

Bordeau Immigration Law, LLC

9303 W. 75th Street, Suite 210

Overland Park, Kansas 66204

Ph: 913-432-9994

June 26, 2018: Supreme Court Upholds Travel Ban 3.0

Background:

On September 24, 2017, President Trump issued a third travel ban entitled, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public Safety Threats." The proclamation imposed new country-specific travel restrictions on eight countries: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. In addition, the proclamation subjected nationals of Iraq to extra screening measures. This new travel ban was set to take effect on October 18, 2017.

However, on October 17, 2017, U.S. Court District Judge Derrick Watson of Hawaii and U.S. District Court Judge Theodore Chuang of Maryland each issued separate orders blocking the majority of the travel restrictions set forth in the September 24, 2017 proclamation.

Then, on December 4, 2017, the Supreme Court stayed the injunctions by the two U.S. District Court Judges allowing the entirety of the third travel ban to take effect pending appeals in the 4th and 9th Circuits.

Most recently, on June 26, 2018, the Supreme Court upheld what has come to be known as the Travel Ban 3.0, finding that President Trump was within the scope of his Presidential authority and had lawfully exercised the broad discretion granted to him under INA § 1182(f) to suspend the entry of foreign nationals into the United States. Please see below for a summary of the implications and effects this will have.

Please Note: The scope of the travel ban applies to individuals **who were outside of the U.S. on September 24, 2017 and who did not have a valid visa on that date.** Notwithstanding the scope of the travel ban, individuals with valid visas from the countries listed below are at high risk and should not leave the U.S. without speaking to a qualified immigration specialist. Other exceptions to the restrictions are detailed in the summary below.

Summary:

The following is a summary of the travel restrictions:

- Iran: Entry into the U.S. of Iranian nationals as immigrants and as temporary visitors is suspended EXCEPT for Iranian nationals entering under F, M, and J visas (however, those entering under the exception may be subject to enhanced screening).
- Libya: Entry into the U.S. of Libyan nationals as immigrants and as temporary visitors on business or as tourists is suspended.
- North Korea: Entry into the U.S. of all North Korean nationals as immigrants and nonimmigrants is suspended.
- Syria: Entry into the U.S. of all Syrian nationals as immigrants and nonimmigrants is suspended.
- Venezuela: Entry into the U.S. of certain Venezuelan government officials and their family members as visitors on business or as tourists is suspended.
- Somalia: Entry into the U.S. of Somali nationals as immigrants is suspended. Somali nationals seeking to enter the U.S. as nonimmigrants will be subject to additional scrutiny.
- Yemen: Entry into the U.S. of Yemeni nationals as immigrants and as temporary visitors on business or as tourists is suspended.

***It is important to note that the proclamation does not provide an end date for these restrictions.**

Who is Exempt?

- Lawful Permanent Residents (green card holders);
- Those admitted or paroled to the U.S. on or after the effective date;
- Those with otherwise valid travel documents that are not visas that are valid before or issued after the effective date;
- Dual nationals when the individual has a passport issued by an unaffected country;
- Those traveling on diplomatic visas such as a G visa; and
- Those granted asylum, admitted as a refugee, or granted related relief.

Who can Apply for a Waiver of the Restrictions?

According to Section 3 of the Proclamation, waivers may be granted under the following circumstances:

- (1) When denying entry would cause the foreign national undue hardship and their entry would not pose a threat to national security or public safety, and would be in the national interest; and
- (2) On a case-by-case basis.

Case-by-case waivers may not be granted categorically, but may be granted in individual circumstances such as:

- o Those previously admitted and outside the U.S.;
- o Those with established significant contacts with the U.S. but currently outside the U.S. on the effective date;
- o Those seeking to enter the U.S. for significant business or professional obligations;
- o Those seeking to visit or reside with a close family member and whose denial would cause undue hardship;
- o Those who are an infant, a young child, an adoptee, or in need of urgent medical care or with those with special circumstances;
- o Those employed by the U.S. government; and
- o Those traveling with purposes related to business with the U.S. government or on behalf of certain international organizations.