



# Refugee Labor Mobility in the United States: Obstacles and Opportunities

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## About Talent Beyond Boundaries

Talent Beyond Boundaries (TBB) is a global nonprofit organization launched in 2016. TBB's mission is to open labor mobility pathways for refugees, providing a safe, legal option to resume their careers and rebuild their lives. TBB has worked with several governments to expand refugees' access to their skilled migration programs. Its team facilitates the job recruitment and migration processes for refugees as they move to third countries for international employment. Candidates have received job offers through TBB to work in white-collar positions including IT roles, in medical roles such as nursing, and in skilled trades such as butchers and tool and die makers.

As of October 2022, these programs have provided pathways to durable solutions to over 750 refugees through labor mobility pathways. TBB has successfully built refugee labor mobility programs in partnership with governments, employers, and partner NGOs in Australia, Canada, and the United Kingdom. TBB is also working with partners to identify refugee candidates and support refugee labor mobility across the world, including in Latin America, South Asia, and East Africa.

In Canada, TBB is the lead partner in Canada's refugee labor mobility pilot, called the Economic Mobility Pathways Project (EMPP). TBB worked with Canadian federal and provincial governments to address barriers, such as allowing candidates to access economic immigration pathways using expired passports and other alternative forms of identification and travel documentation.<sup>1</sup>

TBB also partnered with the Australian government to launch the Skilled Refugee Labour Agreement Pilot. The pilot removes many of the barriers that refugees and other forcibly displaced people face when trying to access employer-sponsored skilled migration pathways, including waiving required assessment of skills (since employers are best-situated to evaluate whether a candidate meets their needs), waivers of proof of work experience, flexibility for individuals without valid travel documents and police certificates, and broader eligibility for age and English test scores.<sup>2</sup>

In the United Kingdom, TBB candidates can relocate on a five-year Skilled Worker Visa. Candidates identified by TBB through the UK program receive free priority processing and receive decisions within five days.

In each of these situations, TBB has identified areas where visa criteria and processing can be adjusted so that refugees have meaningful access to employment, and that employers have meaningful ability to hire refugee candidates.

## Acknowledgements

This report was drafted by Betsy Fisher, with input from Patrick O’Leary, Hannah Somers, Steph Cousins, and Lara Dyer.

## Acronyms

DOS - Department of State

FAM - Foreign Affairs Manual (State Department Agency Guidance)

INA - Immigration and Nationality Act

IV - Immigrant Visa

LPR - Lawful Permanent Resident (also known as a green card holder)

NIV - Nonimmigrant Visa

PERM - Program Electronic Review Management (immigrant visa labor certification process)

TBB - Talent Beyond Boundaries

USCIS - U.S. Citizenship and Immigration Services

USRAP - U.S. Refugee Admissions Program (U.S. refugee resettlement program)

# Executive Summary

This Talent Beyond Boundaries (TBB) report outlines the potential for refugees and other forcibly displaced people to relocate to the United States via employment-based visas, building a pathway that is complementary to asylum and resettlement. Drawing on TBB's expertise navigating barriers to refugee labor mobility in Australia, Canada, and the United Kingdom, it also highlights challenges and proposes solutions for obstacles to refugee labor mobility in the United States.<sup>3</sup>

Millions of refugees globally have valued skills, education, and experience, but are not allowed to work in the countries where they currently live. Connecting refugees with employment-based visas based on skills and experience can complement asylum and refugee resettlement, address U.S. labor shortages, and benefit employers and communities in the United States. Refugees can best access labor mobility pathways to the United States through existing visa and immigration pathways.

## **Promising labor pathways in the United States**

The most promising pathways for refugees will provide avenues for long-term status in the United States.

- H-1Bs nonimmigrant visas, which are short-term visas but include applicants with intent to remain in the United States if they can obtain permanent residence.
- EB-3 immigrant visas, which provide permanent residence.
- O-1 visas, which provides a temporary pathway to the United States for candidates with exceptional work qualifications.
- Parole, which authorizes short-term presence in the United States, but allows parolees to seek another lawful status after entering the United States.

Refugee resettlement also provides long-term status and the ability to become a lawful permanent resident. TBB believes that, in the long term, refugee labor mobility should be additional to vulnerability-based refugee resettlement. This report focuses on the opportunities and obstacles in employment-based visas.

## **Recommendations**

This report also explores the hurdles that refugees are likely to face in pursuing employment-based visas in the United States. To make these visas accessible to as many qualified refugees as possible, TBB makes the following key recommendations:

- U.S. Citizenship and Immigration Services (USCIS) and the Department of State (DOS) should issue guidance and train adjudicators to use the flexibility that U.S. immigration law already provides. This should include waiving passport requirements in some situations and accepting alternative evidence of civil documents and employment documentation in visa petitions.
- USCIS and DOS should also issue its guidance publicly, advancing transparency and advancing awareness of refugee labor mobility opportunities.
- USCIS and DOS should establish a central point person to coordinate on employment-based visa petitions and applications for refugees.
- DOS should revise its guidance on passport waivers to provide accurate information about statelessness and to expand passport exemptions beyond nationals of Communist countries.
- DOS should amend regulations to allow visa applicants to attend visa interviews at government facilities, connecting consular officials at inaccessible consular locations via video teleconferencing. This would not alter existing biometric requirements.
- USCIS and DOS should address challenges common across the U.S. immigration system, including long processing times and interview backlogs.

# Refugee Labor Mobility: The Opportunity

Millions of refugees around the world have high levels of education and skills and are well-equipped to fill job vacancies. Yet, millions also live in countries where legal systems prevent refugees from working at all or in skilled professions, pushing them into informal employment or reliance on aid and remittances.

Refugees seeking a permanent home, including in the United States, have generally done so through refugee resettlement or by seeking asylum. But globally, governments consider far less than one percent of refugees for resettlement each year.<sup>4</sup> Skilled migration is a promising solution for many refugees, and in recent years, several governments have implemented ground-breaking labor mobility programs that enable refugees to relocate on employment-based immigration programs and access durable solutions.<sup>5</sup>

Building a refugee labor mobility in the United States means:

- Identifying employers experiencing labor shortages who are willing to hire refugees.
- Identifying refugees who meet employer needs and visa eligibility requirements.
- Supporting refugees and employers in recruitment, visa application, relocation, and integration processes.
- Addressing obstacles that prevent qualified refugees from accessing visa pathways.

After building successful refugee labor mobility programs in several jurisdictions, TBB has identified five key principles of refugee labor mobility:

- **Refugee autonomy:** programs must ensure informed decision-making to allow refugees, rather than third parties, to decide whether and which employment opportunities to accept.
- **Additionality:** while governments may use a variety of avenues to establish a program, refugee labor mobility must be additional and complementary to vulnerability-based refugee resettlement in the long-term by expanding quotas or using alternative pathways.
- **Employer-driven:** successful, sustainable programs address business needs rather than being primarily humanitarian in motivation.
- **Protection-oriented:** refugees who relocate must have protections against forcible return to a country where they fear being tortured or persecuted.
- **Equitable access:** successful refugee labor mobility programs address the obstacles that prevent refugees from accessing employment-based pathways.

Refugee labor mobility can provide refugees with access to long-term residency, allow refugees to use their skills and training, and benefit employers and refugees' new communities. Families that have relocated through TBB report a 750% increase in income.<sup>6</sup> 93% of employers who participated in TBB's program said that they were either "extremely likely" or "very likely" to recommend TBB's program to other employers. No employers responded that they would not recommend working with TBB to recruit candidates.<sup>7</sup> Employers also highlight that hiring through TBB allows them the "opportunity to achieve social impact and gain greater understanding of refugee issues."<sup>8</sup>

Refugee labor mobility benefits refugee communities overseas; 70% of relocated candidates send remittances to family and/or friends in difficult circumstances.<sup>9</sup> Refugees fill a needed role for their employer, and they also pay taxes on their income and purchases in their new communities.

Talent Beyond Boundaries (TBB) has pioneered refugee labor mobility alongside policy makers and the private sector in countries including Australia, Canada, and the United Kingdom. TBB has demonstrated that by enhancing access to skilled migration visa programs, millions have the potential to transcend displacement using their skills and fill labor gaps in destination countries.

## U.S. Immigration Law and Refugee Labor Mobility

In the short term, refugee labor mobility in the United States must operate through existing immigration pathways. The Department of State and Department of Homeland Security can address many obstacles that prevent refugees from accessing employment-based visas, which is vital given limited opportunity for legislation in the current political environment.

### Background on the U.S. Immigration System<sup>10</sup>

Displaced people who enter the United States through refugee resettlement go through a process called the U.S. Refugee Admissions Program.<sup>11</sup> Their legal classification when they enter the United States is as **refugees**. Those who apply for asylum in the United States are called **asylum seekers**.<sup>12</sup> One year after admission, refugees and approved asylum seekers can apply to **adjust status** to a **lawful permanent resident** (also known as a **green card holder**).<sup>13</sup>

U.S. immigration law provides many visa pathways for temporary visits, temporary work and study, and permanent residence in the United States. In U.S. law, a **nonimmigrant visa** (NIV) is

the term for short-term authorization to enter the United States. NIVs include short-term visitor visas and visa categories that allow several years' residence and work in the United States.<sup>14</sup> NIVs generally require a noncitizen to demonstrate that they have nonimmigrant intent, meaning that they will depart the United States after their authorized period of stay in the United States.<sup>15</sup>

**Immigrant visas** provide lawful permanent residence (also known as LPR status, or a green card). Eligibility for immigrant visas is generally based on permanent employment offers or close relatives in the United States, with more than 60% of total green cards issued based on family ties.<sup>16</sup> Immigrant visas provide the primary applicant and the person's spouse and derivative children with a potential pathway to naturalization after several years.<sup>17</sup>

## U.S. Visa Categories and Refugee Labor Mobility

Refugees may be eligible for several employment-based visa categories depending on their experience and education. In addition to having a job offer that meets the visa requirements, applicants must also be **admissible**. The grounds by which a person might be inadmissible are outlined in the Immigration and Nationality Act, and include some communicable health conditions, criminal activity, material misrepresentation in the application process, and others.<sup>18</sup>

Visa pathways are especially appropriate for refugees when they offer a pathway to long-term residence. Initially, three visa categories stand out.<sup>19</sup>

### H-1B visas (for uncapped employers)

H-1Bs are primarily used to employ "specialty workers," meaning those with specialized knowledge and at least a bachelor's degree or its equivalent.<sup>20</sup> H-1Bs are NIVs, providing temporary status in the United States, but H-1B visa applicants can show dual intent, meaning that they can demonstrate that they are seeking avenues to become LPRs and remain in the United States.<sup>21</sup>

H-1Bs are subject to strict numerical caps, with visas allotted according to a competitive lottery. For refugees living without legal rights in a country of asylum, low odds of winning the H-1B lottery undermine the value of pursuing this visa pathway. However, H-1B petitions are not subject to the cap when filed by universities and related nonprofit entities, nonprofit



research organizations and government research organizations.<sup>22</sup> As such, H-1B visa petitions filed by uncapped employers provide a promising visa pathway for refugee candidates.

## EB-3 visas

EB-3 are immigrant visas, providing green cards to primary applicants with permanent job offers, their spouses, and derivative children. EB-3s include job offers in positions classified as professional, skilled, and unskilled, meaning that they can cover a wide range of positions. EB-3s are subject to a cap of 10,000 visas per year as well as per-country caps. As of October 2022, only applicants who are nationals of China and India had to wait for visas to become available.<sup>23</sup>

## O-1 visas

O-1s are for individuals with extraordinary ability or achievement in sciences, arts, etc. O-1s are NIVs, providing temporary status in the United States. Unlike H-1Bs, O-1s cannot show dual intent, so they must demonstrate that they will depart from the United States after their period of authorized stay in the United States. However, a pending application for adjustment to LPR status is not a basis to deny an extension of an O-1 visa.

O-1s are not subject to a cap. Spouses and children of O-1 visas do not receive employment authorization.

## Parole

Parole may also be a pathway to allow refugees to access labor mobility in some situations. U.S. immigration law states that noncitizens can receive parole “on a case-by-case basis for urgent humanitarian reasons or significant public benefit,” and that parole is not intended to replace refugee resettlement.<sup>24</sup> Offering parole to a refugee to fill a needed role could advance both humanitarian goals and the public benefit.

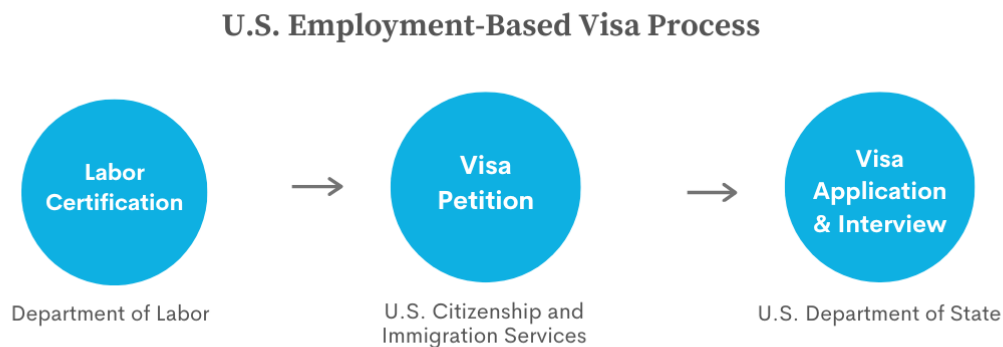
After the initial parole period, parolees must pursue a nonimmigrant employment-based visa, extend their parole, or pursue another legal pathway.<sup>25</sup> Parole could be an appropriate pathway to allow refugees to fill an immediate labor need, if paired with roles and employers that would sponsor an applicant for a nonimmigrant visa after arriving in the United States.

## Refugee Resettlement

The U.S. Refugee Admissions Program (USRAP) can also be a vehicle to admit refugees who have job offers from U.S. employers. Refugee resettlement allows refugees to enter the United States with a pathway to lawful permanent residence and citizenship.<sup>26</sup> Refugees also receive services from local resettlement agencies, including pickup at the airport, initial housing, English lessons and other services. At the same time, refugee resettlement is primarily intended to address humanitarian rather than economic needs. In the long-term, refugee labor mobility must be accomplished by expanding quotas or by using complementary pathways.

## U.S. Visa Processing

The remainder of this report focuses on opportunities and challenges that refugees face in accessing employment-based visas, including H-1B, EB-3, and O-1 visas. The application process for these visas proceeds in a several-step process, which can take from a few months to several years.



Applicants outside the United States follow these steps:

### Labor certification/PERM - Department of Labor

Employers (or **petitioners**) show that they cannot hire a worker already authorized to work in the United States. H-1B and EB-3 visas require employers to seek approval from the Department of Labor to hire a worker who is not currently authorized for employment in the United States. For nonimmigrant visas, this is called the labor certification process. For immigrants, this is called the Program Electronic Review Management (PERM) process. O-1 visas do not have a labor certification or PERM process.

## Visa Petition - U.S. Citizenship and Immigration Services

At the visa petition stage, the employer demonstrates that it has obtained a labor certification and that the applicant meets the requirements specified in the employer's labor certification. Prospective employers of H-1B, O-1, and EB-3 visa employers file visa petitions with U.S. Citizenship and Immigration Services (USCIS).

## Visa Application and Interview - U.S. Department of State

At the visa application and interview stage, applicants (or **beneficiaries**) must demonstrate that they and their dependents are eligible for a visa. The applicant submits evidence of education, experience, and the relationship to their derivative spouse and child, and other required documents. The applicants must then schedule an interview at a U.S. consulate and embassy and complete an interview with consular officials. Immigrant visa applicants (and nonimmigrant visa applicants, if the consular officer requests it) must also complete medical screenings.<sup>27</sup> If successful, the applicant is issued a visa.

# Refugee-Specific Considerations in Labor Mobility

Existing visa categories are promising vehicles to connect refugees with opportunities to relocate to the United States. Two key components of assisting refugees to access employment-based pathways are, first, connecting refugee candidates with U.S.-based employers, and second, supporting refugees on arrival.

## Candidate Identification

Refugee labor mobility requires matching a willing employer that has unmet labor needs and with a candidate who meets that need and qualifies for a visa. To facilitate this process, TBB developed a bespoke database, the Talent Catalog, in which refugees can register to identify their skills and qualifications. Since its launch in 2016, more than 48,000 displaced people have registered. When refugees enter their education, qualifications and professional experience into the Talent Catalog, a CV is automatically generated and available to download and share with potential employers.

Employers who commit to a recruitment process through TBB<sup>28</sup> provide TBB with a job description. TBB staff identify potential candidates who meet the description and visa

eligibility requirements. The employer undergoes their general hiring process and, where appropriate, makes a job offer to their preferred candidate or candidates. The employer, their preferred immigration counsel, the candidate, and TBB coordinate to complete the visa application process.

## Welcoming Services

The United States has a vibrant network of resettlement agencies that provide services to refugees resettled through USRAP. U.S. immigration law considers only those individuals who relocate through USRAP as refugees. A person who meets the international definition of a refugee but who relocates via an employment-based visa is not classified under U.S. law as a refugee and is not legally eligible for resettlement services. By virtue of their employment, refugees who travel via employment-based visas will have a source of income and should also receive health insurance and build connections to their local community.

Yet refugees with an employment-based visa will still require some support in joining their new community. They may need support identifying housing, learning local transportation, enrolling in education and government services, and navigating the U.S. medical system. These services can be provided by community volunteers, professional relocation services, or resettlement agencies receiving additional funding. Volunteers or staff should receive specialized training in the resources available to and needs of this population, which will differ from refugees relocated through USRAP.<sup>29</sup>

# Refugee Labor Mobility: The Obstacles

Visa requirements that apply to applicants can pose significant challenges to refugees, who often lack access to civil documents or evidence and who may not have legal residence in their current country of residence. This section identifies these obstacles and provides recommendations to U.S. government agencies to make these visa processes available to refugees.

To ensure that refugees can access employment-based visas that they are factually qualified for, DOS and USCIS adjudicators should use their existing authority on a case-by-case basis to waive requirements for certain documents or to accept alternative forms of evidence.<sup>30</sup>

Departments can advance refugees' ability to access employment-based visas by instructing their officers on how to use that flexibility when processing applications from refugees.

## Recommendation:

- **USCIS and DOS should establish a central point person to coordinate** on employment-based visa petitions and applications for refugees.
- **USCIS and DOS should issue guidance and provide training to their officers to use existing flexibility in U.S. visa processing. They should also publish the guidance** in the USCIS Policy Manual, a cable to consular officers, and in the Foreign Affairs Manual.

## Passports

Requiring applicants to present a current passport or travel document will prevent many displaced people from accessing a visa. Some refugees have never had a passport, including some who are stateless. Other refugees have lost their passports during conflict or flight. Other refugees have expired travel documents that they cannot renew due to logistical hurdles or fear of approaching the consulate of their country of origin.<sup>31</sup> Palestinian refugees often have travel documents issued by the neighboring countries where they live but do not have national passports.<sup>32</sup>

## Immigrant Visa Passport Requirements

The Immigration and Nationality Act (INA) requires that an applicant have “a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued . . . ”<sup>33</sup> Regulations expand that this passport must be valid for at least 60 days beyond the validity period of the visa.<sup>34</sup>

Regulations waive the passport requirement for several groups of immigrant visa applicants, including stateless individuals and accompanying immediate relatives and nationals of Communist-controlled countries who cannot obtain passports.<sup>35</sup> However, the FAM does not define statelessness.

The FAM also indicates that “statelessness is a rare situation”<sup>36</sup> and notes that the applicant carries the burden to show that they are stateless.<sup>37</sup> In fact, millions of people are stateless globally. This language discourages consular officials from waiving passport requirements for stateless people.

The FAM also allows for an individual waiver for a noncitizen who is “unable to obtain a passport and not within any of the foregoing categories, in whose case the passport requirement. . . has been waived by the Secretary of Homeland Security and the Secretary of State as evidenced by a specific instruction from the Department.”<sup>38</sup> When the passport requirement is waived for immigrant and nonimmigrant applicants, consular officials issue the visa in a form called the DS-232.<sup>39</sup>

## Nonimmigrant Visa Passport Requirements

Nonimmigrants are also required to have valid passports,<sup>40</sup> and a waiver is available for three reasons, only one of which is relevant to refugees: “on the basis of unforeseen emergency in individual cases.”<sup>41</sup> The regulations further limit this to situations where the visa applicant who is “well and favorably known at the consular office, who was previously issued a nonimmigrant visa which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.”<sup>42</sup>

While this situation may apply on occasion to refugees, this waiver does not meaningfully address the circumstances of refugees who cannot obtain or renew passports. Because this requirement is imposed by statute, greater flexibility in the passport requirement for NIV applicants would require legislation.

Recommendations:

- **To ensure that refugees can access employment-based visas, DOS should instruct consular officials to consider waiving the passport requirement for refugees on a case-by-case basis.** The DOS should include mention of the passport waiver in its cable or policy guidance.

- **DOS should update the FAM to provide more accurate information about statelessness.** The FAM does not define statelessness, indicates that “statelessness is a rare situation”<sup>43</sup> and notes that the applicant carries the burden to show that they are stateless.<sup>44</sup> In fact, millions of people, including many refugees, are stateless globally. This language discourages consular officials from waiving passport requirements for stateless people. The FAM should be updated to include the international definition of statelessness: a person “who is not considered a national by any State under the operation of its law,”<sup>45</sup> and to reflect that statelessness impacts millions of people globally.
- **DOS should update its regulation to waive the passport requirement for refugees and nationals of totalitarian as well as Communist regimes.** Regulations waive the passport requirement for a visa applicant who is a “national of a Communist-controlled country and who is unable to obtain a passport from the government of that country.”<sup>46</sup> Many refugees flee from regimes that are authoritarian but not Communist. DOS should revise this regulation to include refugees (as demonstrated by receiving asylum or registering with UNHCR) and nationals of totalitarian regimes, mirroring the language in 8 U.S.C. § 1424, which covers Communist and totalitarian regimes.

## Access to Civil Documentation, Education and Employment Documentations, Police Certificates

Refugees in many situations lack access to civil documents that are required for visa processing.<sup>47</sup> As with passports, a refugee may never have had a required document, or a document may have been lost or destroyed. While some refugees will have all primary documents required in the visa application process, their access to employment-based visas will improve when USCIS and the Department of State officers use their authority to accept alternative forms of evidence.

### Education and Employment Documents

Immigrant and nonimmigrant visa applicants must demonstrate that they have the education and experience that the employer has stated are necessary in the labor certification process.<sup>48</sup> If an applicant cannot provide that evidence, the employer “must show that such evidence cannot be obtained and submit affidavits from persons who worked with the beneficiary that demonstrate the claimed employment or job training.”<sup>49</sup>

## Civil Documents

At the petition stage, regulations indicate that USCIS can accept secondary evidence for a document that does not exist or is unavailable.<sup>50</sup> Where secondary evidence does not exist or is unavailable, the applicant can submit two or more sworn affidavits from individuals with “direct personal knowledge” of the events in question.<sup>51</sup>

At the visa application stage, immigrant visa applicants must submit several documents “if obtainable,” including copies of police certificates, prison records, military records, birth records, and any other documents required by the consular official.<sup>52</sup> Applicants for immigrant and nonimmigrant visas must provide documents to establish the relationship between an accompanying spouse and child and the principal applicant.<sup>53</sup> Nonimmigrant visa applicants have fewer civil documentation requirements, and the FAM instructs consular officers to be judicious in requiring extensive documentation for NIV applicants.<sup>54</sup>

Like USCIS, a consular official may consider a document to be unavailable “if it cannot be procured without causing to the applicant or a family member actual hardship as opposed to normal delay and inconvenience.”<sup>55</sup> The DOS reciprocity table<sup>56</sup> may indicate that a document is generally unavailable, or a consular officer may make an individual determination that a document is unavailable. The applicant can then submit other documentation.<sup>57</sup> Where a document is listed in the reciprocity table as available, but the consular official determines that it is unobtainable, the consular official “must require substitute documentation or secondary evidence”<sup>58</sup> and provide a signed statement on the Form FS-0552 describing the reasons for the determination.<sup>59</sup>

Despite this flexibility, refugee legal aid providers report that, in family-based immigrant petitions, USCIS often requires additional evidence, sending Requests for Evidence, even when substantial secondary evidence is included with petitions. Secondary evidence is often rejected as insufficient. This causes significant delays and costs, and in some cases, keeps refugee families permanently apart.<sup>60</sup>

## Police and Military Certificates

Immigrant visa applicants ages 16 and older have to submit police certificates showing evidence of any arrests or criminal convictions for countries of presence.<sup>61</sup> These documents are valid for two years, though consular officers can request updated certificates within that period.<sup>62</sup> The FAM states: “If the police certificate is not obtainable from the local authorities,



the applicant must present other convincing evidence that he is not ineligible to receive a visa.<sup>63</sup>

The FAM notes that military records should be considered unobtainable for an applicant for an IV outside their country of nationality “if the applicant’s government refuses to furnish certified copies.”<sup>64</sup>

### **Recommendations:**

DOS and USCIS policies already provide flexibility to accept secondary evidence or to accept affidavits in lieu of evidence. But to benefit refugees applying for employment-based visas, USCIS and consular officers must be aware of this flexibility and willing to use it.

- **USCIS and DOS should develop and publish policy guidance to their officers to use their discretion to accept secondary documents or affidavits for refugees** who face hardship in obtaining required primary documents. USCIS should instruct adjudicators to accept petitions that, where persuasive secondary evidence exists, officers should not issue requests for evidence, which cause delay and additional expense to applicants and employers.
- **USCIS and DOS should train adjudicators and consular officials on the challenges that refugees face obtaining required documents.** Officers should be trained on alternative means of proving family relationships through secondary evidence or affidavits, and on alternate documentation of education and employment credentials, such as the World Education Services Credential Evaluations.<sup>65</sup>
- **USCIS and DOS should establish a central point person to coordinate** on employment-based visa petitions and applications for refugees.

## Interview Requirements

### Requirements to Travel for Interviews

Immigration regulation dictates the locations where a visa applicant must apply for a visa,<sup>66</sup> and require applicants to appear in person.<sup>67</sup> Requirements to appear for interviews in particular locations pose an obstacle for some refugees. In some situations, refugees live in locations where processing is not possible due to security situations. For example, Iraq has extremely limited consular processing, so Syrian refugees in Iraq do not have meaningful access to consular processing. In other situations, refugees are not recognized as lawfully present in the country where they will apply for a visa.

DOS has a general requirement that immigrant visa applicants must have legal permission to remain in the country where the consulate is located for the duration of visa processing.<sup>68</sup> When an applicant is of a “homeless nationality” (a country without U.S. consular representation)<sup>69</sup> and the applicant is a refugee, they are exempt from this requirement.<sup>70</sup>

This raises the concern that individuals who are refugees but who are not from a “homeless nationality” may be required to prove legal authorization to remain in the country where they are applying for a visa. Fortunately, the FAM also states that a consulate “may, as a matter of discretion, or shall, at the direction of the Department, accept an immigrant visa application from an alien who is neither a resident of, nor physically present in, the area designated for that office for such purpose.”<sup>71</sup>

## In-Person Interviews

Immigrant visa applicants are required to appear in person for an interview, though consular officials can waive the appearance of children under the age of 14.<sup>72</sup> Nonimmigrant visa applicants who are 14-79 years of age must be interviewed in person.<sup>73</sup>

Attending an in-person interview at a consulate or embassy to attend an in-person interview can also impose significant logistical and financial costs on refugees. In some cases, immigrant visa applicants live in countries where no U.S. embassy or consulate processes immigrant visa applications.<sup>74</sup> Often, refugees lack permission to return to their country of residence, meaning that they cannot travel internationally to attend a visa interview.

The INA allows the Department of State to waive of interviews for certain visa categories, and for individual circumstances if the Department of State determines that a waiver is “in the national interest of the United States” or “necessary as a result of unusual or emergent circumstances.”<sup>75</sup> However, waivers may not apply to individuals who are not nationals or residents of the country where they live, are nationals of countries designated as state sponsors of terror, or who require security clearances.<sup>76</sup> As a result, refugees are generally ineligible for interview waivers.

Refugees in the resettlement process are also required to appear in person by a regulatory provision that mirrors the statutory language requiring visa interviews.<sup>77</sup> In some situations, refugees attend interviews in person at U.S. government facilities and complete their interviews with consular officials at other facilities via secure tele-conferencing link.<sup>78</sup> This complies with the statute, as refugees attend their interviews in-person (and also complete all biometric requirements). Using secure tele-conferencing provides greater flexibility for

embassies with limited staffing or when security or health-related concerns limit government travel.

DOS could apply this precedent and allow refugees to attend visas in-person at accessible consulates, completing visa interviews via teleconferencing with a consular official at another consulate or government facility. This is an appropriate accommodation for refugees when travel to the consulate of jurisdiction is impossible to visa or travel document requirements. They would attend interviews in person at the nearest consulate or other secure government facility. That facility would complete biometrics and connect via secure teleconferencing link to the consulate of jurisdiction for the visa interview.

### Recommendations:

- **DOS should train consular officers to utilize existing flexibility to ensure that refugees can complete visa interviews in the country where they reside** or, if they cannot complete consular processing there, a neighboring country, regardless of their residency status or nationality.
- Where visa applicants cannot attend interviews, **DOS should allow visa applicants to attend interviews in-person and complete biometrics at an accessible consulate**, connecting to the consular officer via tele-conferencing. This should be available where:
  - Applicants cannot travel internationally to attend a visa interview because they lack travel documents or legal residence in their country of asylum, or where they cannot obtain a visa to attend an interview in another country.
  - An applicant cannot attend an interview within the country at the designated consulate because of travel restrictions or security concerns.

## Obstacles across the U.S. Immigration System

In all parts of the U.S. immigration system, applicants must navigate complex systems built on poor technology, complex eligibility criteria, and long delays. These pose challenges to all applicants, including refugees seeking employment-based visas.

### Licensure Requirements

The healthcare sector faces acute labor shortages in the United States. But most physicians and other health care workers must be licensed to be eligible for a visa.<sup>79</sup> U.S. immigration rules do not support an employer to sponsor a candidate for a visa for an immediate, lower-skilled position and support them to improve their skills. This means that, absent a way to

access U.S. licensure processes from outside the United States, refugees must apply for roles that do not require licenses.

## Addressing Backlogs and Delays

The U.S. immigration system has faced extensive backlogs and delays, including in employment-based processes at each stage of the application process. At the labor certification phase, as of August 31, 2022, the Department of Labor was processing H-1B and EB-3 labor certifications and PERM applications filed in January 2022 and December 2021.<sup>80</sup> At the visa petition stage, as of October 5, 2022, USCIS faced delays in the NIV employment-based process between 1.5 and 6.5 months. In the IV employment-based process, processing times exceeded 11.5 to 20 months.<sup>81</sup> Employers can minimize delays at this stage by paying hefty premium processing fees.<sup>82</sup> At the visa application stage, as of October 2022, DOS reported that more than 384,000 immigrant applicants were waiting for an interview appointment,<sup>83</sup> though DOS also made significant reductions in employment-based backlogs in fiscal year 2022.<sup>84</sup>

### Recommendations:

- DOL can alleviate PERM backlogs by **adding other occupations to Schedule A**, a list of occupations that have blanket labor certification due to labor shortages. Currently this includes nurses and physical therapists.<sup>85</sup> Adding other occupations, including direct support professionals and other healthcare workers in acute demand, would eliminate PERM backlogs in these occupations and alleviate delays for all employers.
- **USCIS must continue to address processing times and backlogs**, including by implementing the changes proposed in the USCIS Ombudsman 2022 Annual Report.<sup>86</sup>
- **DOS should continue to improve its processing times and backlogs**, including by implementing recommendations in the 2021 American Immigration Lawyers Association policy brief “Reopening America.”<sup>87</sup>

## State Department Scrutiny of DOL and USCIS Determinations

Prior to the visa interview, DOL adjudicates labor certification and PERM applications, a step that employers must complete before filing petitions with USCIS to verify that authorizing a worker for employment in the United States will not undermine prevailing wages. USCIS then

verifies the employers' eligibility to sponsor an applicant and that the employee meets the job and visa qualifications.

USCIS' determination is "prima facie evidence" that the requirements for visa classification are met, but the FAM requires the consular officer to confirm eligibility.<sup>88</sup>

The FAM also provides a list of "indicators that may justify further scrutiny" in labor certification cases, including "[i]nconsistencies between the applicant's general demeanor and the claimed profession."<sup>89</sup> The FAM instructs consular officials to return visa applications to USCIS for reconsideration if a person is not entitled to the visa classification.<sup>90</sup> If a consular officer believes that the visa applicant or employer "committed a material misrepresentation" in the labor certification process, the consular officer can invalidate the labor certification<sup>91</sup> and the applicant will be inadmissible.<sup>92</sup>

One think tank reports that "U.S. consulates deny a large majority (61 percent) of employer-sponsored immigrant visas . . . because it claims to have found a problem with their job offers."<sup>93</sup> DOS should address these denial rates in employment-based immigrant visas to ensure that, when the PERM process is complete and a job offer is secured, that legitimate candidates will receive approval.

#### **Recommendation:**

- **DOS should encourage deference to DOL and USCIS' determination of employers' needs and employees' qualifications**, particularly in immigrant visa processes that have faced high rates of denials at the visa interview stage.

## Conclusion

Government agencies have existing authority that can improve refugees' access to employment, and that employers have meaningful ability to hire refugee candidates. In Australia, Canada, and the UK, adjustments to visa policies have facilitated more than 750 refugee candidates to relocate globally to date, numbers that are rapidly increasing.

Refugee labor mobility, at its core, seeks to address refugees as employees with skills, and to remove the barriers that prevent them from accessing roles for which they are qualified and that employers seek to fill.

## Annex A - Comparison of Visa Pathways

	EB-3	H-1B	O-1
Status	Lawful permanent residents	Nonimmigrant visa, but dual intent	Nonimmigrant visa, must prove intent to depart U.S.
Numerical limitations	Cap of 10,000 per year. As of Oct. 2022, all countries except China and India had visas available	Strict cap, though nonprofit research institutions are uncapped	No cap
Passport waiver	For relatives of U.S. citizens, lawful permanent residents, stateless people, and individual waiver	Waiver based on unforeseen emergencies only	Waiver based on unforeseen emergencies only
Document requirements	Documentation of education and experience  Documentation of relationships to derivatives  Police and military certificates	Documentation of education and experience  Documentation of relationships to derivatives	Documentation of education and experience  Documentation of relationships to derivatives
Employment authorization for derivatives	Yes	Yes for spouses	No
Minimum English language	Not set by U.S. government - must meet employer's requirements	Not set by U.S. government - must meet employer's requirements	Not set by U.S. government - must meet employer's requirements

# Annex B - TBB Process

## HOW IT WORKS:



### IDENTIFY ROLE

- Employer selects role(s) they need filled.
- Employer provides us with a job description.
- We provide a shortlist of suitable candidates.



### RECRUITMENT

- We facilitate remote recruitment process.
- Employer interviews candidates.
- Employer issues a job offer to preferred candidate(s), and employment contracts are signed.



### VISA APPLICATION

- Mandatory job posting (2-4 weeks)
- Fragomen (or your preferred immigration counsel) supports visa application for employer and employee.
- Immigration counsel monitors process to ensure smooth visa processing.



### INTEGRATION

- We help the employer prepare for the arrival of the new recruit.
- We connect employees with integration services in your area to ensure employees and families are supported.



### POST- ARRIVAL

- We provide support via regular check-ins with employee and direct manager for 12 months.
- We can arrange cultural awareness training if desired.

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## Endnotes

<sup>1</sup> Talent Beyond Boundaries, Evaluation key insight: Global evaluation into Labour Mobility Pathways Pilot 2016-2019, 20-21 (June 26, 2020), <https://www.talentbeyondboundaries.org/s/TBB-Evaluation-Key-Insights-2020.pdf>.

<sup>2</sup> Talent Beyond Boundaries, “Introducing the Australian Skilled Refugee Pilot,” (July 29, 2021), <https://www.talentbeyondboundaries.org/blog/introducing-the-australian-skilled-refugee-pilot?>

<sup>3</sup> Durable Solutions Platform et al., Identifying Barriers and Opportunities to Labor Mobility Pathways for Syrian Refugees in Jordan and Lebanon, 2022, <https://dsp-syria.org/identifying-barriers-and-opportunities-labor-mobility-pathways>.

<sup>4</sup> UNHCR, Refugee Statistics (accessed April 2022), <https://www.unhcr.org/refugee-statistics>.

<sup>5</sup> In the United States, many visas provide short-term work authorization and lawful status in the United States. The H-2A and H-2B nonimmigrant visas could be tools to address humanitarian needs and root causes for migration, but they also require nonimmigrant visa intent and do not permit extension while an application for long-term status is pending. See USCIS, H-2A Temporary Agricultural Workers (last updated Nov. 9, 2021), <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>; USCIS, H-2B Temporary Non-Agricultural Workers (last updated May 31, 2022), <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.



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<sup>6</sup> Talent Beyond Boundaries, Impact, <https://www.talentbeyondboundaries.org/impact?>.

<sup>7</sup> Talent Beyond Boundaries, Evaluation key insight: Global evaluation into Labour Mobility Pathways Pilot 2016-2019, 8 (June 26, 2020), <https://www.talentbeyondboundaries.org/s/TBB-Evaluation-Key-Insights-2020.pdf>.

<sup>8</sup> Id. at 18.

<sup>9</sup> Talent Beyond Boundaries, Impact, <https://www.talentbeyondboundaries.org/impact?>.

<sup>10</sup> This report cites various sources of U.S. law and policy. Federal statutes about immigration are often referred to as the Immigration and Nationality Act, which is codified at Title 8 of the U.S. Code. Regulations carry the force of law and bind federal agencies, but they are promulgated by agencies rather than Congress. Policies on day-to-day operations are often contained in agency policy documents, which can be changed following specific procedures. USCIS' agency policy is contained in the USCIS Policy Manual, while the Department of State's agency guidance is contained in the Foreign Affairs Manual.

<sup>11</sup> INA § 207.

<sup>12</sup> Compare INA § 207 and INA § 208.

<sup>13</sup> INA § 207; INA § 209.

<sup>14</sup> INA § 101(a)(15).

<sup>15</sup> INA § 214(b); as will be addressed below, nonimmigrant intent does not apply to the H-1B visa category.

<sup>16</sup> INA § 203; Irene Gibson, Annual Flow Report U.S. Lawful Permanent Residents: 2021, USCIS, Office of Immigration Statistics (April 2021).

<sup>17</sup> INA § 316.

<sup>18</sup> INA § 212.

<sup>19</sup> See Appendix 1 for more information about these visa pathways.

<sup>20</sup> USCIS, H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models, last updated May 18, 2022, <https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations>.

<sup>21</sup> INA § 101(a)(15)(H)(i) does not require that the applicant show that they have a "residence in a foreign country which he has no intention of abandoning." H visas are excluded from INA's 214(b) immigrant intent presumption, and regulations allow that H-1B applicants "may legitimately come to the United States for a temporary period . . . and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States." 8 C.F.R. § 213.2(h)(16)(i).

<sup>22</sup> INA § 214(g)(5).

<sup>23</sup> State Department, Visa Bulletin October 2022, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-october-2022.html>.

<sup>24</sup> INA § 212(d)(5).

<sup>25</sup> An applicant for an employment-based immigrant visa must be in NIV status to adjust, preventing parolees from moving from parole to LPR status based on an IV. USCIS Policy Manual, Volume 7 – Adjustment of Status, Part B – 245(a) Adjustment – Chapter 5 - Employment-Based Applicant Not in Lawful Nonimmigrant Status (last updated Sept. 29, 2022), <https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-5>.

<sup>26</sup> INA §§ 207 and 209.

<sup>27</sup> INA § 221(d); USCIS Policy Manual, Volume 8 – Admissibility, Part B - Health-Related Grounds of Inadmissibility, Chapter 3 - Applicability of Medical Examination and Vaccination Requirement (last updated July 22, 2022), <https://www.uscis.gov/policy-manual/volume-8-part-b-chapter-3>.

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<sup>28</sup> TBB also celebrates and facilitates the work of partners to identify potential candidates, support candidates in the recruitment and relocation process, or to replicate TBB’s work of connecting candidates with employers.

<sup>29</sup> A full proposal for community integration services is beyond the scope of this proposal, but TBB will issue resources on this subject in future publications.

<sup>30</sup> Under U.S. law, adjudicators should favorably exercise discretion balancing all relevant factors, including where doing so is in the national interest, benefits U.S. employers, and advances humanitarian interests. USCIS, Policy Manual, Volume 1 - General Policies and Procedures, Part E – Adjudications, Chapter 8 - Discretionary Analysis (last updated July 22, 2022), <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8>.

<sup>31</sup> For example, Eritrean citizens are not generally entitled to a passport, and “access to a passport is better conceived of as a privilege than as a right,” and “issuance of a passport is one of the most arbitrary practices in Eritrea.” Daniel Mekonnen and Sara Palacios Arapiles, Access to Official Documents by Eritrean Refugees, 29 (April 2021), <https://refugeerights.org/news-resources/access-to-documents-by-eritrean-refugees-in-the-context-of-family-reunification-april-2021>; see also Syrian Justice and Accountability Centre, Passport Delays Threaten Legal Status of Syrians Abroad, Mar. 31, 2022, <https://syriaaccountability.org/passport-delays-threaten-legal-status-of-syrians-abroad/>.

<sup>32</sup> See generally, Francesca P. Albanese and Lex Takkenberg, Palestinian Refugees in International Law, 195-269 (2d ed. 2020).

<sup>33</sup> 8 U.S.C. §1181(a)(2); see also 8 U.S.C. §1182(a)(7)(A)(i).

<sup>34</sup> 22 C.F.R. § 42.64(b).

<sup>35</sup> 22 C.F.R. § 42.2.

<sup>36</sup> While data on statelessness is limited, UNHCR estimates that 10 million people are stateless globally. UNHCR, #IBelong: End Statelessness Now <https://www.unhcr.org/ibelong/ibelong-end-statelessness-now/>.

<sup>37</sup> 9 FAM 202.2-4(1)(a)-(b).

<sup>38</sup> 22 C.F.R. § 42.2(g)(2); guidance on obtaining CBP concurrence for an individual waiver appears at 9 FAM 201.2-5.

<sup>39</sup> 42 U.S.C. § 41.113(b); 9 FAM 403.9-3(D).

<sup>40</sup> 8 U.S.C. § 1182(a)(7)(B).

<sup>41</sup> 8 U.S.C. § 1182(d)(4); 9 FAM 201.1-6(F)(1); 9 FAM 305.3-1(C).

<sup>42</sup> 42 C.F.R. § 41.3(d).

<sup>43</sup> While data on statelessness is limited, UNHCR estimates that 10 million people are stateless globally. UNHCR, #IBelong: End Statelessness Now (last visited July 28, 2022), <https://www.unhcr.org/ibelong/ibelong-end-statelessness-now/>.

<sup>44</sup> 9 FAM 202.2-4(1)(a)-(b).

<sup>45</sup> 1954 Convention relating to the Status of Stateless Persons.

<sup>46</sup> 22 C.F.R. § 42.2(e).

<sup>47</sup> See International Refugee Assistance Project, Expanding Complementary Pathways for Refugees and Displaced Persons: A Blueprint for the U.S. Government, 20-25 (Nov. 20, 2020), <https://refugeerights.org/news-resources/press-release-irap-publishes-blueprint-for-expanding-complementary-pathways-for-refugees-and-displaced-people>.

<sup>48</sup> 9 FAM 502.4-4C; 9 FAM 402.10-7(D)(b).

<sup>49</sup> 9 FAM 402.10-7(D)(a).

<sup>50</sup> 8 C.F.R. § 103.2(b)(2)(i).

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<sup>51</sup> 8 C.F.R. § 103.2(b)(2)(i); USCIS, Vol. 1, Part E, Chapter 6 (last updated June 24, 2022), <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6>. In this instance, the applicant must also submit a statement from the relevant authorities that the document does not exist or demonstrate they have been unable to obtain the evidence after “repeated good faith efforts,” unless the State Department’s reciprocity table shows that documents are unavailable. 8 C.F.R. § 103.2(b)(2)(ii).

<sup>52</sup> 22 C.F.R. § 42.65(b).

<sup>53</sup> 9 FAM 504.4-4(D); 9 FAM 402.1-4.

<sup>54</sup> 9 FAM 403.7-3(B)(1)(b) (“Unlike IV applicants, NIV applicants are not required to submit extensive documentation in support of their cases so you should not routinely require them. Especially if local documents are unreliable, you should question the utility of requiring them of applicants as they add no value to the NIV adjudication. Remember that the burden of proof for establishing eligibility for the NIV classification lies with the applicant.”).

<sup>55</sup> 22 C.F.R. § 42.65(d)(1).

<sup>56</sup> DOS, Visa Reciprocity and Civil Documents by Country, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>; 9 FAM 504.4-4(A)(b); 9 FAM 504.4-4(F)(a)(1).

<sup>57</sup> 22 C.F.R. § 42.65(d)(1).

<sup>58</sup> 9 FAM 504.4-4(F)(c).

<sup>59</sup> 9 FAM 504.4-4(F)(a)(2) and 9 FAM 504.4-4(F)(c).

<sup>60</sup> IRAP, Expanding Complementary Pathways for Refugees and Displaced Persons, 22-25.

<sup>61</sup> 9 FAM 504.4-4(A)(a); 9 FAM 504.4-4(B). Applicants must provide police certificates for their country of nationality and of residence, if they have lived there for more than six months; any previous country of residence if they were 16 years or older when they lived there and were there for 12 months or more; and any location where they were arrested, regardless of period of residence or age at the time of arrest.

<sup>62</sup> 9 FAM 504.4-4(A)(3).

<sup>63</sup> 9 FAM 504.4-4(B)(b).

<sup>64</sup> 9 FAM 504.4-4(C)(1).

<sup>65</sup> World Education Services, <https://www.wes.org/credential-evaluations/>.

<sup>66</sup> 22 C.F.R. § 41.101; 22 C.F.R. § 42.61.

<sup>67</sup> 22 C.F.R. § 41.102; 22 C.F.R. § 42.62.

<sup>68</sup> 9 FAM 504.4-8(C)(a).

<sup>69</sup> 9 FAM 504.4-8(E)(1)(a).

<sup>70</sup> 9 FAM 504.4-8(E)(2)(b).

<sup>71</sup> 22 C.F.R. § 42.61(a).

<sup>72</sup> 22 C.F.R. § 42.62(a). A limited and temporary exception for individuals whose visas expired due to the coronavirus does not apply here. 22 C.F.R. § 42.62(c).

<sup>73</sup> 8 U.S.C. § 1202(h)(1); 9 FAM 403.5-2(b)(1).

<sup>74</sup> DOS, Visa Issuing Posts (last visited July 27, 2022), <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/visa-issuing-posts.html>.

<sup>75</sup> 8 U.S.C. § 1202(h)(1)(C); 9 FAM 403.5-4(A)(b) and 9 FAM 403.5-4(A)(1)(c).

<sup>76</sup> 8 U.S.C. § 1202(h)(2); 9 FAM 403.5-2(c)(4).

<sup>77</sup> Compare 8 C.F.R. § 207.2(a) (“Each applicant . . . shall appear in person before an immigration officer”) with 22 C.F.R. § 42.62(a) (“Every applicant applying for an immigrant visa . . . shall be required to appear personally before a consular officer”) and 8 U.S.C. § 1202(h)(1) (“the Secretary of State shall

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require every alien applying for a nonimmigrant visa . . . to submit to an in person interview with a consular officer”).

<sup>78</sup> This was explicitly endorsed in Executive Order 14013 (on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration); Department of State, Report to Congress on Proposed Refugee Admissions for Fiscal Year 2022 <https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2022/> (“In certain regions, USCIS has been able to implement video teleconference (V-TEL) interviews.”); USCIS, USCIS Announces FY 2021 Accomplishments, Dec. 16, 2021, <https://www.uscis.gov/newsroom/news-releases/uscis-announces-fy-2021-accomplishments> (“USCIS expanded its capacity to conduct certain refugee applicant interviews remotely using video-teleconferencing . . . USCIS interviewed approximately 6,600 refugee applicants in person and over 3,300 refugee applicants remotely in 23 countries.”).

<sup>79</sup> INA § 212(a)(5)(B) and (C).

<sup>80</sup> FLAG, Department of Labor, Prevailing Wage Determination Processing Times (as of 8/31/2022), <https://flag.dol.gov/processingtimes>.

<sup>81</sup> Processing times vary based on the USCIS Service Center that processes the application. See USCIS, Check Case Processing Times, <https://egov.uscis.gov/processing-times/>.

<sup>82</sup> USCIS, How Do I Request Premium Processing (last updated July 15, 2022), <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing>.

<sup>83</sup> Department of State, National Visa Center (NVC) Immigrant Visa Backlog Report (July 2022), <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-backlog.html>.

<sup>84</sup> USCIS, Fiscal Year 2023 Employment-Based Adjustment of Status FAQs, (last updated Sept. 8, 2022), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/fiscal-year-2023-employment-based-adjustment-of-status-faqs>.

<sup>85</sup> USCIS, Policy Manual, Volume 6 - Immigrants, Part E - Employment-Based Immigration, Chapter 7 - Schedule A Designation Petitions (last updated July 22, 2022). <https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-7>.

<sup>86</sup> USCIS Ombudsman, 2022 Annual Report, <https://www.dhs.gov/annual-report-congress>.

<sup>87</sup> AILA, Policy Brief: Reopening America - How DOS Can Reduce Delays and Eliminate Backlogs and Inefficiencies to Create a Welcoming America, June 29, 2021, <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-reopening-america>.

<sup>88</sup> In the H-1B context, the FAM notes that an

the approval of a petition by USCIS does not relieve the applicant of the burden of establishing visa eligibility. While most petitions are valid, you should confirm that the facts in the petition are true during the visa interview. Remember that USCIS interacts solely with the petitioner; the interview is the first point during the petition-based visa process where a [U.S. government] representative can interact with the beneficiary of the petition. Additionally, you benefit from cultural and local knowledge that adjudicators at USCIS do not possess, making it easier to spot exaggerations or misrepresentation in qualifications.

9 FAM 402.10-9(A)(a). In the EB immigrant visa context, the FAM indicates that

USCIS will approve an I-140 based on information submitted by the employer about the beneficiary. The certifying office has no means of verifying that the beneficiary does, in fact, possess the skills, training, experience, or other qualifications claimed in the

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documents. Therefore, if you, based upon the interview or an investigation, have reason to doubt whether the applicant possesses such skills, training, experience, or other qualifications, you have a responsibility to resolve such doubts.

9 FAM 302.1-5(B)(6)(a).

<sup>89</sup> 9 FAM 302.1-5(B)(10)(a).

<sup>90</sup> 9 FAM 402.10-9(B).

<sup>91</sup> 9 FAM 302.1-5(B)(10)(a)(3); 9 FAM 502.4-4(C).

<sup>92</sup> 9 FAM 302.1-5(B)(10)(b).

<sup>93</sup> David Bier, Consulates Deny 61% of Employer-Sponsored Immigrant Visas, Cato (June 1, 2022), <https://www.cato.org/blog/consulates-deny-61-employer-sponsored-immigrant-visas>.