular officers apply the phrase “close family member” in paragraph 24(d) of 17 STATE 97682 with respect to waivers under the P.P.?

A: The term “child, spouse, or parent” should generally be understood to be consistent with the definition of “immediate relative” at INA 201(b) & 9 FAM 502.2-2(B). Although the INA definition only includes child, spouse, or parent of a U.S. citizen, P.P.9645 also includes these relationships with LPRs and aliens lawfully admitted into the United States on a valid nonimmigrant visa. The term “child” generally refers to an unmarried person under 21 years of age.

If a consular officer believes that an applicant may be eligible for a waiver under paragraph 24(d) of 17 STATE 97682 because the applicant seeks to enter the United States to visit or reside with a close family member, but the close family member is not a child, spouse, or parent, then the consular officer may submit an email to countries-of-concern-inquiries@state.gov. (b) (7)(E)

Q2: One of the requirements for all waivers under P.P. section 3(c) is that barring travel would cause “undue hardship.” What constitutes “undue hardship”? What are some examples?

A: To establish that visa denial under the P.P. will cause undue hardship, the applicant must demonstrate to the consular officer’s satisfaction that an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans until after visa restrictions imposed with respect to nationals of that country are lifted would defeat the purpose of travel. For further information on assessing “undue hardship,” see the questions and answers under “Waivers: Undue Hardship,” below.

Q3: Another requirement for a waiver under P.P. section 3(c) is that entry would be in the “national interest?” What constitutes national interest? What are some examples?

A: An applicant may meet the national interest condition *if a U.S. person or entity* would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted.

The visa referral or priority appointment request could impact the national interest determination for the waiver, particularly for cases sent to CA for consideration. However, each determination is still made on a case-by-case basis, and a referral or priority appointment request is not one of the waiver categories listed in the P.P. If the case doesn’t clearly fit into one of the waiver categories, please follow the instructions in the operational ALDAC and email the case to countries-of-concern-inquiries@state.gov.

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Q4: What are some examples of applicants who may be eligible for waivers?

A: Examples of circumstances in which a case-by-case waiver may be appropriate are listed in paragraph 24 of 17 STATE 97682. Consular officers may not categorically grant waivers. Each case must be considered on its own merit.

- a) The applicant has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date of the P.P. for the applicant, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;
- b) The applicant has previously established significant contacts with the United States but is outside the United States on the applicable effective date of the P.P. for the applicant for work, study, or other lawful activity;
- c) The applicant seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;
- d) The applicant seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child or parent) who is a U.S. citizen, LPR, or alien lawfully admitted on a valid NIV, and the denial of entry during the suspension period would cause the foreign national undue hardship;
- e) The applicant is an infant, a young child, or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;
- f) The applicant has been employed by, or on behalf of, the U.S. government (or is the eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the U.S. government;
- g) The applicant is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C 288 et seq., traveling for purposes of conducting meetings or business with the U.S. government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;
- h) The applicant is a Canadian permanent resident who applies for a visa at a location within Canada;
- i) The applicant is traveling as a U.S. government-sponsored exchange visitor; or
- j) The applicant is traveling to the United States at the request of a U.S. government department or agency for legitimate law enforcement, foreign policy, or national security purposes.

REVISED Q5: What does “would not pose a threat to national security or public safety” mean?

A: (b) (7)(E)

██

██

██

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(b) (7)(E) (b) (7)(E)
[Redacted]

Q6: For purposes of waivers under P.P. Section 3(c)(iv)(B), what are “previously established significant contacts with the United States?”

A: “Previously established significant contacts” are contacts established prior to issuance of the P.P., generally long-term and, in the commercial context, essential to a business or professional obligation or significant, current, opportunity.

Q7: For purposes of waivers under P.P. Section 3(c)(iv)(C), what are “significant business or professional obligations?” What are some examples?

A: “Significant business or professional obligations” in this context, refer to events or activities in the United States that must occur on or before specified dates, and the applicant’s failure to attend by the required date could result in substantial harm to existing or potential commercial relationships. Qualifying commercial relationships generally would be expected to currently generate income, have significant potential to do so in the future, or affect a large number of people. Examples could include: business meetings or trade shows that promote investment in the United States or by the United States in the host country; presenting at a large conference by an applicant who is an expert in the relevant field; a contractual requirement to provide service or installation by an applicant with specialized knowledge; Locally Employed Staff traveling to the United States for training required for their positions; or starring in a cultural performance in the United States.

Q8: The P.P. describes a waiver category for infants, young children, and individuals needing urgent medical care, and also references waivers for others whose entry is “otherwise justified by the special circumstances of the case.” What constitutes “special circumstances” under PP Section 3(c)(iv)(E)? What age are “young children?”

A: (b) (7)(E)
[Redacted] Waivers based on special circumstances other than the examples set forth in paragraph 24 of 17 STATE 97682 require a consular chief approval and submission of an email to countries-of-concern-inquiries@state.gov. If the Visa Office concurs that the special circumstances meets the undue hardship and national interest criteria a waiver may be appropriate, (b) (7)(E)
[Redacted]

“Young” children generally include those beyond infancy but not beyond primary or elementary school age. In general, this would match our interview/fingerprint requirements, meaning younger than 14.

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Q9: What kind of documentation is needed for a waiver under Section 3(c)(iv)(F) to prove that someone employed by, or on behalf of, the U.S. government has “provided faithful and valuable service to the U.S. government?”

A: For Locally Engaged Staff SIV applicants, this requirement has been satisfied by the COM committee’s recommendation.

Waivers: Undue Hardship

Q1: How should I evaluate “undue hardship” when considering waiver eligibility?

A: PP 9645 allows consular officers to grant waivers on a case-by-case basis if three conditions are met, including that the applicant can demonstrate denial of entry would cause undue hardship to the applicant. 17 STATE 97682 addressed undue hardship, noting that the applicant must demonstrate that "an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans until after visa restrictions...are lifted would defeat the purpose of travel."

(b) (7)(E) [Redacted]

NEW Question (Q2): Many of the applicants subject to the P.P. come from, or currently reside in, conflict zones or countries with difficult conditions. May consular officers consider these conditions when evaluating undue hardship?

A: No. Consular officers should not consider applicants’ home country or third country conditions when evaluating undue hardship.

Q3: For which waiver scenarios listed at paragraph 24 of 17 STATE 97682 should I consider (b) (7)(E) [Redacted] to the applicant?

A: (b) (7)(E) [Redacted]

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(b) (7)(E) [Redacted]

Q4: Where should we draw the line with regard to potential (b) (7)(E) [Redacted] ?A: (b) (7)(E) [Redacted]

[Redacted]

(b) (7)(E) [Redacted]

Q5: For which waiver scenarios listed at paragraph 24 of 17 STATE 97682 should I consider (b) (7)(E) [Redacted] to the applicant?

A: (b) (7)(E) [Redacted]

Q6: Where should we draw the line with regard to potential (b) (7)(E) [Redacted] ?

A: (b) (7)(E) [Redacted]

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(b) (7)(E)

[REDACTED]

NEW Question (Q7): Determining Undue Hardship (b) (7)(E)
[REDACTED] **under the waiver examples listed in paragraph 24(d) of 17 STATE 97682 seems inconsistent for NIV and IV applicants.**(b) (7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

NEW Question (Q8): Would the “spouse” of an unconsummated proxy marriage qualify as a close family member for waiver purposes?

A: No. As the applicant’s marriage has not been consummated, the applicant does not qualify as a spouse in the immigration context and therefore would also not qualify for a waiver based solely on his or her relationship as the “spouse” to a U.S. citizen, LPR, or alien in lawful NIV status in the United States.

Q9: For which waiver scenarios listed at paragraph 24 of 17 STATE 97682 should I consider (b) (7)(E) **to the applicant?**

A: (b) (7)(E)
[REDACTED]

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(b) (7)(E) [Redacted]

Q10: Where should we draw the line with regard to (b) (7)(E) [Redacted] ?

A: (b) (7)(E) [Redacted]

[Redacted]

[Redacted]

(b) (7)(E) [Redacted]

Q11: Where should we draw the line with regard to (b) (7)(E) [Redacted] ?

A: (b) (7)(E) [Redacted]

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(b) (7)(E) [Redacted]

[Redacted]

Q12: For which waiver scenarios listed at paragraph 24 of 17 STATE 97682 should I consider (b) (7)(E) [Redacted] ?

A: (b) (7)(E) [Redacted]

Q13: Where should we draw the line with regard to (b) (7)(E) [Redacted] ?

A: (b) (7)(E) [Redacted]

Q14: What if the applicant would be subject to hardship under more than one category listed in the Q&A (e.g., (b) (7)(E) [Redacted])?

A: (b) (7)(E) [Redacted]

Q15: How should I evaluate hardship when a group of applicants is applying as a family?

A: Derivative applicants are not automatically eligible for a waiver just because the principal applicant was found eligible for a waiver. Each applicant in the family unit would need to be evaluated individually, based on the totality of the circumstances. If you determine that the principal applicant satisfies the undue hardship requirement, you may consider the hardship that would be caused to his or her derivatives were the principal applicant to travel to the United States without the family.

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Q16: Does the national interest determination have any effect on undue hardship?

A: Yes. The required level of hardship to an applicant may vary with the level of U.S. national interest in facilitating the applicant's travel to the United States. When assessing national interest, consular officers should consider hardship suffered by a U.S. person or entity, per 17 STATE 97682 at paragraph 23. If an applicant's travel is related to a program or policy objective of the U.S. government, then the national interest can be considered higher, and the hardship to the applicant would not need to be as severe.

Q17: How do we apply the undue hardship standard to applicants who are Canadian permanent residents who are applying for a visa at a location within Canada?

A: We have an overriding national interest in matters implicating our bilateral relationship with Canada. We also have an excellent information sharing relationship with Canada and have full faith in identifying information Canada provides. In light of this relationship, and given the longstanding and extensive travel by this category of applicants to the United States, any curtailment of their travel generally may be considered undue hardship.

Q18: How should consular officers document undue hardship in case notes?

A: Consular officers should clearly note the undue hardship, which generally requires existence of an unusual situation that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans until after visa restriction imposed with respect to nationals of that country are lifted would defeat the purpose of travel. Case notes should include the facts supporting this conclusion, or some other clear bases for finding undue hardship.

Waivers: Other Issues

(b) (7)(E) [Redacted]

[Redacted]

- | [Redacted]
- | [Redacted]

(Further explained in scenario/question below)

(b) (7)(E) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (7)(E) [Redacted]

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Q5: For cases other than urgent medical needs, what is the estimated time frame for CA to respond to questions relating to waivers? Are there options to expedite responses?

A: In urgent cases, a response from the Visa Office can be provided within one business day, provided that the Visa Office has all the information needed. If additional information is needed from post or if a case requires further discussion with other offices and agencies, the response may take longer and could take a week or more.

REVISED Q6: How should consular officers document the national interest in case notes?

A: To document national interest, the consular officer may write in case notes, “national interest requirements satisfied based on harm to [identify U.S. person or entity]” or describe other material U.S. interest. Do not identify the U.S. person or entity by name, e.g., do not use “Jane Smith.” Rather, name the U.S. person by relationship, e.g., “spouse living in Michigan” or describe the U.S. entity, e.g., “U.S. community college.”

Q7: How should consular officers document that an applicant “would not pose a threat to national security or public safety?”

A: To establish that an applicant’s entry would not pose a threat to national security or public safety of the United States (b) (7)(E)

Post must document that the applicant meets the national security/public safety requirement for a waiver under the P.P. by adding appropriate case notes. Additional instructions for meeting this condition are available on CLASSNET in 17 STATE 56801 (unclassified excerpts of this guidance are available on [CA Web](#)).

Q8: How should consular officers document waiver decisions in case notes?

A: Consular officers must reflect the category of waiver for which the applicant is eligible by noting:

- 1) the category of waiver for which the applicant is eligible (i.e., citing the text from 17 STATE 97682);
- 2) the undue hardship caused by denying entry during the suspension (or that there is sufficient basis in the category);
- 3) the national interest;
- 4) confirming that “no threat” was determined in accordance with CLASSNET guidance, omitting any specific details of the determination; and
- 5) the position title of the manager concurring with the waiver (not the actual name of the officer). Sole consular officers do not need concurrence from their supervisor for waivers or exceptions, but should consult with their VO/F post liaison officer for with questions.

(b) (7)(E)

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(b) (7)(E)

Q9: How long will it take to issue a waiver?

A: The granting of a waiver under the P.P is a decision that is made by the consular officer and the manager as part of the adjudication. (b) (7)(E)

Q10: If an applicant is not eligible for a waiver, how does the consular officer process the case?

A: NIV, DV, and IV applicants who are otherwise eligible for the visa, but who do not have an exception from the P.P.'s suspension of entry provision and who do not qualify for a waiver should be refused with the code "EO17," which indicates a refusal under INA 212(f). Post should follow established refusal procedures in 9 FAM 403.10-3 and 9 FAM 504.11-3, which include informing the applicant of the reason for refusal and entering the appropriate refusal code into NIV, or IVO – here "EO17". The consular officer should provide the applicant a denial letter noting the applicant will not be granted a waiver of the P.P.

(b) (7)(E)

Q12: How should consular officers document support from the Chief of Mission or Assistant Secretary concerning a case in the national interest?

A: Please make a case note in the system noting the COM or A/S support.

Q13: Should post add the name of the manager that approved the waiver?

A: No. The title of the manager is sufficient. The name should not be noted in the case notes.

Q14: In a single-officer section, or for cases adjudicated by the Consular Section Chief in a small section, may the Consular Section Chief self-certify eligibility for a waiver?

A: The consular section chief in a sole officer must receive concurrence from the Consular Country Coordinator if part of a multi-post mission or from VO via an email to countries-of-concern-inquiries@state.gov.

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Q15: What should we tell the public about waivers?

A: Public talking points can be found on [CA Web](#).

NIV

Q1: May I issue diplomatic visas for government officials who are nationals of the countries identified in the P.P.?

A: Per paragraph 19(h) of 17 STATE 97682, nationals traveling on a diplomatic (A-1 or A-2), or diplomatic type (of any visa classification), NATO 1-6 visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa are excepted from the P.P. The exception also includes C-3 visas for individuals seeking to transit the U.S. on official travel. The exception does not extend to certain Venezuelan government officials and their family members traveling on a diplomatic type B-1, B-2, or B-1/B-2 visa. Applicants who do not fall within an exception may be considered for a waiver on a case-by-case basis.

Q2: Who are considered “officials of government agencies” for processing visa restrictions on Venezuelan nationals of this P.P.?

A: (b) (7)(E)

Q3: Are derivative family members of Venezuelan government officials treated the same as the officials?

A: (b) (7)(E)

Q4. Are K visas treated as NIVs for purposes of PP9645 restrictions?

A: Yes.

IMMIGRANT VISAS

Q1: May posts transfer to another post IV cases for applicants who are nationals of the eight countries named in the P.P.?

A: Yes, posts may transfer IV cases to another post for affected applicants using the standard criteria to assess any transfer requests.

Q2: Will NVC still schedule IV cases in all categories?

A: The National Visa Center (NVC) will continue to schedule IV appointments for all categories and all nationalities.

Q3: Do waivers or exceptions apply for IV cases?

A: Yes. If the consular officer finds the applicant otherwise eligible for the visa, the consular officer will need to consider during the interview whether the applicant falls within the scope of the country-specific visa restrictions applicable to his or her country of nationality, and if

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so, whether the applicant falls within an exception or if a waiver applies under the P.P. IV applicants who do not fit one of the exceptions and who do not qualify for a waiver should be refused EO17 and should be given a refusal letter noting that a waiver is not granted.

DV

Q1: Are nationals of countries identified in the P.P. 9645 eligible for issuance under the Diversity Visa Program?

A: P.P. 9645 suspends diversity visa issuance for nationals of every country under the P.P., except Venezuela. In order to qualify for a diversity visa under the P.P. from one of the countries for which diversity visa issuance is suspended, the applicant must be covered by an exception under the P.P., or qualify for a waiver of the P.P. DV applicants for 2018 will continue to be scheduled by KCC and post should interview the applicants. If an applicant is otherwise eligible, the consular officer will need to determine if s/he qualifies for an exception or a waiver pursuant to P.P. 9645.

Q2: Will the Kentucky Consular Center (KCC) still schedule DV cases for affected nationals?

A: KCC is scheduling DV appointments for nationals of identified countries for DV 2018 cases.

Q3: Do waivers or exceptions apply for DV cases?

A: Although on a case-by-case basis DV cases could fit within an exception or qualify for a waiver and should be evaluated to determine whether they fit within an exception or qualify for a waiver, based on the Department's experience with the DV program, we anticipate that very few DV applicants are likely to be excepted from the P.P.'s suspension or qualify for a waiver. DV applicants who do not fit one of the exceptions or who do not qualify for a waiver should be refused EO17 and be given a refusal letter indicating that a waiver is not granted.

INA 221(g) Cases

Q1: Is it appropriate to deny cases under INA 221(g) when the applicant is subject to P.P. 9645?

A: A refusal under 221(g) may be used if necessary to determine whether the applicant is otherwise eligible for a visa under the INA. However, a final refusal under 221(g) should not be used for an applicant who is otherwise eligible and subject to the P.P. Those applicants should be refused under refusal code EO17. (b) (7)(E)

REVISED: Q2: If post receives the information needed to process a case to issuance under normal circumstances (e.g., (b) (7)(E), submission of passport, etc.), does the consular officer then reassess the case to determine if it meets one of the exception(s) or waiver criteria in order to complete processing?

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A: If an applicant who was previously refused under INA 221(g) subsequently overcomes the refusal and is determined to be otherwise eligible for a visa, the consular officer must then consider whether the applicant is subject to the P.P., whether any exceptions apply, and whether the applicant qualifies for a waiver. In short, process the case in accordance with the instructions in 17 STATE 97682.

(b) (7)(E)

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Non-Visa Travel Documents: Parole

Q1: Can a visa be placed in a refugee travel document of a national from a country with which we have suspended travel based on P.P. 9645?

A: A visa may be placed in the refugee travel document of such a national if the consular officer determines that the applicant is otherwise eligible for a visa under the INA and subsequently determines that the applicant qualifies for an exception or waiver under P.P. 9645. However, the consular officer must first determine whether refugee travel document meets the definition of passport as provided by INA 101(a)(30); is issued by a competent authority; and shows the bearer’s origin, identity, and nationality, if any, which is valid for the admission of the bearer into a foreign country. See 9 FAM 403.9-3 for guidance on passport requirements. Once the applicant qualifies for the visa, please use the reciprocity schedule for the country that issued the travel document to determine appropriate visa validity.

(b) (7)(E)

[Redacted text block containing approximately 3 lines of information]

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(b) (7)(E)

Q2: Would an individual identified as being a foreign national admitted or paroled into the United States on or after the applicable effective date, or a foreign national who has a document other than a visa, valid on the applicable effective date or after be automatically excepted if they apply for a visa? In other words, if the individual is excepted based on parole, advance parole or other status that permits him or her to travel to the United States and seek entry or admission, and then applies for a visa, is s/he excepted from the P.P. for the visa as well?

A: Yes, individuals who fit within any exception category of the P.P. are not subject to the P.P. for all purposes. This is an exception category.

Q3: If an applicant from one of the affected countries was approved for humanitarian parole, is he/she excepted from the P.P.?

A: Any national who is paroled into the United States on or after the applicable effective date is excepted from the visa restrictions. Please process these requests following current 9 FAM guidance.

Q4: Does the P.P. apply to V92 cases?

A: The P.P. does not affect V92 applicants, follow-to-join asylees, and post should adjudicate these cases per standard guidance.

Q5: Does the P.P. affect applicants granted asylum, permanent resident, or other status in a non-restricted country, carrying a travel document, refugee document, or other legal resident document from a non-restricted country, identifying them as a national of one of the restricted countries? In other words, if the applicant does not hold a passport from one of the restricted countries and instead carries some type of travel documentation issued by a non-restricted country that identifies him or her as a national of one of the restricted countries, does the P.P. apply?

A: Yes, the P.P. applies. However, you may issue a visa in a refugee travel document if the consular officer determines that the applicant is otherwise eligible for a visa under the INA and subsequently determines that the applicant qualifies for an exception or waiver under P.P. 9645. However, the consular officer must first determine whether refugee travel document meets the definition of passport as provided by INA 101(a)(30) and is issued by a competent authority and shows (1) the bearer's origin, (2) identity, and (3) nationality, if any, which is valid for the admission of the bearer into a foreign country. See 9 FAM 403.9-3 for guidance on passport requirements.

Waivers may not be granted categorically to nationals of an affected country who are subject to the P.P.; instead, waivers should be considered based on individual circumstances. One of the individual circumstances listed in the P.P. is Canadian permanent residents who apply for visas at a U.S. consular section in Canada. Consular officers should verify the applicant's Canadian permanent residency status. Consular officers must determine that the applicant does not pose

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a threat to U.S. national security or public safety in accordance with additional guidance that was made available in 17 STATE 56801 and (b) (7)(E).

Current and Prior Visa Holders

NEW Question (Q1): What should posts do with the physical IV files for applicants that are refused EO17 due to PP9645?

A: Post should maintain possession of the cases just as they would with other IV cases based on the possibility of the applicant overcoming the refusal, including if the applicable restriction in the P.P. is lifted.

Q2: How should posts deal with cases for nationals of countries subject to the P.P. whose visas were physically cancelled or revoked earlier this year based on E.O. 13769?

A: Certain posts have already been asked to facilitate travel documents for this small group of travelers. The P.P. states that these individuals are entitled to a travel document. Please contact your VO/F post liaison officer for instructions if you are contacted by any individual requesting a travel document under Section 5(d) of the P.P.

Q3: How does the P.P. apply to previously issued visas?

A: The P.P. does not apply to an individual who had a valid visa on the applicable effective date in Section 7 of the P.P. In addition, an unrevoked, unexpired visa would generally be valid and therefore the bearer would be permitted to travel.

REVISED: Q4: If an applicant from one of the eight affected countries held a valid visa when E.O. 13769 was issued, but it expired before the applicable effective date under this P.P., is the applicant excepted from the P.P.?

A: An applicant who held a valid visa on the applicable effective date of the P.P. 9645 for that applicant qualifies for an exception, under paragraph 19(b) of 17 STATE 97682. An applicant who held a valid visa when E.O. 13769 was issued, but not on the applicable effective date of the P.P. for that applicant, would not qualify for an exception based solely on having held a valid visa. However, such an applicant could qualify for an exception under paragraph 19(c) of 17 STATE 97682 if the applicant had a visa marked revoked or marked canceled as a result of E.O. 13769 such that the applicant is or was entitled to a visa or other valid travel document under section 6(d) of the P.P.

Visa Refusals

Q1: What refusal procedures should post follow?

A: If the applicant is ineligible on some other ground unrelated to the P.P., post should refuse the application on that basis. Visa applicants should only be refused under INA section 212(f) (although you will use refusal code “EO17” in CLASS) if the visa applicant is otherwise eligible, subject to the restrictions in the P.P., and does not benefit from one of the exceptions to the P.P. You must inform the visa applicant orally and in writing that his or her visa application is refused pursuant to the P.P. and cite to INA 212(f) as the basis.

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Before you refuse an applicant under the P.P., you must determine whether the applicant may qualify for a waiver. The waiver decision may not be resolved on the same day as the in-person interview, because (b) (7)(E) [REDACTED]. Following the interview, you should give the applicant a refusal letter indicating either that a waiver will not be granted or waiver eligibility is under review. In all cases, post should refuse the applicant using CLASS code EO17. (b) (7)(E) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

It is important that any refusal letter provided by post explicitly reflect that the applicant was considered for a waiver, either by noting a waiver will not be granted or waiver is under review. It is recommended that you retain a copy of the refusal letter provided to the applicant and scan it into the case.

Q2: What CLASS entries should post make?

A: Post should enter the refusal code “EO17” into NIV or IVO for applicants to whom the restrictions of the P.P. apply and who are not excepted from the P.P. As coordinated with DHS, this code represents a refusal under section 212(f) under the P.P. You should NOT use the refusal code for 221(g) after you have determined that the applicant is otherwise eligible for the visa, but is subject to the P.P. At that point, the only appropriate refusal code will be EO17.

Q3: What should be included in the text of refusal letters?

A: The following text should be used for NIV, IV, and DV refusals.

Consular officers must use the language below to inform NIV applicants who are refused under Sections 212(f) of the INA based on the P.P., checking one of the boxes to indicate whether a waiver may be granted.

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today’s decision cannot be appealed.

- Taking into account the provisions of the Proclamation, a waiver will not be granted in your case. However, you may reapply for a visa at any time. If you decide to reapply, you must submit a new visa application form and photo, pay the visa application fee again, and make a new appointment to be interviewed by a consular officer. If you choose to reapply, you should be prepared to provide information that was not presented in your original visa application, or to

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demonstrate that your circumstances have changed since that application.

The consular officer is reviewing your eligibility for a waiver under the Proclamation. To approve a waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your visa application will remain refused under Section 212(f). You will be contacted with a final determination on your visa application as soon as practicable.

Consular officers must use the language below to inform IV and DV applicants who are refused under Sections 212(f) of the INA based on the P.P., checking one of the boxes to indicate whether a waiver may be granted.

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

The consular officer is reviewing your eligibility for a waiver. To approve your waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your application will remain refused under Section 212(f). You will be contacted with a final determination on your application as soon as practicable.

Q4: What refusal code should be used for applicant refused under P.P.?

A: Applicants who do not qualify for a visa under the P.P. and do not meet an exception should be refused under refusal code "EO17," not INA 221(g), while post is determining whether the applicant qualifies for a waiver and (b) (7)(E).

Q5: How do I proceed with a case for an applicant refused under EO17 if he qualifies for a waiver?

A: After confirming the applicant qualifies for a waiver, post may overcome/waive the EO17 inadmissibility and annotate the visa foil "Presidential Proclamation Waived" and issue. This inadmissibility does not need to be CLOK deleted.

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Other Issues

NEW Question (Q1): An applicant was born in a country whose nationals are subject to visa restrictions under P.P. 9645. However, post has determined that the applicant does not have the nationality of his/her country of birth. Is the applicant still subject to visa restrictions under the P.P.?

A: No. P.P. 9645 imposes visa restrictions only on nationals of Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen, and Somalia. If post has determined that a visa applicant is not a national of one of these countries, then the P.P. does not apply to the applicant.

While place of birth may be a good indicator of an applicant's nationality, an applicant's nationality may differ from his/her place of birth, whether because the applicant's place of birth does not have birthright citizenship (like Syria) or because the applicant renounced the citizenship of his/her place of birth.

Even if an applicant is a national of a country designated under the P.P., if the applicant is also a national of a non-designated country (i.e., the applicant is a dual national) and is traveling on a passport issued by a non-designated country, the applicant is excepted from the P.P. per paragraph 19(g) of 17 STATE 97682.

If post has sufficient information to determine that the applicant is not a national of a designated country, or that the applicant is a dual national of a non-designated country traveling on a passport issued by a non-designated country, post should enter a case note explaining why the applicant is not subject to P.P. 9645. (b) (7)(E)

[REDACTED]

New Question (Q2): An applicant is traveling on a travel document issued by a country whose nationals are subject to visa restrictions under P.P. 9645. However, the travel document reflects that the applicant is a national of a country whose nationals are not subject to visa restrictions under the P.P. Is the applicant still subject to visa restrictions under the P.P.?

A. No. P.P. 9645 imposes visa restrictions only on nationals of Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen, and Somalia. If post has determined that a visa applicant is not a national of one of these countries, then the P.P. does not apply to the applicant. While the country of issuance of a travel document may be a good indicator of an

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applicant's nationality, an applicant's nationality may differ from the county of issuance of his/her travel document. This may be the case with a refugee who has resettled in a third country or an individual otherwise eligible to receive a travel document of a third country without holding the nationality of that country.

If post has sufficient information to determine that the applicant is not a national of a designated country, post should enter a case note explaining why the applicant is not subject to P.P. 9645. (

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[REDACTED])
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[REDACTED])
[REDACTED] (E
[REDACTED] ,

Q3: The P.P. mentions Iraqi nationals. How to we process Iraqi visa applicants?

A: Iraqi nationals are not subject to entry restrictions or limitations under the P.P. (b) (7)(E)

Q4: What information may post include on its website concerning the P.P.?

A: Posts may include translations of information posted on travel.state.gov, but should not add any additional content that has not been cleared by CA.

Q5: In what kind of cases does an applicant receive protection under the Convention Against Torture and is therefore excepted from the P.P.?

A: This factor would not be part of the visa application process and is more intended for DHS consideration of the P.P.

Q6: Are any additional steps necessary when requesting an ARIS waiver for an individual affected by P.P.?

A: The order of consideration does not change in cases which the applicant requires an ARIS waiver. Once a consular officer has determined the applicant is eligible for the visa but for the ground of ineligibility for which the ARIS waiver is required, consular officers should make a determination as to whether an applicant is excepted from the P.P., or whether the applicant qualifies for a waiver. If the applicant has an exception from P.P. or qualifies for a waiver under P.P. 9645, then clearly document the applicant's exception or waiver under P.P. 9645 in the comments when requesting an ARIS waiver for an individual from one of the eight affected nations. CBP/ARO will adjudicate the waiver request normally once they see that a consular officer has made the determination that the applicant is not subject to the suspension and denoted that on the ARIS waiver request.

1. (SBU) **SUMMARY:** This cable provides guidance to consular officers on assessing whether an affected visa applicant poses a threat to the national security or public safety of the United States for the purposes of a waiver of the suspension of visa issuance and entry under Presidential Proclamation 9645. Please refer to 17 State 97682 for guidance on adjudicating visa applications for nationals affected by the Proclamation, determining whether an exception applies, and determining whether the applicant qualifies for a waiver based on undue hardship and whether his or her entry would be in the national interest. Consular officers will use this guidance only if a consular officer has concluded that the applicant is otherwise eligible for a visa, without regard to the Proclamation; that the applicant does not fall within one of the exceptions to the Proclamation; that suspension of entry would cause an undue hardship; and that an applicant's entry to the United States would be in the national interest. If those criteria are met, then the consular officer must follow this guidance in determining the third element of the applicant's waiver eligibility: the applicant's entry would not pose a threat to national security or public safety of the United States. **End Summary.**

2. (SBU) Executive Order (E.O.) 13780 directed the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, to "conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the" Immigration and Nationality Act. As a result of that review, DHS developed information sharing standards foreign governments must meet which fall into three categories: 1) identity management information, 2) national security and public safety information, and 3) national security and public safety risk assessment. The third category was created to provide an overall risk assessment related to specific country conditions. The Proclamation imposes visa restrictions on the countries deemed "inadequate" on information sharing. The visa restrictions are tailored for each country so long as that country remains inadequate in its information-sharing capabilities and practices, despite U.S. government efforts to secure the needed information.

3. (SBU) To assess whether an affected applicant poses a threat to national security or public safety, consular officers must understand the specific circumstances that led to each country's designation as inadequate. A country deemed by the President to be inadequate, by definition, does not provide the U.S. government with adequate information to reliably ensure the applicant is not a threat to the national security or public safety. Therefore, a consular officer's assessment of whether an applicant poses a threat to the national security or public safety will require a case by case determination to verify that an applicant's identity as recorded in a passport is bona fide and that there is no indication that he or she has engaged in terrorist or criminal activities.

4. (SBU) Because these assessments will be resource intensive for posts and interagency partners, these measures should only be employed after the consular officer has found that the applicant is otherwise eligible for the visa without regard to PP 9645, does not fall within one of the exceptions to the Proclamation, and satisfies the other two requirements for a waiver – namely undue hardship and national interest as described in 17 STATE 97682 and the Operational Q and A on CAWeb. If the applicant does not meet either the undue hardship or national interest requirements, the consular officer should refuse the application as described in 17 STATE 97682. (b) (5), (b) (7)(E)

(b) (7)(E)

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5. (SBU) Information Sharing Criteria Descriptions: Below are the information sharing standards as detailed to the president by the Secretary of Homeland Security, in consultation with the Department of State and Director of National Intelligence.

- 1) Identity Management Information: This category defines the type of information the United States expects foreign governments to provide in order to determine that the individual seeking an immigration benefit is who s/he claims to be. It focuses on improving the integrity of travel documents, which will remain the baseline identity requirement for travel to the United States. The criteria in this category include:
 - a) Whether the country issues electronic passports embedded with pertinent biographic and biometric data;
 - b) Whether the country reports lost and stolen passports; and,
 - c) Whether the country makes available identity information that is not present in the passport upon request.

- 2) National Security and Public Safety Information: This category defines the type of information the United States expects foreign governments to provide in order to identify actual or potential terrorists, criminals, and other national security threat actors, as well as fraudulent applicants. The criteria include:
 - a) Whether the country makes available known or suspected terrorist information, including information on foreign fighters;
 - b) Whether the country makes available criminal history information upon request; and,
 - c) Whether the country provides passport and national identity document exemplars.

- 3) National Security and Public Safety Risk Assessment: This category considers three national security risk indicators relevant to the U.S. government's ability to vet a country's nationals to determine admissibility to the United States. The criteria include:
 - a) Whether the country is a known or potential terrorist safe haven;
 - b) Whether countries that are participants in the Visa Waiver Program (VWP) meet all the statutory and policy requirements of the Program; and
 - c) Whether the country regularly takes back its nationals who are subject to a final order of removal from the United States.