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POLICY BRIEF

Unblocking the U.S. Immigration System

Executive Actions to Facilitate the Migration of Needed Workers

GLOBAL SKILLS AND TALENT INITIATIVE

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Executive Summary

The U.S. economy continues to be hungry for additional workers, with more than 10 million job openings recorded monthly since mid-2021. A combination of decreased immigration during the peak months of the COVID-19 pandemic and depressed labor force participation of U.S. workers means there are millions fewer people looking for work than there are job openings. Even as legal immigration levels have rebounded from the pandemic downturn and returned to prior levels, ongoing processing backlogs and longstanding bureaucratic inefficiencies have prevented individuals eligible for immigration to the United States from joining the workforce and filling vacancies. And temporary workers sometimes struggle to renew their status and work authorization in the country.

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While legislative reforms are much needed to align immigration policy with U.S. economic imperatives, congressional action is highly unlikely in the near term. Nevertheless, there are significant steps the executive branch can take under current law to expedite the migration of needed workers through existing legal channels, retain immigrants already in the U.S. workforce, and ease the challenges experienced by U.S. employers and their foreign workers.

This policy brief details 21 steps the executive branch could take to improve the functioning of the legal immigration system for employers, immigrant workers, and the U.S. economy overall. These include:

- Improving the efficiency of U.S. Citizenship and Immigration Services (USCIS) in adjudicating applications by improving online filing and shortening application forms, as well as reducing its workload and backlogs by eliminating duplicative processes that do not gather new information
- Helping workers maintain their employment authorization amid application processing delays, through small-bore changes
- Giving temporary workers time to find new U.S. jobs amid layoffs, through a regulatory change
- Helping temporary workers maintain their ability to travel without enduring extended absences, through expanded options for visa renewals
- Speeding State Department visa processing by codifying visa interview waivers

- Giving employers and workers better information about processing timelines through improved customer service and information sharing
- Widening pathways so that employers can gain access to needed workers through a variety of mechanisms. These include ensuring annual caps for lawful permanent residence (also known as getting a green card) are met when demand is strong; granting work authorization to more spouses of temporary workers; facilitating greater use of available, uncapped temporary worker visas; and updating the list of "shortage" occupations for which green-card access is expedited.

Such changes cannot fully address the wide range of updates needed to the United States' immigration laws, which have been nearly locked in place since 1990. Major changes since then, including the upskilling of the U.S. workforce, the aging of the population, vast technological advances, and broad shifts in the country's industry mix mean that U.S. immigration policies have become misaligned with economic imperatives and national interests. Ultimately, comprehensive legislative reforms will be needed. But until Congress finds the will to act, the executive branch can exercise the powers it has to adjust immigration policies to best serve the country's needs.

1 Introduction

U.S. demand for workers is vastly greater than it has been for the last two decades, and remains strong across industries. A total of 11.0 million jobs were open as of December 2022, while just 5.7 million unemployed workers were actively looking for work.[1] The unemployment rate in January 2023 was at its lowest level in 54 years.[2] Certain sectors—such as leisure and hospitality, child care, and nursing home care—are still missing large numbers of workers compared to pre-pandemic levels.[3] And recent federal investments in the country's infrastructure through the 2021 *Infrastructure Investment and Jobs Act*, in green energy through the 2022 *Inflation Reduction Act*, and in semiconductor manufacturing through the 2022 *CHIPS and Science Act* may further boost demand for workers at various skill levels.[4]

The solutions—market driven or policy based—to this labor demand are myriad, including better wages and working conditions for resident workers, technological adaptations, and concerted efforts to address the barriers to work for the many U.S. adults who find themselves outside the labor force. Immigration policy is another tool that could be harnessed to address current and longer-term unmet labor needs. However, U.S. immigration policy remains stuck in time, governed by a series of legal immigration categories and caps that were last updated by Congress in 1990, and largely unresponsive to dynamic and often-shifting U.S. economic and labor market realities.

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At the same time, large number of immigrants who are eligible to come, stay, and work in the United States under existing law are struggling to access these opportunities. Enormous processing backlogs built up at U.S. Citizenship and Immigration Services (USCIS) and the State Department's consular offices abroad have delayed would-be migrants' ability

to enter or re-enter the United States and the U.S. workforce, and have led to disruptive gaps in status and work authorization for many already here.

Updated immigration laws and speedier and more-efficient processing could help set the country up for future economic success. Immigration of highly educated and specially trained workers is a source of job creation, innovation, and economic growth, and boosts international competitiveness.[5] Given the rising educational attainment of the U.S. born, immigration of less-educated workers—through employment, family, or humanitarian channels—could also help address strong labor demand in lower-wage jobs that complement those held by U.S-born workers. And in the context of an aging population and declining birth rates, immigration can help dampen the acute fiscal challenges of an aging population and ensure future labor force growth and dynamism.

The Biden administration has taken some steps over its first two years to streamline processing and to broaden migration channels for professionals with science, technology, engineering, and math (STEM) degrees.[6] Continued efforts to attract immigrant workers and expedite their entry to the United States can also help the United States compete with other nations for global talent at a time when countries such as Australia and Canada are repositioning their immigration systems to recruit needed workers and expedite visas for those with highly desired technical skills.

In the past, the Migration Policy Institute (MPI) has articulated considerations for a broad update of U.S. legal immigration policies, including whether employment-based immigration levels should be raised.[7] While legislative reforms are ultimately needed, congressional action on immigration, and particularly on U.S. visa policy, is highly unlikely in the short run. Though policymakers broadly agree that the U.S. immigration system is dysfunctional,

BOX 1
About the Global Skills and Talent Initiative

This policy brief is part of the Migration Policy Institute's Global Skills and Talent Initiative, which explores the role immigration can play in addressing current and future workforce needs in countries around the world. It focuses in particular on employment-based immigration and the supports that can help immigrants apply their full range of educational and professional skills in rapidly evolving labor markets.

To learn more about the initiative and read other research from it, see www.migrationpolicy.org/ programs/global-skills-talent.

Congress has proven incapable over the past twenty years of tackling substantive immigration reforms. Growing partisan divides on the costs and benefits of immigration, narrow majorities in Congress, and high numbers of arrivals at the U.S.-Mexico border are all working against Congress's ability to update U.S. visa policies in the next few years, even as employers call for more pathways to admit needed workers.

Recognizing this reality, this policy brief examines 21 steps that the executive branch could take on its own, without congressional action, to make it easier for immigrants who are eligible under existing law to either enter the United States or to maintain their U.S. status and work authorization. Drawing on the prior work of many experts on executive immigration actions and on conversations with immigration lawyers; policy experts; former USCIS, Department of Homeland Security, and State Department staff; and immigration professionals from companies that sponsor many immigrant workers, the brief focuses particularly on actions that USCIS and the State Department can take to streamline processing in the face of enormous backlogs and delays that emerged during the COVID-19 pandemic. The latest data show that USCIS had 8.7 million pending applications in September 2022 (up from 5.8

million in December 2019). The State Department has an immigrant visa interview backlog of 408,000 (up from about 61,000 in 2019), and wait times for visa interviews for temporary workers stretch to more than 200 days at some consulates.[8] While not covered here, significant attention is also needed to Labor Department processing backlogs for prevailing wage determinations and labor certification processes required of some companies that sponsor foreign workers.[9] The brief covers easily achievable, commonsense changes that the current (or future) administration could make any time as well as more complicated regulatory changes that would require substantial justification. All of the options listed here should be possible under current law.

Overcoming backlogs and addressing longer-standing challenges and inefficiencies in U.S. immigration processes can help employers attract foreign workers with needed skills, support continued economic growth, and allow the country to continue to attract the world's most-talented workers amid rising competition from other countries.

2 Efficiency Improvements at USCIS

The four years of the Trump administration brought a strong emphasis on vetting to USCIS and requirements for additional layers of background information, screenings, and interviews, slowing adjudications. There is little evidence to suggest these extra steps have reduced fraud or enhanced national security. But the extra requirements, when compounded by processing delays during the pandemic, led to ballooning processing backlogs. Under the Biden administration, USCIS has made significant strides toward greater processing efficiency by, for example, returning to a policy of deference to prior adjudications, waiving interviews for some applicants previously interviewed by the agency, suspending some biometrics requirements, and increasing the number of forms available for online filing. Additional improvements along these lines, including dropping unnecessary forms and streamlining processing steps, could generate further efficiencies. It is important to note that taking the steps recommended below would not reduce vetting for safety or fraud risks, but rather would remove duplicate steps for previously vetted applicants. Improved processing efficiency could also free additional resources for USCIS to enhance fraud detection for the types of applications most susceptible to misuse.

1. **Make online filing workable.** While USCIS has made important progress toward allowing online filing of applications and digitizing paper applications to enable electronic processing, significant gaps remain. For example, only 17 percent of nonimmigrant application processing is occurring online[10] and USCIS allows online filing for just 15 of its more than 100 application types.[11] And applicants often still file on paper, even when electronic filing is available. In FY 2020, 51 percent of naturalization applicants sent in a paper form, though they could have filed online.[12] Applicants and their lawyers report experiencing glitches and confusing error messages when attempting to file online, and legal service providers find it inefficient to manually enter information into the USCIS system, which does not interface with their case management systems. As noted by the Citizenship and Immigration Services (CIS) Ombudsman, the agency could speed development of an application programming interface (API), so that the electronic systems that high-volume immigration legal service providers use to collect clients' information can interface directly with the USCIS system, avoiding cumbersome re-entry of data.[13] To encourage greater use of online filing, USCIS also could continue collecting and addressing

stakeholder feedback on challenges faced in online filing. As it makes more forms available for online filing, USCIS could prioritize allowing online filing of fee waiver applications, so that lower-income applicants can use online filing.

2 **Shorten forms.** Many USCIS application forms—including those for sponsoring workers, travel documents, and work authorization—have grown substantially in length.[14] The form to apply for an employment authorization document (EAD), which was just one page before 2017,[15] is now seven pages.[16] The form to apply for permanent residence has grown from six pages[17] to twenty.[18] Longer forms place a greater burden on applicants and their attorneys and lengthen the time USCIS spends on adjudication, slowing processing. The agency has pledged to simplify major forms in fiscal year (FY) 2023.[19] It could consider adding additional forms to its review, ensuring only necessary information is collected and considered in adjudications.

3 **Approve advanced parole and work authorization for certain applicants without additional forms.** Noncitizens already in the United States when they apply for a green card are eligible for employment authorization and permission to travel outside of the country once their adjustment of status application is accepted by USCIS. Currently, applicants are required to submit their application for adjustment of status (Form I-485), an application for an EAD (Form I-765), and an application for advance parole (I-131) to take advantage of these benefits. To reduce the number of applications that USCIS must process, the agency could amend the regulations governing advance parole documents to allow the receipt notice for a properly filed I-485 document to serve as authorization for advance parole.[20] USCIS also could amend its regulations governing the issuance of EADs to allow for a properly filed I-485 application—in combination with required security checks—to serve as an application for employment authorization, and mail EADs to qualified applicants without requiring a separate application.[21] The agency could still collect the fees associated with I-765 and I-131 applications—an important source of revenue—since it will still be conducting the same adjudications of applicants' eligibility for advance parole and work authorization. Given that USCIS processes well over 500,000 adjustment of status applications a year, avoiding these I-131 and I-765 applications and associated expedite requests from applicants with pressing needs to travel or work could represent a significant reduction in demand on USCIS adjudicators' time.

4 **Lengthen work permit validity periods.** USCIS recently doubled the validity period to two years for EADs issued to adjustment of status applicants, asylees, refugees, and certain other categories of foreign nationals.[22] Longer grants require fewer renewal applications for work permits, reducing the burden on the agency. Building on this, USCIS could extend EAD grant periods for other applicants who often must renew multiple times. For example, applicants for asylum are eligible for work authorization after their asylum application has been pending for 180 days. These EADs are now granted with a two-year validity period.[23] However, the average time for an asylum claim to be heard before an immigration judge is 4.3 years.[24] To avoid the extra work of repeat renewals, USCIS could grant EADs to asylum seekers

for longer periods, aligned with average asylum case processing times.[25] USCIS could also grant longer EADs for adjustment of status applicants, recognizing that many such cases are taking more than two years to adjudicate.[26] If overall case processing times for these applicants and asylum seekers were reduced in the future, the length of EAD validity could be adjusted down accordingly.

5 **Reduce unnecessary requests for evidence.** When USCIS adjudicators need more information to determine if an applicant is qualified for the benefit being sought, USCIS will issue a formal request for evidence (RFE). RFEs may ask, for example, for additional proof of a qualifying relationship for family sponsorship or for missing translations of foreign language documents. While in some cases important information or evidence is missing from applications, immigrants and their attorneys report frequently receiving RFEs for evidence already provided or that was not required in a past successful application. RFEs slow adjudications because USCIS staff must issue them, applicants need time to respond, and adjudicators must reconsider the same application with the additional paperwork in hand. To reduce RFE issuance, USCIS could develop detailed checklists for applicants and adjudicators of the information and types of evidence that are truly necessary for adjudicating each type of application. This could help adjudicators understand what level of evidence is sufficient and assist applicants in submitting complete applications. In cases where a minor piece of additional information is needed, adjudicators could be empowered to call lawyers for represented applicants to request the information. USCIS could also monitor RFE patterns to determine whether additional instructions are needed for certain categories of applicants or if additional training is needed for individual adjudicators. USCIS customers could also be given a way to flag examples of RFEs that seem duplicative or unreasonable, so USCIS can identify and address patterns of unwarranted asks.

6 **Reuse biometrics when feasible.** USCIS requires applicants to submit biometrics—fingerprints, photographs, and/or signatures—when applying for most benefits.[27] Biometrics collection facilitates background and security checks. Early in the COVID-19 pandemic, USCIS announced it would reuse previously submitted biometrics to conduct background checks for work authorization since biometrics collection centers were closed.[28] In May 2021, the agency announced a two-year suspension on biometrics collection for certain applications to extend or change nonimmigrant status within the country (Form I-539) for those who had previously submitted biometrics, because collection delays were hampering access to work authorization.[29] Building on this experience, USCIS says it will soon remove biometrics requirements for Form I-539 renewal applicants.[30] USCIS could waive biometric requirements for most other renewal applications as well, with exceptions for isolated security concerns. Since most security checks are based on fingerprints, USCIS could re-run checks using previously collected fingerprints. Updated photographs could be required every five or ten years. Reusing biometrics, where possible, to conduct background checks would speed processing times and reduce the burden on applicants.

3 Helping Work-Authorized Immigrants Remain Able to Work

During severe processing delays at USCIS early in the pandemic, many foreign workers who rely on EADs lost their ability to work. More than one-fifth of work permits for green-card applicants and asylum seekers expired before their renewal was approved in FY 2021.[31] Through a combination of auto-extensions of expiring work permits and improved processing speed, USCIS has greatly reduced the number of workers who are forced to leave their jobs or be placed on leave pending the receipt of new work authorization. There are additional changes, listed below, that USCIS could make to keep workers in the U.S. workforce and prepare for any future processing challenges.

7 **Earlier, penalty-free filing for renewals.** USCIS allows EAD holders to file for renewal 180 days before the current work permit expires. Allowing for earlier filing, up to one year before expiration, would give the government more time to adjudicate renewals without applicants losing access to work authorization. USCIS could then grant the renewal with a start date immediately following the expiration date of the old card, rather than the date the renewal was approved, so that applicants with EADs of fixed lengths are not penalized for an earlier filing.[32]

8 **Make longer auto-extensions permanent.** In prior years, USCIS granted 180-day extensions of work permits for those who had filed a renewal application, in many categories, to avoid having EADs expire before the renewals could be processed. As processing times ballooned during the pandemic, this 180-day period was not sufficient. In May 2022, USCIS issued a temporary final rule to increase the auto-extension to 540 days for certain categories of noncitizens expected to have ongoing status in the country.[33] The agency later agreed in court to allow certain spouses of temporary workers to also qualify for the auto-extension.[34] Barring further action, these longer auto-extensions will end in October 2023. While USCIS has made strides in speeding EAD adjudications, it could consider publishing a regulation to make longer auto-extensions (if not 540 days, something longer than 180 days) permanent, to protect employers and workers should any future crisis affect processing times.[35] Auto-extensions could be longer for those expected to stay for a longer period in their current status, and shorter for others.

9 **Prevent interruptions in work authorization for spouses of temporary workers.** Under a recent change, spouses of temporary workers on E and L visas are now considered to be authorized to work as a part of their visa status (but *can* apply for EADs), while eligible spouses of H-1Bs workers *must* apply for EADs to work.[36] All three types of spouses are technically eligible for the 540-day auto-extension, but their work authorization ends when their temporary status expires, rendering the auto-extension meaningless if USCIS takes too long to process their visa renewal applications. USCIS could address this by issuing a regulation that allows for the work authorization of spouses of H-1B, E, and L visa holders to be auto-extended—past the end of their current visa grant—as long as they have filed an application to extend their status.[37] Similar flexibility is available to principal temporary worker visa holders who are extending their status in the United States.[38]

4 Helping U.S.-Based Migrants Maintain their Legal Status

Immigration laws and policies create obstacles for some foreign workers to stay in the United States and continue contributing to the labor force. While broader legislative reform could address this issue in a more comprehensive way by creating smoother pathways from temporary to permanent status for foreign workers, as MPI has proposed,[39] and creating more avenues to U.S. visas for desired workers, some changes in statutory interpretation could help immigrants already in the United States stay.

10 **Extend job-search periods for temporary workers.** Temporary workers on high-skilled visas—E, H-1B, H-1B1, L, O, and TN—are currently granted, by regulation, a period of up to 60 days after ending work with their sponsoring employer to find a new job and employer sponsor within the United States.[40] After that period, workers who lack a new sponsor or who have not transitioned to another type of immigration status must depart the United States. Highly skilled and specialized workers often need more than 60 days to secure a new job. This also is a very short transition period for workers who have sometimes been in the United States for decades and have deep community ties. USCIS could amend its regulations to extend this grace period to at least several months, to give workers a real chance to find new U.S. employment, and if there is no longer a good fit with the U.S. labor market, to wrap up their affairs and transition their families to a post-U.S. future. Such a move is unlikely to help workers currently facing layoffs, because of the length of time needed to finalize a new regulation, but it could help in future tech sector downturns. When USCIS established this 60-day job search period in 2016, the agency set aside suggestions for a longer transition period, stating that it believed 60 days was sufficient.[41] However, new circumstances, including labor market changes in key industries, lengthened USCIS processing times, and increasing green-card wait times that are leaving more workers in temporary status for longer periods all suggest the agency's position might merit reconsideration.

5 Ensuring Smooth Consular Processing

The State Department, like USCIS, faces daunting processing backlogs and delays. Because the State Department handles applications for those arriving from outside of the United States, it plays a particularly important role in shaping the movement of foreign workers eligible for visas into the U.S. labor force. The State Department has significantly reduced backlogs that swelled during the pandemic and improved processing capacity by waiving visa interviews in certain cases, allowing remote processing of applications, and by increasing hiring of consular staff.[42] Targeted additional steps could help the department more efficiently issues visas so qualified applicants can work in the United States.

11 **Permanently extend nonimmigrant visa interview waivers where merited.** By law and under current regulations, the State Department has the authority to waive in-person interviews when nonimmigrant visa applicants are renewing from their home country a visa they held in the past 12 months and have previously complied with U.S. laws and regulations, or when the secretary of state determines that interview waivers are in the national interest or necessary because of unusual or emergent circumstances.[43] Using

this authority, the State Department over the course of the pandemic increased the number of applicants eligible for interview waivers, first allowing discretion to waive visa interviews for those applying from their home countries for the renewal of visas that had expired within the past 24 months, then the past 48 months.[44] In December 2021, the secretary of state announced a broad but time-limited policy that allowed consular officers to waive, though December 2022, interview requirements for applicants for H, L, O, P, and Q temporary work visas and F, M, and J student visas who were (1) applying from their home country; (2) had previously been issued a visa in any category to the United States; (3) had never had a visa denial, unless it was overcome; and (4) had no apparent ineligibility. Interviews could also be waived for applicants for these visas who had previously travelled to the United States under the Visa Waiver Program.

With this broad discretion, the State Department reported that almost half of nonimmigrant visas in FY 2022 were issued without an in-person interview, shortening wait times.[45] This authority has now been extended through 2023.[46] Given that current statute and regulations allow the secretary of state to grant authority for discretionary waivers in cases of national interest, the State Department could extend this authority indefinitely.[47] Consular officers can always elect to require interviews in cases where there are concerns about security or about individuals' visa eligibility. But in cases where applications from repeat travelers to the United States raise no concerns, allowing interview waivers can bring significant efficiencies for State Department processing and speed the entry of needed, visa-eligible workers into the U.S. economy.

12 **Renew visas in the United States.** As U.S. consulates continue to recover from the pandemic, wait times for visa interviews remain long. Wait times for temporary worker visas were 255 days in Cotonou, Benin, and in India were 227 days in Chennai, 199 days in Kolkata, and 198 days in Hyderabad, as of February 7, 2023.[48] Waits for students and J visa exchange visitors stretched to 421 days in Ouagadougou, Burkina Faso; 332 days in Kathmandu, Nepal; 255 days in Cotonou, Benin; and 246 days in Yerevan, Armenia.[49] Temporary visa holders who wish to travel outside of the United States must renew their visas at a U.S. consulate abroad each time their nonimmigrant status is extended to be able to re-enter the United States. Long wait times mean that temporary workers who travel for work, vacation, or family visits can get stuck outside the country. This presents challenges for employers as well as migrants; due to the complexity of other countries' tax laws, many U.S. companies will not allow employees to work from abroad. Instead, workers may be placed on leave or—if waits extend too long—laid off.

To address these challenges, the State Department has indicated it plans to return to a pre-2004 policy of renewing certain temporary visas from within the United States, starting with a pilot later in 2023 for renewals of H and L visas.[50] The government had stopped domestic visa revalidation for C, E, H, I, L, O, and P visas due to logistical challenges in capturing biometric data required by the *Enhanced Border Security and Visa Entry Reform Act of 2002*.[51] Domestic reissuance of certain diplomatic and NATO visas continued. Countries that compete with the United States for skilled workers—including Canada, Germany, and the United Kingdom—all allow for some domestic visa

revalidation.[52] Assuming the pilot this year is successful, the State Department could quickly expand to more visa types, perhaps including those for groups, such as students, that did not benefit from domestic reissuance before 2004.[53]

13 **Codify third-country processing opportunities**. For foreign workers facing long visa interview wait times, the State Department has recommended they consider requesting consular processing at a country other than their own (a third country) where consulates have capacity to take additional cases.[54] Though many applicants have been able to make use of this option, many others find their requests for third-country processing rejected due to consulates' capacity limitations. Visa applicants can also experience difficulties obtaining needed visas to travel to a third country for the duration of their U.S. visa processing. And there is a concern that visa denial rates may be higher in third countries than in applicants' home countries. While the State Department works on implementing domestic visa revalidation, it could codify third-country processing opportunities for applicants from countries with overwhelmed consulates to make this option predictably available. Ideally, consulates in Canada or Mexico could be specially designated and staffed for handling visa renewal applications for U.S.-based temporary workers and students whose home-country consulates are experiencing particularly long wait times. And consular staff could receive special training in the country conditions and any special security issues related to applicants from backlogged countries. If needed, cooperation between the United States and Canada/Mexico could help facilitate any needed visa issuance.

14 **Make administrative processing more transparent.** When individuals apply abroad for a U.S. visa, whether temporary or permanent, their application is reviewed by consular affairs staff and most are also interviewed. In some cases, the consular officer may decide that information from outside sources is needed to establish whether the applicant is eligible for a visa. This administrative processing[55] can result from missing documents, facts that need further verification, suspicion of fraud, or security checks. It sometimes occurs, for example, for students and workers in fields where they have access to technology that could be used by foreign governments.

The State Department says that administrative processing is usually completed within 60 days, but cases can stretch much longer, to the extent that some lawyers have called the process a "black hole."[56] Applicants and their attorneys are generally not told what triggered the administrative processing or what information is being sought. During administrative processing, applicants are stuck outside of the United States, often delaying their U.S. work or study. While thorough security checks are clearly in the national interest, the lack of transparency and timelines for administrative processing can harm U.S. businesses, universities, and workers.

The State Department could increase transparency around administrative processing by sharing data on the number of applicants subjected to the process, the average processing timelines by country and/or type of visa sought, and ideally, could share broad guidelines about the types of information applicants could provide

to help complete adjudication in a timely way. The State Department recently started working with the National Vetting Center, an interagency body, to conduct security screenings for some applicants, which could help speed background checks.[57] Sharing information about any progress toward shorter timelines could reassure applicants. Knowing these types of patterns could help students, workers, universities, and employers anticipate and plan for the delays that administrative processing creates.

6 More and Better Communication

An overarching problem, across agencies, is that visa applicants and their lawyers struggle to obtain information on the status of applications and lack good channels of communication when applicants or government agencies make mistakes, when expedited processing is needed, or when pressing questions arise. Poor communication from USCIS and the State Department makes it harder for U.S. companies to depend on foreign workers to fill labor needs, because they often do not know when processing will be complete and workers will be available. Lack of information creates anxiety for intending immigrants. And it compounds work for government agencies when applicants repeatedly submit official inquiries or requests for expedited processing.

15 **Improve customer service and transparency.** USCIS offers customer service through an online virtual assistant, a toll-free hotline, and in rare cases, scheduled meetings. Applicants may also submit online case inquiries when processing time is outside of norms. In the past, customers could self-schedule InfoPass appointments with a USCIS immigration officer to inquire about case status or make a request for emergency documentation needed for travel, work, or other purposes. Due to misuse of these appointments, USCIS changed its policies. Now, appointments are rarely available and can only be made by calling the toll-free number and waiting for a callback. USCIS has also limited public contact with local service centers.

To improve communication and information-sharing, USCIS could make more live operators available on its toll-free line, with better training, so that customers and lawyers can more often resolve issues with one call. USCIS could reinstitute self-scheduled appointments for a limited set of circumstances, with more guidance and filtering mechanisms to ensure that they are used appropriately.[58] The agency also could increase engagement from local offices and service centers, so stakeholders can raise systemic problems, as well as reinstate email inboxes for service centers. And providing more information on the status of applications through customers' online MyUSCIS accounts, combined with more details about subsequent processing steps and timelines, could also help reassure applicants.

The State Department is even harder to reach. Customers can send a public inquiry to the National Visa Center, which notes that its inquiry response times are lengthy[59] or can contact individual consulates once applications have arrived there, with mixed results. Providing more information to applicants on the status of their application, next steps, and typical processing times could likewise provide more transparency for intending immigrants and their employers.

7 Broadening Pathways to the U.S. Labor Force

Creating new visa pathways for needed workers at various skill levels requires congressional action. Still, the executive branch can take some steps under current law to widen existing legal pathways for immigrant workers. Some of these actions would be easier to achieve than others, and some may require careful legal justification.

16 **Family reunification parole for Central Americans and Haitians.** The United States operates two programs that allow beneficiaries who have an approved family-sponsorship petition but must wait for an available green card to wait inside the United States, rather than outside. The Cuban Family Reunification Parole Program was created in 2007 and, seven years later, a similar program for Haitians followed. The Cuban program is open to anyone with an approved family petition who is invited to apply, while the Haitian program is available to those invited to apply who have a family-based petition approved prior to the Haitian program's announcement in 2014 and who can expect to be eligible for a green card in 18 to 30 months.[60] Program participants file an application with USCIS for humanitarian parole, which is considered on a case-by-case basis.[61] Parolees can stay and work in the United States while they wait for a green card to become available. Once it does, they can adjust to lawful permanent residence without leaving the country.[62] The rationale for both programs was to speed family reunification through safe and orderly channels and, in doing so, reduce irregular migration.

Given the ongoing challenges of poverty, instability, violence, and/or political repression facing countries in the region, which send large numbers of migrants to the U.S. southwest border, the Biden administration could consider creating, through regulation, family reunification parole programs for additional countries. El Salvador, Guatemala, Honduras, and Nicaragua are all prime candidates. The administration could also consider a regulation to reopen the Haitian program to those with more recent family sponsorship petitions. Such programs would meet the "significant public benefit" requirement for parole by discouraging irregular entry and encouraging orderly migration. These parole programs would be quite limited in scope, given the relatively small number of Central Americans and Haitians in the United States who have an immigration status that allows them to sponsor relatives. But they could create an important pathway for those who do have a sponsor. Unlike recent parole programs created by the Biden administration for Ukrainians, Cubans, Haitians, Nicaraguans, and Venezuelans, family reunification parolees have a clear path to permanent status through their family sponsorship. Because such parole programs are limited to those who have approved family sponsorship applications, they do not expand immigration levels. But they do allow approved participants to come to the United States sooner to reunify with family members and join the labor force.

17 **Ensure use of all green-card numbers when demand is sufficient.** Under current statute, a complex set of overall, per-country, and category caps govern the available number of green cards in the family-preference, employment-based, and diversity green-card systems. (Uncapped numbers of green cards are available for immediate family members

of U.S. citizens, certain humanitarian migrants, and others.[63]) In effect, 140,000 employment-based green cards, 226,000 family-preference green cards, and slightly less than 55,000 diversity visas are available in a typical year.[64] In some years, some green-card numbers go unused due to bureaucratic miscalculations and delays, even though there has consistently been demand for all of these visas.[65] During the pandemic, large numbers of visas went unused because of processing pauses and backlogs, reduced global mobility, and bans imposed by the Trump administration on certain immigration categories.[66] When family-preference green-card numbers go unused, they roll into the employment-based system in the following year. When employment-based green cards go unused, under current law and usage of immigration numbers they are lost rather than rolling into the family-preference system, as intended.[67] Two changes could ensure that congressionally mandated levels of green cards are met:

Recapture green cards that went unused due to administrative delays. The Biden administration could, arguably, recapture visas that went unused in prior years. At least 200,000 green-card numbers are estimated to have gone unused between FYs 1990 and 2020 under the caps—even though the demand for the visas was there.[68] During the pandemic, about 66,500 employment-based green cards were lost because the government was not able to process enough employment-based green-card applications in FY 2021 to reach the (higher than usual) cap for that year.[69] There is precedent for administrative recapture of green-card numbers. In the 1970s, the government determined that it had incorrectly charged *Cuban Adjustment Act* grants of permanent status against Western Hemisphere caps in prior years, and so recaptured those numbers to be used for other applicants.[70] Recapturing green cards also seems to accord with congressional intent. Congress created the rollover of unused green-card numbers to ensure that all green-card numbers are used each fiscal year when there is demand. Recapturing green cards could bring some relief to immigrant workers and their family members stuck in green card backlogs. As most are already in the United States working on temporary visas, such a move would give them greater labor mobility that allows them to contribute their full skills and talents.

Revise the Visa Bulletin process to avoid visa loss. Currently, the timeline for when green-card applicants can file their applications and the guidelines for which applications USCIS and the State Department can process are governed by the Visa Bulletin. Every applicant for a green card has a priority date—the date when their family- or employment-based sponsorship petition was accepted, or the date that their employer filed an application with the Labor Department. The Visa Bulletin lists two sets of dates. Filing dates are the latest priority date of people allowed to file an application for an immigrant visa or green card. Final action dates are the latest priority date of those eligible to receive their visa/green card. The filing dates are published to generate a pool of applications that the government can process before the end of the fiscal year, under the numerical cap. While the State Department always allows applicants to file based on filing dates, USCIS generally only allows applicants to use filing dates early in the fiscal year, later requiring them to wait for final action dates to file. The method used to set the dates and the data that are used in those methods are not

transparent.[71] As noted earlier, the process sometimes fails to work to reach annual numerical caps.

To increase transparency and better utilize all available green-card numbers each year, the methods and calculations used to set dates for the Visa Bulletin could be codified into a formal, publicized policy. Likewise, the data used to calculate Visa Bulletin dates could be made available—if not in real time, then after the fact. Such transparency would allow visa applicants, stakeholders, and experts to understand the process and provide input. A main goal of a codified process should be for filing dates to be moved early enough to generate a steady inflow of applications that can be processed over time, so that annual green-card caps are reached without any last-minute need to advance the Visa Bulletin or rush to process applications. To support this goal, USCIS could consider allowing applicants to use the filing dates all year long.

18 **Expand access to work authorization for spouses of highly skilled temporary workers.** Workers on H-1B visas are "specialty" workers filling jobs that require at least a bachelor's degree (the majority hold graduate degrees); they most often are employed in computer programming and systems design occupations.[72] Workers on O-1 visas are workers with extraordinary ability or who have a record of extraordinary achievement at the top of their field of work. Currently, spouses of O-1 visa holders can come to the United States but are not allowed to work. Spouses of H-1B workers are authorized to work only in limited circumstances.[73] They must either be listed as a beneficiary on an approved employer green-card sponsorship application (I-140), or must have a spouse who was approved for an H-1B extension on the basis of an employer sponsorship application that has been pending for at least a year. Estimates suggest that about 90 percent of spouses of H-1B holders have at least a bachelor's degree, and half of those are in a STEM field. And nearly half of spouses hold a graduate degree.[74] Spouses of O-1 workers likely are highly educated as well.

To allow these mostly highly skilled spouses into the U.S. labor force, USCIS could consider amending its regulations to allow all H-4 dependents and spouses of O-1 visa holders to be eligible for work authorization. The statute is silent on work authorization for spouses of temporary workers holding H-1B or O visas; the homeland security secretary has broad discretion to administer immigration laws, including related to work authorization.[75] When USCIS issued a regulation in 2015 extending work authorization to some H-4 spouses, the agency explicitly declined to extend work authorization to other H-4 spouses or to spouses on other nonimmigrant visas, electing to keep the change narrowly focused on H-4 dependents waiting in line for green cards. But USCIS reserved the right to change its stance in the future.[76] Changes in the number of nonimmigrant workers who are waiting in green-card backlogs and growing international competition for talented workers argue in favor of this reconsideration.

19 **Facilitate greater use of H-2 temporary visas by Central American workers.** H-2A and H-2B visas are available for temporary and seasonal workers in agricultural and nonagricultural jobs, respectively. Traditionally, the great majority of these employer-sponsored visas go to Mexicans, reflecting longstanding labor recruitment ties. H-2A visas are uncapped, while H-2B

visas have an annual cap of 66,000. In recent years, Congress has repeatedly authorized the secretaries of homeland security and labor to make an additional number of H-2B visas available at their discretion, up to a limit of just under 65,000 additional visas. To build legal pathways to the United States from El Salvador, Guatemala, and Honduras and convert some unauthorized flows into legal ones, the United States recently began setting aside some of these additional H-2B visas for nationals from those countries, and last year added Haiti to the list. At the same time, the United States has been working with Central American governments to increase recruitment for H-2A and H-2B visas from the region.[77] According to preliminary data, 12 percent of H-2B visas in FY 2022 were issued to nationals from El Salvador, Guatemala, and Honduras, but just 1 percent of H-2A visas.[78] Continuing to promote use of these visas by Central Americans while continuing to strengthen labor protections for temporary visa holders can open important legal pathways for migrants to work in the United States, help meet U.S. employer needs, and also improve development opportunities in Central America.[79] Since the H-2A program does not have an annual numerical cap, it has the capacity to accommodate significant numbers of Central Americans for whom circular migration is a viable option.

20 **Promote greater use of the TN visa.** The 1995 North American Free Trade Agreement (NAFTA) created a new temporary worker pathway, the TN visa, for professionals from Mexico and Canada. This pathway was maintained under the 2020 United States-Mexico-Canada Agreement (USMCA). To qualify for a TN visa, applicants must have a U.S. employer sponsor, work in an occupation specified in the agreement, and for most occupations, hold a bachelor's or higher degree.[80] The list of more than 60 occupations includes engineers, registered nurses, scientists, and professors. TN nonimmigrants can live and work in the United States for an unlimited number of three-year periods. Use of the TN visa by Mexicans has grown over time. Fewer than 10,000 TN visas were issued for Mexicans in FY 2013, rising to nearly 25,000 in FY 2021.[81] (Canadians do not need a visa for U.S. travel, so are not issued TN visas, and therefore there are no publicly available data on how many Canadians have been granted TN status each year.) Because there are no annual numerical caps on TN visas, the visa represents a readily available channel for employers to seek skilled workers. The government could promote use of the TN visa as a way for employers to address labor needs. It also could reduce barriers to use of the visa by providing additional guidance to USCIS, the State Department, and border officials on the full range of job titles that fall within the listed TN visa occupations.

21 **Update Schedule A.** When employers want to sponsor an immigrant for a green card, they usually must show that there are no U.S. workers "able, willing, qualified, and available" for the job. However, for a list of occupations that the Labor Department designates as experiencing shortages, employers can sponsor workers without first attempting to recruit U.S. workers, greatly expediting the process.[82] The *1965 Immigration and Nationality Act* set an initial list of shortage occupations and gave the Labor Department the authority to update the list. The department did so several times, based on analysis of labor market data; input from trade associations, labor, and employers; and reviews by experts.[83] It last used this authority in 1991, updating the "schedule"

of shortage occupations—which came to be called Schedule A—to include only nurses and physical therapists and immigrants of "exceptional ability."[84] The list has not been revised since.[85] While updating Schedule A to include occupations presently facing tight labor markets would not expand legal immigrant pathways, it could expedite immigration for workers with in-demand skills.[86] The Labor Department could convene experts to develop a new methodology to update the list of Schedule A occupations. Following examples from Australia, Canada, New Zealand, the United Kingdom, and other high-immigration countries with shortage occupation lists, the process could include analyses of best available data and consultations with business groups, employers, labor unions, and local officials; it also could account for local needs in addition to national ones.[87]

8 Conclusion

Immediate strong labor needs, combined with historically low unemployment rates, mean that many U.S. employers are looking anywhere they can for suitable workers, including abroad. And longer-term demographic shifts toward an older population suggest that employer interest in foreign workers will only increase in the years ahead. Such trends are emerging not just in the United States, but also in many advanced economies, fueling international competition for desired workers.

While governments around the world are taking steps to revamp their immigration laws to match new labor market realities, in the United States, Congress's attention to immigration is likely to be diverted, at least in the near term, to oversight and record encounters at the U.S. southwest border. Therefore, broad reforms to immigration laws and employment-based immigration levels remain highly unlikely, despite the great need.

Yet even without Congress, there are some steps that the executive branch can take to reduce processing backlogs; speed immigration through employment-, family-, and humanitarian-based channels; and help already present immigrants in various statuses remain in the United States and retain the right to work.

The 21 possibilities highlighted in this policy brief demonstrate some of the ways that USCIS and the State Department could work to facilitate immigration of qualified workers and better perform their immigration processing functions—to the benefit of U.S. employers, immigrant workers, and the country as a whole.

Longer-term demographic shifts toward an older population suggest that employer interest in foreign workers will only increase in the years ahead.

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