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OF THE
UNITED STATES OF AMERICA

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May 19, 2021

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By electronic submission: www.regulations.gov

RE: Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input
86 Fed. Reg. 20398 (April 19, 2021)
RIN 1615-ZB87

Dear Ms. Deshommes:

The U.S. Chamber of Commerce submits the following comments to the Request for Public Input on "Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services." The Chamber greatly appreciates the agency's interest in fulfilling the goal of identifying "barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits," as stated in Executive Order 14012. Businesses of all sizes and across various industries have provided us with insight into various regulatory and administrative obstacles that make it difficult for them to access the critical talent to meet their workforce needs. Below are many of the thoughts and suggestions conveyed to us by our members that would help companies meet their workforce needs in a timely fashion, which will allow them to boost economic growth and job creation in the U.S.

The Chamber commends the agency for the work that it has done thus far to eliminate obstacles that unnecessarily impede the ability of businesses to meet their workforce needs. These policy changes are welcome developments for many companies, as many of these issues have been Chamber priorities for some time. These policy changes include:

- The flexibilities provided to international students that are seeking to begin their careers through the Optional Practical Training (OPT) program, which include measures to ensure that ongoing processing delays do not hinder a student's ability to

obtain the full requested training period, as well as providing these individuals with the ability to apply for their work permits online;
- Instituting guidance that reverts in substance to the long-standing deference policies wherein USCIS will defer to prior agency determinations when adjudicating extension of status requests involving the same parties and facts;
- Temporarily suspending the biometrics requirements for individuals requesting an extension of stay in or change of status to H-4, L-2, and E nonimmigrant status, which will help address the broader processing backlogs currently plaguing USCIS, and;
- Expanding premium processing eligibility for E-3 nonimmigrants.

We thank USCIS for taking action on the above-mentioned issues. We look forward to working with the agency to address the issues discussed below.

UNREASONABLE CASE PROCESSING DELAYS

Severe USCIS processing delays in issuing receipt notices, Requests for Evidence (RFEs), and approval notices for employment-based immigrant and nonimmigrant petitions have significant negative impacts upon businesses. The inability for a company's workers to timely receive an approval notice for an extension of status or the renewal of an Employment Authorization Document oftentimes leads to business disruptions caused by a forced suspension/termination of the employment relationship. These business disruptions have the cascading effect of companies missing critical deadline for their clients, or these problems directly contribute to the delay in launching a new product line or opening a new facility.

Companies have provided us with many examples of critical employees not being able to continue working for their employers because the processing delays for their extension petitions are longer than the regulatorily established 240-day automatic work authorization extension triggered by the timely filing of the extension request. There are many cases where these problems arise for individuals who have been approved for an employment-based immigrant visa and the worker (and oftentimes, his/her family) must deal with the severe negative repercussions of being unable to support themselves financially due to these processing delays. These delays cannot continue to be a fixture of the how our legal immigration system operates.

There are many policy options available for USCIS to pursue that would ameliorate these problems. These options include USCIS moving forward with implementing the premium processing expansions contained within the Emergency Stopgap USCIS Stabilization Act that was included in the Continuing Appropriations Act last fall. This legislation required USCIS to make premium processing options available for the following immigration benefit requests:

- Form I-129 for employment-based nonimmigrant petitions and associated dependent applications;
- Form I-140 for employment-based immigrant petitions (EB-1, EB-2, and EB-3);

- Form I-539 applications to change or extend nonimmigrant status, and;
- Form I-765 Employment Authorization Document (EAD) applications.

Businesses understand that there are several operational issues that USCIS must confront before extending premium processing to these specific benefit request forms. However, if USCIS expands premium processing to cover these benefit requests, it will simultaneously create new sources of revenue for the agency, which could be used to improve overall visa processing at USCIS, and will improve the consistency in the adjudications for these requests. That would provide increased certainty for employers who need to make critical workforce decisions in real time.

Relatedly, given USCIS' recent history of suspending premium processing (particularly with the public announcement being made shortly before the spring H-1B cap season), we urge the agency to avoid making these types of decisions in the future, especially if those decisions are provided to public with little to no notice. Suspending premium processing has the effect of diminishing overall agency revenue and injecting significant uncertainty into the workforce plans for companies across various industries.

In addition, the manner in which USCIS has interpreted the precedent decision of *Matter of Simeio Solutions, LLC* has led to a significant increase in the aggregate number of H-1B petition filings. In the wake of this decision, USCIS instituted its current policy of requiring companies to file a new or amended H-1B petition solely because the H-1B employee's worksite will change, even if there is no change in the worker's job/position and the employer obtained a Labor Condition Application (LCA) for that additional worksite location. Requiring companies to file amended H-1B petitions with USCIS in these instances has created significant paperwork burdens for companies, and it adds an unnecessary work stream for USCIS adjudicators. Changing this policy in a way that won't require the filing of an amended petition in these situations will improve USCIS processing efficiency and provide companies with more flexibility to ensure their critical talent is best serving the interests of the company. These issues have taken on increased importance for many businesses, as companies have made significant adjustments to where their employees perform their work due to the pandemic. It is critical that USCIS acknowledge these new workplace realities such that any policy changes do not needlessly impose new burdens upon American companies that will make them less competitive in the global marketplace.

Other options available to USCIS that will help reestablish reasonable case processing times at USCIS include:

- Expanding the availability of automatic extensions for employment authorization documents for various visa classifications, particularly for H-4, L-2, and E dependent nonimmigrants, as no automatic extension is currently available for those individuals;
    - The expansion of these EAD extensions should be constructed in a manner that accounts for USCIS' processing efficiency, as opposed to using an

arbitrary period of time that, at least for the time being, that is much shorter than the time it takes for USCIS to adjudicate the petition;
- Allowing employees to apply to renew their EADs more than 180 days in advance, which will give USCIS more time to adjudicate the request;
- Extending the duration of 240-day employment authorization extension for Form I-129 extension of stay applicants to 1 year in duration, and;
- Reinstating prior policy flexibility with regard to when a putative employment-based immigrant must have an in-person interview before they can adjust status to that of a lawful permanent resident.

Instituting these types of changes would provide USCIS with the ability to better utilize its limited resources in a manner that will improve processing times for several immigration benefit requests.

With regard to the dependent spouses of L and E nonimmigrants, the statutory language pertaining to both of these visa classifications establishes that these individuals "shall" be authorized to work incident to their status.[1] USCIS issues Employment Authorization Documents for these individuals upon request, but this caused significant delays prior to the onset of the significant USCIS processing backlogs. As these backlogs will likely be an issue for the foreseeable future, allowing these two groups of dependents to work incident to their status, and not prior to the issuance of an EAD, would help USCIS manage its current processing delays because the statute does not require them to an have an EAD before they're allowed to work in the U.S. USCIS could update the M-274 handbook to clarify this point for both E and L dependent spouses, and in doing so, the agency could prioritize EAD applications for individuals who need them in order to work because the INA does not provide them with work incident to their status.

MODERNIZING THE I-9 PROCESS

The current Form I-9, Employment Eligibility Verification process requires employers to verify the identity and employment authorization of workers in the U.S. by physically reviewing original documents in the employee's presence. Though USCIS has made available a fillable form in Portable Document Format (PDF) and many companies complete the Form I-9 using software providers, employers generally must continue to rely on this paper-based process. If an employer is enrolled in the E-Verify employment verification program, the employer must then separately create a case in the E-Verify system using the information from the Form I-9. This antiquated process creates several problems for employers as they seek to onboard new hires or reverify current employers who must go through the I-9 process again. Modernizing this process would go a long way towards eliminating a significant barrier to the ability of legally-authorized

[1] See INA § 214 (c)(2)(E) for dependent spouses under the L visa classification and INA § 214(e)(6) for dependent spouses under the E visa classification

foreign national workers to obtain/maintain employment, as well as improve the overall efficiency of the process required of employers to meet their workforce needs.

In the wake of the COVID-19 pandemic last year, the Chamber worked very closely with U.S. Immigration and Customs Enforcement (ICE) on the implementation of policies that temporarily waived the requirement of an employer to review an employee's identity and employment authorization documents in the employee's physical presence. This flexibility was critical to ensuring that employers that were operating remotely due to the COVID-19 pandemic and, as a result of their remote operations, were unable to perform the in-person document review under the requirements set forth in the M-274 Employer Handbook. USCIS played a pivotal role in ensuring that employers knew how DHS was implementing these policy changes, which are still in effect today, and the Chamber is thankful to the efforts of both ICE and USCIS in this regard.

Prior to the COVID pandemic, the in-person document review association with the I-9 verification process was a problem for many employers that onboarded their workers remotely. ICE and USCIS's implementation of these flexible policies in response to the economic shutdown last spring provided real-world proof that employers could verify the work authorization status of their employees while operating remotely. In short, the in-person document review requirement is not needed in order for employers to ensure that the workers they're employing are legally authorized to work. Many Chamber members would welcome ICE and USCIS working with the business community to make these temporary policies permanent, as it would significantly improve the overall efficiency of the hiring process for many companies.

Alternatively, if USCIS and ICE decline to make these policies permanent, it is absolutely critical that the agencies provide employers with notice well in advance of any scheduled termination of these temporary policies. If the agencies fail to do this, employers will not have time to prepare to readjust to the pre-COVID verification requirements. Per this policy, once a company moves back to normal operations, all employees that were onboarded remotely must report to the employer for the in-person verification of the I-9 documents within **three business days**. In some cases, companies have onboarded several hundred people remotely and the HR managers charged with performing the document review are located hundreds of miles away from where the employee lives and works. If no additional measures are taken by ICE and USCIS to ensure that companies are provided with a reasonable amount of time to perform the in-person document review, further business disruptions will be caused by this unnecessary rush to perform these documents reviews within a tight, 72-hour period.

Another issue of concern for companies regarding the I-9 process is the considerable delays by USCIS in mailing physical approval notices to employers. This is due to both agency backlogs, as well as service delays by the U.S. Postal Service. These delays have led to gaps in employment authorization for workers at many companies, which in turn has led to business disruptions that could have been avoided. One solution to this problem would be for USCIS to

issue new guidance and update the M-274 Handbook for Employers whereby the electronic approval notice issued by USCIS would either a) constitute an acceptable document evidencing work authorization under the I-9 verification process or b) could be used temporarily in lieu of the physical approval notice until the physical notice is made available to the employer by the federal government. This action would prevent gaps in employment for workers who have received an electronic approval notice from USCIS, but due to delays outside their control have not yet received the hard-copy notice.

EXPAND E-FILING OPTIONS

Chamber members have consistently conveyed to us their desire for USCIS to expand its efforts to modernize the filing process for various immigration benefits. Companies across several industries have been pleased with how the electronic H-1B registration process has been implemented, with many of them noting that it reduces their company's overall costs while providing the agency with the ability to make its operations more efficient. Similarly, many companies welcomed the agency's policy decision to expand online filing capability for certain students applying for work authorization under the Optional Practical Training (OPT) program.

USCIS should build upon these above-mentioned developments by expanding the types of immigration benefits than can be applied for electronically. Companies understand that this will likely take a considerable amount of time, but the processing efficiencies and cost reductions that will result from these developments will inure significant benefits to employers, their workers, and USCIS. The vast majority of immigration benefit requests rely upon paper-based processes. Requirements for wet ink signatures on certain forms place significant administrative and monetary burdens on companies for immigration benefits; in those cases, moving towards the acceptance of digital and electronic signatures on those forms, will only add to the cost savings and efficiency to be gained by these efforts.

ADDRESS EMPLOYMENT-BASED GREEN CARD BACKLOG

Obtaining Lawful Permanent Residency through our nation's Employment-Based Immigrant Visa system can be a very long and arduous process for many foreign nationals. Individuals from certain countries must wait years, in some cases, decades, to obtain a green card, which needlessly imposes a significant amount of uncertainty on employers and employees alike. Employers must hope that every nonimmigrant visa extension filed on behalf of its workers are approved, and they will likely have to submit multiple extensions for each of their workers. The employees and their families are always worried about how their long-term plans could be disrupted by an adverse decision by the agency. While we acknowledge that increasing the 140,000 annual quota on employment-based immigrant visas requires legislation, there are several steps that USCIS can take to provide relief to foreign nationals stuck in the backlog.

There are hundreds of thousands of green cards that were made available by Congress between fiscal years 1992 and 2019 that were not issued due to administrative delays on the part

of the federal government. The failure to issue the full allocation of green cards has significantly exacerbated the current immigrant visa backlogs. This state of affairs has a direct impact on the need for employers across several industries to file tens of thousands of nonimmigrant visa extension petitions in order to maintain workforce continuity. This paperwork burden could be substantially smaller than it is today if the federal government had issued all the available immigrant visas during those fiscal years. Relatedly, USCIS' adjudicatory burden would be much less than it is today had these green cards been issued in a timely fashion. The status quo wastes government resources and needlessly harms the employment-based nonimmigrants, their families, and their employer. USCIS can rectify this situation if it works with the State Department to recapture the more than 220,000 unused green cards from those prior years and issue them to applicants that are stuck in the immigrant visa backlog.

Second, USCIS should consider options that will increase the number of adjustment of status applications in the agency's inventory. While this would not result in an applicant receiving a green card any earlier than under the current legal regime, it would significantly reduce the volume of extension and amendment filings and provide much-needed relief and certainty to the foreign nationals waiting their green cards and for the companies that employ them.

CONCLUSION

The Chamber greatly appreciates USCIS providing stakeholders with this opportunity to comment on barriers to USCIS Benefits and Services. We look forward to continuing this critical dialogue with the agency on regulatory and administrative policy changes that can break down barriers to immigration benefits and improve the processing efficiency of the agency.

Thank you for considering our views.

Sincerely,

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U.S. Chamber of Commerce