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US IMMIGRATION & NATIONALITY LAW

COURT STRIKES DOWN 75-COUNTRY IMMIGRANT-VISA BAN AS UNLAWFUL NATIONALITY DISCRIMINATION

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On January 14, 2026, the Department of State announced that, effective January 21, 2026, it was pausing immigrant visa issuance to nationals of 75 countries. The Department publicly justified the policy on the ground that applicants from those countries posed a heightened risk of using public benefits or becoming public charges. That same day, Secretary of State Marco Rubio sent a cable to consular posts worldwide directing officers to implement the policy, and the announcement gave no end date for the pause.

On August 21, 2026, a federal judge in the Southern District of New York struck down the Trump administration's 75-country immigrant-visa policy. In *Catholic Legal Immigration Network, Inc. v. Rubio*, Judge Jeannette Vargas held that the policy was unlawful and beyond Secretary Rubio's statutory authority because it replaced Congress's individualized immigrant-visa system with a blanket nationality-based refusal rule that required consular officers to deny immigrant visas even when applicants were otherwise eligible. The court also said the INA prohibits discrimination based on nationality in the issuance of immigrant visas and "explicitly strips the Secretary of State of authority over consular adjudication of immigrant visas."

As described in the court ruling, the Department of State announced an unqualified suspension of immigrant visas for nationals of 75 countries, regardless of individual statutory eligibility, on the stated premise that applicants from those countries posed a heightened public-charge risk. The court treated the policy not as an ordinary adjustment in screening, but as a

categorical directive that predetermined outcomes in immigrant-visa cases.

The case also matters because it was resolved as a facial challenge to a government policy rather than as a review of any one applicant's visa denial. That framing allowed the court to evaluate whether the State Department's rule itself conflicted with the INA and the APA without requiring the plaintiffs to relitigate individual consular decisions one by one. The ruling is significant because it treats the pause not merely as a procedural delay but as an unlawful, nationality-based immigrant visa refusal system. The decision therefore turns on three overlapping limits: visa refusals must rest on individualized statutory ineligibility, the Secretary of State may not dictate case outcomes reserved to consular officers, and Congress has prohibited discrimination in the issuance of immigrant visas based on nationality and related protected characteristics.

The court's starting point was the structure of the immigration laws themselves. Under the INA, immigrant visa adjudication is supposed to be individualized. Consular officers assess the applicant's eligibility, determine whether any legal ground of ineligibility applies, and then either issue or refuse the visa under the rules Congress enacted. The January 2026 policy did something very different. As the court described it, the policy ordered consular officers to refuse immigrant visas to nationals of the listed countries regardless of whether the officer, after individualized review, had determined that the applicant was otherwise eligible.

The court's analysis of 22 C.F.R. § 40.6 was central. That regulation provides: "A visa can be refused only upon a ground specifically set out in the law or implementing regulations." It further states that the term "reason to believe," as used in INA § 221(g), requires "a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in the INA and as implemented by the regulations." The regulation thus reflects a basic premise of immigrant-visa law: refusals must be anchored in legal ineligibility, not in a policy preference that has no basis in the statute or regulations.

The government relied on INA § 221(g), codified at 8 U.S.C. § 1201(g), as the mechanism for carrying out the policy. But the court held that § 1201(g) does not authorize categorical refusals untethered to statutory ineligibility. It "merely provides" that a visa will not be issued if a consular officer determines that the

applicant is ineligible under § 1182 or another provision of law, or if the applicant fails to comply with the INA. Read together with 22 C.F.R. § 40.6, the provision permits refusal only on a recognized legal ground. Because the challenged policy required refusals even when no such ground existed, the court concluded that the government had turned § 1201(g) into a tool for categorical denial rather than case-specific adjudication. The opinion also stressed that Congress assigned individualized immigrant visa assessments to consular officers, whereas the policy made those assessments ultimately irrelevant for nationals of the listed countries.

One of the most important parts of the ruling is the court's distinction between visa issuance and entry or admissibility restrictions. The opinion states that a visa "does not itself authorize entry into the United States". Instead, it allows the holder to travel to a port of entry and request admission. That distinction became decisive when the government invoked *Trump v. Hawaii*. In *Trump v. Hawaii*, the U.S. Supreme Court held that a presidential proclamation restricting entry of nationals from certain countries did not violate 8 U.S.C. § 1152(a)(1)(A) because that proclamation did not impose limits on visa issuance. The U.S. Supreme Court specifically explained that § 1152(a)(1)(A) is "expressly limited to the issuance" of immigrant visas, not the broader question of entry or admissibility. Judge Vargas used that same distinction against the government here. The court said there was "no question" that the 75-country policy regulated visa issuance. In other words, this was not a case about a President's power to limit entry at the border. It was a case about whether the State Department could deny immigrant visas themselves based solely on nationality. Because 8 U.S.C. § 1152(a)(1)(A) forbids nationality discrimination "in the issuance of an immigrant visa," the court treated this as a visa-issuance case and applied that rule directly. Section 1152(a)(1)(A) states that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence", except as specifically provided elsewhere in the statute. Judge Vargas concluded that the policy ran directly into that prohibition because it "requires consular officers to discriminatorily refuse visas solely on the basis of the applicant's nationality" and that the text of § 1152(a)(1)(A) leaves "no doubt that Congress intended to abolish nationality-based discrimination in the immigrant visa process".

The discrimination point is broader than nationality alone. Section 1152(a)(1)(A)

also bars discrimination in immigrant visa issuance because of race, sex, place of birth, or place of residence, unless Congress has created a specific statutory exception. Although the challenged policy operated through nationality, the opinion matters because it confirms that the immigrant visa process cannot be reorganized around protected classifications that Congress removed from visa allocation and issuance decisions. Judge Vargas stated: "The Policy's categorical ban on the issuance of immigrant visas to nationals of nearly 40% of the world's countries, see ECF No. 48-4 at 1, breaches the commitment of the United States to adjudicate visa applications based solely on an individualized assessment of the applicant's eligibility under the INA, a principle embodied in the INA generally and Section 1152(a)(1) specifically. The visa ban is thus contrary to law."

The administration publicly tied the policy to public-charge concerns, but the court did not accept the idea that this transformed the policy into a lawful implementation of the public-charge provision. The opinion stated that the "Nationality-Based Pause cannot be fairly read as implementing the public-charge provision," and instead found that the policy contravened other INA provisions, especially the nationality-discrimination rule and the visa-refusal rules. The court's objection was not that the administration applied public-charge rules too aggressively. It was that the government used public-charge rhetoric as the rationale for a different kind of measure entirely: a categorical nationality-based immigrant-visa ban that the statutory scheme does not authorize.

The court's analysis of Secretary Rubio's authority under 8 U.S.C. § 1104(a) was equally important. Although the Secretary of State has broad authority to administer immigration laws through diplomatic and consular channels, the INA reserves to consular officers the functions relating to the granting or refusal of visas. The court concluded that the January 2026 cable crossed that line because it did not merely guide officers in how to apply existing law. It commanded them to reach a predetermined result. As the opinion put it, the policy "overrides consular discretion and decision-making and dictates whether immigrant visas shall be granted or denied." That, the court held, exceeded the Secretary's lawful role.

The court also rejected the government's threshold arguments that the case could not be heard at all. It concluded that the policy was final agency action because it reflected the government's settled and operative position and

immediately altered the framework governing immigrant visa adjudications for applicants from the covered countries. It also rejected the government's reliance on consular nonreviewability, reasoning that facial challenges to the lawfulness of agency policies governing visa issuance are different from attempts to overturn individual consular determinations in particular cases.

The court vacated the policy under § 706(2)(A) of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), and ordered that any immigrant visa refusal based solely on the policy be set aside and remanded for further proceedings consistent with the opinion. At the same time, the court limited that relief to policy-based refusals. Refusals supported by other valid grounds were not disturbed. That remedy reflects the logic of the opinion itself: the court did not say that immigrant visa applicants from the listed countries were automatically entitled to visas, but it did hold that the government could not lawfully use this nationality-based policy to deny them. That is why the decision matters beyond this particular 75-country ban. It is a reminder that, even in immigration law, where executive authority can be broad, Congress still controls the legal framework for visa issuance.

The broader significance of the decision is that it reaffirms several basic limits on executive control over immigrant visa issuance. Congress placed consular officers at the center of immigrant visa adjudication, required visa refusals to rest on recognized legal grounds, prohibited discrimination in immigrant visa issuance based on nationality and related classifications, and withheld from the Secretary of State the power to dictate which individual visa cases must be granted or denied. By replacing case-by-case adjudication with a blanket, nationality-based ban, the 75-country policy conflicted with each of those limits. For that reason, the court concluded that the policy was incompatible with the statutory scheme Congress enacted and exceeded the Secretary's lawful authority.

Nationals of the listed countries may no longer be refused immigrant visas solely because of the 75-country nationality-based pause. On the other hand, a separate 39-country security-based ban implemented through a Presidential Proclamation under INA § 212(f) remains in effect. Although the two measures overlap in part, they are distinct policies. Accordingly, the ruling's practical effect is greatest for nationals whose eligibility was restricted only by the 75-country pause. For nationals who remain subject to the separate 39-country security-based restriction, the vacatur of the 75-country pause does not, by

itself, eliminate any independent restrictions that continue to apply under the proclamation.

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