

# United States Senate

WASHINGTON, DC 20510

## **VIA ELECTRONIC TRANSMISSION**

October 21, 2021

Ur Jaddou  
Director  
U.S. Citizenship and Immigration Services  
Camp Springs, Maryland 20588

Director Jaddou,

We write to you today about the loss of tens of thousands of employment-based visas in FY21. As you know, in FY20 over 122,000 family-based visas went unused due to COVID restrictions at U.S. embassies and consulates abroad, which led to a corresponding increase of 122,000 employment-based visas in FY21. In total, 262,288 employment-based visas were ultimately available for USCIS to process in FY21. Despite efforts by USCIS to limit the loss of employment-based visas, it is our understanding that up to 80,000 employment-based visas were not processed in time, and may ultimately be wasted.

For those waiting in the backlog for employment-based visas, the increase for FY21 provided hope that the backlog could be reduced significantly. Many of those in the backlog are already working in the United States, already contributing to our economy, and already paying taxes. They are making active contributions to our states and helping to build industries that are creating jobs and opportunities for Americans.

In recent court filings, USCIS stated it is likely that there will be a significant number of family-based visas which will again roll over into the employment-based category in FY22. Specifically, USCIS estimates that 290,000 employment-based visas will be made available in FY22 – nearly 30,000 more employment-based visas than those available in FY21. In light of this likelihood, it is imperative for USCIS to begin now to process as many employment-based visas as possible during FY22.

To help us better understand the efforts made by USCIS in FY21, and what efforts you will undertake in FY22, we ask you that you respond to the following questions no later than November 19, 2021:

- (1) What was the total number of employment-based visas which were available in FY21?

- (2) How many employment-based visas did USCIS process in FY21? How many employment-based visas went unused in FY21?
- (3) What specific measures did you take to improve processing times for employment-based visas in FY21?
- (4) What is the total number of employment-based visas which will be available in FY22?
- (5) What specific measures will you use in FY22 to improve processing times for employment-base visas?
- (6) What is your best estimate of the number of individuals currently waiting in the employment-based visa backlog?
- (7) Of those waiting in the employment-based visa backlog, what percentage have been approved for a visa who currently reside in the United States?
- (8) Is there additional funding which you need from Congress in order to effectively process all eligible employment-based visas in FY22?
- (9) What additional authorities could Congress provide to USCIS which would allow for you to process all employment-based visas in FY22?

The unprecedented increases in employment-based visas for FY21 and FY22 are a unique opportunity to improve the American economy and reduce the employment-based visa backlog. We look forward to your responses to our questions, and to finding ways to work with your office to fuel the American future through merit-based, legal immigration.

Sincerely,



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Thom Tillis  
United States Senator



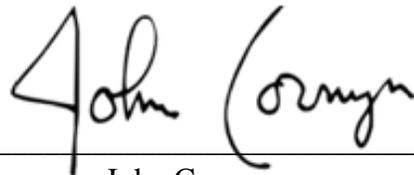
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Susan M. Collins  
United States Senator



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Rand Paul, M.D.  
United States Senator



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John Cornyn  
United States Senator



**U.S. Citizenship  
and Immigration  
Services**

December 15, 2021

The Honorable Thom Tillis  
United States Senate  
Washington, DC 20510

Dear Senator Tillis:

Thank you for your October 21, 2021 letter relating to visa use in the numerically-limited employment-based visa categories.

As you know, U.S. Citizenship and Immigration Services (USCIS) and its partners at the Department of State (DOS) have demonstrated their commitment to use as many of the available family-sponsored and employment-based visa numbers as possible. This commitment has not wavered even in the face of the pandemic—which reduced the resources and operational capacity of both agencies. In Fiscal Year (FY) 2021, USCIS approved more employment-based adjustment of status applications than it had since 2005, and we are well positioned, with DOS, to attempt to use all of the employment-based numbers available in FY 2022.

During FY 2021, USCIS faced the unprecedented challenge of processing over 237,000 employment-based green card applications—not only the agency’s usual 115,000, but an additional 122,000 immigrant visa numbers that the DOS was unable to process during the prior fiscal year due to consular closures in response to the COVID-19 pandemic. Early on in the Fiscal Year, USCIS recognized that it had an unprecedented number of visas to process and began to take steps to maximize its visa usage.

More than doubling the typical USCIS processing rate would have been a major undertaking under any circumstances. This challenge was compounded by ongoing restrictions on USCIS operations due to COVID-19, resource limitations due in part to fiscal challenges that were the result of the previous administration’s actions (including failure to finalize a new fee rule that would bring in significant additional resources), and multiple policy changes by the previous administration that made the agency’s work slower and less efficient, without demonstrable benefits in terms of program integrity. Since January 2021, the Biden administration took action to mitigate each of these impediments in order to improve processing times across the board, and for employment-based adjustment of status applications in particular. Please see the enclosure for additional information on the actions taken by USCIS during FY 2021 as well as detailed responses to your questions. Please note that some responses provide preliminary estimates because, in some instances, final data relating to FY 2021 are not yet available.

We appreciate your legislative proposals relating to the recapture of unused visas and are willing to provide technical assistance to your office upon request. Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou  
Director

Enclosure

**The Department of Homeland Security's Response to  
Senator Thom Tillis's October 21, 2021 Letter**

**1. What was the total number of employment-based visas which were available in FY 21?**

**Response:** The Department of State (DOS) determined that the total number of visas available in the employment-based preference categories in FY 2021 was 262,288.

**2. How many employment-based visas did USCIS process in FY 21? How many employment-based visas went unused in FY 21?**

**Response:** DOS has not yet published the official visa use totals for both agencies for FY 2021. Preliminary estimates based on USCIS and DOS data are that USCIS used approximately 172,343 employment-based visas in FY 2021. This is the highest number of employment-based adjustment of status applications approved since FY 2005, and much higher than the agency's typical annual processing rate of some 115,000 employment-based adjustment of status applications. DOS used approximately 19,779 employment-based visas in FY 2021. Based on these figures, the preliminary estimate of employment-based visas that went unused in FY 2021 is 70,166.

**3. What specific measures did you take to improve processing times for employment-based visas in FY 21?**

**Response:** USCIS prioritized employment-based (EB) adjustment of status applications during every step of processing and adjudication during FY 2021. Among the actions that USCIS took during FY 2021 to maximize EB visa use or improve processing times were the following:

- Based on a multi-year study of EB adjustment of status adjudications, implemented a risk-based interview determination for these applications beginning in March of 2020.
- Through the end of FY 2020, continued to review and prepare employment-based adjustment of status applications for which visas would become available in October of 2020 for final adjudication.
- Worked collaboratively with DOS to ensure that the dates in the Visa Bulletin were set at a level to allow the filing of sufficient new employment-based adjustment of status applications early in FY 2021.
- Allowed applicants to file using the Dates for Filing chart in the DOS Visa Bulletin during the first quarter of FY 2021.
- Prioritized the receipt and processing of the employment-based adjustment of status workload at our Lockbox intake facilities.
- Redistributed pending workloads between Lockbox intake facilities and distributed newly-filed employment-based adjustment of status applications between additional facilities, in order to improve processing and reduce delays in the initial intake and receipt of applications.
- Eliminated a "frontlog" of applications (which was more than 1 million receipts in January 2021 and was fully eliminated in July 2021) by expanding staffing and overtime at USCIS intake facilities.
- Prioritized the processing of the employment-based adjustment of status workload both in Field Operations and Service Center Operations.
- Restored contractor processing capacity at the USCIS National Benefits Center.

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- Reused biometrics for close to 2 million applicants since March 2020 and reduced pending biometrics appointments from 1.4 million in January 2021 to 155,000 as of September 30, 2021, thus freeing up resources at our Application Support Centers (ASCs).
- Prioritized the scheduling of biometrics appointments at ASCs for employment-based adjustment of status applicants.
- Expanded hours at ASC locations where necessary to gain additional capacity for biometrics appointments for employment-based adjustment of status applicants.
- Redistributed the employment-based adjustment of status workload between offices and directorates to match workloads with available resources.
- Provided overtime funds to USCIS employees processing and adjudicating employment-based adjustment of status applications.

In addition, one of the significant challenges that USCIS faced in FY 2021 concerned the lack of a valid Form I-693, Report of Medical Examination and Vaccination Record. In order to demonstrate eligibility for adjustment of status, applicants in the employment-based preference categories are required to provide a valid Form I-693. However, USCIS often does not receive the Form I-693 at the time of filing and instead receives it from applicants when requested through a Request for Evidence (RFE). USCIS took the following steps to address this issue:

- Proactively identified applications with a missing or invalid Form I-693 and issued RFEs.
- Directly contacted applicants using email, text messages, and phone calls to encourage them to submit the Form I-693.
- Issued notices and communication materials to encourage applicants to submit Form I-693 concurrently with their adjustment of status applications.
- Between August 12, 2021 and September 30, 2021, temporarily extended the validity period for Form I-693 from two years to four years.

**4. What is the total number of employment-based visas which will be available in FY 22?**

**Response:** DOS currently estimates that the FY 2022 employment-based annual limit will be approximately 280,000, due to unused family-based visa numbers from FY 2021 “falling across” to the current fiscal year.

**5. What specific measures will you use in FY 22 to improve processing times for employment-base visas?**

**Response:** Given all of the policy and process improvements outlined above, USCIS is well-situated to process an even higher number of employment-based adjustment of status applications in FY 2022. In support of those processing goals, USCIS will take measures including:

- Continue to prioritize the processing of EB adjustment of status applications throughout the agency, while preserving the integrity of the immigration system and continuing to provide resources to serve other applicants and petitioners.

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- Work collaboratively with DOS to ensure that the dates in the Visa Bulletin are set at a level to allow the filing of sufficient new employment-based adjustment of status applications early in FY 2022.
- Allow applicants to file using the Dates for Filing chart in the DOS Visa Bulletin during the first quarter of FY 2022. Service Center Operations is in the process of increasing the number of adjudication officers assigned to work EB cases and will consider reallocation of caseloads to maximize capacity across USCIS.

**6. What is your best estimate of the number of individuals currently waiting in the employment-based visa backlog?**

**Response:** Estimating the number of individuals who are awaiting visa availability in the employment-based categories is very challenging. A noncitizen can be said to enter the queue when they have a priority date. The priority date for an employment-based petition that requires a labor certification from the Department of Labor (DOL) is the date the labor certification application was accepted for processing. The priority date for a petition in a classification that does not require a labor certification is the date the completed, signed petition is properly filed with USCIS. The queue for employment-based immigrant visas consists of the following sub-groups, in order of progress through the process:

Sub-Group	Notes on Estimation
Noncitizens with a pending labor certification application for whom a visa is not available	USCIS has no visibility on this population and defers to DOL.
Noncitizens with an approved labor certification application for whom a visa is not available; no petition pending with USCIS	USCIS has no visibility on this population and estimating the size would require coordination with DOL.
Noncitizens with a pending immigrant visa petition with USCIS for whom a visa is not available	USCIS can determine the number of pending petitions. However, the number of family members who may immigrate with the principal beneficiary of the petition cannot be determined from the petition data and must be estimated. Also, many noncitizens have two or more employment-based petitions filed on their behalf, often in different categories. Correcting for duplicate petitions filed on behalf of the same noncitizen is challenging, particularly for older petitions. In addition, since the petitions are pending, the analysis should assume that a certain percentage will not be approved. Finally, USCIS and DOS experience has shown that a certain percentage of individuals for whom visas are available choose not to seek a visa. This “non-response” rate should be included in the analysis.

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	<p>There are approximately 125,600 pending employment-based immigrant visa petitions at USCIS, across the EB1 through EB5 preference categories. With estimated approval rates in each category, and estimated number of dependents, there are approximately 232,400 noncitizens with a pending employment-based visa petition. This estimate does not consider the “non-response” rate at this time.</p>
<p>Noncitizens with an approved immigrant visa petition but for whom a visa is not available</p>	<p>USCIS can determine the number of approved petitions. However, the number of family members who may immigrate with the principal beneficiary of the petition cannot be determined from the petition data and must be estimated. Also, many noncitizens have two or more employment-based petitions filed on their behalf, often in different categories. Correcting for duplicate petitions filed on behalf of the same noncitizen is challenging, particularly for older petitions. In addition, given the long wait times for visa availability, many noncitizens become lawful permanent residents through other, faster, pathways (through marriage, for example) while awaiting a visa. In order to determine who is truly in the visa queue, all such noncitizens need to be removed from the analysis. This, too, is difficult. Finally, USCIS and DOS experience has shown that a certain percentage of individuals for whom visas are available choose not to seek a visa. This “non-response” rate should be included in the analysis.</p> <p>There are approximately 438,400 approved employment-based immigrant petitions across EB1 through EB5 preference categories. With estimated dependents, there are approximately 875,000 noncitizens with an approved employment-based immigrant visa petition but for whom a visa is not available. This estimate does not consider the “non-response” rate at this time.</p>
<p>Noncitizens with a pending adjustment of status or immigrant visa application for whom a visa is not available</p>	<p>For this sub-group, USCIS and DOS have a discrete count of family members who intend to immigrate, and it is less likely that the</p>

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	<p>noncitizens will have more than one pending application. It is still possible that members of this subgroup have obtained lawful permanent resident status through some other pathway after filing, and the analysis should account for this. As the applications are pending, the analysis should assume that a certain percentage will be denied and not require the use of a visa.</p> <p>There are approximately 263,000 noncitizens with a pending adjustment of status application (I-485) in the employment-based preference categories. However, visas are available for the vast majority of the noncitizens with pending applications at this time. Only applicants in the EB3 category from India and China are currently affected by retrogression. Given the difficulties in determining the exact priority date, category, and country of chargeability of our pending adjustment workload, USCIS cannot state with certainty how many do not have a visa available. In addition, USCIS does not have information on how many immigrant visa applications are pending with DOS.</p>
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USCIS notes that analysts at the Congressional Research Service and nongovernmental organizations have attempted to estimate the employment-based visa queue based on limited data from USCIS and DOS. However, these analyses are based on incomplete data and do not account for multiple petitions, beneficiaries who have already obtained lawful permanent residence, denial rates, non-response rates, and the other considerations noted above.

USCIS and DOS do periodically publish analyses that provide some insight into the queue. DOS publishes an “Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center.” The most recent report is from November of 2020 and is available at [https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem\\_2020\\_vF.pdf](https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2020_vF.pdf). USCIS also publishes a “Form I-140, I-360, I-526 Approved Employment-Based Petitions Awaiting Visa Availability” report. The most recent provided data as of April 21, 2021, and is available at [https://www.uscis.gov/sites/default/files/document/reports/EB\\_I140\\_I360\\_I526\\_performancedata\\_fy2021\\_Q1\\_Q2.pdf](https://www.uscis.gov/sites/default/files/document/reports/EB_I140_I360_I526_performancedata_fy2021_Q1_Q2.pdf). However, this report duplicates every petition included in the DOS report. It also does not account for potential derivative family members, does include multiple petitions filed on behalf of the same noncitizen, does not include pending petitions, does not filter out petitions filed for beneficiaries who have since acquired lawful permanent residence in

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some other way, does not account for the likely “non-response” rate, and does not account for the denial rate of any future application for adjustment of status or immigrant visa application.

While the subgroups above comprise the queue of noncitizens with priority dates for whom employment-based visas are not currently available, there are hundreds of thousands of individuals with priority dates who have visas available to them in the employment-based preference categories. These include noncitizens with pending adjustment of status or immigrant visa applications and individuals with pending or approved petitions who have not yet applied to become lawful permanent residents. While these individuals are generally not considered to be in the “visa backlog,” they are eligible to receive employment-based visas ahead of those in the queue for whom visas are not yet available.

**7. Of those waiting in the employment-based visa backlog, what percentage have been approved for a visa who currently reside in the United States?**

USCIS cannot state with certainty how many individuals in the queue for employment-based immigrant visas currently reside in the United States. All of those noncitizens with pending adjustment of status applications listed in the response to Question 6 above had to be physically present in the United States when they applied for adjustment of status. The beneficiaries of pending or approved immigrant visa petitions, or pending or approved labor certification applications, may reside in any country and are not required to provide USCIS with an updated residential address. However, most noncitizens seeking to become lawful permanent residents (LPRs) in the employment-based preference categories do so through adjustment of status, suggesting that most live in the United States. From FY 2015 – 2019, 82% of all new employment-based LPRs had adjusted status.

**8. Is there additional funding which you need from Congress in order to effectively process all eligible employment-based visas in FY 22?**

**Response:** USCIS respectfully refers you to the President's Budget for Fiscal Year 2022 for USCIS, which requests appropriations in the amount of \$345 million (in addition to available fee resources) for application processing, reducing backlogs within asylum, field, and service center offices, and support of the refugee program. We appreciate the support received from Congress in the recent Continuing Resolution (CR) legislation, which provided \$250 million for these purposes on an annualized basis during the CR period.

**9. What additional authorities could Congress provide to USCIS which would allow for you to process all employment-based visas in FY 22?**

**Response:** The Administration's proposal to modernize the U.S. immigration system (the U.S. Citizenship Act of 2021) includes, with respect to employment-based immigration:

- Clearing employment-based visa backlogs, recapturing unused visas, ensuring that visa numbers do not go to “waste” in the future; reducing lengthy wait times, and eliminating per-country visa caps;
- Making it easier for graduates of U.S. universities with advanced STEM degrees to stay in the United States;

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- Improving access to green cards for workers in lower-wage sectors and eliminating other unnecessary hurdles for employment-based green cards;
- Providing dependents of H-1B visa holders with work authorization, and preventing children from “aging out” of the system; and
- Creating a pilot program to stimulate regional economic development, giving DHS the authority to adjust green cards based on macroeconomic conditions, and incentivizing higher wages for nonimmigrant, high-skilled visas to prevent unfair competition with American workers.

USCIS stands ready to work with Congress on these proposals, and we continue to be available to provide technical drafting assistance to your offices on potential immigration legislation.