

3. The Ombudsman Urges Consideration of a Revolving Trust to Fund USCIS

In the 2006 Annual Report (at p. 29), the Ombudsman suggested that USCIS approach Congress to establish a revolving trust account that would be replenished from future fees. A revolving trust would: (1) enable the agency to test innovative processes; (2) address unexpected program requirements from new legislation; (3) avoid potential temporary anti-deficiency concerns; and (4) encourage USCIS leadership to develop new processes instead of continuing programs which do not enhance customer service, efficiency, and national security, but nevertheless generate essential revenue. In its 2006 Annual Report Response (at p. 12), the agency stated:

USCIS has researched this and has found that even though fees would eventually replenish the appropriated funds deposited in the fund, the legislation required to enact such a vehicle is not deficit neutral. Therefore, any legislation would have budget scorekeeping implications within the context of the scorekeeping conventions of the Administration and the Congress.

USCIS does not discuss the benefits or drawbacks of a revolving trust. It only comments on the budget scorekeeping questions. The Ombudsman continues to believe that a revolving trust would resolve many of the USCIS revenue and funding problems.

4. USCIS Contracts

In the 2006 Annual Report (at p. 82), the Ombudsman expressed interest in analyzing the critical role of contractors in application processing and record handling, and the many problems stemming from processes contractors now handle. Due to USCIS' concerns expressed to DHS about starting this review, DHS encouraged the Ombudsman to forward any such issues to the Department and its procurement office, which would have the proper resources to analyze and address them.

I. Lack of Standardization Across USCIS Business Processes

The INA and related regulations, policy, and procedures govern immigration benefits and should result in uniform and equitable adjudication of the law nationwide. The Ombudsman is encouraged by USCIS attempts to standardize adjudicative processes and decision-making. For example, USCIS now is continually updating its Standard Operating Procedures relating to specific application types and developed the Adjudicator's Toolbox described in its 2006 Annual Report Response (at p. 8). In addition, during the reporting period, USCIS released a Domestic Operations memorandum entitled "Case Management Timelines." This memo provides specific guidance for employees in the efficient management of cases through the adjudication process:

[T]he principle of 'active case management' which simply means that cases are managed through the process in such a manner that ensures that they do not linger unattended in any processing stage. Meeting [USCIS'] case processing time goals also means taking the right actions at the right time.

In its 2006 Annual Report Response (at p. 8), USCIS further states:

USCIS has developed a business strategy over the past number of years to ensure consistency in filing, fee receipting, processing, and adjudicating. Part of this business strategy includes turning over the data entry and fee receipting to the U.S. Department of Treasury, who manages the Lockbox network providers. USCIS has 82 local offices, and has found that a decentralized filing approach results in disparate treatment, multiple points of failure, and increased costs of trying to staff all offices to process receipts and remittances timely. For these reasons, USCIS has moved toward a standardized process.

USCIS is making progress. However, questions about standardization continue to be raised in meetings with customers and stakeholders, including complaints about: (1) inconsistent application of statutory discretion among service centers and field offices; (2) inconsistent interpretation and application of laws, regulations, precedent decisions, policies, and procedures; and (3) wide variation in processing times for the same benefit type among the USCIS offices.

The common complaint is that decisions depend more upon which adjudicator handled the case rather than on the merits of the case; denial of benefits is more likely from certain adjudicators than from others. Stakeholders also related that inequities among various field offices are well-known and predictable.


Examples of Continued Lack of Standardization.

Serious complaints similar to those discussed in the 2006 Annual Report continue to be raised at meetings with the Ombudsman nationwide:


- **Nonimmigrant/Immigrant Adjudication.** Inconsistent adjudication continues to be a problem for many applicants. Stakeholders frequently tell the Ombudsman about inconsistent decisions by USCIS offices for cases similar in nature and merit. Many such decisions arise from inadequate training, poor communication between offices, and the substantial loss of experienced adjudicators due to retirement and attrition. An effective uniform nationwide process has yet to be implemented for most application categories.
- **Processing Times.** Processing times continue to vary widely around the country. Section III.C in this report addresses this issue in detail.
- **Insufficient Standardization and Local Policies.** National standards for adjudication processes are imperative, but still need substantial improvement. During the reporting period, the Ombudsman continued to observe great variation in local policies and procedures among USCIS offices.⁵⁷ Service centers and field offices continue to operate with considerable autonomy resulting in the continuing lack of standardization.


⁵⁷ See Appendix 3, which provides information on the Ombudsman's visits to USCIS offices.

COMMENTS FROM OMBUDSMAN'S TELECONFERENCE


Callers expressed concern over the confusion caused by the lack of uniformity on motions to reopen submissions. Callers also noted that some offices within a district accepted motions by fax, some only by written correspondence, and some by email. 

OBSERVATIONS AND STAKEHOLDER COMMENTS FROM THE OMBUDSMAN'S TRIPS AND MEETINGS


The Newark Field Office conducts same-day fraud interviews. If fraud is suspected at the initial interview, the case goes to a supervisor for review; if the supervisor agrees, the case is scheduled for a fraud interview that day. A few adjudicators conduct the fraud interviews on a rotating basis. 

Stakeholders report that in the New York Field Office, it takes over one year to schedule a marriage fraud interview (referred to as "Stokes" interview), and that some officers are not well trained for this type of interview. Stakeholders request that there be instant appeal to a supervisor in these situations. 

RECOMMENDATION AR 2007 -- 08

The Ombudsman recommends that USCIS institute same-day fraud interviews in all field offices. Timely adjudication of applications will deny fraud perpetrators additional preparation time and timely decisions will prevent issuance of interim benefits. 


RECOMMENDATION AR 2007 -- 09

The Ombudsman recommends that USCIS produce an Aging Report on pending fraud investigations by officer and district. There should be a reasonable limit to the time allotted for investigation by the fraud unit. 


- **Insufficient Standardization and Training.** The Ombudsman observed progress during the reporting period. Training issues are further discussed in section III.M of this report and in the Ombudsman's recommendation AR 2006 -- 05.
- **Quality Assurance.** The QA program needs to be strengthened and supported at all levels within USCIS. The continued absence of adequately trained QA personnel at

the local level contributes to the continuing lack of standardization of all adjudication processes.

COMMENT FROM OMBUDSMAN'S TELECONFERENCE

A caller mentioned that receipt notices have an increasing number of inaccuracies, which can cause problems for establishing the priority date and other subsequent events. 

RECOMMENDATION AR 2007 --10

The Ombudsman strongly endorses a plan whereby employees responsible for quality assurance at the local level receive uniform and comprehensive training in QA procedures. 

- **I-601 Waivers.** The Ombudsman reviewed Form I-601 waiver approval and denial rates for all USCIS domestic and international offices for the last five years. The Ombudsman analyzed the average denial rates for the top five domestic field offices and top five international offices.⁵⁸ The variation in these rates was significant among the offices. While international offices demonstrated a consistent trend upward, the denial rate in similar fiscal years for domestic offices differed. Domestically, denial rates fluctuated with no noticeable trend. For example, at one domestic office where the receipt volume was relatively similar from FY 03 through FY 06, the office's denial rate fluctuated from approximately 53 percent, to 26 percent, to 67 percent, in FY 05, FY 06, and FY 07 YTD, respectively. Although the causes of these fluctuations are likely numerous, in the next reporting period the Ombudsman hopes to analyze the extent to which standardized adjudication criteria might stabilize or destabilize the I-601 waiver denial rate.

To address lack of standardization in adjudications, the Ombudsman encourages USCIS leadership to implement a nationwide program of standardization, as uniform adjudication processing practices and decision-making are imperative. Innovative leadership and effective management oversight are essential elements to achieve this objective.

J. Inefficient or Redundant Processes

In the 2006 Annual Report (at pp. 44-50), the Ombudsman reported on and made recommendations to address these issues under "USCIS Revenue."

⁵⁸ The Ombudsman reviewed I-601 denial rates for the ten field offices, five domestic and five overseas, with the highest number of I-601 receipts.