

PUBLICATION

U.S. Supreme Court Reinstates Key Provisions of the Travel Ban

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On June 26, the U.S. Supreme Court decided to partially lift two injunctions that had been preventing implementation of President Trump's travel ban executive order. Specifically, the Supreme Court ruled that the executive order may take effect but held that the travel ban may not be enforced against nationals of Iran, Libya, Somalia, Sudan and Syria, and refugees from all countries if they have a "credible claim of a bona fide relationship with a person or entity in the United States."

The Supreme Court decision limits the number of individuals who will be subject to travel restrictions to the U.S. The March 6 executive order exempted many foreign nationals from the ban, including permanent residents, dual nationals and holders of valid/unexpired visas. However, nationals of a restricted country who are not already exempt must be prepared to show their strong U.S. ties when applying for a visa or entry to the United States.

Citizens of one of the six listed countries, even if already in possession of a valid visa, should be prepared to present strong evidence of their bona fide relationships when entering the U.S. Examples of bona fide relationships may include:

- An invitation letter from a U.S. entity or employer indicating the national is entering the U.S. to conduct business, attend a conference, or otherwise engage in lawful business activities with a U.S. enterprise and that the relationship was formed in the "ordinary course of business."
- A foreign student who has been admitted to study in the U.S.
- A foreign national who wishes to visit a close family member. A spouse, parent or child is considered a close familial relationship while cousins and grandparents, for example, will likely not be considered close family.
- Foreign workers who have accepted an offer of employment in the U.S. and will conduct employment in a work visa category.

The executive order also authorizes the issuance of discretionary waivers of the travel ban where the denial of entry into the U.S. would cause hardship (such as medical treatment), the foreign national's entry is in the national interest, and entry would not pose a threat to national security. However, the stringent criteria and lack of clear guidance on the application process indicates that waivers may be difficult to obtain.

Further guidance from the Department of State clarifies that if a visa applicant has established eligibility for a visa (other than a B, C-1, D, I or K visa), then the applicant is exempt from the executive order as a bona fide relationship to either a person or entity is inherent in the visa classification. However, applicants for U.S. visas from one of the affected countries should still be prepared for lengthy delays in visa issuance and the possibility of visa denial. Applicants should also expect to address questioning about their ties to the U.S. and relationships in the U.S. during the visa interview and must also present documentation to establish the bona fide ties. In addition, employers with personnel who are subject to travel restrictions should advise their employees to exercise caution when planning travel to the U.S. The Supreme Court will hear final arguments in October.