

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such petition was filed by a person admitted under former section 1971 et seq., of the former Appendix to Title 50, was repealed by Pub.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prior to July 1, 1957, would be held to be nonquota immigrants, and if otherwise admissible, be issued visas, was repealed by Pub.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on basis of a petition approved prior to July 1, 1958, shall be held to be nonquota immigrants and issued visas, was repealed by Pub.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 Security, 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 subsection, 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 an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 1153(a) of this title or to an immediate relative status under section 1151(b)(2)(A)(i) of this title may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 1151(b)(2)(A)(i) of this title also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

(v) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a citizen who—

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of title 10); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (iii) or (iv),