

Practice Alert: Presidential Proclamation on Ending Discriminatory Bans on Entry to the United States¹

On January 20, 2021, the Biden administration [issued a proclamation](#) to end the Muslim & Africa Travel Bans. On [January 22, 2021](#), the Department of State issued guidance on how it will address immigrant and nonimmigrant visa processing previously subject to the bans.

Revocation:

The Proclamation revokes the following, including the two proclamations governing the Muslim and African travel bans:

- [Executive Order 13780](#)
- [Proclamation 9645 \(Muslim Travel Ban 3.0\)](#)
- [Proclamation 9723 \(Removing Chad from Muslim Ban\)](#)
- [Proclamation 9983 \(Africa Travel Ban\)](#)

Resumption of Visa Processing and Clearing the Backlog of Cases in Waiver Processing:

The Proclamation states the Secretary of State shall direct all Embassies and Consulates to resume visa processing in a manner consistent with the revocations listed. The Secretary of State will provide the President, within 45 days, with:

- Information about the number of people being considered for waivers under the bans and a plan for expeditiously adjudicating their pending visa applications.
- A proposal for reconsidering those individuals whose immigrant (permanent) visa applications were denied pursuant to the bans.
- A proposal to consider whether to reopen immigrant visa applications that were denied due to the bans and whether to charge additional fees.
- A plan for the Department of State to expedite consideration of those denied visa applications.
- A plan to ensure that visa applicants are not prejudiced as a result of a previous visa denial due to the bans.

Review of Information-Sharing Relationships and a Plan to Strengthen Partnerships

The Proclamation calls for the Secretaries of Homeland Security and State, in consultation with the Director of National Intelligence, to provide the following within 120 days:

- A description of the current screening and vetting procedures for immigrant and nonimmigrant entry in the United States, including an evaluation of the utility of form DS-5535.
- A review of practices for sharing information with foreign governments

¹ Thanks to AILA members Mahsa Khanbabai and Shoba Sivaprasad Wadhia for their work on this alert.

- Recommendations to improve screening and vetting activities, information sharing, and foreign assistance funds
- A review of the social media identifiers used in the screening and vetting processes and a determination as to whether these identifiers have benefited these processes

January 2021 Guidance from the Department of State

Department of State [issued guidance on January 22, 2021](#) stating that it will undertake a review to ensure that immigrant visa (IV) applicants denied on the basis of Proclamations 9645 or 9983 will have their cases reconsidered. The review will consider reopening cases, whether additional fees are necessary, and develop a plan to expedite these cases. The Department of State also mentioned the following:

- Under current regulations, applicants who were determined not to qualify for a waiver before January 20, 2020, must submit a new visa application (DS-260) and a new visa application processing fee. However, DOS appears to be reviewing this matter.
- No new application or new visa application fee is required for applicants whose eligibility for a waiver is still being assessed, or who did not qualify for a waiver within 1 year of January 20, 2021, and who request their local embassy/consulate to resume processing on their case within one year of January 20, 2021. They may be able to resume processing of their case without submitting a new application or fee.
- Immigrant Visa applicants who are still in the waiver process will be prioritized for adjudication by posts.

Nonimmigrant visa (NIV) applicants who were denied by the travel bans or did not qualify for a waiver will need to submit a new visa application (DS-160) and pay a new visa application fee to reapply for a visa.

Department of State can immediately begin to process visa applications for all individuals from the affected countries. There is no provision to immediately schedule visa interviews for affected applicants. Due to the COVID-19 global pandemic, consular posts will occur on a post-by-post basis. Applicants should check consular post websites to determine if they meet expedited processing guidelines.

Steps to Take

While the Administration determines how it will address cases currently in queue and those that had been denied due to the Muslim and Africa Travel Bans, members can take several steps to prepare for the eventual processing of these cases:

- Assess which cases were denied due to the Muslim and Africa travel bans and not another ground such as prior military service or terrorism bars (212) (a)(3)(b) or public charge issues.
- Determine which cases are still in queue and pending adjudication due to administrative processing and Muslim and Africa Travel Ban consideration, and

assess if biometrics, medical exams, police certificates, affidavits of support and other supporting documents are “stale”.

- Advise clients that it could be many months before any action can be taken due to an assessment period at government agencies and limited consular resources due to COVID-19.

AILA will continue monitoring this issue and provide additional information as necessary. Please review AILA’s Featured Issue page [“First 100 Days of the Biden Administration”](#) for more information on this and other actions.