

**Obstacles Faces by Emigrants with Migration Requirements; a Comparative Analysis
of legal and illegal Emigration from Pakistan**

1. **Sadia Javed**

LL.M International Law, CEO of SJ Law Experts
Email: sadia.ahlam@gmail.com



Abstract

This article highlights the importance of Migration to another country, which evolves around the process of shifting to another state legally permanently, and the impediments faced by the applicants due to the unlimited processing period. The World Population Review's survey reveals that the United States of America has the highest number of migrations globally is 50.6 million just in 2020 (Review, 2024). This paper will discuss the immigration procedure, complexities, and approval ratio of different visa categories specifically the United States of America's Immigration and Nationality Act (INA) (U.S. Citizenship and Immigration Services, 2019). There is a need to curtail the unnecessary and hectic processing time of immigration petitions for the easement of applicants, due to unpredictable and lengthy processing time, many of the applicants expire or get demotivated to adapt to a new phase of life at later ages, while other opt for illegal migration by adopting a death trap route. Furthermore, in Pakistan, there is an enormous need for a well-equipped and widespread knowledge of migration procedures and inclusion of immigration laws at an academic level that evolves around the paramount changes in national curriculums to make it a subject leading to curtail the illegal emigration flow.

Keywords: Immigration, Emigrants, NVC, USCIS, Naturalization, Appointment.

Introduction

Every year millions of people around the world leave their home country to settle permanently in other developed countries for many reasons, including better education, health facilities, equality, profound and effective justice system. Similarly, this ratio of migration is high concerning the migration to the USA (Review, 2024). Since the history of mankind, the surge for safe sanctuary has always dominated human nature and urged them to cross political boundaries or internal movements within the borders of jurisdiction for the sake of a better lifestyle. The term migration in the US literary world is as old as the history of the USA itself. However, in the history of the USA, migration refers to a permanent relocation from one state to another voluntarily, excluding temporary migration due to labour work, visit categories, and study permits (LUIBHÉID, 2007).

Humanity, since its emergence is on the verge of expeditious movement from one avenue to another window of opportunities, whereas, the dilemma of migration differs according to the prevailing economic conditions of a country, few go out of their comfort zoon to escape the cultural conflict, fear of persecution, human rights violations, genocide, and ethnic cleansing, while other move out from their place of origin in response to climate change, environmental disasters, and global warming. As per the data provided by the Population Division of the United Nations Department of Economic and Social Affairs (UNDESA), as of 1 July 2020, the global number of international migrants was estimated to be 281 million. International migrants comprise some 3.5 percent of the global population, compared to 2.8 percent in the year 2000 and 2.3 percent in 1980 (United Nations, 2023).

The American Immigration Council reported that "immigrants accounted for an estimated 14 percent of the US population in 2021. According to a Pew Research Centre analysis, in 2017 more than three-quarters of immigrants were residing in the United States with authorization, while nearly one-quarter were considered unauthorized. Among authorized immigrants, nearly 59 percent were naturalized citizens, foreign-born lawful permanent residents who met the legal requirements outlined by Congress to obtain US citizenship, while some 35 percent held lawful permanent residency, and 6 percent held temporary lawful residency" (United Nations, 2021).

Though, whatever the reasons behind the legal migration are, the migrants must follow the due process of law(s) for peaceful settlement and legal immigration to the land of their desires. Crossing the political boundaries in a legitimate route required a bundle of documents, along with an extensive waiting period of visa interviews and appointments, eligibility requirements, and other associated wants, because no country allows a non-native to move into its territory but with due process of immigration laws. The immigration laws are designed in a way that evolves around the independent foreign policies and state sovereignty of a host state. At the same time, a sovereign state needs to make immigration laws in consonance with its constitutional laws, special domestic laws, and foreign policies. However, the process of visa application assessment should be less complex and easy.

Regarding the immigration petitions and visa categories of different countries, the process and system of U.S. immigration laws is quite formal, systematic, uniform, comprehensive, and without any procedural irregularities, irrespective of extensive time spam and interview appointment issues, specifically about Pakistan region, whereas, comparatively the appointment system of British High Commission, Pakistan, is much easier and more accessible in term of visa applications and seeking appointments (United Nations, 2021).

However, a qualitative and exploratory research methodology has been applied to evaluate the immigration laws, conventions, and threats related to the subject topic. Moreover, after a critical analysis of the available data, it is observed that there is a dire need to add a strict provision in the Immigration and Nationality Act (INA) about processing timing and inclusion of immigration laws in Pakistan's legal curriculum.

Literature Review and Importance of Migration:

There is a tremendous and apparent increase in demand for migration movement after the creation of the United Nations Sustainable Development Goals 2015 (UNSDGs), the goals for the world, that are projected to be accomplished by 2030 (United Nations, 2023). In this regard, a high demand for updated and accurate data on migrants till 2030 is required. However, for the said task and sustainable development, the international community has been tasked to review the traditional sources of migration from one country to another (Migration Data Sources, 2020). At least ten out of 17 goals contain targets and indicators that are directly relevant to migration or mobility of migrants (Migration Data Sources, 2020). The central reference to migration is mentioned in Target 10.7 of SDGs, which is also the goal of reducing inequality (Migration Data Sources, 2020). After the introduction of SDGs, the workload regarding immigration to the U.S. will also peak by 2030. As per the Gallup report, as of 2021, roughly 900 million people worldwide migrated to America even during the COVID-19 pandemic out of which 160 million are adult migrants (RAY, 2023). All the research carried out to achieve the SDGs is related to migration but not specifically about the I-130 Alien Relatives Petition of the U.S., furthermore, the embassy's visa processing time has also been not discussed, that is an ultimate authority to grant or refuse the visa application.

Similarly, regarding migration policies in the continent of Europe, massive work has been initiated by different organizations at the Government and the private partnership level to spread awareness of peaceful migration speedily and decisively. The International Centre for Migration Policy Development (ICMPD) is one of the leading international organizations in Europe that has also been working on migration policy around the world, however, in Pakistan it has its regional office named as Migrant Resource Centre (MRC) working on the agenda. Thus, ICMPD's core domain is to make the police's recommendations and policy development strategies for government and intergovernmental agencies on the direct issues related to migrations. They have currently 80 ongoing projects in more than 20 member states (ICMPD, 2023). The basic purpose of ICMPD is to make awareness in the general public about the legal and skilled migration and share the consequences and deathly results of illegal migration, whereas, the ICMPD also does not deal with the embassies regarding the appointment and visa procedure and protocols. The applicants have also been suffering visa application appointments in various European countries, one of them being the embassy of Italy, Islamabad, Pakistan, and the Portuguese Embassy. Most importantly, the appointment slots available on the websites of many embassies always show the slot of booked appointments, whereas, many of the embassies' websites do not update their websites regarding the current immigration laws of the state.

Moreover, as per USCIS website about the processing period, it states that 'USCIS review the processing times for adjudicated cases to determine how long it took for 80% of those cases to be completed over the previous six months' (USCIS, 2022), this data does not reflect the exact period to adjudicate an application and again is a tentative percentage.

Immigration and Nationality Act (INA) enacted in 1952, addresses different immigration categories including general Provisions, Immigration, Nationality and Naturalization, Refugees, and others along with other Regulations and Policy Manual. Further to this act, section INA 204 under 8 USC 1154 describes the procedure for granting immigration status, which went into effect on 14 March 2024, however, in the whole section the procedure and rules to obtain immigration status have been well-defined and understandable, the only thing which is found to be missing is the exact processing period of any petition.

Significance of the Study:

The migration process is not as smooth as it is depicted to be for all those migrants who intend to move to other countries legally. To achieve this goal at the macro level, there should be more educated persons who have professional skills in immigration law, knowledge with proper university qualifications, and practical experience. As much as the well-versed and competent persons will be in the country of origin with all the basic to advanced knowledge of immigration laws, the fewer chances will be for illegal migration. At the same time the access of authorized persons or immigration experts on behalf of their clients to the relevant embassies, and counsellor offices would be allowed for better understanding, and the positive outcomes would be on the corner. Furthermore, to achieve the SDGs 2030 of skilled migrants, the appointment system and time frame should be easier and shorter for all the countries of the world. More importantly, to secure an early or new appointment with the relevant embassy, the applicant often being trapped by fake agents and paid a heavy amount to secure early appointments (VFS.Global, 2023). Through this article,

Statement of the Problem:

The utmost intention of this article is to highlight the issues faced by the applicants regarding the USA immigration law, specifically concerning the I-130 Alien Relative Petition, precisely in Pakistan. United States Immigration and Nationality Act (INA) enacted in 1952 with numerous amendments throughout time, is a prevalent subject that covers all immigration petitions, guides the applicants about the type of petitions, petitioner's requirements, applicants/beneficiaries' requirements, enacted codes and eligibilities criteria to meet the visa requirements (U.S. Citizenship and Immigration Services, 2019), however, the period given by the USCIS to adjudicate the I-130 Alien Relative Petition is roughly about 85.5 months which is an uncertain time and often goes beyond a decade, is not specifically mentioned in INA, however, this period is just mentioned on the website of <https://egov.uscis.gov/processing-times/> which is tentative and not final.

The objective of the Study:

The main objective of this research article is to highlight the issue of the lengthy visa application adjudication period faced by the applicants, beneficiaries, and petitioners who have been filing their I-130 petitions for their spouses, parents, and siblings, they have to wait a long to get the visa approval from USCIS, NVC and then from Embassy for their departure to USA. However, this paper aims to make the relevant authorities aware of the pain and suffering of the concerned persons, at the same time, the introduction of immigration laws in the curriculum of legal study is being proposed by the Government of Pakistan to curb the illegal emigration from Pakistan.

Delimitation of the Study:

Due to the non-availability of immigration data, research papers, and lack of direct access to the embassies, this study is delimited to data and queries received by the applicants about the processing period of the petitions. The primary purpose of the study is to focus on the I-130 petition period and the consequence of illegal emigration from the country, however, due to the limitation of data availability and the other external factors being faced by the relevant authorities, this study may not have been able to explore all the associated factors in depth.

United States of America's Immigration Laws, Procedure, and Visa Categories:

Potentially, the USA differentiates its' visa categories into two domains, i.e. Immigration Visa Categories (IV) and Non-immigrant Visa Categories (NIV) (Travel.State.Gov, 2024), whereas, immigration visa is subject to permanent settlements in the USA which has further sub-categories,

while the purpose of NIV is to move to USA temporarily for a certain period, for a certain type of work or purpose and to return to the home country after the accomplishment of the intended tasks.

The paramount and substantial category of IV is the I-130 alien relative petition, in this category, initially, the U.S. citizen, whether a green card holder or Nationality holder, who is at least 21 years old, may submit the petition for the approval of the petition for his spouse, unmarried child under the age of 21, parents or siblings, in the United States Citizenship and Immigration Services (USCIS) (U.S. Citizenship and Immigration Services, 2019) for the approval and taking his family permanently to U.S. Thus if the petitioner got successful to meet the eligibility criteria, the USCIS approves the petition and sends the approval notice to petitioner, the applicant and also to National Visa Centre (NVC) of the country of the applicant for further actions, including, the interview of the applicant(s), biometric, medical tests and submission of passport. However, when the case is put forward to the NVC, the NVC takes time to complete further steps and thereafter the embassy takes time to call the applicant for an interview and takes the passport for endorsement of visa(s), if the applicant successfully passes the interview and meets the eligibility criteria again at this stage, the visa is endorsed to him, initially, the Green Card is issued to applicant which is also referred as Lawful Permanent Resident (LPR). Thereafter, the process of successful acquisition of a USA naturalization certificate (Nationality), a journey for a U.S. Passport, starts after entering the U.S. (USCIS, 2024), which normally takes five years' time period to be completed, when the applicant takes the Oath of Allegiance before the authority. Moreover, the applicant must have resided continuously in the United States after his or her lawful permanent resident (LPR) admission for at least 5 years before filing the naturalization application and up to the time of naturalization (USCIS, 2024).

Thus, the procedure and the process of all the IV categories of the U.S. is very systematic and formal but, one of the burning issues of the I-130 petition for alien relatives is a lengthy time frame. The normal processing period of I-130 petition's adjudication given by the USCIS is about 83.5 months (roughly seven years) for sibling petition (United States Citizen and Immigration Services, n.d.) varies in different field offices or service centers, while the processing time for I-130 Petition for spouse and child under 21-year-old is about 51 months (United States Citizen and Immigration Services, n.d.), roughly consists of four years. It has been seen in many cases particularly after the Covid-19 Pandemic, that the allocated period has been increased to a decade or more, roughly 12 to 14 years according to the country of birth of the applicant.

Whereas, after the approval of the petition from USCIS it is directed to NVC to call for the interview of the applicant(s), his/her biometric, medical, and the fulfilment of other requirements, then the visa is endorsed to the applicant, however, if there would be any ambiguity in documents or any of the documents is missing, the NVC asks for the submission of said documents again or Request for Evidence (RFE), which yet again become the reasons of unnecessary delay, at this time from both sides, from the applicant and NVC.

The chief attention-arresting issue is not the adjudication process itself, but the unspecified lengthy processing time, which is worth weightage, moreover, the adjudication time mentioned by USCIS is not a complete and accurate time duration but a tentative time that often goes beyond the given time slot. There are several cases categorically after the COVID-19 pandemic that is taking more than a decade to be adjudicated to its timeline and to be issued the green card to the applicant(s) explicitly in sibling petition (United States Citizenship and Immigration Services, n.d.), also depend upon the country of origin of the applicant, typically where the applicant has born.

It is worth highlighting the painful and arguable adjudication period regarding the jurisdiction of the applicants, anything can occur during the waiting period of the petition's approval till the issuance of the visa, the applicant, the petitioner, or the sponsor may expire, the applicant may have been demotivated to move out from his country of origin due to the fear of age factor or resistance to adaptability of new avenue of life, the child who was under 21 years of age at the time of submission of the petition in USCIS, may attain the age of majority that creates obstacle to the immigration process and stop him/her to join his U.S. parent(s) or the U.S. petitioner in the USA. Several factors cause depression and agony to applicants if the delay is caused. At the same time, after waiting too long, it is not confirmed whether the visa will be issued to the applicant or not, the visa may get denied or adjourned sine die by the Embassy of the relevant jurisdiction or Department of Homeland Security (DHS), due to ineligibility of applicant, death of sponsor, death of petitioner, withdrawal of

sponsorship from sponsor, in case if the petitioner and sponsor are two different persons, death of main applicant/Beneficiary, criminal record or applicant or petitioner, tax defaulter on part of citizen of the U.S. irrelevant visa category or other associated issues. During the whole process, a crucial phase of life gets wasted, normally at a young age, a person can have the ability to adapt to any changes of newly abode particularly about cross-boundaries culture and norms, which could not have been possible at later ages.

However, in case of denial of an I-130 petition or emigrational issues, relief can be found from the Board of Immigration Appeals (BIA) which adjudicates the immigration cases in a fairly, and expeditiously manner, also a highly administrative body to interpret, amend, and apply the immigration laws (Executive Office for Immigration Review U.S. Department of Justice, 2024). Whereas, the applicant can file an appeal against the denial or decision of DHS and the visa officer for justice. Most of the time, the judgments of BIA provide fair and smooth justice to applicants and decide the cases on merits that satisfy the applicants/beneficiaries if the applicant is of the view that, his/her case was mishandled or there are any ambiguities in procedural irregularities or immigrations laws itself (Executive Office for Immigration Review, 2024), apart from getting relief from BIA, the applicant again encounter with the passing out of time till the decision released by BIA.

From all around the world, the U.S. is one of the top priority countries among migrants, there are many other immigration visa categories, but all the applicants meet the criteria for instance one of them is the E5 Immigrant investor visa, which is also not possible for all individual, especially for Pakistan, because to qualify for immigrant investor petition, a foreign national must invest at least \$1,000,000 (U.S.) or \$ 500,000 (U.S) in a high- unemployment or rural area, considered a targeted employment area (United States Department of State, 2024), this amount must not be taken as a loan from a financial bank, etc.

After getting the approval letter from USCIS the qualifying investment must, within two years, create full-time jobs for at least 10 U.S. citizens, lawful permanent residents, or other immigrants authorized to work in the United States (United States Department of State, 2024), however, under this category the spouse, sons or daughters of petitioner are not included as workers (United States Department of State, 2024).

Further to the investor petition, we can argue that, if a person is eligible and has sufficient funds with him and is eager to file the investor petition, he must have to wait for the ambiguous period, the processing time for an Investor (I-526) petition is at Immigrant Investor Program Office, are 56.5 months consecutively that makes about 4.7 years, excluding the other interim orders or RFE (Request for Evidence) (United States Citizen and Immigration Services, n.d.). This is the ratio in the cases of genuine visa seekers who have met the eligibility requirements, and waiting for approval of the petition till the endorsement of the visa.

No Access to Immigration Data Leading Research Gap

Mostly the data of embassies, consular offices, or migrations authorities in immigration cases is not accessible both in denied cases or approved cases for further understanding and perusal of already existing records for practitioners. There are very few persons who have been exercising immigration laws but due to the non-availability of precedents, and judgments, they are not able to prepare and file the case by immigration laws. Therefore, no one would be able to write articles or/papers on the specific topic that triggers the research gap. Thus, limited available records can only be found in appellate tribunals, administrative bodies, appeal tribunals, or appellate bodies of relevant jurisdiction if in case the applicant goes against the decision of the visa officer or ambassador(s), and if the right of appeal is given to him, for his specific visa category, because in many visa categories, the right of appeal is not given to the applicant. In the petition base denial cases of the U.S., the appeal forum is BIA, where the applicant can file the appeal against DHS, or the visa officer, whereas, in the U.K. the appeals are filed in HM Courts and Tribunals Service (HM Courts & Tribunals Service, n.d.), in Sweden, the government office of Sweden (Government offices of Sweden, n.d.), similarly in different countries the appeal tribunal and forum are named differently. One must say that the availability of data even in this tribunal is not readily available completely.

Moreover, as the countries are interconnected with each other in the present time and working for the accomplishment of UNSDGs, more migration is expected till 2030, in this regard knowledge and information about immigration laws are imperative, there are a few universities in the world, mostly in the U.S., who have been coaching the immigration laws as a course work (Merson, 2023).

To understand immigration law virtually, it is paramount to undergo the bundle of cases during academic years and to get more hands-on experience before diving into the practical field, at the same time, access to decided cases of different embassies/diplomatic missions, is also a crucial element to stop the catastrophe of illegal migration. If this happens so, the immigration consultants would be able to screen the application before applying to relevant embassies, in this way, the refusal ratio would decline, and the time of applicant(s) would be saved, contrary to that, the unnecessary burden on embassies or migration departments would also be released.

Comparative Analysis of Immigration law with Pakistan’s Curriculum and notion of emigration:

As Pakistan is a developing country, there is a high ratio of emigration from Pakistan, this is the reason that Pakistan is amongst the 8th highest emigrating countries in the world (Haaqi, 2023) from 1990 to 2020 (Economy, 2023). Currently, Pakistan has been encountering mass emigration up to a record-breaking emigration figure that is eight hundred thousand just in the first half of 2023, out of which one hundred thousand emigrated, being a skilled professional in various fields, i.e. doctors, para-medical staff, engineers, IT professional, lawyers, and accountants. The unprecedented departure of such a large number of people, especially skilled professionals, poses significant challenges for Pakistan's economy and workforce (Angel Mohan Bishnoi, 2023). Pakistan’s migration to abroad have rushed in recent years. In 2022, the figure reached three times that of 2021, with a staggering 225,000 individuals leaving the country. Even in 2020, amidst the pandemic and global travel restrictions, 280,000 Pakistanis chose to emigrate (Angel Mohan Bishnoi, 2023).

However, if there is not a proper awareness campaign for individuals and the introduction of formal immigration laws as a subject at an academic level, or certification for practitioners, if fewer people would encompass to choose the immigration field for practice, then unprofessional and human smuggling agents would come on surface and mislead the general public without the concept of legal and illegal migration. Therefore, apart from legal emigration from Pakistan as a skilled professional or skilled worker, there is also high and consolidated involvement of national and international agents for human trafficking and other associated crimes. The U.S. State 'Department's Trafficking in Persons Report', published in June 2009, designates Pakistan as a source, transit, and destination country for men, women and children trafficked for forced labor and sexual exploitation (US Department of State, 2009).

Over the years, the agents have been playing with the lives of innocent, marginalized, and illiterate people inversely. Here the term 'agents' refers to the 'human smugglers who arrange the hazardous journeys for illegal emigrants, most of the times, with fake documents and through illegal channels, this tendency also reveals that illiterate people are easy prey of them, as every unprofessional person knows that to get the visa or entry permit of other countries, the concrete documentation is a crucial aspect, with these thoughts, they indulge to prepare fake documents and even some times these documents also presented in the embassies of host countries where they get exposed easily and received the denial, even in some cases the entry to host state get banned for some certain period because the genuineness and authenticity of fake documents can be assessed and scrutinized by various methodologies (Agency, 2023).

In the enigmatic and trembling incident of a sinking boat in the Mediterranean near the Greece coast on 14 June 2023, an estimation has been given that there were about 700 people on a small boat heading from Libya to Italy, while 104 survivors were killed in the disaster later on (Agency, 2023) Whereas, hundreds of them were from Pakistan, without declaring the final figure, but this confirmation was not established till the end of June 2023 regarding death tolls however, the Pakistan’s government claimed that ‘there were approximately 350 of its nationals were on the boat and the bodies of 82 have been recovered’ (Agency, 2023). However, after such a soul-jolting incident, people are not learning lessons and are still inclined to emigrate abroad illegally through agents.

Moreover, many people are of the view that to avoid the hectic visa application requirements, lengthy adjudication process of an application, and the lengthy appointment time for interviews of numerous embassies particularly about U.S. immigration (Travel.State.Gov, 2024) and emigration to Europe, it is better to move out illegally with the help of agents, for the said purpose, they readily pay the have amount of money normally in million rupees for illegal migration. The report revealed that the agents allegedly collected between 2.3 million rupees (\$8,000) and 3.5 million rupees (\$12,200)

from Pakistanis who were on the ill-fated trawler that sank at Greece coast on 14 June 2023, however, to gain the trust of emigrants the human smugglers or agents allow the people to pay half or some of the money after the completion of their journey, which is a sort of tactic (Agency, 2023). A recently released movie, 'Aaja Mexico Challiye', is the best depiction of the consequences and ordeal of illegal migrants (Dhawan, 2022) covered in a short movie, a lesson for an emigrant and the Government of the time. Moreover, after reaching the destination country, the illegal migrants seek asylum on different grounds that stop them from repatriating to their home country for another number of years, until the approval of their asylum cases or voluntary repatriation if anyone wishes to do so.

Discussion and Conclusion:

In a nutshell, emigration is considered an important aspect of sharing cross-cultural norms and practices, the understating of way of life and other day-to-day matters along with the opportunities of earning handsome income, however, the process of immigration and requirements specifically about U.S appointments and European Union Countries should be smooth and less time-consuming. If the task for securing an appointment would be easily available, there would be fewer chances to pay a heavy amount of money to fake agents; on the other hand, the flow of illegal emigration would also be curtailed while more people would try to apply genuinely without tempering documents. It is all in the hands of authorities to provide easy emigration opportunities; however, many of the countries have already advanced their work on the smooth, Point Base System, Skilled Professionals, and skilled Migration policies.

Furthermore, there is a need for organizations like ICMPD, to make campaigns on skills migration and introduce youngsters to the importance of professional skills, professional certification, and legal migration channels. The international organizations that have been working on migration and immigration laws do not pay specific attention to speedy appointment and early adjudication of immigration/visa applications, if the smooth surface is not provided and more educated immigration experts do not step into the field the incident like sinking boat, 14 June 2023 would not be controlled. Furthermore, in destitute and less developing countries, there should be the proper introduction of immigration laws at the academic level to throw more professionals in the field of immigration who would then encounter fake agents through the weapon of knowledge and expertise, giving the awareness to the general public.

At last, the lengthy processing time of certain visa categories, whether IV or NIV, should be minimized to maintain the morale and patience of applicants/beneficiaries and persons associated with them.

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