

President Trump's Latest Travel Ban and its Effect on Canadian Citizens and Permanent Residents

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Introduction

On December 4, 2017, in a 7-2 decision the United States Supreme Court lifted the temporary restraining order that had initially blocked President Trump's latest travel ban. This means that the United States Government is now free to fully enforce the travel ban while the United States Court of Appeals considers the merits of the underlying legal challenge.

Because of this recent development, it may be useful to briefly review the history of President Trump's three travel bans and to consider how the latest travel ban will affect citizens of the designated countries, including dual national Canadians and Canadian permanent residents.

The History of President Trump's Travel Bans

Travel Ban 1.0

On January 28, 2017, President Trump issued executive order 13769 (Protecting the Nation from Foreign Terrorist Entry into the United States), which imposed the first travel ban. Now referred to as "Travel Ban 1.0," it imposed an immediate 90-day travel ban on citizens of certain designated countries (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen).

Travel Ban 1.0 caused chaos when it was initially implemented because no advance notice was given to the affected foreign nationals. Many citizens of the designated countries had already made arrangements to travel to the United States. In some cases, affected travelers were already *en route* to the United States when Travel Ban 1.0 became effective.

In addition, very little guidance was initially provided to the relevant federal agencies that were responsible for enforcing Travel Ban 1.0. For example, it was initially unclear whether U.S. permanent residents or dual citizens would be affected.

When United States Customs and Border Protection (“USCBP”) eventually published its FAQ page for Travel Ban 1.0, it confirmed that permanent residents of Canada (not including refugees) who held passports from a designated country could still apply for admission to the United States if they presented their passport with a valid (previously-issued) immigrant or non-immigrant visa along with proof of their Canadian permanent resident status. However, travel had to originate in Canada and be made through a Canada-U.S. land port of entry or a preclearance office at a Canadian airport.

Although the USCBP guidance answered the issue of whether a Canadian permanent resident, who had previously received a U.S. visa (which was still valid), would be permitted to seek admission to the United States, the U.S. Department of State provided no guidance regarding whether an affected Canadian permanent resident could apply for a new visa through a United States Consulate in Canada.

Fortunately, Travel Ban 1.0 was blocked by a temporary restraining order on February 3, 2017. As a result, it was only in effect for six days.

Travel Ban 2.0

On March 6, 2017, President Trump issued executive order 13780 (Protecting the Nation from Foreign Terrorist Entry into The United States). This executive order implemented his second travel ban, which is now referred to as “Travel Ban 2.0.” Unlike Travel Ban 1.0, which became effective immediately, Travel Ban 2.0 included a ten-day delay to allow sufficient time for affected parties to prepare for the ban.

Unlike Travel Ban 1.0, Travel Ban 2.0 did not include Iraq. However, it also stated that decisions regarding the issuance of visas or granting admission to Iraqi nationals would be subjected to “additional scrutiny” to determine if applicants had connections with ISIS or other terrorist organizations, or otherwise posed a risk to either national security or public safety.

Travel Ban 2.0 again suspended the entry of citizens of designated countries (which now included Iran, Libya, Somalia, Sudan, Syria, and Yemen) for a period of 90 days. However, this time it made clear that the travel ban would apply only to individuals who:

- Were outside the United States on the effective date of Travel Ban 2.0;
- Did not have a valid visa when Travel Ban 1.0 became effective (such individuals were entitled to receive a travel document to enter the United States, even if their visa had been revoked or cancelled as a result of the ban); and
- Did not have a valid visa on the effective date of Travel Ban 2.0.

Travel Ban 2.0 also included several exceptions, including the following:

- A lawful permanent resident of the United States; and
- A dual national of a designated country traveling on a passport issued by a non-designated country.

Canadian permanent residents were not specifically exempted. However, Travel Ban 2.0 allowed nationals of the designated countries to seek a waiver on a case-by-case basis, if they could demonstrate that denying them entry would cause undue hardship, that their entry would not pose a threat to national security, and that their entry would be in the national interest. One of the examples provided described a Canadian permanent resident who was applying for a visa at a location within Canada.

A federal court judge issued a temporary restraining order blocking Travel Ban 2.0 on March 15, 2017, the day before its effective date. Shortly thereafter, a second federal court judge also blocked Travel Ban 2.0. On May 25, 2017, the United States Court of Appeals refused to reinstate the ban. However, on June 26, 2017, the United States Supreme Court partially lifted the temporary restraining order (exempting those with *bona fide* relationships with a person or entity in the U.S.) and agreed to hear oral arguments for the petition to vacate the temporary restraining orders.

Travel Ban 3.0

On September 24, 2017, President Trump signed Presidential Proclamation 9645 (Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public Safety Threats). This Presidential Proclamation established the current travel ban, which is now known as “Travel Ban 3.0.” As a result, the United States Supreme Court cancelled its scheduled hearing to consider the legality of Travel Ban 2.0.

Travel Ban 3.0 imposed permanent travel restrictions on citizens of Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. North Korea and Venezuela were added and Sudan was removed. The travel restrictions vary depending on the country:

- Chad – Entry as immigrants, and as nonimmigrants under business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is suspended.
- Iran – Entry as immigrants and as nonimmigrants, except under valid student (F and M) and exchange visitor (J) visas, is suspended. Such individuals will be subject to enhanced screening and vetting requirements.
- Libya – Entry as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is suspended.
- North Korea – Entry as immigrants and nonimmigrants is suspended.
- Syria - Entry as immigrants and nonimmigrants is suspended.
- Venezuela – The entry of officials from government agencies involved in screening and vetting procedures (Ministry of Interior, Justice, and Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People’s Power Ministry of Foreign Affairs) and their immediate family members, as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is suspended. Other nationals of Venezuela will be subject to additional measures.

- Yemen - Entry into the United States as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is suspended.
- Somalia - Entry as immigrants is suspended. Also, nonimmigrant visa applications will be subject to additional scrutiny.

As in Travel Ban 2.0, Travel Ban 3.0 made clear that it would apply only to citizens of designated countries who:

- Were outside the United States on the effective date of the proclamation;
- Did not have a valid visa on the effective date of the proclamation; and
- Did not have their previously-issued visas revoked or cancelled as a result of Travel Ban 1.0 (such individuals would receive a travel document so that they could still enter the United States).

Travel Ban 3.0 also included the same exemptions that appeared in Travel Ban 2.0, including exemptions for:

- A lawful permanent resident of the United States; and
- A dual national of a designated country traveling on a passport issued by a non-designated country.

As in Travel Ban 2.0, Travel Ban 3.0 allows nationals of the designated countries to seek a waiver on a case-by-case basis, if they can demonstrate that denying them entry would cause undue hardship, that their entry would not pose a threat to national security, and that their entry would be in the national interest. The examples provided in Travel Ban 3.0 still include a Canadian permanent resident who is applying for a visa at a location within Canada.

Travel Ban 3.0 was scheduled to take effect on October 18, 2017. However, on October 17, 2017, a federal court judge issued a temporary restraining order against Travel Ban 3.0, as it applied Chad, Iran, Libya, Syria, Yemen, and Somalia (but not North Korea or Venezuela). A second federal court judge later issued a similar order. The United States Court of Appeals also agreed with the lower court decisions. However, the United States Supreme Court lifted the temporary restraining order on December 4, 2017.

Although Travel Ban 3.0 initially provided for a delay, in order to allow sufficient time for affected parties to prepare for the ban, the effective date passed months ago while the temporary restraining order was in force. Soon after the United States Supreme Court's decision, the U.S. Department of State issued guidance confirming that Travel Ban 3.0 would be fully implemented around the world starting on December 8, 2017.

What to Expect Now

As of December 8, 2017, citizens of Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen are subject to the visa restrictions described in Presidential Proclamation 9645. However, individuals who have already entered the United States will not be affected. Neither will individuals who were issued U.S. visas prior to the effective date of Travel Ban 3.0. In

addition, any individual whose visa was revoked or cancelled solely due to Travel Ban 1.0 will be issued a travel document.

United States permanent residents are not subject to the visa restrictions. In addition, dual national Canadians who are also citizens of a designated country are not subject to the visa restrictions, if they enter the United States using their Canadian Passports.

Canadian permanent residents who are citizens of a designated country are still subject to Travel Ban 3.0. However, they may seek a case-by-case waiver when they apply for their visa through a United States consular post in Canada. Although Canadian permanent residents were specifically mentioned in Presidential Proclamation 9645 as one example of an appropriate case, the U.S. Department of State's recent guidance reiterates that waiver requests, even those submitted by Canadian permanent residents, will be adjudicated on a case by case basis. In other words, nothing is guaranteed.