



Advocates frustrated by shrinking legal migration under Biden

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With Democrats' immigration plans sputtering in Congress, some advocates are increasingly frustrated the Biden administration isn't taking advantage of existing legal pathways for those seeking to come to the U.S.

They described what they say are shrinking immigration opportunities under Biden as the White House lets visas expire — and as the U.S. hit the lowest number of resettled refugees in the history of the program.

“We’ve lost hundreds of thousands of visas that were meant for people to come here through the employment-based system or to join family members that, because of federal bureaucracy, were not processed in time, which is absolutely unjustifiable,” said Jorge Loweree, policy director for the American Immigration Council.

“One of the things that we consistently ignore in the immigration debate in this country is the reality that a big part of why we have 11 to 12 million undocumented people in the U.S. is because we don't have a meaningful and functional system of legal immigration,” he added.

Democrats have spent much of the first months of Biden's presidency attempting to move immigration reform through Congress, but their efforts have been twice batted down by the Senate parliamentarian.

A big part of those efforts is designed at providing protection to millions already in the U.S., shielding them from deportation by ensuring residency and an eventual path to naturalization.

But the close of the fiscal year means more than 200,000 visas will expire without action from Congress.

The government failed to issue some 150,000 family-based visas and as many as 80,000 employment-based visas, according to estimates provided by the State Department in mid-September.

“It doesn't sound like big deal but what 80,000 visas means is these are people stuck in employment-based or family-based green card backlogs for decades, and they are waiting for their chance to be able to apply,” said Shev Dalal-Dheini with the American Immigration Lawyers Association, noting that the government is just getting to visa applications first initiated in the late 1990s and early 2000s.

Also lost at the end of the fiscal year were 40,000 diversity visas, given out via lottery to as many as 55,000 people each year to help diversify the pool of immigrants coming to the U.S. The low processing rate has spurred lawsuits, with a court ordering the State Department to still issue nearly 7,000 from last fiscal year.

And the Biden administration resettled just 11,411 refugees this year, the lowest figure on record. Though the administration had doubts it would reach the 62,500 cap it set after the program atrophied during the Trump administration, the low totals nonetheless mean some 50,000 slots went unused.

“The loss of over 150,000 visas in the family-based category and potentially 80,000 visas in the employment-based category coupled with the record low resettlement of refugees this year equates to one of the sharpest decreases in legal immigration in modern history,” Loweree said.

It’s something he warned could have “cascading consequences for many people in the pipeline.”

The lost visa numbers were especially high this year as the coronavirus pandemic slowed processing both at the State Department, where some consulates remain closed, and the Department of Homeland Security.

The U.S. caps the number of both family- and employment-based visas every year. However, any family-based visas that aren’t used are then added to the employment-based cap for the following year — a feature that can surge employment-based opportunities.

The expiration of the visas furthers a trend sought by former President Trump, who wanted to limit family-based migration in favor of that tied to employment.

“The government can issue these visas whenever it wants to. It just doesn’t want to do anything that would enable it to get them out the door. It’s just that simple,” said David Bier, an immigration research fellow with the libertarian Cato Institute.

“The Biden administration came in with a set of promises, and they’re not fulfilling those promises so far. They haven’t restored the immigration system to what it was before Trump and they’re aren’t really even trying. It’s a lot of very tiny, marginal improvements,” Bier told The Hill.

Some have been pushing the administration to include visa recapture in Democrats’ budget reconciliation bill as a way to ensure the visas are not permanently lost and can instead be used in the fiscal year ahead. It’s a process lawmakers haven’t done since 2005, when Congress recaptured 50,000 visas through the REAL ID Act.

“It’s really irresponsible for Congress to let these numbers go to waste because these are numbers that they already authorized, and they’re going to waste because of the pandemic and because agencies can’t get their act together fast enough to adjudicate cases,” Dalal-Dheini said.

“I think this is something long overdue, and it's trying to fix a problem that's unintentional,” she added, saying that lawmakers expected the visas they authorized to be used.

But that could hit a roadblock in Congress.

After the parliamentarian for the second time shot down passing a Democratic immigration proposal through reconciliation, some leaders indicated little appetite for forwarding a proposal that didn't deal with the undocumented.

“Other immigration things, especially for businesses, that's not going to happen if we're not going to have any pathway to some form of status adjustment for the undocumented,” Senate Foreign Relations Committee Chairman Bob Menendez (D-N.J.) told reporters.

He later clarified to Bloomberg, “If we're talking about recapturing visas for family backlogs ... I certainly would consider that. If we're talking about getting visas so we can take care of businesses' problems, I'm not supportive — in the absence of getting anything else done.”

Menendez's comments nodded to a legislative effort from Sen. Thom Tillis (R-N.C.) and others that would preserve employment-based visas, which already receive the rolled over family-based visas, rather than those meant to help people obtain green cards to join family in the U.S.

Bier said the hesitation to advance efforts for visa recapture without other legalization pathways in part reflects broader lobbying efforts for the undocumented.

“The pro-immigrant side is so heavily dominated by organizations focused on helping immigrants already in the U.S. — it's people helping out with the asylum-seekers and people helping people without legal status here. So much of the advocacy organization and legal aid is all devoted to just preventing removals of people who are already here as opposed to helping people outside the country get here legally,” he said.

But Dalal-Dheini said any efforts to cure the ills of the immigration system will be a benefit to all who interact with it, including Dreamers and those with Temporary Protected Status looking to change their status. She warned that many in the U.S. with legal status are at risk of losing it while encountering the same overwhelmed system as those outside the U.S.

“With a big system like that if you improve some aspects of it other pieces can get ready for change,” she said. “You’re going to an agency that's pretty drained, and so to help people in the backlog and fund it better while anticipating a legalization package — it’s like clearing off the deck so that the big things can be taken care of by a ship that's in better shape.”