

President Trump's Executive Order and Its Application to Canadian Dual-Citizens

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On January 27, 2017, President Trump signed an Executive Order for the purpose of [“Protecting the Nation from Foreign Terrorist Entry into the United States”](#) (the “Executive Order”). Among other things, it temporarily suspends the entry of aliens (both nonimmigrant and immigrant) who are from one of the countries referred to in INA §217(a)(12), for a period of 90 days. INA §217(a)(12) lists countries whose citizens are prohibited from using the [Visa Waiver Program](#) (“VWP”).

[As previously reported](#), the VWP was modified on December 18, 2015, in response to the Paris and San Bernadino attacks. On that date, dual citizens of Iran, Iraq, Sudan (but not including South Sudan), and Syria were barred from the VWP, even if they were also citizens of a VWP-eligible country. On February 18, 2016, the U.S. Department of State added Libya, Somalia, and Yemen to the list of prohibited countries. As a result, the Executive Order applies to aliens from Iran, Iraq, Sudan (but not including South Sudan), Syria, Libya, Somalia, and Yemen (the “Listed Countries”).

After the VWP revisions were implemented, there was some initial concern that dual-citizen Canadians who were also citizens of one of the above countries would not be permitted to enter without visas. This concern was quickly dismissed because Canadian citizens do not use the VWP; the visa-exemption for Canadians falls under a completely different section of the regulations.

The scope of the Executive Order is much less clear. It states only that the immigrant and nonimmigrant entry of “aliens from countries referred to in Section 217(a)(12) of the INA” is suspended. It does not actually define who is included in this language. For example, the Executive Order could be interpreted to include Canadian dual citizens who also hold citizenship from one of the Listed Countries. It could also be interpreted to include Canadian citizens who

were born in one of the Listed Countries, even if they no longer hold citizenship from their country or birth.

The language of the Executive Order does provide for some limited exceptions. For example, it excludes foreign nationals travelling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas. This means that Canada's current [Minister of Immigration, Refugees and Citizenship](#), who was born in Somalia, will clearly be able to enter the United States, since he would be entering the United States under diplomatic status.

There is also language stating that the Secretaries of State and Homeland Security may, on case by case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked. There is no reference to them acting jointly so either should be able to utilize this authority independently. However it seems unlikely that this authority would be used liberally ... or at all.

Due to the vague language of the Executive Order, the U.S. Department of State initially stated that Canadian dual citizens from the Listed Countries would not be allowed to enter the U.S. during the next 90 days. Of course, this initial position was widely [reported by the media](#).

Fortunately, the Canadian Embassy in Washington, DC, has now confirmed that the Executive Order will not apply to Canadian citizens even if they also hold citizenship from one of the Listed Countries. According to the Canadian Embassy's twitter feed (@CanEmbUSA), President Trump's National Security Adviser, Michael Flynn, has confirmed that Canadian dual citizens who also hold citizenship from one of the Listed Countries will not be affected by the travel ban.

The language of the Executive Order is clearly broad enough to include Canadian dual citizens from one of the Listed Countries. Nevertheless, President Trump and his team are free to interpret his Executive Order any way they see fit, and for now they have interpreted it to exclude dual national Canadians.

So crisis averted ... at least for dual national Canadians.