

“(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921) [which provided that unless legislation inconsistent therewith was enacted on or before June 30, 1968, the number of special immigrants within the meaning of section 1101(a)(27)(A) of this title, exclusive of special immigrants who were immediate relatives of United States citizens as described in section 1151(b) of this title, should not, in the fiscal year beginning July 1, 1968, or in any fiscal year thereafter, exceed a total of 120,000] who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act [see Effective Date of 1976 Amendment note under section 1101 of this title] shall be deemed to be entitled to immigrant status under section 203(a)(8) of the Immigration and Nationality Act [subsec. (a)(8) of this section] and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section], as amended by section 4 of this Act. Any petition filed by, or in behalf of, such an alien to accord him a preference status under section 203(a) [subsec. (a) of this section] shall, upon approval, be deemed to have been filed as of the priority date previously established by such alien. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title], as amended by this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title].”

**NONQUOTA IMMIGRANT STATUS OF CERTAIN RELATIVES OF UNITED STATES CITIZENS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO JANUARY 1, 1962**

Pub. L. 87-885, §1, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien relatives of United States citizens registered on a consular waiting list under priority date earlier than March 31, 1954, and eligible for a quota immigrant status on a basis of a petition filed with the Attorney General prior to January 1, 1962, and the spouse and children of such alien, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99-653, §11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100-525, §8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

**NONQUOTA IMMIGRANT STATUS OF SKILLED SPECIALISTS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO APRIL 1, 1962**

Pub. L. 87-885, §2, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien skilled specialists eligible for a quota immigrant status on the basis of a petition filed with the Attorney General prior to April 1, 1962, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99-653, §11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100-525, §8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

**ISSUANCE OF NONQUOTA IMMIGRANT VISAS TO CERTAIN ELIGIBLE ORPHANS**

Pub. L. 87-301, §25, Sept. 26, 1961, 75 Stat. 657, as amended by Pub. L. 99-653, §11, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100-525, §8(j)(2), Oct. 24, 1988, 102 Stat. 2617, provided that: “At any time prior to the expiration of the one hundred and eightieth day immediately following the enactment of this Act [Sept. 26, 1961] a special nonquota immigrant visa may be issued to an eligible orphan as defined in section 4 of the Act of September 11, 1957, as amended (8 U.S.C. 1205; 71 Stat. 639, 73 Stat. 490, 74 Stat. 505), if a visa petition filed in behalf of such eligible orphan was (A) approved by the Attorney General prior to September 30, 1961, or (B) pending before the Attorney General prior to September 30, 1961, and the Attorney General approves such petition.”

[Pub. L. 99-653, §23(c), as added by Pub. L. 100-525, §8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: “The amendments made by section 11 [amending section 25 of Pub. L. 87-301 set out above and repealing sections 1 and 2 of Pub. L. 87-885] take effect on November 14, 1986.”]

**NONQUOTA IMMIGRANT STATUS OF SPOUSES AND CHILDREN OF CERTAIN ALIENS**

Pub. L. 86-363, §4, Sept. 22, 1959, 73 Stat. 644, providing that an alien registered on a consular waiting list was eligible for quota immigrant status on basis of a petition approved prior to Jan. 1, 1959, along with the spouse and children of such alien, was repealed by Pub. L. 87-301, §24(a)(7), Sept. 26, 1961.

[Repeal of section 4 of Pub. L. 86-363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.]

**ADOPTED SONS OR ADOPTED DAUGHTERS, PREFERENCE STATUS**

Pub. L. 86-363, §5(c), Sept. 22, 1959, 73 Stat. 645, provided that aliens granted a preference pursuant to petitions approved by the Attorney General on the ground that they were the adopted sons or adopted daughters of United States citizens were to remain in that status notwithstanding the provisions of section 1 of Pub. L. 86-363 (amending this section), unless they acquired a different immigrant status pursuant to a petition approved by the Attorney General.

**SPECIAL NONQUOTA IMMIGRANT VISAS FOR REFUGEES**

Pub. L. 86-363, §6, Sept. 22, 1959, 73 Stat. 645, authorizing issuance of nonquota immigrant visas to aliens eligible to enter for permanent residence if the alien was the beneficiary of a visa petition approved by the Attorney General, and such petition was filed by a person admitted under former section 1971 et seq., of the former Appendix to Title 50, was repealed by Pub. L. 87-301, §24(a)(7), Sept. 26, 1961, 75 Stat. 657.

[Repeal of section 6 of Pub. L. 86-363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.]

**ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1957**

Pub. L. 85-316, §12, Sept. 11, 1957, 71 Stat. 642, which provided that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1957, would be held to be nonquota immigrants, and if otherwise admissible, be issued visas, was repealed by Pub. L. 87-301, §24(a)(5), Sept. 26, 1961, 75 Stat. 657.

[Repeal of section 12 of Pub. L. 85-316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.]

**ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1958**

Pub. L. 85-316, §12A, as added by Pub. L. 85-700, §2, Aug. 21, 1958, 72 Stat. 699, providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1958, shall be held to be nonquota immigrants and issued visas, was repealed by Pub. L. 87-301, §24(a)(6), Sept. 26, 1961, 75 Stat. 657.

[Repeal of section 12A of Pub. L. 85-316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.]

**§ 1153a. Transparency**

**(a) In general**

Employees of the Department of Homeland Security, including the Secretary of Homeland Se-

curity, the Secretary's counselors, the Assistant Secretary for the Private Sector, the Director of U.S. Citizenship and Immigration Services, counselors to such Director, and the Chief of the Immigrant Investor Programs Office (or any successor to such Office) at U.S. Citizenship and Immigration Services, shall act impartially and may not give preferential treatment to any entity, organization, or individual in connection with any aspect of the immigrant visa program described in section 1153(b)(5) of this title.

**(b) Improper activities**

Activities that constitute preferential treatment under subsection (a) shall include—

(1) working on, or in any way attempting to influence, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under the immigrant visa program referred to in subsection (a), the standard processing of an application, petition, or benefit for—

- (A) a regional center;
- (B) a new commercial enterprise;
- (C) a job-creating entity; or
- (D) any person or entity associated with such regional center, new commercial enterprise, or job-creating entity; and

(2) meeting or communicating with persons associated with the entities listed in paragraph (1), at the request of such persons, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under such immigrant visa program.

**(c) Reporting of communications**

**(1) Written communication**

Employees of the Department of Homeland Security, including the officials listed in subsection (a), shall include, in the record of proceeding for a case under section 1153(b)(5) of this title, actual or electronic copies of all case-specific written communication, including emails from government and private accounts, with non-Department persons or entities advocating for regional center applications or individual petitions under such section that are pending on or after March 15, 2022 (other than routine communications with other agencies of the Federal Government regarding the case, including communications involving background checks and litigation defense).

**(2) Oral communication**

If substantive oral communication, including telephonic communication, virtual communication, or in-person meetings, takes place between officials of the Department of Homeland Security and non-Department persons or entities advocating for regional center applications or individual petitions under section 1153(b)(5) of this title that are pending on or after March 15, 2022 (except communications exempted under paragraph (1))—

- (A) the conversation shall be recorded; or
- (B) detailed minutes of the session shall be taken and included in the record of proceeding.

**(3) Notification**

**(A) In general**

If the Secretary, in the course of written or oral communication described in this sub-

section, receives evidence about a specific case from anyone other than an affected party or his or her representative (excluding Federal Government or law enforcement sources), such information may not be made part of the record of proceeding and may not be considered in adjudicative proceedings unless—

- (i) the affected party has been given notice of such evidence; and
- (ii) if such evidence is derogatory, the affected party has been given an opportunity to respond to the evidence.

**(B) Information from law enforcement, intelligence agencies, or confidential sources**

**(i) Law enforcement or intelligence agencies**

Evidence received from law enforcement or intelligence agencies may not be made part of the record of proceeding without the consent of the relevant agency or law enforcement entity.

**(ii) Whistleblowers, confidential sources, or intelligence agencies**

Evidence received from whistleblowers, other confidential sources, or the intelligence community that is included in the record of proceeding and considered in adjudicative proceedings shall be handled in a manner that does not reveal the identity of the whistleblower or confidential source, or reveal classified information.

**(d) Consideration of evidence**

**(1) In general**

No case-specific communication with persons or entities that are not part of the Department of Homeland Security may be considered in the adjudication of an application or petition under section 1153(b)(5) of this title unless the communication is included in the record of proceeding of the case.

**(2) Waiver**

The Secretary of Homeland Security may waive the requirement under paragraph (1) only in the interests of national security or for investigative or law enforcement purposes.

**(e) Channels of communication**

**(1) Email address or equivalent**

The Director of U.S. Citizenship and Immigration Services shall maintain an email account (or equivalent means of communication) for persons or entities—

- (A) with inquiries regarding specific petitions or applications under the immigrant visa program described in section 1153(b)(5) of this title; or
- (B) seeking information that is not case-specific about the immigrant visa program described in such section 1153(b)(5).

**(2) Communication only through appropriate channels or offices**

**(A) Announcement of appropriate channels of communication**

Not later than 40 days after March 15, 2022, the Director of U.S. Citizenship and Immigration Services shall announce that the

only channels or offices by which industry stakeholders, petitioners, applicants, and seekers of benefits under the immigrant visa program described in section 1153(b)(5) of this title may communicate with the Department of Homeland Security regarding specific cases under such section (except for communication made by applicants and petitioners pursuant to regular adjudicatory procedures), or information that is not case-specific about the visa program applicable to certain cases under such section, are through—

- (i) the email address or equivalent channel described in paragraph (1);
- (ii) the National Customer Service Center, or any successor to such Center; or
- (iii) the Office of Public Engagement, Immigrant Investor Program Office, including the Stakeholder Engagement Branch, or any successors to those Offices or that Branch.

**(B) Direction of incoming communications**

**(i) In general**

Employees of the Department of Homeland Security shall direct communications described in subparagraph (A) to the channels of communication or offices listed in clauses (i) through (iii) of subparagraph (A).

**(ii) Rule of construction**

Nothing in this subparagraph may be construed to prevent—

- (I) any person from communicating with the Ombudsman of U.S. Citizenship and Immigration Services regarding the immigrant investor program under section 1153(b)(5) of this title; or
- (II) the Ombudsman from resolving problems regarding such immigrant investor program pursuant to the authority granted under section 272 of title 6.

**(C) Log**

**(i) In general**

The Director of U.S. Citizenship and Immigration Services shall maintain a written or electronic log of—

- (I) all communications described in subparagraph (A) and communications from Members of Congress, which shall reference the date, time, and subject of the communication, and the identity of the Department official, if any, to whom the inquiry was forwarded;
- (II) with respect to written communications described in subsection (c)(1), the date on which the communication was received, the identities of the sender and addressee, and the subject of the communication; and
- (III) with respect to oral communications described in subsection (c)(2), the date on which the communication occurred, the participants in the conversation or meeting, and the subject of the communication.

**(ii) Transparency**

The log of communications described in clause (i) shall be made publicly available

in accordance with section 552 of title 5 (commonly known as the “Freedom of Information Act”).

**(3) Publication of information**

Not later than 30 days after a person or entity inquiring about a specific case or generally about the immigrant visa program described in section 1153(b)(5) of this title receives, as a result of a communication with an official of the Department of Homeland Security, generally applicable information that is not case-specific about program requirements or administration that has not been made publicly available by the Department, the Director of U.S. Citizenship and Immigration Services shall publish such information on the U.S. Citizenship and Immigration Services website as an update to the relevant Frequently Asked Questions page or by some other comparable mechanism.

**(f) Penalty**

**(1) In general**

Any person who intentionally violates the prohibition on preferential treatment under this section or intentionally violates the reporting requirements under subsection (c) shall be disciplined in accordance with paragraph (2).

**(2) Sanctions**

Not later than 90 days after March 15, 2022, the Secretary of Homeland Security shall establish a graduated set of sanctions based on the severity of the violation referred to in paragraph (1), which may include, in addition to any criminal or civil penalties that may be imposed, written reprimand, suspension, demotion, or removal.

**(g) Rule of construction regarding classified information**

Nothing in this section may be construed to modify any law, regulation, or policy regarding the handling or disclosure of classified information.

**(h) Rule of construction regarding private right of action**

Nothing in this section may be construed to create or authorize a private right of action to challenge a decision of an employee of the Department of Homeland Security.

**(i) Effective date**

This section, and the amendments made by this section, shall take effect on March 15, 2022.

(Pub. L. 117–103, div. BB, § 107, Mar. 15, 2022, 136 Stat. 1105.)

**Editorial Notes**

**CODIFICATION**

Section was enacted as part of the EB-5 Reform and Integrity Act of 2022, and also as part of the Consolidated Appropriations Act, 2022, and not as part of the Immigration and Nationality Act which comprises this chapter.

**§ 1154. Procedure for granting immigrant status**

**(a) Petitioning procedure**

(1)(A)(i) Except as provided in clause (viii), any citizen of the United States claiming that