

June XX 2021

The Honorable Patrick Leahy
Chairman
Senate Committee on Appropriations

The Honorable Richard Shelby
Vice Chairman
Senate Committee on Appropriations

The Honorable Chris Murphy
Chairman
Subcommittee on Homeland Security
Committee on Appropriations

The Honorable Shelley Moore Capito
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations

Dear Chairman Leahy, Vice Chairman Shelby, Chairman Murphy, and Ranking Member Capito:

We respectfully request you include language in the Fiscal Year 2022 Homeland Security Appropriations bill to: (1) recapture unused green cards lost to bureaucratic delay and 100,000 family-based green cards lost due to the Trump administration's COVID immigration ban; (2) require the government to end the practice of counting derivative visas towards the Immigration and Nationality Act's numerical limits; and (3) provide green cards to persons who were selected through the Diversity Visa program lottery but did not receive a green card due to the former administration's executive actions on immigration. These measures will help reunite many American families with their loved ones, help prevent prolonged family separations, and provide redress to people who were denied visas based on discriminatory immigration bans.

The Trump Administration made many administrative changes in an effort to lower immigration levels, particularly seeking to exclude Black people, people from Muslim-majority countries, and other people of color. The Muslim and African bans disproportionately impacted Black and Muslim migrants and their family members in the U.S. Thousands of diversity visa applicants who were selected during the diversity visa lotteries from FY 2017 through FY 2021 lost their opportunity to immigrate to the U.S. due to the Muslim or African bans or later COVID-related bans.¹ Inclusion of this language in the FY2022 Department of Homeland Security appropriations bill would restore these individuals with the opportunity to come to the U.S.

In 2020, immigration in many categories was shut down due to COVID-related immigration bans. Many of these bans are still in place, and continue to exacerbate already long green card backlogs. There are currently over 3.7 million people in the family immigration backlogs waiting to reunite with their loved ones.² The average wait time for a permanent resident to sponsor an

¹ Ruth Sherlock and Nada Homsy, "Some Yemenis Struggle for U.S. Visas Even After The End of the Travel Ban," National Public Radio, May 24, 2021, <https://www.npr.org/2021/05/24/995925221/some-yemenis-struggle-for-u-s-visas-even-after-the-end-of-the-travel-ban>

²U.S. Department of State, Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center, November 1, 2020, https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2020_vF.pdf

unmarried son or daughter from Mexico is over 21 years.³ The average wait time for a U.S. citizen to sponsor a sibling from the Philippines is almost 20 years.⁴ The growing employment-based backlogs are mostly comprised of Indian families on H-1B visas who live in limbo in temporary status with their children facing loss of status when they turn 21. Yet, there are many solutions that could be taken to help alleviate these backlogs.

One solution is to change how families are counted for the purpose of visa caps. Currently, a primary beneficiary of a permanent visa can bring in their spouse and children to the United States, but those individuals count against the numerical limit of that immigration category. Ensuring that spouses and children do not count against the numerical limits of the relevant visa category would significantly help reduce the family-based visa backlog.

In addition, it is estimated that there are hundreds of thousands of previously authorized but unused employment and family-based green cards. According to a 2010 report by the Department of Homeland Security's Citizenship and Immigration Services Ombudsman, between 1992-2009, there were 241,928 family-based visas and 506,410 employment-based visas that were unused.⁵ In FY 2020, 122,281 family-based visas went unused due to COVID-19 related shutdowns.⁶ If the agencies cannot process enough visas to reach the annual caps by the end of FY 2021, more visas will be lost. All of these unused visas should be recaptured and processed for the individuals currently in the family-based and employment-based visa backlog.

For these reasons, we respectfully ask you consider including the following language in the FY 2022 Department of Homeland Security Appropriations bill:

SEC. ___. RECAPTURE OF IMMIGRANT VISAS LOST TO BUREAUCRATIC DELAY.

a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

“(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

“(1) IN GENERAL. —The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

“(A) 480,000;

“(B) the number computed under paragraph (2); and

³ U.S. Department of State Bureau of Consular Affairs, Visa Bulletin for June 2021, June 2021, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-june-2021.html>

⁴ U.S. Department of State Bureau of Consular Affairs, Visa Bulletin for June 2021, June 2021, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-june-2021.html>

⁵ U.S. Department of Homeland Security Citizenship and Immigration Services Ombudsman, Annual Report 2010, June 30, 2010, https://www.dhs.gov/xlibrary/assets/cisomb_2010_annual_report_to_congress.pdf

⁶ U.S. Department of State, Immigrant Visas Issued and Adjustments of Status Subject to Numerical Limitations, Fiscal Year 2020, September 30, 2020, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport-TableV.pdf>

“(C) the number computed under paragraph (3).

“(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

“(A) the worldwide level of employment-based immigrant visas established for the previous fiscal year; and

“(B) the number of visas issued under section 203(b) during the previous fiscal year.

“(3) UNUSED VISA NUMBERS FROM FISCAL 7 YEARS 1992 THROUGH 2020.—The number computed under this paragraph is the difference, if any, between—

“(A) the difference, if any, between—

“(i) the sum of the worldwide levels of family-sponsored immigrant visas established for fiscal years 1992 through 2020; and

“(ii) the number of visas issued under section 203(a) during such fiscal years;

“(B) the number of visas resulting from the calculation under subparagraph (A) that 20 were issued after fiscal year 2020 under section 203(a).”.

b) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

“(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

“(1) IN GENERAL.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

“(A) 170,000;

“(B) the number computed under paragraph (2); and

“(C) the number computed under paragraph (3).

“(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

“(A) the worldwide level of family-sponsored immigrant visas established for the previous fiscal year; and

“(B) the number of visas issued under section 203(a) during the previous fiscal year.

“(3) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2020.—The number computed under this paragraph is the difference, if any, between—

“(A) the difference, if any, between—

“(i) the sum of the worldwide levels of employment-based immigrant visas established for each of fiscal years 1992 through 2020; and

“(ii) the number of visas issued under section 203(b) during such fiscal years; and

“(B) the number of visas resulting from the calculation under subparagraph (A) that were issued after fiscal year 2020 under section 203(b).”.

(b) EFFECTIVE DATE. —The amendments made by this section shall apply to each fiscal year beginning with fiscal year 2022

SEC. ___. ADDRESSING VISA BACKLOGS.

(a) NONCITIZENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)) is amended by adding at the end the following:

“(H) Noncitizens described in section 203(d).”.

SEC. ___. ALIENS PREVIOUSLY ALLOCATED DIVERSITY VISAS.

(a) Notwithstanding section 204(a)(1)(I)(ii)(II) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(I)(ii)(II)), and subject to subsection (c) of this section, an immigrant visa made available to an alien under section 203(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(e)(2)) in any of fiscal years 2017, 2018, 2019, 2020, or 2021 shall remain available to such alien if—

(1) the alien was refused a visa or denied admission to the United States solely because of—

(A) Executive Order 13769, “Protecting the Nation from Foreign Terrorist Entry into The United States” (January 27, 2017);

(B) Executive Order 13780, “Protecting the Nation from Foreign Terrorist Entry into the United States” (March 6, 2017);

(C) Proclamation 9645, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats” (September 24, 2017); or

(D) Proclamation 9983, “Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats” (January 31, 2020); or

(2) because of the COVID–19 public health emergency—

(A) the alien was unable to receive a visa interview despite submitting an Online Immigrant Visa and Alien Registration Application (Form DS-260) to the Secretary of State; or

(B) the alien was unable to be admitted to the United States despite being approved for a visa under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)).

(b) (1) Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall—

(A) notify each alien described in subsection (a) (and such alien's representative, if applicable) of their continuing eligibility for a visa under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)); and

(B) publish on the Department of State website, information and procedures implementing this Act.

(2) The notice described in paragraph (1)(A) shall include procedures for the alien to inform the Secretary of State of the alien's intent to proceed with or abandon the application, and shall include an advisal that such application shall be deemed abandoned if the alien fails to notify the Secretary of the alien's intent to proceed within one year of the date of the notice.

(c) An alien described in subsection (a) shall remain eligible to receive such visa until the earliest of the date that the alien—

(1) notifies the Secretary of the alien's intent to abandon the application;

(2) fails to respond to the notice described in subsection (b)(2); or

(3) is refused a visa by the Secretary of State—

(A) for failure to meet the education or work experience requirements under section 203(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(c)(2)); or

(B) on grounds that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)).

(d) (1) Except as provided in paragraphs (2) and (3), visas issued to aliens under this Act shall be counted against the numerical limitation described in section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)) for the fiscal year in which such visas were made available to such aliens.

(2) Visas under section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)) that go unused in any of fiscal years 2017, 2018, 2019, 2020, or 2021 may be allocated to aliens described in subsection (a) regardless of the fiscal year in which such alien's visa was made available.

(3) In the case that the total number of aliens described in subsection (a) who are eligible for visas exceeds the total number of visas under section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)) for fiscal years 2017, 2018, 2019, 2020, and 2021, such excess number shall not be counted against the numerical limitation described in such section 201(e).

(f) A determination of whether an alien is the child of a visa recipient described in this Act pursuant section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d)) shall be made using the age of the child when applicant was initially selected for a visa in accordance with section 203(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(e)(2)).

We thank you for your work on this and other issues as you write the FY 2022 Homeland Security Appropriations bill. We appreciate your consideration of our request and we stand ready to work with you to address this critical issue.

Sincerely,