U.S. Citizenship and Immigration Services

TESTIMONY

OF

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FOR A HEARING

BEFORE
THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

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Introduction

Chairwoman Lofgren, Ranking Member King, Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the role of U.S. Citizenship and Immigration Services (USCIS) in the visa process, particularly USCIS and Department of State (DOS) efforts to maximize visa issuance in accordance with the law. I am accompanied today by Don Neufeld, Acting Associate Director for Domestic Operations.

In recent years, over 1 million people became Lawful Permanent Residents of the United States (LPRs). Under the law there are a variety of different categories and means through which a person may become eligible for permanent residence. A substantial number of these categories have numerical limitations – annual caps on how many people can immigrate. There are other aspects to these caps as well, such as limitations per country.

While there are many different categories and means by which a person may become a permanent resident, there are two ways a person is actually granted permanent residence. The first is by being issued an immigrant visa overseas from DOS, and then being admitted to the United States with that visa. The second is by being granted Adjustment of Status by USCIS or the Executive Office of Immigration Review (EOIR).[1] The adjustment option is limited to people already in the United States when they become eligible for an immigrant visa or otherwise become eligible for adjustment of status.

The Department of State administers the provisions of the Immigration and Nationality Act (INA) that relate to the numerical limits on immigrant visa issuance. However, DOS and USCIS must work closely in this respect because visas issued by DOS and adjustment of status granted by USCIS draw down from the same pool of limited numbers. Close and careful coordination ensures that annual limitations are not exceeded, and also helps us jointly strive to use all available visa numbers when there is sufficient demand.

According to the Office of Immigration Statistics March 2008 Annual Flow Report, a total of 1,052,415 persons became LPRs in 2007. The majority of the new permanent residents (59 percent) were already living in the United States when they adjusted status to permanent residence. Two-thirds of all new LPRs were granted permanent residence based on a qualifying family relationship with a U.S. citizen or LPR. The leading countries of birth for new permanent residents were Mexico (14 percent), China (7 percent), and the Philippines (7 percent).

In concert with DOS, USCIS has made significant changes in recent years to maximize the use of the limited number of visas available annually. These changes include increased staffing, enhanced analytical capacity, more detailed and strategic management of monthly production, and close partnership with DOS to share greater information. This enhanced information exchange assists DOS in better managing visa allocations through the monthly visa bulletin and improves USCIS' ability to target production for maximum result.

[1] According to the Office of Immigration Statistics Annual Flow Report March 2008, for the last three years the number of persons granted permanent residence were 1,052,415 in 2007; 1,266,129 in 2006, and 1,122,257 in 2005.

Background

A Lawful Permanent Resident is an individual who has been granted permanent resident status in the United States. These residents are given Permanent Resident Cards, commonly called "green cards", and may live and work permanently anywhere in the United States. They may own property, attend schools, join the U.S. military, and apply to become U.S. citizens.

There are five general categories of persons able to immigrate to the United States. They are Immediate Relatives of a U.S. citizen, Family-sponsored immigrants, Employment-based immigrants, Diversity immigrants and those granted permanent residence after holding refugee or asylum status in the United States. Congress has established annual limits on the number of aliens who can become LPRs through the family sponsored, employment-based and diversity categories.

The family-sponsored category consists of four preferences -

- Unmarried sons and daughters of U.S. citizens and their children;
- Spouses, children, and unmarried sons and daughters of permanent residents and their children;
- Married sons and daughters of U.S. citizens and their spouses and children; and
- Brothers and sisters of US citizens aged 21 and over, and their spouses and children.

A U.S. citizen or LPR seeking to sponsor an alien on the basis of their family relationship will file a visa petition (Form I-130) with USCIS. Section 201 of the Immigration and Nationality Act (INA) sets a minimum annual family-sponsored preference limit of 226,000. In recent years, because of the large number of Immediate Relatives, the family-sponsored preference limit has remained at this statutory floor.

Employment-based petitions are filed by U.S. companies, organizations and individuals in order to employee foreign workers in accordance with the INA. These workers may be nonimmigrants within the United States or people in other countries willing to immigrate for employment. A prospective employer will file an employment-based visa petition (Form I-140) with USCIS to sponsor the alien as an immigrant worker. The annual limit for employment-based visas is 140,000 plus any family-based preference visas that went unused in the prior fiscal year. In some recent years, such as 2005-07, the number of employment-based visas authorized and issued has been substantially higher than 140,000 because of the effect of "recapture" statutes. These visas may be issued to the immigrant worker and his or her spouse and children that are not already U.S. citizens or LPRs.

Once USCIS is satisfied that the qualifying relationship exists and the I-130 or I-140 is approved, an individual may apply for a visa with DOS overseas or may apply to adjust status in the United States with USCIS or EOIR <u>if a visa is immediately available</u>.

The following table indicates approvals for all adjustment of status applications over the past few years.

Fiscal Year	Adjustment of Status Approvals	Percent of All Admissions
2005	738,302	65.8%
2006	819,248	64.7%
2007	621,047	59.0%
2008 to date	340,432	not known

USCIS Operations

By statute, an application for adjustment of status can only be filed if an immigrant visa is immediately available to the applicant. USCIS regulations define a visa to be immediately available if the priority date of the underlying visa petition is earlier than the cut-off date indicated for the appropriate visa category on the current DOS monthly visa bulletin. Because of these requirements, USCIS is unable to accept an application and begin the adjudication process in advance of visa availability. It is also unable to limit the number of applications accepted in a given month to the actual number of visas available. Rather, as many as qualify can file for adjustment of status during the window indicated on the visa bulletin. This can lead to a far greater number of applications than visas available. In such cases, USCIS adjudicates the application and grants interim benefits, such as work authorization and permission to travel (advance parole), until a visa number is available. Currently, the wait for some adjustment of status applicants in the employment categories can be measured in years.

Over the past few years, USCIS has built up an inventory of applications for some visa categories that cannot now be adjudicated because the number of filings exceeded the number of visas that were actually available. It also has built up a backlog of applications for some visa categories where competing adjudication priorities have prevented the timely completion of cases, even though visas are immediately available.

According to DOS, applicants for adjustment of status currently account for 25% of annual family-based visa allocations and 85% of annual employment-based visa allocations. This has varied from year to year as different factors have influenced USCIS production. For instance, the largest gaps in recent visa number usage occurred in Fiscal Year (FY) 2002 and 2003, which coincided with a significant drop in adjustment of status processing as USCIS adapted to changes to increase security screening post 9/11. Production rose in FY 2006 due to the culmination of backlog elimination efforts and the infusion of appropriated funds. While production slowed in FY 07 after completing the prior backlog reduction effort and subsequent temporary staffing reductions, production is up substantially in FY 2008. For the first half of FY 2008, increased productivity through operational and staffing enhancements has resulted in increased visa usage of 16.6% over the same period last year.

USCIS has a fee structure and surge response plan that is financing the capacity enhancements needed to both eliminate the current adjustment of status backlog and to sustain a higher capacity for timely adjudications going forward.

To maximize visa number usage while working off its backlog, USCIS has adopted a production strategy that focuses on completing cases where visas are immediately available and on working cases to the point just short of approval (pre-adjudication) where visas will be available in the coming months. Pre-adjudication includes completing all required background checks and resolving all eligibility issues except for visa availability. This allows for immediate approval and visa number allocation as visas become available for pre-adjudicated cases.

Collaboration with DOS

USCIS works with DOS more closely than ever to exchange information that is critical for managing visa allocation and for targeting future production efforts. We are now in weekly contact with the Chief of DOS's Visa Unit to communicate current inventories per country and preference class to better determine each month's visa bulletin. DOS provides regular updates to USCIS on past visa number usage and remaining numeric allocations per country and preference class. DOS also shares its forecast for priority date movement in upcoming visa bulletins so that USCIS can adjust production in advance for maximum visa number usage.

USCIS and DOS are also working together on a plan to forward all approved family-based visa petitions to DOS, including those where the petitioner indicates the beneficiary will apply for adjustment of status in the United States. This will enhance the ability of DOS to accurately forecast demand for visa numbers and more precisely manage the establishment of priority dates to meter the intake of applications for adjustment of status to match visa availability.

Conclusion

Though we still have challenges to overcome, USCIS is currently showing improvements as a result of process improvements. As of April 25, 2008, USCIS had adjudicated over 65 percent of its FY 2008 target for employment-based visas. With five months to go in FY 2008, this is a strong start. We plan to continue implementing process improvements and new reporting mechanisms for managing these important applications.

Over the years, USCIS and DOS have strived to work in concert with respect to the Visa Bulletin process. After the events of the Summer of 2007, this year, we have built on that foundation and are better equipped to accurately assess and effectively manage the process to ensure that all available visa numbers are utilized. With five months left in FY 2008 year, we are confident this partnership between USCIS and DOS will provide the blueprint for continued success in managing visa allocations.

I look forward to updating you on our continued progress and am pleased to answer any questions that you may have at this time.