

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

JONATHAN BASELICE
VICE PRESIDENT, IMMIGRATION POLICY
EMPLOYMENT POLICY DIVISION

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5457 • 202/463-3194 FAX

October 18, 2021

Claire Kelly
Office of Visa Services
Bureau of Consular Affairs
U.S. Department of State
600 19th Street, NW
Washington, DC 20006

By electronic submission: www.regulations.gov

RE: Visas: Immigrant Visas
86 Fed. Reg. 51643 (September 16, 2021)
RIN 1400-AF30

Dear Ms. Kelly:

The U.S. Chamber of Commerce (“Chamber”) submits the following comment regarding the State Department’s request for public input (“RFI”) on identifying barriers to accessing immigration benefits and the fair and efficient adjudication of applications by individuals and companies seeking such benefits. The Chamber appreciates the State Department’s willingness to learn more about potential actions it could take to expand access to immigrant visas and make the processing of said visas more efficient, but many of our members view the Department’s approach as myopic. Consular officials do not process immigrant visa petitions in a vacuum. Problems afflicting the processing of services for other types of visa petitions impact the ability of those consular officials to efficiently process immigrant visa petitions as well.

If the State Department continues to move forward only focusing on one subset of immigration benefits to the exclusion of all others, it will never be able to truly solve the problems afflicting America’s consular capabilities. Processing delays will grow for other groups of immigration benefits. The Chamber fully appreciates how the pandemic disrupted the State Department’s processing capabilities. However, adopting a post-pandemic approach that prioritizes one group of immigration benefits will eventually harm the processing of all immigration benefits, even those benefits that the department would prioritize.

We urge the State Department to take a more holistic approach in identifying barriers to accessing the legal immigration system in carrying out President Biden’s directive in E.O. 14012.¹ One of the stated primary goals of that executive order was to “restore faith in our legal

¹ 86 Fed. Reg. 8277 (Feb. 5, 2021).

immigration systems” and the section cited by the State Department in this request for public input called for identifying barriers that impeded access to immigration benefits.² The President included no language that would suggest the State Department should limit the types of immigration benefits it examines. The State Department is responsible for processing various types of immigration benefits. It should examine access barriers and processing inefficiencies related to all forms of immigration benefits, not just one type of benefits.

The Chamber very much desires to work with the State Department to increase the access to immigration benefits for all types of well-meaning foreign nationals that want to come to the U.S. for various purposes. There are many other substantial hurdles that, if left unaddressed, will continue to impact the State Department’s ability to provide foreign nationals with access to a fair and efficient system that can provide qualifying individuals with the immigration benefits they desire in a timely manner. This includes the adjudication of immigrant visa petitions. As such, it is imperative upon the State Department to consider the barriers to both access and efficient adjudication of all forms of immigrant benefits it adjudicates. Addressing the issues highlighted below would expand access and improve the processing efficiency of all immigration benefits, including the immigrant visa petitions that the department seeks to address in this RFI.

Ending Current COVID-Related Travel Restrictions

The Chamber welcomed the federal government’s recent announcement that the current country/region specific travel bans will no longer be in effect come November 8, 2021. These bans covered anyone seeking to enter the U.S. from a covered nation without a National Interest Exemption (“NIE”). It cannot be understated as to how much disruption was, and still is, being caused by these restrictions. The disruption was significant throughout 2020, and according to many companies, got worse throughout 2021.

The structure of these entry bans necessitated companies obtaining NIEs for any individual they needed in the U.S. In the spring, the State Department and DHS refined their respective roles in the issuance of NIEs, with State largely assuming the responsibility for adjudicating these NIE requests and DHS all but relinquishing its involvement in the NIE issuance process. This policy made the situation demonstrably worse for companies that needed critical talent from abroad, and the increased consular workload had a significant negative impact on processing all sorts of other immigration benefits, including the immigrant visas at issue in this RFI.

The replacement of the current travel bans with the forthcoming vaccine requirements for foreign nationals seeking to enter the U.S. will do much to remove a significant barrier to access to all forms of immigration benefits, including immigrant visas. The NIE process created by the current travel bans forced consulates to utilize a significant amount of resources, which significantly slowed down the processing of all immigration benefits. Allowing vaccinated foreign nationals with the ability to travel internationally to the U.S. will allow the State

² 86 Fed. Reg. 51643 (Sept. 16, 2021).

Department to better allocate its limited staffing resources to adjudicate other immigration benefit requests, thus boosting the processing efficiency of immigration benefit requests. This last point on processing efficiency will be critical for various stakeholders, as the State Department's consular processing backlogs have grown substantially. To illustrate this point, the Cato Institute compared overall visa issuance between March 2018-July 2019 with visa issuance from March 2020-July 2021 and the U.S. government issued 1.2 million fewer visas during the 2020-2021 period.³ With specific regard to the State Department's interest in immigrant visas in this RPI, the federal government issued 270,000 fewer immigrant visas than it did during the same time frame between 2018-2019.⁴

Resuming Domestic Visa Revalidation and Issuance

For many years, the State Department allowed recipients of E, H, I, L, O, and P nonimmigrant visas to renew their visas from within the U.S. The State Department discontinued this process of "visa revalidation" for these work-based nonimmigrant visas classifications in 2004 after the Enhanced Border Security and Visa Entry Reform Act required that visas issued must contain biometric identifiers.⁵ In 2004, it was understandable that this change in the law required the State Department to change its longstanding policies.⁶ Passports, visas, and other immigration documents were not tamper-resistant or machine-readable in the manner that they are today, nor was it easy for the federal government to obtain biometrics from foreign nationals. Today, however, the federal government has the ability and the means to obtain biometrics with relative ease. The Department could reuse the biometric data from an individual's current visa to conduct the background security checks. In addition, if the State Department wanted to collect new biometrics, it could work with DHS to leverage established biometrics facilities in the U.S. to meet the "biometric identifier" requirement in P.L. 107-173.

Another critically important consideration for pursuing this policy change is that the DOS already possesses the authority to renew these nonimmigrant visas from within the United States.⁷ Given that the immigrant visa backlogs for family-based and employment-based immigrant visas stands over 9 million,⁸ reinstating domestic nonimmigrant visa reissuance for the aforementioned categories would have a significantly positive impact on boosting the access to, and the processing efficiency of, immigrant visas, as well as other immigration benefits abroad. Having these issues dealt with domestically will cut down on the overall workload for

³ See David Bier, *U.S. Issued 1.2 Million Fewer Visas to Work-Eligible Foreigners Since March 2020*, October 14, 2021, available at [U.S. Issued 1.2 Million Fewer Visas to Work-Eligible Foreigners Since March 2020 | Cato at Liberty Blog](#), (accessed Oct. 16, 2021).

⁴ Id.

⁵ See Section 303(b)(1), P. L. 107-173, (116 Stat. 543).

⁶ 69 Fed. Reg. 35121 (June 23, 2004).

⁷ See 22 C.F.R. Section 41.111(b)(2), which allows the Deputy Assistant Secretary for Visa Services, and any officers he or she may designate, to issue visas to the aforementioned categories of visa holders to obtain a new nonimmigrant visa in the U.S.

⁸ See David J. Bier, *Family and Employment Green Card Backlog Exceeds 9 Million*, September 29, 2021, available online at <https://www.cato.org/blog/family-employment-green-card-backlog-exceeds-9-million>, (accessed on Oct, 16, 2021).

embassies and consulates, as these visa renewals will no longer need to be handled abroad. As such, the State Department will have more consular resources available to process other immigration benefit requests.

Extending Visa Interview Waiver Authority

The Chamber welcomed the State Department's expansion of the nonimmigrant visa interview eligibility to all nonimmigrant categories for 48 months through the end of 2021.⁹ This was an important development in helping consular posts prioritize which visa applicants required in-person interviews, which, in turn, aided embassies and consulates to improve visa processing efficiency. Unfortunately, the majority of consulates worldwide remain partially or fully closed, with 40% of U.S. consular facilities still fully closed.¹⁰ Given this state of affairs, it is critically important that this interview waiver authority remain in effect as long as consulates are in the process of returning to normal operations. Letting this authority expire prematurely would have the effect of cutting off access to all types of visas, including the immigrant visas that the State Department wants to focus on in this RFI, causing further processing slowdowns. The State Department should consider extending this authority through the end of Fiscal Year 2022 so as to not add to their current processing woes.

Remote Visa Interviews and Remote Visa Processing

The Chamber and its members have long sought State Department approval for virtual consular interviews for prospective visa applicants, particularly for foreign nationals seeking to come to the [U.S. as tourists](#). This past spring, the State Department published a notice in the Unified Regulatory Agenda where it intends to create limited exemptions for certain in-person appearances before consular officers.¹¹ This notice in the Unified Regulatory Agenda was a welcome development and would help streamline the processing of certain immigrant visa petitions. Additionally, expanding similar virtual interview eligibility for nonimmigrant visa applicants would provide significantly more benefits in terms of boosting processing efficiencies and expanding access to various types of immigration benefits.

In the past, video teleconferencing technology was not developed to such an extent that the image of an individual and his/her passport could be viewed clearly by a consular official. Today, advances in technology have made it possible for the reviewing official to clearly see the visa applicant and the applicant's passport picture, boosting the security of the overall process. Similarly, biometric identifiers incorporated into machine-readable passports and biometrics taken prior to the interview would address identity and security concerns. Lastly, DOS could

⁹ See Expansion of Interview Waiver Eligibility, March 11, 2021, available online at [Expansion of Interview Waiver Eligibility \(state.gov\)](#), (accessed on Oct. 16, 2021).

¹⁰ See David J. Bier, *U.S. Stops Reopening Consulates: 60% Remain Partially Closed*, October 15, 2021, available at [U.S. Stops Reopening Consulates: 60% Still Partially Closed | Cato at Liberty Blog](#), (accessed on Oct. 16, 2021).

¹¹ See Visas: Documentation of Immigrants under the Immigration and Nationality Act, as Amended; Personal Appearance Waiver for Immigrant Visa Applicants, available at [View Rule \(reginfo.gov\)](#), (accessed on Oct. 16, 2021).

review its risk assessment protocols such that it could limit the virtual visa interview eligibility to only those individuals who pose a very low security risk. There are many ways this policy change could be effectuated regulatorily, but providing the means for a significant amount of foreign nationals to obtain their visas in a timely, cost-effective manner will help streamline visa processing and provide greater access to immigration benefits.

In addition to virtual visa interviews, the State Department also has the capability to expand remote visa processing. The paperwork that is submitted to an embassy or consulate abroad for a benefit request can be processed in the U.S. This would significantly help overburdened consulates and embassies deal with influxes of cases, which many U.S. businesses expect to happen as the global economy continues to open. Combining virtual interviews with remote processing would be two cost-effective ways to speed up visa processing and provide more access to immigration benefits around the world.

Conclusion

The Chamber appreciates the State Department's willingness to engage with the public in this capacity. We urge the State Department to build upon this current effort on immigrant visas and seek more feedback from stakeholders on how there are several barriers regarding the ability to obtain nonimmigrant visas from embassies and consulates abroad. By taking that type of holistic approach to these issues, the State Department will be in a better position to address these problems effectively.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Baselice', written in a cursive style.

Jonathan Baselice
Vice President, Immigration Policy
U.S. Chamber of Commerce