



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)**

Dear Ms. Dawkins:

The National Council of Asian Pacific Americans (NCAPA) submits this comment in response to the Notice for Request for Information on Recommendations to Streamline and Improve the Legal Immigration System published in the Federal Register (DHS Docket No. USCIS-2014-0014). We commend President Obama and his Administration for taking bold action to protect immigrants and their families through executive action. We also appreciate that the President has created a Visa Modernization Task Force to identify ways to update and streamline our legal immigration system. Thank you for the opportunity to provide recommendations for modernizing the backlogged visa system to promote family unity and alleviate the suffering of families waiting years to be reunited.

Founded in 1996, NCAPA is a coalition of 34 Asian Pacific American organizations around the country. Based in Washington, D.C., NCAPA serves to represent the interests of Asian American, Native Hawaiian, and Pacific Islander communities and to provide a national voice for our communities' issues. Immigration is a top priority for NCAPA. 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.

Our country has a long history of reuniting families who are looking for new and prosperous opportunities or who seek protection in the United States. But our current flawed system keeps too many families apart for years or decades. As of November 2014, more than 4.3 million loved ones are waiting in the family visa backlogs.¹ Nearly 1.8 million of the over 4 million family members waiting in the backlog for family based visas are in Asian countries.²

¹U.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>. And the vast majority of individuals waiting for employment visas are from Asian countries as well.

² 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*,



Prolonged separation hurts families and, by extension, entire communities. 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. Many family members waiting for visas are unable to receive tourist visas so they cannot visit loved ones in the United States, even if they could afford to travel here, and many important life events are missed during the long waits.

We have several proposed changes the Administration can make now using executive authority to improve 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; (3) recapture unused visa numbers; (4) eliminate profiling; and (5) 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 hurt by the substantial visa backlog is through setting a “provisional priority date” and allowing individuals with approved family based petitions to file for permanent residence earlier. Visa applications submitted under a provisional priority date can be held in abeyance by the U.S. Citizenship and Immigration Services and the Department of State. This change would help families reunite sooner and allow family members of U.S. citizens and lawful permanent residents to reside in the U.S. without fear of detention and deportation. We recommend this change for all visa preference categories.

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 United States 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 United States.

Response to No. 6

A number of South Asian, Muslim and Middle Eastern communities face unfair profiling based on their race, religion or country of origin within the immigration system, both when applying for immigration and upon arrival at U.S. ports of entry. Many people have reported unnecessary questioning, secondary screening and detention at airports due to targeting of Muslim last names or so called “behavioral recognition” tools used to identify suspects under national security



concerns. In order to decrease the risk of profiling and civil liberties violations, we recommend the following policy and operational changes:

- Ensure that data from the former NSEERS program has not been incorporated into the immigration system data base as a means to screen people either in the immigration visa process or at U.S. ports of entry. The data collected under the biased NSEERS program should be eliminated and not used in any immigration processes. In the future, we should never implement any racial profiling programs like NSEERS using the Priority Enforcement Program.
- Customs and Border Protection (CBP) should not be exempt from the Department of Justice Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. The flawed exceptions for anything deemed national security or border security concerns enables CBP to continue profiling individuals at ports of entry. It also continues to keep the possibility for profiling during the visa processing period open. In particular, members of Muslim, Arab, and South Asian communities are facing unacceptably and inhumanely long delays and backlogs for their visas to be processed.
- Allow individuals the right to challenge their inclusion on the “No Fly List”

CBP should not have jurisdiction to enforce the immigration laws beyond at the port of entry. By allowing CBP to enforce immigration laws within 100 miles of any port of entry, it is expanding their jurisdiction to a majority of the U.S. and therefore taking away resources that could be used to expedite processes at U.S. Ports of Entry.

Ensuring the Use of All Immigrant Visa Numbers

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

Response to No. 15

To ensure available visas are maximized in the future, NCAPA recommends 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 1990, immigration law required the current practice of counting principals and derivatives. But changes to immigration law in 1990 eliminated language that required counting both principals and derivatives for purposes of the numerical limits.

Response to No. 16



To address the problem of visas that went unused in prior years, NCAPA recommends “recapturing” 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 family-based (and employment-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. To help ease the current backlog, we recommend the administration “recapture” unused visas from prior years and issue them to individuals waiting for visas.

Modernizing IT Infrastructure

Response to No. 18

To help improve oversight, it would be beneficial to have public data of how long people with Muslim last names or people from countries of origin that were part of the former NSEERS programs are in DHS’s databases due to national security concerns.

Using Parole to Promote Family Unity

Finally, we urge the Administration to continue using the parole power under Section 212(d)(5) of the INA 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.”³

Reuniting families quickly would have significant public benefit for individual families and our community overall. As described above, intact families can provide economic and emotional support and stability for one another as immigrants establish new lives in our communities. Family reunification helps new Americans succeed and thrive.

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 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.⁴ 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

³See 8 U.S.C. § 1182(d)(5) (Supp. IV 1980).

⁴2010 WL 1368925 (D.O.J.).



Selected Reserve).⁵ More recently and upon the request of the Department of Defense, the 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.⁶ 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.⁷ 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.⁸ Humanitarian parole could be used for discrete groups such as the adult children of Filipino American World War II veterans who have been waiting years in the visa backlogs – and many of their visa petitions lapsed when their elderly parents passed away.

* * *

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 immigrant families separated by the inadequacy of our current legal immigration system. We strongly urge DHS and DOS to make the proposed administrative changes.

Sincerely,

Mini Timmaraju
National Director

⁵See 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.

⁶ 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.

⁷ 91 NO. 41 Interpreter Releases 1925.

⁸ 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>