



## FAMILY IMMIGRATION

Family values are the cornerstone of our nation's immigration policy. The next Administration should ensure that these values are upheld not only through our family immigration system but also in the immigration courts, in detention, during enforcement actions, and in the implementation of our immigration laws. Family unity impacts the well-being of our children, communities, and economy, and should be considered when making discretionary decisions regarding humanitarian waivers and bars to re-entry. Family immigration reform requires both legislative and administrative solutions, but DHS can take a number of important administrative steps to enhance family unity.

**Resolve general workflow inefficiencies:** In a USCIS Ombudsman report released in June 2008,<sup>1</sup> several recommendations were proposed to reduce green card backlogs significantly. In response, USCIS promised to deploy a Background Check System (BCS) to better track all applications stalled by a background check. The report also recommended that USCIS provide a more precise measurement of the current backlogs.

Recommendations:

- Deploy the BCS as soon as possible to ensure that background checks do not drag on for months and years.
- Reformulate its counting procedures to track how long each application has been pending, rather than averaging backlog numbers.

**Additional resources for processing of visa applications and petitions:** USCIS and the Department of State (DOS) need more resources and staff in order to maximize work flow, so that any new laws that add visas or add to the work load will not cause undue strain on the current work flow and infrastructure.

Recommendation:

- Include increased funding and staffing increases for USCIS and DOS in the President's budget.

**Waivers and Admissibility:** USCIS needs to expand its generosity in granting both fee waivers and discretionary waivers, especially in cases in which individuals in proceedings have immediate family members who are citizens.

Recommendation:

- Take a more comprehensive and fair view of the hardship requirement in family waiver cases, especially where the re-entry bars are the only obstacle to family reunification.
- Support proposals to expand USCIS's authority to grant waivers for individuals with pending family-based petitions and/or family members in the United States.
- Ensure that HHS removes HIV from the list of "communicable diseases of public health significance" issued by USCIS, a list which has the effect of severely limiting such immigrants' ability to obtain immigrant or non-immigrant visas or to adjust their status.

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<sup>1</sup> USCIS Ombudsman Annual Report to Congress 2008, at vii-ix, 5-7, *available at* [http://www.dhs.gov/xlibrary/assets/CISOMB\\_Annual\\_Report\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2008.pdf)



**Allow separated spouses to receive permanent residency by restoring efficient processing:** Legal residents who were sponsored by a spouse are authorized to remain in the United States following a divorce, as long as they can prove to USCIS that the marriage was in good faith. However, in April 2003, USCIS created procedural roadblocks in these cases by requiring a final order of divorce before a person could even ask the agency to determine whether the marriage had been in good faith. As a result, conditional resident spouses who have pending divorce proceedings are being placed in removal proceedings, which are later put on hold after the divorce becomes final. The case then goes back to the same USCIS office that would have made the good-faith marriage determination if the removal proceeding had never been initiated. The current procedure wastes the resources of immigration judges, staff attorneys, and other personnel at ICE and EOIR, when USCIS itself is already authorized to make all necessary determinations. A more efficient approach was in place prior to 2003, which allowed the necessary application to be filed based on a pending divorce, but required that the divorce become final before the case could be approved.

Recommendation:

- Revert to the historical policy of allowing individual to provide divorce decree once divorce is final, and allow them then to amend their petitions accordingly.

**Retain priority dates for children aging out:** Children who are waiting to immigrate through our legal channels should retain their original visa priority date when they turn 21 years of age so they are not forced into a separate preference category. DHS and DOS need to fully implement Section 3 of the Child Status Protection Act (CSPA) by clarifying that Congress has mandated retention of the original priority dates for cases in which a child has turned 21 and no longer qualifies as a “derivative beneficiary” entitled to accompany his or her parents. At present, instead of crediting the child with the years that he or she has already waited since the original priority date, the agencies are ignoring the Congressional directive by assigning the child a new priority date and placing him or her at the back of a nine-year line.

Recommendations:

- Require DHS and DOS to issue guidelines or regulations clarifying CSPA rules relating to priority date retention.
- Require DHS to issue administrative guidelines allowing the children of K-2 visa recipients who were initially approved for a visa, emigrated to the United States with their parents, and aged out prior to filing for adjustment of status to file an application for status under the new guidelines regarding the age-out provisions in the CSPA.

**Authorize adjustment of status to keep mixed-status families together:** DHS should interpret the laws to promote family unity. In one recent case, DHS fought against a court decision designed to promote family reunification. The Ninth Circuit Court of Appeals ruled in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), that certain individuals who were previously deported may apply for adjustment to permanent resident status; the decision applies only if the person has an immediately available visa based on a petition filed during the validity of INA §245(i) (by April 30, 2001), together with an I-212 application for permission to request admission to the United States after being deported. Under *Perez-Gonzalez*, these individuals must pay a \$1,000 fine, plus all regular application fees, in order to request adjustment of status. Provided that they follow these procedures, the ten-year bar to



reuniting with their family in the United States can be waived. But DHS and the BIA have refused to follow the court's order to allow waiver applications, and have vigorously fought to keep families apart for the full ten years.

Recommendation:

- Allow individuals to receive a waiver to the ten-year bar if they comply with all requirements, so that they may reunited with their families.

**Reunite refugee families: faster processing of Form I-730:** Asylees and refugees who have already been granted legal status in the U.S. are given two years to file the Refugee/Asylee Relative Petition (form I-730) with USCIS if they wish for their spouse and unmarried children under the age of 21 to join them in the U.S. It currently takes about 18 months for an I-730 to be approved, and often takes weeks or months for the relative to travel to a U.S. consular post abroad where he or she can begin the procedure for emigrating to the U.S. Security clearances can also add months to the process. In the meantime, these family members are often experiencing persecution, are in immediate danger of being persecuted, and/or are survivors of trauma. They are among the most at-risk beneficiaries of applications that USCIS is responsible for adjudicating, yet processing times for these petitions have lengthened over time.

Recommendation:

- Refugee and asylee petitions for relatives should be prioritized for quick processing by USCIS, with a goal of three months' processing time.