



**PennState Law**

Center for Immigrants' Rights Clinic



## **A View from the Ground: Stories of Families Separated by the Presidential Proclamation**

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On December 4, 2017 the U.S. Supreme Court issued two [orders](#) allowing the [Presidential Proclamation](#) to go into full effect, pending a decision by the Supreme Court. The Proclamation suspends entry for most nationals from the following eight countries: Chad, Iran, Libya, North Korea, Somalia, Syria, Yemen, and Venezuela; however, in Section 3(c), the Proclamation also provides that a consular officer may, on a case-by-case basis and within their discretion, [grant a waiver](#) to affected applicants if they meet certain criteria. This fact sheet provides an overview from the ground, based on the experiences of individuals impacted by the Proclamation who are attempting to reunite with their family members in the United States but have had their waivers denied or are pending approval. These cases raise serious concerns about the waiver process and mean that some families are in limbo until the U.S. Supreme Court issues a final decision, which we anticipate in June 2018.

The Proclamation states that to obtain a waiver, the person seeking entry must demonstrate that: 1) denying entry would cause the noncitizen undue hardship; 2) entry would not pose a threat to the national security or public safety of the United States; and 3) entry would be in the national interest. By the terms of the Proclamation, a waiver will be granted only where the individual demonstrates eligibility to a consular officer or to the Customs and Border Protection officer.

The Proclamation lists ten examples where a person might qualify for a waiver, including but not limited to those in a close family relationship and those seeking urgent medical care in the United States. The [Department of State](#) posted guidance that defined “close family relationship” as those in “relationships with LPRs [i.e., lawful permanent residents or green card holders] and aliens lawfully admitted on a valid nonimmigrant visa in addition to U.S. citizens,” and further confirmed that waivers may be considered for applicants who are “otherwise qualified and seeking urgent medical care in the United States.” Neither the Department of State nor Department of Homeland Security have issued any guidance to individuals or attorneys seeking to obtain a waiver, nor has any agency expanded upon the limited language and examples listed in the Proclamation.

Since the Proclamation went into full effect in December 2017, we have documented reports from individuals who have been denied a visa under the Presidential Proclamation but without consideration under the waiver scheme; denied a visa and a waiver without explanation; and/or denied a visa with instructions that a waiver will be considered. In many cases, denials were made without consideration for the individual's family ties or medical needs in the United States. The human impact is significant, keeping families separated and individuals stranded despite established and compelling circumstances. Below are several stories to highlight the impact:

- **YEMENI FAMILY IN DJIBOUTI SEPARATED FROM THEIR USC FATHER/SON/HUSBAND IN THE UNITED STATES:** “A” is a civil engineer and a United States Citizen who petitioned for a visa for his wife, mother and children, ages 13, 9, and 5 years old, who are all Yemeni citizens. He accompanied them to their interview at the Djibouti embassy in December 2017, at the conclusion of which they were told everything was complete and were even provided a document from the consular officer that told them their visa had been approved, and that it was awaiting printing. On December 14, however, A received a second notice informing him that his family's visas were all denied, and were furthermore considered ineligible for a waiver under the Proclamation. He had not been contacted and had asked for any additional information in between the two notices. A has reached out to his congressional representatives, who - in turn - have inquired with the congressional liaisons on his behalf, seeking information as to why his wife and daughters were denied a waiver. They were not provided with any reasons, and were only told that the decision was final. A's family remains in Djibouti, unable to secure all the visas to Egypt and afraid to return to Yemen, where he reports airstrikes have hit approximately a thousand meters from their home.
- **YEMENI FAMILY WHICH INCLUDES A DAUGHTER WITH SERIOUS MEDICAL CONDITIONS STRANDED IN DJIBOUTI:** “B” is a U.S. Citizen father of a 10-year-old daughter with cerebral palsy and spastic quadriplegia. She is unable to walk, needs regular therapy and medical assistance, including a time-sensitive surgery. When the war in Yemen started, medical facilities became severely under-resourced and they were no longer able to secure the supplies and care she depends on. B filed an I-130 petition to bring his wife and his two daughters to the United States. In October 2017, B and his family traveled to the embassy in Djibouti for the interview but were told to return with additional documents and given a second appointment in January 2018. On the day of his second interview, he went to the embassy carrying his daughter, along with his wife and other daughter, prepared to make the case for his waiver. He brought his full file with him, including his daughter's medical records. After an interview of about 15 minutes, the Consular Officer handed him a denial letter, telling him that a waiver would not be granted in his case. B pleaded, showing him his daughter who is visibly disabled, along with her respective medical reports. The Consular Officer simply said that he would “see what he could do,” which B felt was only to appease him and get him to leave the premises. Today, B is still stuck in Djibouti with his wife and his two daughters, renting a small room with no mattress. He estimates that his living expenses amount to approximately \$100 USD/day, and he is still not able to secure the appropriate medical help needed for his daughter, as it remains unavailable in Djibouti.
- **USC SON AND SUCCESSFUL BUSINESSMAN IN THE UNITED STATES SEPARATED FROM HIS ELDERLY MOTHER:** “C” is a Virginia resident U.S. citizen who is originally from Syria, and runs a very successful small business. He had an approved petition to sponsor his elderly mother to come join him in the United States. Her interview took place in Amman, Jordan in December 2017, after the Muslim Ban went fully into effect. He submitted an application for a waiver under the Proclamation with the assistance of his attorneys. At the interview, his mother was informed that she may be eligible for a waiver, and asked to provide answers to a number of detailed questions about her employment, her residence, her extended family, and other information. She

provided answers to all the required questions the next day. Since that time, she has been placed in administrative processing and has not received an answer about her immigrant visa petition, despite inquiries by congressional offices. She and *C* are suffering great emotional distress because of their separation, and they cannot wait to be reunited with each other.

- **FATHER IN IRAN SEPARATED FROM WIFE AND SON IN THE UNITED STATES:** “*D*” is a man from Iran who is a husband, father and academic who suffers from various medical conditions. *A* was sponsored for a family-based petition by his son, a United States citizen. *D* is a well-recognized professor who has been teaching in Iran for many years. *D*’s wife is a lawful permanent resident (green card holder) living in the United States. *D*’s separation from his wife, son and daughter-in-law places a financial burden on family members and keeps a close family separated. *D* prepared a self-made waiver package and brought it to his interview. The consular officer did not look at the waiver package. The consular officer asked a few questions, but none that were related to the waiver. Shortly after the interview, *D* received a letter saying he had not demonstrated that he qualified for a waiver. His visa denial was based on the Proclamation. *D* was not given an opportunity to present any evidence or claim that he was eligible for a waiver.
- **IRANIAN RESEARCHER IN THE UNITED STATES SEPARATED FROM HER MOTHER IN IRAN FOR MORE THAN ONE YEAR:** “*E*” is an Iranian researcher who works at the National Institutes of Health and is married to a Lawful Permanent Resident of the United States has not seen her mom in more than a year. *E*’s mom applied for a visitor visa to come see her daughter, but when the ban went into effect in December 2017, she received a document stating that she had been denied a visa and is not eligible for a waiver. She was never given an opportunity to apply for a waiver or to present documents showing that she qualifies. She visited the United States previously in 2015, but the Ban is making it impossible for her to come visit her family in the United States again. She remains separated from her daughter, who is in need of her emotional support.
- **ELDERLY FATHER IS SEPARATED FROM HIS ADULT USC CHILDREN AND GRANDCHILDREN:** “*F*” is a retired physician from Iran living in Canada in permanent status. *F* is a father and grandfather to two daughters currently living in the United States. One daughter applied for green cards for both *F* and his wife, who is a Canadian citizen. Both parents are elderly and would like to be in the United States with their children and grandchildren. *F* went to his visa interview at the consulate in January 2018. He was told he was ineligible for a visa because of the Proclamation. The officer marked the box saying he thought the *F* was eligible for a waiver, and that she would email the family a questionnaire and request a waiver. *F* was not given an opportunity to request a waiver before his visa was denied.
- **IRANIAN WITH A U.S. CITIZEN PARENT WHO SUFFERS FROM MEDICAL CONDITIONS AND LIVES IN THE U.S.:** “*G*” is an applicant for a family-based immigrant visa through his relationship with immediate relatives. One of his parents are a U.S. citizen. *G* completed the interview at the consulate. *G* has been stuck in administrative processing. *G* received an immediate waiver denial letter from the consulate in December, 2017. *G* was not given a chance to submit any information that shows he qualifies for a waiver. *G* suffers from economic hardship in Iran, and both of his parents have medical conditions and need support which has caused the entire family great emotional distress.

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