



## **(Expanded) Travel Ban 3.0: Frequently Asked Questions**

*Updated February 8, 2020*

On January 31, 2020, President Trump signed a [Presidential Proclamation](#) that EXPANDS Travel Ban 3.0 to certain nationals from six NEW countries: Myanmar (also known as Burma), Eritrea, Kyrgyzstan, Nigeria, Sudan and Tanzania. There is no expiration date. The effective date is 12:01 a.m. (Eastern Standard Time) on February 21, 2020. The new effective date for the seven countries (Libya, Yemen, Iran, North Korea, Syria, Somalia, Venezuela) listed in the 2017 ban is January 31, 2020.

Please review [this fact sheet](#) for a fuller description about the new Expanded Travel Ban.

Below are some of the questions we have received that may be helpful in illustrating the many ways the Travel Ban affects individuals in various parts of the immigration process. The questions have been modified for clarity and to preserve anonymity. **Important:** Our responses are based on our reading of the Proclamation, but how the Expanded Travel Ban is implemented is unknown.

**Q: I am from Nigeria and am living and working in the United States on an H1-B visa. I'm in the process of applying for an employment based green card for my spouse and I, but my spouse is still in Nigeria. Does the Expanded Travel Ban affect me?**

H-1B visas are a category that applies to people who wish to perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and develop project, or services as a fashion model of distinguished merit or ability, as described in the statute, regulations, and [U.S. Citizenship and Immigration Services](#).

The Expanded Travel Ban **does not** apply to nonimmigrant visa categories, such as the H-1B category. [8 CFR §214.2\(h\)](#). The critical difference between immigrants and non-immigrants is that immigrants seek admission to the United States on a *permanent* basis, while non-immigrants seek admission on a *temporary basis*. [8 USC § 1101\(a\)\(15\)](#). The language in the latest [Proclamation](#) suggested a need to prioritize restricting immigrant visa travel over nonimmigrant visa travel. The language of the Proclamation also applies to those people who are outside the United States and without a valid visa on the effective date, which in your case would be February 21, 2020. For this reason, the Proclamation may not apply to you. Whether your wife is affected will depend on whether she currently has a valid visa and when she obtains an immigrant visa from the consulate. In general, obtaining an immigrant visa before the effective the date of the Expanded Travel Ban is preferable.

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**Q: How does the ban apply to someone from Eritrea who has a fiancé visa and is in consular processing to apply for a green card?**

The Expanded Travel Ban does not apply to nonimmigrant visa categories, such as H-1B and K-1 visas. [8 CFR §214.2\(h\)](#). Once you are the beneficiary of an approved immigrant petition and an immigrant visa number is immediately available, you may apply for lawful permanent resident status (a green card). If you are outside the United States, you may apply at a U.S. Department of State consulate abroad for an immigrant visa in order to come to the United States and be admitted as a permanent resident. This pathway is referred to as [consular processing](#). The scope of the Proclamation is limited to those people who are outside the United States and without a valid visa on the effective date. If you have a fiancé visa on the effective date, the Proclamation may not apply to you. In general, obtaining an immigrant visa before the effective date of the expanded travel ban is preferable.

**Q: I am a permanent resident of the United States, and have a pending I-130 application for my wife, who is from Somalia, to join me in the United States. Does the ban also include I-130 applications?**

The I-130 is a petition for an immediate or close relative under the “immigrant” category. Unless she falls into one of the exemptions found in Proclamation 9645, she may be subject to the travel ban, which for Somali nationals, has an effective date of January 31, 2020. She should consult with an immigration attorney to identify the steps for applying for a waiver. To qualify, the applicant must show undue hardship if they are denied entry, that their entry is in the national interest, and that they pose no national security risk.

**Q: Does the Expanded Travel Ban apply to immigrants that are adjusting status from within the United States? If so, is there a waiver available?**

*Adjustment of Status* refers to the process used to apply for permanent resident status when the individual is present in the United States, also commonly known as “applying for a green card”. [U.S. Citizenship and Immigration Services](#). Based on the language of the Proclamation, the Expanded Travel Ban does not cover individuals that are currently applying to adjust their status. The Expanded Travel Ban is focused on entry of immigrants, but immigrants who are adjusting status are currently present in the United States. The Immigration and Nationality Act gives the President the power to “suspend entry of all aliens or any class of aliens if he finds that the entry would be detrimental to the interests of the United States”. [8 U.S.C. § 1182](#). Further, the scope of the new Expanded Travel Ban applies only to people outside the United States on the effective date. Presumably, nationals from the newly banned countries who are inside the United State pending adjustment are not covered by the ban.

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**Q: I am a Diversity Visa Lottery winner from Sudan with an immigrant visa interview scheduled for March. Am I included in this ban? Does this apply to new applicants for the upcoming Diversity Lottery Program 2022 (DV-2022)?**

Operated by the United States Department of State, the [Diversity Visa Program](#) allows individuals “from countries with historically low rate of immigration” to apply for a diversity immigrant visa. The Expanded Travel Ban suspends entry for individuals from Sudan, including Diversity Visa Immigrants. The effective date is February 21, 2020. First, you should determine if you are exempt from the expanded travel ban. If you are not exempt, then you should determine if you can expedite your visa interview to an earlier date. If you are not exempt from the ban and are unable to move your immigrant visa interview to an earlier date, then you should consult with an immigration attorney about applying for a waiver. Currently, there is no expiration date and the Expanded Travel Ban remains in effect for new applicants until termination.

**Q: How does the Expanded Travel Ban, and the previous Travel Ban, affect refugees?**

Under one interpretation, refugees are not in the “immigrant” or “nonimmigrant” categories as a matter of law. Refugees are seemingly like “immigrants” because in both categories they may eventually obtain permanent residence. However, this does not transform refugees into the “immigrant” category as a matter of law. “Immigrants” include those seeking admission through employment, family, or the Diversity Lottery as outlined in the immigration statute.

The exemptions listed in Section 2 of the expansion, cross-referenced to [Proclamation 9645](#), specifically exempts refugees admitted to the United States. Notwithstanding this exemption, since refugees are not in the “immigrant” category, neither *actual refugees* outside or inside the United States nor *would-be* refugees appear to be covered by the ban under this interpretation.

**Q: Where can I find more resources?**

- [Penn State Law Center for Immigrants' Rights Clinic](#)
- [Immigration in the Time of Trump](#) contains resources for immigrants and the broader community
- [Know Your Rights: Enforcement at the Airport](#), ACLU, January 2020.

Please consult with an immigration attorney if you need legal advice or if you are from one of the covered countries and plan to travel. Here is a [list of attorneys](#) who have graciously agreed to assist members in our community impacted by the New Expanded Travel Ban.

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