

What's At Stake For Employers In Fight Over Visa Pause

By **Lisa Eisenberg** (April 30, 2026)

The U.S. Department of State's January suspension of immigrant visa issuance for nationals of 75 countries is already doing more than generating litigation headlines. It is disrupting immigration planning, complicating hiring and mobility strategies, reducing the supply of workers in healthcare and other industries, and raising a consequential legal question: How far can the executive branch go in transforming an individualized visa adjudication process into a broad nationality-based restriction?



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That question is now at the center of *Catholic Legal Immigration Network Inc. v. Rubio*, a case filed in the U.S. District Court for the Southern District of New York in February.[1] While it focuses on statutory authority, administrative law principles and threshold reviewability doctrines, the stakes for employers are practical as much legal.

For employers relying on foreign talent and for foreign nationals whose long-term plans depend on immigrant visa issuance, this lawsuit may determine whether consular processing remains an individualized adjudication system or becomes, for some nationalities, a categorical barrier.

According to State Department guidance, the pause took effect Jan. 21, and applies to immigrant visa issuance for nationals of 75 listed countries.[2] The administration cited public-charge risk as its justification for the pause, prescribing "a full review of all screening and vetting policies to ensure that immigrants from high-risk countries do not unlawfully utilize welfare in the United States or become a public charge." [3]

The consequences are not limited to keeping families apart. The affected immigrant visas also include employment-based categories. For employers, this creates a significant challenge.

A company may have an approved immigrant petition, which often takes years to secure; a complete case at a U.S. consulate; and a candidate ready to relocate, yet still be unable to secure the visa needed to complete the process.

The suit was filed by nonprofits Catholic Legal Immigration Network Inc. and African Communities Together, along with several U.S. citizens who petitioned for family-based visas and foreign workers who had their visas denied. One of the plaintiffs is a Harvard-trained endocrinologist with an approved EB-1A extraordinary ability visa, a category reserved for the most accomplished people in their respective fields.[4]

The plaintiff pool also includes professionals with approved national interest waiver EB-2 petitions, which require extensive proof of the value of the proposed work and the applicants' qualifications, i.e., a solar energy engineer; a finance expert specializing in mining, oil and energy regulations; and two architects.[5]

The inclusion of these plaintiffs highlights the gap between the government's public-charge rationale and its blanket application to all applicants, regardless of their individual circumstances and visa category.

The complaint alleges that the consular processing cable's generalized public-charge premise "makes little sense" as applied to employment-based visa applicants, given the level of record development and vetting that already accompanies employment-based immigration.[6]

The plaintiffs in the Catholic Charities case do not include visa applicants directly sponsored by American employers through labor certification coming to the U.S. to take full-time jobs, but the same critique would be equally salient for this category.

The mismatch becomes even harder to ignore when considering EB-5 immigrant investors. The EB-5 is an employment-based immigrant category for investors who generally must invest at least \$800,000 and, in some cases, \$1,050,000 in a qualifying U.S. enterprise.[7]

Whatever courts ultimately decide about the government's legal authority, a policy purportedly justified by public-charge concerns sits uneasily with immigrant categories built around impressive professional achievements, significant capital investment, job creation or employer-sponsored work.

At the center of the plaintiffs' legal case in Catholic Charities is an argument that immigration law requires individualized determinations when the government decides whether an applicant is inadmissible and whether an immigrant visa may be issued.[8]

The complaint argues that the public-charge ground of inadmissibility under Section 212(a)(4) of the Immigration and Nationality Act is inherently case-specific, requiring that the government consider the totality of a particular applicant's circumstances, including age, health, family status, assets, resources, education and skills.[9]

The plaintiffs further argue that Section 221(g) permits refusal only when the officer determines, based on the individual record, that the applicant is ineligible under a statutory ground.[10]

The challenged policy does not operate like an individualized public-charge assessment. Instead, it functions as a broad rule barring immigrant visa issuance to nationals of listed countries regardless of their personal circumstances. In the plaintiffs' view, the government has taken a statute built around individualized adjudication and repurposed it into a categorical nationality-based restriction.[11]

Another provision of the INA, Section 202(a)(1)(A), bars discrimination in the issuance of immigrant visas because of nationality, place of birth or place of residence.[12] The plaintiffs argue that the policy conflicts directly with that prohibition.[13]

The government, of course, is likely to characterize the measure not as nationality discrimination, but as a permissible screening mechanism tied to public-charge risk. But that framing may be harder to sustain if courts conclude that the policy effectively denies visas across the board based on nationality rather than through individualized statutory findings.

The litigation raises Administrative Procedure Act claims that could prove especially significant. The plaintiffs argue the State Department adopted a substantive change in visa adjudication policy without notice-and-comment rulemaking, and that the policy is arbitrary and capricious because it rests on sweeping assumptions about entire national populations rather than on the individualized inquiry the statute contemplates.[14]

Even a court reluctant to resolve the dispute on broader constitutional or separation-of-powers grounds could find that the department altered the rules of visa issuance without the procedure or explanation the APA requires.[15]

How courts assess the government's authority may turn in part on what this policy is, and what it is not. In prior litigation over broad immigration restrictions, the government often relied on express presidential action and expansive executive authority over entry. Here, by contrast, a State Department action is presented as something more innocuous: a temporary pause on immigrant visa issuance to review public-charge vetting procedures.[16]

In its defense, the government will likely invoke consular nonreviewability, along with the broader deference courts often give the political branches in immigration and foreign affairs. But there is a meaningful distinction between challenging an individual consular officer's decision and challenging an overarching policy that changes the rules for entire categories of pending and future cases.

Courts may view the latter differently, particularly where the plaintiffs frame the dispute as an APA challenge to systemic agency action, rather than an effort to relitigate an individual refusal.

One federal court has already shown willingness to scrutinize this policy. In January, in *Sangster v. Rubio*, U.S. District Judge Anne Traum of the U.S. District Court for the District of Nevada temporarily enjoined the government from refusing two visa applications based on the same secretary of state memo, first by issuing a temporary restraining order and then by converting it into a preliminary injunction, finding that the plaintiffs in that case are likely to succeed on the merits.

The ruling is procedural and limited to the parties in the *Sangster* case, but it shows judicial discomfort with giving the Department of State a blanket visa-denial power without notice and comment, even if it is labeled a pause.[17]

For employers, this policy already presents important practical implications.

First, businesses should prepare for timing uncertainty in employment-based permanent residence matters involving nationals of affected countries, even in cases that appear to be moving forward.

The pause allows affected applicants to submit applications and attend interviews, but no immigrant visa will issue until the pause is lifted.[18] Cases may continue to progress through processing steps while remaining frozen at the stage that matters most: final visa issuance.

Some applicants may choose to move forward with document collection, medical exams and consular interviews without any assurance that a visa will issue at the end of the process, while others may prefer to postpone their interviews. Such decisions should be made on a case-by-case basis.

The key takeaway is that an approved petition and otherwise completed consular case are no longer enough for visa issuance, and it is unclear when this situation will change.

Second, employers should not lose sight of the fact that the State Department's guidance is

expressly limited to immigrant visa applicants. It does not purport to suspend nonimmigrant visa processing, i.e., tourist visas, work visas and other nonimmigrant visas.[19]

Employers should therefore evaluate whether temporary, work-authorized nonimmigrant options — including classifications such as L-1, O-1 or H-1B, depending on the employee's role and circumstances — may offer a path to bring key talent to the U.S. while immigrant visa litigation and consular processing remain uncertain.[20]

In addition, dual nationals applying for immigrant visas on a valid passport from a nonlisted country are exempt.[21] But for applicants from affected countries who remain subject to the policy, the question is not whether their case will be approved. It is whether the application process still leads anywhere.

If the government prevails, both employers and applicants could expect broader use of nationality-based risk judgments in immigrant visa processing and less predictability in long-term immigration planning.

If the plaintiffs challenging the policy prevail, the outcome may still be narrower than a full return to the prior status quo. A court could block the blanket pause while leaving room for heightened individualized public-charge scrutiny.

Whatever the precise result, this case is poised to answer a question with implications well beyond the current dispute: whether the executive branch may suspend legal immigrant visa issuance for broad groups of applicants without clearer authorization from Congress.

For now, the lesson for employers is straightforward. In the current environment, immigration planning has to account for the possibility that a case may satisfy the ordinary legal requirements and still be delayed by a broader policy fight over who gets to define the rules of immigrant visa processing.

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[1] National Immigration Law Center, CLINIC v. Rubio.

[2] U.S. Department of State, Immigrant Visa Processing Updates for Nationalities at High Risk of Public Benefits Usage.

[3] Ibid.

[4] U.S. Citizenship and Immigration Services, Employment-Based Immigration: First Preference EB-1.

[5] U.S. Citizenship and Immigration Services, Employment-Based Immigration: Second Preference EB-2.

[6] Complaint, CLINIC v. Rubio.

- [7] U.S. Citizenship and Immigration Services, EB-5 Immigrant Investor Program.
- [8] Complaint, CLINIC v. Rubio.
- [9] Complaint, CLINIC v. Rubio; see also U.S. Citizenship and Immigration Services, Public Charge Ground of Inadmissibility.
- [10] Complaint, CLINIC v. Rubio.
- [11] Complaint, CLINIC v. Rubio.
- [12] Complaint, CLINIC v. Rubio.
- [13] Complaint, CLINIC v. Rubio.
- [14] Complaint, CLINIC v. Rubio; see also U.S. Environmental Protection Agency, Summary of the Administrative Procedure Act.
- [15] U.S. Environmental Protection Agency, Summary of the Administrative Procedure Act.
- [16] U.S. Department of State, Immigrant Visa Processing Updates for Nationalities at High Risk of Public Benefits Usage.
- [17] Sangster v. Rubio, CourtListener docket.
- [18] U.S. Department of State, Immigrant Visa Processing Updates for Nationalities at High Risk of Public Benefits Usage.
- [19] Ibid.
- [20] U.S. Citizenship and Immigration Services, L-1A Intracompany Transferee Executive or Manager.
- [21] U.S. Department of State, Immigrant Visa Processing Updates for Nationalities at High Risk of Public Benefits Usage.