

BORDER SOLUTIONS



AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Policy Brief: Barriers to Immigrant Visas Driving Migrants to the Southern Border

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When it comes to resources and attention on immigration, the southern border gets a far bigger slice of the pie than it should. But immigration is not just about the southern border. It is a complex system with many moving parts and agencies. For example, visa delays at the Department of State (DOS)—not generally viewed as a border agency—put pressure on migrants to cross the southern border without authorization. Most of these delays result from lack of resources and insufficient funding for DOS and U.S. Citizenship and Immigration Services (USCIS) - also not generally viewed as a border agency -- as well as inefficiencies in the agencies' processing. The Biden Administration must ensure that the legal pathways Congress has authorized function efficiently and Congress must properly resource those agencies and create legal pathways reflective of today's demands to not inadvertently push people to attempt to cross at the U.S. southern border.

Many immigration attorneys have stories of clients who crossed the southern border even when other legal pathways were available to them. The American Immigration Lawyers Association (AILA) obtained the following examples from its attorney members:

- A child had an approved I-730 petition as a relative of an asylum seeker or refugee. After **more than three years** of waiting for an interview, the child crossed the southern border alone and was detained.
- A father with his green card sponsored his daughter to come to the United States. The petition was approved; DOS had all the necessary documents and the daughter was only waiting on the consulate to schedule the interview. Due to processing delays, her interview was scheduled **over two years later**. After waiting so long and with shifting politics in her home country, she made the decision to enter at the southern border and apply for asylum.
- A mother sponsored her adult child for an I-130 in June 2015. In March 2022, he entered at the southern border because he faced persecution and filed for asylum a few months later. DOS scheduled his visa interview almost a year after he entered the United States, which was **seven and a half years** after his petition was filed.
- The pregnant foreign national wife of a U.S. citizen had an approved immigrant petition. The wait time for an immediate relative interview at the consulate was over a year, an exceptionally long time for her to wait given her health situation. As a result, the wife

entered through the southern border without inspection. The **alternative was to remain in her country alone, pregnant, and at risk.**

- A Venezuelan national was approved as a beneficiary of a fiancé visa petition but while waiting for the interview, the embassy in Venezuela closed. There were also long waits at the Bogota embassy. With no other options, the fiancée (of a U.S. citizen) crossed the southern border and was issued a notice to appear. Now married, the fiancée has a removal case in the immigration court and will need to request an I-601A waiver. This unnecessary step, caused by delays, added to the backlogs in both the immigration courts and the I-601A processing, the latter of which is **currently 43 months or longer**, up from 4.5 months in 2018.

These stories demonstrate the very real human costs of consulate backlogs and inefficiencies. More than the human costs, long wait times result in an added burden on the southern border's infrastructure as well as our asylum system. Alleviating pressure on the southern border of the United States requires looking *beyond* the southern border. Improving our lawful immigration system will in turn prevent individuals who have approved immigrant petitions from entering without inspection in the face of a hopeless – and unnecessary – wait.

Solutions

- **Congress should allocate funding to USCIS and DOS to ensure the sufficient staffing and resources needed to address the existing backlogs created under the prior Administration and exacerbated by the COVID-19 global pandemic, as well as crisis-level processing delays.** Backlog reduction is key for both agencies and will allow for the capacity to address the processing delays and inefficiencies that disincentivize the use of lawful pathways.
- **USCIS should reduce processing delays for family and humanitarian-based form types such as Form I-130, Form I-360, and I-601/I-601A waivers.** Transparent and efficient processing can help relieve pressure on the border. Lengthy processing times, which can take years in some cases, particularly for family and humanitarian form-types, cause anxiety, family separation, and lead many to make difficult decisions for themselves or their families.
- **Eliminate the visa backlog for both employment-based and family-based green cards by recapturing several hundred thousand unused immigrant visas and avoiding the loss of visas moving forward.** A technical error in the statute has led to unused green cards in both categories being “lost” instead of properly rolling over from one category to another in the subsequent year, in line with congressional intent.¹ This error significantly contributes to backlogs and delays in accessing immigrant visas. In turn, visa backlogs put more pressure on the border by limiting the option and value of legal immigration. Families and businesses should not need to wait decades for a loved one or critical employee to immigrate.

¹ See *Green card recapture and reform would reduce immigration backlogs*, FWD.us (Sept. 14, 2022), <https://www.fwd.us/news/green-card-recapture/>.

- **Remove barriers and implement technological enhancements to streamline processing at both USCIS and DOS.** These resources would allow legal processing to be a viable option and reduce pressure at the border.
- **DOS should implement policies that will reduce pressure on agency resources and result in greater capacity and efficiency,** such as:
 - Permanently authorize DOS to waive the interview requirement – a time-consuming step that is often unnecessary – in certain nonimmigrant (NIV) and immigrant visa (IV) cases.
 - Expand the use of stateside visa renewals for certain NIV cases.
 - Maximize staffing at posts abroad and place an increased focus on family-based petitions, particularly for immediate relative cases not restricted by statutory limitations.
 - Implement virtual interviews for NIV and IV cases.
- **Congress should allocate funding to DOS for use by Safe Mobility Offices (SMOs) abroad to expand engagement with local populations on available lawful pathways, provide the necessary resources for efficient and effective refugee resettlement processing, and ensure greater transparency in their operations.** This funding will facilitate a greater understanding of available lawful pathways, increase the capacity of the SMOs and the agency and organization staff that support them, and ensure accessible and efficient refugee resettlement processing.

Further Reading

[Policy Brief: What Does Effective Border Management Look Like?](#)

[Making Headway: An Update on DOS's Progress toward Addressing Inefficiencies and Delays Created by COVID-19](#)

[AILA Policy Brief — Righting the Ship: The Current Status of USCIS Processing Delays and How the Agency Can Get Back on Course](#)

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