



February 2, 2017

The Honorable John F. Kelly
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Rex W. Tillerson
Secretary of State
U.S. Department of State
Washington, D.C. 20520

Re: Request to Create a Process to Grant Exceptions to the Suspension of Entry of Foreign Nationals from Specified Countries for “Responsible Known Travelers with Pressing Needs” Sponsored by U.S. Companies

Dear Secretary Kelly and Secretary Tillerson:

I write to convey Microsoft Corporation’s request that you exercise the authority granted to you in Section 3(g) of the President’s Executive Order entitled “Protecting the Nation from Foreign Terrorist Entry into the United States” (the “Executive Order”) and create a process to grant exceptions that will permit specific “Responsible Known Travelers with Pressing Needs” to enter the United States in a manner that will address compelling personal needs while protecting the nation’s security.

Microsoft has 76 employees who, together with their 41 dependents, have nonimmigrant visas to live and work in the United States and are impacted by the Executive Order. After contacting these employees and their families, we have learned that some of them have particularly pressing needs. For example, we are concerned about families that have been separated as one or both parents were outside the United States last Friday and therefore cannot re-enter the country and are stranded away from their homes. We are also concerned about an impacted employee inside the United States with a desperate need to visit a critically-ill parent abroad. These situations almost certainly are not unique to our employees and their families. Therefore, we request that you create an exception process to address these and other responsible applications for entry into the country.

We have reviewed carefully the Executive Order, which was signed January 27, 2017 and amended on February 1, 2017. Section 3(g) of the Executive Order specifically states that “the Secretaries of State and Homeland Security may, on a 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.” We therefore believe that the process we are proposing here is not only consistent with the Executive Order, but was contemplated by it.

More specifically, we request that you create an exception under Section 3(g) for an applicant to be classified as a “Responsible Known Traveler with Pressing Needs” by satisfying the following criteria:

- The individual holds a valid nonimmigrant work visa sponsored by a U.S. employer enrolled in E-Verify, an F-1 student visa to pursue a degree at an accredited U.S. university accompanied by documentation from the university showing that he or she is currently enrolled and in good standing, or a derivative nonimmigrant visa as an immediate family member of one of these individuals.
- The individual has committed no crime in the United States.
- If departing from the U.S., the purpose of the travel must be for the business need of the employer or for an exigent family-related emergency. The travel abroad will be for a duration of no longer than two weeks. Immediate family members with derivative nonimmigrant visas would be permitted to accompany “Responsible Known Travelers with Pressing Needs” if the travel is for an exigent family-related emergency.
- Business travel abroad will not include passage through the countries covered by the Executive Order. Personal travel abroad for exigent family-related emergencies may allow for travel to any country on a case-by-case basis.

Under the proposed “Responsible Known Traveler with Pressing Needs” classification, an individual otherwise covered by Section 3(c) of the Executive Order would be allowed to enter the U.S. on their existing nonimmigrant visa. Under this classification, individuals could also be granted a new nonimmigrant visa if based on an approved U.S. Citizenship and Immigration Services visa petition sponsored by a U.S. employer enrolled in E-Verify. The first entry into the U.S. for a newly-issued visa under this exception would be permitted to commence employment with the sponsoring employer.

We believe such an exception under the existing framework of the Executive Order would help address compelling personal needs without compromising the Executive Order’s security-related objectives. Under these criteria, the individuals who would qualify for the “Responsible Known Traveler with Pressing Needs” classification do not present the types of safety and security risks described by the Executive Order.

Employer-sponsored nonimmigrant visa holders are known persons and have already undergone significant governmental security review.

From the perspective of safety and security, a wide range of personal information is known about individuals holding nonimmigrant work visas, including their occupation, place of work, place of residence, family members, state identification/driver's license information, and the existence of any criminal history. These are not people trying to avoid detection. Rather, these individuals are "known quantities" in their communities: their character, personalities, conduct, and behavior is well recognized and understood by their employers, colleagues, friends, and neighbors.

These individuals fill critical roles in the organizations that employ them, whether they are doctors, scientists, engineers, medical technicians, researchers, architects, software developers, or any number of other highly skilled professionals. They are deeply valued contributors to the innovation, research, and business acumen of our nation, and they serve critical roles in the successful operations of U.S. companies.

Students in good standing and already in the United States may face similar hardships.

We have also learned of similar hardships for foreign students pursuing their studies at our nation's universities. These individuals, on F-1 student visas, have placed a bet on our country's higher education system, and are among the promising young minds of the next generation. But they certainly are equally subject to the realities of life, with personal emergencies potentially creating the desperate need to travel abroad. It would be tragic for a student to be faced with the need to forfeit a dream of completing one's education in the United States to tend to family needs that are entirely outside of one's control. These are circumstances that merit an exception.

This proposed exception will by definition build on security screenings that have already taken place.

The individuals who would be eligible for the proposed exception have already been vetted on numerous levels by the U.S. government for security risks in order to be approved for employment on a nonimmigrant visa. Any person with a valid nonimmigrant U.S. visa has been reviewed according to an expansive multi-agency security evaluation process. Those visas that are based on a petition with the U.S. Citizenship and Immigration Services includes background checks against the Interagency Border Inspection System (IBIS), which involves reviews of the following:

- FBI fingerprint and name check;
- US VISIT's Automated Biometric Identification System (IDENT) fingerprint information;
- DHS's Traveler Enforcement Compliance Program (TECS) name check; and
- National Crime Information Center (NCIS) information.

Any “hits” are escalated for further review, and no case is approved if issues cannot be resolved and cleared.

In addition, all nonimmigrant visas processed at U.S. consulates abroad are subjected to additional rounds of interagency security screening. Applicants must submit a range of biographic data, including fingerprints and photographs. The Consular Consolidated Database contains biographic and biometric information to screen all visa applicants, and links to the following security-related programs:

- Consular Lookout and Support System Database (CLASS);
- DHS’s Automated Biometric Identification System (IDENT);
- FBI Integrated Automated Fingerprint Identification System (IAFIS);
- National Crime Information Center (NCIC) data;
- Terrorist Screening Center (TSC) (which includes facial recognition technology to screen applicants against a watch list of photos of known and suspected terrorists);
- DHS’s Traveler Enforcement Compliance Program (TECS) (which includes a consolidated database of law enforcement and inspection information); and
- DHS’s Arrival Departure Information System (ADIS).

Nonimmigrant visa applications also are checked against the CLASS database and are subject to the Security Advisory Opinion (SAO) Process, which incorporates information from the DHS, DEA, and the FBI. Any cases indicating links to potentially derogatory information are referred back to the State Department for review by intelligence and law enforcement agencies, through a request for a Security Advisory Opinion. If subjected to a Security Advisory Opinion, the applicant must pass through the following processes:

- **Visa Viper.** If the individual is suspected of being a terrorist, the visa application or other information is referred to the National Counterterrorism Center (NCTC), ensuring the transmission of potentially derogatory information to a central source.
- **Visa Condor.** This process provides for additional background checks for individuals from a “country of concern,” which would include countries in the Executive Order.
- **Visa Mantis.** The Mantis SAO process addresses INA 212(a)(3)(A)(i)(II), concerning applicants who are “principally” or “incidentally” involved in exporting “goods, technology or sensitive information” from the United States included on the Technology Alert List (TAL).
- **Terrorist Exclusion List (TEL).** SAO applicants are checked against this list of terrorist-related organizations and individuals.
- **Kingfisher Expansion (KFE) Program.** Part of a partnership with the NCTC, the program conducts interagency counterterrorism screening for all visa applicants and allows the FBI, DHS and Terrorist Screening Center to participate in applicant reviews. “Vetting Packages” are sent to NCTC and reviewed against the Terrorist Identities Datamart Environment (TIDE) for known and suspected terrorists.

- **KFE Hit.** A Washington-based review of visa application and post-issuance reviews of all issued visas to check for new information.

The suspension of admission creates a significant burden on U.S. companies contrary to the country's national and economic interests and places significant personal burdens on law-abiding visa holders.

We know from direct experience that many of the individuals who would be eligible for this proposed exception are asked by their employers to travel for business purposes from time to time, and employers rely on their ability to travel internationally in order to run their operations with certainty. The suspension of admission to the U.S. for impacted individuals has created substantial disruption for companies, and that disruption has effects even beyond the 90-day initial duration of the suspension. The aggregate economic consequence of that disruption is high, whether in administrative costs of changing travel plans or the opportunity cost of cancelled business meetings and deals.

There is also a deep personal cost for many impacted individuals. Again, even among just our own employees, we have one individual who is unable to start her new job in the U.S.; others who have been separated from their spouses; and yet another employee who is confronted with the gut-wrenching decision of whether to visit her dying parent overseas. These are not situations that law-abiding individuals should be forced to confront when there is no evidence that they pose a security or safety threat to the United States.

We appreciate your consideration of this proposal and look forward to your response.

Sincerely,



Bradford L. Smith
President, Chief Legal Officer
Microsoft Corporation