



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

President Biden Rescinds Muslim Ban

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On his first day in office, President Biden signed the “Proclamation on Ending Discriminatory Bans on Entry to the United States,” (“Revocation”) rescinding the infamous “Muslim Ban.” These were policies enacted by President Trump that restricted the entry into the United States of citizens from primarily Muslim and African countries. In his repeal of Proclamations 9645 and 9983, Biden instructed the State Department to restart visa processing for applicants from the affected countries and develop a proposal to restore fairness and remedy the harms caused by the bans, especially for individuals stuck in the waiver process and those who had immigrant visas denied.

This is an important step in providing relief to individuals and families harmed by this Trump administration policy that was inconsistent with U.S. values. The Revocation also provides for the strengthening of screening and vetting of immigrant and nonimmigrant visa applicants by enhancing information sharing with foreign governments. It also directs review of other Trump administration “extreme vetting” practices.

A Brief Timeline of the Muslim Ban

On January 27, 2017, President Trump signed an Executive Order banning for 90 days foreign nationals from seven predominantly Muslim countries from entering the United States. It suspended entry by Syrian refugees indefinitely and prohibited all other refugees from entering the country for 120 days. Numerous legal challenges were immediately raised to this initial Muslim Ban, and it was blocked.

After two more attempts by the Trump administration to implement its ban, and numerous lawsuits, appeals, and injunctions halting that implementation, the Supreme Court allowed the final version, signed by President Trump on September 24, 2017, to take effect while it was being challenged in the courts. On January 19, 2018, the Supreme Court agreed to review the third iteration of the Muslim Ban, and on June 26, 2018, the Supreme Court upheld it.

The ban upheld by the Supreme Court is Proclamation 9645, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats,” which barred entry of immigrants and nonimmigrants from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. This ban was then extended to include Chad, North Korea and Venezuela. Eventually Chad and Sudan were dropped from the list of countries subject to the ban.

On January 31, 2020, the Trump administration further expanded the ban by issuing Proclamation 9983, titled "Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry." This ban furthered the administration's efforts to prevent nationals from majority Muslim countries from entering the United States and applied to nationals from Myanmar (Burma), Eritrea, Kyrgyzstan, Nigeria, Sudan, and Tanzania who had immigrant visas approved after February 21, 2020. The Ban was also updated with respect to the seven previously banned countries, effective January 31, 2020.

The Muslim Ban's Impact

The following chart illustrates the application of the Muslim Ban and its 2020 expansion:

Country	Effective Date	Ban Applies to:
Sudan	2/21/2020	Immigrant visas under Diversity Visa Lottery
Tanzania	2/21/2020	Immigrant visas under Diversity Visa Lottery
Eritrea	2/21/2020	All immigrant visas except those who provided special assistance so the U.S. Government
Nigeria	2/21/2020	All immigrant visas except those who provided special assistance so the U.S. Government
Myanmar (Burma)	2/21/2020	All immigrant visas except those who provided special assistance so the U.S. Government
Kyrgyzstan	2/21/2020	All immigrant visas except those who provided special assistance so the U.S. Government
Libya	1/31/2020 (Previously 9/24/17)	All immigrant and visitor visas (other nonimmigrant visas are not banned)
Somalia	1/31/2020 (Previously 9/24/17)	All immigrant visas
Iran	1/31/2020 (Previously 9/24/17)	All immigrant and nonimmigrant visas except J, M, and F visas.
Venezuela	1/31/2020 (Previously 10/18/17)	Certain government officials and their family members
North Korea	1/31/2020 (Previously 10/18/17)	All immigrant and nonimmigrant visas
Yemen	1/31/2020 (Previously 9/24/17)	All immigrant and visitor visas (other nonimmigrant visas are not banned)
Syria	1/31/2020 (Previously 9/24/17)	All immigrants and nonimmigrant visas

Exceptions

There were limited exceptions to the ban, most notably those already admitted as lawful permanent residents (LPRs), those already within the United States, and those who already had a valid visa on the applicable effective date. There were additional individuals excluded from the ban not listed here.

Waivers

Although certain individuals from the affected countries qualified to apply for a waiver, which they would have to seek from the consulate adjudicating their visa, only a small portion of applicants were actually granted these waivers. The State Department has stated that in the first 11 months the ban was in effect, only six percent of applicants were granted waivers.

Numbers of Affected Individuals

The Muslim Ban contributed to the significant declines in the number of persons who were granted immigrant visas and became LPRs. For example, between fiscal year 2016 and 2018, the number of immigrants admitted into the United States from Iran declined by 72 percent, from Syria by 62 percent, and from Yemen by 91 percent. Particularly stark is the effect of the ban on immediate relatives of United States citizens: 10,544 fewer immediate relatives from Yemen, Iran, Libya, Somalia and Syria were admitted in fiscal year 2018, after the ban went into effect, compared to fiscal year 2016. That represents a 69 percent decline. Similarly, in family-based preference categories, there was a 79 percent overall decline in immigration from those five countries between 2016 and 2018. In 2019, there was an additional 5 percent decline in immediate relative LPRs admitted. More than 37,000 visa applications were denied in 2018, up from less than 1,000 the year prior to the ban taking effect.

The Revocation's Text as it Pertains to Visa Processing

Section 1 of Biden's Revocation formally revokes the previous Executive Orders and Proclamations constituting the Muslim Ban. Section 2 of Revocation orders the Secretary of State to resume visa processing for all countries previously affected. That section likewise orders the Secretary of State to provide to the president, within 45 days, a report outlining: (a) the number of visa applications currently being considered for waivers and a plan for expediting the adjudication of those visa applications; (b) a proposal for a process to reconsider any applications that were denied due to the Muslim Ban, including whether that includes reopening their cases, reassessing any fees, and how these reconsiderations might be expedited; and (c) a plan for ensuring that applicants choosing to re-apply for a visa suffer no prejudice due to a previous denial under the Muslim Ban.

The Likely Immediate Effects of the Revocation of the Muslim Ban

There are three principal effects from the Revocation that should be expected immediately and in the near future. First, because the Muslim Ban has been revoked effective immediately, any first-time applicants for immigrant and nonimmigrant visas from the previously affected countries are now eligible to apply without the need for a waiver. Second, those who are currently being considered for waivers may soon have their visa applications adjudicated. Third, those who had applied for visas since the effective date of the ban and its

expansion and were denied will soon be eligible for reconsideration of their applications. We still don't know what the latter two processes will look like, as the Secretary of State has 45 days to propose a plan on both to the president. Even then, there may be a delay in the implementation of that plan.

What Practitioners Should Know and Prepare For

It is yet unclear how many people intended to apply for visas since the effective dates of the Muslim Ban and did not do so due to it. However, given the welcoming message conveyed by the Revocation, practitioners can likely expect many more inquiries from potential clients in the coming months from the affected countries, particularly the early days of President Biden's term.

Practitioners should also be prepared for the State Department to implement proposals for expediting adjudications of visa applications currently being considered for waivers and reconsiderations of denials over the coming months. They should work with clients now to gather updated evidence for any changes in circumstances should that evidence become necessary. They should also advise clients that there may be additional fees levied, and that clients should be gathering the necessary funds for those potential fees.

Practitioners should check the Department of State website regularly for updated information on the rollout of any processes for expedited visa adjudication and reconsideration of denials.