

# United States Senate

WASHINGTON, DC 20510

## VIA ELECTRONIC TRANSMISSION

May 9, 2022

The Honorable Ur Jaddou  
Director  
U.S. Citizenship and Immigration Services  
Camp Springs, MD 20588

Dear Director Jaddou:

We write today to request an update of U.S. Citizenship and Immigration Services (USCIS) efforts to improve processing of employment-based visas. The loss of tens of thousands of employment-based visas in fiscal year 2020 (FY20) and fiscal year 2021 (FY21) was a missed opportunity to reduce the green card backlog, and we want to ensure your agency has every tool and resource you need to process every available employment-based green card possible in fiscal year 2022 (FY22).

In December 2021, you wrote that USCIS and the Department of State (DOS) were “well positioned . . . to attempt to use all of the employment-based numbers available in FY 2022.”<sup>1</sup> In your letter, you wrote that 262,288 employment-based visas were available in FY21 and that approximately 280,000 employment-based visas were likely available in FY22.

As of this writing, we are over halfway through FY22. In light of your stated commitments to process employment-based visas and to avoid having these visas go unused, we would like additional information about the status of your efforts (along with DOS). We would ask that you respond to the following questions no later than June 6, 2022:

1. How many employment-based visas did USCIS approve and issue in FY21? How many employment-based visas went unused in FY21?
2. What is the total number of employment-based visas which are available in FY22? How many have been approved and issued at this time?
3. Has USCIS calculated an estimate of how many employment-based visas may go unused in FY22? What measures has the agency taken during FY22 to prevent the loss of any employment-based visas this fiscal year?

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<sup>1</sup> Letter from Ur M. Jaddou, Director, U.S. Citizenship and Immigration Services, to Thom Tillis, United States Senator (December 15, 2021).

4. Compared to the end of FY21, have processing times improved for employment-based visas? Please provide additional statistics showing how processing times for FY22 compare to FY21.
5. Please provide data on the number of employment-based visas available for each fiscal year starting with fiscal year 2011 and going until the present. In each of these fiscal years, how many employment-based visas were approved and issued by USCIS?
6. Are there any specific barriers preventing you from processing visas more efficiently? What are those barriers, and are there additional authorities Congress could provide to assist you in improving processing times?

We share your commitment to processing visas quickly and efficiently, and to avoid unused employment-based visas in FY22. We appreciate your attention to this important matter, and look forward to receiving your response so that we can evaluate the success of any measures you have taken to prevent employment-based visas from going unused during FY22.

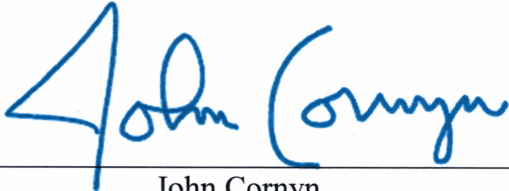
Sincerely,



Thom Tillis  
United States Senator



Amy Klobuchar  
United States Senator



John Cornyn  
United States Senator



Christopher A. Coons  
United States Senator



Susan M. Collins  
United States Senator



Mark R. Warner  
United States Senator



U.S. Citizenship  
and Immigration  
Services

July 7, 2022

The Honorable Thom Tillis  
United States Senate  
Washington, DC 20510

Dear Senator Tillis:

Thank you for your May 9, 2022 letter regarding processing of employment-based immigrant visas. USCIS appreciates your and your co-signers' shared commitment to using all of the available employment-based visas and your support for USCIS and our partners at the Department of State (DOS) in this effort.

The employment-based adjustment of status workload is a critical priority for USCIS, and I am committed to ensuring that USCIS implements every lawful policy and procedural action that we can to maximize our use of the available visas. USCIS has taken multiple proactive steps, in coordination with our partners at DOS, to maximize the issuance of employment-based visas despite the operational challenges caused by the COVID-19 pandemic. USCIS is working hard to adjudicate employment-based adjustment of status applications and underlying petitions, including continuing to make processing and resource allocation decisions to increase the pace of adjudications and to limit the potential for employment-based visas to go unused.

USCIS also strongly supports the ongoing legislative efforts to recapture previously unused immigrant visas and to prevent the loss of unused immigrant visa numbers in the future when federal agencies lack the operational capacity to use them all by the end of a given fiscal year. Congress is currently considering several proposals that would accomplish either or both goals, and USCIS has provided technical assistance in support of those efforts. USCIS is committed to continuing to engage with Congress on this topic and providing technical assistance, as needed, to remedy this problem.

We have included an enclosure with this response that addresses the various questions raised in your May 9, 2022 letter. Thank you again for your letter and interest in this important issue. The co-signers 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,

The Honorable Thom Tillis  
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A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal stroke.

Ur M. Jaddou  
Director

Enclosure

## **The U.S. Citizenship and Immigration Services' Response to Senator Thom Tillis' May 9, 2022 Letter**

### **1. How many employment-based visas did USCIS approve and issue in FY21? How many employment-based visas went unused in FY21?**

The annual limit for employment-based visa use in FY 2021 was 262,288. The Department of State (DOS) publishes the official figures for visa use in their Report of the Visa Office, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports/report-of-the-visa-office-2021.html>. Overall, USCIS and DOS combined to use 195,507 employment-based immigrant visas in FY 2021. DOS issued 19,779 employment-based immigrant visas, and USCIS used 175,728 employment-based immigrant visas through adjustment of status, more than 52 percent higher than the average before the pandemic. Despite our best efforts, which we detailed in our [December 15, 2021 letter](#), 66,781 visas went unused at the end of FY 2021.

### **2. What is the total number of employment-based visas which are available in FY22? How many have been approved and issued at this time?**

DOS will publish the official annual limit for the employment-based preference categories later this year. They previously published an estimated value of 280,000 for FY 2022, based on the shortfall in family-sponsored visa use in FY 2021. USCIS and DOS have used significantly more employment-based visas at the halfway point of FY 2022 than the agencies had used at that point in FY 2021, with USCIS alone utilizing more than twice as many visas on a weekly basis than at this point in FY 2021. Through June 5, 2022, the two agencies have combined to use 154,249 employment-based immigrant visas, and remain committed to taking all available policy and procedural action that we can to maximize our use of all available visas by the end of the fiscal year.

### **3. Has USCIS calculated an estimate of how many employment-based visas may go unused in FY22? What measures has the agency taken during FY22 to prevent the loss of any employment-based visas this fiscal year?**

USCIS is dedicated, with its partners at DOS, to use all of the available employment-based immigrant visas in FY 2022. In order to do so, USCIS must continue to accelerate its rate of employment-based adjustment of status adjudications during the remainder of the fiscal year.

USCIS has taken the following measures, with its partners, to help prevent the loss of employment-based visas during FY 2022:

- Prioritized the processing and adjudication of employment-based adjustment of status applications and underlying petitions at our Lockbox intake facilities, the National Benefits Center, our Service Centers, and our Field Offices;
- Continued to apply risk-based interview waiver determination for employment-based adjustment of status applications, resulting in most applications being adjudicated without an interview;
- Worked collaboratively with DOS to ensure that the dates in the Visa Bulletin are significantly advanced to allow for the filing and adjudication of sufficient immigrant visa and adjustment of status applications;
- Allowed applicants to use the Dates for Filing chart in the DOS Visa Bulletin through at least May of 2022;

**The U.S. Citizenship and Immigration Services' Response to  
Senator Thom Tillis' May 9, 2022 Letter**

- Provided overtime funds and supplemental USCIS staff to support employment-based adjustment of status and underlying petition processing and adjudication;
- Prioritized the adjudication of underlying immigrant visa petitions (after accounting for premium processing) to focus our efforts on beneficiaries who may receive immigrant visas in FY 2022;
- Reused biometrics previously provided by applicants to the greatest extent possible;
- Eliminated a backlog of noncitizens awaiting biometrics appointments;
- Redistributed employment-based adjustment of status workloads between offices and directorates to match the workloads with the available resources;
- Published communication materials in January, February, March, and April of 2022 notifying the public that USCIS lacked sufficient inventory in the EB-1 and EB-2 categories and encouraging eligible noncitizens to consider applying for adjustment of status in those categories;
- Established a new process and a dedicated single mailing address for receiving requests from employment-based adjustment of status applicants who wish to transfer their pending adjustment of status applications to a different employment-based category;
- Published communication materials about the new transfer of underlying basis process and encouraging eligible noncitizens to consider submitting requests;
- Published communication materials encouraging potential adjustment of status applicants to include a valid Form I-693, Report of Medical Examination and Vaccination Record, with their adjustment of status applications;
- Proactively identified applications that lack a valid Form I-693 and issued requests for evidence;
- On December 9, 2021, USCIS in collaboration with the Centers for Disease Control and Prevention, temporarily waived the requirement that the civil surgeon sign Form I-693 no more than 60 days before an applicant files an adjustment of status, through September 30, 2022, and
- Implemented an ambitious hiring plan dedicated to filling 95 percent of the agency's vacancies by the end of calendar year 2022.

**4. Compared to the end of FY21, have processing times improved for employment-based visas? Please provide additional statistics showing how processing times for FY22 compare to FY21.**

FY 2022 processing times are consistent with the end of FY 2021. Please see the enclosed Excel spreadsheet for additional statistics on processing times by quarter.

**5. Please provide data on the number of employment-based visas available for each fiscal year starting with fiscal year 2011 and going until the present. In each of these fiscal years, how many employment-based visas were approved and issued by USCIS?**

Employment-Based Visa Number Use						
	DOS	USCIS	Total	Annual Limit	Shortfall	Shortfall %
<b>FY 2011</b>	15,099	124,203	139,302	140,000	698	0.50%
<b>FY 2012</b>	19,137	125,510	144,647	144,951	304	0.21%
<b>FY 2013</b>	21,144	140,125	161,269	158,466	-2,803	-1.77%
<b>FY 2014</b>	21,365	129,994	151,359	150,241	-1,118	-0.74%
<b>FY 2015</b>	21,613	122,339	143,952	144,796	844	0.58%

**The U.S. Citizenship and Immigration Services' Response to  
Senator Thom Tillis' May 9, 2022 Letter**

<b>FY 2016</b>	25,056	115,294	140,350	140,300	-50	-0.04%
<b>FY 2017</b>	23,814	115,790	139,604	140,000	396	0.28%
<b>FY 2018</b>	27,345	112,138	139,483	140,292	809	0.58%
<b>FY 2019</b>	28,538	112,048	140,586	141,905	1,319	0.93%
<b>FY 2020</b>	14,694	132,459	147,153	156,253	9,100	5.82%
<b>FY 2021</b>	19,779	175,728	195,507	262,288	66,781	25.46%

All DOS and USCIS figures reported here were taken from the DOS annual Report of the Visa Office. Official annual limit values were published in Visa Bulletins during the relevant fiscal years. A “shortfall” value or percentage that is negative in this table indicates that the agencies used more visas than were authorized, while a positive value indicates that the agencies fell short of using the available visas.

**6. Are there any specific barriers preventing you from processing visas more efficiently? What are those barriers, and are there additional authorities Congress could provide to assist you in improving processing times?**

In FY 2022, the key challenges we have faced in processing the extraordinary number of employment-based immigrant visas available include the following:

- Insufficient early-year demand in EB-1 and EB-2
- Continued limitations on consular post capacity
- USCIS capacity constraints, particularly for Form I-140 adjudication
- Mismatch between workload distribution and available adjudicative resources during the first part of the year
- Missing or invalid Form I-693 from filers
- Lapse in authorization of the EB-5 Regional Center Program

Other barriers not specific to our experience in FY 2022, and some that relate to family-sponsored immigrant visa use, include:

- The limited validity period of the immigrant medical examination as documented on Form I-693;
- The lack of an exception to the per-country caps in the family-sponsored categories similar to the exception for the employment-based categories found in INA 202(a)(5), 8 U.S.C. 1152(a)(5);
- The current structure of INA 201(c)(1)(B) and (c)(3), 8 U.S.C. 1151(c)(1)(B) and (c)(3), which effectively results in the permanent loss of all unused employment-based visas, and
- Generally, a statutory framework for the numerical control system for immigrant visas in INA 201, 202, and 203, 8 U.S.C. 1151, 1152, and 1153, that is not flexible enough to avoid the loss of immigrant visas due to operational constraints during a pandemic or other unforeseeable operational interruptions.

What can Congress do to assist in improving processing times?

**The U.S. Citizenship and Immigration Services' Response to  
Senator Thom Tillis' May 9, 2022 Letter**

- USCIS will benefit from, and appreciates, the ongoing support for discretionary/appropriated funding in FY 2023 and outyears so it can continue its prioritization of reducing backlogs across its major immigration benefit workflows, and ensure it has adequate staffing, facilities space, and a secure IT infrastructure. Through support from Congress, USCIS will continue its efforts to provide timely processing and adjudication of various workflows related to humanitarian efforts, which entails asylum, refugee, and parole work among other immigration benefits;
- Congress can continue to support our partners at DOS Consular Affairs as they rebuild their own capacity after the pandemic and related operational and fiscal challenges.
- Congress can take action on the Administration's proposals to recapture previously unused visas and otherwise modernize the immigration system, as included in the U.S. Citizenship Act, S. 348.

Form I-485, Application to Register Permanent Residence or Adjust Status  
Employment-Based Completions and Processing Time  
Grouped by Fiscal Year and Quarter



U.S. Citizenship  
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Services

Period	Completed	Processing Time (in months)
<b>Fiscal Year 2021</b>	<b>168,593</b>	<b>N/A</b>
Q1 October - December	28,817	11.3
Q2 January - March	19,506	11.6
Q3 April - June	31,341	8.7
Q4 July - September	88,929	9.9
<b>Fiscal Year 2022</b>	<b>68,141</b>	<b>N/A</b>
Q1 October - December	35,485	11.1
Q2 January - March	32,656	9.9
Q3 April - June	N/A	N/A
Q4 July - September	N/A	N/A

**Notes:**

- 1) Some applications or petitions approved or denied may have been received in previous reporting periods.
- 2) The report reflects the most up-to-date estimate available at the time the database is queried.
- 3) Completed are the number of applications or petitions approved or denied.
- 4) Processing times are defined as the number of months it took for an application, petition, or request to be processed from receipt to completion in a given time period. The number of months presented is the median which is the time it took to complete 50% of all the cases processed in the quarter.
- 5) Forms completed (approved and denied) may differ from counts reported in previously published reports due to processing delays and the time at which the data are queried, system updates, and post-adjudicative outcomes.
- 6) Data for FY 2022 Quarters 3-4 are not currently available.
- 7) For a complete list of USCIS forms and descriptions, visit <https://www.uscis.gov/forms>

**Source:**

Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality  
Quarterly All Forms reports (PRT, ELIS, CLAIMS3), FY21 and FY22, TRK 9718

Form I-485, Application to Register Permanent Residence or Adjust Status  
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