CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

FEDERAL COURT VACATES STATE DEPARTMENT’S 75-COUNTRY IMMIGRANT VISA SUSPENSION

Posted on August 24, 2026 by Cyrus Mehta

By Cyrus D. Mehta and Manjeeta Chowdhary *

On August 21, 2026, the U.S. District Court for the Southern District of New York issued a significant decision in *Catholic Legal Immigration Network, Inc. (CLINIC) v. Rubio*, No. 1:26-cv-00858-JAV, vacating the Department of State’s policy suspending the issuance of immigrant visas to nationals of 75 countries.

Judge Jeannette A. Vargas ordered that: “The judgment shall set aside and vacate the Policy categorically suspending the issuance of immigrant visas to applicants from the 75 designated countries as contrary to law and in excess of statutory authority. The Judgment shall set aside and vacate any refusal of an immigrant visa that was based solely upon the Policy, and remand those agency actions for further proceedings consistent with this Opinion and Order.”

On January 14, 2026, the Department of State announced that, effective January 21, 2026, it would suspend immigrant visa issuance to nationals of 75 designated countries based on concerns relating to public-charge risk and use of government benefits. The implementing Cable nevertheless required consular officers to continue conducting individualized visa adjudications, including public-charge determinations under INA § 212(a)(4). Even where an applicant was not found inadmissible on any statutory ground, or successfully overcame a public-charge refusal, the Cable required the officer to refuse the visa under INA § 221(g) while the Department developed additional screening and vetting procedures. The Policy remained in effect until further notice and was adopted without notice-and-comment rulemaking.

On February 2, 2026, the Plaintiffs filed suit challenging the Policy and asserting nine causes of action. Three claims – Counts One, Three and Seven- were before the Court on the parties' cross-motions for partial summary judgment. Count One alleged that the Policy was contrary to law and exceeded the Department's statutory authority in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A)-(C). Count Three alleged that the Government violated the APA by enacting a legislative rule without providing the required notice and opportunity for public comment. Count Seven alleged that the Policy violated the doctrine articulated in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) by departing from and overriding the INA and its implementing regulations.

Before reaching the merits, the Court rejected the Government's threshold challenges. It found that the individual Plaintiffs had standing because the Policy deprived them, or their family members, of a meaningful opportunity to obtain immigrant visas, and that African Communities Together had associational standing through one of its members. Since these Plaintiffs had standing to seek the requested relief, the Court did not separately determine whether CLINIC also had standing. The Court also held that the doctrine of consular nonreviewability did not bar the lawsuit because the Plaintiffs challenged a Department-wide policy rather than an individual consular officer's visa determination. The Court also concluded that the Policy constituted final agency action reviewable under the APA because it imposed mandatory instructions requiring consular officers to refuse affected visa applications and had already produced concrete legal consequences.

<u>The Court's decision on the merits: Count One</u>

Under the APA, a court must set aside agency action that is "not in accordance with law' or "in excess of statutory authority … authority." In addressing Count One, the Court considered whether the State Department's Policy conflicted with several provisions of the INA. The Court concluded that although the Policy did not violate the public charge provision of INA § 212(a)(4), it violated the

INA's prohibition against nationality discrimination in immigrant visa issuance, improperly relied on INA § 221(g) to refuse visas to otherwise eligible applicants, and exceeded the authority Congress granted to the Secretary of State.

The Plaintiffs argued that the Policy was inconsistent with INA § 212(a)(4) because public charge determinations must be based on an individualized assessment rather than nationality. The Court rejected this particular argument. It explained that the Policy did not instruct consular officers to dispense with individualized public charge determinations. To the contrary, Cable required officers to continue interviewing applicants and evaluating whether each applicant was likely to become a public charge INA § 212(a)(4) and applicable State Department guidance.

The problem arose after that individualized assessment. If an applicant was not found inadmissible on public charge or another ground, or if an applicant successfully overcame an earlier public charge refusal, the Policy nevertheless required the consular officer to refuse the immigrant visa under INA § 221(g). The Court therefore concluded that the Policy did not itself displace the public charge framework under INA § 212(a)(4); its unlawfulness arose under other provision of the INA.

INA § 202(a)(1)(A), codified at 8 U.S.C. § 1152 (a)(1)(A), generally provides that a person may not be discriminated against in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence. The Court held that the Policy directly conflicted with this prohibition because it required consular officers to refuse immigrant visas solely on the basis of an applicant's nationality. The Court emphasized that the Policy applied to nationals of 75 countries and prevented otherwise eligible applicants from receiving immigrant visas based on their nationality rather than an individualized determination of eligibility.

The Court distinguished the Policy from the entry restrictions upheld in *Trump* *v. Hawaii*. There, the Supreme Court explained that INA § 202(a)(1)(A) prohibits nationality discrimination in the issuance of immigrant visas, but does not govern separate restrictions on entry into the United States. Unlike the policy in *Hawaii*, the 75-country Policy directly prohibited the issuance of immigrant visas based on nationality. The Court therefore concluded that INA § 202(a)(1)(A)’s prohibition against nationality discrimination applied. The Court also relied on the history of the 1965 amendments to the INA, which abolished the prior national-origins quota system and established a statutory prohibition against nationality discrimination in immigrant visa issuance.

The Court separately held that the Policy violated INA § 221(g), codified at 8 U.S.C. § 1201(g), and its implementing regulation at 22 C.F.R. § 40.6. INA § 221(g) authorizes refusal where an applicant has not established eligibility for a visa or the application otherwise fails to comply with applicable immigration law. Similarly, 22 C.F.R. § 40.6 provides that a visa may be refused only on a ground specifically established by law or implementing regulation.

The State Department Policy, however, required consular officers to refuse immigrant visa applications under INA § 221(g) even after the officer had determined that no other ground of ineligibility applied. The Court found no statutory provision permitting a consular officer to refuse an otherwise eligible applicant solely because the applicant was a national of one of the designated countries. Accordingly, the Court held that the Policy’s mandatory use of INA § 221(g) in those circumstances was contrary to both INA § 221(g) and 22 C.F.R. § 40.6. The Court further emphasized that although consular officers formally entered the refusals, the Policy effectively predetermined the result. Officers could perform the ordinary steps of visa adjudication, but for affected applicants they were ultimately permitted to reach only one outcome: refusal.

Thus, the Court held that the Policy exceeded the authority Congress granted to the Secretary of State under INA § 104(a), codified at 8 U.S.C. § 1104(a). Section 1104(a) gives the Secretary broad authority to administer immigration laws relating to diplomatic and consular functions, but expressly excludes the powers and duties conferred on consular officers concerning the granting or refusal of visas.

The Court concluded that the Cable crossed that statutory boundary by directing consular officers that they "must refuse" immigrant visas to otherwise eligible applicants from the designated countries. By predetermining the outcome of those visa applications, the Secretary effectively controlled decisions that Congress had assigned to consular officers. The Court therefore held that the Policy exceeded the Secretary of State's statutory authority.

Count Three:

The Plaintiffs argued that the Policy should also be set aside because the Department of State adopted it without first providing notice and an opportunity for public comment as required by the APA.

The APA generally requires notice-and-comment procedures before an agency promulgates a **legislative rule**. Legislative rules are rules that create new law, rights, or duties through an exercise of authority delegated by Congress. By contrast, interpretive rules, general statements of policy, and rules concerning agency organization, procedure, or practice generally are not subject to the APA's notice-and-comment requirements. The Court concluded that the 75-country Policy did not qualify as a legislative rule. Applying the framework discussed in *American Mining Congress v. Mine Safety & Health Administration*, the Court focused on whether the Policy created legally enforceable rights or obligations. The Court found that it did not create new rights or impose legal obligations on immigrant visa applicants. Rather, the duties created by the Policy were directed at consular officers and governed how they were instructed to process visa applications. The Court also noted that the Policy did not subject visa applicants to administrative, civil, or criminal penalties for failing to comply with it, nor did it confer benefits on any class of individuals. The Department likewise did not invoke delegated legislative authority to issue a rule carrying the force of law. For those reasons, the Court concluded that the Policy was not a legislative rule requiring notice-and-comment rulemaking.

The Plaintiffs separately argued that the Policy effectively amended existing State Department regulations, including 22 C.F.R. §§ 40.6 and 42.81, and therefore should have been subject to notice and comment. The Court rejected that argument as well. Although the Court had already concluded that the Policy conflicted with 22 C.F.R. § 40.6, it explained that an agency action does not necessarily "amend" a regulation merely because the action is inconsistent with that regulation. The Court found that the Policy did not change or replace the standards contained in § 40.6 and therefore did not constitute an amendment triggering notice-and-comment procedures. Accordingly, the Court ruled in favor of the Government on Count Three and held that the Policy was not subject to the APA's notice-and-comment requirement.

<u>Count Seven:</u>

The Plaintiffs argued that the Policy violated the *Accardi* doctrine by requiring consular officers to depart from existing immigration regulations and procedures.

Under the *Accardi* doctrine, a federal agency generally must follow its own valid regulations when individual rights or interests are affected. The Court explained that this principle may extend beyond formally promulgated regulations to certain internal agency procedures. The Court concluded that the Policy violated the *Accardi* doctrine for the same reason it had already found the Policy contrary to 22 C.F.R. § 40.6. That regulation provides that a visa may be refused only on a ground specifically set out in law or implementing regulations. Because the Policy required consular officers to refuse immigrant visas under INA § 221(g) even where no independent legal ground of ineligibility existed, the Policy departed from the Department's governing regulation.

The Plaintiffs also argued that the Policy conflicted with provisions of the Foreign Affairs Manual and other internal State Department procedures. The Court did not reach those additional arguments, concluding that the statutory and regulatory violations it had already identified were sufficient to grant relief.

The Court vacated the 75-country immigrant visa suspension in its entirety and set aside immigrant visa refusals that were based solely on the Policy. Those applications were remanded to consular officers for further adjudication. The Court made clear, however, that its ruling does not disturb visa refusals based on an independent ground of inadmissibility or other provision of law, even where the refusal notice also referenced the Policy.

Although the District Court’s decision is not binding precedent on other courts, the significance of the judgment extends beyond the named Plaintiffs because the Court vacated the State Department Policy itself under the APA. The Court explained that APA vacatur operates by setting aside the unlawful agency action, rather than merely prohibiting its application to the particular plaintiffs before the Court.

Therefore, unless the judgment is stayed, modified, or reversed on appeal, the Department may not continue to apply the vacated 75-country Policy to immigrant visa applicants. The decision does not guarantee visa issuance to affected applicants. Consular officers retain authority to determine each applicant’s eligibility under the INA, and applicants remain subject to individualized review of all applicable grounds of inadmissibility. The Court entered judgment for the Plaintiffs on Counts One and Seven and for the Government on Count Three, while the remaining claims in the litigation remain pending.

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.

*Manjeeta Chowdhary is an Associate at Cyrus D. Mehta & Partners PLLC.