

# **Durbin, senators urge DHS to use waiver authority for dual nationals subject to discrimination from new visa waiver program restricted**

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**WASHINGTON** — U.S. Senator Dick Durbin (D-IL) is leading a group of 12 senators calling on Secretary of Homeland Security Jeh Johnson to provide guidance on the issuance of waivers for individuals who are dual nationals of a country participating in the Visa Waiver Program and Iran, Iraq, Sudan, or Syria.

Under the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*, which was included in the end of year Omnibus spending bill, travelers from Visa Waiver Program countries who are nationals of or have traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011 are no longer permitted to travel to the United States under the Visa Waiver Program.

**“The legislation grants you authority to waive these prohibitions if you determine it is in the law enforcement or national security interests of the United States,”** the senators wrote. **“Notably, the prohibition on dual nationals applies to individuals who were born in VWP countries and have never traveled to Iran, Iraq, Sudan, or**

**Syria, but who are nationals of one of these countries solely because of their ancestry. We support reforming the VWP, but singling people out based on their national origin does not make us safer, is inconsistent with American values, and invites discrimination against American citizens who are dual nationals.”**

February 11, 2016

Dear Secretary Johnson:

We commend you for providing guidance on the issuance of waivers on a case-by-case basis for certain categories of individuals from Visa Waiver Program (VWP) countries who have recently traveled to Iran, Iraq, Sudan, or Syria. We respectfully request that you provide similar guidance for individuals who are dual nationals of a VWP country and Iran, Iraq, Sudan, or Syria.

As you know, under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, individuals from VWP countries who are nationals of or have traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011 are no longer permitted to travel to the United States under the VWP. The legislation grants you authority to waive these prohibitions if you determine it is in the law enforcement or national security interests of the United States.

Notably, the prohibition on dual nationals applies to individuals who were born in VWP countries and have never traveled to Iran, Iraq, Sudan, or Syria, but who are nationals of one of these countries solely because of their ancestry. We support reforming the VWP, but singling people out based on their national origin does not make us safer, is inconsistent with American values, and invites discrimination against American citizens who are dual nationals.

Senators Flake, Durbin, and Booker have introduced S.2449, the Equal Protection in Travel Act. This bipartisan legislation would repeal the prohibition on dual nationals participating in the VWP. We support the Equal Protection in Travel Act, but while this legislation is pending we urge you to clarify the circumstances in which you will consider waivers for VWP travelers who are dual nationals of Iran, Iraq, Sudan, or Syria.

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act does not define “law enforcement or national security interests” and there is no legislative history regarding the waiver, so it is solely in your discretion to determine when such interests justify a waiver. There are ample law-enforcement and national-security justifications for granting waivers for dual nationals. For example, singling out people based on their national origin risks alienating these communities from law enforcement. It is also an

unwise use of scarce law-enforcement resources to provide greater scrutiny to people based on their national origin. Your focus should be on people with possible links to terrorism, regardless of their nationality.

Accordingly, we urge you to establish a process for dual nationals to apply for case-by-case waivers via the Electronic System for Travel Authorization and to designate categories of dual nationals who could be eligible for such waivers, for example:

- “Passive” dual nationals who are nationals of Iran, Iraq, Sudan, or Syria under one of the country’s laws but who have never acted as such (e.g. the individual has not obtained a passport from the country);
- Individuals with no significant ties to Iran, Iraq, Sudan, or Syria;
- Individuals who have continuously resided in a VWP country for more than five years; and
- Individuals who have not travelled to Iran, Iraq, Sudan, or Syria in the last ten years.

Thank you for your time and consideration. We look forward to a prompt response.

Sincerely,

RICHARD J. DURBIN

United States Senator

PATRICK LEAHY

United States Senator

BENJAMIN L. CARDIN

United States Senator

BARBARA BOXER

United States Senator

PATTY MURRAY

United States Senator

RON WYDEN

United States Senator

SHERROD BROWN

United States Senator

AL FRANKEN

United States Senator

BRIAN SCHATZ

United States Senator

CHRISTOPHER S. MURPHY

United States Senator

MARTIN HEINRICH

United States Senator

EDWARD J. MARKEY

United States Senator

CORY A. BOOKER

United States Senator

cc: The Honorable John Kerry, Secretary of State