

Congress of the United States

Washington, DC 20515

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By ESEC at 7:41 am, Jul 31, 2023

July 28, 2023

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Antony J. Blinken
Secretary of State
U.S. Department of State
Washington, D.C. 20520

Dear Secretary Mayorkas and Secretary Blinken:

The U.S. economy continues to benefit from our retention of highly skilled workers, predominantly advanced degree holders in the fields of science, technology, engineering, and mathematics (STEM) employed in critical industries in the United States. These professionals are scientists, inventors, healthcare workers, entrepreneurs, and talents who contribute to the United States' global competitiveness. These talented individuals are eager to live and work in the U.S., but the current immigration system is broken, making it nearly impossible for them to stay. Given decades long backlogs and increased recruitment by Canada of foreign STEM talent, the number of individuals who remain committed to waiting for an employment-based green card is unclear. As a result, we encourage the administration to make all employment-based visas current on the Visa Bulletin on October 1, 2023.

By definition, on October 1st (i.e., the first day of each government fiscal year), none of the available 140,000 employment-based green cards have been allocated yet for that fiscal year. Moreover, at the beginning of the year, it cannot be known how many of the people who either have already applied, or who will apply, for green cards will actually be eligible to receive a green card. Some number will be approved, and some number will be denied on one of the many statutory or discretionary grounds of ineligibility. Other individuals may even have lost their employer sponsor due to the recent layoffs in the tech sector or moved to a country with more straightforward immigration laws.

Over the past few years, the Department of State has been wildly inconsistent in how it has set the bulletin, creating confusion among those seeking employment-based green cards. Therefore, all eligible applicants who already have an approved employment-based Immigrant Petition (Form I-140) should have the opportunity to submit an I-485 application for adjustment of status between October 1st and October 31st of each fiscal year. This way, the administration can ensure that it will have sufficient applicants to award each of the available green cards—as it has been the case that many prior years have seen green cards go wasted rather than be issued to extremely deserving applicants. This fact is critical, because between FY 1992 and FY 2021, the federal government failed to issue at least 194,100 available employment-based green cards.¹ There is historical precedent to utilizing the Visa Bulletin to gauge interest in green cards, such as when President George W. Bush and his administration marked all dates as current in the July 2007 Visa Bulletin.

Thank you for your consideration of this important action. We look forward to continued collaboration on legislative and technical solutions to provide relief for our constituents in the backlog.

Sincerely,

¹ <https://crsreports.congress.gov/product/pdf/IN/IN11811>



Raja Krishnamoorthi
Member of Congress



Larry Bucshon, M.D.
Member of Congress



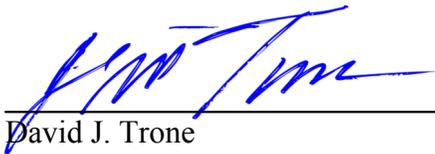
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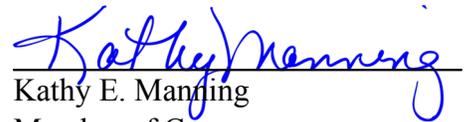
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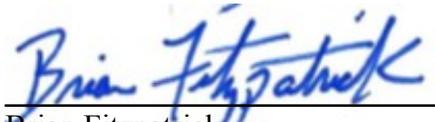
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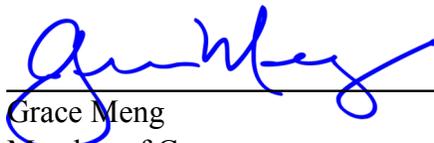
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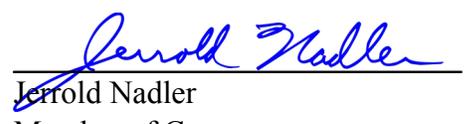
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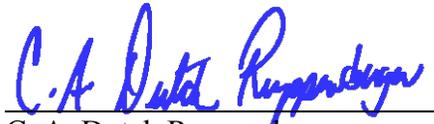
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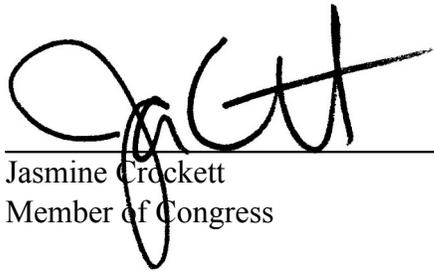
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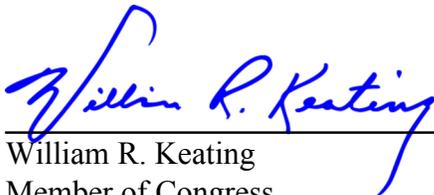
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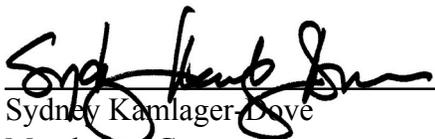
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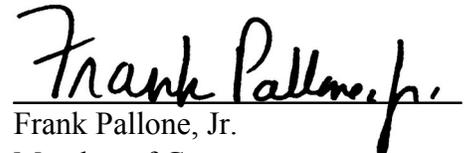
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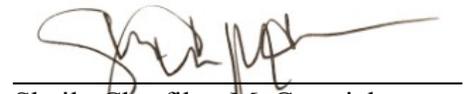

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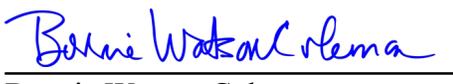

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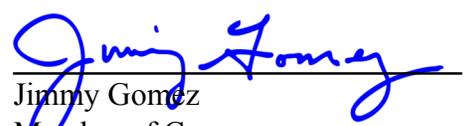

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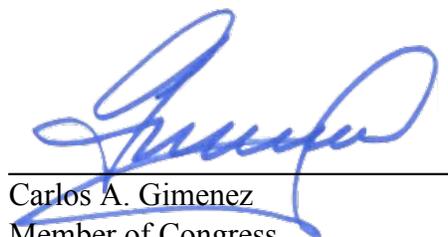

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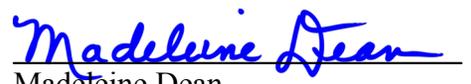

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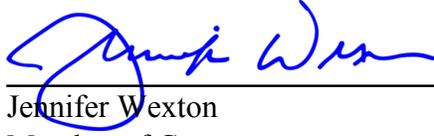

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**U.S. Citizenship
and Immigration
Services**

September 25, 2023

The Honorable Raja Krishnamoorthi
U.S. House of Representatives
Washington, DC 20515

Dear Representative Krishnamoorthi:

Thank you for your July 28, 2023 letter to the Department of Homeland Security (DHS) requesting that DHS and the Department of State (DOS) make all employment-based visas current on the Visa Bulletin on October 1, 2023. I am responding on behalf of DHS.

DHS is keenly aware that demand greatly exceeds the limited supply of immigrant visas in the family-sponsored and employment-based preference categories and that such demand has steadily increased over the years. DHS also acknowledges your concern that this imbalance between the needs of the U.S. labor market and the annual statutory limits on visa issuance hinders the ability of talented professionals in critical industries to remain in the United States and may lead such individuals to utilize their talents in other countries. However, only legislation can address the imbalance between the limited supply of immigrant visas and the increasing demand for those visas.

In the family-sponsored categories, which were established by Congress several decades ago, the annual limits were insufficient to meet the demand when they were enacted. Noncitizens from all countries have had to wait many years for preference-based visas to become available. Many noncitizens seeking immigrant visas in the employment-based categories have similarly faced significant and increasingly long waits due to high demand relative to limited visa availability.

DHS defers to DOS to address your proposal relating to immigrant visa availability and issuance. Specific to the adjustment of status context, section 245(a) of the Immigration and Nationality Act (INA) allows DHS to adjust the status of a noncitizen to that of a lawful permanent resident only if, among other things, “an immigrant visa is immediately available to him at the time his application is filed.” U.S. Citizenship and Immigration Services (USCIS), in collaboration with DOS, helps ensure that there is a sufficient volume of applications for immigrant visas by allowing noncitizens to apply for adjustment of status using the Dates for Filing chart when the supply of visas is greater than the demand for those visas, taking into

account inventory at USCIS and DOS as well as other considerations.¹ Accepting over one million adjustment of status applications in the employment-based categories (and a potentially higher volume in the family preference categories) while knowing that visas would not be “immediately available” or available at all for many decades would be unreasonable.

Pursuant to section 203(g) of the INA, DHS and DOS make “reasonable estimates” of the number of noncitizens with pending applications (immigrant visa applications with DOS, adjustment of status applications with USCIS) who will use immigrant visa numbers, as well as the number of potential new applications that will result in visa number use. DOS advances the dates in the Visa Bulletin so that a sufficient number of applicants have available visas to reach the annual limits, using DOS refusal rates and USCIS denial rates, as well as other factors, to generate this estimate. The collaboration between the two agencies is excellent, the quality of the available data regularly improves, and the agencies have been successful in allowing a sufficient number of noncitizens to apply to use the available visas.

Since fiscal year (FY) 2007, USCIS and DOS have only twice failed to use more than a small number of employment-based visas, in FY 2020 and FY 2021. This shortfall was not due to a failure to invite a sufficient number of noncitizens to apply. Rather, a shortage of financial resources and COVID-19 pandemic-related operational restrictions impacted visa processing over this two-year period.

Despite these challenges, USCIS approved more employment-based adjustment of status applications in FY 2020 than any of the previous eight years. This trend continued through FY 2021, when USCIS approved what was at the time the second highest number of employment-based adjustment of status applications in the history of the agency. In FY 2022, with an employment-based limit of more than twice the usual annual limit, USCIS and DOS successfully overcame the significant challenges confronting them and used all available employment-based visas.

Currently, there are 325,000 pending employment-based applications; USCIS has over 200,000 adjustment of status applications, and DOS has over 125,000 documentarily complete immigrant visa applications. DHS anticipates that on October 1, 2023, the total number of pending immigrant visa and adjustment of status applications will exceed the FY 2024 limit for employment-based visas and will likely be more than double the annual limit. Available data, including recent and historical refusal and denial rates, does not indicate that these 325,000 pending applications would be insufficient to use all available visas in FY 2024.

DHS, in partnership with DOS, is committed to using all available employment-based visas and working with Congress to find durable solutions to address the imbalance between the high demand for immigrant visas and the decades-old annual statutory limits. As employment-based annual limits return to pre-pandemic levels, we will continue to pursue policy changes to bring greater certainty, stability, and protection for employer-sponsored noncitizens in the United States, consistent with the INA.

¹ See USCIS Policy Manual, [Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement](#)

Recent measures include, but are not limited to:

- Updating USCIS Policy Manual guidance regarding the eligibility criteria for O-1A and O-1B individuals of extraordinary ability;
- Updating USCIS Policy Manual guidance regarding eligibility for EB-2 individuals of exceptional ability and advanced degree holders with National Interest Waivers;
- Updating the USCIS Policy Manual to clarify the analysis of an employer's ability to pay the proffered wage for certain employment-based immigrant petition adjudications;
- Clarifying options for laid-off workers to remain in the United States while securing new employment;
- Instituting improved age-out protections for certain children of adjustment of status applicants;
- Updating the list of degree fields qualifying F-1 nonimmigrant graduates of U.S. universities for STEM Optional Practical Training;
- Clarifying that USCIS considers certain E-1, E-2, E-3 and L-2 nonimmigrant dependent spouses employment authorized incident to status such that they are not required to apply and wait for an employment authorization document (EAD) and applying the automatic extension of employment authorization for renewal EAD applications filed by these E and L spouses as well as certain H-4 spouses;
- Establishing a process for healthcare and childcare workers to make an expedited request for processing of initial EAD applications that have been pending for more than 90 days or renewal applications that would expire within 30 days or have already expired;
- Expanding premium processing to all filers of Form I-140, Immigrant Petition for Alien Workers, and certain filers of Form I-765, Application for Employment Authorization, and Form I-539, Application to Extend/Change Nonimmigrant Status, while adhering to the congressional requirement that such services must not cause an increase in processing times for regular immigration benefit requests;
- Updating eligibility criteria for Compelling Circumstances EADs; and,
- Updating the USCIS Policy Manual to clarify eligibility for J-1 exchange visitor status.

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,



Ur M. Jaddou
Director