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Update on the Pilot Shortage in the US

23 February 2023

“The two most powerful warriors are patience and time” – Leo Tolstoy.

We have all heard the story of someone being processed quicker than someone else who submitted their petition earlier. This confuses everyone because it makes no logical sense and gives us no linear timeline we can hold onto.

Pilots and lawyers alike are known to like to control and foresee the next course of events and timeline; this is what we do. Illogical timelines and results create frustration. Should there be an urge to respond to a Request for Evidence (RFE) immediately, as soon as possible, to maximize the chances of approval? Is the time it takes to hear back from USCIS a reflection that perhaps something has gone wrong? All these questions rushing through are again an attempt to create order and rationality, to make logical sense of it all, and to instill some kind of control.

No, we do not like to rush the RFEs because we are continually doing research. Although the basis of our arguments remains the same, how we present them is continually evolving. No, it is not a sign of trouble if USCIS takes longer to process one petition than another; it is simply a sign that one officer let one petition sit on the shelves longer than the officer for the other petition—some officers are fast



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and some are slow.

The reality is that the USCIS/**human factor** is an important one. It is not a scientific process. We see regular inconsistencies not only in terms of timing (i.e., the process is not first in, first out) but also in terms of substance (i.e., we have seen some first-time officers approved with less baggage than captains who have been denied). Manoeuvring around the inconsistencies is something that we unfortunately have to deal with. Part of our job is to let you know that these inconsistencies are normal; we know they are normal because we see them day in and day out and have seen them for years across a wide variety of petitions filed in the U.S.

And now the moment we have all been waiting for: Premium processing

From January 30, 2023, USCIS will begin accepting premium processing requests for new and previously filed Form I-140 petitions. This means that pilots who have or will file an I-140 petition for national interest waiver (NIW) could apply for premium processing (at a premium processing fee of USD 2,500) to have some adjudicative action taken (whether a decision or a Request for Evidence, for instance) within 45 days from submission. If you are interested in premium processing, please contact Ms. Zoie San (zsan@harveylawcorporation.com) and



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Ms. Amanda Chan (achan@harveylawcorporation.com).

Priority dates

We would like to put aside the rumor that I-140 NIWs are no longer granted. In fact, our experience is that they keep coming, with 46 approvals to date. What is now happening, though, is that all nationalities will have to wait for their priority date to be current before they can apply for an immigrant visa (DS-260, Stage 2 of the process). At the moment, the priority date is current if the I-140 petition was filed prior to November 20, 2022 (or other earlier dates for India, China, etc.). Factoring in six months for the I-140 process, we do not see this impacting our pilots for now. Of course, we will continue to monitor and keep you updated on developments.

The future ?

Naturally, we all wonder how to reconcile, on the one hand, premium processing being made available to allow for quicker decisions and, on the other hand, the limitations that priority dates bring.

Is it worth applying for premium processing if we have to then wait due to priority dates not being current? Will it get worse with time? If the number of applicants has increased to the point where there are now priority dates to be aware of, does



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this imply that USCIS will soon be overwhelmed, making it more difficult to obtain straight-up approvals? Will officers have systematic recourse to RFEs to stagger the process?

To all these questions, the only answer we can give with certainty is "maybe." If the past is a reflection of the future, we can expect to continue getting erratic findings as we file more petitions. In other words, the future may already be here.

Despite all of the above, acceptances are still coming in weekly, and the system does work—in a chaotic way, but it does work. Also, we understand that many of you have decided to prepare your petition by yourself, which is fine, of course, but many of those who did that are now calling upon us to help them reply to the RFE that they have received. Kindly note that you are not saving any fees or time; we are charging the same fees or more if engaged only at the RFE stage as we do if engaged from the start to file a new petition, which includes an RFE reply if needed (or refiling when we think the client's interest will be better served due to new information available).

On this day, a very happy Lunar New Year to everyone!

Jean-Francois Harvey
Global Managing Partner



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On a final note, we often receive requests regarding job opportunities in the US aviation industry. There are many tools on the internet, yet there are also firms specializing in recruitment within the industry, and we could certainly recommend some, notably Rishworth Aviation, who have been quite active in the US market and have now accumulated over 35 years of experience in the industry. For any additional queries, you can reach their team directly at USA@rishworthaviation.com.

1. '[USCIS Announces Final Phase Of Premium Processing Expansion For EB-1 and EB-2 Form I-140 Petitions And Future Expansion For F-1 Students Seeking OPT And Certain Student And Exchange Visitors](#)', USCIS, 12 January 2023

- Unlike previous expansions, this phase will apply to new (initial) petitions in addition to all previously filed forms.
- Petitioners who wish to request premium processing must file form I-907. And pay an additional processing fee of USD 2,500.

2. Timothy Nerozzi, '[American Airlines Drops 3 Cities From Service, Blaming Pilot Shortage](#)', New York Post, 9 January 2023

- In response to the regional pilot shortage, affecting the airline industry and soft demands. American Airlines has ended services in Columbus, Georgia, Del Rio, Texas and Long Beach, California.



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- Since the beginning of the pandemic American Airlines has dropped more than 19 cities from its routes, other airlines have seen similar cuts due to the pilot shortage.
3. Rohit Yadav, '[Bidens Myopic Policies Have Paralysed Airlines Across The USA](#)', TFI Global News, 31 December 2022
- Southwest Airlines have been dealing with a pilot shortage for more than a year due to the imposed Biden policy of businesses with over 100 employees will need all employees to be fully vaccinated against COVID-19.
 - Pilots' unions forewarned the Biden administration mandatory vaccinations would result in mass terminations of unvaccinated pilots.
4. Kyle Arnold, '[Will Labor Strife Led By Pilots Become the Airline Industry's Next Big Obstacle](#)', The Dallas Morning News, 27 December 2022
- Union pilots at Southwest, American, United and Delta Airlines have increased pressure with staged demonstrations throughout the fall. Three of the four airlines accepted some form of tentative deals.
 - Commercial flying is still down 5-10% from pre-pandemic levels due to a shortage of pilots. Airlines are expected to surpass 2019 levels in 2023.
5. Pilar Wolfsteller, '[US Airlines Strive To Solve Pilot Shortage Crisis](#)', FlightGlobal, 20 December 2022



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- While the US has been grappling with a severe flight crew shortage since before the Coronavirus crisis, other regions will be facing a dearth of candidates to fill their cockpits in the coming years
- The Regional Airline Association (RAA), which represents US-based regional carriers, says that 324, – or 76% – of US airports have lost service in the past three years due to airlines permanently cancelling flights because of crew shortages.

6. Leslie Josephs, '[Mesa And American Cutting Ties As Regional Airline Expands Deal With United](#)', CNBC, 17 December 2022

- The heart of the problem stems from a shortage of pilots, Mesa and other regional airlines have boosted wages to attract and retain pilots.
- Mesa's new deal with United will allow its pilots a better shot at transitioning to the larger carrier

7. Jamie Freed, '[Explainer: Why US Airline Pilot Wages Are Outpacing Global Rises](#)', Reuters, 5 December 2022

- Uniquely among other world markets the US requires pilots to have a minimum of 1,500 hours of flight experience and U.S federal Aviation Administration rejected a request to have this cut in half.
- Delta Airlines has offered a 34% cumulative pay increase to its pilots over a three year new contract in a deal which is widely considered to be the



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benchmark standard for other airlines to follow in order to retain pilots and onboard new ones.

8. Mark Phelps, '[2022 Shaping Up As Record Year For Pilot Hiring](#)', AVweb, 28 November 2022

- The Aircraft Owners and Pilots Association (AOPA) reported that, according to the Future and Active Pilot Advisors (FAPA), 2022 was on track for a record year for airline pilot hiring.
- Through October 2022, 12 major airlines had hired 11,372 pilots. Projections call for a total of some 13,500 new hires by the end of the year, more than twice the number hired in 2021.

9. Riley Pickett, '[United States Pilot Supply Much Stronger Than Demand](#)', Simple Flying, 18 November 2022

- Many major airlines such as American and Delta take pilots from regional airlines such as Envoy and SkyWest. This in turn created a deficit of regional pilots as the minimum number of flight hours required is 1,500.
- This shortage of regional pilots led to delays and cancellations nationwide in 2022, with many smaller communities have seen airline services vanish overnight as their routes were no longer viable with the resources available.



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10. Bob Woods, '[How Airlines Plan To Create A New Generation Of Pilots Amid Fears Of Decade-Long Cockpit Crisis](#)', CNBC, 12 November 2022

- An acute pilot shortage for major airlines including United, Delta, American and Southwest is forcing the industry to rethink how it trains pilots and recruits the next generation of aviation labor in the cockpit.
- United now has its own flight school while its competitors and regional airlines have linked up with independent flight schools and branded their own programs.

11. Chris Matyszczyk, '[Southwest Airlines Just Made A Twisted Admission That'll Infuriate Customers](#)', ZDNET, 5 November 2022

- The CEO of Southwest Airlines suggested the lack of more pilots was to blame for Southwest Airline's lack of more capacity.
- When the pandemic struck, airlines received tens of billions in bailout funds from the government to offer buyouts to staff.
- However, it is clear headcount was being reduced and the House Oversight Committee recently asked the Treasury Department whether airlines may have used the money to get rid of headcount.

12. Daniel Rye, Lindsay Grant and Jeff Green, '[The Pilot Shortage Will Only Get Worse As The Decade Progresses](#)', Brink News, 1 November 2022



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- With the rebound in air travel demand in 2021 and 2022, the lack of pilots quickly became apparent, starting in North America where the shortage is being most acutely felt.
- After North America, the next region to be affected will be the Middle East. Driven by a projected sharp increase in air travel demand over the next few years, the region could face a shortage of 3,000 pilots by 2023 and 18,000 by 2032.
- Asia currently has a surplus of pilots, mainly because strict COVID travel restrictions curbed air travel demand.

13. Rajesh Kumar Singh, '[American Airlines Offers 19% Pay Hike To Pilots In Draft Agreement](#)', U.S. News & World Report, 27 October 2022

- CHICAGO (Reuters) - American Airlines has offered a 19% pay increase to its pilots over two years in a new contract, according to a draft agreement.
- American pilots will get a 12% raise on the date the contract is signed, with another 5% hike after a year and another 2% after two years.
- American has also offered another up to 3% increase in pay rates to match any salary increases at United and Delta.

14. James Packard, '[Why Hasn't U.S. Solved The Pilot Shortage?](#)', Scripps News, 14 October 2022

- A congressional report in 2019 warned the Pentagon faced a shortfall of over 3,000 pilots which it states has been "several years in the making."



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- The FAA requires commercial pilots to log 1,500 flight hours for certification.
And obtaining a commercial license after that isn't cheap.

15. Bryan Bedford, '[How To Solve The Pilot Shortage? Here Are Some Ideas](#)', The Dallas Morning News, 30 August 2022

- The FAA acknowledged the safety advantage of structured training over unstructured time building with its 2013 First Officer Qualifications Rule that created new pathways for flight training that replaced hundreds of time-building hours with structured training credit.
- Policymakers can build on this success by authorizing additional R-ATP pathways that similarly advance safety. Airlines can shoulder the costs, easing the financial burden on future pilots while advancing safety.

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