



The Muslim travel ban is over. What happens now?

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It was a four-year long fight against the Muslim ban. Now, the work begins: catching up on the backlogs of immigration applications, reuniting families, and advocating for long-term immigration reform, say lawyers.

"We were very pleased that the president committed to rescinding the ban on day one and did it. It was a stain on our nation's moral character. It hurt so many families," says Mary Bauer, legal director at Muslim Advocates.

Still, she emphasises, "There's a lot that remains to be done. We have been pushing the Biden administration to take a very pro-active approach, to go through and review the applications that have been denied and give people the opportunity to have their cases adjudicated so they don't have to apply and pay all over again. People can never get back the time they lost with their families. But we can seek some semblance of justice after this initial decision."

Former president Donald Trump signed an executive order to ban citizens from six Muslim-majority countries one week into his administration, setting a tone for his policies for the following four years (after having campaigned on multiple xenophobic promises, including the creation of a Muslim registry).

Though he faced strong opposition, the next year he was able to quietly push through the executive order into law, helped by the incorporation of non-Muslim-majority countries into the ban, making it legally difficult to argue that it was based on religious discrimination.

In April 2020, a complete 30-day ban on all immigration was imposed, which Trump announced in a late-night tweet. Though the last move was largely symbolic, given pandemic-related travel restrictions since the beginning of last year, it was nevertheless a message of exclusion.

With Joe Biden's new executive order to reverse the ban on day one of his administration, he appears to be showing that he wants to take a more inclusive approach. The order also ensures that those who were denied visas or waivers as a result of the ban will have their applications reconsidered.

This comes amid dozens of other executive orders to reverse Trump policies on the environment, healthcare and civil rights. It was a campaign promise he kept after winning in key swing states, thanks to the support of the Arab and Muslim communities in Michigan and Minnesota.

For anyone who might think the reversal of the travel ban will open a floodgate of immigration to the US, lawyers note that applicants from the previously banned countries will still have to go through the same rigid process they were subject to prior to the ban.

"When we talk about repealing the ban, it doesn't mean repealing the vetting process. It was never like that before," says Hiba Ghalib, an Atlanta-based immigration attorney. "It's about allowing the system to proceed and making it available to everybody, not just certain countries."

Even before the ban, dating back decades, the path to America for Muslims – whether for tourism, studies, or immigration – has been exceptionally difficult (this has also included non-Muslim minorities from Muslim-majority countries, as the State Department does not require visa applicants to state their religion). These applicants have been subject to extreme vetting in various forms.

"When Trump talked about creating a Muslim registry, there really already was a Muslim registry. It was the terrorist watch list," says Gadeir Abbas, an attorney for the Council on American-Islamic Relations, referring to the Terrorism Screening Database, a list of more 1.6 million people (as of 2017), the vast majority of whom are Muslim and foreign.

The list, which followed the September 11, 2001 terrorist attacks on New York and Washington, has long been criticised for its lack of transparency and for singling out Muslims. In 2019, a judgement in the US District Court for the Eastern District of Virginia found that "the TSDB fails to provide constitutionally sufficient procedural due process, and thereby also violates the Administrative Procedures Act." The government is now appealing the decision.

Among the most severe forms of vetting is the Controlled Application Review and Resolution Program (CARRP), which can send applications into a so-called black hole, sometimes causing years-long delays, and in some cases blacklisting.

Adopted in 2008, at the end of George W. Bush's presidency, it continues to this day. A 2013 report by the American Civil Liberties Union (ACLU) titled 'Muslims Need Not Apply' describes the program as relying on "deeply flawed mechanisms to identify 'national security concerns,' including error-ridden and overbroad watch-list systems and security checks; and religious, national origin, and associational profiling. Predictably, the CARRP program not only catches far too many harmless applicants in its net, but it has overwhelmingly affected applicants who are Muslim or perceived-to-be Muslim."

Moreover, discrimination against Muslim immigrants since the travel ban was enacted appears to extend beyond the order. A 2018 study by the Cato Institute calculated that the travel ban could explain a two-thirds decline in immigrants and a 28 percent decline in visitors to the US.

It noted that while three of those countries - Chad, Iraq and Sudan - had been taken off the list, visa approvals for Chad and Sudan are back up, but Iraq's were still down 42 percent in 2018. "This highlights that policies at work are much broader than the highly publicized ban," according to the report.

In light of these obstacles, advocates are already studying ways to prevent another implementation of the Muslim ban in the future. This would mean modifying the law that allowed the ban in the first place.

"We've also got to make sure no future president can implement the ban," says Abed Ayoub, director of legal and policy affairs at the Arab-American Anti-Discrimination Committee (ADC), referring to America's broad executive power over immigration policy.

Section 212(f) of the Immigration and Nationality Act of 1952 gives the president the authority to "suspend the entry of all aliens or any class of aliens as immigrants or non-immigrants," or "impose on the entry of aliens any restrictions he may deem to be appropriate," whenever the president finds that such entry would be "detrimental to the interests of the United States," for "such period as he shall deem necessary."

Compounding these obstacles are the logistics that lie ahead. After four years of a travel ban and State Department layoffs, US embassies and consulates around the world do not have sufficient or recently trained staff to process the backlog of visa applications.

"There's going to be a need for the reallocation of staff. There have been consulate offices not processing visas. There will be a surge of people wanting to be reunited with families that will need to be processed," says Bauer.

Meanwhile, many would-be immigrants have given up, changed their plans, or have been left in limbo. Many have had to make life-altering decisions about their jobs and personal relationships.

"I think the struggle for me is the unpredictability and not knowing how to help people. The targets keep moving," says Ghalib. "This causes stress for families, so they can't plan and they're always in limbo. Sometimes it's easier to get denied, because at least they know the outcome."

Will immigrants give up on America? Right now, with the high number of queries to immigration lawyers, it appears that many are still holding out hope. Despite its clear flaws, America is still widely seen as a land of opportunity. Immigrants have long found success as both employees and employers. In the US, immigrants create around 25 percent of new businesses.

Today, more than half of Fortune 500 companies were founded or co-founded by an immigrant or the child of an immigrant. In recent years, a growing number of immigrants, including from the group of previously banned countries, are running for political office, showing that they not only want to live in America, but also serve and represent it.

"I have to say I'm deeply impressed every day with the power of the promise of America," says Bauer. "People who have suffered so much and have been subject to discrimination believe in us as a beacon of hope and tolerance. I think there will be tens of thousands of people who will try to immigrate to the US. It is deeply moving that so many people believe in the good our country has to offer."

She recalls a Yemeni family she represented on the first day of the travel ban. Although they were permanent residents, they were turned away at the airport upon their arrival home to America. They were able to return to the US, but only after they had arrived back in Yemen. This meant they took three 18-hour flights. Waiting to greet them at the airport were their friends and relatives, who were wearing American flag lapel pins.

"It was a beautiful thing to watch," says Bauer. "I suspect there will be thousands more of those stories. I expect there will be many, many reunions, too long in the waiting. At least they will happen."

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