Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Notice of Identifying Barriers across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input

Dear Chief Deshommes,

On behalf of the Murthy Law Firm, we are submitting the following comments regarding the April 19, 2021 Notice of Identifying Barriers across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input.

For over twenty-five years, the Murthy Law Firm (MLF) has provided representation exclusively in U.S. immigration law. We have assisted businesses to bring in much needed global talent and helped individuals and their families achieve their dream of living and working in the United States. The Request for Input is particularly relevant to our clientele who have encountered various obstacles with the USCIS in their efforts to apply for immigration benefits.

The U.S. immigration system is plagued by prolonged processing times and severe backlogs in the various preference categories. While these have been ongoing issues with the USCIS, these problems have been exasperated in recent years. The previous administration implemented one policy after another that had the USCIS focus on enforcement efforts, rather than servicing stakeholders. The legacy Immigration and Naturalization Service (INS) was dismantled and the USCIS was created under the Homeland Security Act in 2003 with the goal of providing “Service” to its customers. In 2018, the USCIS altered its mission statement, presenting the agency as an arm of the U.S. Immigration and Customs Enforcement (ICE), eliminating the notion of serving customers and even eliminated recognizing that this is a "nation of immigrants."

The pandemic, of course, has magnified many of the problems that the USCIS – and its stakeholders – are struggling with. It would be shortsighted to solely focus on those short-term problems. The USCIS must take bold action to resolve some of the systemic problems that continue to bog down the U.S. immigration system.

Expand Availability for Premium Processing, Especially for I-539 Application to Extend/Change Nonimmigrant Status and I-765 Application for Employment Authorization.

USCIS processing times are unacceptably long. Even before the start of the COVID-19 pandemic, processing times at the USCIS had been on the rise. [1] Once the pandemic began in

[1] USCIS Webpage, "Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year," https://egov.uscis.gov/processing-times/historic-pt (Accessed 10.May.2021)

the early spring 2020, however, processing times spiked to record levels. These processing delays are especially problematic for foreign nationals who have lost work authorization.

Fortunately, there is a simple solution. The Continuing Appropriations Act, 2021 and Other Extensions Act directs the USCIS to expand the availability of premium processing service to many additional immigration benefits, including the following:

- Employment-based nonimmigrant petitions and associated applications for dependents
- Employment-based immigrant petitions;
- Applications to change or extend nonimmigrant status;
- Applications for employment authorization; and
- Any other immigration benefit type that the Secretary deems appropriate for premium processing.[2]

However, the USCIS has yet to even publish a proposed rule on expanding premium processing service. This must change.

In particular, premium processing is desperately needed for I-539 and I-765 applicants. Not only will this help to provide funding to the USCIS, it will also help foreign nationals to avoid status issues and gaps in employment authorization in many situations, such as certain H-4 spouses of H1B workers eligible for employment authorization and F-1 students on initial Optional Practical Training (OPT).

End the I-539 biometrics Requirement Imposed by the Trump Administration

The Trump Administration instituted a biometrics requirement for all I-539 applicants. The USCIS is temporarily suspending this requirement for L-2, H-4, and E-2 dependents. However, most other I-539 applicants are still required to obtain biometrics. The USICS should eliminate the blanket I-539 biometrics requirement, or at least greatly curtail it.

Due to the ongoing pandemic and limited workforce at application support centers for safety considerations, I-539 biometrics scheduling has been severely backlogged, which further delays the adjudication process on the underlying application.

The biometrics requirement for the updated I-539 form originated from the Executive Order 13780 by the Trump administration, which proposed a biometric entry-exit tracking system to protect the U.S. from foreign terrorist entry.[3] However, virtually all I-539 applicants have already provided biometrics multiple times. In fact, nearly all foreign nationals between the ages of 14 and 79 must submit biometrics when applying for a visa to enter the United States, and then again at the port of entry. The USCIS could, perhaps, require new biometrics to be provided on a case-by-case basis. But, the current blanket requirement is just another bureaucratic hurdle that offers little or no discernible or significant security benefit.

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[2] *See* The Continuing Appropriations Act, 2021 and Other Extensions Act, §4102(a)(u)(2).

[3] *See* Executive Order 13780 of March 6, 2017, Protecting the Nation From Foreign Terrorist Entry Into the United States, Sec. 8.

Reduce Backlogs in Oversubscribed Preference Categories by Only Counting the Principal Beneficiary

The significant backlogs in oversubscribed employment-based immigrant visa categories seems to be a perpetual problem within the U.S. immigration system. Those born in India, in particular, continue to languish, with applicants routinely waiting a decade or more to become lawful permanent residents. These backlogs are a barrier to many high skilled workers, including physicians, engineers, and researchers, from achieving their American Dream, within a reasonable time frame, often taking over a decade or longer get their immigrant status.

There is a straightforward means available to the DHS to address these issues in a comprehensive manner. Through regulation, the DHS need only clarify that derivative family members issued immigrant visas pursuant to INA 203(d) are not to be individually counted against the immigrant visa quotas established by INA §201(c)(1) and INA §201(d)(1). Rather, only the principal beneficiary of the approved I-140 or I-130 should be counted against the 140,000-immigrant visa cap on employment-based immigrants and the 480,000-visa cap on family-based immigrants.

Under the current rules, foreign national workers from oversubscribed countries may have to wait a decade or longer for an immigrant visa to become available. This runs afoul of the legislative purpose of attracting highly skilled foreign national workers efficiently and effectively for the benefit of the U.S. economy. By amending the regulations to allow for this “one immigrant visa per family unit” system, the DHS could help to tremendously reduce, or even eliminate, the colossal backlogs in the employment-based visa process.

Expand the Online Filing System

It is time for the USCIS to move into the 21st Century and embrace the use of electronic filing for majority of applications and petitions for immigration benefits. MLF recognizes the USCIS’s efforts in making online filing available to an increasing number of case types. However, the introduction to the online filing system has been a painstakingly slow and cumbersome process. The effective transition to online filing may be difficult, but it is long past due.

Digital forms are nearly ubiquitous in the private sector, and quickly becoming the norm in the public sector, as well. While the transition to electronic filing may be a painful process, it is a necessary one that will provide the USCIS and stakeholders with long-term benefits. As explained in the Citizenship and Immigration Services Ombudsman Annual Report 2019, electronic filings "… will enhance the accuracy, quality, and completeness of submitted benefit requests…reduce USCIS rejections for missing signatures or incorrect fee amounts, requests for additional evidence, and denials due to filing deficiencies."[4] The report further notes that the USCIS expects electronic filings to "reduce agency overhead…and enhance USCIS' ability to detect fraud…"

[4] See “Annual Report 2019," Citizenship and Immigration Services Ombudsman, p. 75, (12.Jul.2019) https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2019-annual-report-to-congress.pdf (accessed May 7, 2021)

While we recognize that a full transition to electronic filing will take time, there are steps the USCIS can take now to help move the process forward. For example, the USCIS has already discovered that it can process applications and petitions without the need for "wet ink" signatures.[5] This temporary allowance, announced on March 20, 2020, should be made permanent. Better yet, the USCIS should modify this provision to allow for electronic signatures on forms, eliminating the need for stakeholders to keep copies of the documents that contain the wet ink signatures.

In addition, the USCIS should look to other means that would reduce paper filings in the short term. For instance, once a petition or application has been filed, if the USCIS issues an RFE, NOID, or NOIR, stakeholders should be permitted to submit responses electronically.

Eliminate the bridging B-2 requirement

In 2017, the USCIS imposed a policy requiring individuals in B-1/B-2 applying for a change of status to F-1 to maintain valid status until within 30 days of the deferred program start date, as opposed to the actual start date requested in the initial application. This "B-2 bridging" policy was expanded to all classifications in 2018.

This change has been both costly to applicants and a drain on USCIS resources. Even before the pandemic, I-539 processing times were on the rise. Yet, inexplicably, the USCIS created this unnecessary burden, forcing applicants to pay additional filing fees, and increasing workloads for the USCIS officers charged with adjudicating these cases. Moreover, the longer these applications take to process, the more I-539 applications the F-1 applicants must file, along with the corresponding filing fees and biometrics fees.

This policy should be immediately reversed. The USCIS should revert back to its former policy of requiring the person to be in valid status at the time of filing, and maintain valid status until within 30 days of the initially requested start date.

Conclusion

We deeply appreciate the spirit and goal to eliminate barriers to the USCIS providing long overdue services to its customers, as was the intention all along, since the creation of USCIS in 2003. On behalf of the Murthy Law Firm, we thank the DHS for the opportunity to submit comments and for your favorable consideration.

Sincerely,

Sheela Murthy, President / CEO

[5] USCIS Webpage, "USCIS Announces Flexibility in Submitting Required Signatures During COVID-19 National Emergency," https://www.uscis.gov/news/alerts/uscis-announces-flexibility-in-submitting-required-signatures-during-covid-19-national-emergency (accessed 7.May, 2021)