
Supreme Court Agrees to Hear Travel Ban Case, Continues Allowing Entry of Most Visa-Holders from Designated Countries

By Patrick Taurel, Thomas K. Ragland, Michael P. Nowlan, James E. Morrison / Jun 28, 2017

On June 26, 2017, the United States Supreme Court granted *certiorari* in two cases challenging President Trump's revised executive order temporarily banning certain nationals from six Muslim-majority countries from entering the United States. The Court will hear the two cases - *International Refugee Assistance Project v. Trump* and *Hawaii v. Trump* - which the Court consolidated, during the first session of the October 2017 term.

The six countries listed in the executive order are Syria, Sudan, Somalia, Yemen, Iran, and Libya.

The Court also modified the injunctions issued by lower courts, which had fully blocked the Trump Administration from implementing the travel ban. Despite the Court's modification, the vast majority of visa-holders from the six countries should still be permitted to travel to the United States, provided the U.S. government fairly and reasonably interprets and implements the decision.

Specifically, the Court held that the travel ban may not be enforced against nationals of the designated countries who have a "credible claim of a bona fide relationship with a person or entity in the United States." This means, for individuals, a "close familial relationship," and for entities the "relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading" the executive order. For example, students from the six countries who have been admitted to attend schools in the United States have the requisite relationship, and the executive order should not apply to them. Likewise, workers who have accepted offers of employment from an American company, or a lecturer invited to address an American audience, should not be banned.

The reason most visa-holders from the designated countries should be permitted to travel to the United States unimpeded by the executive order is that under the U.S. immigration system, to obtain a visa in the first instance usually requires a substantial connection with a U.S. person or business. Put differently, because only a small number of visa-holders lack the necessary "bona fide relationship," the ban should not apply to the overwhelming majority of travelers from the six designated countries.

In a press release, the Department of Homeland Security (DHS) pledged to provide additional details on implementation following consultation with the Departments of Justice and State. The press release provides that implementation of the executive order "will be done professionally, with clear and sufficient public notice, particularly to potentially affected travelers, and in coordination with partners in the travel industry."

If any Clark Hill clients are adversely impacted, or anticipate being adversely impacted, by the executive order, we would encourage you to contact members of the Immigration Practice Group as soon as practicable.