



6930 Carroll Avenue, Suite 506  
Takoma Park, MD 20912

Phone: 301.270.1855  
Fax: 301.270.1882  
saalt@saalt.org  
www.saalt.org

**Immigration Priorities for the South Asian Community**  
RECOMMENDATIONS FOR THE IMMIGRATION POLICY WORKING GROUP  
(OBAMA-BIDEN TRANSITION TEAM)  
DECEMBER 17, 2008

As a national civil rights and immigrant rights organization dedicated to fostering the full and equal civic and political participation of South Asians in the United States, **South Asian Americans Leading Together** (SAALT) appreciates the opportunity to provide input to the Obama-Biden Transition Immigration Policy Working Group.

SAALT is the coordinating entity of the **National Coalition of South Asian Organizations**, a diverse network of 35 community-based organizations around the country that provide services to, organize, and advocate on behalf of South Asian communities. In 2008, the National Coalition produced the first policy platform from the perspective of South Asian communities ([\*A National Action Agenda: Policy Recommendations to Empower South Asian Communities in the United States\*](#)<sup>1</sup>), which contains detailed analysis and proposed solutions to address a range of concerns facing the South Asian community.

### **The Impact of Immigration on South Asians in the United States**

With nearly three-quarters of the over 2.5 million South Asians in the United States being foreign-born, the rights and welfare of immigrants in this country are a top priority for the community. The South Asian community includes undocumented immigrants, dependents and temporary workers on various visas, refugees and asylum-seekers, lawful permanent residents, and United States citizens. Unfortunately, the immigration system and immigration policies have negatively affected many South Asians, regardless of status.

As the Immigration Policy Working Group endeavors to obtain community input in developing policies for the next Administration, we refer you to the accompanying Immigrant Rights section<sup>2</sup> of *A National Action Agenda*, which sets forth analysis and recommendations on a broad range of immigration issues affecting the South Asian community, including:

- Pathways to legalization and citizenship
- Reunification of immigrant families
- Immigrant workers
- Immigration concerns for women
- Impact of national security and enforcement initiatives

---

<sup>1</sup> Available at <http://www.saalt.org/attachments/1/National%20Action%20Agenda.pdf>.

<sup>2</sup> Also available at <http://www.saalt.org/attachments/1/Immigrant%20Rights.pdf>.

## Immigration Priorities for the South Asian Community

- Immigration issues in detention and courts
- Immigration concerns for lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) individuals
- Access to services and benefits for immigrants

In addition to the comprehensive recommendations offered in *A National Action Agenda*, we would like highlight four of the community's top priorities regarding immigration reform. Specific issues affecting South Asians include the policies and procedures that have promoted the separation of immigrant families; the backlog of employment-based visas and inadequate protections afforded to workers on temporary visas (including H-1B and H-2B visas); the insufficiency of current immigration policies to address vulnerable populations, including survivors of domestic violence; and the unfair selective enforcement of immigration laws targeting South Asians, Muslims, and Arab Americans in the wake of September 11<sup>th</sup> that has led to the deprivation of due process rights for many. Just and humane reform is necessary to fix the current immigration system such that community members can meaningfully contribute to the U.S. economy and society.

### **Four Immigration Priorities for the South Asian Community**

In addition to the broader policy recommendations outlined in the immigration section of *A National Action Agenda* (beginning on page 35), below are four specific immigration issues that we believe the new Administration can effectively address through administrative avenues and influence over legislative priorities in 2009.

#### ***Restore Values of Due Process to the Immigration System***

In the wake of September 11<sup>th</sup>, national security initiatives and immigration laws have been used to expand the power of the government to detain and investigate individuals targeted for terrorism-related investigations. Many of these policies undertaken through the Department of Justice (DOJ) and the Department of Homeland Security (DHS) can be nullified or terminated by the new Administration. In addition, an opportunity exists for the new Administration to investigate the extent of violations of civil rights and due process protections of immigrants in the wake of September 11<sup>th</sup> by governmental agencies and officials in order to ensure that such breaches do not recur in the future.

For example, the detention and investigation of "special interest" detainees led to prolonged detention without charge; interference with the right to counsel and closed immigration hearings; revocation of bond; and physical and verbal abuse while in confinement. In addition, in late 2002, DOJ instituted the special registration program under the National Security Entry/Exit Registration System (NSEERS), which required male non-citizens on non-immigrant visas from exclusively majority-Muslim countries (with the exception of North Korea), including Bangladesh and Pakistan, to register with immigration authorities. As a result, many South Asian and Muslim immigrants were deported for failing to register or if they were discovered to be out of status. While portions of the program have been suspended, certain aspects still

## Immigration Priorities for the South Asian Community

remain, including a discretionary call-in component under which DHS may notify individual non-immigrants subject to special registration to appear for additional and continuing registration interviews. This initiative yielded virtually no information of significance to ensure national security but took a devastating toll upon community members and families.

We ask the Administration to support and implement policies that would:

- Rescind NSEERS regulations in order to terminate the program entirely, and ensure that those who failed to register are not denied the ability to seek immigration status or relief from removal if otherwise eligible (*Department of Homeland Security – Immigration and Customs Enforcement*)
- Prohibit the future use of policies such as special registration that target immigrants on the basis of national origin, religion, ethnicity and similar bases (*Department of Homeland Security*)
- Nullify the September 21, 2001 memo that put into effect the conditions for investigating and detaining “special interest” detainees (*Department of Justice – Executive Office for Immigration Review*)
- Ensure prompt filing of charges and bond hearings for individuals detained as part of immigration proceedings (*Department of Justice – Executive Office for Immigration Review; Department of Homeland Security – Immigration and Customs Enforcement*)
- Repeal the “automatic stay” regulation which interferes with the ability of detainees to obtain bond (*Department of Justice – Executive Office for Immigration Review*)
- Establish a presumption that immigration proceedings are open to the public (*Department of Justice – Executive Office for Immigration Review*)
- Codify detention standards governing facilities that house immigrant detainees (*Department of Homeland Security – Immigration and Customs Enforcement*)

### ***Support Immigration Policies that Promote Family Unity***

Family-based visa backlogs present significant obstacles for South Asians in the United States and prevent many immigrant families from being reunited with loved ones. Many South Asians currently being sponsored by U.S. citizen siblings have to wait nearly eleven years before obtaining green cards; others, in particular, green card holders, continue to wait to be reunited with spouses and children. Reasons for these delays include the backlog of applications, insufficient numbers of visas for certain family preference categories, and delays due to background and security checks.

We ask the Administration to support and implement policies that would:

- Resolve workflow inefficiencies that currently exist at USCIS to process family-based visa applications (*Department of Homeland Security – Citizenship and Immigration Services*)

## Immigration Priorities for the South Asian Community

- Expedite immigration application background checks related to security delays (*Department of Homeland Security – Citizenship and Immigration Services; Department of Justice – Federal Bureau of Investigation*)
- Provide fee and discretionary waivers for individuals with pending family-based petitions (*Department of Homeland Security – Citizenship and Immigration Services*)
- Support legislative efforts that allow for the recapture of unused and unclaimed family-based visas and to ensure future unused visas are not wasted (*Congress*)
- Support legislative efforts that would reclassify spouses and children of lawful permanent residents as “immediate relatives” exempted from existing numerical caps on family-based immigrant visas (*Congress*)

### ***Support Immigration Policies that Protect the Rights of Immigrant Workers***

South Asians heavily use temporary and permanent employment-based visa channels (including the H-1B and H-2B visa programs) in order to work in the United States. In fact, in recent years, the annual H-1B visa cap has been filled a mere few days following the filing deadline. In addition, employment-based visaholders from South Asia often suffer from severe visa backlogs that prevent them from obtaining lawful permanent residency. Both H-1B and employment-based visa holders find it nearly impossible to change jobs and advance professionally due to limitations on the portability of their visas.

Moreover, many South Asian skilled workers entering the United States on temporary H-2B visas suffer abuses at the hands of their employers but have difficulty escaping exploitation because they lose their status if they leave their jobs. Moreover, the inability of H-2B workers to be able to change jobs and simultaneously maintain their immigration status prevents them from leaving an employer, creating devastating consequences for those in abusive work environments. In fact, exploitation can often occur undetected by labor law enforcement, particularly because the Department of Labor currently lacks the legal authority to enforce prevailing wage requirements or employment contracts under this visa program. Furthermore, the H-2B program does not explicitly require employers to cover employees’ costs for arrival to or departure from the United States, which results in many workers incurring significant debts to both employers and labor recruiters.

We ask the Administration to support and implement policies that would:

- Resolve workflow inefficiencies that currently exist at USCIS to process employment-based visa applications (*Department of Homeland Security – Citizenship and Immigration Services*)
- Expedite immigration application background checks related to security delays (*Department of Homeland Security – Citizenship and Immigration Services; Department of Justice – Federal Bureau of Investigation*)
- Support legislative efforts that allow for the recapture of unused and unclaimed employment-based visas and to ensure future unused visas are not wasted (*Congress*)

## Immigration Priorities for the South Asian Community

- Support and implement policies that will allow H-1B, H-2B, and, employment-based visaholders greater ability to change employers or jobs without losing their immigration status (*Congress; Department of Homeland Security – Citizenship and Immigration Services*)
- Raise the number of employment-based and H-1B visas granted annually (*Congress*)
- Ensure that the Department of Labor can enforce prevailing wage requirements and employment contracts for H-2B workers (*Department of Labor*)

### ***Provide Protections and Access to Services and Benefits for Immigrant Women and Survivors of Domestic Violence***

Many domestic violence survivors have been able to rely on protections within the *Violence Against Women's Act* (VAWA) and other similar avenues of relief to gain independent immigration status and self-sufficiency. However, DHS has yet to publish overdue regulations implementing *VAWA 2005*, thus failing to provide various protections intended by Congress to become effective. For example, interim regulations under *VAWA* would permit certain abused non-immigrant derivative visaholders the opportunity to self-petition and gain work authorization, but final regulations have yet to be implemented. This affects many abused South Asian women who are spouses on derivative H-4 visas and suffer from immigration restrictions preventing them from working, gaining public benefits, receiving a social security number, and, in some states, even obtaining a driver's license.

Another casualty of the failure to implement *VAWA 2005* regulations has been protections expanding mechanisms for self-petitioning for lawful permanent resident status through *VAWA* to elder abuse victims who have been battered or subjected to extreme cruelty by their adult U.S. citizen son or daughter. An additional provision aims to protect abused immigrant children and children of battered immigrants from being cut off from *VAWA* immigration protections and *Child Status Protection Act* relief due to current aging-out restrictions once they turn 21 years old.

Beyond meaningful access to such protections set forth in *VAWA*, many South Asian women on dependent non-immigrant visas are in need of policies granting them employment authorization and the ability to self-petition. Many abused spouses on temporary dependent visas are unable to self-petition and receive permanent immigration status under *VAWA* because self-petitioning is currently limited to spouses of lawful permanent residents and U.S. citizens. Furthermore, no policy in any form currently exists to provide employment authorization for H-4 derivatives who do not qualify under *VAWA*. Women who are denied employment authorization are more vulnerable to power and control abuse. It is in their best interests to be gainfully employed while in the U.S., both as a violence prevention mechanism as well as to promote the economic empowerment of South Asian women. The issue of employment authorization for derivatives is crucial to the South Asian community, given that over 130,000 South Asian H-1B workers and their H-4 dependents entered the United States in 2006 alone.

## Immigration Priorities for the South Asian Community

We ask the Administration to support and implement policies and regulations that would:

- Require the Department of Homeland Security to publish an interim final rule on the immigration provisions of *VAWA 2005* that would provide employment authorization for abused non-immigrant derivative visaholders, expand self-petitioning mechanisms, and eliminate aging-out restrictions (*Department of Homeland Security*)
- Support legislative efforts that provide all non-immigrant derivatives, including H-4 visaholders, the ability to self-petition for lawful permanent resident status and to apply for work authorization without permission of the principal visaholder (*Congress*)

We look forward to a continuing dialogue with members of the Immigration Policy Working Group and the next Administration on immigration issues affecting the South Asian community in the United States.

### **For Additional Information:**

Deepa Iyer, Executive Director (301-270-1855; [deepa@saalt.org](mailto:deepa@saalt.org))

Priya Murthy, Policy Director (301-270-1855; [priya@saalt.org](mailto:priya@saalt.org))