

January 29, 2015

Laura Dawkins  
Chief of Regulatory Coordination Division  
USCIS Office of Policy and Strategy  
20 Massachusetts Avenue NW  
Washington D.C. 20529

**Re: Modernizing and Streamlining the Legal Immigration System  
(DHS Docket No. USCIS-2014-0014)**

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Dear Ms. Dawkins:

We, the undersigned Asian American and Pacific Islander (AAPI) organizations, have been working with the White House on much-needed administrative reforms to our nation's immigration laws. We commend the President and his Administration for the executive actions announced on November 20, 2014. We are excited about the Visa Modernization Task Force and thank the Department of Homeland Security and the Department of State for the opportunity to comment on the Notice of Request for Information in the Federal Register (DHS Docket No. USCIS-2014-0014) concerning modernizing and streamlining the legal immigration system.

**Introduction to AAPIs and Immigration**

Immigration is a top priority for AAPI communities. Over the last few years, Asians have become the single largest demographic of new immigrants moving to the U.S.<sup>1</sup> and make up the fastest growing racial group in the country.<sup>2</sup> The majority of Asian Americans are immigrants or the children of immigrants. Our community members come to the U.S. in various ways – as students, family members, workers, or refugees and asylees. Dating back to exclusionary immigration laws of the late 1800s, the AAPI community has been and continues to be uniquely shaped by U.S. immigration laws. The Department of Homeland Security (DHS) estimates that 1.3 million Asian Americans are undocumented.<sup>3</sup> And nearly 1.8 million of the over 4 million family members waiting in the backlog for family based visas are Asian nationals.<sup>4</sup>

We are committed to the successful implementation of President Obama's executive actions, and we believe there are additional changes that can be made within the President's executive power

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<sup>1</sup> Kirk Semple, *In a Shift, Biggest Wave of Migrants Is Now Asian*, N.Y. Times (Jun. 18, 2012), <http://www.nytimes.com/2012/06/19/us/asians-surpass-hispanics-as-biggest-immigrant-wave.html?>

<sup>2</sup> U.S. Census Bureau, *2010 Census Shows Asians are Fastest-Growing Race Group*, Mar. 21, 2012, [http://www.census.gov/newsroom/releases/archives/2010\\_census/cb12-cn22.html](http://www.census.gov/newsroom/releases/archives/2010_census/cb12-cn22.html).

<sup>3</sup> 3 Pew Hispanic Center, *Unauthorized Immigrant Population: National and State Trends*, 2010, <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/>

<sup>4</sup> U.S. Department of State, *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2014*, <http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf>. Four of the five highest countries of origin facing backlogs are Asian countries: Philippines (428,765), India (323,089), Vietnam (259,030), and China (243,440).

to address current problems in our legal immigration system. These modest changes can begin to address the serious visa backlogs that impose undue burdens on hundreds of thousands of families and countless businesses, large and small, across our country.

We all recognize that for years now, the demand for immigrant visas has far outpaced the limited number of visas available. As a consequence, all of the family preference categories are oversubscribed and nationals of some countries face unacceptable wait times of 20 years or more to be reunited with their loved ones in the United States. As described above, Asian countries make up nearly half of the over 4 million close family members waiting for their visas to become available. Similarly, India and China face the longest wait times for certain employment visa preference categories.

We propose four specific changes the Administration can make now to address flaws in our legal immigration system: (1) allow for preregistration of permanent residence for all preference categories; (2) count spouses and minor children as part of the same family unit for visas; (3) recapture unused visa numbers; and (4) extend the use of parole for purposes of family unity.

### **Streamlining the Legal Immigration System**

#### **Response to No. 3**

One change that would begin to provide some relief to families and businesses impacted by the substantial visa backlog is through setting a “provisional priority date” and allowing individuals with approved family and employment based petitions to file for permanent residence earlier. The current system of priority dates is arbitrary and needs major reform. Visa applications submitted under a provisional priority date can be held in abeyance by the U.S. Citizenship and Immigration Services (USCIS) and the Department of State (DOS). We recommend this change for all visa preference categories. This has several benefits for applicants:

- (1) It provides individuals with pending adjustment applications authorization to stay in the U.S. under color of law, and prevents their detention and removal;
- (2) Adjustment applicants can get work authorization, and travel authorization;
- (3) It prevents the accruing of unlawful presence for applicants residing in the U.S.;
- (4) It provides ability to freeze the age of a child to preserve the benefits of the Child Status Protection Act (CSPA); and
- (5) It allows adjustment portability for employment-based categories.

This change would help keep families together, allow family members of U.S. citizens and lawful permanent residents to reside in the U.S. without fear of detention and deportation, and employees would be able to fill critical gaps in our workforce.

If preregistration of permanent residence applications is too cumbersome, the Administration can, alternatively, allow persons waiting in backlogged family and employment visa categories to work legally in the U.S. while they await adjustment of status. This does not allow as many legal benefits as preregistration, but it would provide work and travel authorization to many individuals who are presently living in the U.S.

## **Ensuring the Use of All Immigrant Visa Numbers**

Since the family and employment visas allocated by Congress are so limited, it is critical that the Administration take every action to ensure that all available visas are used.

First, to ensure available visas are maximized in the future (RFI Question No. 15), we recommend counting dependent family members as part of the same family unit for purposes of the visa cap. Current practice counts both the principal visa beneficiaries and their derivatives (i.e., spouses and minor children) against the visa caps. This method of assigning each and every family member a visa has the effect of creating even greater demand for the already limited number of visas available each year. However, this current practice is not required by statute (*see e.g.*, INA § 203(d), 8 U.S.C. §1153(d)). Prior to the Immigration Act of 1990 (IMMACT90), INA § 201(a) required the current practice of counting principals and derivatives. But IMMACT90 eliminated language that requires counting both principals and derivatives for purposes of the numerical limits. Further, the current version of INA § 203(d), which relates to treatment of family members, contains no language requiring that derivatives be individually counted. This change could apply equally to the employment-based preference categories.

Second, to address the problem of visas that went unused in prior years (RFI Question No. 16), we recommend “recapture” of previously unused visas and issuing them to individuals currently in the backlog. It is estimated that there are hundreds of thousands of previously authorized but unused employment-based and family-based green cards. These green cards were unused not because of a temporary lull in demand, but because of administrative and processing issues that occurred during the fiscal years they were made available. For example, in FY 2006, “over 10,000 employment-based visas were lost, even though USCIS had an estimated 100,000 to 150,000 pending applications for employment-based green cards.”<sup>5</sup> Similarly, in 2010, an estimated 241,000 family-based visas and 326,000 employment-based visas were available for recapture.<sup>6</sup> The government’s inability to efficiently utilize these visas has needlessly added to the backlog delays, while adding personal and economic strain to tens of thousands of families. To help ease the current backlog, we recommend the administration “recapture” unused visas from prior years and issue them to individuals waiting for visas.

## **Using Parole to Promote Family Unity**

Finally, we urge the Administration to continue using the parole power under Section 212(d)(5) to reunite certain family members of U.S. citizens and lawful permanent residents. The Secretary of Homeland Security has the discretion to parole temporarily into the United States, under such conditions as he or she may prescribe, any non-citizen applying for admission. The Secretary may exercise this discretion on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit.”<sup>7</sup>

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<sup>5</sup> USCIS Ombudsman Annual Report (2007), *available at* <http://www.dhs.gov/sites/default/files/publications/2007%20Annual%20Report.pdf>.

<sup>6</sup> USCIS Ombudsman Annual Report (2010), *available at* [http://www.dhs.gov/xlibrary/assets/cisomb\\_2010\\_annual\\_report\\_to\\_congress.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_2010_annual_report_to_congress.pdf).

<sup>7</sup> *See* 8 U.S.C. § 1182(d)(5) (Supp. IV 1980).

Reuniting families quickly would have significant public benefit for individual families and our community overall. Intact families can provide economic support and stability for each other, including pooling resources to start small businesses or purchase homes or providing childcare so other family members can work, which make the United States more successful overall. Also, citizens and green card holders are less pressured to send remittances or other support abroad because their close family members are with them here. Family members also provide important emotional support as newer Americans establish new lives in our communities.

Indeed, the Obama Administration has already used the parole power in four previous situations to promote family unity. There is no reason why the current Administration cannot use the discretionary parole power to assist family members who are waiting on the oversubscribed family preference categories with immigrating to the United States.

In the first instance, parole was used to enable Haitian orphans abroad to join their prospective and adoptive parents in the U.S.<sup>8</sup> In the second instance, the Administration extended parole-in-place (PIP) to the spouse, child, or parent of an individual who is currently a member of the U.S. Armed Forces or the Selected Reserve (or who previously served in the U.S. Armed Forces or Selected Reserve).<sup>9</sup> More recently and upon the request of the Department of Defense, the Obama Administration also extended the use of parole-in-place to spouses, children and parents of U.S. citizen and lawful permanent residents seeking to enlist in the U.S. Armed Forces.<sup>10</sup> Finally, in late 2014, DHS announced the Haitian Family Reunification Parole Program to expedite family reunification for certain eligible Haitian family members of U.S. citizens and lawful permanent residents.<sup>11</sup> We applaud the Administration's decision to use its executive power to keep families together and we urge the Administration to use parole for families of other countries with severely impacted backlogs such as Mexico, China, India and the Philippines.<sup>12</sup>

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Thank you for the opportunity to provide these comments to assist the Visa Modernization Task Force. These modest proposals would provide small but important relief for the economy, and immediate and substantial relief for tens of thousands of AAPI and other immigrant families separated by the inadequacy of our current legal immigration system.

We strongly urge DHS and DOS to make the proposed administrative changes. The AAPI community stands ready to work with you to ensure the longevity and success of these new

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<sup>8</sup> 2010 WL 1368925 (D.O.J.).

<sup>9</sup> See U.S. Citizenship and Immigration Services, *Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i)*, November 15, 2013,

[http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115\\_Parole\\_in\\_Place\\_Memo\\_.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf).

<sup>10</sup> Memorandum of Jeh Johnson, *Families of Armed Forces and Enlistees*, Department of Homeland Security, Nov. 20, 2014, [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_parole\\_in\\_place.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf).

<sup>11</sup> 91 NO. 41 Interpreter Releases 1925.

<sup>12</sup> Department of State, Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2014, *available at* <http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf>.

proposals. If you have any questions about these recommendations, please contact Erin Oshiro at [eoshiro@advancingjustice-aajc.org](mailto:eoshiro@advancingjustice-aajc.org) or 202-296-2300. Thank you.

Sincerely,

The Accountability Project  
All People's Day, Inc.  
American Citizens for Justice  
APIAVote-Michigan  
Asian American Advisory Board  
Asian American Civic Association  
Asian American Federation  
Asian American Federation of Florida  
Asian American Senior Coalition  
Asian Americans Advancing Justice | AAJC  
Asian Americans Advancing Justice | Asian Law Caucus  
Asian Americans Advancing Justice | Atlanta  
Asian Americans Advancing Justice | Chicago  
Asian Americans Advancing Justice | Los Angeles  
Asian Chamber of Commerce of Arizona  
Asian Law Alliance  
Asian Pacific American Labor Alliance-LA  
Asian Services In Action, Inc.  
Asian American Community Service Council  
BPSOS-Houston  
Chinese Community Center - Houston  
Chinese for Affirmative Action  
EMBARC  
Faith in Florida  
Filipino American Service Group Inc. (FASGI)  
Florida Chinese Federation  
Florida State Asa Philip Randolph Institute  
Ilocano American Association of Nevada  
Indian Horizon of Florida  
Institute for Justice & Democracy in Haiti  
Japanese American Citizens League, Arizona Chapter  
Junior Chamber International Miami (JCI)  
Lao Mutual Assistance Association  
NANAY CEDC  
National Alliance to Nurture the Aged and Youth (NANAY)  
OCA South Florida Chapter  
OCA Tucson  
SAAVI  
South Asian Helpline & Referral Agency (SAHARA)  
Thai Community Development Center  
Thai Health And Information Services

UDiON Foundation  
United Chinese Association of Florida  
Wisconsin United Coalition of Mutual Assistance Association, Inc.