Texas Wesleyan Law Review

Volume 15 | Issue 1 Article 9

10-1-2008

Family Unity for Permanent Residents and Their Spouses and Minor Children: A Common Sense Argument for Revival of the "V" Visa

Wim van Rooyen

DOI: https://doi.org/10.37419/TWLR.V15.I1.8

FAMILY UNITY FOR PERMANENT RESIDENTS AND THEIR SPOUSES AND MINOR CHILDREN: A COMMON SENSE ARGUMENT FOR REVIVAL OF THE "V" VISA

Wim van Rooyen

I. INTRODUCTION

Under current U.S. immigration law, U.S. permanent residents are allowed to sponsor their spouses and minor children for immigrant visas to the United States. Such immigrant visas allow these relatives to live and work permanently in the United States.[1] However, these visas are subject to quota restrictions, i.e., only a certain number of visas are issued each year.[2] Accordingly, there are significant backlogs resulting in five to six-year delays in receiving a visa.[3] This is

1. *See* U.S. Cit'ship & Immigr. Servs., Now That You Are a Permanent Resident, http://www.uscis.gov (follow "Permanent Resident (Green Card)" hyperlink; then follow "Now That You Are a Permanent Resident" hyperlink) (last visited Sept. 30, 2008).

2. *See* 8 U.S.C. § 1153(a)(2).

3. *See Shortfalls of the 1986 Immigration Reform Legislation: Hearing Before the Subcomm. on Immigration,Citizenship, Refugees, Border Sec., & Int'l Law of the H. Comm. on the Judiciary*, 110th Cong. 5 (2007) [hereinafter Legomsky] (testimony of

exacerbated by the fact that most sponsored relatives are unable to travel to the United States during the waiting period.[4] As a result, many are separated from their U.S. relatives for several years.[5]

To remedy this, Congress created a new class of nonimmigrant visas for qualifying spouses and minor children of U.S. permanent residents.[6] The V visa allows these relatives to enter the United States as nonimmigrants and remain in the country until an immigrant visa is approved.[7] However, due to the V visa legislation's sunset provision, the visa is practically unavailable to most spouses and minor children of permanent residents today.[8]

This Comment argues that the V visa should be revived for the overall promotion of family unity in our immigration system. First, it examines the unique situation of spouses and minor children of U.S. permanent residents. Next, it addresses the current V visa legislation—its history and purposes, how it operates, and why it is currently of little practical value. This Comment then suggests possible remedies, and in particular, argues for the revival of the V visa for humanitarian, economic, and practical reasons.

II. BACKGROUND

Quite possibly the best introduction to this subject matter is to tell a story. However, the following is not a story in the fictional sense, nor is it a constructed hypothetical—it is the true story of a real immigrant family. It clearly and accurately illustrates the hardships that many U.S. permanent residents, their spouses, and minor children face under current immigration law.

A. *An Immigrant's Story Stretching Across Generations*[9]

Ramon Lobo's family immigrated to the United States in 1994.[10] Ramon's father had worked for a U.S. airbase in the Phillipines, and this made the family eligible to immigrate to the United States.[11] Unfortunately, Ramon could not join his family at that time.[12] Since he

---

Stephen H. Legomsky, Professor, Wash. Univ. Sch. of Law), *available at* http://judiciary.house.gov/media/pdfs/Legomsky070419.pdf.

4. *See generally* posting of Michael Shane on Ask a Lawyer Question and Answer Archive, http://www.lawyers.com/ask_a_lawyer/q_and_a_archive/view_archive/index.php?QID=25-SEP-06&site=537 (Sept. 25, 2006).

5. Legomsky, *supra* note 3, at 5.

6. *See* SARAH IGNATIUS & ELISABETH S. STICKNEY, IMMIGRATION LAW AND THE FAMILY § 14:15, at para. 1 (updated June 2008), *available at* IMLF § 14:15 (Westlaw).

7. *See id.* at para. 10.

8. *See id.* at para. 2.

9. *See* Jennifer Ludden, *A Family's Wait for U.S. Visas Spans Generations*, NPR, May 10, 2006, http://www.npr.org/templates/story/story.php?storyId=5404214.

10. *Id.*

11. *Id.*

12. *Id.*

had just turned twenty-one when the family's visas were approved, Ramon was placed in a different visa category which had a much longer waiting period.[13] Despite much agony, Ramon's parents and siblings moved to California, and Ramon stayed behind in the Philippines.[14] During the subsequent nine-year waiting period, Ramon was unable to visit his family in the United States, even when his mother was diagnosed with cancer.[15] Because he had a pending petition for an immigrant visa, he was regarded as a high risk for overstaying his visitor visa.[16] Eventually, Ramon's immigrant visa came through, and he was able to join his family.[17]

Sadly, history repeats itself, and Ramon also left some family behind in the Philippines.[18] By the time his immigrant visa was finally approved, Ramon already had a two year-old son, Patrick, with his longtime girlfriend, Ana.[19] Even though he married Ana soon after the approval of his visa, Ramon had to leave her and his son behind when he moved to California.[20] Ramon has petitioned for Ana's immigrant visa, but it may be several years before she is able to join him.[21]

In the meantime, Ramon and Ana communicate and continue their marriage over the Internet via a web cam.[22] Ramon also travels to the Philippines for the occasional visit, and he and Ana had another son, Tristan, who was conceived during one of his visits.[23] Ana often shoots videos of the two boys so that Ramon will not miss too much of their childhood.[24] Ramon's parents hoped that they would be able to welcome Ana to the United States, but Ramon's mother has since passed away.[25]

Ramon and Ana plan and look forward to Ramon's three to four week visits.[26] As Ramon says, "Any longer would make it harder to leave."[27] He continues, "This way, they won't really get used to my being there. It'll be just like a dream."[28]

---

13. *Id.*
14. *Id.*
15. *Id.*
16. *See id.*
17. *Id.*
18. *See id.*
19. *Id.*
20. *Id.*
21. *See id.*
22. *Id.*
23. *See id.*
24. *See id.*
25. *Id.*
26. *See id.*
27. *Id.*
28. *Id.*

B. *Background to Immigrant Visas for Spouses and Minor Children of U.S. Permanent Residents*

A gut reaction to the above account may be to ask how this is possible. First, is the United States not popularly known as a nation of immigrants, where family unity is a valued and treasured ideal?[29] Is a system that separates immediate family members for extended periods of time really acceptable to a morally conscious society? Second, we are not here dealing with illegal immigrants and illegal immigration, which is beyond the scope of this Comment. Being part of a recognized visa category, spouses and minor children of permanent residents are legal immigrants with a proper basis for immigrating to the United States.[30] While illegal immigrants are often discussed, it appears as if spouses and minor children of U.S. permanent residents are a forgotten group.[31]

1. Overview of Immigrant Visas

At this point, an overview of the U.S. immigrant visa process is appropriate. An immigrant visa, applied for at a U.S. consulate abroad, allows a person to travel to the United States as an immigrant and to become a permanent resident upon entry to the country.[32] A permanent resident is a foreign national who has been granted the right to reside and work permanently in the United States.[33] There are several general pathways to receive an immigrant visa: (1) immigration through a family member; (2) immigration through employment; (3) immigration through investment; (4) immigration through the Diversity Lottery; and (5) immigration through the registry provisions of the Immigration and Nationality Act.[34]

Family-based immigration has two overall categories—unlimited family immigration and limited family immigration.[35] In the unlimited category, there are no quotas or restrictions on the number of immigrant visas that can be issued in a particular year.[36] Immediate relatives of U.S. citizens fall into this category—spouses, widows or widowers, and children; and parents of U.S. citizens, who are twenty-

29. *See* Legomsky, *supra* note 3, at 6.

30. *See generally* Immigration and Nationality Act, 8 U.S.C. §§ 1151(a)(1), 1153(a) (2006).

31. *See* Legomsky, *supra* note 3, at 2.

32. *See* U.S. Dep't of State, U.S. Consulate Gen. in Amsterdam, the Netherlands, Immigrant Visas, http://amsterdam.usconsulate.gov/immigrant_visas.html (last visited Mar. 2, 2008).

33. *See* U.S. Dep't of State, Family Immigration, http://travel.state.gov/visa/immigrants/types/types_1310.html (last visited Jan. 23, 2008).

34. *See* U.S. Citizenship and Immigration Servs., Lawful Permanent Resident ("Green Card"), http://www.uscis.gov/greencard (last visited Sept. 19, 2008).

35. U.S. Dep't of State, Family-Based Immigrants, http://travel.state.gov/visa/immigrants/types/types_1306.html (last visited Jan. 23, 2008) [hereinafter Family-Based Immigrants].

36. *See* Immigration and Nationality Act, 8 U.S.C. § 1151(b) (2006).

one or older.[37] Returning residents (those permanent residents who have lived abroad temporarily for more than one year) are also included in this category.[38] Since the number of visas available is unlimited, an immigrant visa is immediately available as soon as administrative processing is completed.[39]

Those family members who fall under the limited family immigration category are divided further into various preference categories: Family First Preference (F1) for unmarried sons and daughters (twenty-one or older) of U.S. citizens, and their children if they have any; Family Second Preference (F2) for spouses, minor children, and unmarried sons or daughters (twenty-one or older) of permanent residents; Family Third Preference (F3) for married children of U.S. citizens, and their spouses and children; and Family Fourth Preference (F4) for siblings of U.S. citizens, as well as the siblings' spouses and children, if the U.S. citizen is over twenty-one.[40]

Each preference category is assigned a certain number of allocated visas per year, with the possibility that some unused visas in a higher-preference category could "spill over" to a lower-preference category.[41] However, when the demand exceeds the supply, i.e., there are more applications for immigrant visas in a given year than the yearly quota of visas allocated for the particular category, significant backlogs can be created, which may result in long wait times for an immigrant visa.[42]

The first step in the process of obtaining an immigrant visa is that the sponsor or petitioner (the U.S. relative) must file a Petition for Alien Relative, also known as the I-130.[43] The date on which the I-130 is filed is called the priority date, and this date is very important in the limited categories because it essentially gives the potential beneficiary a "place in line."[44]

The U.S. Department of State publishes a monthly Visa Bulletin, where the backlog for each visa category is updated on a monthly basis.[45] The Visa Bulletin shows a cut-off date for each preference cate-

37. *Id.* Under the Immigration and Naturalization Act, children are unmarried persons who are under twenty-one years of age. *See id.* § 1101(b)(1).

38. Family-Based Immigrants, *supra* note 36.

39. *See* Legomsky, *supra* note 3, at 6–7.

40. Family-Based Immigrants, *supra* note 35; 8 U.S.C. § 1153(a).

41. *See* 8 U.S.C. § 1153(a).

42. *See* Family-Based Immigrants, *supra* note 35.

43. *See* U.S. Cit'ship & Immigr. Servs., Immigration Through a Family Member, http://www.uscis.gov (follow "Services & Benefits" hyperlink; then follow "Permanent Resident (Green Card)" hyperlink; then follow "Immigration through a Family Member" hyperlink) (last visted Sept. 30, 2008).

44. *See* U.S. Dep't of State, Glossary of Visa Terms, "Priority Date," http://travel.state.gov/visa/frvi/glossary/glossary_1363.html (last visited Jan. 23, 2008).

45. *See e.g.*, U.S. Dep't of State, *Visa Bulletin for February 2008*, http://travel.state.gov/visa/frvi/bulletin/bulletin_3925.html (last visited Jan. 23, 2008) [hereinafter *Visa Bulletin*].

gory, and the cut-off date essentially indicates that all I-130 petitions with a priority date before the cut-off date are ripe for processing for an immigrant visa.[46] This is often referred to as the case becoming "current."[47] Therefore, while an I-130 petition may be approved, processing for an immigrant visa cannot continue until the petition's priority date falls before the cut-off date.[48]

In reality, the Visa Bulletin contains another factor to be considered. In addition to the quotas imposed for the different preference categories, there are also numerical limits on the amount of immigrant visas that can be issued to immigrants from any particular foreign country.[49] Interestingly, the limits are assigned according to the immigrant's place of birth and not by the immigrant's citizenship.[50] The per-country limit for preference immigrants is 7% of the total yearly family-based and employment-based preference limits—therefore, 25,620 visas.[51] Due to these limits and varying demands for visas by different countries, the cut-off dates are somewhat different for the various countries.[52] The Visa Bulletin lists the cut-off dates separately for immigrants from China (mainland born), India, Mexico, the Philippines, and "all chargeability areas except those listed" [hereafter referred to as "Worldwide"].[53] The chart for family-based preference categories in the Visa Bulletin for February 2008 is indicated below:[54]

Family	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	08FEB02	08FEB02	08FEB02	01JUL92	22JAN93
2A	15MAR03	15MAR03	15MAR03	01MAY02	15MAR03
2B	01JAN99	01JAN99	01JAN99	22MAR92	22JAN97
3rd	08MAY00	08MAY00	08MAY00	08JUL92	01APR91
4th	08JUL97	15NOV96	08OCT96	01NOV94	15FEB86

As can be seen in the Visa Bulletin above, the backlog in some of the preference categories is quite severe, resulting in long waits for many immigrants. To a certain extent, one might suppose that such a state of affairs is normal and to be expected, especially given the demand for immigration and the need to control the number of immigrants coming to the United States. However, as will be seen below,

46. *See id.*
47. *See* U.S. Dep't of State, Glossary of Visa Terms, "Current/non-current," http://travel.state.gov/visa/frvi/glossary/glossary_1363.html (last visited Jan. 23, 2008).
48. *See id.*
49. *Id.*
50. *Id.*
51. *See* Immigration and Nationality Act, 8 U.S.C. § 1152(a)(2) (2006); *Visa Bulletin*, *supra* note 45.
52. *See generally Visa Bulletin*, *supra* note 45 (see the Family chart for dates).
53. *Id.*
54. *Id.*

the effect on spouses and minor children of permanent residents is particularly severe.

2. Immigrant Visas for Spouses and Minor Children of Permanent Residents—The Dilemma

As mentioned above, the Family Second Preference (F2) category consists of spouses, minor children, and unmarried sons and daughters (aged twenty-one or older) of permanent residents.[55] Note that the category also includes children with "derivative" status, i.e., any unmarried children under the age of twenty-one of the above-named beneficiaries.[56]

The number of visas allocated to the F2 category each year is 114,200, and added to this number are any unused visas from the Family First Preference category as well as "the number (if any) by which such worldwide family preference level exceeds 226,000."[57] The F2 category is further divided into the F2A subcategory (consisting of spouses and minor children of permanent residents, as well as any derivative children) and the F2B subcategory (consisting of unmarried sons and daughters—aged twenty-one or older—of permanent residents, as well as any derivative children).[58] 77% of the F2 category visas are required to go towards the F2A category, and the remainder goes to the F2B category.[59]

At this point, an important distinction must be made. Not all spouses and minor children of permanent residents necessarily fall within the F2A subcategory—if a person becomes a permanent resident or receives an immigrant visa, U.S. immigration law grants what is commonly referred to as "accompanying or follow-to-join" status to spouses and minor children in cases where a pre-existing relationship exists.[60] In other words, if marriage to the spouse occurred before the visa was issued, or if the child was born before the visa was issued, the spouse or child is also immediately eligible for an immigrant visa along with the eligible principal immigrant.[61] The problem occurs when the spouse or child is acquired after the permanent resident status or immigrant visa was received. In such a case, the spouse or minor child of the permanent resident cannot receive "accompanying or following to join" benefits, and they fall within the F2A subcategory and its accompanying limitations.[62]

---

55. Family-Based Immigrants, *supra* note 35; 8 U.S.C. § 1153(a).
56. *See* 8 U.S.C. § 1153(d).
57. *See* Family-Based Immigrants, *supra* note 35; 8 U.S.C. § 1153(a)(2).
58. *See* 8 U.S.C. § 1153(a)(2), (d) (the categories are often referred to as "F2A" and "F2B" – "F" indicating it is a family-based category, and "2A" or "2B" representing the statutory subsections "(2)(A)" or "(2)(B)").
59. *See id.* § 1153(a)(2).
60. *See id.* §§ 1101(b)(1), 1153(d).
61. *See* Legomsky, *supra* note 3, at 5, 7.
62. *Id.* at 5, 7–8.

The focus of this Comment is really on the F2A subcategory. This is not to say that the plight of those in the F2B subcategory is not important—the February 2008 Visa Bulletin indeed indicates that the backlog is more severe in this category and the wait time much longer.[63] Comparing the "Worldwide" cut-off dates in the February 2008 Visa Bulletin, the cut-off date for subcategory F2A is March 15, 2003, while the cut-off date for subcategory F2B is January 1, 1999.[64] However, on a personal level, the wait time is likely not the exclusive factor to be considered—the relationship between the sponsor and the beneficiary is also significant.[65] In the case of the F2B subcategory, the beneficiaries are unmarried sons and daughters (aged twenty-one or older) of permanent residents.[66] While geographic separation is hard on everyone, these beneficiaries are at least, arguably, at a more independent age. Hypothetically, they may be pursuing academic or vocational studies, or they may be gainfully employed. In contrast, the F2A subcategory involves spouses and minor children of permanent residents.[67] Extended periods of separation between parents and minor children, and between spouses, would likely result in even greater hardship and is even less desirable than separating adult children from their parents.[68]

A quick look at the other preference categories will also highlight the unique circumstances of spouses and minor children of permanent residents. The F1 category consists of unmarried sons and daughters of U.S. citizens, including their children (if they have any).[69] The primary immigrants in this category are all aged twenty-one or older, since they would be eligible to immigrate under the unlimited family immigration category if they were younger than twenty-one.[70] Again, the beneficiaries in the F1 category appear to be at a more independent age. The F3 category consists of married children of U.S. citizens.[71] In this category, the beneficiaries' marital status at least mitigates the separation from their parents that they may have to endure while they wait for an immigrant visa. Also, the beneficiary's primary relationship (his or her marriage) is not adversely affected by the immigration system. Lastly, the F4 category consists of siblings of U.S. citizens.[72] While this Comment by no means attempts to down-

63. *See Visa Bulletin*, *supra* note 45.

64. *Id.*

65. *See generally* Legomsky, *supra* note 3, at 5–6 (suggesting that separating "members of the nuclear family" is more problematic than separating "extended family members").

66. *See* Immigration and Nationality Act, 8 U.S.C. § 1153(a)(2)(B) (2006).

67. *See id.* § 1153(a)(2)(A).

68. *See* Legomsky, *supra* note 3, at 5-6.

69. *See* 8 U.S.C. § 1153(a)(1), (d).

70. *See id.* § 1151(b)(2)(A)(i) (listing relatives who are not subject to the annual numerical limitations on immigrant visas).

71. *See id.* § 1153(a)(3).

72. *See id.* § 1153(a)(4).

play the relationship between siblings, it is suggested that it is not as fundamentally important for siblings to live together as it is in the case of parents and minor children, and spouses.

Given the special relationship between spouses and between parents and minor children, the long wait times for immigrant visas likely have a particularly severe effect on permanent residents, their spouses, and their minor children. As stated above, visa petitions for most beneficiaries in the F2A subcategory filed before March 15, 2003, are currently eligible for processing.[73] This implies that the beneficiary of a petition filed on, for example, March 14, 2003, waited almost five years for the petition to be "current" for processing. The situation, according to the February 2008 Visa Bulletin, is even worse for those beneficiaries born in Mexico, where the cut-off date is May 1, 2002.[74] Accordingly, a Mexican-born beneficiary of a petition filed on, for example, April 30, 2002, waited more than five years for the petition to be "current" for processing. Such a long separation of spouses, and parents from minor children, could hardly be said to be consistent with ideals of family unity in an immigration system.

But, there is more. Not only do the spouses and minor children of U.S. permanent residents have a raw deal compared to other immigrants—they also have the short end of the stick compared to nonimmigrants. A nonimmigrant is a foreign citizen who "enter[s] the United States temporarily for a specific purpose."[75] These individuals include tourists, temporary workers, students, etc.[76] Most U.S. nonimmigrants do not face the problems that U.S. permanent residents do because they can sponsor spouses and children for dependent visas.[77] For example, the F1 visa is a visa issued to academic students, but the F1 visa also has a dependent visa, known as the F2 visa, which is available to spouses or children of F1 visa holders.[78] Similarly, the H1B visa is a temporary work visa, and the H1B visa has a dependent visa, known as the H-4 visa, which is available to spouses or children of H1B visa holders.[79] Furthermore, there are no quotas or limits involved with these dependent visas.[80] Accordingly, the nonimmigrant spouses and children are not subject to long waits or long periods of separation. It seems a strange quirk in the U.S. immigration system to allow spouses and minor children of nonimmigrants to be sponsored

73. *See Visa Bulletin*, *supra* note 45.

74. *See id.*

75. U.S. Dep't of State, Glossary of Visa Terms, "Nonimmigrant Visa (NIV)," http://travel.state.gov/visa/frvi/glossary/glossary_1363.html (last visited Jan. 23, 2008).

76. *Id.*

77. *See generally* 8 U.S.C. § 1101(a)(15).

78. *See* U.S. Cit'ship & Immigr. Servs., Immigration Classifications and Visa Categories, http://www.uscis.gov (enter "Immigration Classifications and Visa Categories" in search box) (last visited Oct. 15, 2008) [hereinafter Immigration Classifications]; 8 U.S.C. § 1101(a)(15)(F).

79. *See* Immigration Classifications, *supra* note 78; 8 U.S.C. § 1101(a)(15)(H).

80. *See generally* 8 U.S.C. § 1101(a)(15).

for immediately available visas while a substantially larger burden is placed on the spouses and minor children of permanent residents, who have made a commitment to, and significant investments in, making the United States their new permanent home.

Additionally, there is the above-mentioned inconsistent, and possibly somewhat arbitrary, way in which spouses and minor children of permanent residents are classified under U.S. immigration law.[81] In some cases, where the marriage to the spouse or birth of the child occurred before the immigrant visa was issued to the primary immigrant, the spouse or child is eligible for an immigrant visa immediately due to "accompanying or following to join" benefits.[82] In contrast, F2A beneficiaries, whose marriages or births occurred after an immigrant visa was issued to the primary immigrant, must wait several years in order to join their family in the U.S.[83]

Finally, permanent residents really have very limited options in terms of preserving some family unity with their F2A spouses and minor children. First, the permanent resident cannot be away from the United States for extended periods without careful documentation and planning.[84] If a permanent resident decides to live abroad with his spouse and minor children until their visas are approved, there is significant risk that the United States Citizenship and Immigration Services (USCIS) may, under the facts, determine that the permanent resident had abandoned his permanent residence in the United States, and if so, the permanent resident may be ineligible to return to the United States.[85] Also, it may be supposed that many permanent residents simply cannot afford to travel abroad regularly or cannot get sufficient vacation time to do this. Second, beneficiaries of I-130 petitions often find it very hard to make short visits to the United States while their petitions are pending.[86] Technically, such beneficiaries are allowed to travel to the United States to visit their relatives, either on a B-2 tourist visa or under the Visa Waiver Program (if they hold a passport from a country allowed to participate in the Visa Waiver Program).[87] However, many such applications for a visa (or applications for admission at the port of entry in the case of Visa Waiver Program visitors) are denied, because an individual seeking a B-2 visa (or entry

81. *See* Legomsky, *supra* note 3, at 7–8.

82. *Id.*; *see also* 8 U.S.C. § 1153(d).

83. *See* Legomsky, *supra* note 3, at 7–8.

84. *See generally* posting of Michael Shane on Ask a Lawyer Question and Answer Archive, http://research.lawyers.com/ask-a-lawyer/Abandonment-of-Permanent-Residency-LPR-Issues-5609.html (last visited Jan. 25, 2008).

85. *See generally id.*

86. *See generally* posting of Michael Shane on Ask a Lawyer Question and Answer Archive, *supra* note 4.

87. *See generally* U.S. Dep't of State, Coming to America – Getting Your Visitors Visa, http://travel.state.gov/visa/temp/types/types_1264.html (last visited Jan. 25, 2008); U.S. Dep't of State, Visa Waiver Program (VWP), http://travel.state.gov/visa/temp/without/without_1990.html (last visited Jan. 25, 2008).

under the Visa Waiver Program) has the burden of proving nonimmigrant intent, i.e., that the applicant has a residence in the foreign country that the applicant does not intend to abandon.[88] It is logically very difficult for the spouse or minor child of a permanent resident to demonstrate nonimmigrant intent when the person is a beneficiary of a pending immigrant petition.[89] Some succeed by showing strong ties to their home country that would prevent them from overstaying their temporary status, such as financial and educational commitments abroad, but it is not an easy task.[90]

From the above, it is clear that the system of issuing immigrant visas places a huge strain on the relationships of permanent residents with their spouses and minor children. Consequently, Congress attempted to devise a remedy, which today, unfortunately, is of little help to most F2A petitioners and beneficiaries.

C. *The Current V Visa—A Doomed Remedy*

In 2000, Congress passed the Legal Immigration Family Equity (LIFE) Act.[91] This legislation created a new visa specifically with spouses and minor children of permanent residents in mind.[92] As the Department of State explains it, "The purpose of this act is to reunite families who have been or could be separated during the process of immigrating to the United States."[93] Essentially, it allows the F2A beneficiaries to come to the United States and wait for the immigrant visa process to take its course.[94]

The new V visa is a nonimmigrant visa issued to those spouses and minor children of permanent residents who have F2A petitions filed by their permanent resident spouse or parent, and more specifically, the petition must have been filed by December 21, 2000.[95] Also, in order to be eligible for a V visa, the beneficiary must have been waiting at least three years for any of the following: approval of the immigrant visa (I-130) petition; in the event of an approved immigrant visa petition, a "current" priority date; or adjudication by the U.S. consulate of the application for an immigrant visa.[96] However, if the case

88. *See* Immigration and Nationality Act, 8 U.S.C. § 1184(b) (2006); U.S. Dep't of State, Visa Denials, http://travel.state.gov/visa/frvi/denials/denials_1361.html (last visited Jan. 25, 2008) [hereinafter Visa Denials].

89. *See* posting of Michael Shane on Ask a Lawyer Question and Answer Archive, *supra* note 4.

90. *See id.*; Visa Denials, *supra* note 88.

91. *See* Legal Immigration Family Equity Act ("LIFE Act"), Pub. L. No. 106-553, 114 Stat. 2762 (2000).

92. *See* IGNATIUS & STICKNEY, *supra* note 6.

93. U.S. Dep't of State, Nonimmigrant (V) Visa for Spouse and Children of a Lawful Permanent Resident (LPR), http://travel.state.gov/visa/immigrants/types/types_1493.html (last visited Jan. 24, 2008) [hereinafter Nonimmigrant V Visa].

94. *See id.*

95. *See* IGNATIUS & STICKNEY, *supra* note 6.

96. *See id.*

has already been scheduled for an immigrant visa interview, the beneficiary may not apply for a V visa.[97]

The National Visa Center (NVC) notifies potential V visa applicants (and their petitioners/sponsors) by letter if they are potentially eligible for the visa, and they are prompted to contact the U.S. consulate abroad to apply for the visa.[98] The amount of documentation required to apply is fairly extensive—in addition to various administrative forms, the applicant must submit a current passport, birth certificate, police certificates from all places the applicant resided since he or she was sixteen years old, marriage/death/divorce certificates (if applicable), proof of financial support (showing that the applicant will not likely become a public charge), and evidence that the permanent resident petitioner has not abandoned his permanent resident status in the U.S.[99] Also, the applicant must submit to a medical examination and background checks.[100] The length of time it takes to complete the application process and issue a V visa depends on the particular consulate used and the circumstances of the individual; furthermore, security clearance may take some time.[101] An applicant is not eligible for a V visa if he or she has trafficked in drugs, has HIV/AIDS, has overstayed a prior visa, or has submitted fraudulent documents.[102]

There are actually three types of V visas that are issued: the V1 visa, for the spouse of a permanent resident; the V2 visa, for the minor child of a permanent resident; and the V3 visa, for a derivative child of a V1 or V2 beneficiary.[103] When a V visa holder enters the United States on the visa, he or she is admitted for two years and is then further given two-year extensions, as needed, until his or her case is "current" and the holder can start the process for permanent residence.[104] Interestingly, USCIS initially interpreted the legislation behind the V visa to include an "age-out" provision, whereby F2A children of permanent residents became excluded from the relief provided by the legislation when they turned twenty-one.[105] Typically, visas for such children were issued so as to expire on the child's twenty-first birthday.[106] However, the "age-out" provision was struck down by the United States Court of Appeals for the Ninth Circuit in *Akhtar v. Burzynski*.[107] The court stated that it was Congress's intent

97. *See* Nonimmigrant V Visa, *supra* note 93.
98. *See id.*
99. *See id.*; IGNATIUS & STICKNEY, *supra* note 6, at para. 7.
100. *See* IGNATIUS & STICKNEY, *supra* note 6, at para. 7.
101. Nonimmigrant V Visa, *supra* note 93.
102. *Id.*
103. *See* Immigration Classifications, *supra* note 78.
104. *See* IGNATIUS & STICKNEY, *supra* note 6, at paras. 7, 10.
105. *See id.* at para. 1.
106. *See id.* at para. 3.
107. Akhtar v. Burzynski, 384 F.3d 1193, 1202 (9th Cir. 2004).

to bring families together when it authorized the creation of the V visa.[108] The court reasoned that USCIS's interpretation was inconsistent with Congress's intent, because the interpretation would essentially re-separate families after they had been reunified by the V visa.[109] Since the decision in *Akhtar*, USCIS has not applied the "age-out" provision, not even in jurisdictions other than the Ninth Circuit, and all V visa holders may continue to renew their status until their cases become "current."[110]

Once the I-130 petition becomes "current," the V visa holder may elect to apply for an immigrant visa at a consulate abroad, or may file for adjustment of status to permanent residence with USCIS.[111] The latter option allows the V visa holder to file in the United States with the obvious advantage of never having to leave family in the United States, even for a short period of time.[112]

Another advantage of the V visa is that it allows the holder to apply to USCIS for permission to work once admitted to the United States.[113] This is particularly helpful to low-income immigrant families, especially when it comes to the later process of obtaining permanent residency for the V visa holders.[114] In that process, the permanent resident petitioner must meet some minimum income requirements to show that he or she can support the beneficiaries; however, if the beneficiaries are legally allowed to work in the U.S., their incomes can be added to that of the petitioner, allowing the petitioner to satisfy the minimum requirements that otherwise might not have been met.[115]

While the current V visa certainly provided relief to many permanent residents and their spouses and minor children, it is sadly of little practical value today. As stated above, for the F2A beneficiaries to be eligible for the V visa, the permanent resident petitioner must have filed the I-130 petition by December 21, 2000.[116] This "sunset provision" essentially makes the visa unavailable to beneficiaries whose petitioners applied after December 21, 2000, i.e., virtually all spouses and minor children of permanent residents today.[117] As before, most have to deal with long waits for immigrant visas and endure long periods of separation.

---

108. *Id.* at 1200.
109. *See id.* at 1202.
110. *See* IGNATIUS & STICKNEY, *supra* note 7, at paras. 7, 10.
111. *See id.* at para. 5.
112. *See id.*
113. *See id.* at para. 6.
114. *See id.*
115. *See id.*
116. *See id.* at para. 1.
117. *See id.* at para. 2.

III. ANALYSIS

Is there a viable solution to this problem? Is it possible to find a remedy that would provide relief to the F2A beneficiaries, without compromising national security and the quota system and limitations currently in place? This Comment considers two bills that had been introduced in Congress in the past to address the situation. It also provides a brief overview of how some other foreign jurisdictions treat spouses and minor children of their permanent residents. Finally, this Comment, in considering the merits of each bill, recommends a modified version of one of the proposed bills in Congress that would revive the V visa. The Author believes that this solution would best address the problem in terms of humanitarian, economic, practical, and national security concerns.

A. *Congress's Proposals*

The subject of spouses and minor children of permanent residents appears to have gotten enough public attention to have inspired two serious (although lapsed) bills to be introduced in a previous session of Congress, namely S. 1919[118] in the U.S. Senate and H.R. 1823[119] in the U.S. House of Representatives. Interestingly, both were introduced in the 109th Congress.[120] Each bill is considered separately below.

1. S. 1919

S. 1919 was introduced by Senator Hagel in the first session of the 109th Congress.[121] Its stated purpose was to "amend the Immigration and Nationality Act in order to reunify families, to provide for earned adjustment of status, and for other purposes."[122] The bill was also given the short title of the "Immigrant Accountability Act of 2005."[123]

Indeed, this bill addressed a lot more subject matter than just the rights and privileges of F2A spouses and minor children of permanent residents—it also dealt with issues such as adjustment of status, mandatory departure and reentry, and correction of social security records.[124] But importantly, it dedicated an entire section to "[r]eclassification of spouses and minor children of legal permanent residents as immediate relatives."[125]

As already discussed, those immigrants classified as "immediate relatives" of U.S. citizens are not subject to direct numerical limitations

118. *See* S. 1919, 109th Cong. (2005).
119. *See* H.R. 1823, 109th Cong. (2005).
120. *See* S. 1919; H.R. 1823.
121. *See* S. 1919.
122. *See id.*
123. *See id.*
124. *See id.*
125. *See id.* § 202.

or quotas.[126] The current definition of "immediate relatives" is as follows:[127]

> For purposes of this subsection, the term "immediate relatives" means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 1154(a)(1)(A)(ii) of this title within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

Section 202 of S. 1919 proposed the following changes to the current definition:[128]

> (a) Immediate Relatives- Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended—(1) in the first sentence, by inserting 'or the spouses and children of aliens lawfully admitted for permanent residence,' after 'United States,'; (2) in the second sentence—(A) by inserting 'or lawful permanent resident' after 'citizen' each place that term appears; and (B) by inserting 'or lawful permanent resident's' after 'citizen's' each place that term appears; (3) in the third sentence, by inserting 'or the lawful permanent resident loses lawful permanent resident status' after 'United States citizenship'; and (4) by adding at the end the following: 'A spouse or child, as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1), shall be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join the spouse or parent. The same treatment shall apply to parents of citizens of the United States being entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join their daughter or son.'

These changes, together with other relevant changes to the allocation of immigrant visas and the procedure for granting immigrant status, essentially would allow spouses and minor children of permanent residents to be classified as "immediate relatives," allowing them to escape the numerical limitations and quotas associated with the F2A category. Just like the spouses and minor children of U.S. citizens (or

126. *See* Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2)(A)(i) (2006).
127. *Id.*
128. *See* S. 1919, 109th Cong. § 202 (2005).

spouses and minor children whose relationships precede the granting of an immigrant visa to the primary immigrant), they would be immediately eligible for an immigrant visa to the United States.[129]

2. H.R. 1823

Another potential solution was offered during the first session of the 109th Congress.[130] Introduced in the House of Representatives, H.R. 1823 had a stated purpose of amending the Immigration and Nationality Act "to extend the provisions governing nonimmigrant status for spouses and children of permanent resident aliens awaiting the availability of an immigrant visa, and for other purposes."[131]

In particular, H.R. 1823 proposed to amend the portion of the Immigration and Nationality Act which afforded nonimmigrant status to F2A spouses and minor children of permanent residents, i.e., the portion that basically created and authorized the V visa.[132] The current version of the federal statute is as follows:[133]

> (a) As used in this chapter—
> (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—
> (V) subject to section 1184(q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153(d)) of a petition to accord a status under section 1153(a)(2)(A) that was filed with the Attorney General under section 1154 of this title on or before December 21, 2000, if—
> (i) such petition has been pending for 3 years or more; or
> (ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—
> (I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 1153(a)(2)(A) of this title; or
> (II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 1255, pursuant to the approval of such petition, remains pending.

H.R. 1823 proposed two relatively simple changes, as indicated below:[134]

> Section 101(a)(15)(V) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(V)) is amended—
> (1) by striking "the date of the enactment of the Legal Immigration Family Equity Act,' and inserting 'January 1, 2011,"; and
> (2) by striking "3 years" each place such term appears and inserting "6 months".

---

129. *See* 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(d).
130. *See* H.R. 1823, 109th Cong. (2005).
131. *Id.*
132. *See generally id.*
133. *See* Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(V) (2006).
134. *See* H.R. 1823.

Basically, H. R. 1823 was an attempt to revive the V visa, and it did so by (1) creating a new cut-off date (January 1, 2011) by which the I-130 petition needs to be filed in order to be eligible for a V visa and (2) reducing the amount of time the beneficiary has to wait before he or she can apply for a V visa (from three years to six months).[135] This solution would make no changes to the current scheme of numerical limitations or quotas for immigrant visas. Simply put, it would again make the V visa, as a sort of interim visa, a viable option for most F2A spouses and minor children of permanent residents today—an alternative to the long wait times and periods of separation.

B. *Treatment in Foreign Jurisdictions*

Finally, before drawing conclusions about what the best solution to the problem might be, it is appropriate to consider how two other countries with large numbers of immigrants, Canada and Australia, have approached the issue. This Comment by no means purports to contain a detailed and in-depth discussion of immigration laws in these countries. It simply takes a cursory glance at how these countries' immigration systems treat spouses and minor children of permanent residents (or individuals with a similar status).

1. Canada

Under Canadian immigration law, Canadian citizens and permanent residents who are at least eighteen years old can sponsor a "spouse, common-law or conjugal partner, or dependent children" for permanent residence, whether they already live in Canada or whether they reside abroad.[136] A child is considered to be dependent if the child is "under the age of 22 and does not have a spouse or common-law partner," "is a full-time student and is substantially dependent on a parent for financial support since before the age of 22, or since becoming a spouse or common-law partner (if this happened before age 22)" or "is financially dependent on a parent since before the age of 22 because of a disability."[137] The sponsor files an application for sponsorship, and the beneficiary files an application for permanent residence.[138] The forms are sent together to the appropriate Case Processing Center, and once the application for sponsorship is ap-

135. *See id.*

136. Cit'ship & Immigr. Can., Sponsoring Your Family: Spouses and Dependent Children—Who Can Apply, http://www.cic.gc.ca/english/immigrate/sponsor/spouse-apply-who.asp (last visited Jan. 24, 2008).

137. *Id.*

138. *See* Cit'ship & Immigr. Can., Sponsoring Your Family: Spouses and Dependent Children—How to Apply, http://www.cic.gc.ca/english/immigrate/sponsor/spouse-apply-how.asp (last visited Jan. 24, 2008).

proved, the permanent residence application is forwarded to the appropriate Canadian visa office for processing of the visa.[139]

Therefore, under the Canadian immigration system, spouses and dependent children of Canadian permanent residents are subject to the same Family Class sponsorship as spouses and dependent children of Canadian citizens.[140] There are no special quotas or limitations, and the beneficiaries are immediately eligible, subject to wait time for administrative processing.[141]

2. Australia

Similarly, Australia allows its citizens, permanent residents, and eligible New Zealand citizens to sponsor their "fiance(é)s, partners, children, parents and other family members" for permanent residence.[142] Partners include "married (de jure) partners," "de facto partners," and "interdependent partners (including those in a same-sex relationship)."[143] Dependent children can also be included on the partner's application; to be classified as a dependent child, the child must be younger than eighteen or if older than eighteen must have been "wholly or substantially dependent" on the parent for a "substantial period (at least twelve months) for their basic needs," and the reliance on the parent must be greater than on any other person.[144] As primary beneficiaries, children must be younger than twenty-five and if the child is eighteen years of age or older, the child must be a full-time student and must be financially dependent on the parent.[145]

The application process varies somewhat depending on whether the beneficiary is already in Australia on some other status or whether the beneficiary is still residing abroad.[146] However, both the sponsor and the beneficiary will complete separate application forms, and the beneficiary will submit these to the nearest Australian visa office (whether in Australia or abroad).[147] Provided that the sponsor and beneficiary meet all legal requirements, including health, character,

139. *See id.*

140. *See* Cit'ship & Immigr. Can., Who Can Apply, *supra* note 137.

141. *See id.*

142. Austl. Gov't, Dep't of Immigr. & Cit'ship, Migrants–Family–All Visa Options, http://www.immi.gov.au/migrants/family/family-visas-all.htm (last visited Jan. 25, 2008).

143. *Id.*

144. *See* Austl. Gov't, Dep't of Immigr. & Cit'ship, Spouse Visa: Offshore Temporary and Permanent (Subclasses 309 and 100), Family Member Eligibility, http://www.immi.gov.au/migrants/partners/spouse/309-100/eligibility-dependent.htm (last visited Jan. 25, 2008).

145. *See* Austl. Gov't, Dep't of Immigr. & Cit'ship, Child Visa (Offshore) (Subclass 101), Applicant Eligibility, http://www.immi.gov.au/migrants/family/child/101/eligibility-applicant.htm (last visited Jan. 25, 2008).

146. *See* Austl. Gov't, Dep't of Immigr. & Cit'ship, Partner Visa Options, http://www.immi.gov.au/migrants/family/family-visas-partner.htm (last visited Jan. 25, 2008).

147. *See* Austl. Gov't, Dep't of Immigr. & Cit'ship, Spouse Visa: Offshore Temporary and Permanent (Subclasses 309 and 100), Applying for This Visa, http://

financial, and evidence of relationship requirements, the beneficiary can be granted the appropriate visa as a spouse or child of an Australian permanent resident.[148] There is no difference between Australian citizens and Australian permanent residents in their ability to sponsor their spouses or children, and such relatives are immediately eligible for a visa, subject to the normal waiting period for administrative processing.[149]

C. *Suggested Approach: Variation on a Theme from H. R. 1823*

Having considered the various approaches to the issue, it might seem as if the ideal solution would be to reclassify F2A spouses and minor children of permanent residents as "immediate relatives," thereby eliminating the quotas and numerical limitations for the category.[150] This seems to have been the approach in S. 1919 and in both of the foreign jurisdictions evaluated—Canada and Australia. In fact, in his appearance before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the United States House of Representatives, Stephen Legomsky, a well-respected immigration law scholar, made precisely this argument.[151]

Legomsky gave several important reasons for such reform. First, it would address the humanitarian concerns in the long-term separation of spouses and children.[152] Second, it would remove the strong incentive to enter the U.S. illegally, at least for F2A beneficiaries.[153] Third, such reform would eliminate the need for constant and wasteful international commutes to visit spouses and children overseas.[154] Fourth, it would enable families to shed the uncertainty of wait times and plan their careers and futures.[155] Fifth, it would address the objections by those against legalization who argue that it is unfair to those who apply legally and await their turns, because in this case, F2A relatives would no longer be obliged to wait in long lines while illegal immigrants are allowed to stay.[156] Finally, it would eliminate the difference in how spouses or children are treated, regardless of whether the birth or marriage occurred before or after the sponsor became a permanent

---

www.immi.gov.au/migrants/partners/spouse/309-100/how-to-apply.htm (last visited Jan. 25, 2008).

148. *See* Austl. Gov't, Dep't of Immigr. & Cit'ship, Spouse Visa: Offshore Temporary and Permanent (Subclasses 309 and 100), Married Applicant Eligibility, http://www.immi.gov.au/migrants/partners/spouse/309-100/eligibility-married.htm (last visited Jan. 25, 2008).

149. *See* Austl. Gov't, All Visa Options, *supra* note 142.

150. *See* Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2)(A)(i) (2006).

151. *See* Legomsky, *supra* note 3, at 6.

152. *See id.* at 7.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

resident.[157] As Legomsky points out, there is "no apparent reason to treat these two classes of family members differently."[158]

However, such a proposal may also present some serious problems. It would almost certainly lead to a very large increase in the number of immigrant visas issued, since the huge backlog of F2A beneficiaries would no longer be subject to quotas and would be immediately eligible for an immigrant visa. As Legomsky argues, it "would not increase total 2A immigration in the long term," because F2A beneficiaries would have likely immigrated anyway at a later point.[159] However, Legomsky acknowledges, "it would clearly redistribute the numbers from year to year in the short-term."[160] He recommends a transitionary scheme, whereby a certain percentage of F2A beneficiaries could be exempted from the numerical limits for a particular interim period, but concedes that it would be difficult to estimate how long such a transition period would have to be.[161] The task is complicated by having to deal with an admission process consisting of several steps and data from several government agencies.[162]

Additionally, it is questionable whether such reform would gain enough political support to be of any help to F2A beneficiaries. In his speech to the Subcommittee, Legomsky mentions that "in almost all 50 states and in hundreds of municipalities, serious anti-immigrant movements have spurred state and local legislation to address 'the immigration problem.'"[163] Given such a political background, isn't it very likely that a proposal that would dramatically increase the number of immigrant visas issued would just be viewed as another attempt to give amnesty? While this may be a completely inaccurate perception of the proposal, such perceptions need to be considered when we attempt to find a workable solution and relief for F2A beneficiaries.

Instead, a proposal similar to H. R. 1823, which attempts to revive the V visa, does not interfere with the current immigrant visa legislation at all.[164] It does not change the quotas or numerical limitations in place for immigrant visas.[165] It merely provides F2A beneficiaries a way to come to the United States to live with their family while waiting for the immigrant visa process to take its course.[166] As such, it is likely to be a lot less politically contentious than a proposal that tries to reform the immigrant visa process and the system of quotas and numerical limitations currently in place.

157. *Id.* at 7–8.
158. *Id.* at 8.
159. *See id.* at 7, 8.
160. *Id.* at 8.
161. *Id.*
162. *Id.*
163. *Id.* at 2.
164. *See generally* H.R. 1823, 109th Cong. (2005).
165. *See generally id.*
166. *See generally id.*

Moreover, reviving the V visa would still bring about all of the benefits Professor Legomsky described—it would resolve the humanitarian issue, discourage illegal immigration for F2A beneficiaries, and reduce economic waste inherent in constant international commuting.[167] The V visa would benefit our national economy, since money that would be sent overseas to support families could be spent in the United States. It would also allow permanent residents and their spouses and minor children to plan their lives and careers together.[168] Additionally, reviving the V visa would not compromise national security, since applicants would be subject to all the security and background checks that have always been required of V visa applicants.[169]

This Comment therefore recommends legislative change very similar to H. R. 1823, involving a reasonable six-month wait period before the beneficiary can apply for a V visa,[170] but with one important exception. Unlike H. R. 1823, reform legislation should not include a cut-off date by which an I-130 petition has to be filed in order to make the beneficiary eligible for a V visa.[171] If the backlog continues as it does today, such a cut-off date would merely postpone the problem, which would have to be revisited again in the future. Reviving the current V visa without a cut-off date would provide a practical and workable solution to the long periods of separation and associated problems faced by F2A spouses and minor children of permanent residents.

IV. CONCLUSION

F2A spouses and minor children of permanent residents currently endure long periods of separation from their spouses and parents.[172] Such hardship is quite simply unacceptable by common standards of decency. They are not the only subcategory that faces long waiting periods, but, as Professor Legomsky points out, "they are by any definition members of the nuclear family."[173] While it may perhaps be tolerable for adult brothers and sisters, or parents and adult children, to be separated for extended periods of time, it is unthinkable for husbands and wives to endure such long separation in the first years of marriage, or for parents and new-born children to be separated for the child's first years.[174] "In a nation that rightly proclaims its fidelity to family values, the problem is one that requires fixing."[175]

167. *See* Legomsky, *supra* note 3, at 7.
168. *Id.*
169. *See* IGNATIUS & STICKNEY, *supra* note 6, at para. 7.
170. *See* H.R. 1823, 109th Cong. (2005).
171. *See id.*
172. *See* Legomsky, *supra* note 3, at 5.
173. *Id.* at 5.
174. *See id.* at 5–6.
175. *Id.* at 6.

Reviving the V visa, without a mandated cut-off date by which the I-130 petition must have been filed, and a reasonable six-month waiting period before the beneficiary is able to apply for the visa, would be a good "fix." It would address humanitarian and economic concerns, provide a viable alternative to illegal immigration, and would do so without compromising national security or the current quota system for immigrant visas. It would not increase legal immigration to the United States because F2A beneficiaries will immigrate anyway at some point in the future.[176]

To ignore the problem would not only be a moral mistake—it would have tangible consequences. As Professor Legomsky eloquently puts it:

> Human nature will have to be remade before new spouses willingly separate for the first five or six years of their marriages or new parents willingly separate from their newborn children for the first five or six years of their children's lives. For too many people, illegal immigration will continue to be an irresistible temptation.[177]

176. *Id.* at 7.
177. *Id.* at 6.