

Congress of the United States
House of Representatives
Washington, DC 20515

October 28, 2015

The Honorable Jeh Johnson
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable John Kerry
Secretary
U.S. Department of State
2201 C Street, NW
Washington, DC 20451

Dear Secretary Johnson and Secretary Kerry:

On November 20, 2014, Secretary Jeh Johnson directed U.S. Citizenship and Immigration Services (USCIS) to “continue and enhance its work with the Department of State to ensure that all immigrant visas authorized by Congress are issued to eligible individuals when there is sufficient demand for such visas,” and to “improve the system for determining when immigrant visas are available to applicants during the fiscal year.”¹ The very next day, President Obama directed that “administrative policies, practices, and systems use all of the immigrant visa numbers that the Congress provides for and intends to be issued, consistent with demand.”² These announcements were made in recognition of the contributions high-skilled immigrants make to our economy and to support U.S. businesses and workers. When the Departments of State and Homeland security announced early September that the Visa Bulletin was being revised and that foreign nationals would now be able to file for adjustment of status earlier, we applauded those efforts.³

Then on September 25, 2015, the Department of State issued a revised Visa Bulletin — one that dramatically scales back the number of immigrants’ eligible to apply for adjustment of status to lawful permanent residence.⁴ As a result, thousands of individuals and businesses that had relied on the original Bulletin filing dates irrevocably lost thousands of dollars in legal fees and other

¹ Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, to León Rodriguez, Director, USCIS, et al., *Policies Supporting U.S. High-Skilled Businesses and Workers* (Nov. 20, 2014).

² Memorandum from Barack Obama to the Heads of Executive Departments and Agencies, *Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century* (Nov. 21, 2014).

³ Statement from Hon. Zoe Lofgren and Hon. Mike Honda, *Lofgren & Honda Applaud New Rules to Ease Green Card Process* (Sept. 10, 2015) available at <https://lofgren.house.gov/news/documentsingle.aspx?DocumentID=397988>.

⁴ Department of State, *Visa Bulletin For October 2015*, (Rev’d Sept. 25, 2015).

expenses related to preparing their applications. Many have made life-changing decisions that cannot be undone.⁵

We have heard estimates that the revised Bulletin would decrease the number of immigrants eligible for filing by 80% to 95% from the number projected to be eligible under the original Bulletin filing dates. If true, the revision would effectively reverse the progress made toward the Administration's goals to reform our visa system. Therefore, we request that you provide the estimated number of eligible applicants under the initial Visa Bulletin filing dates and the estimated number of eligible applicants under the revised Bulletin. To the extent possible, please provide a breakdown of these projections by preference category and country of chargeability. The Department of State should set Visa Bulletin filing dates to ensure that as many eligible applicants as possible may submit green card applications, consistent with the policy goals outlined by the President.

To ameliorate the hardships caused by the Visa Bulletin revision, we strongly urge that the Department of Homeland Security implement regulatory changes that would benefit high-skilled workers waiting in the United States for immigrant visa numbers. Specifically, we are referring to 1) providing beneficiaries of an approved employment-based petition (Form I-140), and their derivative dependents, employment authorization; and 2) amending the regulations so that such petitions will remain valid in cases where the beneficiary has a new job that is in the same or similar classification as the job for which the petition was filed.⁶

We believe these would be important and meaningful changes that are well within the agency's legal authority. They would permit adversely affected workers to stay in the country while waiting for the filing dates to advance to the dates announced in the initial Visa Bulletin, without sacrificing job flexibility.⁷ They would not only help our country to retain valuable high-skilled workers but also better protect American workers, combat abuse, and strengthen the economy, which are the very things that the Secretary and the President intended when making the announcements to modernize our visa system almost one year ago.

Additionally, USCIS should consider the Visa Bulletin revision "an extraordinary circumstance beyond the control of the applicant or petitioner" in the event a person is filing a late request to extend nonimmigrants status.⁸ USCIS should also take into consideration the disruption to both businesses and personal lives that the revision has caused when deciding to grant parole for urgent humanitarian reasons or significant public benefit.⁹

⁵ See e.g. Class Action Complaint for Declaratory and Injunctive Relief, *Mehta v. Kerry, et. al.*, (West. Dist. of Wash.; Sept. 28, 2015) (One plaintiff rejected a job offer; another plaintiff postponed having a child).

⁶ DHS Regulatory Agenda, *Employment-Based Immigration Modernization*, RIN: 1615-AC05, available at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=1615-AC05>; see also Letter from Hon. Zoe Lofgren to USCIS (July 14, 2015).

⁷ Foreign and American workers are harmed by policies that unnecessarily tie foreign workers to a single employer for years on end. Suppressing job mobility for any population leads to depressed wages and worse working conditions for all. On the other hand, increased job mobility for foreign workers benefits the economy as a whole. See Dorning, Mike, *Immigrant Wages to Get Boost From Job Mobility Under Obama Plan*, Bloomberg (Nov. 22, 2014) at <http://www.bloomberg.com/politics/articles/2014-11-22/immigrant-wages-to-get-boost-from-job-mobility-under-obama-plan>.

⁸ 8 C.F.R. § 214.1(c)(4).

⁹ See 8 USC § 212(d)(5).

The revision to the Visa Bulletin has undermined the stability and predictability of our immigration system. Our current visa backlog and restrictions already create incentives for skilled foreign workers to leave the United States and take their skills to other countries that offer more competitive immigration programs. This is now exacerbated by a confounding and sudden change to the Visa Bulletin, which has caused the world to lose faith in our immigration process.

We look forward to receiving the requested information as well as any plans your Departments may have in providing relief to those harmed by the revision and in restoring faith in our immigration process.

Sincerely,



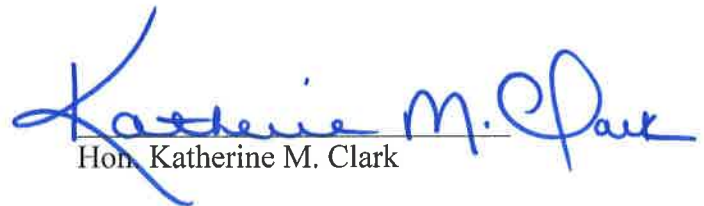
Hon. Joe Lofgren



Hon. Michael M. Honda



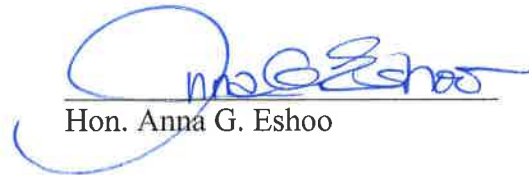
Hon. Judy Chu



Hon. Katherine M. Clark



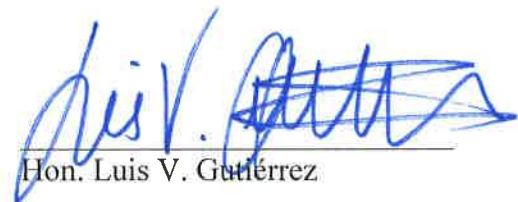
Hon. Elijah E. Cummings



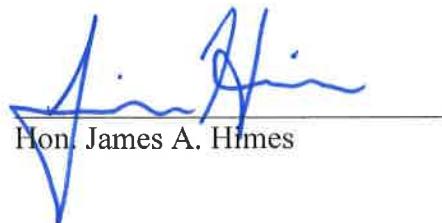
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Hon. Tulsi Gabbard



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Hon. Alma S. Adams