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# Immigrants Increasingly Sucked Into Bureaucratic 'Black Hole'

By Andrew Kreighbaum

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- Visa applications increasingly get State Department scrutiny
- Extended wait times can outlast temporary visas' duration

A growing number of immigrant workers already beset by government backlogs now face an additional hurdle—their applications at US consulates and embassies are being put on hold pending further review from the State Department.

Those additional reviews, known as administrative processing, often come with no explanation for what the issues are with the applications, how applicants can address them, and no timetable for a resolution, immigration attorneys say.

Immigrants already wait weeks or months for an appointment to get a passport stamp to travel to the US, which is supposed to be the last step after receiving visa approval from the Homeland Security Department. But the once-perfunctory process has become a nightmare for many.

“What we’re hearing across the board from immigration attorneys is it’s an epidemic,” said Jonathan Wasden, a partner at Wasden Bless & Forney LLC. “No one has seen this before.”

Consular offices can put visas on hold under Section 221g of the Immigration and Nationality Act because of missing paperwork, or if an application is tagged for additional security screening—especially workers in fields with access to sensitive technology that could have a potential military use for foreign powers.

Delays in work visa processing can have an outsized impact on industries like tech—which claimed nearly 70% of H-1B specialty occupation visas in fiscal year 2020—or architecture, engineering, and surveying, which claimed more than 9% of the visas.

## Open-ended Process

When a case is put into administrative processing, the agency technically considers it a visa denial, although applicants can overcome the issues that prompt additional screening.

But it could take anywhere from weeks to months or a year to reach a resolution, said Fuji Whittenburg, managing partner at Whittenburg Immigration and chair of the American Immigration Lawyers Association's State Department liaison committee.

"It's a bit of a black hole," she said. "You want to avoid it at all costs."

The State Department releases statistics on visa refusals, but not cases referred for administrative processing. The agency didn't comment on the rate of cases referred for that additional scrutiny. The term "administrative processing" could refer to various additional steps needed to complete an assessment of a visa, an agency spokesperson said.

"Before issuing any visa, we must ensure that applicants do not pose a security risk to the United States and otherwise are eligible for a visa," the spokesperson said. "If an applicant requires additional screening for whatever reason, we will not issue a visa until that screening is complete."

The duration of additional reviews vary based on the individual circumstances in each case, and the State Department encourages travelers to submit visa applications well ahead of their expected travel dates, the spokesperson said.

### Ticking Clock

While the DHS's US Citizenship and Immigration Services determines eligibility for a visa, the State Department decides if an applicant is admissible to enter the US. For visas with a limited duration, such as H-1B visas and L-1 intracompany transferee visas, the clock starts ticking as soon as USCIS approves it, Wasden said.

There is no regulation setting a deadline for the State Department to complete administrative processing, and the wait can significantly eat into the length of a visa. In some cases, the processing time even outlasts the visa itself, he said.

"You'll see people with H-1Bs and Ls who time out on the validity period and have those visas expire while they're in 221g," Wasden said. "That takes a huge chunk out of profitability out of the employers' pocket when you can't get that person in the country. It's a huge loss."

Deepa Patil, originally from India, secured an O-1 extraordinary ability visa in July after she was hired as a senior research scientist at Boston-area biomedical startup Transcera.

But what was supposed to be a weeks-long trip to Mumbai for a passport stamp in August has turned into an open-ended stay after a visa appointment at the consular office there ended with a referral to administrative processing.

The delay, stemming from missing documents in the State Department's case system, has disrupted research at a critical stage for Transcera, which aims to use naturally occurring molecules to deliver therapeutic drugs.

"I have to be in the lab all the time to do that work," Patil said. "It cannot be done remotely."

The visa delay has also separated Patil and her one-year-old daughter from her husband in the US.

### Lack of Transparency

James Hollis, an immigration attorney at Siskind Susser PC, advises clients to take notes on anything said to them about potential issues during their visa interviews.

"There's no transparency in this process once they issue the 221g letter," he said.

Patil said she resubmitted documents she was told were missing from the State Department's system within 24 hours of her visa interview, but weeks later, she's received no update from the agency.

Her unanticipated absence from work at Transcera has put stress on the rest of the team and could mean it will take longer to complete studies that are key to securing the startup's next round of funding, said Hunter Goble, the company's co-founder and CEO.

Finding a researcher with Patil's qualifications was extremely difficult, and the vast majority of candidates for the position required visa sponsorship. The biotech industry in Cambridge, Mass., where the company is based, is "highly dependent on brilliant scientists who come here from all over the world," Goble said.

"The fact that the US makes it more difficult for those people to get here and to stay here really does impede innovation in a very real and immediate way. It's not an abstract concept," he said.

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