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Policy Brief

Making Headway: An Update on the Department of State’s Progress toward Addressing Inefficiencies and Delays Created by the COVID-19 Pandemic

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Introduction

Last year, the American Immigration Lawyers Association (AILA) released a policy brief discussing the current state of visa processing at the Department of State (DOS) that included 10 recommendations the agency could implement to overcome inefficiencies and delays created or exacerbated by the COVID-19 global pandemic.¹ Since last year, significant progress has been made globally in the fight against COVID-19. As vaccines have become more prevalent, COVID-19 cases are significantly down from their peak, and our nation and many across the globe have gradually reopened borders and sought a return to “normalcy.”

In light of this reopening, U.S. embassies and consular posts around the world are ramping up visa services and began the arduous process of working through a backlog of cases. In light of the progress the agency has made, AILA provides the following update concerning the status of the recommendations included in our June 2021 policy brief, as well as additional recommendations that might be helpful for the agency moving forward.

Current State of Visa Backlog and Issuance Rates

First, it is important to highlight the progress DOS has made in reopening visa services and reducing its backlog. During the pandemic, significant backlogs developed as a result of post closures, in-country conditions, travel bans implemented by the Trump Administration, and regional travel bans resurrected by the Biden Administration. As AILA recommended in our June 2021 policy brief, President Biden rescinded the last of the regional travel bans on October 25, 2021, allowing DOS to focus its adjudicative efforts on reducing its sizeable backlog, rather than the enforcement of the bans and adjudication of national interest exemptions.²

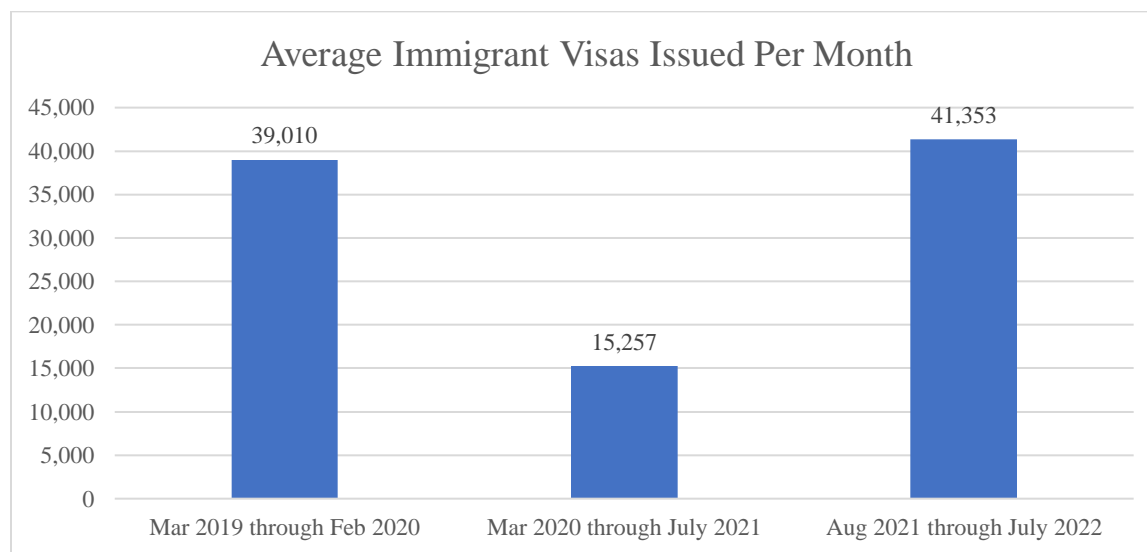
¹ Policy Brief: Reopening America – How DOS Can Reduce Delays and Eliminate Backlogs and Inefficiencies to Create a Welcoming America, <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-reopening-america>

² The White House, A Proclamation on Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/#:~:text=It%20is%20the%20policy%20of,incluing%20from%20international%20air%20travelers.>

The agency has implemented or is in the process of implementing several other recommendations designed to reduce the backlog and increase the agency’s overall efficiency. In addition, the gradual improvement of in-country conditions for many nations across the globe has allowed posts to operate at a higher capacity, which in turn has allowed posts to move toward offering visa services at prepandemic levels. Recent statistics from DOS show a dramatic increase in the level of visa issuance for both immigrant and nonimmigrant visas, as well as a significant reduction in the backlog of pending immigrant visa cases awaiting an interview at the National Visa Center (NVC).

Immigrant Visa Issuance and NVC Backlog

From March 2020 through July 2021, the immigrant visa issuance rate fell sharply from a prepandemic average (FY2019) of roughly 39,000 to roughly 15,257 per month. Since August 2021, monthly average issuance rates have risen 171% to 41,353 immigrant visas, but it is important to put that increase in perspective. The monthly average since August 2021 is slightly below the monthly average for fiscal years 2017 and 2018.³ Therefore, while the increase in visa issuance for immigrant visas shows dramatic progress, it remains slightly below average output for previous prepandemic fiscal years.⁴

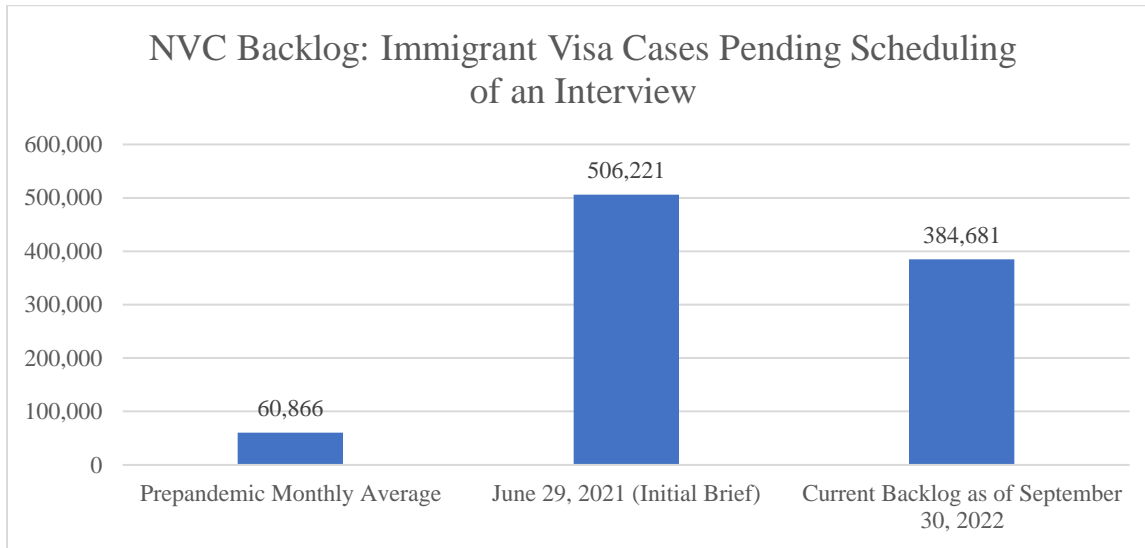


Analysis of data from DOS webpage, “Monthly Immigrant Visa Issuance Statistics”<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/immigrant-visa-statistics/monthly-immigrant-visa-issuances.html>.

³ Analysis of data from DOS webpage, “Monthly Immigrant Visa Issuance Statistics”<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/immigrant-visa-statistics/monthly-immigrant-visa-issuances.html>. Previous fiscal years 2017 and 2018 average issuance rates for immigrant visas were 46,628 and 44,463 respectively. See Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts Fiscal Years 2017-2021, available here:
https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2021AnnualReport/FY21_TableL.pdf

⁴ DOS did release its August 2022 IV issuance statistics after this brief was finalized. The statistics show IV issuance for August 2022 was 57,137. An increase of close to 14,000 visas from the previous the July 2022 issuance monthly total of 43,148. See: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/immigrant-visa-statistics/monthly-immigrant-visa-issuances.html>

Following the trend of significant improvement, the backlog of immigrant visa cases at the NVC pending scheduling of an interview has decreased by 24% from 506,221 at the time of our June 2021 policy brief to 384,681 at the time of writing.⁵ However, the current backlog is still significantly higher than monthly average backlog in 2019 of 60,866 cases.



Analysis of data from DOS webpage, “National Visa Center (NVC) Immigrant Visa Backlog Report”
<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-backlog.html>

Nonimmigrant Visa Issuance

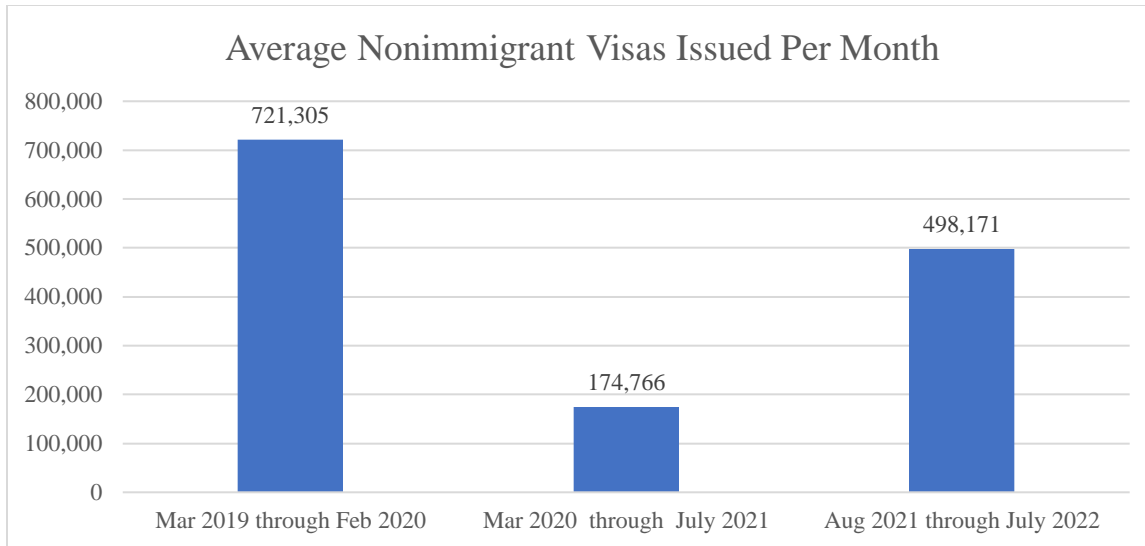
Finally, issuance rates for nonimmigrant visas also increased dramatically from pandemic lows. Since August 2021, the average issuance per month is 498,171. This represents a 185% increase from the pandemic monthly average of 174,766.⁶ Similar to immigrant visa issuance, DOS has made significant progress in its issuance rates for nonimmigrant visas; however, the monthly issuance rates are still far below prepandemic levels.⁷ While issuance rates continue to improve⁸, it is clear that additional work and changes are needed to overcome backlogs and delays created by the pandemic.

⁵ Analysis of data from DOS webpage, “National Visa Center (NVC) Immigrant Visa Backlog Report”
<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-backlog.html>

⁶ Analysis of data from DOS webpage, “Monthly Nonimmigrant Visa Issuance Statistics”
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html>.

⁷ Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts Fiscal Years 2017-2021, available here:
https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2021AnnualReport/FY21_TableI.pdf.
 Previous fiscal years 2017 and 2018 average issuance rates for nonimmigrant visas were 806,826 and 752,335 respectively. Calculation was done by dividing the total number for each fiscal year by 12.

⁸ It is worth noting that average monthly issuance from March 2022 through July 2022 is 666,431, which is far closer to pre-pandemic numbers. In the August 2022 statistics released by DOS, NIV issuance reached 754,062, close to 98,000 visas more than the July 2022 NIV issuance of 656,119. See:
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html>



Analysis of data from DOS webpage, “Monthly Nonimmigrant Visa Issuance Statistics”

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html>.

Update on AILA’s Recommendations to Eliminate Pandemic-Related Consular Backlogs

While there is still significant work needed to overcome its backlog and return to full services, as the statistics above show, the agency has made a significant dent in its backlog and, in the case of immigrant visas, exceeded the visa issuance rate from the fiscal year immediately prior to the pandemic. These improvements signal that after adopting many of AILA’s recommendations, the agency is making progress.

This policy brief highlights the action taken by DOS on the recommendations made in our June 2021 brief, and areas where the Department can make additional improvements.

1. Reopen America.

AILA’s first recommendation called for the termination of regional travel restrictions such as Presidential Proclamations 9984, 9992, 10143, and 10199, calling instead for common sense measures based on science. On October 25, 2021, President Biden rescinded the regional travel restrictions, effective on November 8, 2021.⁹ The decision significantly scaled down the need to apply for National Interest Exceptions in very limited circumstances, opting instead for a science-based measure of requiring vaccinations for travelers not subject to certain exceptions. AILA applauds the Biden Administration for its long-awaited decision to rescind these regional restrictions and DOS for its implementation of new measures. However, the impacts of these bans, such as long case backlogs and significant delays, are still being felt by many.

⁹ Presidential Proclamation Rescinding Regional COVID Travel Bans and Imposing Vaccination Requirement, available here: <https://www.aila.org/infonet/white-house-memo-resume-global-travel-covid-19>

2. Resume stateside processing of visa renewals.

Currently, only a few diplomatic categories of nonimmigrant visas are processed stateside. But previously, A-3, G-5, NATO-7, C, E, H, I, L, O, and P visa renewals were processed in the United States. AILA's recommendation to resume stateside processing of visa renewals for these nonimmigrant garnered interest from the Biden Administration. DOS has noted that it is actively considering a return to stateside processing of these visa renewals to reduce the burden on posts, improve overseas services, and provide certainty to renewal applicants who want to travel overseas. While returning to domestic processing of visa renewals will require significant operational investment and planning, AILA believes it is imperative for DOS to start taking incremental steps now to help those individuals who have already been sufficiently vetted by the government and who are in need of stateside renewal the most. This could include individuals who have been previously granted a certain category of visa more than twice or who have been in the United States for a significant period of time.

If DOS cannot immediately resume the services it provided in 2004, then it should begin with a pilot initiative focused on providing services to nationals of countries from the most backlogged posts such as India; individuals whose country of residence does not have consular services; individuals who work in critical industries such as health care workers or those employment-based visa renewal applicants in categories such as Es, Hs, and Ls who have been issued visas more than once; or individuals in visa categories that are not petition based. We urge the agency to make use of existing resources to implement this type of pilot program for low-risk applicants while partnering with other executive agencies, such as the U.S. Citizenship and Immigration Service (USCIS) and Customs and Border Protection (CBP), who currently have the capability of housing secure documents and processing applications.

3. Expand visa interview waiver eligibility.

AILA and our members appreciate DOS's December 2021 expansion of interview waiver authority covering additional applicants, including certain first-time applicants, as well as the extension of the waiver through the end of 2022.¹⁰ It is clear that the reduction of in-person nonimmigrant visa interviews has helped to reduce workload and contributed to a reduction of the backlog in a manner that safeguards national security interests. Given the benefits for both applicants and posts, AILA strongly urges DOS to permanently extend the current interview waiver program. AILA also urges the agency to issue a formal announcement as soon as possible concerning the extension of the interview waiver program beyond December 2022 to provide applicants and stakeholders with greater certainty on eligibility for an interview waiver and the interview waiver program moving forward.

AILA understands that interview waivers are issued on a case-by-case basis and that discretion on the use of interview waivers is left to each post. Nevertheless, AILA members have reported uneven use and implementation of the interview waiver program across posts. AILA has also

¹⁰ Department of State, Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, <https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html>

received reports that certain posts, such as Mission India, have long waits for an appointment to drop off documents for a waiver. AILA recommends that DOS encourage posts to utilize the interview waiver program to further reduce workloads and provide greater efficiency for all applicants and also to leverage remote processing to reduce wait times in backlogged countries.

4. Automatically extend visas that expired during the COVID-19 pandemic by 24 months.

At the time of this writing, DOS has not taken unilateral action to extend nonimmigrant visas that expired during the COVID-19 pandemic. AILA continues to urge DOS to provide relief for individuals who were either stranded abroad or required to return home for urgent business and family or pandemic related emergencies during the pandemic. Doing so would help to reduce burdens on consular officers, allowing them to focus time and resources on reduction of the visa backlog and resumption of routine visa services at posts around the globe, and also provide temporary relief to those nonimmigrant visa holders impacted by the pandemic.

5. Maximize staffing on immigrant visa processing at consular posts.

AILA is pleased to learn that the agency has been actively hiring staff to adjudicate visas. In a press briefing on August 12, 2022, Deputy Assistant Secretary Julie Stufft confirmed that the agency has nearly doubled hiring of consular officers over the last year, and that it has also been utilizing a team of experienced adjudicators to remotely support high-volume posts.¹¹ While AILA understands that training new consular officers will likely require time, AILA urges DOS to continue implementing creative solutions such as remote support for high-volume posts and historically beneficial methods of support such as calling back retired consular officers. In addition, DOS should consider all available options for increasing the agency's output including seeking additional appropriations to facilitate more hirings, capacity for overtime authorization, and any other solutions necessary.

6. Revise regulations to allow virtual immigrant and nonimmigrant visa interviews.

On December 13, 2021, DOS issued a temporary final rule allowing the waiver of certain in-person appearance and oath requirements for immigrant visa applicants.¹² While the agency has extended and expanded interview waiver authorities for certain nonimmigrant visas, allowing for virtual interviews for both immigrant and nonimmigrant visas would allow for further remote support and enable high-volume posts to better manage their workload. DOS has announced a final rule in the Unified Agenda that is scheduled for publication in December 2022.¹³ It would add a limited exception in 22 CFR part 42 to the requirement that an immigrant visa applicant appear in person before a consular officer and provide an in-person oath. AILA encourages DOS

¹¹ Department of State, Update on Visa Services, <https://www.state.gov/briefings-foreign-press-centers/update-on-visa-services>

¹² DOS Temporary Final Rule on Waiver of Personal Appearance and In-Person Oath Requirement for Certain Immigrant Visa Applicants, <https://www.aila.org/infonet/dos-temporary-final-rule-on-waiver-of-personal>

¹³ Unified Agenda, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1400-AF31>

to finalize this regulation as quickly as possible and to ensure that the regulation provides for as much flexibility as the law allows.

7. Leverage U.S.-based consular officers to adjudicate visa applications.

As indicated by DOS in our January 2022 meeting, posts may not see officers hired in FY2022 until the second half of the year or even FY2023, particularly for those officers in need of language training.¹⁴ In the meantime, AILA continues to urge DOS to continue to build its team of domestic adjudicators and to consider training deputized civil servants, new Foreign Service Officers (FSOs), and retired FSOs to further support backlog reduction efforts.

8. Admit all U.S. lawful permanent residents (LPRs) returning to the United States from abroad without conducting an abandonment analysis if they last departed the United States on or after December 31, 2019, or had a valid reentry permit on that date and discourage SB-1 returning resident visa applications.

At the time of this writing, DOS has not taken action on this recommendation. However, as conditions surrounding the pandemic and consular staffing improves, AILA recognizes that this is less of an issue for most LPRs. We continue to encourage the agency to, in conjunction with CBP, take action that allows admission to LPRs who felt constrained from returning to the United States before their reentry permits expired or within a year of their last departure due to pandemic-related reasons.

9. Adopt a policy to automatically extend immigrant visas from 6 months to 18 months, in coordination with CBP.

At the time of this writing, DOS has not taken action on this recommendation. AILA continues to urge DOS to provide relief for individuals whose visas expired during the COVID-19 global pandemic and for related reasons have been unable to use their visas. Even as pandemic conditions improve, automatically extending visa validity would reduce administrative burdens on consular posts to reissue these visas and free up consular officers to focus on further reduction of the visa backlog and resumption of routine visa services, while providing temporary relief to visa applicants.

10. Recapture and avoid the loss of unallocated visas.

To date, the Administration has not taken steps to recapture unused visas. AILA continues to encourage members of Congress to recapture the hundreds of thousands of unused employment- and family-based visas lost since 1992, as well as those diversity lottery visas lost due to COVID-19 and the policies of the prior Administration. Of note, several bills have been introduced during the 117th Congress pertaining to recapture in some capacity, with certain bills updating the formula for rolling over visas to avoid loss moving forward.¹⁵ Text has also been included in the House text for the FY2023 Department of Homeland Security (DHS)

¹⁴ Department of State/AILA Liaison Committee Meeting, January 20, 2022 at <https://travel.state.gov/content/dam/visas/AILA/AILA-Meeting-Agenda-01-20-2022.pdf>

¹⁵ FWD.us, Legislation to Reduce Green Card Backlogs Gaining Support in Congress, <https://www.fwd.us/news/green-card-backlogs/>

Appropriations Bill as a result of an amendment from Representative Meng (D-NY) that would recapture visas between FY1992 and FY2021 and also make visas available for diversity visa applicants from FY2020 and FY2021 who were not admitted due to restrictions or closures.¹⁶

AILA continues to urge both DOS and USCIS to take administrative steps to ensure maximum usage of visa numbers for FY2022 and beyond. Although it has been confirmed that more than 280,000 employment-based visas will be used for FY2022, it appears as though roughly 60,000 family-based visas will go unused and will thus be rolled over into the employment-based category next year. In addition to considering administrative recapture of unused visas, AILA urges DOS, in coordination with DHS, to take steps to ensure that immigrants in the backlog are not further delayed from becoming permanent residents due to delays in adjudications outside of their control that result in visas going unused. For example, DOS should consider visa numbers “issued” for purposes of the numerical caps earlier in the application process to ensure the visa number is utilized once an individual has shown they are documentarily eligible, even if final processing continues beyond the end of the fiscal year. It is imperative that all family-sponsored, employment-based, and diversity visas are never lost in a race against time.

Conclusion

Over the last year, DOS has been able to improve its efficiency and increase its operations to levels nearing, or in limited cases, exceeding prepandemic levels. Issuance rates for immigrant and nonimmigrant visas have dramatically risen, and the overall backlog has been reduced by 24% to date. This improvement is a direct result of the agency being able to reopen posts, increase visa services, and adopt recommendations that reduce unnecessary work for consular officers. To continue its progress toward eliminating its backlog and returning to full visa services, DOS must take additional steps to build on the progress already made reducing unnecessary workloads and increasing overall efficiency in visa processing.

¹⁶ Department of Homeland Security Appropriations Bill, 2023, <https://www.congress.gov/117/crpt/hrpt396/CRPT-117hrpt396.pdf>