

## Backlogs for (Almost) Everything in U.S. Immigration



By [Eileen M. Martin](#)

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Crossing the border for business during the pandemic was challenging across all industries, forcing private businesses and their workers to implement changes and pivots to weather the storm. But as we emerge on the other side of the pandemic, new challenges are coming to light — including outlandish backlogs caused by the U.S. federal government's apparent inability to make adjustments during or after the crisis.

To understand where the problem lies, you need to know the players. When filing for U.S. immigration benefits, there are four U.S. federal government agencies involved: U.S. Customs and Border Protection (USCBP) and U.S. Citizenship and Immigration Services (USCIS), both under the Department of Homeland Security; the Department of State; and the Department of Labor.

USCBP has had shorter lines at its ports of entry while travellers stayed home during the pandemic. However, some land border ports of entry suddenly require USMCA applicants and beneficiaries to make appointments to obtain work permits. Currently, the wait for an appointment can be as long as a month, but officers are often reticent to schedule individuals for appointments that are longer than a month away. This backlog is unnecessary and a function of bureaucracy discouraging those they are to serve.

USCIS has outrageous backlogs for most of its processes. Maybe one of the most egregious is the B-2 (visitor) extension. A visitor in the U.S. can apply to extend status, but the published processing time has been 20 months. If a visitor in the U.S. for under six months files to stay an additional six months, he or she will not know if the U.S. government approves it until 20 months later. Adding insult to injury, if that person leaves while the application is pending, USCIS may deny the application. Depending on when that person leaves, USCBP may count their time in the U.S. waiting for a decision as unlawful presence, creating a statutory bar to re-entering the U.S. Foreign nationals are made to feel as though they are being held hostage by these wait times created by backlogs. This example is one out of dozens of petition and application backlogs that are wreaking havoc on the lives of foreign nationals. The U.S. federal government appears to feel no pressure to create a solution to these problems, created and sustained by its inability to fulfil its mission.

U.S. Department of State (USDOS) issues visas required by many foreign nationals to enter the U.S. Despite creating limited opportunities for individuals to obtain visas without interview, those who must attend interviews must wait very long times.

Obtaining a visitor visa to the U.S. from a USDOS office in Canada currently takes somewhere between 11 months and 18 months. Traders and investors are struggling to manage cross-border or U.S.-based businesses because of visa backlogs. USDOS waives few interviews, even for those who have received the same visa multiple times. There are no phone calls or Zoom interviews, like private industry uses. Frequently, those who require interviews try to schedule them — even knowing the appointment might be a year out — only to find there are no interviews available for scheduling at all. They cannot get the required visa without an interview, and they cannot get an interview. Perhaps that makes them less bitter when they finally secure an interview for a date set 10 months away, but I suspect not.

The U.S. Department of Labor (USDOL) plays a critical role in the green card process for many foreign national workers. For USDOL to tell an employer the prevailing wage for an occupation in a region, it takes more than eight months. Considering it is an electronic system, with the information in a government database that anyone can access online, this is inexcusable. This is a single step in a multistep process. The other electronic filing that is part of the process similarly takes about eight months.

While private industry learned how to ensure it could function remotely in the last several years, government agencies have not even come close to trying to do so — and are making no accommodation for available technologies or on-file information that could substantially shorten or streamline their existing processes. It is baffling that the easier and more convenient these processes become, the longer they take.

Amidst these backlogs, immigration-related agencies have also decided to be more stingy than ever in their approvals. Most applicants find that what may have been sufficient evidence to show eligibility for a visa or work authorized status in the past is now insufficient — requiring them to put even more time and money into obtaining an approval for an immigration benefit.

Be aware that any U.S. immigration process involving the U.S. government is likely to take longer than expected, and feel like more of an uphill climb. Stay ahead of your processes and extensions by engaging counsel early to prevent disappointment.

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