



How the Nigerian Travel Ban Affects EB-5 Investors



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Introduction: Recent proposals for increasing the minimum investment amount for the U.S. EB-5 visa from the current \$500,000 and \$1,000,000 amounts for TEA and non-TEA projects, respectively, have been the subject of much debate. Proposed legislation by Senators Grassley or Cornyn would raise the minimum investment amounts to \$800,000 and \$1,000,000, or \$800,000 and \$925,000, while the proposal from the Department of Homeland Security would raise them to \$1,350,000 and \$1,800,000. The proposals stem mainly from the perceived need to adjust the investment amount for inflation, as the current amounts have not been adjusted since the program's inception, some 28 years ago. It should also be noted that all of the proposals above impose such high hurdles to qualify for the lower TEA amount that in effect the higher investment amounts above seem as a practical matter

more likely to become the market standard.

In February 2020, the Trump administration set into effect a travel ban for immigrant visa applications by Nigerian nationals, along with nationals of five other countries. Although nonimmigrant visas such as visitor visas, student visas, and other work permit visas are still permissible, the EB-5 immigrant investor visa is not to be issued at a U.S. Consulate to a Nigerian national until the policy is reconsidered by October 1st later this year.

Approximately 30% of Houston EB5's investor database consists of Nigerian nationals. Most Nigerians were blindsided by the recent travel ban since Nigeria is Africa's largest economy and the second largest trading partner to the U.S. in all of Africa. Although each case is different and

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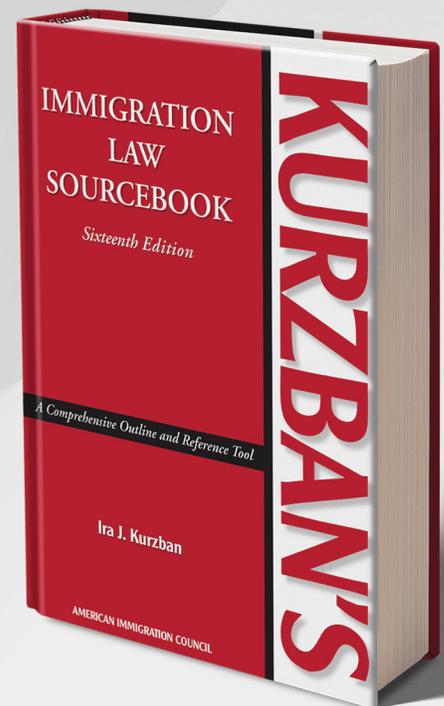


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Regional Centers and their investors should always consult with their legal counsel first. Regional Centers should communicate the details and realities of this ban with current and prospective EB-5 investors.

If an investor chooses to continue course with his/her investment with the optimism that the ban will not remain in place by the time an immigrant visa interview is scheduled at a U.S. Consulate, then filing his/her I-526 petition with USCIS will preserve his/her place in line for adjudication. In select cases involving an investor whose I-526 petition approval comes when the investor is already physically present in the U.S. lawfully, there may be the option of adjusting status without returning to the U.S. Consulate for an immigrant visa, thereby avoiding the travel ban entirely. If adjustment of status is not an option, and if the travel ban still exists, then a waiver is likely to be necessary for the Nigerian EB-5 investor.

Below is a list of exemptions and waivers to the travel ban that could be applicable to some investors. The ones in **bold** are most likely to be helpful to Nigerian investors.

Exemptions: The travel restrictions in the proclamation do not apply to:

- Lawful permanent residents (LPRs);
- **Dual nationals of a designated country who are traveling on a passport issued by a non-designated country;**

Waivers: A waiver may be granted if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

- a) Denying entry would cause the foreign national undue hardship;
- b) Entry would not pose a threat to the national security or public safety of the U.S.; and
- c) Entry would be in the national interest.

A waiver issued by a consular officer shall be valid for both the issuance of the visa and for any subsequent entry on that visa.

Waivers may not be granted categorically but may be appropriate in the following situations:

- **The foreign national has previously been admitted to the U.S. for a continuous period of work, study, or other long-term activity, is outside the U.S. on the applicable effective date, seeks to reenter the U.S. to resume that activity, and the denial of reentry would impair that activity;**
- **The foreign national has previously established significant contacts with the U.S. but is outside the U.S. on the applicable effective date for work, study, or other lawful activity;**
- **The foreign national seeks to enter the U.S. for significant business or professional obligations and the denial of entry would impair those obligations;**
- **The foreign national seeks to enter the U.S. to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a USC, LPR or lawful nonimmigrant, and the denial of entry would cause undue hardship;**
- The foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by special circumstances;
- The foreign national can document that he or she has provided faithful and valuable service to the U.S. Government;
- The foreign national is traveling for purposes

related to an international organization designated under the International Organizations Immunities Act (IOIA), traveling for purposes of conducting meetings or business with the U.S. Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

- The foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;
- The foreign national is traveling as a U.S. Government-sponsored exchange visitor; or
- The foreign national is traveling to the U.S. at the request of a U.S. Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

We at Houston EB5 are optimistic that Nigeria will take the steps needed to remove itself from U.S. visa restrictions that were imposed in February. In a meeting in February between Secretary of State Mike Pompeo and Nigerian Foreign Minister Geoffrey Onyeama, Onyeama said, "We have identified all those requirements, we had actually started working on all of them." He said Nigeria was close to creating an information sharing mechanism that would meet the criteria for passport security and sharing of criminal and terrorism information.

"We hope to have that up and running very soon and no longer running through third parties," he said. "Hopefully once that has been achieved, we look forward to being taken off this visa restriction list." At this same meeting Secretary of State Mike Pompeo said he's optimistic that Nigeria will take the steps needed to remove itself from U.S. visa restrictions that were imposed. Based on that optimistic assessment, we believe investors with recently-filed or soon-to-be-filed petitions will not be severely impacted by the Travel Ban. ▶