

**Statement of the American Immigration Lawyers Association
Submitted to the
Committee on the Judiciary of the U.S. Senate**



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“How Comprehensive Immigration Reform Should Address the Needs of Women and Families”

The American Immigration Lawyers Association (AILA) submits the following testimony to the Committee on the Judiciary. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 12,000 attorney and law professor members.

This statement focuses on the importance of the family-based immigration system. Family unification has always been the cornerstone of the U.S. legal immigration system. Keeping families strong and united is a core national value and interest. Under our current out dated system, unreasonable and unnecessary backlogs have kept families separated for years. A properly working family-based immigration system is foundational to ensure that future generations of immigrant families continue their track record of success in building up America.

Family-based immigration is not only about keeping close family members together. When it works properly, it furthers America's economic and social interests while advancing fundamental American values. Often times, immigrants who arrive through the family-based system have employable skills or are business innovators themselves. Moreover, studies have shown that close family relationships facilitate entrepreneurship because family members can support in caring for children and working in family-owned businesses.

Unfortunately, the current immigration system has kept families separated and uncertain about their future through backlogs and delays. A popular misconception about the immigration system is that family members who would like to immigrant can simply get into a line to obtain a visa, and then get their green card in a reasonable period of time. Apart from immediate relatives of U.S. citizens, close family members of U.S. citizens and legal permanent residents are forced to navigate extremely long delays in the visa application process due to the insufficiency of the number of visas available per year – numbers which were set by Congress in 1990.

For example, a U.S. citizen parent typically has to wait about seven years to bring an adult child; almost 20 years for those coming from Mexico. Brothers and sisters of U.S. citizens typically wait about 12 years; almost 24 years for those coming from the Philippines. These long delays create uncertainty and burdens for families as they weigh moving forward in their lives with the impact life decisions will have on their application. In the case of N (See Appendix Case Example #1), after waiting for 5 years on her parents’ petition for her, she decided to get married, which voided the petition. She now has to wait at least a decade to join them. The long waits leave family members

with uncertain lives, extending to the next generation. In Lauren's case (See Case Example #2), the long wait on her grandmother's petition for her mom left her with the possibility of being separated from her parents and sister.

Creating a rational, orderly, effective system that comports with 21st century realities are essential for America. The U.S. has long benefited from family-based immigration to strengthen economic resources, enhance the cultural melting pot, and bolster democracy, all which needs to continue as we embrace new challenges and competition.

Moving forward in reform, it is essential not to undermine one of the most important sources of immigrant strength and vitality – their broad-based families. Our family-based immigration system should work to reunite loved ones and provide stability to families. It should also reflect our values of fairness and inclusion, and reflect the realities of close ties and relationships that exist among family members beyond spouses and minor children. The ties that hold together siblings or elderly parents and adult children cannot be dismissed. Siblings and adult sons and daughters are in some cases, the closest family tie to a U.S. citizen or lawful permanent resident. In the case of Nadine (See Case Example #3), the backlog in visas available to siblings keep her separated from her brother, her closest remaining family tie. This separation has been felt more poignantly in the last 6 years with the deaths of their parents and a grandparent. The current family-based system is insufficient to meet the needs of families and requires improvements including the expansion of family categories and the addition of visa numbers.

Eliminating or restricting family-based immigration would tear apart existing family structures and foster social isolation and disconnection. Yet, some proposals call for limitations in the family-based visa categories in order to increase employment visa categories. This approach is premised on the faulty assumption that American can only absorb a fixed number of immigrants at a given time when in fact, our nation's needs are constantly changes – sometimes expanding and other times contracting. Adult children and siblings have been shown to have a direct impact on immigrant entrepreneurship. They help build family-owned businesses. They also provide critical care for elderly parents and minor children.

The social and economic benefits that family-based immigration has provided America are numerous. And, because of the immeasurable value added to our communities by immigrants with existing family ties, the benefits of family-based immigration cannot be measured in comparison to the benefits of employment-based immigration. America benefits the most when the family- and employment-based systems are each working effectively. And a well-functioning family-based system strengthens the employment-based system by allowing workers to maintain their family unit in the U.S. Less family-friendly policies may dissuade high-skilled immigrants, who also have families, from choosing to invest in America's economy with their talents and resources. Our immigration system must be flexible and capable of meeting the needs of both American businesses and families.

Other critically needed improvements in the system include:

- Re-classifying the children and spouses of lawful permanent residents as "immediate relatives" allowing them to immediately qualify for a visa.
- Recapturing unused family-based and employment-based visas that were authorized but not allocated due to bureaucratic delay.

- Increasing the per country limits of family visas from 7% to at least 15% to help ease family green card backlogs.
- Allowing same-sex partners to reunite.
- Allowing orphans, widows and widowers to immigrate despite death of a petitioner.

Appendix- Case Examples

Case Example #1 N

N is the daughter of M and J, from Thailand. After immigrating to the US in the 1990's based on M's skill as a traditional Thai chef, M and J opened their own Thai restaurant. In 2002, they filed a petition for their adult daughter, N, to immigrate and join them. N was over the age of 21 when M and J immigrated initially, and therefore, could not accompany them to the U.S. for M's job.

By the time the petition on N's behalf was approved in 2005, the "priority date" in the category for an unmarried daughter of a lawful permanent resident was backlogged to 1995. M and J considered naturalizing, but between the demands of running their own restaurant and the high cost of the application fees, did not do so until 2010.

In 2009, however, N decided to get married. As a married daughter of permanent residents, her parent's immigrant petitions became immediately void, and she lost her place in the immigrant visa quota backlog, losing 5 years of priority.

M and J have now become US citizens and have re-filed immigrant petitions for their married daughter, but their priority date of January 2013 is in a category that is backlogged to July of 2002, meaning that it will be at least a decade or more before their daughter can join them.

Case Example #2 Lauren

Lauren, a British citizen, 21 years old, came to the U.S. when she was 4 years old. Her grandparents had immigrated to the U.S. earlier in 1983 to farm. After an accident where Lauren's grandmother had a stroke and lost her leg, her parents, Ian and Allison, brought their family to the U.S. in 1995. The parents arrived on an E-2 visa to manage a motel and restaurant.

Lauren's grandparents became U.S. citizens, and in September 2003, her grandmother filed a petition for Lauren's mom as an adult married child of a U.S. citizen (Family Third category). Lauren was a derivative on that petition. Because of the wait on the Family Third (F3) category, the family is still waiting for visas to be available that would allow them to become lawful permanent residents. From March 2013 to April 2013, the F3 category will only inch forward one week from July 15, 2002 to July 22, 2002. At that rate, it may take 5 more years for their priority date to come current.

Lauren's parents' E-2 visa status does not provide a path to permanent residency. And when Lauren turned 21, she was no longer covered under her parents' current nonimmigrant visa – and was left without a status. Furthermore, she may soon “age-out” of the F3 family-based petition filed in 2003, her eligibility for which the Child Status Protection Act is only extending past age 21 to the extent of the number of days the petition was pending. If the family's priority date does not come current before that calculation runs out, Lauren ages out and loses her eligibility. Lauren was granted deferred action in 2012, allowing her to stay in the U.S. temporarily, and is currently pursuing dance in New York.

Outside of the extraordinary relief of deferred action there are little options for Lauren to remain with her family. If Lauren ages out, she does not keep her place in line with a different petition due to the lack of permanent priority dates for family based cases. When her mother gets her own permanent resident status, she could file a new petition for Lauren as the adult child of a permanent resident (2B). And Lauren will have to start her wait over again. The wait in that category means that Lauren could wait another decade or longer to get her green card.

Case Example #3 Nadine

Nadine, originally from Trinidad, came to the U.S. on a student visa in August 1988. She completed a graduate degree and was sponsored for an H-1B visa and later, a green card by a corporation. She became a permanent resident in 1993, worked, and paid taxes. In 1998, Nadine made a commitment to the United States, took the oath of allegiance, and became a naturalized citizen.

Once Nadine became a U.S. citizen, she filed a petition for her mother. While the case for her mother was quickly processed, Nadine's mother decided not to immigrate to the U.S. Nadine's mother was later diagnosed with breast cancer and died in 2007.

In February 2006, Nadine filed a sibling petition (I-130) for her youngest brother, who was 23 years old at the time. Though their dad was deceased and their mother was fighting cancer, Nadine's brother was a determined university student. Nadine was working long hours in the U.S. and trying to provide support to her brother and her mother from afar. The family determined that it would be best for Nadine and her brother to be together. The approval for the I-130 petition was received from USCIS on December 7, 2009. The case was sent to the U.S. State Department for visa processing on December 10, 2009. As of April 2013, green cards are available to brothers and sisters of U.S. citizens who began the process in April of 2001, five years before Nadine began the process for her brother. To date, a visa has not been made available and, during the almost decade-long wait, Nadine's brother finished a bachelor's degree. At age 30, he is currently residing in Barbados, where he attended college and remained after graduation.

Nadine and her brother are very close, and given the age difference between them, Nadine has always helped to take care of him. Once she settled in the U.S., Nadine would visit her family every year. She called her family weekly and wrote to her brother frequently. Each school year, she bought him a new supply of clothes, books, and educational toys. When Nadine's brother was 12 years old, he traveled to the U.S. to spend Christmas with her. The following year, he spent the summer with his sister. He has made many visits to the U.S. since that time, and when Nadine received her PhD, he was there for the ceremonies. In the past six years, Nadine and her brother have buried their mother, grandmother, and stepfather—it has been a difficult time for them to be apart. Nadine's brother last visited for Christmas in December of 2012. They maintain weekly contact through phone calls, Skype, or Facebook.