



October 18, 2021

Claire Kelly
Office of Visa Services, Bureau of Consular Affairs
U.S. Department of State
600 19th St. NW, Washington, DC 20006

Submitted via <https://beta.regulations.gov>
Docket ID No. DOS-2021-0017
RIN: 1400-AF30

Re: Response to Request for Comments, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans

Dear Ms. Kelly:

The American Immigration Lawyers Association (AILA) submits the following in response to the above-referenced request for comments on Visas: Immigrant Visas (86 FR 51643, 09/16/21), which requests public comment on barriers that impede access to immigration benefits and fair and efficient adjudications, as well as any Department of State (DOS) actions that fail to promote access to the legal immigration system.

Established in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and naturalization and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

I. Introduction

AILA appreciates the opportunity presented by DOS to provide input on how it can reduce barriers across its administrative services, regulations, and policies related to Immigrant Visas (IVs). In June 2021, AILA issued a Policy Brief titled: [Reopening America - How DOS Can Reduce Delays and Eliminate Backlogs and Inefficiencies to Create a Welcoming America](#). In that brief, AILA details several recommendations for policies and procedures that the DOS and the Biden Administration can implement to address systemic barriers and overcome hurdles created by the ongoing global pandemic, such as the mountainous immigrant visa backlog.

AILA acknowledges that the focus of this request is barriers that exist notwithstanding the pandemic, and that is the primary focus of our comments. However, unless the IV (and NIV)

backlogs resulting from COVID-19 visa bans and pandemic staffing levels are aggressively addressed through multiple bold and innovative temporary measures, it may take several years until routine consular services resume and the backlog is eliminated, delaying any reforms that might otherwise result from this well-intentioned request.

Below AILA provides a non-exhaustive list of recommendations concerning how the agency might reduce barriers to immigration services and benefits and might better promote access to the legal immigration system.

II. Recommendations on Reducing Administrative Barriers

A. Ensuring Equity in the Implementation of COVID-19 Vaccine Requirements

First, we want to thank the Biden Administration for adopting AILA's [recommendation](#) to rescind the COVID-19 geographic travel bans effective on November 8, 2021, and to follow science-based solutions such as vaccine requirement to stop the spread of the virus. We believe this decision will reduce the burden on consular officers who have had to adjudicate NIEs in addition to their existing workload.

Recommendation: We urge the administration to ensure that the vaccine requirement is implemented in an equitable and efficient manner as to not impose additional barriers for the public and DOS officers. AILA urges the Administration to develop policies that recognize the countless people around the world, specifically in Asia, the Middle East, and Africa, that have been vaccinated against the virus with vaccines not currently approved by the FDA or WHO. While we understand that there will be certain exceptions to the requirements for children and humanitarian issues, the administration should also consider providing an exception, alongside additional requirements, for those who do not have approved vaccines readily available to them or have been vaccinated by a different vaccine. Additional requirements may include providing proof of a negative COVID-19 test before travel and upon arrival, as well as additional quarantining requirements. The Administration and DOS should also ensure that the process for applying for an exception is less burdensome and time consuming for both posts and applicants than the National Interest Exception (NIE) process has been.

B. Improving Efficiency

- i. Request Appropriations and Consider Equity When Implementing a Reasonable and Targeted Increase in Consular Fees

Since March 2020, Consular Affairs has had to significantly reduce its visa services due to the pandemic. Since Consular Affairs (CA) is fee-based, the reduction in visa interviews had a significant negative impact on its budget. Additionally, at posts subject to the COVID-19 geographic bans, officers were required to perform significant additional work in assessing whether an exception to the ban applied or whether the applicant was eligible for an NIE, **all without a fee.**

Recommendation: DOS should seek significant appropriations from Congress for DOS and particularly CA. AILA understands that DOS is working on a proposed fee rule. We look forward to reviewing any changes that DOS believes will reasonably benefit the efficiency of its operations without imposing barriers to individuals who are consular processing and offering our feedback on the proposed rule. However, a reasonable fee increase without the implementation of efficiency processes and exceptions to those who cannot afford the increase would continue to pose significant administrative barriers to individuals seeking to consular process.

Accordingly, AILA urges that any proposed fee increase be reasonable and coupled with measures that ensure that CA can operate efficiently and with policies to ensure fair, equitable and consistent processing. To ensure equal access to all, DOS should exempt Special Immigrants, humanitarian applicants, and those who would not trigger public charge concerns but for whom higher fees would be burdensome. DOS should institute a fee waiver process. DOS can earn reasonable fees to adequately staff its IV operations while simultaneously ensuring that access to IV processing is available to all applicants. AILA welcomes the opportunity to review and provide feedback to DOS on any potential fee increase before implementation.

ii. Increase Consular Staffing

Over the last several years, DOS has faced significant staffing issues and lost hundreds of Foreign Service Officers (FSOs). While problems with staffing predate the current pandemic, the long-term consequences of post shutdowns and reduction of services have left an enormous backlog to deal with. As such, it is vital that DOS have the staff available to tackle these issues, which will likely be a problem for the agency for many years to come. This is why it is disheartening to see staffing levels at DOS have been stagnant for more than five years. In fact, according to fact sheets from the agency, more FSOs were employed in [June 2015](#) than in [June 2021](#). The number of FSOs on the consular track has also remained stagnant. This means that during this time, not only has the agency not increased its workforce to handle the growing workload overseas, it has reduced it.

Recommendation: DOS must replenish its consular officer ranks if it is going to tackle the barriers to efficient consular IV services, especially the significant visa backlog. First and foremost, the agency must significantly increase the number of consular officer positions it plans to create. In June 2021, before the House Committee on Foreign Affairs, Secretary Blinken [discussed](#) the agency's plan to utilize allocated funding to create 500 new foreign service and civil service positions, which would likely include a number of new consular officers. While this is admirable, AILA believes the agency requires far more staff, especially those on the consular track. AILA recommends that the agency create at least 500 new consular officer positions to help tackle the myriad of issues currently facing the agency's overseas operations, particularly visa services.

The agency can also employ creative solutions to staffing shortages that will allow it to tackle the significant workload faced by posts overseas, including the [drastic increase](#) in the consular immigrant visa backlog. The number of immigrant visa applications awaiting an interview [currently sits at 468,891](#). The agency should consider leveraging existing staff, including deputizing DOS employees as FSOs, allowing processing of certain cases or visa types to

temporarily occur domestically until its significant backlog is sufficiently reduced. In addition, DOS needs to implement an aggressive recruitment campaign for consular officers and consider calling back retired FSOs for assistance.

DOS should also consider leveraging staff across the globe to adjudicate cases remotely. IV processing in a given country typically occurs at only one post within that country. DOS should reconsider whether the consolidation of IV processing in a particular post is still the most efficient way to manage its IV caseload. The vast majority of worldwide IV processing occurs at only a handful of posts, resulting in these posts' staffs having extensive experience in IV matters. In contrast, smaller posts may have very little IV expertise. DOS may want to consider whether technology affords a way to leverage IV expertise remotely from these high-volume IV processing posts, in conjunction with staff at the local smaller posts, to ensure equal access to IV resources. This is especially true where officers may have done a previous tour in a particular country or region, and have specific experience concerning local culture and customs, which may play a part in adjudicating cases.

Lastly, it is worth mentioning that staffing at consular posts is severely limited, with officers focusing on visa interviews. Posts often lean on appointment vendors and local staff to monitor email boxes and communicate with applicants and representatives that raise inquiries, many containing critical legal issues. AILA encourages DOS to ensure that these email boxes and communication positions are filled or supervised by individuals with sufficient expertise to handle these requests and locally employed staff to ensure quick and timely responses.

iii. Reduce Burdens on IV Processing by Implementing Certain NIV Policies

It is AILA's observation that consular officers are struggling with multiple priorities and insufficient staff to handle all of the demands adequately. For example, although DOS currently authorizes the use of a drop-box for remote processing in place of an interview for NIVs that expired within the last 48 months, the extent to which this authority is being implemented, both in terms of the time since expiration and the types of NIVs has been inconsistently adopted by posts. Posts' inability to fully leverage this authority results in the unnecessary use of resources at the post for NIV interviews when those resources could be devoted to IV interviews.

Recommendations: AILA [recently issued](#) a policy brief with additional recommendations for DOS to consider for its nonimmigrant visa (NIV) policies and procedures that, if implemented, will help to reduce the burden on overseas posts and free up resources to address barriers to IV efficient processing, like the growing IV backlog. These recommendations include a return to stateside visa re-issuance, permanent expansion of interview waivers, virtual interviews, and as discussed above, remote processing of nonimmigrant visa applications via adjudication of drop-box applications for cases that don't present a fraud risk. Implementing these recommendations would further improve equal access to benefits for applicants and allow the agency to utilize available resources and staff by reallocating work, even temporarily, to enable consular staff the bandwidth to address more pressing issues and ensure that they can sufficiently address any future problems that arise.

iv. Leverage Technology to Improve Services and Software

Due to the many delays in the U.S. visa processing system caused by the pandemic and various COVID-related travel bans, as well as shortage of resources, there is a devastating backlog of hundreds of thousands of visas at U.S. Consulates and Embassies worldwide where applicants are awaiting adjudications of long-pending applications stuck in various stages of the process.

While leveraging new technologies and improving existing systems might not be the panacea for all barriers to IV benefits, it will undoubtedly be of significant assistance for both applicants and agency staff. By implementing technological solutions, the visa appointment, adjudications, and issuance process will be streamlined, effectively giving officers more time to spend on substantive issues and adjudications requiring individual officer attention. For the applicant, implementing such solutions will ensure enhanced access to consular services, more efficient processing, and increased economic and cultural exchange.

Below we discuss several barriers that can be overcome by either updating outdated systems or making creative uses of existing technology to streamline agency processes or adjudication.

Allowing for Secure Virtual Visa Interviews for Both IV and NIV Applicants

Making use of limited staffing and resources has been an issue facing the agency for the past several years. We recognize that presently and moving into at least the immediate future, resources will remain limited due to the ongoing pandemic and its exacerbation of these issues. To alleviate some of these concerns, AILA suggests allowing for secure virtual visa interviews for eligible applicants in both the NIV and IV categories, reserving in-person visa interviews for, among others, high-risk travelers, applicants requiring additional scrutiny, or applicants who pose a potential security risk. Taking this step would reduce not only the burden on agency staff but also applicants.

Recommendation: As the capacity for consular services increases, along with demand, to reduce backlogs, AILA recommends implementing a temporary program for virtual interviews, just as the [U.S. Embassy in Jerusalem is piloting for children under the age of 2](#). The benefits, both immediate and long-term, of virtual visa interviews for eligible applicants are myriad. It would ensure:

1. Increased health and safety of consular staff.
2. Increased capacity to schedule more in-person appointments for cases where additional scrutiny or review is required.
3. Reduced IV and NIV backlogs.
4. Shorter visa appointment wait times.
5. Reduced stress for visa applicants and families.

In-person appearance requirements for immigrant visa (IV) applicants are outlined in INA Section 222(e), 8 U.S.C. 1202(e), (“[E]ach application for an immigrant visa shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant

administered by the consular officer”), however, the law allows for exceptions to be made by regulation. The Department’s regulations currently require IV applicants to “*appear personally before a consular officer*” and swear to their application “*before a consular officer.*” 22 CFR 42.62 and 42.67. We do acknowledge the [interim final rule](#) that recently cleared the Office of Regulatory Affairs (OIRA) concerning the waiver of personal appearance and in-person oath requirement for certain IV applications due to the COVID-19 pandemic. As the rule completed review on October 6, 2021, AILA urges the agency to publish it as soon as possible. In addition, AILA encourages DOS to allow for these waivers permanently moving forward.

Given the advancement of technology, availability of accessing prior biometrics records, and the ability to check the applicant’s identity against a machine-readable passport, successfully holding virtual interviews for eligible applicants is easier now than ever. Offering this option would be especially useful for vulnerable applicants who may not be able to attend interviews in person due to location, age, or other health /safety concerns beyond the ongoing pandemic.

Where a virtual interview is permissible, we recommend using a similar system to the renewal by mail program implemented globally by many consulates. In this program, the applicant answers questions in an online format, and where eligible, mails the required documents to the consular officer. Once the required documents and fees are received, the applicant is scheduled for a secure video interview. The visa waiver program similarly uses intelligence information garnered through an online security screening system that vets individuals planning to come to the United States.

AILA recommends that if implemented, requirements for video interviews should be fairly broad and accessible as no special equipment is needed other than access to the internet and a camera-enabled device such as cell phone, laptop, tablet, desktop computer, etc.

Problems with DOS Software and Electronic Initiatives

In addition, to leveraging technology to update outdated policies, DOS can reduce burdens on applicants and increase efficiency by updating its current systems. A prime example of a system that could use an update is the Consular Electronic Application Center (CEAC). The system is antiquated, and AILA’s members have encountered numerous issues in navigating it. On multiple occasions, AILA has [reported](#) these issues to the National Visa Center (NVC) and the DOS Visa Office. This indicates a larger problem facing the agency where technology is improved iteratively, and suggestions or recommendations take a very long time to materialize into improvements.

Recommendations:

Currently, the forms have a “time-out” feature so that if the application is idle for approximately 20 minutes, CEAC will log you off, and all unsaved activity is lost. AILA members have in the past reported that these time-outs will sometimes happen after less than 20 minutes. AILA recommends increasing this idle time to 45 minutes to minimize lost time and information.

At present, there is a 2 MB limit for each document uploaded into CEAC. This has been an issue plaguing the CEAC system for many years. The National Visa Center [last indicated to AILA in 2019](#) its intention to increase the size to 4MB, but that change has not materialized. Regardless, due to the sophisticated and detailed nature of the documents that the applicants are required to submit, as well as various technological access and capabilities of applicants around the world, AILA recommends increasing the upload size limit to 10 MB or eliminating the size limit, simplifying the document uploading process.

Often, applicants will submit CEAC forms with unintended errors and blank spaces. Rather than using valuable time on substantive review of the CEAC forms and assessing the applicant's eligibility, consular officers and applicants often use this time to clarify or correct unintended errors made on the form. To increase efficiency and reduce the burden on consular officers having to re-open the form to correct such mistakes, AILA recommends allowing applicants to edit CEAC forms after submission and before the interview. This will ensure that the most accurate and up-to-date information is captured in the form, assisting with a more secure and efficient visa interview and reducing unneeded stress on applicants.

The CEAC system is the only means that an applicant (or attorney) may pay the required visa processing fees and submit an IV application. Unfortunately, the CEAC portal frequently is plagued with shutdowns, glitches, bugs, and other issues leading to significant disruptions in the visa process. Due to its importance as a vital portal in the visa application process, coupled with the fact that there are no other options for completing the required steps (paying visa fees, submitting the visa application, etc.), AILA recommends that the CEAC website/system be thoroughly reviewed and that the agency consider bringing in an independent software company for technological enhancements and improvements.

v. Improve Communication Methods and Response Times

A critical element of consular processing is communication between the agency and the visa applicant and when the applicant is represented by counsel, the attorney of record. Our members have reported inadequate means of communication, excessively long response times, and repeated instances of failing to include attorneys in communication relating to their clients. This situation applies equally to the NVC and among the various consular posts around the world.

Requests and Inquiries with the National Visa Center and Overseas Posts

Currently, the NVC offers several different modes of communicating with its staff. One of the primary ways to connect with the National Visa Center on a case inquiry is via the [“AskNVC” online form](#). This survey-like form gathers information from applicants and attorneys and forwards it to agency staff internally to handle or respond. This form also publicly replaced the [NVCAttorney@state.gov](#) email address, with attorneys now being required to indicate that they are an attorney of record to have a case inquiry routed to the appropriate internal NVC email box. Web-based forms like this may be convenient for collecting data, but they are prone to problems. They provide very little accountability concerning agency responses, fail to provide written record of inquiry, and often leave applicants and representatives feeling that their request or inquiry has fallen into a black hole, especially where a response is either not received or from

a template. Even more frustrating, the escalation process after a nonresponse or template response is to submit another inquiry through the AskNVC form.

Perhaps the most troubling issue is the lack of response and inadequate response times across the board for communications at the NVC. In addition to the AskNVC form, the NVC also offers an email address to request that a case be expeditiously sent to a post for adjudication, NVCExpedite@state.gov. Despite the urgent nature of these inquiries, AILA has received reports of responses taking up to 45 days. The same issue plagues the AskNVC box, where members routinely report inadequate response times and often a lack of response altogether.

Like the NVC, AILA members and clients continue to voice frustration with the lack of substantive communication and excessive wait times when communicating with consular posts. One huge problem is the lack of consistency among posts when it comes to modes of communication. Some posts have public, dedicated emails for IV and NIV inquiries. Others utilize web-based forms like the NVC. Some simply do not do a good job of making means of communication available on their websites. Regardless of the means of communication, response times have been inadequate across the board, and responses often do not address the case-specific issues in question. Frequently, responses simply direct applicants and attorneys to general resources on travel.state.gov, the post's website, or other template language. We understand the utility of websites to convey information to a broad audience and the usefulness of having template email responses to common questions. However, case-specific inquiries require a case-specific response.

Recommendation: With this in mind, we believe that having dedicated, direct, well-monitored email communication can benefit the overall consular process by reducing errors and eliminating the need for repeated contact. Both NVC and posts should create publicly available email addresses to better facilitate communication with applicants and attorneys. These email addresses can help both the NVC and consular posts manage cases and help stakeholders manage expectations. Along with such easily identifiable, purpose-driven email addresses as “[post]IV@state.gov,” “[post]NIV@state.gov,” and “[post]Expedite@state.gov,” we believe a direct means of communication between attorneys and NVC and attorneys and posts (e.g. “[post]Attorney@state.gov”) is essential and will help improve services for everyone. Attorneys may identify a common issue, the resolution of which can mean not having to engage repeatedly on the same issue.

Whether DOS chooses to allow web-based forms, it should strive to ensure that NVC and posts provide applicants and attorneys with automatic confirmation that their inquiry or email was received, alongside a reasonable expectation for when communication will be returned. Where a web-based form is used, the agency should strive to provide applicants both with a written copy of the inquiry they just submitted, alongside a timestamp of submission, to ensure that there is a record of the exchange that can be included in future follow up or escalation of the inquiry.

DOS must also ensure reasonable response times for all inquiries, especially those of an urgent nature. Responses to inquiries submitted via expedite email boxes like NVCExpedite@state.gov should receive a response in no more than five business days. AILA understands that this may be a lofty goal for certain posts or offices, considering the number of emails that will likely, be

submitted daily. However, utilizing the automatic reply recommendation discussed above, NVC and posts can provide immediate, automated responses to inquiries stating that only inquiries determined to require emergency assistance will receive a response within five business days. This will eliminate the need to respond to inquiries that do not merit expeditious service.

Lastly, DOS can take additional steps to lessen the burden on applicants by affirmatively providing information to applicants instead of waiting for requests to be made. For example, on the “Visa Appointment Wait Times” page on travel.state.gov, DOS provides estimated wait times for an interview for NIV cases at particular consular posts abroad. It would be helpful if DOS were to also provide wait times for immigrant visa interviews. The agency can add a disclaimer to these updates that the information provided may differ for some cases and is subject to change due to shifting conditions abroad.

DOS should also consider having an automated alert or outbound communication that reminds applicants to contact the National Visa Center each year to avoid the termination of their pending I-130 or I-140 petition. As discussed in AILA’s [last engagement with the National Visa Center, there are several ways to make contact](#). However, it would be helpful for DOS to find a mechanism by which an automatic reminder of the yearly deadline can be communicated.

We live in the Communication Age. We enjoy access to various means of communication, from traditional mail to email, from texting to webchats. Certainly, DOS can identify suitable means of communication to enhance the reliability and efficiency of visa processing at all levels.

Effective Attorney Communication with Consular Posts and Attorney Representation

Attorneys' ability to easily and effectively communicate with posts and other DOS offices on behalf of their clients, when needed, is essential to ensuring that applications are adjudicated consistent with the law. Notwithstanding affirmative requirements to engage with attorneys (9 FAM 601.7-1 c), our members continue to report instances in which attorneys are excluded from communication. The U.S. embassy in Beirut, for example, has telephoned applicants directly to provide verbal instructions, ignoring the fact of an attorney listed in the submissions, and leaving the applicant confused as to procedures without written guidance. The procedures for contacting attorneys often differ depending on the post. Unlike the National Visa Center, many posts do not have a dedicated process or email box whereby attorneys may submit evidence of their representation in the form of a Form G-28.

Additionally, the lack of attorney representation at IV and NIV interviews is a significant barrier to fair and legally consistent adjudications. Approximately twenty years ago, the DOS suspended the ability of attorneys to accompany clients to interviews. Since then, immigration law and accompanying regulations have become more complex, and applicants may not have a sufficient understanding of the legal aspects of their case, which in the short time during which interviews take place, may be a deciding factor in a consular officer’s decision.

Recommendation: First, all Consulates should post a publicly facing email address or standardized process whereby attorneys or representatives may submit a Form G-28 to indicate first-time representation, a change in representation, or in situations where a post is not

adequately communicating with an attorney of record/representative, to remind the post that it should be doing so. In addition, any communication to both clients and attorneys should be in writing to avoid confusion and ensure that a record of the information provided exists. Similar to the naming convention discussed for post email addresses above, each post can utilize the following convention [post]G-28@state.gov or establish a standardized process for documenting or refreshing attorney information.

Concerning attorney representation, DOS should reinstate its policy allowing attorneys to attend their clients' applicants' IV and NIV interviews, whether in person or until pandemic occupancy restrictions are lifted, by teleconference. Given the brief amount of time that applicants are interviewed and applicants' typical lack of understanding of the legal relevance of aspects of their case, enabling attorneys to be present at interviews to explain the legal issues would be immensely helpful to officers in quickly identifying the relevant issues and promote more efficient adjudications. Impressions of the applicant during the visa interview are often more determinative of the outcome of the application than the paperwork. Allowing attorney representation at IV and NIV interviews would reduce barriers to fair and legally accurate adjudications, especially less educated or less articulate applicants. For your reference, please see AILA's [May 24, 2017 Petition for Rulemaking to Promulgate Regulations Governing Access to Counsel](#).

Communications with LegalNet

In 2020, a restructuring occurred that moved attorneys who worked for the Visa Office to be transferred into the Office of Legal Adviser (LA). AILA understands that the attorneys who staff the LegalNet@state.gov email box are now part of LA. Given the reduced visa processing since the pandemic began, it is unclear how this system is working within the new structure.

Given that DOS is leveraging myriad consular staff to address visa issues, some of whom are not seasoned consular officers, and since DOS will undoubtedly also be hiring new FSOs, it is more important than ever that attorneys be able to access attorneys at the DOS who are experienced in consular matters within a reasonable period of time, to ensure that adjudications at posts are fair and conform with the law.

Recommendation: To that end, AILA requests that DOS review LegalNet procedures and staffing to ensure that this function is appropriately staffed and can efficiently meet the demand for legal advice. Our members have enjoyed meaningful access to LegalNet. We would like to ensure that, amid the restructuring, whoever is handling LegalNet's email box has the requisite experience to handle consular matters.

vi. Ensure the Fair and Efficient Adjudication of IVs

Below AILA discusses several issues which impact the fair and efficient adjudication of IVs at consular posts and create unjust or excessive barriers for certain applicants.

Consistency in Training and Access Across Consular Posts

If DOS is looking to address barriers in its adjudication of IVs, it should look to review not only existing policies but also the application of those policies across posts worldwide.

Recommendation: While DOS requires some degree of flexibility to account for local conditions, every effort should be made to ensure uniform application of policies across the world, with rare exceptions. To the extent that local conditions make technology less accessible, DOS should find a way to have basic technology available (*e.g.*, reliable Internet connection, emails, scanners, phone, teleconferencing, etc.) at all posts worldwide.

Consular Processing for Derivatives Seeking to “Follow to Join” Through Consular Processing

The current practice for derivative dependents of the principal applicant who has adjusted status in the U.S. to “follow to join” them through consular processing is to file a Form I-824, Application for Action on an Approved Application or Petition with USCIS to have case files sent to the NVC to start the immigrant visa processing for the dependent. USCIS reports processing times of up to 20 months for this form, which is excessive and highly inefficient.

Recommendation: AILA encourages DOS to create a process whereby NVC can either commence the immigrant visa process in parallel to the filing of Form I-824 or establish an even more efficient system whereby NVC requests the file directly from USCIS.

Vulnerable Populations Seeking Third-Country Processing

In the NIV context, applicants can apply for a nonimmigrant visa at any post where they are physically present. The same flexibility does not occur in the IV context, as the applicant must typically apply at the consular post in their country of citizenship or residence. While attorneys can contact a third country post where the applicant has ties to request that they entertain the IV application, there is not a well-established process for this beyond reaching out to the post to inquire whether they will consider the IV application at their discretion.

There are a number of vulnerable populations who need to apply for IVs at a third country post. Some examples include a same-sex spouse in a country that tolerates or encourages violence against those in the LGBTQIA+ community and citizens of countries ripped apart by war or other humanitarian disasters, or where there is no U.S. consular post available in their country. Contemporary examples include citizens of Afghanistan, Iran, Iraq, Russia, Syria, Yemen.

While admittedly, DOS policy allows third-country posts to accept these applications at their discretion, the lack of a clearly defined and transparent policy, centralized process mechanism, and high dependency on post discretion, effectively disenfranchise these applicants from receiving an IV interview. Even when posts are designated to entertain appointments of certain nationals, they have tremendous discretion to not schedule their interviews. This is an egregious burden on entire nationalities, which in many cases, are vulnerable populations.

Recommendation: AILA recommends that NVC assign interviews to allow these populations to apply wherever they are physically present or where they are able to travel. There should be a mechanism that prioritizes them and, if needed, the ability to engage in a web interview with DOS officials who served at a post in their country of citizenship. Currently, posts indicate to NVC what capacity they have and dictate the number and type of IV cases they are able to entertain in the coming month. Where possible, NVC and Consular Affairs should agree on a process for ensuring that these applicants continue to be interviewed on an ongoing basis, without regard for specific post preferences.

Iranians Who Performed Military Service

In April 2019, President Trump designated the Iranian Revolutionary Guard Corps (IRGC) as a terrorist organization. U.S. Consulates and Embassies have since been routinely denying visas to certain applicants from Iran under section 212(a)(3)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §1182(a)(3)(B) – the so-called “terrorism bar” – based on an applicants’ past compulsory military service in the IRGC, or Sepah. Iranian nationals are being found inadmissible for having completed mandatory military service in the IRGC as long as four decades ago. The vast majority of them have undertaken non-combatant duties, with negligible firearms training. DOS appears to be applying this bar too broadly in that facts and circumstances do not seem to be considered when posts deny these IVs.

Recommendation: AILA respectfully recommends that the agency review the impact of designations like this one on those who had non-combatant duties or served many years before designation. AILA recommends that DOS raise this issue with the White House with a request to reconsider the applicability of the INA § 212(d)(3) finding for those who performed mandatory military service before the April 2019 designation.

Administrative Recapture of Visas

In FY2020, over 100,000 family-based and diversity preference category visas went unused. This is in addition to unused employment-based immigrant visas which are [generally incinerated](#) when left unused. While we do not yet have predictions for FY2021, the number is expected to be even higher for unused family-based, diversity, and employment-based visas.

Recommendation: DOS can administratively recapture those visas lost in 2020 and 2021 under the authority granted by INA §206. The lasting impact of the pandemic will continue to affect DOS operations for at least the immediate future and likely further. Looking forward, DOS must take active steps to utilize recommendations that we have included to improve its efficiency, reduce delays, and ensure that all visa numbers available for FY2022 are fully allocated and do not get wasted simply due to processing delays.

III. Conclusion

AILA appreciates the opportunity to provide feedback to DOS concerning the barriers to the timely accessing of its benefits and services and promoting access to the legal immigration system. The

suggestions provided above encompass a great deal of the issues and recommendations that AILA would like to see the agency resolve and implement. AILA looks forward to working with DOS moving forward and to continued engagement on these and any other issues that arise.

Please address any concerns or questions to AILA Director of Government Relations Sharvari Dalal-Dheini at SDalal-Dheini@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION