



REPORT CARD

On the Biden Administration's Efforts to Reduce Barriers to Accessing Benefits Through USCIS

By the
Ready to Stay
Administrative Advocacy Working Group



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PRELIMINARY STATEMENT

Ready to Stay is a national coalition with legal, field, and organizing expertise working to build field capacities and coordination for effective implementation of a large-scale immigration legalization program.¹ While politics as usual continues to deprive our immigrant communities of a legislative large-scale immigration legalization program, Ready to Stay understands the value of the Biden Administration undoing the damage under the Trump Administration and re-envisioning USCIS as a benefits agency that seeks to welcome qualifying noncitizens. Ready to Stay recognizes the important role that USCIS serves in achieving this goal, especially as it seeks to uphold “America’s promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve”² and reestablishes trust with stakeholders and customers through policies and practices that are aligned with its new mission statement.

1 For more information on the Ready to Stay Coalition, visit <https://readytostay.org/>.

2 USCIS Mission and Core Values, <https://www.uscis.gov/about-us/mission-and-core-values> (Feb. 9, 2022).

READY TO STAY REPORT CARD

Last year, the Department of Homeland Security (DHS) issued a notice in the Federal Register seeking public comments “on how U.S. Citizenship and Immigration Services (USCIS) can reduce administrative and other barriers and burdens within its regulations and policies, including those that prevent foreign citizens from easily obtaining access to immigration services and benefits.”³ The stated goal of the Federal Register notice was to comply with President Biden’s Executive Order 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans.”⁴ DHS allowed stakeholders 30 days to provide “public input to better understand and identify administrative barriers and burdens (including paperwork requirements, waiting time, and other obstacles) that impair the functions of the USCIS process and unnecessarily impede access to USCIS immigration benefits.” The response was significant—7,396 individuals and organizations provided input to DHS.

Now, one year after the submission deadline, the Ready to Stay Administrative Advocacy Working Group⁵ (RTSAAWG) issues this report to provide the Biden Administration feedback on its progress breaking down the barriers erected by the Trump administration. USCIS has made significant progress in some areas, notably in the rescinding of the 2018 NTA Guidance – which had an enormous impact on applicants – and creating bona fide determination processes for U-visa and Special Immigrant Juvenile Status. While the Administration has made some progress, RTSAAWG is concerned that there are several categories of services where USCIS is still failing noncitizens, and by extension the American public. These categories are best summarized as the need to 1) End the Culture of Denial, 2) Decrease the Backlogs, and 3) Increase Access to Benefits.

In this report, RTSAAWG analyzes agency actions in these three categories and issues a rating of “Progress Made,” “Work Still To Do,” and “No or Insufficient Action Taken.” It is the goal of this report to commend USCIS for positive progress made during the first year of the Biden Administration and to highlight where actions are still necessary to fulfill the goals of President Biden’s executive orders and the stated policy goals of DHS and USCIS.

RATING SCORES:

PROGRESS MADE

WORK STILL TO BE DONE

NO OR INSUFFICIENT ACTION TAKEN

³ 86 Fed. Reg. 20398 (Apr. 19, 2021), <https://www.federalregister.gov/d/2021-07987>.

⁴ Exec. Order No. 14012, Fed. Reg. 8277 (Feb. 5, 2021), <https://www.federalregister.gov/d/2021-02563>.

⁵ This Working Group is chaired by the National Immigration Project (NIPNLG). Members of the Working Group are: Black Alliance for Just Immigration (BAJI); Coalition for Humane Immigrant Rights (CHIRLA); Catholic Legal Immigration Network Inc. (CLINIC); Faith in Action; Immigrant Advocates Response Collaborative (I-ARC); Immigrant Legal Resource Center (ILRC); Immigrant Welcome Center; National Immigration Law Center (NILC); Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA); National Immigrant Justice Center (NIJC); Presente.org; and UnidosUS. The report focuses on issues highlighted in the comments submitted by RTSAAWG members.

END THE CULTURE OF DENIAL

RTSAAWG believes that USCIS must undergo a cultural shift, where the agency broadens access to immigration benefits and clarifies that the adjudication officer's role is to grant benefits whenever possible rather than to look for reasons to deny them.

END THE CULTURE OF DENIAL

RTSAAWG believes that USCIS must undergo a cultural shift, where the agency broadens access to immigration benefits and clarifies that the adjudication officer's role is to grant benefits whenever possible rather than to look for reasons to deny them. Under the Trump Administration, USCIS was transformed from the service-based agency it was created to be, to another arm of enforcement.⁶ The newfound agency emphasis on "securing the homeland" often filtered down to officers in the form of finding ways to delay or deny decisions on benefits, rather than looking to provide stable immigration status for long-term residents.⁷

Many of the comments RTSAAWG members submitted detailed changes USCIS could easily make to its Policy Manual that would lead to fairer decision-making by USCIS officers.⁸ For example, in 2020 the USCIS Policy Manual radically altered USCIS decision-making criteria by requiring USCIS officers to make a separate discretionary finding on applications.⁹ The Policy Manual added 1 USCIS-PM E.8 and 10 USCIS-PM A.5 which provide vague and unnecessary adjudicatory factors and require many applications to go through a second, time-consuming adjudicatory process to apply the factors. The Policy Manual added similar language requiring discretionary review of adjustment of status applications at 7 USCIS-PM A.1 and 7 USCIS-PM A.10 and of EAD applications for deferred action recipients at 10 USCIS-PM A and 10 USCIS-PM B.¹⁰ These changes appear designed to give officers broad ability to deny applications even where the applicant is prima facie eligible for the benefit. RTSAAWG members suggest removing this language altogether or replacing it with specific criteria for officers to easily follow.

While USCIS has made many positive changes to the Policy Manual under the Biden administration, this practice of extreme vetting persists throughout USCIS operations. Until this practice is abolished and USCIS officers are trained to adjudicate applications with a benefit-granting mindset, the agency cannot hope to restore the faith in our immigration system that was decimated during the Trump administration.

⁶ The Trump Administration changed the USCIS mission statement to, "U.S. Citizenship and Immigration Services administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values," DHS, Citizenship and Immigration Services Overview, <https://www.dhs.gov/citizenship-and-immigration-overview> (last updated May 24, 2022).

⁷ *Id.*

⁸ RTSAAWG members highlight a few examples below, but suggest reviewing the comments for more detailed suggestions. For ease of reference, all comments from RTSAAWG members are attached hereto as an appendix.

⁹ USCIS, Policy Alert: Applying Discretion in USCIS Adjudications (July 15, 2020), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200715-Discretion.pdf>.

¹⁰ USCIS, Policy Alert: Use of Discretion for Adjustment of Status (Nov. 17, 2020), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20201117-AOSDiscretion.pdf>; USCIS, Policy Alert: Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action (Jan. 14, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210114-DiscretionaryEADForAOSAndDA.pdf>.

NO OR INSUFFICIENT ACTION TAKEN***Implement the Mission Statement in USCIS Training and Provide Training Materials to the Public***

One aspect of the “culture of denial” that advocates have seen over the past few years, has been officers turning straightforward non-adversarial interviews into longer interrogations and fishing expeditions. Similarly, stakeholders have reported that many interview times have more than doubled from 20-30 minutes to 60-90 minutes. The importance of regular, meaningful training cannot be overstated if USCIS hopes to restore public confidence in the agency and USCIS is going to return to being primarily a benefits adjudication agency rather than an enforcement agency. Many USCIS officers were hired under the prior administration and have only worked at the agency after its mission shifted. Moreover, as USCIS has widely acknowledged, it will need to hire many new officers to address the backlogs, and it is imperative that new officers and those hired under the previous administration receive appropriate training and supervision that holds them accountable for complying with the law.

To further the goal of strengthening trust and accountability, USCIS should make training materials publicly available. It is difficult for advocates to hold officers accountable for errors if advocates cannot cite to specific standards and guidance which the officers should be following. As an example, vulnerable noncitizens in exigent circumstances, such as Afghans and Ukrainians who escaped to third countries, can often only seek entry into the United States through humanitarian parole with USCIS. Though USCIS has posted some guidance on the humanitarian parole process¹¹ and provided some program-specific guidance for the Uniting for Ukraine program,¹² the process, including the adjudication timeline, remains opaque and advocates report high denial rates and inconsistent adjudications, especially for Afghan humanitarian parole applications.¹³

USCIS should make asylum officer training materials publicly available on the USCIS website, as it has done in past years. While some of the lesson plans are posted in the USCIS Reading Room, it appears that only those materials that have been the subject of multiple FOIA requests are available.¹⁴ Understanding how USCIS asylum officers interpret and apply the law and the regulations is critical for asylum seekers’ representatives. If an officer does not follow proper procedures or engages in inappropriate questioning, the advocate can raise these issues at the interview or with a supervisor. As of January 28, 2022, the Asylum Division was at 76 percent of authorized staffing with approximately 460 vacancies,¹⁵ and that was before the Asylum Processing Rule went into effect, which will require

11 USCIS, *Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States*, <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (last updated May 10, 2022).

12 USCIS, *Uniting for Ukraine*, <https://www.uscis.gov/ukraine> (last updated May 27, 2022).

13 See, e.g., Miriam Jordan, *Afghans Who Bet on Fast Path to the U.S. Are Facing a Closed Door*, The New York Times, Feb. 28, 2022, <https://www.nytimes.com/2022/02/16/us/afghan-refugees-humanitarian-parole.html>; see also Complaint for Declaratory, Injunctive, and Mandamus Relief, *Roe et al v. Mayorkas*, No. 1:22-cv-10808-MLW (Dist. Ct. Mass.), https://www.aclum.org/sites/default/files/field_documents/complaint_0.pdf.

14 USCIS, *Electronic Reading Room, Asylum Quarterly Engagement and Listening Session* (Feb. 23, 2022) https://www.uscis.gov/sites/default/files/document/outreach-engagements/Asylum_Quarterly_Engagement_and_Listening_Session.pdf.

15 See American Immigration Lawyers Association, *Asylum & Refugee National Committee Meeting with the USCIS Refugee, Asylum & International Operations Directorate* (Jan. 5, 2022), https://www.uscis.gov/sites/default/files/document/outreach-engagements/AILA_Meeting_with_the_USCIS_Refugee_Asylum_and_International_Operations_Directorate.pdf.

USCIS to hire hundreds more officers.¹⁶ Posting training materials will provide transparency and accountability in the asylum adjudication process, especially as the agency begins to apply new procedures and standards.

PROGRESS MADE

Increase Transparency and Public Engagement

Across the board, USCIS has significantly increased stakeholder engagements under the Biden administration. RTSAAWG members commend the agency for this change and have participated in numerous engagements with DHS officials. The benefit to the public from understanding USCIS processes ultimately increases the efficiency of adjudications by presenting evidence that the agency requires and allowing practitioners to adjust their filings to meet these requirements. Likewise, USCIS benefits from hearing directly from stakeholders about trends that create barriers to benefits as well as our proposed solutions.

While significant progress has been made on this front, government officials have not always fully engaged in stakeholders calls. Calls have involved officials in “listen only” mode; reading prepared, publicly-available materials; failing to take questions at the end; and failing to meaningfully engage in collaborative problem-solving. Stakeholder meetings are most valuable to both stakeholders and the government if there is a meaningful dialogue. USCIS should strive to make the most of every stakeholder meeting opportunity and engage fully with a diverse range of stakeholders including practitioners, advocacy organizations and directly impacted communities. Furthermore, regular quarterly engagements with USCIS rather than ad hoc engagements would nurture transparency and ensure ongoing public engagement.

In a similar vein, we commend USCIS for ensuring that the comment period has been consistently 60 days for lengthy and complicated proposed regulations. USCIS should ensure that this practice continues as it allows individuals and organizations sufficient time to provide meaningful comments on proposed regulations. However, USCIS should generously consider requests for an extension of a comment period when an issue is receiving significant attention. RTSAAWG members strongly believe that for the public to have a meaningful opportunity to review and comment on proposed rules, the public requires adequate time. As such, RTSAAWG members urge USCIS to continue to issue 60-day comment periods on most proposed regulations.

NO OR INSUFFICIENT ACTION TAKEN

Restore Faith in the Asylum System

In their comments to the Federal Register notice, many RTSAAWG members commented on the asylum backlog and the need to restore faith in the asylum adjudication system. A recent report issued by the University of Maine Law School and allied organizations, describes how the grant rate in the Boston

¹⁶ See 87 Fed. Reg. 18078 et seq. (Mar. 29, 2022), <https://www.federalregister.gov/d/2022-06148> (“USCIS has estimated that it will need to hire approximately 800 new employees to fully implement the proposed asylum officer interview and adjudication process to handle approximately 75,000 cases annually.”).

Asylum Office is a mere 15.5 percent as compared to the national average of 40 percent, and explains the outsized role that supervisory asylum officers play in creating a culture of denial.¹⁷ RTSAAWG believes that it is imperative that USCIS hire, or promote internally, Asylum Office leaders who embody a vision of welcoming asylum seekers, rather than those who perpetrate a culture of fear and unsubstantiated fraud allegations, and who are willing to ensure that all officers under their supervision take this approach.

The affirmative asylum system now has a yearslong backlog, with asylum seekers who submitted applications in 2015 still awaiting an interview. Several RTSAAWG member comments highlighted the need for USCIS to eliminate its Last In, First Out (LIFO) scheduling system. This system strands asylum seekers in the United States without being able to stabilize their status or reunite with family who may be in harm's way. While the Asylum Division has claimed that LIFO is needed to prevent baseless claims from being filed just to seek an EAD, this justification is based on a problem that existed in 1996, before waiting periods were put into place for EADs. Instead, those who have been waiting the longest continue to languish in a backlog that does not move forward in a rational way, thus undermining faith in the system and family unity principles. Indeed, it is a notable reflection of the punitive impact of LIFO on asylum seekers that anti-immigrant groups touted LIFO in their comment to this rulemaking.

Many of the regulations promulgated by the Trump administration remain outstanding and require action from the Biden administration. While many have been enjoined by federal courts, it is imperative that DHS take the proper steps under the Administrative Procedures Act to officially withdraw rules that curtail the rights of asylum seekers and others, and to replace them with rules with clear substance and fair procedure.

PROGRESS MADE

Improve Access to Work Authorization

USCIS should broadly consider how to improve Employment Authorization Document (EAD) policy and practice to respond to the needs of all communities who rely on EADs. RTSAAWG members applaud USCIS for implementing new policies around EADs including allowing for deferred action and EADs for U-visa applicants with a bona fide determination¹⁸ and SIJS applicants with approved I-360s,¹⁹ and instituting an automatic extension²⁰ process of EADs filed by several categories of applicants that are pending renewal. Several RTSAAWG members advocated for these changes and we encourage USCIS to continue to similarly improve EAD access to other vulnerable noncitizens.

17 *Lives in Limbo: How the Boston Asylum Office Fails Asylum Seekers*, A Report by the Refugee and Human Rights Clinic at the University of Maine School of Law, Immigrant Legal Advocacy Project, American Civil Liberties Union of Maine, and Basileus Zeno, Ph.D Political Science at Amherst College (Mar. 2022), <https://mainelaw.maine.edu/news/report-boston-asylum-office-violates-rights-of-asylum-seekers/>.

18 USCIS, Policy Alert: Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners (Jun. 14, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf>.

19 USCIS, Policy Alert: Special Immigrant Juvenile Classification and Deferred Action (Mar. 7, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.

20 USCIS, Policy Alert: Updating General Guidelines on Maximum Validity Periods for Employment Authorization Documents based on Certain Filing Categories, Feb. 7, 2022, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220207-EmploymentAuthorizationValidity.pdf>.

While progress has been made, USCIS must allow other lawfully present individuals to apply for EADs. EADs are essential to the self-sufficiency, protection, and contributions of noncitizens, yet many lawfully-present individuals cannot apply for an EAD under current regulations. It appears that USCIS regards many EAD applicants with suspicion and applies a presumption that their presence in the United States is based solely on a desire to work. It is this insidious presumption that has led to many EAD applicants being caught in yearslong delays of their underlying benefit application, which in turn frustrates their ability to eat, seek dignified shelter, and retain immigration counsel. USCIS needs to address this issue, recognizing that an EAD allows a vulnerable noncitizen to work lawfully and pay taxes, and avoid potentially exploitative underground labor.

USCIS should also eliminate the “asylum clock” for asylum pending EADs. While the Immigration and Nationality Act (INA) limits eligibility for asylum pending EADs to 180 days after filing, the statute does not require a clock to stop and start with “applicant-caused delays.” It is unfair to prevent asylum seekers from working legally for reasons such as a postponement to seek counsel, especially when there is a shortage of pro- and low-bono counsel for asylum seekers, or a change in address from one Asylum Office’s jurisdiction to another, especially when asylum seekers are forced to be transient out of economic necessity and yearslong agency delays. In addition to the harm caused to the asylum seeker by the “clock,” this system – in which USCIS officers need to count days, determine the cause of any delay, and troubleshoot the asylum clock when it is wrongly stopped or not restarted – is a poor use of limited USCIS resources, which should be expended on adjudicating applications.

The current EAD system is broken with backlogs so long in many categories that noncitizens cannot work while waiting for their EADs to be renewed. USCIS has acknowledged this reality by providing for auto-extensions of 540 days for certain categories of EADs.²¹ However, DACA recipients are excluded from those who benefit from this measure and, as such, they risk unemployment regularly even after timely filing a renewal application.

Additionally, RTSAAWG commends USCIS for extending²² the validity period of EADs for certain categories but urges USCIS to extend validity periods for more categories of applicants and to extend validity periods beyond two years whenever possible. EADs that are valid for a longer period of time allow noncitizens to work without the constant threat of losing their employment. Moreover, longer EAD validity periods would be more efficient for USCIS and aid in cutting EAD adjudicatory workload, which would help in reducing the backlogs the agency is currently experiencing. Longer EAD validity periods would also curtail the need for USCIS to respond to EAD-related questions and complaints, thereby reducing the strain on already overburdened staff.

²¹ USCIS, Automatic Employment Authorization Document (EAD) Extension, <https://www.uscis.gov/eadautoextend> (last updated May 17, 2022).

²² USCIS, Policy Alert: Updating General Guidelines on Maximum Validity Periods for Employment Authorization Documents based on Certain Filing Categories (Feb. 7, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220207-EmploymentAuthorizationValidity.pdf>.

DECREASE THE BACKLOGS

While Congress has provided specific appropriations to address backlogs for Fiscal Year 2022 and is poised to do so again for Fiscal Year 2023, the agency still needs to significantly increase its hiring in order to return to reasonable processing times.

DECREASE THE BACKLOGS

The Biden administration inherited unprecedented backlogs in virtually every category of benefit application from the previous administration. Many backlogs were exacerbated by the COVID-19 pandemic, significant insolvency issues, and reductions in staffing and the ability of staff to conduct interviews. Much of the backlog was caused by Trump-era policies designed to slow down adjudications and target applicants for enforcement. Such efforts included needless, duplicative interviews and absurdly long forms containing questions that are not legally required to adjudicate the benefit.

The Trump administration also made a regular practice of transferring USCIS funds to ICE and CBP to ramp up enforcement. As a primarily fee-funded agency, it is especially critical that USCIS use its limited funds exclusively to serve its own mission of adjudicating benefits. As such, USCIS should not transfer funds paid by applicants for the purpose of adjudicating benefits to any other agency for enforcement purposes, particularly when USCIS processing times and backlogs are at unprecedented levels. The Biden administration should forbid the Trump-era practice of transferring USCIS funds and personnel to CBP and ICE.

While Congress has provided specific appropriations to address backlogs for Fiscal Year 2022 and is poised to do so again for Fiscal Year 2023, the agency still needs to significantly increase its hiring in order to return to reasonable processing times. The need to hire more officers reinforces many of the issues addressed elsewhere in this report, such as the need for training and supervision of officers. To address the backlogs adequately, it is also imperative that USCIS eliminates unnecessary processes, such as mandatory interviews in routine cases, to make best use of its limited resources.

NO OR INSUFFICIENT ACTION TAKEN

Reduce Program-Specific Backlogs

As USCIS implements its backlog reduction plan, the agency must invest more resources into reducing backlogs for cases where the applicants are, by definition, vulnerable, such as applicants for U and T visas, VAWA protection, and SIJS. Further, where deferred action during the pendency of such an application is available, USCIS must ensure that deferred action applications are adjudicated within six months instead of subjecting these applicants to multi-year delays for work authorization and protection from removal. For example, U visa applicants currently face a 59-month waiting period simply to receive deferred action, while the case processing time for an I-918 is 61.5 months.²³ Making applicants wait for deferred action almost as long as it takes to process a backlogged application renders the deferred action grant almost moot. Further, though USCIS has put in place a bona fide application review process for U visa applicants to facilitate issuance of work authorization,²⁴ reports from advocates indicate that the new process is not resulting in significantly faster issuance of work authorization.

²³ USCIS, Check Case Processing Times, <https://egov.uscis.gov/processing-times/> (last accessed Jun. 3, 2022).

²⁴ USCIS, U Nonimmigrant Status Bona Fide Determination Process FAQs, <https://www.uscis.gov/records/electronic-reading-room/u-nonimmigrant-status-bona-fide-determination-process-faqs> (last updated Sept. 23, 2021).

Religious visa worker categories also face lengthy delays and could benefit from premium processing in this category, as it falls under the employment-based visa system. Expanding the availability of premium processing will both allow religious institutions to retain valuable employees, and bring more funds into USCIS which can be used to adjudicate unfunded applications such as asylum.

The protection of vulnerable groups while also addressing backlogs calls for creative problem solving by USCIS and its recent creation of a new EAD eligibility category for noncitizens with pending U visa applications proves that USCIS is capable of implementing creative strategies for addressing backlogs.

NO OR INSUFFICIENT ACTION TAKEN

Shorten and Simplify USCIS Forms

Many common USCIS forms, including the I-485, N-400, I-765,²⁵ and even the G-28, have increased substantially in length and complexity over the past few years. For example, the I-602 waiver form used to be one page, and optional. Now the form is mandatory and ten pages long. These longer forms take substantially more time for advocates and applicants to complete. Further, longer forms with more complex questions pose a barrier for pro se applicants. USCIS has shown a willingness to revise forms for clarity and concision.²⁶ In October 2021, USCIS revised Form N-648 to be more concise and clear and plans to replace the old form in the near future. The length of the form was cut in half and questions were revised to be simpler and clearer for the intended audience (in this case, medical professionals signing disability certifications). USCIS should follow suit and shorten and simplify the language in other forms so that pro se applicants are not unduly burdened by the overt complexity of forms.

Some questions in these longer forms are not legally relevant to the form's adjudication, whereas others are vague and confusing for applicants. Questions such as "have you ever committed a crime for which you were not arrested" lay a trap for applicants who may feel compelled to disclose negative information that is not criminalized or relevant to eligibility for a form of relief.²⁷ Furthermore, this question forces pro se applicants/petitioners to make legal conclusions that they are not qualified to make. If the questions are unclear, it is more likely that an applicant will misunderstand them and respond incorrectly. This could lead to adverse action on the application or prompt USCIS to send an unnecessary Request for Evidence (RFE). Other questions relate to legal rules that have been vacated by courts, such as asylum-pending EAD questions, again leaving applicants in an untenable position of not knowing whether they must answer or not.

Forms that are long and confusing create barriers for applicants and create unnecessary additional work for USCIS officers. Indeed, language aside, the more questions included on a form, the longer it takes

²⁵ USCIS is seeking to extend the current I-765 form without change, in spite of the fact that numerous questions on the form seek information about asylum seekers that is no longer legally relevant to the adjudication of their EAD applications. 87 Fed. Reg. 19696 (Apr. 5, 2022), <https://www.federalregister.gov/d/2021-21759>.

²⁶ 86 Fed. Reg. 55630 (Oct. 6, 2021), <https://www.federalregister.gov/d/2021-21759>.

²⁷ 86 Fed. Reg. 55630 (Oct. 6, 2021), <https://www.federalregister.gov/d/2021-21759>.

²⁸ See Form N-400, 22 ("Have you EVER committed, assisted in committing, or attempted to commit, a crime or offense for which you were NOT arrested?"); see also Form I-485, 26 ("Have you EVER committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime)?").

for an officer to review the form both before and during an interview. We note that USCIS officials have stated in recent stakeholder meetings that reviews of the forms are a needed improvement. We urge USCIS to expedite form review. A review and revision of all forms is a necessary step to create equity for applicants and to increase efficiency in USCIS adjudications.

WORK STILL TO BE DONE

Eliminate Unnecessary Mandatory Interviews and Simplify Necessary Interviews

Under the Trump administration, more application types were subject to mandatory interviews and the average interview length increased dramatically. For example, since the Trump administration, naturalization interviews more than doubled from 20-30 minutes to 60-90 minutes.²⁸ Many interviews became interrogations with officers apparently looking for fraud or misrepresentation and asking questions on underlying applications that were approved years ago.²⁹ Through training and strong supervision, officers' perspectives must shift from an assumption that noncitizens applying for benefits are likely engaging in fraud to a belief in USCIS's mission to grant benefits to those who are eligible. Further, deference to previous approvals should be given in the adjudication of new applications which will reduce the evidentiary burden on applicants and the administrative burden on USCIS officers. Again, this cultural shift must start at the highest levels of USCIS and each office director must make clear to all employees that they work for a benefits administration agency, not an enforcement agency.

USCIS should also review the purpose of its interviews and determine whether officers need to spend valuable interview time simply repeating every question and answer on a form. For example, asylum officers typically spend more than 30 minutes at the beginning of each interview reviewing every piece of biographic information. At least in cases with legal representation, officers could ask for any updates or corrections in writing at the beginning of the interview. Immigration courts employ this procedure and this aspect of most asylum individual hearings generally take only a few minutes.

While the Biden administration has announced that it will take a risk-based approach and waive interviews for certain I-751³⁰ cases and has ended certain mandatory interviews for I-730 applications, vestiges of the Trump administration remain. Under the Trump administration, both the petitioner and the beneficiary were required to attend interviews. While the Biden administration has rescinded the policy requiring petitioners to be interviewed,³¹ USCIS should not require interviews of all beneficiaries. Beneficiaries of I-730s are not required to have an independent fear-based claim. Instead, the only issue to be adjudicated on the I-730 is the existence of the family relationship. Thus, the vast majority of I-730s can and should be granted

28 Randy Capps & Carlos Echeverría-Estrada, A Rockier Road to U.S. Citizenship? Findings of a Survey on Changing Naturalization Procedures, Migration Policy Institute, Jul. 2020, https://www.migrationpolicy.org/sites/default/files/publications/MPI-Naturalization-Changes_Final.pdf.

29 *Id.*

30 USCIS, *USCIS Implements Risk-Based Approach for Conditional Permanent Resident Interviews*, Apr. 7, 2022, <https://www.uscis.gov/newsroom/news-releases/uscis-implements-risk-based-approach-for-conditional-permanent-resident-interviews>.

31 USCIS, *USCIS Reverts to Previous Criteria for Interviewing Petitioners Requesting Derivative Refugee and Asylee Status for Family Members* (Dec. 10, 2021), <https://www.uscis.gov/newsroom/alerts/uscis-reverts-to-previous-criteria-for-interviewing-petitioners-requesting-derivative-refugee-and->

without an interview and USCIS should only interview I-730 beneficiaries if there is a potential ground of inadmissibility or bar to asylum in the case record. Until USCIS eliminates mandatory interviews for I-730s, family members of asylees will continue to languish in the backlog created by the Trump administration.

WORK STILL TO BE DONE

Make the RFE Process More Efficient

The rescission³² of the Trump-era policy allowing USCIS officers to deny applications without issuing an RFE or Notice of Intent to Deny (NOID), was a welcome change that RTSAAWG applauds. Though the agency has returned to the 2013 RFE practice and policy instead of summarily denying applications with no opportunity to respond to deficiencies, the agency's current RFE practice still needs to be reformed. The RTSAAWG members acknowledge that, in some instances, USCIS will need further evidence to complete an adjudication. However, USCIS sends many RFEs that are overbroad, confusing, or inapplicable to the particular applicant or petitioner. USCIS often sends boilerplate RFEs that do not adequately inform the noncitizen what evidence is mandatory, or that seek evidence that the noncitizen has already provided. For example, USCIS often requests evidence such as juvenile records or expunged criminal records, to which it is not legally entitled. Furthermore, many RFEs characterize evidence submitted by applicants and petitioners as "self-serving," which is a legally meaningless term in the context of a noncitizen who is required to submit evidence showing their eligibility for a benefit. Some RFEs contain remnants of a poorly edited RFE template that ask for evidence that the noncitizen has already provided to USCIS.

Unnecessary or overbroad RFEs slow down the adjudication process in addition to imposing further burden on applicants. USCIS should review and revamp all RFE templates to eliminate confusing and outdated language to ensure that the evidence sought is clear and legally necessary. Prior to sending an RFE, USCIS officers should review RFEs for accuracy and applicability to the specific case.

WORK STILL TO BE DONE

Avoid Unnecessary Denials

Unnecessary denials based on non-substantive factors such as late filing are inefficient because they cause applicants to move to reopen or to apply from scratch when an officer may have already put time into becoming familiar with the record. As such, USCIS should adopt the "mail box rule" considering applications and responses to RFEs timely filed on the date of mailing. Since the onset of COVID, there have been delays both at the U.S. Postal Service and even at overnight couriers which may no longer guarantee overnight delivery which has prejudiced many applicants. While USCIS has instituted some filing flexibilities as a result of COVID,³³ in its last extension of these flexibilities, USCIS noted that they would likely not be extended beyond July 25, 2022. RTSAAWG believes that basing compliance with RFE deadlines on the date

³² USCIS, Policy Alert: Requests for Evidence and Notices of Intent to Deny (Jun. 9, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210609-RFEs%26NOIDs.pdf>.

³³ USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (Mar. 30, 2022), <https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1>

the evidence is mailed rather than the date it is received, would yield fairer results and would only delay USCIS's adjudication by a few days, while preventing the expenditure of resources on motions to reopen when applications are denied due to failures of the postal service or courier services.

NO OR INSUFFICIENT ACTION TAKEN

Eliminate Mandatory Marijuana Denials

The USCIS Policy Manual puts noncitizens at risk of a finding of inadmissibility³⁴ or lack of “good moral character” for engaging in activities, such as working at a marijuana dispensary or using marijuana, where it is legal to do so in the state where they reside. Indeed, as more states legalize or decriminalize marijuana, President Biden pardons people with marijuana convictions,³⁵ and the U.S. House of Representatives passes the Marijuana Opportunity Reinvestment and Expungement (MORE) Act removing marijuana³⁶ from the list of scheduled substances and eliminating criminal penalties for those who make, distribute or possess marijuana, noncitizens are likely unaware of the negative implications of marijuana-related activities on their immigration status.

USCIS should update the Policy Manual to allow for activity that is legal under state law and stop penalizing applicants for engaging in behavior that is lawful in many jurisdictions. Many noncitizens would not know these activities could affect their immigration options, especially if the noncitizen is proceeding pro se before USCIS. In light of our society's increasing acceptance of marijuana, USCIS should update the Policy Manual to align it with quickly evolving societal norms on marijuana.

NO OR INSUFFICIENT ACTION TAKEN

Eliminate Extreme Vetting

USCIS should end the “extreme vetting” mandated in the USCIS Policy Manual. For example, pursuant to this guidance, USCIS officers are required to review underlying lawful permanent resident (LPR) applications for all naturalization applicants. This added review wastes valuable USCIS resources by seeking to relitigate issues that have already been resolved; discourages LPRs from pursuing naturalization, especially if they cannot afford legal representation on their naturalization application; and reinforces the perception of USCIS as an enforcement agency rather than a benefits agency. In many instances, LPRs were represented on their adjustment of status application or consular process so both counsel and USCIS would have thoroughly assessed the underlying application before granting relief. In some cases, re-adjudication also risks the re-traumatization of applicants who are adjusting status or naturalizing as the result of a survivor-based relief. Ultimately, extreme vetting exacerbates the growing backlogs while wasting limited USCIS resources and placing an undue evidentiary burden on applicants.

³⁴ See INA § 212(a)(2)(l)(ii).

³⁵ Dario Sabaghi, *Biden Grants Pardons And Commutations To People With Marijuana Convictions*, Forbes, Apr. 28, 2022, <https://www.forbes.com/sites/dariosabaghi/2022/04/28/biden-grants-pardons-and-commutations-to-people-with-marijuana-convictions/?sh=ff46e692b9ce>.

³⁶ Marijuana Opportunity Reinvestment and Expungement Act, H.R. 3617, 117th Cong. (2022) <https://www.congress.gov/bill/117th-congress/house-bill/3617>.

PROGRESS MADE***Reuse All Previously Captured Biometrics***

Many applications, both before USCIS and EOIR, require biometrics from the noncitizen.³⁷ USCIS should update previously captured biometrics instead of requiring an applicant/petitioner to attend a biometrics appointment at an Application Support Center Office every time USCIS needs to run biometrics. USCIS recently announced on a stakeholder engagement call that it has reused biometrics to process 2.5 million applications, thereby indicating its capacity and willingness to reuse previously captured biometrics. On the same call, USCIS officials stated that this practice has helped to reduce the pending biometrics backlog significantly. Requiring multiple fingerprints from applicants often requires applicants/ petitioners to take leave from work, find childcare, and travel long distances, which is often expensive, and is unnecessary where the agency already has biometrics on record. Additionally, it is poor use of USCIS resources to staff Application Support Centers to capture biometric data that is already in the system. As USCIS has recognized, updating previously captured biometrics “should maximize efficiencies for both the government” and “for individuals in EOIR proceedings by eliminating the costs and delays created by requiring individuals to provide new fingerprints when, in most cases, fingerprint results can be updated with information already available in either an ICE or USCIS system.”³⁸

USCIS should continue to reuse biometrics and expand the use to all applications where it is feasible to do so. As the positive effects have already been established, there is no reason for USCIS to not continue in this practice and to expand it nationally on a permanent basis.

³⁷ USCIS Policy Manual, Chapter 2 - Biometrics Collection, <https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2> (last updated May 25, 2022).

³⁸ USCIS, Fingerprint Check Update Request: Agreement between USCIS and ICE, <https://www.uscis.gov/forms/fingerprint-check-update-request-agreement-between-uscis-and-ice> (last updated Jul. 27, 2016).

INCREASE ACCESS TO BENEFITS

While the Biden administration has prioritized legislative changes and improvements to the immigration laws, passage of a comprehensive immigration bill has been elusive.

INCREASE ACCESS TO BENEFITS

While the Biden administration has prioritized legislative changes and improvements to the immigration laws,³⁹ passage of a comprehensive immigration bill has been elusive. We call on the Biden administration, and USCIS in particular, to implement broad changes that will increase access to benefits for noncitizens; in particular changes that make it easier for lawful permanent residents to naturalize, and for noncitizens to obtain the stability of lawful permanent residence where possible.

WORK STILL TO BE DONE

Increase Access to Naturalization

President Biden's Executive Order specifically called on agencies to "eliminate barriers in and otherwise improve the existing naturalization process."⁴⁰ 86 Fed. Reg. 8278. RTSAAWG members made numerous common sense proposals to increase access to naturalization. Yet substantive and logistical barriers to naturalization remain.

While USCIS has clarified that USCIS will not penalize an applicant who unknowingly or unwilfully registers to vote through negative good moral character finding,⁴¹ this clarification is extremely narrow and therefore unhelpful to many potential U.S. citizens. Furthermore, *Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019), which USCIS incorporated into the Policy Manual⁴² and held that noncitizen need not intend to falsely claim citizenship to be found inadmissible under INA 212(a)(6)(C)(ii) of the Act, continues to prejudice naturalization applicants. Under *Matter of Zhang* and the overall expansive application of false claims to U.S. citizenship, even those who unknowingly or unwillingly made a false claim to U.S. citizenship as children are in danger of summoning the life-long penalties of this ground of inadmissibility.

Under current policy, USCIS provides temporary evidence of LPR status in the form of an ADIT stamp where applicants filed the Form N-400 more than 6 months before the expiration of their green card. However, those filing for citizenship with fewer than 6 months left on their green card but stuck in the backlog are forced to submit an I-90.⁴³ The "green card" does not in itself confer status to LPRs and whereas I-90s once cost \$110 to file, these now cost \$455.⁴⁴ This process costs the applicant money and time, and uses USCIS resources to first adjudicate an I-90 and issue a card that is useless once they naturalize. The Policy Manual signals that this requirement is an unnecessary barrier to naturalization and that a free alternative exists.

39 The White House, Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>.

40 Exec. Order No. 14012, Fed. Reg. 8278 (Feb. 5, 2021), <https://www.federalregister.gov/d/2021-02563>.

41 USCIS, Policy Alert: Naturalization Eligibility and Voter Registration Through a State's Benefit Application Process (May 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210527-VoterRegistration.pdf>.

42 USCIS Policy Alert: False Claim to U.S. Citizenship Ground of Inadmissibility and Matter of Zhang (Apr. 24, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200424-FalseClaimToUSCitizenship.pdf>.

43 USCIS Policy Manual, Chapter 2 - Lawful Permanent Resident Admission for Naturalization, <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-2#footnotelink-16> (last updated May, 25, 2022).

44 AILA, INS Interim Process for I-551 Renewal (Sept. 29, 1999) <https://www.aila.org/infonet/ins-interim-process-for-i-551-renewal>; USCIS, I-90, Application to Replace Permanent Resident Card (Green Card), <https://www.uscis.gov/i-90> (last updated Jan. 25, 2022).

Forcing an LPR to renew their “green card” before or simultaneous with naturalizing is therefore inefficient, unnecessary, and delays attainment of U.S. citizenship. To avoid this unnecessary outcome, USCIS should issue automatic I-551 extensions for twelve months from the expiration date of the “green card” upon submission of the N-400. This mirrors the automatic 12-month validity extension that is granted upon filing of an I-90, and is similar to the automatic extension of residence granted upon filing Form I-751s.

USCIS also frequently cites the “unlawful acts” provision of the Policy Manual to deny naturalization to individuals. Unfortunately, this provision is ill-defined and has the potential to be abused by officers. Under this provision, USCIS has denied some applicants naturalization for not filing an AR-11, arrests in which all charges were dismissed on the merits, or minor issues with tax returns. USCIS should update its Policy Manual to make clear that the unlawful acts provision is not a vessel for a fishing expedition and should not be applied liberally to deny naturalization. At a minimum, USCIS should adopt nationwide the Ninth Circuits’ requirement that the officer must consider countervailing evidence of good moral character before denying naturalization based solely on an alleged “unlawful act.”⁴⁵

NO OR INSUFFICIENT ACTION TAKEN

End Denaturalization Efforts

For many immigrants, becoming a U.S. citizen means finally feeling a sense of stability and belonging in the United States yet the prospect of denaturalization strips them of these feelings. The DOJ under the Trump administration ramped up denaturalizations 600 percent from 2018 to 2020,⁴⁶ seemingly designed to ensure that naturalized citizens could never feel truly secure in their status.⁴⁷ In 2018, USCIS announced that it intended to refer approximately 1,600 cases to the DOJ for prosecution and announced the creation of a new office dedicated to reviewing and referring denaturalization cases to DOJ. Unsurprisingly, these denaturalization efforts have had a disparate racial impact with black and brown noncitizens being the main targets for denaturalization.⁴⁸ Of course, the disparate impact of these denaturalization efforts on people of color conflicts with President Biden’s “Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”⁴⁹

45 See *Hussein v. Barrett*, 820 F.3d 1083 (9th Cir. 2016).

46 “Of the 228 denaturalization cases that the department has filed since 2008, about 40 percent of them were filed since 2017, according to official department numbers. And over the past three years, denaturalization case referrals to the department have increased 600 percent.” Katie Benner, *Justice Dept. Establishes Office to Denaturalize Immigrants*, *The New York Times*, Jun. 17, 2020, <https://www.nytimes.com/2020/02/26/us/politics/denaturalization-immigrants-justice-department.html>.

47 DOJ, *The Department of Justice Creates Section Dedicated to Denaturalization Cases* (Feb. 26, 2020). <https://www.justice.gov/opa/pr/department-justice-creates-section-dedicated-denaturalization-cases/>

48 See Laura Bingham, *Unmaking Americans: Insecure Citizenship in the United States*, *Open Society Justice Initiatives*, 2019, <https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcf37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf>.

49 The White House, *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (calling on each agency to conduct an “Equity Assessment” of whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.)

We are gratified that the Biden Administration has rescinded many of the Trump-era policies concerning denaturalization and redirected some resources that were previously dedicated to denaturalization enforcement. However, the administration continues to operate without a clear denaturalization policy and continues to fund and utilize dragnet information technology systems to mine for private data. The administration and USCIS should commit to transparency in its policies and use of technology to target individuals for denaturalization.

WORK STILL TO BE DONE

Eliminate Draconian Barriers to Lawful Status

The members of the RTSAAWG identified numerous changes that USCIS could make to its Policy Manual that would lead to greater access to benefits, especially to lawful permanent residence, for applicants.

First, USCIS should eliminate the “permanent” bar for minors, who likely had no ability to decide when and whether to enter the United States, and lacked intent to violate U.S. immigration laws. The language in INA § 212(a)(9)(C)(i)(I) concerning the “permanent” unlawful presence bar resembles the INA language for the 3 year/10 year bar yet USCIS exempts minors from the harsh consequences of the 3 year/10 year bar while subjecting them to the “permanent” bar. Eliminating the “permanent” bar for minors would lead to fairer results for those minors who are now contributing adult residents of the United States and have no option to legalize their status.

USCIS should amend the Policy Manual to focus on intent issues for false claims to U.S. citizenship. The false claim bar on benefits is one of the harshest penalties in the INA, and USCIS could amend the Policy Manual to require a showing of intent to misrepresent or commit fraud and remove citations to *Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019), which defines false claims to U.S. citizenship as simply needing an act and no mens rea. In one well-publicized story, a border patrol agent who thought he was born in the United States and therefore a citizen, learned that he was actually born in Mexico. Even though he had no idea his parents had lied to him, his applications for permanent status were denied based on his false claim to citizenship.⁵⁰

While USCIS has addressed the scenario of noncitizens inadvertently registering to vote through voter registration drives or when applying for drivers’ licenses,⁵¹ USCIS can do more to prevent unjust and lifelong consequences for unintentional false claims to U.S. citizenship, especially when related to claims by minors who legally lack the ability to consent.

USCIS should also expand the I-601A waiver to potentially waive inadmissibility issues beyond the unlawful physical presence ground. The I-601A allows noncitizens with unlawful presence to seek pre-approval on a waiver of unlawful presence so that their wait time is reduced when they seek to consular

⁵⁰ John Burnett, *He worked as a U.S. immigration agent for 18 years — as an undocumented immigrant*, NPR, Oct. 14, 2021, <https://www.npr.org/2021/10/14/1046140327/he-worked-as-a-u-s-immigration-agent-for-18-years-as-an-undocumented-immigrant>.

⁵¹ USCIS, Policy Alert: Naturalization Eligibility and Voter Registration Through a State’s Benefit Application Process (May 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210527-VoterRegistration.pdf>.

process and re-enter the United States. The Policy Manual narrowly allows only unlawful presence to be waived through this procedure, but there is no substantive reason that USCIS could not expand the I-601A to pre-approve waiver of other grounds of inadmissibility, thereby allowing a broader segment of the undocumented population to apply for permanent status without risking yearslong waits outside the United States. USCIS should also focus backlog reduction efforts on the I-601A. Practitioners are reporting multi-year wait times for adjudication of the waiver which slows down consular processing, leading to even longer processing times.

USCIS should update the Policy Manual to remove recent additions that have made it more difficult to demonstrate good moral character. For example, the Policy Manual requires findings that applicants lack good moral character based on violations of federal marijuana laws, even when the applicant has not violated state laws. Likewise, the Policy Manual codified the *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019), decision finding that two DUI convictions generally means lack of good moral character for affirmative benefits, even though that decision arose in the context of cancellation of removal, where Congress intentionally set a higher standard. Instead, USCIS should engage in case-by-case analysis of all relevant factors in assessing good moral character, rather than applying bright line rules that may lead to unjust results.

USCIS should rescind its practice of denying I-730s for beneficiaries with a prior removal order. The Trump administration instituted this policy and while other improvements to I-730 policy have been made under the Biden administration, it seems that USCIS is still making these beneficiaries known to ICE to reinstate removal. It also appears that if ICE declines to reinstate, USCIS will move forward with the adjudication of the I-730. However, if ICE proceeds to reinstate a prior order of deportation or removal, USCIS defers to ICE and will not adjudicate the I-730. USCIS should adjudicate all I-730s, recognizing the vulnerable nature of asylum seekers and refugees, instead of making referrals to ICE. Preventing family members of asylees and refugees, many of whom have lived in the United States for years and come from dangerous countries, from a clear pathway to legalization adds to the undocumented population in the United States and exacerbates family separation.

NO OR INSUFFICIENT ACTION TAKEN

Revamp the Contact Center

The Trump administration dismantled the InfoPass system whereby noncitizens or their counsel could make appointments online to meet with a local USCIS officer to address an urgent issue (such as a need for emergency travel documents) or seek to resolve intractable issues requiring human intervention. In place of InfoPass, the Trump Administration established a “Contact Center” which advocates have universally found to inhibit the resolution of issues rather than help. For example, legal representatives often receive call backs at inconvenient times before or after business hours, which makes it unlikely that the legal representative has the case file with them or client information readily available. Without this information on hand, the Contact Center is unable and unwilling to resolve the issue. The Contact Center erects unreasonable hurdles and a nearly impenetrable wall between legal representatives and officers who can actually answer questions on specific cases. By the time the Contact Center assists a legal representative, if at all, both USCIS and the legal representative have wasted significant resources. While not every issue requires in-person assistance through an InfoPass

Appointment, USCIS should recognize that some issues need in-person assistance and should allow for the flexibility to schedule such an appointment with the field office directly, rather than running all requests through the Contact Center.

WORK STILL TO BE DONE

Adopt a Simpler Fee Waiver Process

The Biden Administration did not pursue appeal of a federal ruling enjoining new USCIS fees. However, USCIS has indicated that it intends to issue a new fee rule in 2022 and the new rule is expected in the coming months.

RTSAAWG urges the Biden administration to implement a simpler fee waiver process that broadens the qualification criteria to allow applicants to access and submit the fee waiver application online before it raises USCIS fees. Many lower income people face difficulties qualifying for a fee waiver because they do not receive any means-tested benefits or have incomes that are marginally over the income threshold, which does not accurately reflect the reality of poverty in the United States and makes no accounting for differences in locality. The effect is very often that eligible applicants decline to apply for a benefit due to the cost of the benefit.

Moreover, fee waiver applicants should have access to an easy online filing system, especially when they can file the benefit application itself online. For example, a naturalization applicant who can submit an N-400 online should also be able to access and submit a fee waiver online. Otherwise, limited income naturalization applicants are shut out of the more efficient online filing system solely because of their economic status and potentially subject to longer processing times.

In general, allowing noncitizens to submit all fees to USCIS online would be helpful to many. Noncitizens faced many challenges in paying fees for applications that are adjudicated by the immigration court, such as motions to reopen and motions to reconsider, after the Trump administration forced applicants to make an appointment through the USCIS Contact Center to fee in a motion. This telephone scheduling process was extraordinarily burdensome and time-consuming for legal representatives and for pro se applicants and therefore led to delays in filing motions to reopen that automatically triggered a stay of removal. The Biden administration has since addressed this concern by allowing non-citizens or their legal representative to make an appointment online to access a self-help kiosk at the local USCIS District Office to pay the fee and get the required receipt to include with the filing.⁵² Although RTSAAWG recommends that USCIS to institute a system that allows noncitizens to pay these EOIR application fees online and receive receipts for payment like the current system for paying USCIS application fees, this is a positive step that aligns with the strict motion to reopen deadlines and the needs of detained noncitizens who can benefit from the automatic stay of removal protections triggered by the filing of certain motions to reopen. Indeed, an increasing number of USCIS forms may be filed and paid through the USCIS website, which is a step in the right direction.

52 USCIS Field Offices, <https://www.uscis.gov/about-us/find-a-uscis-office/field-offices> (last updated May 4, 2022).

PROGRESS MADE***Issue Public Charge Regulations Restoring and Improving Upon Prior Guidance***

The Trump administration proposed a public charge rule that allowed USCIS to deny legal status to immigrants whose families used or were deemed likely to use publicly funded programs. Litigation ensued leading to national injunctions against these rules. RTSAAWG applauds the Biden administration for not pursuing an appeal of *Cook Cty., Illinois v. McAleenan*, 417 F. Supp. 3d 1008 (N.D. Ill. 2019), *aff'd on other grounds sub nom. Cook Cty., Illinois v. Wolf*, 962 F.3d 208 (7th Cir. 2020) and thus keeping the court's order enjoining the Trump era public charge rules in place. RTSAAWG members appreciate USCIS's return to prior agency guidance on public charge adjudications and call on the agency to publish regulations that restore prior guidance and improve upon it, thereby codifying the guidance and making it more difficult to undo in the future.⁵³ The administration must also prioritize robust community outreach to address the continued negative impacts on immigrant communities caused by the Trump administration's rule.

PROGRESS MADE***Issue Temporary Protected Status (TPS) and Deferred Enforced Departure (DED) Designations/Redesignations***

TPS is a vital protection for noncitizens from countries to which they cannot return because of war, environmental disaster, or other dangerous conditions. RTSAAWG applauds the Biden administration for using its executive authority to issue TPS and DED designations and redesignations for select countries including Cameroon, Afghanistan, Ukraine, South Sudan, Sudan, and Haiti.⁵⁴ RTSAAWG calls on the administration to designate TPS or DED, or renew TPS and DED designations for countries where it is not currently safe to return, including El Salvador, Ethiopia, Guatemala, Guinea, Haiti, Honduras, Liberia, Lebanon, Mauritania, Nicaragua, Nepal, Sierra Leone, and other countries.⁵⁵ These countries are currently experiencing conditions that satisfy one or more conditions of TPS under 8 U.S.C. §1254a.

Ensuring the safety and stability of noncitizens from countries to which they cannot safely be returned will be especially important as ICE OPLA implements a new prosecutorial discretion initiative,⁵⁶ which will

53 See Protecting Immigrant Families Campaign, Comments in Response to Proposed Rulemaking, Public Charge Ground of Inadmissibility (Apr. 25, 2022), <https://protectingimmigrantfamilies.org/wp-content/uploads/2022/04/Sign-On-Comment-for-Submission.pdf>.

54 USCIS, Temporary Protected Status, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated May 20, 2022).

55 TPS-DED Administrative Advocacy Table, Apr. 15, 2022, https://docs.google.com/document/d/1Rv8SHysewBQwec1H5AIKjICW76x_duBu/edit; *The Leadership Conference on Civil and Human Rights, 165 Organizations Call for Immediate 18-month Designation of Temporary Protected Status or Deferred Enforced Departure for Mauritania*, Feb. 23, 2021, <https://civilrights.org/resource/163-organizations-call-for-immediate-18-month-designation-of-temporary-protected-status-or-deferred-enforced-departure-for-mauritania/#>; *Amnesty International, 84 Civil Society Organizations Call on Biden Administration to Designate New 18-Month TPS for Ethiopia*, Aug. 4, 2021, <https://www.amnestyusa.org/our-work/government-relations/advocacy/amnesty-international-and-civil-society-organizations-call-for-tps-for-ethiopia-080421/>.

56 Memorandum from Kerry E. Doyle, Principal Legal Advisor, ICE, Office of the Principal Legal Advisor (OPLA), to All Att'y's, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (Apr. 3, 2022), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf.

result in thousands of noncitizens having their cases dismissed from immigration court. Many of these noncitizens come from countries that are in crisis or lack the infrastructure to accommodate their return. At the same time, the dismissal of pending removal proceedings will greatly increase the undocumented population in the United States, returning people to “the shadows”⁵⁷ President Obama described when he encouraged those eligible for DACA to apply. Expanding access to TPS would serve the dual purpose of protecting countries that are not equipped to receive their citizens back from having to do so, and allowing long-term noncitizen residents to register with the U.S. government and receive employment authorization while foregoing the immediate need to pursue relief in removal proceedings in our already overburdened immigration courts.

There is also an acute need for USCIS to provide adequate resources to actually adjudicate the TPS applications. For example, despite the designation of Venezuela for TPS, as of the fourth quarter of fiscal year 2021, only 15,788 applications had been adjudicated after 220,673 applications had been filed.⁵⁸ Unless USCIS can quickly adjudicate these applications, the value of receiving temporary protection is greatly diminished.

NO OR INSUFFICIENT ACTION TAKEN

Rescind Guidance that Erects Barriers to Permanent Status for Temporary Protected Status Holders

USCIS should take steps to expand pathways to stability for TPS holders. In 2020, the Administrative Appeals Office adopted the decision *Matter of Z-R-Z-C*,⁵⁹ which, contrary to prior USCIS interpretation of the impact of travel on TPS advance parole on adjustment eligibility, holds that a return to the United States pursuant to TPS travel authorization does not satisfy section 245(a) of the INA. USCIS applies *Matter of Z-R-Z-C* to TPS holders who travel on advance parole on or after August 20, 2020. While there is currently federal litigation pending to challenge this holding,⁶⁰ USCIS does not need to await the outcome of that case to change its policy. The AAO is housed within USCIS and USCIS has the authority to rescind this decision immediately and should do so.

WORK STILL TO BE DONE

Expand DACA Protections

DACA has provided vital protections to noncitizens brought to the United States as minors, allowing them to integrate into the American fabric and obtain work authorization. This administration should increase its protections for DACA recipients and remove barriers to applying for DACA. These suggestions include

57 Jim Acosta and Stephen Collinson, *Obama: ‘You can come out of the shadows’*, CNN, Nov. 21, 2014, <https://www.cnn.com/2014/11/20/politics/obama-immigration-speech/index.html>.

58 See USCIS, Form I 821, Application for Temporary Protected Status - Receipts, Approvals, Denials, and Pending by Country of Designation Fiscal Year 2021 Q1 - Q4, https://www.uscis.gov/sites/default/files/document/data/Form_I-821%2CAApplication_for_Temporary_Protected_Status_FY_2021.pdf.

59 USCIS, Policy Memorandum: *Matter of Z-R-Z-C*, Adopted Decision 2020-02 (AAO Aug. 20, 2020) (Aug. 20, 2020), <https://www.uscis.gov/sites/default/files/document/aao-decisions/Matter-of-Z-R-Z-C-Adopted-AAO-Decision.pdf>.

60 *Gomez v. Jaddou*, No. 21-cv-9203 (S.D.N.Y.), <https://immigrationlitigation.org/wp-content/uploads/2021/11/Gomez-Complaint.pdf>.

making the fee lower and reducing the evidentiary burden in applying for initial DACA. Since the DACA program⁶¹ has now been in effect since 2012, and applicants must provide proof of continuous residence in the United States from five years prior to that date, it can be extremely difficult to demonstrate that residence when, for example, schools often do not keep records for more than ten years. While RTSAAWG appreciates the Biden administration's pending DACA regulation that seeks to preserve and fortify the DACA program, that proposed regulation is limited and maintains the 2012 DACA threshold criteria rather than expanding the criteria. Further, even the proposed regulation would continue DACA as a temporary, renewable form of deferred action, but a permanent solution is needed from Congress, including a pathway to citizenship. The best way to preserve and fortify DACA is by expanding DACA eligibility and legislating a pathway to citizenship.⁶²

NO OR INSUFFICIENT ACTION TAKEN

Support the Recognition and Accreditation (R&A) Program

USCIS should recognize the importance of accredited representatives and provide support and facilitation for the Recognition and Accreditation (R&A) Program wherever possible.⁶³ RTSAAWG members believe that access to legal counsel, including accredited representatives, is critical in immigration applications. Immigration rules and procedures are incredibly complex, and noncitizens are much more likely to succeed in their applications if they are represented. Representation also provides efficiencies to USCIS officers who can explain complex legal issues quickly to a representative, which might take much longer to try to explain to an unrepresented person. Given the significant benefits to noncitizens of having counsel, USCIS should ensure that in any case where a representative has a G-28 on file, they can fully participate in interviews. Members have noted that in some cases officers proceed with interviews without alerting counsel, even when they have a G-28 on file. Moreover, the Trump administration made it more difficult for accredited representatives to apply for and renew accreditation and the program continues to suffer from a lack of resources and staffing.⁶⁴ While accreditation is adjudicated by the DOJ, part of the application process requires USCIS to comment on the application. As such, USCIS should comment on R&A applications as expeditiously as possible to help increase access to counsel while encouraging its DOJ counterparts to ensure timely processing of accreditation applications.

61 See 86 Fed. Reg. 53736, (Sept. 28, 2021), <https://www.federalregister.gov/d/2021-20898>.

62 Currently, USCIS is not adjudicating initial DACA requests because a federal district court in Texas blocked them from doing so. That order is on appeal to the Fifth Circuit. That DACA has been stalled in the courts for many eligible noncitizens is another reason why Congress must act. See USCIS, DHS DACA Frequently Asked Questions, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions> (last updated Aug. 31, 2021).

63 DOJ, Recognition & Accreditation Program, <https://www.justice.gov/eoir/recognition-and-accreditation-program> (last updated Apr. 14, 2021).

64 See CLINIC, Key Takeaways from Freedom of Information Act Request on Office of Legal Access Programs (OLAP) and the Recognition and Accreditation Program, <https://cliniclegal.org/resources/doj-recognition-and-accreditation/clinic-releases-key-takeaways-foia-requests-olap-and> (last updated Mar. 19, 2021).

CONCLUSION

In four years, the Trump administration took unprecedented steps to dismantle the immigration adjudication agencies. While RTSAAWG members understand that rebuilding the system takes time, many noncitizens simply do not have that time, as they remain separated from family members, in desperate situations when they are unable to work lawfully, or potentially facing removal while awaiting the adjudication of a benefit. To fulfill its own mission and to effectuate President Biden's Executive Orders, USCIS must redouble its efforts over the coming years. As discussed in this report, RTSAAWG have already made dozens of common-sense suggestions through the notice and comment process that would allow for adjudications that are more efficient and that would lead to more just results. Although we recognize that a year has passed since RTSAAWG and other advocates and stakeholders submitted comments, we expect and hope that the Biden administration will consider and implement our suggestions with the same level of urgency that the Trump administration employed in making its changes across the board at USCIS. RTSAAWG members welcome the opportunity to engage in ongoing dialogue with USCIS and provide further feedback on how the agency can truly fulfill its promise.

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