Testimony of Randall Emery

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To a hearing on

The Separation of Nuclear Families under U.S. Immigration Law

Thursday 3/14/2013 - 1:30 p.m.

2237 Rayburn House Office Building

Subcommittee on Immigration and Border Security

Thank you Chairman Gowdy, ranking member Lofgren, and all the members of the panel. My name is Randall Emery. I am a US citizen. I am president and co-founder of American Families United. We are the premier grassroots organization advocating for nuclear families in US immigration reform.

American Families United was founded by US citizens in 2006 because our rights as US citizens – as husbands and wives, mothers and fathers – are not respected by US immigration law. We could not find another voice working on the specific oversights in US immigration law that threatened our right as US citizens to live with our families in our country.

We immediately made common cause with legal permanent residents – and are here today – because our values demand no less. These are people who got their green cards and then got married – and were shocked by the indefensible delays they face in living together as nuclear families in the country that claims to welcome them as legal permanent immigrants.

It is often said that our immigration laws are broken, but not why. It's simple: our laws contradict our values.

On the one hand, we welcome legal immigrants as permanent residents and urge them to become US citizens – so that "they" become "us". On the other hand, our laws block some of the most basic human values for both legal immigrants and US citizens – marriage and family.

Today's hearing is on the separation of nuclear families under US immigration law. Let me take a moment to give a brief history of the F2A backlog, the spouses and minor children of legal permanent residents.

It has been nearly a quarter century since the Congress last increased legal immigration, even though the country's population has grown by a quarter and our economy is nearly 60% larger. America is a positive sum proposition. Isn't that why we get married and have children?

In 1990, if someone got a green card today and got married tomorrow, the minimum wait was one year. The House of Representatives passed a version of the Immigration Act of 1990 that would have made this category numerically unlimited, although the Senate would only agree to a substantial increase.

Speaking on behalf of American Families United, we are proud of Governor Romney for proposing to return to this idea in his 2012 campaign, and we were very encouraged at news reports that Senator Rubio has also proposed making the F2A category into Immediate Relatives under the law.

In 1995, the bipartisan US Commission on Immigration Reform examined this issue. Known as the Jordan Commission, they were the first to ask the State Department for a formal count: **how many people are we talking about?**

At that time, the official estimate was 1.1 million, with more than 800,000 in the US and another 300,0000 waiting abroad, facing a minimum wait of 3 years. The Jordan Commission found both those numbers contrary to our national interest in warmly welcoming new Americans, and recommended that Congress recognize that the unification of nuclear families should have priority.

But others said at the time that this backlog was merely temporary and would go away on its own.

By the end of the 1990s, it was clear that the separation of nuclear families had become a permanent feature of US immigration policy. The State Department has explained that their 1997 estimate of more than a million was very low, for two reasons:

> First, they had not properly counted the numbers of nuclear family members waiting in the United States, since the then-INS does not count applications until a visa is nearly available. Neither does the USCIS now.
>
> Second, the delay is so long that families often increase while waiting – that is, a husband might visit his wife, who was counted as one person waiting but when her priority date finally arrives, the family has children. This is particularly true for Mexico.

For many years, the only way to see the scale of human misery created by this failure of our laws was to watch the priority dates – or the way we in American Families United have seen it, with people like Mat, here, who come to us for help and join our cause. We want to show the Committee most of the iceberg is below the surface.

In December 2000, the minimum worldwide wait for the spouse of a legal permanent resident was 4 years and 5 months. For Mexico, it was 6 years and two months. That was when Congress passed the LIFE Act, which created the V visa that allowed spouses and minor children of legal permanent residents to wait for their green cards in the US – but only up until the date of enactment. American Families United supported last year's STEM bill, which would have revived the V visa. But it is important to realize that the LIFE Act did not solve the problem.

The worldwide wait for the nuclear families of legal immigrants peaked in July 2006 at 6 years and nine months. For Mexico, it peaked in July 2003 at 7 years and 8 months.

How could the total number of people waiting have been declining, when the time they must wait increased?

Over the next few years – from 2003 to 2010 – something happened, which you can see in the dry charts of the priority dates, but which we at American Families United heard directly from the people affected. Literally hundreds of thousands of people who should have been welcomed as American families were pushed into the shadows or forced to leave their new country: exiled – or outlawed.

Month by month, the State Department moved the priority dates forward, in order to bring in that month's portion of annual immigration in this category. By July 2010, the delay that had been nearly 7 years worldwide, had become just two years. For Mexico, what had been a nearly 8 year delay had ostensibly declined to a little more than 3.

Today, the State Department's Visa Bulletin pegs both Mexico and the worldwide wait in this category the same: 2 years, 5 months. That's the delay Mat is facing. It's far, far too long. Yet it's not the whole story.

It is not true that a shorter waiting time means fewer people are waiting. It means something much worse.

Since 2010, the State Department has published an annual Waiting List. Last November, they officially counted 220,313 people waiting in this category.

But it has to be said clearly: this is misleading, because the State Department count does not include hundreds of thousands of applications for nuclear family immigration held at USCIS. There is no consolidated count for nuclear family unification.

Outside of the comprehensive immigration debate, there is no discussion of how many of the undocumented population has been eligible for legal immigration for many years. So it isn't so much that they violate the value of the rule of law. Instead, our immigration laws fail the test of American values.

So let me briefly show the Committee the human face of these numbers through stories shared with us.

Consider the example of an engineer from Russia, who was working in Oklahoma. He married his sweetheart from back home, who was working in Kazakhstan. At the time, the minimum time they had to wait fluctuated each month between 5 and 6 years. But then she was hit by a car. Many of her bones were broken. He literally tried to commute between Kazakhstan and Oklahoma, to continue his career while obeying that part about "for better, for worse, in sickness and in health". But he spent so much time at her bedside that he lost his permanent residence status in the US – and America lost ***that*** guy, someone who flew halfway around the world three times a month to try to keep his commitment to his new country as well as his new bride.

Just one more example, of many: an elevator repairman, a skilled mechanic from Jamaica, owns his own business. He married a foreign student from Trinidad. They had a baby – so she was the mother of a US citizen, and the wife of a legal permanent resident. But as often happens, it never occurred to her that US immigration law does not respect those fundamental values. She learned that her mother in Trinidad was dying – so she faced the dilemma: she could

bring the only granddaughter to her dying mother, and be exiled from her husband, raise that little girl apart from her father for ten years – or she could remain in the US, never see her mother again, and be permanently outlawed.

Now, some might ask: why can't these people just wait to become US citizens?

There are two things to say to that. First, America welcomes legal immigrants. That's why they are legal, after all.

It defies our national interest to tell a new American that they cannot marry, cannot really start a new life in the United States, until they become a US citizen. What national interest could it possibly serve, to tell husbands and wives that they must sleep in separate countries for five years?

Second, even naturalization does not help in many thousands of cases. We know – that's why American Families United was founded by ***US citizens*** whose spouses have been caught by the fish hooks and bear traps that litter US immigration law and policy. We know that nuclear families are often forced apart because our immigration laws are like death penalty trials with traffic court rules of evidence, with catastrophic consequences to US citizen families.

That's why on Valentine's Day – which happened to be Mat's wedding day – AFU members met with 53 Congressional offices, including personal meetings with 5 US Senators and, in fact, we have met with several members of this Committee: with ranking Member Lofgren, in her California office; with Congressman Gutierrez – thank you again for your public support, Congressman Poe, Congressman Amodei, and others here in DC; and with the staff of Congressman Gowdy, Congressman Holding, and Congressman Garcia.

As those of you who met with us recall, we have a very specific ask for due process waiver reform: that US citizens' families be treated at least as generously as anybody else in comprehensive immigration reform.

American Families United's full legislative agenda is on our website, AmericanFamiliesUnited.org.

For this Committee hearing, let me emphasize just two parts: immediate relative status for the nuclear families of legal permanent residents, and – please, do not forget – due process waiver reform, so that the families of US citizens are at least not treated worse than others in comprehensive reform legislation.

Thank you.

Supporting Material:

From the Executive Summary of *Legal Immigration: Setting Priorities*, the 1995 Report of the bipartisan US Commission on Immigration Reform http://www.utexas.edu/lbj/uscir/reports.html (Page XV)

> By the end of this fiscal year, 824,000 spouses and minor children of aliens legalized under IRCA will be waiting for visas. The number of new applications has fallen to only a handful for this group. However, since the filing of applications by the legalization beneficiaries, a backlog of 279,000 (or about 80,000 per year) spouses and minor children of other LPRs has developed. Under our current system, it would take more than a decade to clear the backlog, even with substantial naturalization. In the meantime, when an LPR sponsors a spouse and/or minor child, that individual goes to the end of the waiting list of 1.1 million.

History of the F2A backlog, the spouses and minor children of legal permanent residents:

Minimum wait (summarized from the State Department Visa Bulletin Archives)

December 1995
http://dosfan.lib.uic.edu/ERC/visa_bulletin/9512bulletin.html

Worldwide August 92; Mexico February 92

Worldwide: 4 years, 5 months
Mexico: 4 years, 10 months

December 1999
http://dosfan.lib.uic.edu/ERC/visa_bulletin/9912bulletin.html

Worldwide September 1995; Mexico June 1994

Worldwide: 4 years, 3 months
Mexico: 5 years, 7 months

December 2000 (when LIFE Act created the V Visa):
Worldwide: July 96; Mexico October 94.

Worldwide: 4 years, 5 months
Mexico: 6 years, 2 months

July 2001

Worldwide September 96; Mexico October 94

Worldwide: 4 years, 9 months
Mexico: 6 years, 3 months

July 2002

Worldwide April 97; Mexico November 94

Worldwide: 5 years, 2 months
Mexico: 7 years, 8 months

July 2003

Worldwide: May 98; Mexico December 95

Worldwide: 5 years, 2 months
Mexico: 7 years, 8 months

July 2004

Worldwide: March 2000; Mexico August 97

Worldwide: 4 years, 3 months
Mexico: 6 years, 11 months

July 2005

Worldwide: May 2001; Mexico May 98

Worldwide: 4 years, 2 months
Mexico: 7 years, 2 months

July 2006

Worldwide: September 99; Mexico September 99

Worldwide: 6 years, 9 months
Mexico: 6 years, 9 months

July 2007

Worldwide June 02; Mexico August 01

Worldwide: 5 years, 1 month
Mexico: 6 years, 11 months

July 2008

Worldwide: August 03; Mexico **UNAVAILABLE**

Worldwide: 4 years, 11 months
Mexico: Unavailable

July 2009

Worldwide: December 04; Mexico June 02

Worldwide: 4 years, 8 months
Mexico: 7 years, 1 month

July 2010

Worldwide July 08; Mexico June 07

Worldwide: 2 years
Mexico: 3 years, 1 month

July 2011

Worldwide: March 08; Mexico February 08

Worldwide: 3 years, 3 months
Mexico: 3 years, 4 months

July 2012

Worldwide: February 2010; Mexico February 2010

Worldwide: 2 years, 4 months
Mexico 2 years, 4 months

March 2013:

Worldwide: November 2010; Mexico November 2010.

Worldwide: 2 years, 5 months
Mexico: 2 years, 5 months

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Inadmissibility Waivers Based on Family and Community Equities. Current waiver provisions for the various grounds of inadmissibility vary widely in standards and applicability. Most create bright lines between eligibility and ineligibility which fail to account for the widely varying facts of each case. We propose an overall waiver section applicable to all grounds of inadmissibility that are not based on prospective conduct. The provision creates a balancing test of positive and negative factors to be applied in each case. Central to these factors are the strength of family and community ties compared to the seriousness of the misconduct involved.

Legislative Language

SEC. XXX. WAIVERS OF INADMISSIBITY. Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting the following subsection (c)—

"(c)(1) Notwithstanding any other provision of law, the Secretary of Homeland Security or the Attorney General shall waive the effect of the following statutory provisions unless it is found that the balance of favorable and unfavorable factors on the totality of the evidence weighs against granting the waiver:

"(i) Any one or more grounds of inadmissibility (including any requirement of permission to reapply for admission and any application for relief from removal) set forth in subsections (a)(2), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10)(except subparagraph (A)) to permit an alien to receive an immigrant visa or be adjusted to the status of lawful permanent resident; or
"(ii) Any one or more grounds of removability set forth in section 237, except subsection (a)(4).

"(2) Favorable factors shall include:

"(i) The amount of time that has passed since the events or conduct that is the basis of the inadmissibility;
"(ii) The extent of rehabilitation and remorse demonstrated by the alien since such events or conduct;
"(iii) The duration of legal residence in the United States;
"(iv) The presence of family members entitled to live legally in the United States;

"(v) The provision of economic and social support to family members entitled to live legally in the United States;
"(vi) Property owned by the alien in the United States for personal or business use;
"(vii) Social, economic or cultural contributions made by the alien to his community in the United States or abroad;
"(viii) Honorable service in the armed forces of the United States or of an ally of the United States;
"(ix) The extent of any hardship that would be suffered by the alien or any person entitled to live legally in the United States due to the alien's inadmissibility; and
"(x) Any specific benefit that would accrue to the government or citizens of the United States by permitting the alien to become a lawful permanent resident.

"(3) Unfavorable factors shall include:

"(i) The seriousness of the conduct that is the basis of the inadmissibility;
"(ii) Commission of serious crimes or significant immigration violations in addition to the conduct that is the basis of the inadmissibility;
"(iii) Specific harm caused to the national interest of the United States by conduct of the alien;
"(iv) Any specific detriment that would accrue to the government or citizens of the United States by permitting the alien to become a lawful permanent resident.

"(4) The absence of one or more favorable factors shall not be construed as a negative factor and a single favorable factor can provide sufficient basis to grant a waiver.

"(5) Permitting spouses and minor children to live together in the United States if one of the spouses is a citizen or lawful permanent resident is a specific benefit to the government and citizens of the United States and shall be given conclusive weight in favor of granting waivers in the absence of unusually serious negative factors."

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