



**Homeland
Security**

Recommendation from the CIS Ombudsman to the Director, USCIS

TO: Dr. Emilio T. Gonzalez, Director, U.S. Citizenship and Immigration Services
CC: Michael P. Jackson, Deputy Secretary, Department of Homeland Security
FROM: Prakash Khatri, CIS Ombudsman
DATE: February 8, 2007
RE: Recommendation that USCIS adopt a Standard Operating Procedure (SOP) under which there would be at least 30 day advance notice to the public and posting on the USCIS website of changes to policy and operations instructions, absent exigent circumstances.

I. RECOMMENDATION

Recommendation that USCIS adopt an SOP under which there would be at least 30 day advance notice to the public and posting on the USCIS website of changes to policy and operations instructions, absent exigent circumstances.

II. BACKGROUND

The CIS Ombudsman (CISOMB) is concerned about USCIS changes to policy and procedure without adequate notice. The CISOMB often receives case problems and inquiries from customers and stakeholders regarding changes to policy and procedure that result in denials, requests for additional evidence (RFE), or otherwise hinder the efficient delivery of immigration services.¹

This issue most recently arose and was reported to our office in the context of U visa interim relief and Form I-765 Application for Employment Authorization.² Applicants for U visa interim relief previously were permitted to file an I-765 with the initial application. In November 2006, USCIS changed this practice and determined that the I-765 should not be submitted until deferred action was granted. To the best of our knowledge, USCIS implemented this change without any prior notice to the public.

¹ In February 2005, the CISOMB recommended such notice prior to termination of USCIS pilot programs (http://www.dhs.gov/ximgtn/programs/editorial_0769.shtm, Recommendation #14). USCIS responded in May 2005 stating, "We are generally in agreement with this recommendation...It is our intention to provide such a public notice via the Federal Register or press release as appropriate whenever the processing of benefits forms directly impacts the way the applicants submit them for future pilots unless there are law enforcement considerations associated with the pilot program that would be negatively impacted by such notice."

² See generally 8 U.S.C. §§1101(a)(15)(U) and 1184(p).

USCIS then 1) sent RFEs in relation to the I-765, requesting evidence that the individual had been placed in deferred action, to every applicant who had followed long-standing procedures by submitting the I-765 with the initial application; and 2) sent denial letters to each applicant who was unable to respond to the RFE because the Vermont Service Center (VSC) had not yet adjudicated the U visa interim relief application.

III. JUSTIFICATION

As a general matter, any organization must endeavor to work with its customers and stakeholders to ensure that there are ongoing communications regarding the delivery of services and the mutual responsibilities of the parties involved. To this end, USCIS has active customer service, public affairs, and community outreach programs. USCIS also maintains and has recently revamped its website, which despite some recent issues is widely considered to be an excellent resource. The Ombudsman recognizes and applauds these initiatives and the dedicated professionals behind them.

However, from time to time, changes are made to USCIS policy and operations instructions without adequate notice to customers and stakeholders. Insufficient notice has a negative cascading impact: adjudication of immigration benefits applications may be delayed, customers may be required to re-file and pay fees twice, USCIS resources may be directed to issuing rejections, denials, and RFEs, rather than to adjudication of the benefit sought.

To remedy the problem of insufficient notice, the CISOMB recommends that USCIS 1) provide at least 30 day advance notice to the public in the case of changes to policy and operations instructions; and 2) where changes are made that affect applicants who acted on prior USCIS policy in filing an application, refund fees for a reasonable period of time, where practicable, or otherwise facilitate resolution of case issues by allowing for re-filing with no additional fees.

In the case of the specific issues discussed herein for U visa interim relief applicants, the CISOMB recommends that USCIS accept copies of the documents originally submitted, or a copy of the original I-765 receipt notice indicating that the fee waiver had already been granted.

IV. BENEFITS

A. Customer Service

Providing sufficient notice to customers of changes to policy and operations instructions is essential to high quality customer service. Implementation of this recommendation would help ensure that customers understand precisely what is expected and required in a submission. Customers, in turn, would then be more likely to receive in a timely manner the immigration benefits services they expect and for which they have paid user fees.

B. USCIS Efficiency

In adopting this recommendation, USCIS would become more efficient. Rejecting, denying and issuing RFEs for applications and petitions – often a result of inadequate notice and/or instructions – is a time consuming process that diverts USCIS resources from the adjudication of petitions and applications. This recommendation would help customers to file submissions that are complete, which can then be adjudicated by USCIS as efficiently as possible.

C. National Security

This recommendation has no national security impact. This recommendation contemplates that there may be circumstances where exigent conditions, including national security considerations, require changes without the above-discussed notice to customers.