



**Homeland
Security**

Recommendation from the CIS Ombudsman to the Director, USCIS

To: Dr. Emilio T. Gonzalez, Director, US Citizenship and Immigration Services
cc: Michael P. Jackson, Deputy Secretary, Department of Homeland Security
From: Prakash I. Khatri, CIS Ombudsman
Date: May 19, 2006
Re: Recommendation to USCIS that it implement up-front processing of immigration benefits beginning with those for family-based adjustment of status applications for the following reasons: 1) to enhance security and process integrity; 2) to improve customer service; and 3) to increase USCIS efficiency.

I. RECOMMENDATION

Recommendation to USCIS that it implement up-front processing of immigration benefits beginning with those for family-based adjustment of status applications for the following reasons: 1) to enhance security and process integrity; 2) to improve customer service; and 3) to increase USCIS efficiency.

II. Background

The up-front model provides the basis for a 21st century process that will ultimately deliver benefits to qualified applicants within days or even hours of filing while enhancing national security.

Up-front processing of benefits applications incorporates three basic processing concepts.

- USCIS pre-screens applications to ensure they are complete prior to filing;
- Customers file one form and pay one fee per immigration benefit; and
- USCIS conducts interviews, if required, and captures biometrics on the day of filing, and completes adjudications within days or even hours of filing, obviating the need for issuance of interim benefits.

In May 2004, USCIS initiated the Dallas Office Rapid Adjustment program (DORA) to improve customer service while also helping to eliminate the backlog. DORA has 1) reduced the need for interim benefits (employment authorization and advance parole) and thus improved national security by preventing fraudulent or ineligible applicants from obtaining government-

issued identification cards; 2) improved USCIS customer service by providing for more timely processing of immigration cases; and 3) increased USCIS efficiency.

III. Justification

Through DORA, USCIS has demonstrated that an up-front processing model works within current USCIS capabilities.

- Compared to other USCIS field offices, Dallas has dramatically reduced its issuance of interim benefits, which enhances national security and immigration process integrity.
- The Dallas Pilot Program has not negatively impacted the regular adjudicative operations of the Dallas District Office, including backlog reduction efforts.

The Ombudsman supports immediate national roll-out of an up-front processing program and suggests that the existing DORA program be used as a model. Alternatively, the Ombudsman would support 1) implementation of up-front processing based on another model that would achieve the same or better results than DORA; 2) immediate national roll-out of an up-front processing pilot program; or 3) phased-in implementation.

IV. Benefits

- **Customer Service.** Up-front processing dramatically improves customer service by providing for the adjudication of the majority of applications for green cards within 90 days and could lead to a near-instant adjudications process. Customers save time and money they currently spend on follow-up appointments with USCIS and application fees for interim benefits.
- **USCIS Efficiency.** Up-front processing saves hours of officer and clerical time. Pre-screening obviates the need for the time-consuming issuance of case remands and/or denial notices and resources expended on processing interim benefits. DORA had minimal start-up costs and did not require new information technology systems.
- **National Security.** Up-front processing enhances national security by 1) preventing ineligible or unscrupulous applicants from obtaining government-issued identity documents while their cases are pending; 2) allowing USCIS to detect and act on fraudulent cases at the earliest point possible; and 3) providing for the collection of biometric data at the time of filing that can be used by law enforcement and intelligence organizations.

Detailed explanation and analysis follow.

ANALYSIS

A. Up-Front Processing and Backlog Reduction

Large backlogs at USCIS have resulted in lengthy processing times for permanent residency (informally referred to as “green card”) applications. As of February 2006, 61 of the 80 USCIS district and sub offices had processing times for family-based permanent residency cases over 180 days. The five largest district offices – Chicago, Los Angeles, Miami, New York, and San Francisco – which account for over 48% of all district office adjudications, had an average processing time of over 19 months for green card applications.¹

To improve customer service while also helping to eliminate the backlog, USCIS implemented pilot programs to test rapid processing of permanent residency cases. In May 2004, USCIS initiated one such pilot program, the Dallas Office Rapid Adjustment program (DORA) in the Dallas, Texas District Office. In addition, USCIS implemented two other pilot programs of note: the California Service Center Backlog Elimination Pilot and the New York District Backlog Elimination and Fraud Reduction Pilot. Consistent with this recommendation, USCIS has informally indicated that it intends to expand DORA to the El Paso District Office and the Oklahoma City Sub Office.

In a December 17, 2004 USCIS Response to the Ombudsman, USCIS stated:

There is agreement at the USCIS that the goal of the pilot to adjudicate cases within 90 days, thereby eliminating the need to issue employment authorization or advance parole to individuals for whom eligibility for the benefit is not established[,] is one that is important to consider.

The up-front model provides the basis for a 21st century process that will ultimately deliver benefits to qualified applicants within days or even hours of filing, while enhancing national security, customer service, and efficiency.

The Ombudsman strongly supports the expansion of the DORA pilot, and looks forward to working with USCIS management and staff to roll out up-front processing programs nationally. The Ombudsman also appreciates the work of USCIS staff at headquarters, in the district offices, and at the service centers, who have implemented up-front pilot programs and improved customer service, USCIS efficiency, and national security.

B. Overview of an Up-Front Processing Model

In May 2004, USCIS implemented an up-front processing pilot program at its Dallas District Office to test a new adjudication model for concurrently filed Petitions for Alien Relatives (Form I-130) and Applications to Adjust Status (Form I-485). The goal was to complete adjudications in fewer than 75 days so that card production and delivery could be

¹ USCIS Website, Processing Dates, <https://egov.immigration.gov/cris/jsps/ptimes.jsp> (Last visited February 17, 2006).

achieved within 90 days of filing. In so doing, USCIS would preclude the issuance of interim benefits to tens of thousands of applicants.² Up-front processing also provides for the rejection of most cases where an applicant is ineligible, thus allowing USCIS to better utilize clerical and officer staff.

An ongoing program, DORA has accomplished the following: 1) reduced the need for interim benefits (employment authorization and advance parole) and thus improved national security by preventing fraudulent or ineligible applicants from applying for government-issued identification cards; 2) improved USCIS customer service by providing for more timely processing of immigration cases; and 3) increased USCIS efficiency in its use of labor and support systems.

In DORA, USCIS initiates certain background checks, reviews documents, and conducts eligibility interviews on the day of filing and then forwards the application for data entry and administrative processing at the Chicago Lockbox and National Benefits Center. The applicant receives an appointment notice to appear at an Application Support Center where biometrics are captured. The Chicago Lockbox then issues a Receipt Notice to the applicant and forwards the newly created case. The NBC assembles receipted applications into A-file jackets. The NBC then forwards the files to the Dallas District Office. When all background checks are completed, the Dallas District adjudicates the case and orders production of green cards for qualified applicants.

C. Overview of the California Service Center Backlog Elimination Pilot and the New York District Backlog Elimination and Fraud Reduction Pilot Programs

1. California Service Center Backlog Elimination Pilot

In March 2004, USCIS began an employment-based immigrant processing pilot, the California Service Center Backlog Elimination Pilot, for a narrow set of cases – second preference employment-based green card applications.³ These cases typically do not involve interviews and are among the least complicated green card cases. The USCIS goal was to promote process efficiency and complete cases within 90 days of filing an application.

The pilot program data indicate that USCIS was unable to process cases within target timeframes due largely to two factors—security checks, specifically the FBI name check, and Requests for Evidence (RFEs) because the initial submission was incomplete.

² See generally 8 C.F.R. §§274.a12(d) (employment authorization) and 212.5 (advance parole/travel documents).

³ Second preference employment-based applicants are members of the professions holding advanced degrees or their equivalent and who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit the economic, cultural, or educational interests of the United States. 8 U.S.C. §1153(b)(2); 8 C.F.R. §204.5(k).

2. New York District Backlog Elimination and Fraud Reduction Pilot

Also in March 2004, USCIS began a family-sponsored green card application process in the New York District Office, where the standard processing time was over two years. In the New York District Backlog Elimination and Fraud Reduction Pilot, cases were processed at an accelerated rate under the existing processing structure with a goal of completing adjudications within 90 days of filing the application. In essence, this program sought to compress traditional business processes into a 90 day timeframe, rather than reengineer the process to incorporate fully the elements of up-front processing.

In December 2004, USCIS discontinued the New York Pilot. It deemed the program unsuccessful because it did not adjudicate the majority of cases within 90 days of filing or significantly reduce the existing backlog.⁴ Again, the pilot program data indicate that USCIS was unable to process cases within target timeframes largely due to two factors—security checks and RFEs. In addition, the New York pilot was not able to take advantage of automated business process efficiencies because the compressed pilot program process differed from standard processes. Most importantly, the New York Pilot did not incorporate any of the elements of up-front screening that make the DORA model successful.

Despite finding the New York pilot unsuccessful, similar programs were implemented in three district offices, Buffalo, San Antonio and San Diego, in April 2005.

D. DORA Results

From its inception in May 2004 through November 2005, DORA scheduled 17,751 appointments, of which 3,698 (21%) were no-shows.⁵ DORA rejected 2,876 (18%) applications of the total received. Of the 10,973 cases accepted for processing through the end of August 2005, 8,797 (80%), were completed by the end of November 2005. Of these 10,973 applications accepted, 8,519 were approved, 278 were denied and 2,170 remain pending. Approximately 58% of accepted cases were completed within 90 days of filing (6,347 completed of 10,973 considered). Had it not been for delays caused by FBI name check issues, the 90-day completion rate would have exceeded 80%. Only 1,641 interim benefits were issued to DORA applicants – 10% of the total number of DORA adjustment applications.

JUSTIFICATION

The Ombudsman recommends implementation of an up-front processing model that screens applicants, conducts interviews, and grants immigration benefits to deserving applicants within a few days, while rejecting applications from ineligible applicants and thereby instantly

⁴ The New York District Office diverted resources to support the pilot process at the expense of existing backlog elimination efforts because pilot program case receipts exceeded expectations.

⁵ Data in this recommendation are from the USCIS Performance Analysis System (PAS); the Dallas District Office provided the raw data on DORA.

denying them access to interim benefits. USCIS has already implemented, on a limited basis, such a program.

A. Benefits of the DORA Program

1. DORA merits expansion for the following reasons.

- The Dallas Pilot Program greatly increases customer service. Nearly 60% of the pilot program cases were completed within 90 days. Excepting cases pending due to FBI name checks, the completion rate increases to over 80%. Most of these customers would have filed for interim benefits, and not having to do so saved such customers between \$170 to \$350 per year.⁶ Customers apply for benefits with a reasonable expectation of the time it will take to receive them, and up-front processing helps USCIS to meet this customer service expectation.
- Compared to other USCIS field offices, Dallas has dramatically reduced its issuance of interim employment and travel documents, which enhances national security and immigration process integrity. With an employment authorization document, a foreign national can obtain a social security card, a driver's license, secure credit, and provide evidence of both identity and employment eligibility to an employer. Under standard processing, ineligible applicants often receive interim benefits for months or years while applications are pending.
- The Dallas Pilot Program has not negatively impacted the regular adjudicative operations of the Dallas District Office, including backlog reduction efforts. In fact, Dallas officer productivity rose by 9% between May 1, 2004 and November 30, 2005 and the district office realized substantial backlog reduction. Backlog reduction efforts have been negatively affected, however, due to detailing of officers away from the Dallas District Office for work on other backlog-related projects.

2. Objective Criteria to Evaluate Success of the Up-Front Processing Model

To evaluate the success of the Dallas Pilot, the following objective criteria should be considered:

- The effect of the Dallas Pilot Program on customer service by measuring pilot case completion times, assessing any cost savings, and evaluating the effect, if any, of the pilot program on the other immigration services that the Dallas District Office provides.

⁶ Currently, the filing fee for Form I-765, Application for Employment Authorization is \$180 and the fee for Form I-131, Application for Travel Document (advance parole) is \$170. In district offices where the adjustment of status application is backlogged more than one year, the customer may have to apply and pay fees for interim work and travel authorization documents more than once.

The Dallas Pilot Program has not negatively affected regular adjudicative operations in the Dallas District Office. Between May 1, 2004 and November 30, 2005, the total number of applications and petitions pending in the Dallas District decreased 25.3% from 46,651 to 34,848.⁷ The number of I-485s decreased 27.5% from 18,872 to 13,676. These reductions, while still not allowing the district to claim processing times of less than 90 days on I-485s, are significant. In fact, Dallas achieved greater backlog reduction than 25 out of 32 total district offices. That such progress was made in the face of staff reductions and details makes it even more remarkable. From all available data, it appears that adjudication of cases under DORA requires the allocation of fewer resources than for regular processing.

- The potential impact of the Dallas Pilot Program on national security can be measured by comparing the volume of employment and travel authorization applications received and processed by the Dallas District Office to the volume of such applications at other USCIS local offices.

Under the current process, thousands of applicants for adjustment of status are issued interim benefits even though they are ineligible for adjustment and their green card applications will eventually be denied. From May 2004 through November 2005, the Ombudsman estimates that USCIS issued more than 1.5 million EADs to adjustment applicants.⁸ Given that USCIS currently denies approximately 18% of all adjustment of status applications, approximately 283,000 EADs were issued to individuals ineligible for adjustment.

DORA demonstrates how up-front processing eliminates the need to issue interim benefits to the vast majority of adjustment applicants. In DORA, most of the cases that would eventually be denied under the current USCIS process—18% of all DORA applications—are rejected at the outset. Of the cases that were accepted and completed under DORA, only 3% were denied. For DORA cases delayed beyond the 90-day processing time target the denial rate is only 1.5%. Therefore, if USCIS had processed all adjustment cases from May 2004 through November 2005 consistent with the DORA process, it would only have issued approximately 2,400 EADs to

⁷ PAS data indicate that at the beginning of May 2004, the Dallas District Office had 40,235 applications and petitions of which 12,456 were Form I-485 applications. On November 30, 2005, those numbers were 34,848 and 13,676, respectively. Not recognized in the May 2004 data, but included in the November 2005 data, are 6,416 Form I-485 applications added through a September 2004 “Inventory/Audit” entry. If these additional, audit-generated applications are included with existing data from May 2004, when Dallas implemented DORA, then the program effectively started with pending counts of 46,651 (i.e., 40,235 + 6,416) applications and petitions and 18,872 (i.e., 12,456 + 6,416) Form I-485 applications. As a result, the number of pending cases in Dallas has decreased 25.3% for all application/petitions and 27.5% for I-485s.

⁸ Based on available data, the Ombudsman estimates that approximately two-thirds of I-765 applications for employment authorization and virtually all I-131 applications for advance parole are attributable to individuals with pending applications for adjustment of status. The total presented here is a conservative estimate derived by calculating 65.69 percent of the total number of both employment authorization documents *and* advance parole travel authorization documents issued.

ineligible adjustment applicants, less than 1% of the number of benefits it actually issued.

In a November 2004 CIS Ombudsman site visit to the Dallas District Office with then USCIS Director of Operations William Yates, adjudicators stated that DORA has enhanced fraud detection and prevention because DORA does not afford unscrupulous applicants the time to develop and advance their fraud scheme. Thus, up-front processing enhances the integrity and security of the immigration benefits process by preventing unscrupulous applicants from submitting frivolous adjustment applications merely to gain access to interim benefits.

B. Key Elements of the DORA Up-Front Processing Model

1. By shifting key tasks to the beginning of the application process, DORA is a true up-front processing model.

The DORA model screens applications prior to their submission. Conversely, the New York and California pilots merely attempted to compress the existing case processing model into a 90 day timeframe.

In the DORA pilot program from May 2004 through November 2005, 2,876 applications were rejected before they could be filed, of which only 447 applications were rejected due to an incorrect filing fee.⁹ Thus, in 2,429 cases, DORA saved resources otherwise used to adjudicate and issue interim benefits, time-consuming RFEs, and/or denials.

The DORA program is effective at rooting out fraud at the earliest possible point in the immigration process. From May 2004 through November 2005, of all the DORA cases denied within the 90 day processing target timeframe, approximately 21% were denied due to fraud, as compared to a national fraud denial rate of approximately 4.5%. Thus, data support the conclusion that up-front processing is effective at detecting fraud.

2. Over the life of the program, the DORA model did not detract from the district office backlog reduction efforts.

USCIS has asserted that DORA is “labor intensive” and caused completion rates to decline. However, these conclusions appear to be derived from statistics that did not separate DORA applicants from regular applicants, thereby losing DORA statistics in the overall workload. Available data show that apparent inefficiencies were due less to DORA program

⁹ Under DORA, an application that has been screened and deemed deficient may, at the customer’s discretion, still be filed or withheld until the noted deficiencies are corrected. Currently, under standard USCIS procedures, individuals often learn that their applications are deficient only when they receive an RFE or denial notice—months or years after filing. Thus, DORA addresses any potential “front-desking” problems. This term stems from the INS practice of rejecting certain applications during the legalization program instituted under the Immigration Reform and Control Act of 1986. Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986). Following the program, a number of individuals and organizations brought litigation against INS, alleging that applications were erroneously rejected by frontline INS officers.

deficiencies than to other issues such as incomplete security checks, shortages in contract staff, and file transfers from service centers. Between May 1, 2004 and November 30, 2005, the total number of pending applications and petitions in the Dallas District decreased 25.3% from 46,651 to 34,848. The number of I-485s decreased from 18,872 to 13,676—a decrease of 27.5%.

The Ombudsman concurs with the USCIS assessment that the California and the New York pilot programs were labor intensive and may have hindered immediate backlog reduction efforts. In comparison, the Dallas office was successful in reducing its backlog while operating the DORA up-front processing program. Significantly, DORA had minimal start-up costs, required no new information technology, and involved only limited new training of officers.

C. Implementation of National Up-Front Processing Programs

Through DORA, USCIS has demonstrated that an up-front processing model works within current USCIS capabilities and that it improves customer service and enhances national security. In adopting an up-front processing model, USCIS can achieve higher completion rates, improve customer satisfaction, reduce the issuance of interim benefits, and substantially reduce unnecessary, time-consuming procedures.

The Ombudsman supports immediate national roll-out of an up-front processing program and suggests that the existing DORA program be used as a model. Alternatively, the Ombudsman would support:

- Implementation of up-front processing based on another model that would achieve the same or better results;
- Immediate national roll-out of an up-front processing pilot program to study further the benefits of this business process; or
- Phased-in implementation of up-front processing by region.

The Ombudsman believes, however, that USCIS should build on the success of the up-front business process in the DORA program by rolling out up-front processing nationally. Only by adopting such fundamental process change will USCIS realize its goal of effective transformation.

BENEFITS

A. Customer Service

- *Timely Adjudication of Immigration Benefits.* Up-front processing dramatically improves customer service by providing for the adjudication of applications for green cards within a 90 day timeframe in most cases.

- Up-front processing saves customers time by reducing the need for follow-up case status inquiries and address changes with USCIS, both via the National Customer Service Center telephone line and InfoPass's in-person appointments.
- Customers also save time by not having to repeatedly visit Application Support Centers for the capture of biometrics. With prolonged processing times at many USCIS offices, customers often have to visit these centers multiple times because fingerprint checks expire after 15 months under USCIS rules, and USCIS, as a non-law enforcement entity, does not have access to a "wrap-around" feature that would provide for automatic updates on criminal history.
- *Savings of Fees for Interim Benefits.* Customers save hundreds of dollars that they would otherwise have to spend on application fees for interim employment and travel authorization documents.
- *No Adverse Impact on Backlog Reduction.* Up-front processing does not adversely impact backlog reduction efforts for long-pending applications.
 - DORA uses existing permanent staff without drawing upon the temporary employees hired to reduce the existing case backlog.
 - If the backlog is eliminated by the end of FY 2006,¹⁰ the permanent workforce will be capable of handling the daily workloads associated with the DORA program.
- *Instant Basic Eligibility Determination.* Applications will be screened at the time they are submitted, allowing customers the opportunity to perfect incomplete packages before submitting them. By submitting complete packages, customers minimize the likelihood that their applications will be the subject of RFEs or denials.

B. USCIS Efficiency

- *Streamlines USCIS Operations.* Up-front processing saves hours of officer, clerical, and contractor time by reviewing the application packages before filing. This pre-screening obviates the need for the time-consuming issuance of RFEs and/or denial notices, thus freeing staff to perform other functions.
- *Saves Resources Spent on Interim Benefits Adjudications.* A national up-front processing program would allow USCIS to reallocate significant resources currently tied up with interim benefits processing, thereby allowing USCIS to apply those resources to actual case processing and backlog reduction.

¹⁰ See *Email Message from Director Gonzalez*, USCIS (Feb. 3, 2006) ("Through a sustained and intense effort, USCIS will make its assigned goal to eliminate the backlog by October 1, 2006...").

- *Reduces the Number of Case Status Inquiries.* Adjudication of cases within a 90 day timeframe reduces the number of case status inquiries made via the National Customer Service Center telephone line and the InfoPass online scheduler for appointments at district offices.
- *Requires Minimal Implementation Costs*
 - No New Information Technology. DORA did not require additional information technology (IT) systems. The Dallas District Office was able to implement and run the up-front processing program with existing USCIS IT systems.
 - Limited New Training Required for USCIS Officers. DORA required only limited training for USCIS officers on process changes to adjudications procedures.
- *Aids Other Agencies Charged with Providing Services to Foreign Nationals.* Timely delivery of the immigration benefit ensures that state Department of Motor Vehicles offices and the Social Security Administration are able to confirm status prior to issuing driver's licenses and Social Security cards.

C. National Security

- *Prevents Ineligible or Unscrupulous Applicants from Obtaining Interim Benefits.* Up-front processing enhances national security by preventing ineligible or unscrupulous applicants from obtaining government-issued identity documents for months or years while their cases are pending. Up-front processing also provides for the collection of biographic and biometric data at the time of filing that can be used by law enforcement and intelligence organizations.
- *Detects and Roots Out Fraud at the Earliest Possible Point.* Up-front processing allows USCIS to detect and act on fraudulent cases at the earliest point possible, rather than after a case has been pending for months or years. Up-front processing does not afford unscrupulous applicants the time to develop and advance their fraud schemes.