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Ordeal of entering U.S. legally

No plan in Congress will solve the complexities, experts say

- Tyche Hendricks, Chronicle Staff Writer

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When Alfonso Farfán fell in love with an old family friend in 2002, he set out to bring his sweetheart and her two children home with him.

But nothing has gone as planned. After waiting a year for a fiancée visa for her to move here from El Salvador, he learned the paperwork had been lost.

The new application was delayed two years because U.S. Citizenship and Immigration Services kept using an old address for Farfán, married now to Elizabeth Farfán, although he had twice updated their records. And when the family's green cards arrived six weeks ago, one was missing.

"I wanted to scream," said Farfán a paralegal at an Oakland immigrant assistance center, recalling the day he learned the immigration agency had lost the \$1,500 application. "But you can't," he said. "You just have to work harder, save more money and submit a new application."

Legally immigrating to this country can be a gut-wrenching, yearslong ordeal. Administrative errors, protracted security checks -- which have lengthened markedly since the Sept. 11, 2001, terror attacks -- and bad information routinely cause heartache. Immigrants and immigration lawyers say applications sometimes go into a "black hole" from which no case updates emanate.

"What's going on in Congress right now is still an add-on to an essentially outdated and overly complex, throwback system ... written in the 1950s and amended in 1965," said former immigration agency chief Doris Meissner, who is now senior fellow at the Migration Policy Institute, a nonpartisan think tank in Washington, D.C. "The statutes are just hopelessly complicated and convoluted. ... It surely shouldn't have to be such an unpleasant and harrowing experience."

No plan under consideration will fundamentally overhaul the country's cobbled-together immigration law, which lawyers say rivals only the tax code in complexity.

Many legal immigrants have worried that immigration reforms proposed in Congress will allow some of the country's estimated 12 million illegal immigrants to skip this nerve-wracking process. But the bill the Senate passed last month could actually help the 3 million people currently in line for lawful permanent residence documents, or "green cards," to get them more easily. And those familiar with the bill say no illegal immigrant will get to cut into the line for a green card.

In addition to allowing several million undocumented immigrants to apply for temporary work visas and eventually permanent residence, the bill would make more green cards available overall.

But the proposal faces a tough battle in a forthcoming conference committee that will attempt to reconcile it with the immigration bill passed by the House in December. The House bill would criminalize illegal immigration and beef up immigration enforcement but makes no provision for new green cards.

Immigration advocates hope the additional green cards will, if the Senate bill becomes law, ease backlogs. The bill also could help the immigration agency improve its services because it will receive the new fines to be paid by undocumented immigrants adjusting to legal status. But it is not likely to address security bottlenecks or the lack of an integrated immigration computer system.

"It would be nice for them to get into the 20th century, let alone the 21st," said Crystal Williams, deputy director of the American Immigration Lawyers Association in Washington, D.C. "Everything is done by paper right now. We have the problem of paper being shifted back and forth around the country. Virtually nothing is done electronically."

The **National Foundation for American Policy** in Washington, D.C., reported last month that skilled workers must now wait more than five years for a green card and, in spite of recent progress, the backlogs are as long as they always have been for some categories of family-sponsored visas.

Filipino siblings of U.S. citizens still can expect to wait 22 years to immigrate. Adult children of U.S. citizens in Mexico will wait 13 years. And then there are the indignities:

-- Visitors to San Francisco's immigration office must pay nearby deli and copy shop workers \$5 to hold their cell phones because they are forbidden in the building.

-- People seeking visas from abroad must pay \$18 each time they schedule an appointment or check on their case.

-- People renewing temporary skilled-worker visas must return to their home countries, sometimes at a cost of thousands of dollars in airfare, to obtain the visa stamp in their passports that allows them to travel.

"It really is Kafkaesque," said Susan Bowyer, managing attorney at the International Institute of the East Bay. "All the power is in the immigration service's hands, because the burden is on the applicant to show by clear and convincing evidence that they're eligible."

Bowyer recalled the case of a Tongan woman who won the "diversity lottery," a program to admit 50,000 people a year from countries that don't produce many immigrants to the United States. She had to forgo her spot because she couldn't prove she had completed high school after the small religious institution folded.

A Salvadoran woman who petitioned in 1992 to bring her brother and his family from El Salvador saw the case summarily closed after a 12-year wait, Bowyer said, because a government clerk thought a note on a document saying the man was already here on a visit meant the family no longer wanted to immigrate.

Williams, of the immigration lawyers association, estimated that major errors like this occur in up to 10 percent of cases. Occasionally, the errors affect large numbers of people, she said. Immigration agency recently rescinded 10,000 fiancée visas after realizing it hadn't asked about the citizen petitioners' criminal histories.

Simple matters, like getting the immigration service to keep track of a changed address, fail more often, said San Francisco attorney Angela Moore, chair of the Northern California chapter of the immigration lawyers group. When mail is returned to the agency, applicants can miss hearings or have their green cards destroyed, which means paying \$260 for a replacement.

"I would guess it's at least 20 to 30 percent of the time," said Moore. "It's not infrequent at all."

Strict formulas that limit the number of immigrants from any one country and the order of preference by which relatives can apply for reunification

can cause decadeslong delays. That and the lack of green cards or even temporary visas for low-skilled immigrants promote illegal migration, said Traci Hong, director of immigration programs, Asian American Justice Center in Washington,

D.C.

But the Senate's plan to offer permanent residence to millions of undocumented immigrants strikes a raw nerve with many people who came here legally.

"Part of my frustration is to hear illegal immigrants called immigrants when I'm called an alien. I'm doing things right, but I'm still called an alien," said French-born Florence Ahlouche, who has spent nine years in the United States. "If I lose my job tomorrow, my reward is a ticket back home."

First an au pair, then a student and now working on an H1B visa as a contracts administrator for a Foster City biotech company, Ahlouche longs to put down roots here in the country where she came of age. She began the green card application two years ago and expects to wait two or three more years, but she's concerned that a legalization program would let the undocumented jump ahead of her in line.

Others see a glimmer of hope in offering legal status to illegal immigrants. Kondala Rao Palaka, an Indian citizen who has lived in the United States for 16 years as a student and then an H1B worker, just got his green card last month, after a four-year wait. But his wife is still waiting for hers.

"These are hardworking people, just looking for a better life," said Palaka, a Fremont resident. "And because of their efforts, their demonstrations and lobbying, if Congress decides to allow them into the line, that will help people who are already waiting. It will mean they have to keep the line moving."

Immigration experts say that's precisely what would happen if the Senate bill becomes law. The increase in green cards is expected to eliminate all backlogs within six years, and everyone who has a pending application would be taken care of before any undocumented immigrant gets a green card.

But some immigration observers say making life easier for would-be immigrants should not be the government's first priority. Yeh Ling Ling, director of the Oakland-based Diversity Alliance for a Sustainable America and herself an immigrant from Vietnam, believes the United States lacks the resources to absorb more immigrants. She opposes the

Senate bill, both for its expansion of legal immigration and for its offer of legal residence to illegal immigrants.

"If the Senate amnesty bill becomes law, we can expect 12 million illegal aliens to apply and, once naturalized, they can bring in their family members, spouses and children," said Yeh. "You cannot invite people to your house for dinner if some of your kids are starving."

Immigrating legally

About 1.1 million people gained lawful permanent residence in the United States -- green cards -- in fiscal year 2005, up from just under 1 million in 2004 and 700,000 in 2003. Strict formulas limit the number of immigrants from any one country.

The increase came in part from the U.S. Citizenship and Immigration Services reducing a backlog -- now down to 3 million cases -- that developed in part after the Sept. 11, 2001, attacks.

There are four main paths to a green card:

Sponsorship by a citizen or permanent resident who is a close relative (58 percent of green cards last year). Priority goes to the family of citizens. Relatives from some countries must wait decades.

Sponsorship by an employer, primarily for highly trained professionals lacking in the United States (22 percent of green cards last year).

A year of refugee or asylum status (about 13 percent of green cards in 2005). Last year's 143,000 such green cards doubled the previous year's number and tripled 2003's, after a post-Sept. 11 reduction.

Through the diversity lottery for 50,000 immigrants a year from underrepresented countries.

How immigrants apply:

People can apply for green cards through U.S. embassies overseas or through immigration service offices here, if they're in the United States legally. Almost all employment-based petitions are made on behalf of workers already in the United States. Family members more often apply from abroad and are generally denied tourist visas while waiting on the assumption that they would stay without authorization.

Anyone who has had a green card for five years is eligible to apply for citizenship.

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