



Citizenship and Immigration Services Ombudsman

Annual Report 2007

Submitted to:

**United States Senate
Committee on the Judiciary**

**United States House of Representatives
Committee on the Judiciary**

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**Homeland
Security**

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MESSAGE FROM THE OMBUDSMAN



The Citizenship and Immigration Services Ombudsman's 2007 Annual Report marks 46 months of cumulative analysis and recommendations since the establishment of the office. The Ombudsman's office is Congressionally-mandated to assist individuals and employers in resolving problems with the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) by advancing recommendations on improving USCIS services and operations. It is an independent DHS office that reports directly to the DHS Deputy Secretary with an annual report to Congress without prior review and comment by DHS or the executive branch, as directed by the Homeland Security Act of 2002.

The Ombudsman's first three annual reports focused on the systemic issues that caused delay in granting immigration benefits and customer service complaints. These reports identified pervasive and serious issues that were addressed in 28 formal recommendations directed at solving problems faced by individuals and employers in their interactions with USCIS. The USCIS Director and the Ombudsman generally agree on the identified problems and their need for priority attention, although the solutions proposed and those adopted by USCIS may differ.

Challenges still exist within USCIS. Customers continue to have difficulties with confusing forms and processes and many customers wait months, and perhaps years, for final adjudication of their cases. The Ombudsman will continue to assist individuals to receive lawful benefits in a timely, customer-friendly, secure, and efficient manner.

I want to thank DHS Secretary Michael Chertoff, Deputy Secretary Michael P. Jackson, former Secretary Tom Ridge, former Deputy Secretary Jim Loy, former Deputy Secretary Gordon England, USCIS Director Emilio Gonzalez, Deputy Director Jonathan "Jock" Scharfen, and former Director Eduardo Aguirre for their dedication to our mission of providing secure, efficient, and expeditious immigration services. I have been privileged to work with committed professionals in DHS, USCIS, and the Ombudsman's office.

The preparation of this annual report was accomplished by tireless efforts of a dedicated staff of professionals who spent many hundreds of hours reviewing and validating facts and figures, as well as drafting and editing the report. I thank them for assisting me in completing it and for their public service in addressing national security and customer service. I especially would like to thank Wendy Kamenshine who again this year skillfully managed this complicated project.

We have accomplished a great deal, but there is much more to do in the spirit of responsive government.

Prakash Khatri
Citizenship & Immigration Services Ombudsman

EXECUTIVE SUMMARY

This report, submitted pursuant to the Homeland Security Act of 2002 § 452, provides details on activities undertaken by the Ombudsman from June 1, 2006 through May 31, 2007.

The statutory mission of the Ombudsman is to:

- Assist individuals and employers in resolving problems with USCIS;
- Identify areas in which individuals and employers have problems in dealing with USCIS; and
- Propose changes to mitigate identified problems.

During the reporting period, the Ombudsman continued to provide assistance to USCIS customers, identify problems, and recommend solutions to systemic problems confronting USCIS. These recommendations focused on improving customer service and transparency, while enhancing security and efficiency. Information boxes in the report provide readers with: (1) USCIS best practices; (2) additional recommendations; (3) observations from the Ombudsman's trips to USCIS facilities; (4) customer comments from the Ombudsman's pilot teleconference program; and (5) descriptions of actual case problems.

USCIS Transformation

Transformation of USCIS -- which encompasses IT modernization efforts, forms revision, and other initiatives to provide USCIS with world-class digital processing capability -- is vital to the agency's future success. However, USCIS has devoted considerable resources to various types of transformation since the 1990s with minimal progress. The success of USCIS' transformation efforts requires focus, resources, and credible performance measures to assess outcomes.

Pervasive and Serious Problems

Pervasive and serious problems faced by USCIS and its customers include:

A. Complexity of the Immigration Process – One of the most serious problems facing individuals and employers is the complexity of the immigration process. While the Immigration and Nationality Act is the principal statute governing immigration to the United States, there are myriad other laws, regulations, policies, and procedures that affect whether and in what manner a foreign national may enter the United States, seek temporary status, a green card, or U.S. citizenship. Many of the pervasive and serious problems detailed in this report are interconnected and stem from the complexity and opaque nature of the immigration rules and the agency administering them.

B. Backlogs and Pending Cases – USCIS customers continue to face lengthy and costly waiting periods for benefits, but thanks to the dedication and leadership of staff in

support centers, field offices, and service centers, there has been a substantial reduction in the backlog. Unfortunately, the agency's redefinition of the backlog obscures the issue and raises questions about its backlog reduction efforts.

C. Processing Times – On August 23, 2006, USCIS announced changes that would improve the reporting methodology for processing times of immigration benefit applications. The Ombudsman disagrees that this change provides better information and urges USCIS to return to the practice of providing the public with the actual processing time for each field office.

D. Customer Service – During the reporting period, USCIS made important strides in customer service. USCIS increased the number of appointments available via INFOPASS and began two new contracts in the effort to improve its toll-free customer service line. Nevertheless, the Ombudsman continued to observe other areas where communication issues with customers persist: (1) limited customer access to USCIS immigration officers who know about individual cases to resolve an inquiry accurately and efficiently; (2) questionable accuracy of information provided by customer service representatives; and (3) the practice of providing minimal information in response to customer inquiries.

E. Untimely Processing and Systemic Problems with Employment-Based Green Card Applications – USCIS' inability to process enough green card applications and accurately track employment-based green card applications has resulted in a perpetual backlog of employment-based green card applications and widespread issuance of interim benefits. This lack of accurate data also has resulted in the underutilization of statutorily limited visa numbers.

F. Name Checks and Other Security Checks – FBI name checks, one of the security screening tools used by USCIS, continue to significantly delay adjudication of immigration benefits for many customers, hinder backlog reduction efforts, and may not achieve their intended national security objectives. FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits, and the problem of long-pending FBI name check cases worsened during the reporting period.

G. Interim Benefits – The Ombudsman strongly supports efforts by USCIS to eliminate the need for interim benefits in favor of timely, efficient, and secure adjudication of the ultimate immigration benefit. Legitimate customers should not have to pay filing fees for interim benefits they would not need if the underlying petition were timely processed. Interim benefits also allow ineligible and fraudulent applicants to receive work authorization and travel documents because of processing delays.

H. Funding of USCIS – Due to the congressional requirement that USCIS be self-funded from fees, USCIS may make decisions that compromise operational efficiency to ensure revenue flow. The manner in which USCIS obtains its funding affects every facet of USCIS operations, including the ability to: (1) implement new program and

processing initiatives; (2) begin information technology and other transformation efforts; and (3) plan for the future.

I. Lack of Standardization Across USCIS Business Processes – The Ombudsman is encouraged by USCIS' attempts to foster standardization of adjudicative processes and decision-making, yet processing times and the quality of decisions between offices remain inconsistent.

J. Inefficient or Redundant Processes – There are certain USCIS processing inefficiencies and redundancies that could be easily addressed and would make substantial improvements for customers.

K. Coordination and Communication – Coordination and communication problems between USCIS field offices and service centers, USCIS headquarters and field offices, USCIS and stakeholders and other government agencies, and even among headquarters components continue to cause processing delays, inconsistency in adjudications, and costly inefficiencies.

L. Information Technology Issues – The effective deployment of information technology systems to all service centers and field offices remained a significant challenge for USCIS. Legacy agency systems are unable to communicate with one another, and USCIS continues to be a paper-based operation.

M. Staffing, Career Development, Training, and Strategic Workforce Planning and Recruiting – During the reporting period, USCIS combined its human resources and training and career development components into a new office led by the agency's first Chief Human Capital Officer. USCIS completed its first strategic workforce planning and integrated training effort, which addressed aspects of the staffing and training gaps identified in the Ombudsman's 2006 Annual Report. Substantial workforce staffing and training challenges remain for USCIS. The Ombudsman urges USCIS to implement the findings of the Strategic Workforce Plan.

N. Delay in Updating U.S. Citizenship Designation in Records – In the past, some naturalized citizens could not apply for passports because naturalization could not be verified. The Ombudsman understands that USCIS has corrected this problem and will continue to monitor it.

O. Green Cards Collected, Not Recorded, and Green Card Delivery Problems – In the past, untimely and inaccurate updating of records resulted in major inconveniences for certain USCIS customers and misdirected green cards for others. The Ombudsman will monitor the changes USCIS has implemented and is planning on these issues.

Up-front Processing

The Ombudsman strongly supports up-front processing of immigration benefits applications to enhance national security, improve customer service, and increase USCIS

efficiency. Up-front processing changes current USCIS processing procedures by assuring that an agency official reviews and completes as many actionable items on a case as possible at the time USCIS accepts the application or petition. During the reporting period, USCIS expanded up-front processing programs to two additional small field offices. However, inadequate resources for transitioning to the new process and other circumstances have limited the success of the pilot programs at these two offices.

Recommendations

This report includes summaries of the Ombudsman's formal recommendations for the 2007 reporting period, as well as those recommendations to which the Ombudsman received new USCIS responses. Recommendations during the reporting period focused on notice to customers and stakeholders, transparency in agency programs, and improving Freedom of Information Act operations.

Ombudsman Outreach

During the reporting period, the Ombudsman traveled to over 40 USCIS facilities, met with countless stakeholder organizations, and held numerous in-person and telephonic meetings with interested parties. The Ombudsman urges USCIS to be a more transparent agency with better communication with its customers, and in this regard, the Ombudsman has sought to lead by example.

Key outreach initiatives include:

- **Teleconferences.** During the reporting period, the Ombudsman began a pilot teleconference series with customers and stakeholders to hear and address their comments and concerns on specific topics and regarding certain offices.
- **Trends Email.** The Ombudsman maintains an email account specifically for customers and stakeholders who have concerns about trends and systemic issues to suggest solutions. The majority of correspondence forwarded to the Ombudsman's trends email pertains to adjudications delays due to FBI name checks.
- **Virtual Ombudsman's Office.** As an alternative to local Ombudsman offices, for which there are no budget requests or allocations for FY 08, the Ombudsman is working with the relevant DHS components to develop a "Virtual Ombudsman's Office." The Ombudsman expects this program to be operational and make services of the Ombudsman more easily available to individuals and employers across the country via the internet by FY 08.
- **Ombudsman's Priorities.** The reporting period priorities, posted on the Ombudsman's website, were: (1) Recommending Solutions to Systemic Issues that Continue to Cause Individual Case Problems; (2) Expanding Up-Front Processing Programs; (3) Addressing USCIS Fundamental Budget Issues; (4)

Reviewing Processing Delays Caused by USCIS Security Screening; and (5) Improving USCIS Customer Service and Communications.

Case Problems

By statute, the Ombudsman receives and processes case problems to assist individuals and employers who experience difficulties with USCIS. The case problem resolution unit also helps identify systemic issues for the Ombudsman to recommend solutions. During the reporting period, the Ombudsman and USCIS refined communication processes to improve case problem resolution capability.

Looking Forward

In 2007-2008, the Ombudsman will continue to identify areas in which individuals and employers have problems interfacing with USCIS, and to the extent possible, propose changes to mitigate identified problems. The Ombudsman will gather information and feedback from USCIS customers and stakeholders by continuing to conduct frequent site visits to USCIS facilities; meeting regularly with community, employer, and immigration law organizations; and expanding individual and employer access to the Ombudsman.

The Ombudsman will improve the process for resolving problems individuals and employers face in dealing with USCIS by establishing a Virtual Ombudsman's Office to provide for online case problem submission. Additionally, the Ombudsman will continue to initiate and expand activities to promote interagency cooperation and holistic approaches to immigration issues.

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I. INTRODUCTION

The Homeland Security Act of 2002 (the Act) § 452, 6 U.S.C. § 272 (2002) established the position of Citizenship and Immigration Services Ombudsman (Ombudsman)¹ to be appointed by the Secretary of DHS and report directly to the Deputy Secretary. The first DHS Secretary, Tom Ridge, appointed Prakash Khatri as the first Ombudsman on July 28, 2003.²

This annual report is submitted pursuant to 6 U.S.C. § 272(c)(1) and covers the activities of the Ombudsman³ from June 1, 2006 through May 31, 2007.

A. Mission

The statutory mission of the Ombudsman is to:⁴

- Assist individuals and employers in resolving problems with USCIS;
- Identify areas in which individuals and employers have problems dealing with USCIS; and
- Propose changes to mitigate identified problems.

The Ombudsman serves as a spokesperson and advocate for individuals and employers who encounter problems with the immigration benefits system.⁵ The Ombudsman believes the best way to assist individuals and employers is to encourage efficiency and better customer service at USCIS by recommending solutions to systemic problems in USCIS processes.

The Ombudsman continues to work with USCIS and DHS headquarters to create more efficient, secure, and responsive methods for providing immigration services that respect the dignity of individuals and enhance our economy, while simultaneously protecting the country from those who would harm the United States.

¹ See Appendix 4 for excerpts of relevant sections of the Homeland Security Act.

² See Appendix 6 for Mr. Khatri's biography.

³ In this report, the term "Ombudsman" and the acronym "CISOMB" refer interchangeably to Ombudsman Prakash Khatri, his staff, and the Ombudsman's office.

⁴ See 6 U.S.C. § 272(b).

⁵ "Immigration benefits" is the term used to describe the services side of the immigration system, versus enforcement. Primary immigration benefits include lawful nonimmigrant status, permanent residence (also known as adjustment of status, evidenced by a "green card"), naturalization, asylum, etc. Secondary immigration benefits or interim benefits include work permits, *i.e.*, Employment Authorization Documents (EADs), and travel documents (*e.g.* advance parole), obtained while awaiting a primary benefit.

B. State of USCIS

During the reporting period, USCIS made substantial progress in eliminating its backlogs, improving customer service, and implementing 90-day green card processing programs throughout the country. USCIS also published a new fee structure to correct its funding shortfall.

However, USCIS remains an agency with significant problems including case backlogs, lengthy waits for security name checks for certain individuals, inefficient intake and adjudications processes, insufficient workforce training, and antiquated IT systems that present an ongoing challenge to the efficient and timely delivery of immigration services.

Congress included provisions in the Act requiring USCIS to respond to Congress on the Ombudsman's recommendations in the annual report, within three months.⁶ However, it was not until May 18, 2007, nearly eight months after the statutorily required due date and just a few weeks prior to the release of this year's report, that USCIS responded to the Ombudsman's June 29, 2006 Annual Report to Congress (2006 Annual Report Response). This delay limited the Ombudsman's ability to evaluate the USCIS responses.

In addition, inherent to developing recommendations for USCIS improvements, the Ombudsman requires full and unrestricted access to USCIS information and data. In recent months, this access has been selectively restricted at USCIS headquarters and a few field offices. The Ombudsman hopes that this approach will change so that customers can receive the assistance they need and deserve.

The Ombudsman challenges USCIS to: (1) establish measurable milestones to verify that it is achieving the service objectives used to justify its fees; (2) establish a culture of innovation; (3) test and implement new approaches to benefits processing; and (4) be transparent in its adjudications processing.

1. USCIS Budget and Funding

During the reporting period, the Ombudsman's numerous visits to USCIS facilities nationwide reinforced the belief that USCIS funding problems drive agency policy. The lack of an adequate funding source and requirements to provide for unfunded mandates force USCIS leaders to make management decisions that can be inconsistent with efficiency in processing immigration benefits. For that reason, the Ombudsman supports a fee structure that provides fully for USCIS' cost of doing business.

The Ombudsman also recognizes that agency spending requires diligent, focused oversight through the budgeting and spending process. Because USCIS is primarily fee funded, it does not receive the same scrutiny from congressional appropriations committees as an agency would receive if its budget were obtained from appropriations.

⁶ See 6 U.S.C. § 271(a)(3)(F).

As a self-funded government monopoly, USCIS should be held to no lesser a standard of accountability and transparency than private sector entities such as publicly traded companies. U.S. citizens and legal residents have an interest in efficient management and accounting of receipts similar to that of shareholders and their interest in the operations of a public company. USCIS must efficiently manage its resources and funding, while monitoring the internal controls of the many aspects of immigration benefits processing. The agency must pay particular attention to those aspects that are delegated to other service providers such as name checking by the FBI, assisting applicants at Application Support Centers (ASCs), collecting and depositing fees at the commercial bank lockboxes, and responding to public inquiries at national call centers. Like any publicly traded company, USCIS should take full responsibility for these delegated services.

The Ombudsman also has recommended a revolving trust to help address USCIS budget and funding problems. A revolving trust would assist USCIS in handling fluctuations in immigration benefits filings, which causes substantial variability in the fee revenue stream. It also would help enable USCIS to make investments in infrastructure and training. The 2006 Annual Report Response (at p. 2) that “the proposed legislation has budget scorekeeping implications within the context of the scorekeeping conventions of the Administration and the Congress,” does not address the relative benefits or drawbacks of establishing a revolving trust account for the agency.

2. Testing and Implementation of Innovative Approaches to Benefits Processing

The Ombudsman devotes a substantial part of this report to the up-front processing model, which has been implemented and tested in the USCIS Dallas Field Office. The Ombudsman strongly believes that, if USCIS were to implement this model or a similar up-front process nationally, it would result in more efficient, timely, and secure delivery of immigration benefits. The Ombudsman encourages USCIS to test and implement other innovative programs that eliminate redundant, inefficient processes, and leverage technology.

3. Transparency in Adjudications Processing

The agency should be transparent in all of its decisions and activities. The Ombudsman recognizes that the details of USCIS security screening and anti-fraud efforts cannot and should not be made public. However, criteria for classifications and case status should be transparent to customers.

USCIS should take pride in all that it has done and is doing, including its continuous, critical self-evaluations that should be public. When the agency is not transparent, customers even misunderstand positive initiatives developed to assist them. Best practices developed independently by conscientious, devoted employees are not shared. Vertical and horizontal communication within the agency (or to the public) is inadequate. Inefficiencies continue due to unshared data that the agency fears may reveal the very inefficiencies it needs to correct. The Ombudsman would like transparency to become part of the USCIS culture.

4. USCIS Relationship with the Ombudsman

Inherent to developing recommendations for USCIS improvements, in accordance with the Act, the Ombudsman requires access to USCIS information – policies, operational directives,

data, and reports used – as well as agency personnel. In the past 46 months, this access has evolved from the agency withholding information to more openness and cooperation back to the most recent USCIS directives to selectively share information and tighten direct access to personnel and data.

The first USCIS Director fostered a sharing of information personified by the Senior Management Counsel and Liaison to the Ombudsman who traveled with the Ombudsman frequently and who typically would open field visits with this statement:

We ought to be prideful in what we do, and if not, we ought not be doing it . . . and if we are prideful, we can be transparent in what we do. Show me a growing and innovative organization that does not have challenges. Rest assured there will be robust discussions at headquarters on the best way to address these challenges, but in the time the Ombudsman is with us we want to ensure he has a complete picture of your operations and the challenges faced.

However, rather than building on this transparent approach, during the reporting period the Ombudsman experienced repeated efforts by a few USCIS leaders to limit access to non-sensitive data and information. These efforts hindered the Ombudsman from learning about some processes necessary for informed evaluations and recommendations. In many important instances and throughout USCIS, the Ombudsman has seen USCIS supervisors and managers welcome open dialogue and demonstrate efforts to become more transparent and provide complete information to the public. It is regrettable that some leaders within the agency have chosen to restrict the Ombudsman's efforts to achieve the common goal of customer assistance.

C. Accomplishments

During the reporting period, the Ombudsman made four formal recommendations to USCIS and numerous informal recommendations. The formal recommendations primarily sought to make USCIS more transparent in its operations, to enhance customer access to information by ensuring that there is adequate notice for changes to USCIS policy and procedures, and to address the Freedom of Information Act backlogs. Additionally, the Ombudsman included 14 recommendations in the 2006 Annual Report. The Ombudsman repeatedly addressed many of the identified pervasive and serious problems with USCIS and DHS leadership that, if solved, would increase USCIS efficiency, improve customer service, and enhance national security.

To identify problems and collect data, the Ombudsman held numerous meetings with representatives from community based organizations, the immigration legal community, and employer organizations. The Ombudsman also met with other federal government agency partners including representatives from the Departments of State, Commerce, Justice, and Labor to address interagency coordination.

During the reporting period, the Ombudsman visited over 40 USCIS facilities, including field offices, service centers, and other facilities.⁷ The purpose of these visits was to see firsthand the issues that individuals and employers encountered, identify systemic problems, and consult with USCIS field offices on proposed solutions. The travel and site visits provided the Ombudsman opportunities for candid dialogue on a variety of issues including: impact of immigration processing backlogs on families and employers; lack of standardization in immigration adjudications; imprecise and confusing instructions on requests for information for cases; and ongoing problems due to long pending security name checks.

In addition, the Ombudsman expanded the office's outreach by starting a pilot teleconference series for customers and stakeholders with the relevant USCIS components listening in. The Ombudsman continued work to develop a Virtual Ombudsman's Office, and devoted substantial resources to assisting individuals and employers in resolving problems with USCIS.

II. USCIS TRANSFORMATION

Transformation of USCIS is vital to the agency's future success. As discussed in the 2006 Annual Report (at p. 29), the transformation program encompasses IT modernization efforts, forms revision, and other initiatives to provide USCIS with world-class digital processing capability. However, USCIS has devoted considerable resources to various types of transformation since the 1990s with minimal progress. The Immigration and Naturalization Service (INS) had a history of stagnated transformation efforts. With each new leader, transformation planning begins anew. Its eventual success requires focus, resources, and credible performance measures to assess outcomes.

As stated in the DHS Inspector General's November 2006 Report:

USCIS recognizes the unique challenges it faces to reengineer business processes and modernize technology to better accomplish mission objectives The accomplishments to date are steps in the right direction for both business and IT modernization. However, USCIS remains entrenched in a cycle of continual planning, with limited progress toward achieving its long term transformation goals.⁸

The Ombudsman is concerned that the agency's current seven-year initiative will not allow it to implement immediate and necessary changes to address existing pervasive and serious problems.

Currently, the Transformation Program Office is developing three programs:

⁷ See Appendix 3 for complete list of facilities visited.

⁸ DHS Office of the Inspector General Report, "[USCIS] Progress in Modernizing Information Technology," OIG-07-11 (Nov. 2006) at 21; http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-11_Nov06.pdf (last visited June 3, 2007).



- **Enterprise Document Management System (EDMS).** EDMS, led by an integrated project team that includes the Transformation Program Office, the Records Division, and the Office of Information Technology, allows USCIS to maintain and access digitized images. It is the first step in moving USCIS from paper-based processes to review of electronic files for adjudications.
- **Adjudication-Ready Scanning for Certain Temporary Protected Status (TPS) Cases.** In early June, the Vermont Service Center (VSC) began reviewing digitized files to adjudicate certain TPS cases.
- **Case Management System for International Adoption Cases.** On July 5, 2007, USCIS is scheduled to deploy a digital case management system for the e-filing and paperless adjudication of international adoption cases.

Also, the Transformation Program Office is revising USCIS forms to improve the ability to collect and use biographic and other information from customers.

The Ombudsman agrees that these are worthwhile goals for USCIS. USCIS' antiquated computer systems are a constant obstacle to delivering timely and efficient immigration benefits services. The continuous revisions to long-term planning detract from short-term initiatives that could yield long-term benefits and provide important relief to USCIS customers and staff well before the seven-year life cycle for transformation. In its search for a 100 percent IT solution, the agency often appears to overlook many commercially available "off the shelf" solutions that could meet the vast majority of its current requirements and solve most of the existing case management problems. It is too easy for USCIS to excuse inefficient procedures and stall replacing antiquated systems in anticipation of a seven-year fix.

RECOMMENDATION AR 2007 -- 01

The Ombudsman recommends that the Transformation Program Office:

- (1) Publish transformation timelines, goals, and regular updates on the public USCIS website. The Ombudsman is concerned that transformation is proceeding largely without input from customers, Congress, and the public. The lack of transparency enables USCIS to modify deadlines and goals without producing meaningful results.* 
- (2) Establish transparency as a goal for USCIS processing and services. The agency provides minimal information to customers who often have long pending applications and petitions. The agency could make its processes more transparent, which would reduce inquiries to the National Customer Service Center (NCSC) and the need for INFOPASS appointments, as well as make available USCIS resources for adjudicative functions.* 

III. PERVASIVE AND SERIOUS PROBLEMS

The Homeland Security Act requires the Ombudsman to highlight problems that significantly impact individuals and employers applying for immigration benefits and to make recommendations for change.⁹ It further requires the Ombudsman to report on USCIS' responses to these recommendations.¹⁰

Although the Act does not require the Ombudsman to report on the best practices of USCIS staff, this report highlights many of them. The Ombudsman recognizes the talent and professionalism of USCIS employees, particularly those in the field, who perform their jobs each day often with inadequate facilities, equipment, and training. In addition, the Ombudsman hopes that USCIS senior leadership will recognize these best practices and implement them throughout the agency so that all offices can benefit.

While USCIS has made progress in addressing some of the pervasive and serious problems identified in previous reports, core problems remain.

A. Complexity of the Immigration Process

One of the most serious problems facing individuals and employers is the complexity of the immigration process.

1. Background

While the Immigration and Nationality Act (INA) is the principal statute governing immigration to the United States, there are myriad other laws, regulations, policies, and procedures that affect whether and in what manner a foreign national may enter the United States, request temporary status, apply for a green card, and ultimately seek U.S. citizenship.

As in previous years, this annual report provides details on pervasive and serious problems. Many of them are interconnected and stem from the complexity and opaque nature of the immigration rules and the agency administering them.

In the December 2006 DHS Unified Agenda, *i.e.*, the Semi-Annual Regulatory Agenda, USCIS listed 12 regulations in the proposed rule stage, 17 regulations in the final rule stage, 31 long-term regulatory actions, and 13 recently completed regulatory actions.¹¹ This list totals over 70 outstanding or recently completed regulations, some addressing (or yet to address) fundamental issues of concern to individuals and employers, such as:

- Defining "lawful presence";

⁹ See 6 U.S.C. § 272 (b).

¹⁰ See 6 U.S.C. § 272 (c)(1).

¹¹ See 72 Fed. Reg. 22574, 22591-22618 (Apr. 30, 2007).

- Implementing the American Competitiveness and Workforce Improvement Act of 1998, the American Competitiveness in the Twenty-First Century Act of 2000, and other related bills; and
- Reducing the number of acceptable documents for Form I-9 employment eligibility verification purposes.

This regulatory logjam has led USCIS to use press releases, memos, website postings, and other informal forms of policy guidance to provide customers with basic information on rules and procedures. The result is a hodgepodge of disconnected, overlapping, and contradictory rules. There is no single, dispositive source to obtain basic information about immigration law. Besides confusing applicants, these attempts at policy clarification have resulted in a lack of consistent decision-making in some areas and loss of confidence in USCIS by many applicants.

In immigration, the stakes could not be higher. A single misstep by a foreign national or employer can lead to the denial of an application or petition, the loss of status and/or the accrual of unlawful status, ineligibility in the future for an immigration benefit, and even removal from the United States. Many foreign nationals attempt to navigate this labyrinth with limited English language capability. In addition, many employers are forced to retain costly in-house and outside counsel to manage immigration programs and ensure they have access to international talent. Likewise, many individual applicants resort to using expensive legal counsel in addition to paying continually rising application fees. Processes that should be simple and straightforward are unnecessarily complicated.

2. USCIS Accountability

Just as USCIS is often an indecipherable organization for customers filing for benefits and seeking information on pending applications and petitions, USCIS remains opaque for stakeholders, Congress, and a public concerned about agency accountability.

Over the past four years, USCIS has changed its definition of the immigration benefits backlogs at least two times.¹² USCIS does not make available to the public the number of cases pending longer than six months – the definition of case backlogs. Shifting definitions hinder congressional oversight and prevent stakeholders from fully understanding whether the agency is meeting its goals to provide timely and efficient services.

Additionally, from time to time USCIS transfers cases to use extra processing capacity in a particular office. The Ombudsman supports USCIS efforts to adjudicate cases expeditiously and fully leverage its human capital. However, USCIS IT systems are unreliable in tracking and providing precise numbers of pending family and employment-based green card applications when cases are transferred because different offices use separate, often unconnected, database systems.

¹² For a complete discussion of USCIS backlogs, *see* section III.B.

3. Filing Requirements and Processes

At the same time, the agency often can be nearly impenetrable for customers seeking the status of pending applications. Sometimes applicants and USCIS officials cannot pinpoint the location of a file or its status. Widespread reports continue regarding the dissemination of incorrect or incomplete information both by contract and direct-hire USCIS personnel. Seemingly simple matters like obtaining the answer on how or where to file an application, or correcting a typographic error on a receipt notice or document, can lead to hours of frustration. Some forms are filed based on jurisdiction, some on the type of form, and still others at a centralized location.

For some immigration benefits, there is no single form but rather two, three, or more forms that must be filed together. For example, the green card application can involve a combination of six or more forms selected from more than a dozen.

The following are examples of filing complexities and confusion:

a. Confusing Instructions

Many of the forms most commonly used by individuals and employers are plagued by instructions which are difficult to understand. In some cases, these difficulties are language issues for non-English speakers. In others cases, the problems involve inconsistencies or outright error. For example, one form contained an error in describing the photograph an applicant must provide. The Ombudsman learned about this error from two different applicants, brought it to USCIS' attention multiple times over two months, and was assured each time that the error would be corrected.

b. Bi-specialization

USCIS' bi-specialization initiative limited the ability of customers to file forms at their regional service center. Instead, some family-based petitions now must be filed at one of three places: the Vermont Service Center, the Nebraska Service Center (NSC), or the Chicago Lockbox.

Except for green card filings for eligible applicants in the United States submitted at the Lockbox, most other forms must be filed at either the VSC (paired with the California Service Center (CSC)) or the NSC (paired with the Texas Service Center (TSC)). However, while the VSC and CSC jointly process Form I-129 (Petition for Nonimmigrant Worker), all applicants must file those forms at the VSC. Similarly, although NSC and TSC both process green card applications stemming from I-140 employment-based petitions and concurrently-filed I-140/I-485 green card applications, the NSC is the designated filing location.

c. Concurrently Filed Applications

The process differs for concurrently-filed I-130/I-485 green card applications, since applicants must still file I-130s at the service center with jurisdiction over the petitioner's place of residence. That is, these family-based solo filings have not yet been integrated into bi-specialization. Moreover, there is no clear filing location for I-130/I-485 green card applications.

The current I-130 instructions (November 30, 2007 expiration date) direct petitioners to the service center with jurisdiction over their place of residence (and list the four service center addresses and the respective states they cover).¹³ However, it is the Ombudsman's understanding that these concurrent filings should be filed at the Lockbox.

d. Disagreement Between Forms and Website

The green card application and contradictory instructions on the USCIS website illustrate the confusion in filing locations. The website states that family-based green card applications should generally be filed at the Chicago Lockbox. However, on the form itself, the first page of instructions lists 36 states and four other U.S. jurisdictions (D.C., Guam, Puerto Rico, and the U.S. Virgin Islands) whose residents should use the Lockbox, while saying nothing about the filing location for residents of the other 14 states. Filing location is next discussed on page four in the context of where to send concurrently-filed I-140/I-485 green card applications, which is not at the Lockbox, but the NSC. Finally, on page five, the instructions state:

In all other instances: File this application at the USCIS service center or local office that has jurisdiction over your place of residence, or submit the form to the USCIS Lockbox Facility. For details on where to file your application, read the additional instructions that may be included with this form, call our National Customer Service Center at **1-800-375-5283** or visit our website at **www.uscis.gov**.¹⁴

It would appear that the filing location of all family-based green card applications is the Chicago Lockbox. However, customers seem to have the option of filing at the field office or a service center. The separate listing of 14 states implies that they have a different filing location, but ultimately the applicant is led back to filing at the Lockbox.

If the applicant makes one error in understanding the confusing instructions and eligibility requirements and files the application at the wrong location, USCIS often will reject it. However, the agency continues accepting incomplete filings (and ineligible applicants) at most locations, if sent to the correct location. The agency is concerned about lawsuits emanating from a 1993 lawsuit related to its rejection of apparently incomplete applications, also known as "front-desking," during the 1986 amnesty filings.¹⁵ The agency needs to recognize that its focus is misplaced. There are a large number of ineligible applicants accepted for processing, which frustrates applicants who paid filing fees and had other expenses. USCIS creates false expectations when months or years later the agency will deny the case.¹⁶

¹³ See USCIS "Instructions, I-130 Petition for Alien Relative"; <http://www.uscis.gov/files/form/I-130.pdf> (last visited June 7, 2007).

¹⁴ See USCIS, "Direct Mail Instructions for Persons Filing Form I-485"; <http://www.uscis.gov/files/form/i-485.pdf> (last visited June 3, 2007).

¹⁵ See USCIS' 2006 Annual Report Response (at pp. 17, 21).

¹⁶ See section IV for further discussion on front-desking and up-front processing.

This discrepancy is best reflected in Appendix 1, which provides servicewide data on denials for selected forms. In 1993, the denial rates for green card applications were four percent, but by 2003 this figure grew to over 20 percent nationally with some offices such as New York denying as many as 47 percent of green card applications. The most recent data provide some hope that recent reductions in processing times may help reduce the volume of ineligible applicants who may file incomplete or fraudulent applications solely for procuring interim benefits.

USCIS is reviewing its forms to update them and revise instructions. The agency is seeking to ensure that information provided on its website and through its website links are consistent. The importance of making sure these changes are implemented within a reasonable time cannot be overemphasized. Without the changes, there is more confusion than necessary in an already unwieldy process.

B. Backlogs and Pending Cases

Thanks to the dedication and leadership of staff in support centers, field offices, and service centers, there has been a substantial reduction in the backlog. The Ombudsman appreciates the detailed backlog data provided by the 2006 Annual Report Response (at pp. 4-6). Unfortunately, USCIS has not received the unqualified praise it rightfully deserves for progress made under the old definitions. Instead, the agency's redefinition of the backlog obscures the issue and raises questions about its backlog reduction efforts.

1. Backlog Definition and Data

USCIS reports on September 2006 backlog data in its 2006 Annual Report Response, *i.e.*, the end of the 2006 fiscal year and the target for elimination of the backlog. In its Response (at p. 5), USCIS stated: “[t]he overall backlog, using exactly the same methodology as was used to calculate the original backlog of 3.85 million in 2004, is now just over 1 million (1,020,042).”¹⁷ By March 2007, and using that same calculation, USCIS had a backlog of 1,275,795.¹⁸

In last year's annual report (at pp. 6-11), the Ombudsman analyzed USCIS' redefinition of its backlog. That analysis is not repeated here, as the backlog redefinition is unchanged. The current definition continues to consider “backlogged” only the cases pending after subtracting those cases not yet ripe for adjudication, “where even if the application or petition were approved today, a benefit could not be conferred for months or years to come. [Unripe cases are] excluded from the number of cases in the backlog but remain in the pending.”¹⁹

The funds provided to jumpstart USCIS' backlog elimination project have expired and the total number of pending cases has increased. This result does not bode well for USCIS as it

¹⁷ The sum of USCIS' “active suspense” cases by category for September 2006 is 1,139,059. *See* USCIS' 2006 Annual Report Response (at pp. 4-5); *see also* Figure 1.

¹⁸ *See* USCIS' Processing Report, March 2007.

¹⁹ Ombudsman's 2006 Annual Report (at p. 8), *citing* USCIS Backlog Elimination Plan (BEP), 3rd Quarter FY 04 Update (Nov. 5, 2005) at 4.

must rely on only its own resources to continue the backlog reduction effort. This could be particularly problematic if there is comprehensive immigration reform.

The DHS Inspector General's assessment cited in last year's annual report remains true today: "[. . .] reclassifications, as well as the strategy of relying upon temporary employees, may benefit USCIS in the short-term, [but] will not resolve the long-standing processing and IT problems that contributed to the backlog in the first place. Until these problems are addressed, USCIS will not be able to apply its resources to meet mission and customer needs effectively."²⁰

The data on pending I-130 petitions for foreign national relatives, the largest component of backlogged benefits applications, illustrate these problems. According to USCIS records, the agency had 1,244,166 pending I-130 petitions through March 2007 of which 818,206 USCIS classifies as "active suspense" cases or those cases excluded from the pending count for calculation of the backlog.²¹ The number of active suspense cases has increased about ten percent or over 100,000 additional cases compared to the pending numbers reported in the Ombudsman's 2006 Annual Report (at pp. 18-19).²²

In its May 1, 2007 Production Update (FY 07, 1st Qtr.²³), USCIS explains:

The re-appearance of a backlog is a symptom of the fact that the fees charged by USCIS currently do not recover its full costs. Furthermore, while the temporary subsidy of appropriated dollars ended September 30, 2006, USCIS has not yet implemented the proposed filing fee rule to allow it to fully recover costs and ensure that capacity is sufficient to keep up with demand.²⁴

Referring to its redefinition of the "backlog," an updated report stated that "USCIS has implemented 'Active Case Management' (ACM)" and:

Pursuant to ACM, cases that do not have an available visa or an FBI name check, and cases that are in suspense for other reasons deemed beyond USCIS' control have been taken out of the

²⁰ Ombudsman's 2006 Annual Report (at pp. 8-9), *citing* DHS Inspector General Report "USCIS Faces Challenges in Modernizing Information Technology," OIG-05-41 (Sept. 2005) at 28; http://www.dhs.gov/interweb/assetlibrary/OIG_05-41_Sep05.pdf (last visited June 3, 2007).

²¹ See USCIS Production Status Report, Mar. 2007.

²² "For each application type, USCIS removes from the calculated backlog the total number of pending applications that it is unable to complete due to statutory caps or other bars, including applications where a benefit is not immediately available to the applicant or beneficiary (such as "non-ripe" Form I-130, Relative Alien Petitions where a required visa number is not available, and I-485 cases where the visa number is no longer available due to regression . . .") USCIS Backlog Elimination Plan, 3rd Quarter FY 06 Update (Dec. 11, 2006) at 1.

²³ USCIS has replaced quarterly "Backlog Elimination Plan" reports with "Production Updates," so-called because the Backlog Elimination Plan was officially retired at the end of FY 06 ("After eliminating the I-485 backlog, and nearly eliminating the I-130 backlog at the end of [FY 06], a backlog for these form types has reappeared . . .") USCIS Production Update, 1st Quarter FY 07 Update (May 1, 2007) at 2).

²⁴ *Id.*, at 3.

production queue. This allows USCIS to focus its attention on those cases which are ripe for adjudication.²⁵

As stated in the 2006 Annual Report, the Ombudsman remains concerned that such formulations obscure USCIS' continued difficulty to timely process applications and petitions. As further explained below, it is particularly troublesome that USCIS continues to rely upon future applicants to pay for these backlogged cases excluded by redefinition.

In its Response to the Ombudsman's 2006 Annual Report recommendation (AR 2006 – 01), USCIS agreed in principle to provide a breakdown of all incomplete cases by the number of months pending and application type, and stated (at p. 7):

USCIS is committed to working to develop systems that would give this level of detail to help manage both overall workload and individual cases Under its Transformation Program, USCIS has already begun a multi-year redesign of its current business environment [which] will give USCIS new operational data and reports, including the type of data described in the recommendation. Given the constraints of existing legacy case management systems, USCIS would today need to perform a cumbersome, labor intensive, recurring manual audit of all pending files in order to compile the suggested data. Such audits would be cost prohibitive.

USCIS states that the constraints of existing management systems prevent it from providing information on discrete processing times of each application. This is in conflict with previous outputs from those systems, which can provide the necessary data. The Ombudsman has observed many USCIS facilities using such data drawn from the three most commonly used systems -- CLAIMS 3, CLAIMS 4, and the Marriage Fraud Amendment System.

USCIS has opted not to use its limited financial resources to extract data from current systems and prefers to spend it on prospective systems that are years in the planning. For example, USCIS has not made corrections to the CLAIMS 3 system to capture data on applicants' priority date information, country of nationality, and the preference category under which the application is filed that USCIS must review before the application is accepted for green card processing. The Ombudsman first raised this issue 42 months ago with senior USCIS leadership and proposed several solutions over that time. Instead of fixing CLAIMS 3 now, USCIS is waiting for the "case management system" it has promised to implement for many years. Failing to correct the system annually results in hundreds, if not thousands, of wasted hours by all levels of USCIS leadership in trying to account for an often asked question by Congress, the Ombudsman, stakeholders, and others: "Exactly how many employment-based green card applications does the agency have pending?" USCIS still cannot answer that question today with certainty.

²⁵ *Id.*

Figure 1: USCIS Cases Excluded from the USCIS “Backlog”

	March 2007 (most recent final data available)	as of end of September 2006 (end of FY 06 and "backlog" elimination goal)
Total -- Pending Customer Action	137,405	150,122
<i>Customer did not file necessary evidence or material</i>	122,608	135,155
<i>Customer failed initial naturalization test and second opportunity was scheduled</i>	14,797	14,967
Total -- Unripe Due to Limits on Annual Immigration	869,544	823,439
<i>Processed applications for green cards that cannot be approved due to annual statutory limits</i>	29,303	39,121
<i>I-130 relative petitions</i>	799,043	710,119
<i>Asylum-based green card applicants</i>	41,198	74,200
Total -- Pending Other Agency Action	309,791	264,262
<i>No appointment for oath of allegiance is scheduled within month of USCIS decision for naturalization cases where the federal courts have exclusive jurisdiction over the oath</i>	2,417	1,552
<i>USCIS is waiting for the investigations requested of other agencies</i>	11,879	6,879
Total -- FBI Name Check Cases	295,495	255,831
<i>USCIS is waiting for FBI name check results for naturalization applicants who have not been interviewed</i>	149,003	98,764 ¹
<i>USCIS is waiting for FBI name check result for otherwise processed cases or interviewed cases</i>	146,492 ²	157,067
TOTAL -- Pending Cases Not Included in "Backlog"	1,316,740	1,237,823

¹ USCIS did not provide this number in its Response to the Ombudsman's 2006 Annual Report, which shows September 2006 data. Consequently, the data point above is from USCIS' November 2006 Production Status Report.

² The separate USCIS FBI Pending Name Check Aging Report of May 4, 2007 indicates the pending number of FBI name checks for both green card and naturalization cases has increased to 329,160.

Sources: USCIS Production Status Report (Mar. 2007); USCIS Production Status Report (Nov. 2006); USCIS Response to the Ombudsman's 2006 Annual Report (May 18, 2007), at 4-5.


2. Adjudications of Backlogged Cases


From numerous visits to USCIS facilities, the Ombudsman has observed that adjudicators prefer to work on the cases that are easiest to complete. Adjudicators pick the “low hanging fruit” first because supervisors base performance evaluations on the number of cases completed. Consequently, adjudicators put aside the most difficult and time-intensive cases. These cases remain pending, perhaps for years, while backlog reduction appears generally to be succeeding.

The Ombudsman fully supports USCIS efforts to quickly and efficiently complete the cases. However, the current drive to complete large numbers of cases presents problems. For example, USCIS provides field offices resources based on what is needed to complete a typical

case. It is the Ombudsman's understanding that if field offices have a workload of 1,000 cases and USCIS determines each case usually takes one hour to complete, USCIS will provide financial support for 1,000 hours. Cases that take longer than an hour to complete are not provided additional resources in the office's budget. Offices with more than the average numbers of difficult cases or offices that try to work the difficult cases thoroughly will not be adequately funded because the number of completions will be low. Meanwhile, offices that push to complete the easy cases will see their budgets grow. One field office visited by the Ombudsman has a large number of long-pending cases which require substantial adjudicator hours. However, officers at that office indicate that they cannot address the older, difficult cases without negatively affecting their productivity report to USCIS headquarters.

RECOMMENDATION AR 2007 -- 02

The Ombudsman has observed that newer cases are processed more quickly while cases more than six months old are increasingly backlogged. The Ombudsman supports the USCIS drive to maximize case completions, but attention needs to be directed at clearing older cases. 

The Ombudsman recommends that USCIS provide a clearer picture of the current backlog by providing information on the number of pending cases by form type with receipts that are: (1) less than 90 days; (2) less than 180 days; (3) less than one year; (4) less than two years; (5) less than three years; (6) less than four years; and (7) greater than four years. 

3. Backlogged Form I-130 Petitions for Foreign National Relatives

In its Response to the Ombudsman's 2006 Annual Report (at pp. 8-9) and the recommendation (AR 2006 – 03) regarding the timely processing of I-130s, USCIS stated that it is not practical to process them as soon as they are received:

Where the person will not be able to immigrate within a year due to the overall limits on legal immigration, USCIS' goal . . . is to process the case twelve months ahead of visa availability to ensure that DOS has sufficient time to complete their part of the processing. This process ensures that an eligible person's eventual immigration to the United States will not be delayed by USCIS processing . . .

USCIS believes having different service levels for different kinds of applications, which reflect relative time sensitivity and risk, while using those with less time sensitivity as a buffer, results in a system that is more cost effective for both USCIS and its customers.

Further, while processing a relative petition immediately, even if the person will thereafter have to wait to immigrate, may appear ideal [. . . ,] the evaluation is best performed closer to the time the

person would actually receive the benefit. In addition, USCIS is currently evaluating the impact of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-249, which adds additional public safety screening requirements before a petition is approved to protect the relative being sponsored. It may be appropriate that those checks should similarly be done closer to the time at which the person would actually be able to immigrate.

Despite making several valid points, USCIS is merely delaying the inevitable and, in effect, increasing the cost to the agency to process these cases. The cost to complete the current backlog of over 800,000 I-130 petitions is more than \$225 million today, based on USCIS' cost estimates explained in its proposed fee rule.²⁶ Because applicants paid for these petitions when they were submitted in previous years, their payments do not cover today's costs or future USCIS costs to process them. Each year that processing is delayed the cost to USCIS will increase if for no other reason than to account for inflation. Thus, the fact that USCIS can process each of these petitions to conclusion now and chooses by policy not to do so is fiscally unwise.


In addition, the impact on beneficiaries is significant. By statute, certain approved petitions terminated by the petitioner's death are reinstated for humanitarian reasons for the petitioner's beneficiaries.²⁷ By USCIS not approving I-130 petitions in a timely manner, beneficiaries cannot benefit from this important humanitarian exception.

²⁶ See 72 Fed. Reg. 4,888, 4,909 (Feb. 1, 2007).

²⁷ See Family Sponsor Immigration Act of 2002, Pub. L. No. 107-150; see also 8 C.F.R. § 205.1(a)(3)(i)(C) (petition revoked automatically by petitioner's death may be reinstated for humanitarian reasons by the Attorney General on sponsored alien's request). USCIS has interpreted this provision to apply to beneficiaries only of approved petitions and generally has refused to extend this to pending petitions.

C. Processing Times

CASE PROBLEM

A green card application filed in late spring 2003 with a service center remains pending. The applicant filed his fourth EAD in the fall of 2006. In January 2007, the applicant needed the EAD to continue employment, but had not yet received it more than 90 days after filing. As advised by USCIS, the applicant visited the USCIS field office to obtain an interim EAD. At the field office, USCIS told the applicant it no longer issues interim EADs. USCIS gave the applicant a form to request an interim EAD, which the applicant filed with the service center but received no response.²⁸ The applicant contacted the Ombudsman in February 2007. The applicant's green card application remains pending, while the interim EAD was approved late. 

On August 23, 2006, USCIS announced changes that would improve the reporting methodology for processing times of immigration benefit applications and provide “customers more accurate information that better reflects current processing time and USCIS service level commitments.”²⁹ The Ombudsman disagrees that this change provides better information.


Previously, USCIS benefit processing reports indicated the specific application or petition type and the receipt date for the currently processed cases. For example, if February 1, 2007 was the green card processing date on the website, any application filed prior to February 1 already would be, or was about to be, processed. If USCIS takes approximately four months to process these applications, an applicant could expect that on or about June 1, 2007, an application filed on or about February 1, 2007 would be completed.


Under the new USCIS approach, the agency reports processing “goals” instead of the processing time. The online processing times no longer indicate whether USCIS is adjudicating cases more quickly than the USCIS processing goal. If the USCIS processing goal for the green card is 180 days, the USCIS website would show approximately 180 days before today’s date, or an earlier date. In the example, if today is June 1, 2007, the posted processing date would be December 1, 2006, even if the actual applications processed were filed on or around February 1, 2007. The website would not reflect the more recent February date indicating a faster processing time.

²⁸ In general, if USCIS does not adjudicate an EAD application within 90 days, an applicant may request an interim EAD. See Memorandum, Aytes, Elimination of I-688B, Employment Authorization Card, (Aug. 18, 2006). The procedures adopted by this field office in the Case Problem appear to be inconsistent with the procedures outlined in the policy memorandum. According to this Memorandum, the Immigration Information Officer should have contacted the service center to obtain information; the service center should have attempted to provide a status inquiry in 30 minutes to provide the applicant with a response. The memorandum does not contemplate that a field office would give an applicant a form to make the inquiry.

²⁹ USCIS Public Notice, “Improved Procedures for Reporting USCIS Processing Time of Immigration Benefit Applications on the USCIS Website,” (Aug. 23, 2006). <http://www.uscis.gov/files/pressrelease/PRCSSTimes082306PN.pdf> (last visited June 3, 2007).

COMMENT FROM OMBUDSMAN'S TELECONFERENCE

One caller mentioned that USCIS posts processing times as six months (if the processing is six months or less) or the exact processing time if it is greater than six months. This makes planning difficult. For example, fiancé(e) petitions once took several months, but now are completed in one month. For one month completions, the posted processing time will be six months. 

Another caller said it would be helpful to get guidance on the real processing times for I-130s. 

Under the new reporting guidelines, green card applicants may think that all offices take at least 180 days to process applications and, consequently, apply unnecessarily for interim benefits, which are allowable after 90 days. Under the old reporting guidelines, applicants could determine if processing times were greater than 90 days and, therefore, apply for an interim benefit. This saved time and resources both for the applicant and the USCIS office receiving the application.


In response to these concerns expressed by the Ombudsman in August 2006, USCIS committed to: (1) use a processing time of 90 days for green card applications; and (2) provide the actual processing time where the processing time is over 90 days.³⁰ However, despite written assurances by the USCIS Operations Director, the agency continues to use the 180-day processing time on its website.

USCIS indicated that it will continue to maintain precise data on processing times for internal management purposes. The Ombudsman recently requested data on precise processing times, but instead was given data on cycle times that show future processing potential.


³⁰ See Email from USCIS Operations Director to the Ombudsman (Aug. 25, 2006).

The current processing time reporting provides less information to customers and makes the processing times more opaque. Transparency inherently leads to more efficient government services and greater accountability. USCIS should strive to be transparent and provide as much information to customers as possible.

CASE PROBLEM

In 2004, a foreign national and his U.S. citizen wife applied for removal of the conditions of residence using Form I-751 (Petition to Remove the Conditions of Residence) at a field office. The petition was forwarded to a service center. Over 25 months later, the petition remained pending. Without providing the applicant any reason for the delay, USCIS informed him that his file was transferred to another service center. The individual contacted the Ombudsman in the middle of 2006 because the case was outside normal processing times. The case eventually was approved. 

RECOMMENDATION AR 2007 --03




Currently, USCIS provides processing times based on agency goals, rather than actual processing time as it previously provided. In addition to the agency's responsibility to be transparent, green card applicants in particular should know if applications will be processed within 90 days, rather than the 180-day target time, to avoid applying unnecessarily for interim benefits. The Ombudsman recommends that USCIS return to providing the public with actual processing times for each field office. 

D. Customer Service

During the reporting period, USCIS made important strides in customer service. USCIS increased the number of appointments available via INFOPASS and began two new contracts in the effort to improve its toll-free customer service line.


BEST PRACTICES

The Ombudsman commends USCIS' Information and Customer Service Division for developing the following: 


- (1) The direct access military hotline for service members and their families to inquire about USCIS applications.* 
- (2) Well-designed and easy to understand pamphlets on such topics as INFOPASS and the new change of address system.* 
- (3) "Linda Liberty and Friends Take A Roadtrip Across America," an activity worksheet, with specific civics education-related projects, that is provided to children along with a box of crayons.* 


Conversely, the Ombudsman continued to observe other areas where the lack of communication with customers persists: (1) limited customer access to USCIS immigration officers who know about individual cases to resolve an inquiry accurately and efficiently; (2) questionable accuracy of information provided by customer service representatives; and (3) the practice of providing minimal information in response to customer inquiries. As noted in all three prior annual reports, customers often call USCIS numerous times, make frequent visits to USCIS facilities, and ask for congressional assistance to determine case status.


CASE PROBLEM


An applicant received her green card in 2006 after a two-year delay. However, the name on the green card contained typographical errors. The applicant promptly returned the green card with an application for a new card using Form I-90. A month later, the applicant received a notice that the fee was waived for the I-90 because the errors were USCIS' mistake. However, the I-90 receipt notice stated an incorrect city for the applicant's residence, despite the correct city noted on the I-90 application. The applicant called the NCSC and was advised that the information would be forwarded to the appropriate USCIS office and that future communications would be sent to the correct address. Two months later, the applicant received another green card, but it contained a new typographical error misspelling her middle name. The applicant had to restart the process filing another Form I-90. 


BEST PRACTICES

Des Moines and other field offices in the Central Region distribute customer surveys in the waiting area to solicit feedback regarding the level of service provided by the information counter. 

In El Paso, an officer is assigned on a weekly basis to take recurring inquiries. This officer also provides backup to the supervisor and is the backup interviewer. 

El Paso officers issue “come-back passes” for applicants who lack a document to return the same day so the case can be completed without further delay. 

The Washington Field Office Director meets with attorney groups and community based organizations every other month. These groups email a list of cases for status updates and the Director provides the update at the meeting. 

The Ombudsman is encouraged by the continuation of teleconferences held by the Nebraska Service Center and a few other offices to discuss issues of importance to stakeholders. The Ombudsman encourages all USCIS field and service center offices to adopt this or a similar practice of direct communication with customers and stakeholders. 

1. INFOPASS

The Ombudsman commends the new USCIS leadership team as well as field office management for their attention to ensuring appointments are available and for the substantial improvements in the management and administration of INFOPASS during the reporting period. Started by the Miami District Office to address the problem of long lines at facilities, INFOPASS has emerged as one of the most important customer service initiatives by USCIS. It is a valuable on-line service that allows applicants to schedule an in-person appointment with a field office.

The Ombudsman criticized INFOPASS in previous annual reports because the appointment scheduler replaced physical waiting lines with invisible, digital waiting lines. Over the past two years, the Ombudsman has regularly tested INFOPASS by logging on to the website and seeking to schedule appointments at various field offices. Appointments have been readily available over the past year compared to previous tests that often yielded a message that no appointments were available. In addition, the Ombudsman has noted a dramatic reduction in the number of concerns raised about INFOPASS appointments during the Ombudsman’s travel, teleconferences, and other discussions with stakeholders in this reporting period.

During the reporting period, USCIS modified INFOPASS appointment scheduling at many offices. The agency also addressed fraudulent practices in relation to scheduling INFOPASS appointments by using technology effectively. The Ombudsman applauds USCIS’ efforts to make INFOPASS appointments available the same day or the next day for all

customers. Only two offices, New York City and Portland, Oregon, had no INFOPASS appointments available for three or more days.³¹

The Ombudsman also is encouraged by USCIS plans to introduce INFOPASS kiosks nationally to ensure that customers have electronic access to appointment scheduling. Availability of kiosks was one of the key provisions of the Ombudsman's INFOPASS recommendation in 2004.³² The Ombudsman continues to urge USCIS field offices to adopt innovative approaches to customer needs.


While it is important to note progress in the administration of INFOPASS, it remains a limited system. The system cannot compile information on issues addressed during the appointments, which limits USCIS leadership's ability to identify and correct systemic problems that require repeated customer visits.


The Ombudsman understands that USCIS' Office of Information Technology and the Office of Transformation are working jointly to modernize USCIS legacy scheduling systems, which are used not only for INFOPASS but also for appointments at ASCs and interviews at field offices. The main goal of this project is to provide customers greater control and access over their appointments with USCIS.


³¹ See USCIS INFOPASS Usage Statistics, accessed by the Ombudsman on June 3, 2007, which showed appointments available for June 4-8, 2007.


³² See section V.11 for the Ombudsman's INFOPASS recommendation summary.


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

*The **Washington Field Office** accepts walk-ins without an INFOPASS appointment for triage. The Immigration Information Officer (IIO) decides if there is an urgent reason or emergency for the individual to be seen that day.* 

*The **Des Moines Field Office** uses an appointment request form that can be used to obtain a walk-in appointment. The office also uses an "Emergency Request Form."* 

***Garden City** is not a full-service office. There is an information counter, but not enough IIOs to staff INFOPASS appointments due to apparent space issues. A new facility under development is approximately two years from completion.* 

*In the **Kansas City Field Office**, customers without INFOPASS appointments are turned away, unless they drive more than 50 miles to reach the office.* 

*Stakeholders in **El Paso** complain that INFOPASS appointments are often difficult to obtain.* 

2. National Customer Service Center

USCIS uses the NCSC to provide customers inside the United States with toll-free access to a call center with live operator assistance in either English or Spanish.


The two-tier system of assistance, as described in the Ombudsman's 2006 Annual Report (at p. 34), remains. For the majority of the year, waiting times in "Tier 1" and "Tier 2" were extremely long.³³ However, USCIS has addressed this problem in more recent months. At the end of 2006, USCIS replaced the Tier 1 contractor with two contracts. The new contracts have improved quality control features and customers have begun to experience the positive results of these measures. In recent months, the Ombudsman observed shortened wait time to talk with a call representative. The Ombudsman understands from a recent meeting with the USCIS Customer Assistance Office (CAO) that since November 2006, the average NCSC wait times are less than 30 seconds to speak with a Tier 1 representative and two minutes for Tier 2. The reduction in wait times was confirmed in a recent meeting with USCIS.

During the reporting period, the Ombudsman continued to hear about problems with the NCSC: (1) Tier 1 representatives do not have enough immigration knowledge to process a request and have no access to case files; (2) the Tier 1 representatives have difficulty identifying the actual problems and nature of the inquiries; (3) customers have difficulty getting transferred to a more knowledgeable IIO; (4) customers continue to describe inconsistencies in responses if

³³ See Figure 6.

they call several times about the same issue; and (5) there is still a lack of conclusive responses or incorrect responses provided by Tier 1 representatives.

COMMENT FROM OMBUDSMAN'S TELECONFERENCE

A caller described the NCSC's inability to fix errors. He filed a TPS application on behalf of a client and the receipt came back with the A-number transposed. He called the NCSC to fix the error and learned at an INFOPASS appointment a few months later that the error still was not fixed. 

The Ombudsman relayed the NCSC concerns to USCIS and learned that the new Information and Customer Service Division Director is systematically addressing them. Recent data received from this Division demonstrate dramatic improvement in some of these areas:

Figure 6: NCSC Average Time to Answer Call in Minutes, FY 07 YTD

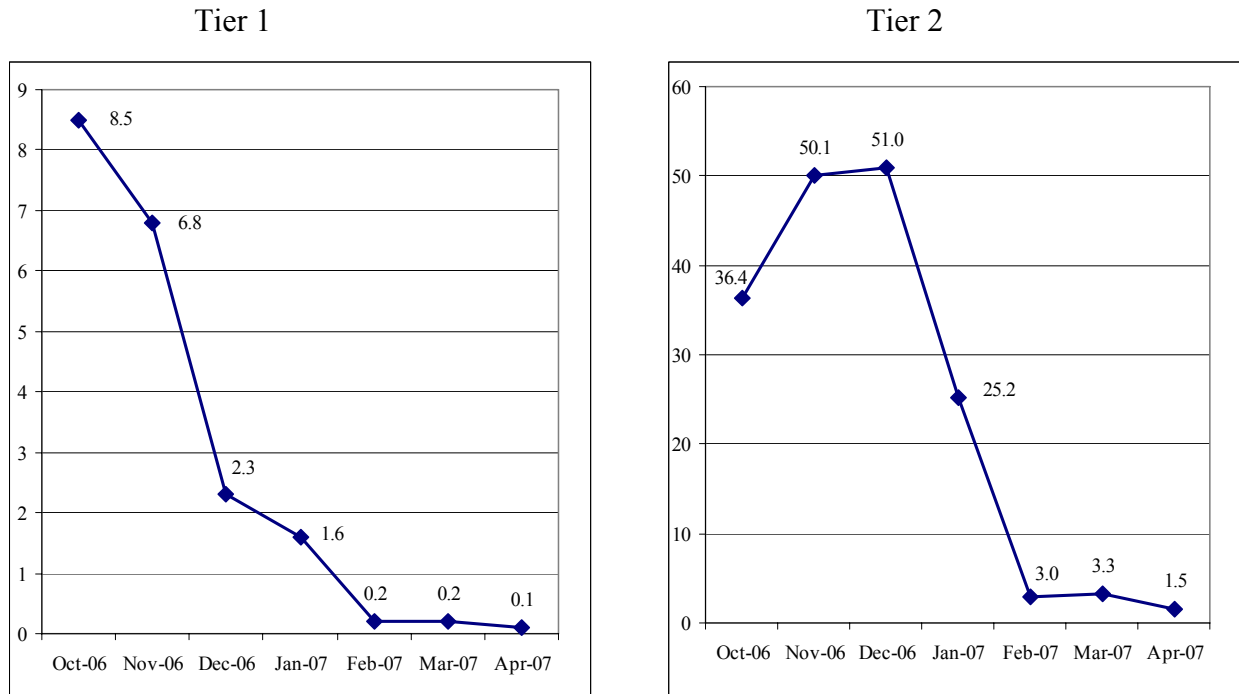
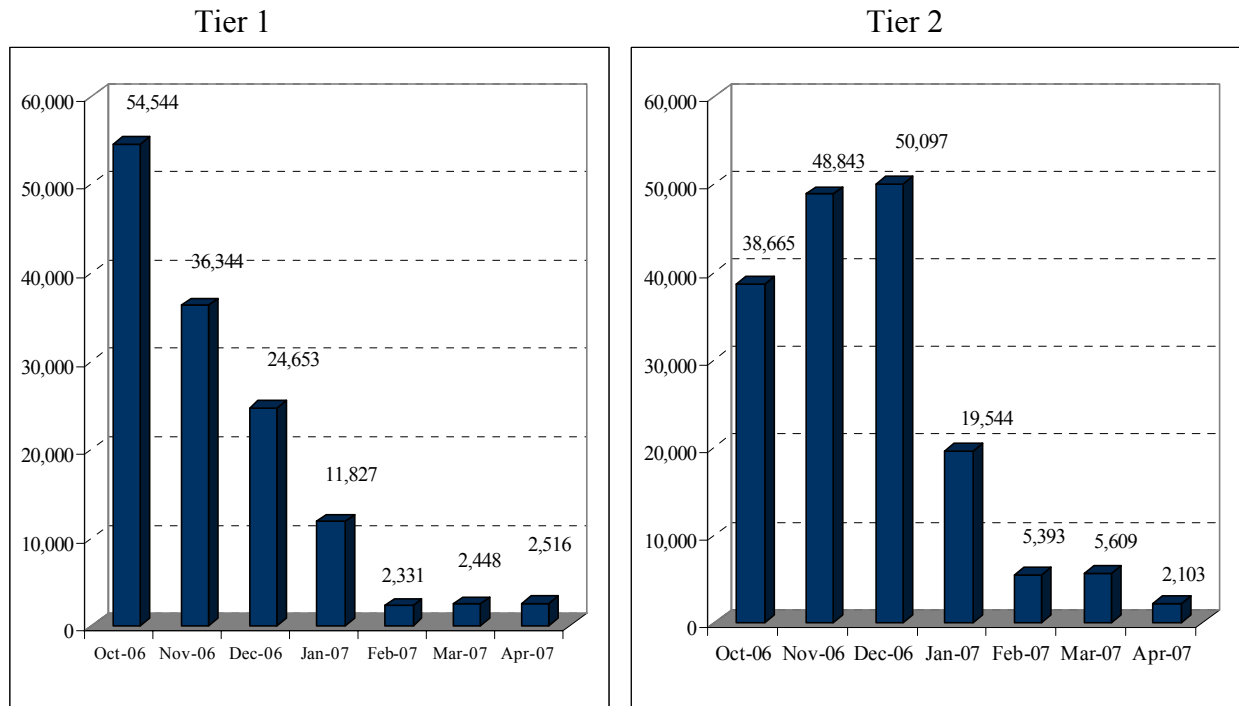


Figure 7: NCSC Average Call Abandonment (Number of Callers), FY 07 YTD



The Ombudsman can report positively that USCIS is improving the NCSC. The Ombudsman understands that USCIS plans to give Tier 1 access to USCIS systems to respond more accurately with case information. At such time, Tier 2 would become a case resolution entity for more complex issues.

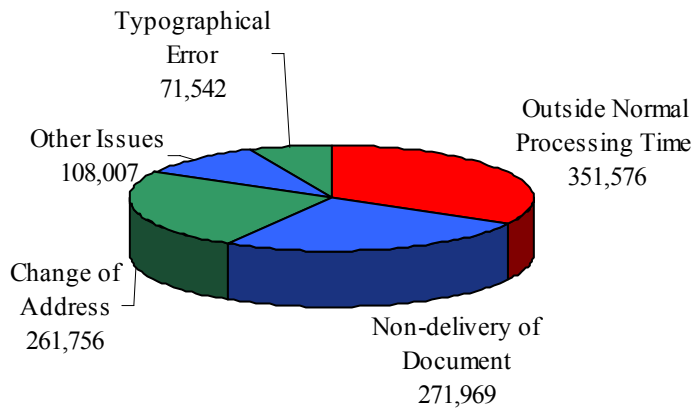
As described in the Ombudsman’s 2006 Annual Report (at p. 34), call centers were designed to take a substantial workload off the service centers and field offices. Instead, the Service Request Management Tool (SRMT) sends this work back to the field offices. The problems with this part of the system as described in last year’s annual report remain. The SRMT system itself continues to be backlogged. During the Ombudsman’s visit to the NBC in April 2007, the NBC reported that it had 70,000 pending SRMT requests with approximately 15,000 completed each month. During this visit, the NBC was in the process of responding to SRMTs received in December 2006.

In its 2006 Annual Report Response (at p. 13), USCIS indicated:

[The agency] is working toward putting the SRMT protocol and inquiry process on-line for customers. In conjunction with the current case status services USCIS provides, this will let customers generate referrals. This enhancement is in the initial development stage.

The Ombudsman looks forward to understanding more about the development of the new SRMT protocol.

Figure 8: SRMT Volume by Type, May 2006 – April 2007





The Ombudsman’s previous recommendations and annual reports address all of the issues reflected in Figure 8, which was provided by the USCIS Information and Customer Service Division. In previous reporting periods, USCIS has not had such data readily available, which has prevented the Ombudsman from evaluating improvements to customer service. The Ombudsman is encouraged by the positive approach of the new USCIS leadership in the Information and Customer Service Division to resolve many of the pervasive and serious issues identified.


BEST PRACTICE


A helpful feature incorporated into the toll-free customer service line is inclusion of messages on recent developments in immigration. 

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


IIOs at Newark reported that they talk to attorneys, applicants, and community-based representatives who receive incorrect information from the NCSC. IIOs suggest that applicants should know the NCSC only provides general information. 


Stakeholders in New York complained that additional training is needed for NCSC operators. 

A stakeholder in the Chicago area reported that customer service (through the NCSC) is not working, especially when applicants try to reach Tier 2. Another stakeholder commented there is no access to local district officers. 


A visit to the Kentucky Call Center revealed that Tier 1 operators do not have access to helpful information to answer calls and some operators speak very quickly to callers with limited English language ability. 

COMMENTS FROM OMBUDSMAN'S TELECONFERENCE

One caller questioned why the NCSC and Case Status Online do not reflect denials. 

Another caller mentioned that some adjudicators, particularly at the Nebraska and Texas Service Centers, just call the applicant or attorney to ask him/her to provide missing information. 

RECOMMENDATION AR 2007 -- 04

The Ombudsman recommends that USCIS adopt the frequently asked questions format used by Customs and Border Protection (CBP), incorporating a dynamic search feature on the website, rather than a static FAQ list. In addition, USCIS should provide a service on the website whereby customers can email a question and receive an answer within a short period of time. 


RECOMMENDATION AR 2007 -- 05

The Ombudsman further recommends that USCIS adopt a national process similar to that in the San Diego Field Office wherein an applicant who has not received a decision after an interview can contact the District Adjudications Officer (DAO) via email. If the DAO fails to respond within a set period of time, the applicant should be able to contact the supervisor. If there is still no response, the applicant should be able to contact the District Director.

**BEST PRACTICES:**

The Ombudsman considers it a best practice to:

(1) Provide email access for customers to inquire about case status. Providing this opportunity for case status inquiries alleviates the burden on INFOPASS and leaves more slots open to the public. 

(2) Have a duty officer at each field office location assigned to handle inquiries for customers who appear for a second INFOPASS appointment based on a previously unresolved inquiry. A few field offices have adopted this approach to reduce the number of repetitive visits as well as identify and correct systemic problems. 

3. Case Status Online

USCIS customers can use the internet-based Case Status Online to check case status if they have application/petition receipt numbers. The primary shortcomings of this resource, noted in previous annual reports, all remain.³⁴ Case Status Online information is often inaccurate or unreliable, which can have serious consequences for the individual. For example, the resource often shows a case is “pending,” although it was denied and the applicant or representative never received the decision. This is the same information the Tier 1 NCSC representatives provide to a caller, as they do not have access to any internal databases. As a result, an applicant may unwittingly forgo challenging a decision from lack of information. Moreover, there is no avenue to prove non-receipt of the notice and USCIS does not make copies of notices readily available.

³⁴ See Ombudsman’s 2006 Annual Report (at p. 35); Ombudsman’s 2005 Annual Report (at p. 14).

CASE PROBLEM


The applicant who filed a green card application in 2002 is a physician who obtained a National Interest Waiver in exchange for working in an underserved area. After five years, the applicant forwarded the paperwork regarding this work to the USCIS service center where the green card application was pending. The applicant checked Case Status Online to ascertain if the service center received the information, but the system showed no such information. The applicant called the NCSC and, in response, received a letter that the file was pending due to security checks.

The next month, the applicant again contacted the NCSC. In response, the applicant received a letter that USCIS was holding the file because the applicant did not mail in the five-year service requirement information.

The applicant made an INFOPASS appointment at the local office to obtain case status information and the IIO said to wait six weeks. The next month, the applicant made another INFOPASS appointment. The IIO at the local office called the service center where the application was located and indicated that the information was received, the file was complete, and the adjudication should be forthcoming by year's end.

In early 2007, the applicant still had not heard from USCIS. By that time, the applicant moved to another state and filed the required change of address with USCIS. The applicant made another INFOPASS appointment at the local USCIS office. USCIS told the applicant that the information obtained from the other IIO was verbal and unreliable, the case was pending due to security checks, and the IIO could not confirm that the file was complete.

Shortly thereafter, the applicant called the NCSC again. In response, the applicant received a letter that indicated the case was pending because the service center did not have the information about completion of the five-year's work. Based on this information, the applicant made another INFOPASS appointment at the local office. The IIO indicated that the case appeared to be in order, but the IIO did not have access to the file at the service center where the application was pending and could not confirm anything.

In March 2007, the applicant called the NCSC again and also contacted the Ombudsman. The Case Status Online information still is dated October 2005 and states that the biometrics fees for the case were received. The case remains pending. 

E. Untimely Processing and Systemic Problems with Employment-Based Green Card Applications

Although raised in the Ombudsman's 2005 Annual Report (at pp. 9-11) and 2006 Annual Report (at pp. 13-16), significant issues remain with the timely processing of employment- and family-based petitions and applications for green cards.

1. Background

The INA establishes formulas and numerical limits for regulating immigration to the United States. U.S. employers may file a petition to hire foreign workers using Form I-140. U.S. citizens and green card holders can file petitions for certain family members using Form I-130. The filing of the petition (or of the labor certification application for employment-based petitioners) establishes a "priority date." Priority dates determine a beneficiary's "place in line" relative to other beneficiaries in the same category and nationality for visa allocation.

By statute, there are formulas and limits on the annual number of employment-based visas and certain family-based visas. The Department of State (DOS) allocates these visas by estimating how many immigrant visas will be available and publishes the results in a monthly "Visa Bulletin."³⁵ If the number of visas available in a category exceeds demand for them, the Visa Bulletin will indicate that the category is "current." A petition in a current category filed today can be processed for a visa today. If the demand for visas exceeds what is available in a category, the Visa Bulletin will indicate a cutoff date and the issuance of visas is restricted to applicants whose priority dates are earlier than the cutoff date. Petitions with priority dates after the published date must wait until DOS advances the posted date to obtain a visa. However, cutoff dates also can "retrogress," which occurs when the actual number of applications received exceeds the number DOS estimated would be used for the visas available.

Retrogression can have serious consequences because applicants and their families who expected to obtain green cards suddenly cannot. For those applicants awaiting visas overseas, their preparations to immigrate are derailed. Plans that depend on a green card status, such as to study, advance in a job, or obtain essential credentials, are delayed. Moreover, a retrogression can have significant business consequences for employers that require predictability in staffing.

The movement of priority dates is critical to ensure: (1) orderly processing of visa applications; and (2) that visas issued do not exceed statutory limits. Priority dates also are connected with USCIS backlogs.

When priority dates are current, foreign nationals in the United States may apply for green cards and become eligible for an EAD if the green card is not processed within 90 days. Significantly, EADs may be issued and renewed for applicants who may ultimately be deemed ineligible for the green card. Importantly, there is a dynamic connection between priority dates, workloads, and backlogs, and the downstream consequences can be significant.

³⁵ See Department of State's Visa Bulletins at http://travel.state.gov/visa/frvi/bulletin/bulletin_1770.html (last visited June 3, 2007).

For example, when employment-based visas are not used during the year they are authorized, they are lost and are not available for future use without special legislation. In FY 06, over 10,000 employment-based visas were lost, even though USCIS had an estimated 100,000 to 150,000 pending applications for employment-based green cards.³⁶ Based on USCIS use of visa numbers as of May 2007, at present consumption rates approximately 40,000 visas will be lost in FY 07 without a dramatic increase in USCIS requests of visa numbers.³⁷ As illustrated below, since 1994 there have been over 218,000 un-recaptured employment-based visas lost due to underutilization of the employment-based visas.

³⁶ USCIS provided estimates during monthly interdepartmental meetings. Exact figures are unavailable because USCIS has no accounting of these pending numbers by category and different agency divisions provide different estimates.

³⁷ DOS provided these estimates to the Ombudsman during monthly interdepartmental meetings.

Figure 9: Department of State Unused Family and Employment Preference Numbers, FY 1992-2006 (Preliminary), Printed with Permission from DOS

FY	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following FY's Fam. Pref. Limit	Empl. Pref. Numbers Avail. For Recapture ¹
1992	5,388	21,171	---- ²	---- ²
1993	3,101	0	226,000	0
1994	6,328	29,430	253,721	1,709
1995	0	58,694	311,819	0
1996	0	21,173	226,000	21,173
1997	0	40,710	226,000	40,710
1998	20,885	53,571	226,000	53,571
1999	2,262	98,941	294,601	---- ³
2000	52,062	31,098	226,000	---- ³
2001	2,616	5,511	226,000	5,511 ⁴
2002	31,542	0	226,000	0 ⁴
2003	64,424	88,482	226,000	88,482 ⁴
2004	8,435	47,307	226,000	47,307 ⁴
2005	3,885	0	226,000	0
2006 ⁶	----	10,296	226,000	10,296
Totals	200,928	506,384	---	218,759 ⁵

Note: The Unused Employment Preference Numbers total is that used in calculating the following fiscal year's Family Preference numerical limit.

¹ Employment Preference Numbers Available for Recapture total represents the unused Employment Preference numbers in a fiscal year minus the amount of the following fiscal year's Family Preference limit above 226,000.

² Unused Employment Preference numbers did not fall across to the following fiscal year's Family Preference limit (and vice versa) until FY 94.

³ Employment Preference numbers unused in FY 99 and FY 00 have already been recaptured; therefore, none remain unused.

⁴ Of the 141,300 Employment Preference numbers unused in FY 01 through FY 04, 50,000 have already been recaptured and used for Schedule A applicants; therefore, only the balance (91,300) remain unused.

⁵ The Grand Total of Employment Preference Numbers Available for Recapture is shown as 218,759 (not 268,759), since it reflects subtraction of 50,000 numbers already recaptured from FY 01 through FY 04.

⁶ Totals for FY 06 are preliminary.

This loss of visas is due to: (1) gaps in USCIS' accounting of cases; (2) USCIS not processing enough pending applications in a timely manner; and (3) the imprecise art of predicting workflows and demand surges at three federal agencies: Department of Labor (DOL) (approves labor certifications); USCIS (processes immigration petitions after completion of labor certifications and processes green card applications for applicants in the United States); and DOS (establishes priority dates and processes immigrant visas from applicants outside the United States).

There will be severe consequences from rapid fluctuations in priority dates. If the priority date became current today, due to delayed USCIS processing and thus underutilization of visa numbers, some have predicted that within a few months as many as 500,000 to 750,000 individuals now residing in the United States under a temporary worker visa could apply for a green card. Additionally, DOL's recent backlog elimination efforts, scheduled to be completed by September 30, 2007, are predicted to add 70,000 or more approved labor certifications yielding as many as 170,000 additional green card applications. As USCIS begins to complete these applications and request visa numbers from DOS, the 140,000 statutorily authorized visa numbers will be used. DOS then will be required to retrogress priority dates. Consequently, most applicants in this scenario will find themselves trapped whereas they anticipated timely receipt of a green card, their wait exceeds seven or more years. In addition, all future employment-based green card applicants effectively would be barred from applying for many years.³⁸

2. Employment-Based Green Card Data Tracking and Ombudsman as Interdepartmental Liaison

The key to addressing this management issue at USCIS is to understand the dynamic interplay of priority dates and shifting workloads of three departments, and to know with greater precision and accuracy the size and details of USCIS' workloads. As recommended in the 2006 Annual Report (at p. 16, AR 2006 -- 02), the Ombudsman continues to strongly recommend that USCIS track data relating to employment-based green card applications at the time of submission to USCIS. These data should include immigrant visa classifications, priority dates, and countries of chargeability. USCIS should provide these data to DOS, either through a designated operations office at headquarters or through direct contact with USCIS service centers, so DOS can set cutoff dates with a clear understanding of pending applications. Since August 2005, the Ombudsman has hosted regular monthly meetings with USCIS, DOL, and DOS to discuss developments that affect priority dates and visa workloads.

The tri-agency meetings seek to expand inter-agency communication regarding expected new demands and surges, workflows, and priority dates. During the meetings, there is an examination of the case management systems and data collection processes used to assess workflows through each entity, particularly USCIS. USCIS is impacted the most from changes in priority dates, as it processes up to 85 percent of the employment-based visas as green card applications for individuals already living in the United States.³⁹

³⁸ These data are based on analysis of information from various sources and interdepartmental meetings with USCIS, DOS, and DOL.

³⁹ See "2006 Yearbook of Immigration Statistics," DHS Office of Immigration Statistics, at Table 6.

Although USCIS stated in its 2006 Annual Report Response (at p. 8) that it provides detailed data to DOS, the tri-agency group identified gaps in USCIS' data. Through these discussions, the Ombudsman learned that accounting and processing methods differ at the Nebraska and Texas Service Centers (where USCIS processes employment-based petitions). Encouragingly, at these meetings and at a recent Ombudsman-initiated meeting at the NSC in May, USCIS staff has demonstrated a commitment to addressing these problems. USCIS is continuing to evaluate and improve its accounting and case management system to capture the necessary data and provide accurate numbers to DOS to ensure priority dates can be set to avoid visa loss. Finally, these discussions reveal a growing appreciation of the necessity of coordinating the work that critically affects the immigration process at the three agencies.

3. Possible Solutions to Problems with Employment-Based Green Card Processing

Despite encouraging signs, there is room to do better. In its 2006 Annual Report Response (at p. 8) to recommendation AR 2006 -- 02, USCIS stated:

With respect to the first part of this recommendation, USCIS has previously indicated it agrees, and has already implemented corresponding changes. Detailed data on the visa impact of the USCIS holdings are now provided to DOS each month.

USCIS also added (at p. 8):

With respect to the recommendation that USCIS assign visa numbers to cases as they are received, the process the Ombudsman describes was the process in place a number of years ago. DOS, which manages overall visa number allocations, modified that process to the procedure in effect today. It is their policy to allocate visa numbers to USCIS adjustment cases only as the point of approval is reached.

However, through the tri-agency meetings, DOS explained that the modification to the program occurred in the early 1980s because INS could not adhere to the requirements to return unused visa numbers immediately. The Ombudsman understands that DOS prefers that cases are reported qualified for a visa earlier than at approval. In the last several months, there have been several suggestions on how to accomplish that task, but operational concerns remain. The Ombudsman hopes that USCIS and DOS can reestablish the older program with improved processing and technology to ensure timely and accurate reporting of cases ready-to-issue and to prevent the future loss of visa numbers.

In the 2006 Annual Report (at p. 16, AR 2006 -- 02), the Ombudsman also recommended that USCIS assign visa numbers to employment-based green card applications as applicants file them. The Ombudsman continues to recommend that USCIS work with DOS to reinstate that process which existed in the early 1980s, wherein DOS issued visa numbers for both employment and family-based applications for applicants as they applied rather than as they

were approved. This process would ensure that USCIS does not accept more applications than the number of visas available.

Another issue with priority dates and workloads is connected to the new fee rule. The Ombudsman anticipates that when the new fee rule goes into effect in July, delays in adjudication will significantly impact the agency if it does not track visa information, including visa classifications, priority dates, and country of chargeability. Without tallying cases receipted by visa category, USCIS inevitably will accept ineligible applications and more applications than it can process in the given timeframe. The agency will not collect fees for interim benefits issued for new green card applicants, as the new fee rule requires only one payment for both. In addition, there may be large numbers of retrogressed cases and, eventually, multiple issuances of interim benefits.

As described in the Ombudsman's 2006 Annual Report (at pp. 13-16), the Ombudsman continues to be concerned about USCIS' data integrity and failure to meet its obligation to maintain an accurate count of pending employment- and family-based preference applications. Although the focus is on employment-based visa applications, similar concerns exist for family-based preference cases. The continued collaboration of these agencies supports the Ombudsman's vision of cooperation to provide benefits in a timely and efficient manner.

F. Name Checks and Other Security Checks

FBI name checks, one of several security screening tools used by USCIS, continue to significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their intended national security objectives. FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits. The problem of long-pending FBI name check cases worsened during the reporting period.

1. Background

As of May 2007, USCIS reported a staggering 329,160 FBI name check cases pending, with approximately 64 percent (211,341) of those cases pending more than 90 days and approximately 32 percent (106,738) pending more than one year.⁴⁰ While the percentages of long-pending cases compared to last year are similar, the absolute numbers have increased. There are now 93,358 more cases pending the name check than last year. Perhaps most disturbing, there are 31,144 FBI name check cases pending more than 33 months as compared to 21,570 last year – over a 44 percent increase in the number of cases pending more than 33 months.⁴¹

⁴⁰ See USCIS FBI Pending Name Check Aging Report (May 4, 2007). It is important to note that USCIS does not include within its backlog cases pending due to FBI name checks. There are 155,592 FBI name check cases pending more than six months that otherwise may be part of USCIS' backlog. See section III.B for a discussion of USCIS backlogs.

⁴¹ See *id.*

Figure 10: Pending FBI Name Checks

Age of Pending Response	Total Count (May 4, 2007)	Total Count (May 17, 2006)
< 3 months	117,819	82,636
3 - 6 months	55,749	33,450
6 - 9 months	28,029	20,047
9 - 12 months	20,825	16,845
12 - 15 months	14,133	15,064
15 - 18 months	13,931	10,636
18 - 21 months	11,035	8,144
21 - 24 months	12,398	8,325
24 - 27 months	11,765	9,754
27 - 30 months	6,600	4,435
30 - 33 months	5,732	4,896
> 33 months	31,144	21,570
Total Pending	329,160	235,802

During the reporting period, processing delays due to FBI name checks were an issue in approximately 25 percent of all written case problems received by the Ombudsman. Resolving the FBI name check issue is included in the Ombudsman's top five priorities posted on the office website.⁴² Unlike FBI name checks, other types of background and security checks – *e.g.*, fingerprint checks, the Interagency Border Inspection Systems name checks (IBIS), and the Automated Biometric Identification System (IDENT) checks – return results within a few days, if not a few minutes. These law enforcement and watch list checks do not significantly prolong USCIS processing times or contribute to the USCIS backlog.

As described in the Ombudsman's 2006 Annual Report (at p. 24), the FBI provides information to USCIS regarding anyone who is the principal subject of an investigation or is a person referenced in a file. USCIS adjudicators and the Fraud Detection and National Security (FDNS) unit use this information to determine if applicants are ineligible for benefits. The FBI provides the name check results at USCIS' request. Name checks are not conducted by the FBI as part of ongoing investigations or from a need to learn more about an individual because of any threat or risk perceived by the FBI. Instead, the name checks are a fee-for-service that the FBI provides to USCIS and according to USCIS-defined standards.

Once USCIS forwards records to the FBI for name checks, the process and the turnaround time for the checks are outside of USCIS' control. Completion of the name check process may take considerable time because manual reviews of FBI files are sometimes required. This review may include FBI reporting on fragments of names of people who are not necessarily central or directly related to an investigation or law enforcement matter. In discussions with the

⁴² See section VI.F.


Ombudsman, the FBI has stated that it lacks the resources to perform the function in a timely manner.

2. Impact of Long-Pending FBI Name Checks on USCIS Customers


The delay caused by the FBI name check has substantial consequences to applicants and their families, as well as to our country and the economy. Examples of how legitimate applicants suffer include:

- Loss of employment and employment opportunities where the position requires green card status or U.S. citizenship;
- Possible termination of employment due to the inability to comply with required Form I-9 employment verification procedures where USCIS delays interim EAD issuance;
- Difficulties obtaining drivers' licenses;
- Inability to qualify for certain federal grants and funds;
- Limitations on the ability to purchase property;
- Difficulties obtaining credit and student loans; and
- Disqualification from in-state tuition.


CASE PROBLEM

The applicant's green card application has been pending since early 2005 due to the FBI name check. The applicant is a valued researcher at a U.S. pharmaceutical company. 

CASE PROBLEM

The applicant's green card application has been pending with USCIS for approximately four years due to the FBI name check. The applicant is a researcher at a U.S. university and, because of the adjudication delay, the university and the individual have been disadvantaged in seeking grant proposals and funding. Specifically, the individual reports that he is currently working on federal research projects. The applicant's inability to advance critical work for the project is a serious impediment to the university, its competitiveness, and the applicant's professional advancement. 

CASE PROBLEM

In fall 2003, an applicant filed a green card application, which remained pending due to FBI name checks until spring 2007. During the course of the adjudication, the applicant was fingerprinted and applied for interim benefits several times. Although the applicant applied for most of the interim benefits in a timely manner, the filing of the last EAD was not timely, and the applicant had to end his employment. In correspondence to the Ombudsman in the winter of 2007, the applicant related that he is a cancer patient who no longer has income necessary to pay for treatments. 

In February 2007, USCIS made public the criteria for expedited treatment of FBI name checks. While this change should help with specific cases, the *status quo* for FBI name check completion is unacceptable from the standpoint of national security and immigration benefits processing.

3. Value of the FBI Name Checks

The challenge for USCIS (and perhaps the challenge for DHS and the entire federal government) is to evaluate the value of maintaining the current FBI name check process relative to considerations of threat, vulnerability, and consequence. The Ombudsman agrees with the assessment of many case workers and supervisors at USCIS field offices and service centers that the FBI name check process has limited value to public safety or national security, especially because in almost every case the applicant is in the United States during the name check process, living or working without restriction.

The Ombudsman recommended in the 2006 Annual Report (at p. 25) that the FBI name check process be re-examined. Delays in the name check process actually prolong an individual's presence in the United States while the check is pending. In this sense, the current USCIS name check policy may increase the risk to national security by extending the time a potential criminal or terrorist remains in the country.


In its 2006 Annual Report Response (at p. 10), USCIS stated:


Although these security checks may require a more lengthy processing time, USCIS believes that performing them is essential to identifying national security and public safety concerns that would not have been uncovered by other means . . . in, a few cases, the information obtained from the FBI through this process has reflected very significant issues and risks. FBI name checks disclose information to USCIS that is otherwise not available. Information contained in 39 [percent] of the FBI positive responses (letterhead memoranda) received in FY 06 was not contained in IBIS/TECS, USCIS' primary background check tool. . . . [A]lthough a heavy price is paid in inquiries, mandamus actions, and other forms of litigation, USCIS is committed to effective

background checks, and thus is committed to the FBI name check. In fact, under the new fee rule currently under review, USCIS proposes to dedicate more funds to the FBI name check process as the FBI has indicated the fees they charge for these checks will increase and additional staff will be added to the process. This should help to speed up the name check process and reduce the backlog significantly.

Use of the 39 percent positive response rate as referenced by USCIS to justify continuing this program may exaggerate the value of the FBI name check. It is unclear how many of the FBI name check “responses” also were revealed by one or more of the other security checks conducted for the applications. To date, the Ombudsman has been unable to ascertain from USCIS the total number of actual problem cases that the agency discovered exclusively as a result of the FBI name check. The Ombudsman understands that most, if not all, of the problem cases which would result in an eventual denial of benefits also can be revealed by the other more efficient, automated criminal and security checks that USCIS initiates.

COMMENTS FROM OMBUDSMAN'S TELECONFERENCE

One caller mentioned that USCIS does not schedule applicants for interviews because security clearances are not yet completed. He suggested that USCIS needs to look at the cost-benefit of doing these clearances. The caller stated he is in the military and has a top secret clearance. 

Another caller suggested that information could be sent every “X” number of months to the applicant or attorney that the application still is held up for pending name checks, which would avert the many update requests. 

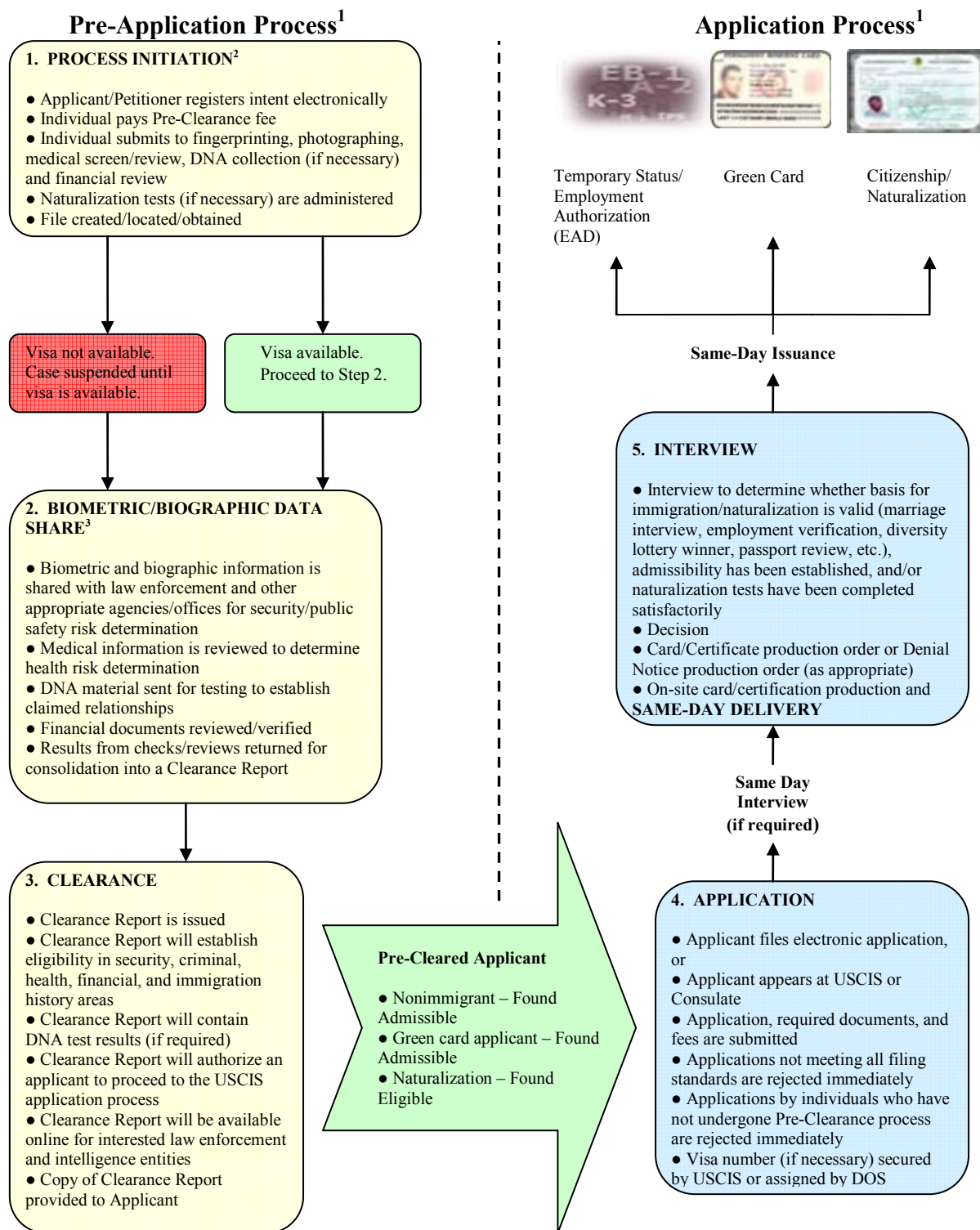
4. Possible Solutions to the FBI Name Check Delays

During this and previous reporting periods, the Ombudsman had numerous meetings with USCIS leadership on FBI name checks and discussed a number of solutions to the name check logjam.

a. Pre-Application Security Checks

A possible solution to the name check problem is pre-application security checks. USCIS has not chosen to implement such a process, which would dramatically impact the agency’s revenue stream for a short period of time. Simultaneously, USCIS is failing to make basic changes to its processing methodology to reduce fraud and ineligible applicants. Instead, USCIS continues to substantially fund a process with questionable value. USCIS maintains that the name check process is of value, but it remains unclear whether the process has added any additional value over the security processes already in place.

Figure 11: Ombudsman’s Suggested Pre-Application Security Check Process



1. May be performed in the United States or abroad.
 2. Can include individuals applying for nonimmigrant visas or changes of status, individuals applying for immigrant status (adjustment or consular process), refugees, and naturalization applicants.
 3. DHS/USCIS will collect and share data through an integrated case (person-based) management system. A component of this system will be an immigration case management system.

Figure 11 outlines the security screening steps to clear an applicant prior to interview, where necessary, and for adjudication of the immigration benefits application. The applicant/petitioner would register intent and pay a fee to cover the costs of the process. Pre-application is more than a pre-screening that determines *prima facie* eligibility. It moves the case to an adjudicating officer who reviews the file and interviews the applicant, if necessary. Since all fingerprints, biometrics, security clearances, necessary documents, medical evaluation, financial support, and visa availability are cleared, the applicant can be processed to conclusion immediately after interview. A Clearance Report is documentary proof that the applicant successfully completed the pre-application process. This process would place biometrics capture and security screening in the hands of appropriate law enforcement/contract employees, trained in the pre-screening process, and the determination of eligibility for benefits in the hands of USCIS officers trained in immigration law.

The agency also should review the DHS resources available to assist in exploring options to solve the backlogged FBI name check process. A number of DHS law enforcement entities perform security checks similar to those performed by USCIS.


b. USCIS Background Check Service IT System for Tracking FBI Name Check Cases

USCIS' 2006 Annual Report Response (at p. 10) indicates that the agency's planned Background Check Service (BCS), a new IT system that will track the status of background and security checks for pending cases, was to be implemented in late April with deployment beginning in May 2007. As of this writing, the BCS is not yet deployed. Currently, USCIS has limited capability to produce reports detailing the status of long-pending FBI name check cases. In addition, USCIS systems do not automatically indicate when a delayed name check is complete and the case can be adjudicated. Often, this leads to a situation where the validity of other checks expire before USCIS reviews the case. Those other checks then need to be reinitiated, adding financial and time costs for applicants and USCIS. The Ombudsman fully supports the expeditious rollout of the BCS system.


c. A Risk-Based Approach to FBI Name Checks

Name checks do not differentiate whether the individual has been in the United States for many years or a few days, is from and/or has traveled frequently to a country designated as a State Sponsor of Terrorism, or is a member of the U.S. military. Many individuals subject to lengthy name checks are either already green card holders or have been issued Employment Authorization Documents (EADs). These documents allow them to receive Social Security cards and state drivers' licenses. Most green card applicants are also eligible to receive advance parole enabling them to travel outside the United States and return as long as their cases are pending, which can be for many years under the current process.

CASE PROBLEM

In early 2006, the applicant applied for naturalization. USCIS informed the applicant that the application is pending due to the FBI name check. The applicant currently is a contract employee for a federal agency and was security screened prior to beginning that employment. 

CASE PROBLEM

The applicant's green card application was filed in early 2004. The application remains pending due to the FBI name check. The applicant previously served as a security officer at a U.S. embassy and was subject to rigorous security screening for the position. 

In November 2006, Secretary Chertoff discussed a risk-based approach to homeland security threats, vulnerabilities, and consequences:

[T]he core principle that animates what we do at DHS . . . is risk management. It is a recognition of the fact that management of risk is not elimination of risk. There is no elimination of risk in life, and anybody who promises every single person protection against every threat at every moment in every place in the country is making a false promise . . . What we do have to do is identify and prioritize risks -- understanding the threat, the vulnerability and the consequence. And then we have to apply our resources in a cost-effective manner, using discipline and common sense in order to minimize the risk without imposing undue cost on our communities and our families.⁴³


Despite Secretary Chertoff's continuing emphasis on risk management, USCIS performs FBI name checks without the benefit of risk management modeling. In recent visits to USCIS field offices, a number of leaders have questioned the usefulness of the FBI name checks citing some of the same concerns discussed here. The process is not working and consideration should be given to re-engineering it to include a risk-based approach to immigration screening and national security. The U.S. Government Accountability Office recently noted in a report that "[w]hile the Secretary of DHS has expressed a commitment to risk management, DHS has not

⁴³ DHS Secretary Michael Chertoff, Prepared Remarks at the 2006 Grants & Training National Conference, Washington, D.C. (Nov. 28, 2006); http://www.dhs.gov/xnews/speeches/sp_1164738645429.shtm (last visited June 3, 2007).

performed comprehensive risk assessments in . . . immigration and customs systems to guide resource allocation decisions.”⁴⁴

Every effort should be undertaken to identify and remove persons who pose threats to the United States, which would include rescinding immigration benefits after USCIS has granted them. It would be irresponsible for law enforcement entities to stop their investigation of a potential crime merely because the person who is the subject of their investigation has obtained a green card or U.S. citizenship. Similarly, it would be illogical to think that delaying issuance of a green card or U.S. citizenship will prevent a criminal from committing a crime. Considering the protection the FBI name check provides, the cost of government resources used, and mental and actual hardships to applicants and their families, USCIS should reassess the continuation of its policy to require FBI name checks in their current form.

RECOMMENDATION AR 2007 -- 06

In addition to the Ombudsman’s recommendation in the 2006 Annual Report, AR 2006 –04, the Ombudsman recommends that USCIS: (1) evaluate the value of the name check in its current format and establish a risk-based approach to screening for national security concerns; (2) work with the FBI to provide the necessary resources to perform name checks in a timely manner; and (3) provide greater transparency to customers by publishing monthly the number of long-pending FBI name check cases. 

G. Interim Benefits

The Ombudsman strongly supports efforts by USCIS to eliminate the need for interim benefits in favor of timely, efficient, and secure adjudication of the ultimate immigration benefit.

1. Background

Generally, USCIS issues interim benefits – EADs and advance parole documents (international travel documents) – to individuals who have green card applications pending with the agency for over 90 days.⁴⁵ The Ombudsman is encouraged by constructive dialogue with USCIS during the reporting period that addresses funding and security issues related to the processing of interim benefits.

On May 30, 2007, USCIS established new filing fees for immigration benefits.⁴⁶ Under the new fee schedule, USCIS will charge a single fee for green card applications to include recovery of the processing costs for interim benefits. The Ombudsman supports this approach to

⁴⁴ U.S. Government Accountability Office Report “Homeland Security: Management and Programmatic Challenges Facing the Department of Homeland Security,” GAO-07-398T at 2 (Feb. 2007); <http://www.gao.gov/new.items/d07398t.pdf> (last visited June 6, 2007).

⁴⁵ See 8 C.F.R. § 274a.13(d).

⁴⁶ See “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” 72 Fed. Reg. 29,851 (May 30, 2007); see also section III.H.1.

cost recovery. By combining the two fees, USCIS mitigates its dependency on fees from interim benefits and eliminates the appearance of the agency prolonging processing times of the primary benefit application to collect fees on interim benefits.

Figure 12 shows that interim benefits accounted for approximately 18 percent of all USCIS revenue in FY 06. Currently, USCIS must dedicate resources to the adjudication of interim benefits, rather than focus on green card and other benefits processing. A cycle of delays and fees has developed to the detriment of customers and USCIS alike.

EADs confer many of the privileges that the green card provides, including permission to work in the United States and ability to obtain other federal and state forms of identification such as Social Security cards and drivers' licenses. These documents enable an individual to secure property and obtain credit in the United States. They also legitimize the individual's presence in the United States, although legal status is not yet fully determined. It is not uncommon for individuals to receive EADs for years, only to have the green card application eventually denied. In fact, applicants who know they are ineligible for green cards may rely on the continuation of a backlog to obtain the EAD, which allows them to live and work in the United States legally for months, if not years.

2. Thousands of Ineligible Green Card Applicants Continue to Receive EADs

In 2004, the Ombudsman recommended an up-front processing model that would eliminate the need to issue EADs in many instances.⁴⁷ USCIS implemented a pilot program to test a version of this model, which became known as the Dallas Office Rapid Adjustment (DORA) program. As discussed in section IV of this annual report, the Ombudsman strongly supports the expansion of the DORA program or a similar up-front processing model that would eliminate the issuance of interim benefits to most ineligible applicants.

During the reporting period, the DORA data reflected similar approval and denial rates as in the 2006 reporting period.⁴⁸ Unfortunately, USCIS has been unable to provide accurate and complete data on the exact number of interim benefits issued nationally to green card applicants. In the 2006 Annual Report, the Ombudsman estimated the data, but is not including these data for this reporting period as the DORA program continues to perform as in 2006 and nationwide denials continue to be significantly higher. Consequently, there are tens of thousands of green card applicants who continue to receive EADs even though they eventually are deemed ineligible for the green card.

H. Funding of USCIS

The USCIS funding structure is one of the principal challenges to efficient and timely delivery of immigration services. The manner in which USCIS obtains its funding affects every facet of USCIS operations, including the ability to: (1) implement new program and processing initiatives; (2) begin information technology and other transformation efforts; and (3) plan for

⁴⁷ See sections IV and V.27.

⁴⁸ See Figure 14.

the future. Congress mandates that USCIS be self-funded. This includes covering the cost of programs for which the agency charges no fees, *i.e.*, “unfunded mandates,” such as asylum and refugee processing and U.S. armed forces naturalization filings, as well as operational overhead and information technology modernization.

Figure 12: USCIS Fee Revenue for FY 06

Form	Total Revenue (millions)
I-765 (Employment Authorization Application)	\$241
N-400 (Naturalization Application)	\$233
Biometric Fees -- Photograph and Fingerprint Fee	\$165
Premium Processing (for I-129s)	\$160
I-485 (Green Card Application)	\$160
I-130 (Family Immigrant Petition)	\$141
I-90 (Green Card Replacement Application)	\$122
I-129 (Temporary Employment)	\$79
I-131 (Travel Document Application)	\$62
I-539 (Extension or Change of Temporary Status)	\$46
I-751 (Removal of Conditional Residence)	\$27
I-140 (Employment Immigrant Petition)	\$26
Life Act (74)- 245(i) (Penalty Fee for Immigrant Petition)	\$39
I-290B (Notice of Appeal to the Administrative Appeals Office)	\$18
I-600A (Application for Advance Processing of Orphan Petition)	\$15
N-600 (Petition to Classify Orphan as an Immediate Relative)	\$15
I-129F (Fiancé(e) Petition)	\$11
I-687 - over 18 years of age (Application for Status as A Temporary Resident)	\$10
Subtotal	\$1,570
All Other Forms and Miscellaneous Revenue	\$79
Grand Total	\$1,649

Source: USCIS FY 06 Fee Collections

1. USCIS Sets New Fees for Petitions and Applications

On May 30, 2007, USCIS published a final rule entitled “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” to set new application fees.⁴⁹ The fees increase on average \$223 per application or petition and \$605 for green card applications (from \$325 to \$930 including fees for interim benefits).

⁴⁹ See generally 72 Fed. Reg. 29,851 (May 30, 2007).

The current fee schedule is based on data and analysis of INS benefits processes from 1997, and all subsequent fee adjustments were based on that data until the May 2007 fee adjustment. The new fee schedule improves the methodology and updates the data used to calculate and set user fees. It takes into account current costs, current service levels, goals for additional services, new post-September 11, 2001 security requirements, and data from the USCIS Performance Analysis System (PAS). However, some of the inputs for the model are flawed. For example, PAS data are often deficient and do not precisely capture USCIS workloads and statistics. USCIS also plans to review fees every two years to ensure the agency is recovering the full cost of processing immigration benefits.

The Ombudsman strongly supports the concept that fee levels should recover the cost of processing applications and petitions and other USCIS expenses. It is essential that USCIS maintain a funding stream that provides it with adequate revenue to complete adjudications in a timely manner and make investments for the future in infrastructure, technology, and personnel. At the same time, the Ombudsman recognizes that many people and organizations are concerned that the new fees are excessive and unfairly burden applicants. They are concerned, as is the Ombudsman, that user fees are used in an efficient and cost-effective manner to improve processing and customer service. In that regard, USCIS should demonstrate through public milestones its progress in achieving the 20 percent productivity gains promised by the Director in his testimony to Congress on the new fee schedule.⁵⁰ There should be visible evidence of better facilities and digital processing. Working with stakeholders, USCIS should establish a list of deliverables with timelines to allow the public to see what it gains from the considerable money spent in fees.

Applications for ancillary services necessitated by lengthy processing times generate substantial additional revenue for USCIS, but the new fee rule takes steps to address the problems previously noted by the Ombudsman. Under the rule, fees for interim benefits will be included in the overall fee for green card applications. This approach is an important step in reducing USCIS' reliance on revenue that directly results from delays in adjudications. However, inclusion of interim benefits fees means that most green card applicants will pay for interim benefits whether they need them or want to obtain work authorizations or travel documents.⁵¹ In addition, customers who applied for green cards prior to publication of the final fee adjustment rule will continue to apply and pay fees separately for interim benefits as well as renew work authorization and travel documents annually.

The new fee rule also eliminates the double fee for K-3 foreign national spouses who file Forms I-130 and I-129F (Petition for Alien Fiancé(e)).⁵² There is no charge for the K-3 visa petition if the petitioner is the beneficiary of an immigrant petition filed by a U.S. citizen on the Form I-130.

⁵⁰ See Testimony of Emilio Gonzalez, Director USCIS, before the U.S. House Judiciary Committee Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law (Feb. 14, 2007).

⁵¹ In the final rule, USCIS provided for applicants age 14 and younger to pay a reduced fee. See 72 Fed. Reg. at 29862.

⁵² See *id.* at 29873.

2. Premium Processing

Premium processing service guarantees a 15-day processing time for certain immigration benefits applications upon payment of an additional \$1,000 fee.⁵³ USCIS must respond within the 15 days with a grant, denial, or request for evidence (RFE). Otherwise, it must return the money. Premium processing illustrates the fundamental dilemma USCIS faces in balancing its efforts to improve efficiency and need to ensure a continuous flow of funds. At the same time, premium processing demonstrates USCIS' capability to provide world-class, 21st century service to its customers.

Premium processing addresses many of the pervasive and serious problems identified in regular processing. Customers who pay the additional fee for premium processing can contact USCIS directly by phone, email, or facsimile to answer basic questions. The need for USCIS to issue requests for additional evidence is reduced as applications are more complete. Time is saved both for the adjudicator and applicant. The quick turnaround time for premium processing cases eliminates the need for benefits applications to be warehoused, which requires substantial contractor expenditures for storage and retrieval. With a 15-day processing time, it is less likely applicants will have changed addresses.

During the reporting period, USCIS announced the addition of employment-based immigrant visa categories for premium processing.⁵⁴ With benefits to both the agency and customers, USCIS should use elements of premium processing for all of its cases.

In its 2006 Annual Report Response (at p. 20), USCIS stated:


[The agency] believes in incrementally expanding Premium Processing options to give customers choices of fee and service levels The Ombudsman, focused on processing times and costs, asserts that USCIS data shows that it could apply the attributes of premium processing to all applications at less cost. Only in a very narrow sense is this true, for faster processing and direct communication with the customer can reduce some tangential costs. However, this overlooks the key to premium processing, which is speed.

⁵³ “The Attorney General is authorized to establish and collect a premium fee for employment-based petitions and applications. This fee shall be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes. For approval of the benefit applied for, the petitioner/applicant must meet the legal criteria for such benefit. This fee shall be set at \$1, 000, shall be paid in addition to any normal petition/application fee that may be applicable, and shall be deposited as offsetting collections in the Immigration Examinations Fee Account. The Attorney General may adjust this fee according to the Consumer Price Index.” 8 U.S.C. §1356(u).

⁵⁴ See USCIS News Releases, USCIS to Expand Premium Processing Service (Aug. 18, 2006, Sept. 22, 2006, and Nov. 8, 2006); <http://www.uscis.gov/files/pressrelease/PremProc081806NR.pdf>; <http://www.uscis.gov/files/pressrelease/PremProc092206PR.pdf>; and http://www.uscis.gov/files/pressrelease/PremiumProcessingRelease_08No06.pdf (last visited June 6, 2007).

USCIS also gains substantial revenue from premium processed cases. In a three-year period from October 2003 through September 2006, USCIS collected \$501 million in premium processing fees and \$212 million for regular processing. Since the start of premium processing in June 2001, USCIS has collected more than \$800 million. The Ombudsman again notes that premium processing is less costly than regular USCIS benefits processing because fewer repeat steps are necessary, fewer employees must handle these applications, and delayed processing inquiries are eliminated. USCIS has not provided any credible data to the contrary. The margin of income that USCIS can derive from premium processing is higher than from regular processing.

RECOMMENDATION AR 2007 -- 07

The Ombudsman recommends that USCIS conduct a thorough, transparent, and independent analysis of premium processing costs as compared with regular processing. The Ombudsman recommends that this process include a comparison for each stage of these processes for: (1) contractor costs; (2) federal employee costs; and (3) all other associated costs. 

As discussed in section III.H.1 of this annual report, USCIS has set new fee increases that would fully fund USCIS and allow premium processing revenue to be “isolated from other revenues and devoted to the extra services provided to premium processing customers and to broader investments in a new technology and business process.”⁵⁵

Specifically, premium processing fees will be used to transform USCIS from a paper-based process to an electronic environment, making it possible to incorporate more effective processing of low risk applicants and better identification of higher risk individuals. The new operational concept will be based on the types of online customer accounts used in the private sector in order to facilitate transactions, track activities, and reduce identity fraud.⁵⁶

The Ombudsman supports the idea of using premium processing revenue for its originally intended purpose. However, it is problematic for USCIS to rely on this particular fee to fund the transformation effort. To the extent that USCIS improves its processing times, as the agency anticipates and stakeholders want, applicants will have fewer reasons to pay the premium processing fees to obtain services. As a result, USCIS effectively undercuts the revenue it earmarked for transformation.

Apart from the questions of revenue and how it is used, the Ombudsman continues to urge USCIS to apply its experience with premium processing to improve regular processing of cases. The objective should be to make regular processing match the service level of premium processing without the applicant paying additional fees.

⁵⁵ See 72 Fed. Reg. at 4893-94.

⁵⁶ *Id.* at 4894.

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.

1. Need for Improved Form Instructions and USCIS Intake Processes

In the Ombudsman's 2006 Annual Report (at p. 46, AR 2006 -- 09), the Ombudsman recommended that USCIS adhere to its regulations and require: (1) application and petition packages to be complete before USCIS accepts them; and (2) that the review of necessary documents take place before a fee is accepted via a thorough pre-screening process. In its 2006 Annual Report Response (at p. 17), USCIS indicated that:

USCIS continues to work to improve the clarity of form instructions to help applicants understand what they will need to file with an application. This greater clarity also helps manage customer expectations with respect to both process and outcomes. However, USCIS believes it is more appropriate to accept applications that meet minimum standards required by law than to extensively analyze applications and reject those that do not contain absolutely every document that may be required. Such extensive review occurs during the actual adjudication process since the need for additional supporting documents may not become apparent until the applicant is interviewed. For instance, these documents may include proof of termination of prior marriages or court documents regarding an arrest. Hence, while to a degree it is consistent with the Ombudsman's theme of up-front processing and local adjudication of many kinds of applications, rejecting applications prior to filing still leaves significant litigation risks as customers can allege that USCIS rejected cases that were complete, and they were prevented from pursuing their cases. This process occurred with a number of legalization cases during the late 1980s and USCIS is still resolving cases where applicants claim they were turned away inappropriately. USCIS has no proof otherwise because the applications were returned to the applicants.

Front-desking was a problem that occurred approximately 20 years ago during the implementation of the Immigration Reform Control Act of 1986. It continues to be cited as a reason the agency is hesitant to engage in more rigorous screening prior to accepting filings. However, current processes at the Chicago Lockbox provide for digitized records of all cases received by the facility whether accepted or rejected. Thus, the one issue of front-desking, *i.e.*, the lack of a rejection notice, is moot. Additionally, the 1986 legalization program had very specific deadlines, whereas no similar cutoffs apply to the vast majority of cases the Lockbox accepts today.

In many stakeholder meetings and teleconferences, the Ombudsman continues to hear concerns about incorrect rejections and an inordinate number of incorrect and/or unnecessary RFEs. During a recent visit to the NBC, the Ombudsman discussed these issues and was

encouraged by the management's awareness of them and the initiatives undertaken by the staff to address both underlying and immediate concerns.⁵⁹

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

If a DORA application is rejected at the Lockbox, there is no communication to the local field office. The rejection only goes to the applicant.



The Lockbox sometimes creates a new applicant file when one already exists for the applicant.



Stakeholders have received rejected applications with another applicant's documents enclosed.



Stakeholders report that they have received multiple receipts for some applications and no receipts for other applications.



If an application is sent to the Lockbox rather than a service center, the Lockbox returns the application to the applicant rather than forwarding it within USCIS.



RECOMMENDATIONS AR 2007 -- 11

For the Chicago Lockbox, the Ombudsman recommends that USCIS:

- (1) Implement a procedure so the Lockbox will not accept a new filing if a case already has been denied and a Notice to Appear (NTA) issued;*
- (2) Institute a process to notify a field office when an application is rejected; and*
- (3) Implement quality review measures to ensure that errors do not occur in mailings to applicants.*



2. Multiple Filings for Foreign Spouses of U.S. Citizens

U.S. citizens petitioning for foreign spouses to join them in the United States are subject to duplicative filing requirements and will pay additional fees until the new fee rule takes effect in July 2007. In response to growing processing delays, Congress passed the Legal Immigration Family Equity (LIFE) Act in 2000, which created the K-3 visa category for foreign spouses of U.S. citizens to obtain a nonimmigrant visa and more quickly join their U.S. citizen spouses in the United States.⁶⁰

⁵⁹ See section III.J.4.

⁶⁰ See generally Pub. L. No. 106-553, 114 Stat. 2762 (Dec. 21, 2000).

USCIS implemented the law to require a U.S. citizen spouse to first file the Form I-130 immigrant visa petition, followed by the filing of a petition used for non-immigrant fiancé(e)s, Form I-129F. However, to file the I-129F for expedited processing of the non-immigrant visa, the U.S. citizen spouse needs to submit a receipt to show proof of the previously filed I-130 and its supporting documentation. Thus, to file for expedited service, the applicant needs to file all documents previously filed with the receipt for the original I-130 and pay an additional fee. USCIS conducts substantially the same security checks and requires approximately the same number of hours to process each form.

However, until the Ombudsman brought this issue to USCIS' attention, the I-129F was processed in 2-3 months, while the I-130 remained pending for many additional months. During the reporting period, it appears that USCIS responded to the Ombudsman's concerns by slowing down processing of the I-129F. The May 18, 2007 processing time for the I-129F at the National Benefits Center (NBC), the only service center that processes these petitions for the K-3, is six months. As of May 18, 2007, the processing time for the I-130 was six months at the California Service Center and fourteen months at the Vermont Service Center. The Ombudsman points out that the NBC processes I-129F petitions for the K-3 and the VSC and CSC process the I-130 petitions. If the processing times for I-129Fs and I-130s are the same, as at the CSC, the LIFE Act provision providing for the fiancé(e) visa as a faster alternative to the I-130 process is meaningless.

In the 2006 Annual Report (at p. 47, AR 2006 -- 10), the Ombudsman recommended that USCIS consolidate these petitions and rapidly process them for spouses and children of U.S. citizens. In its 2006 Annual Report Response (at p. 18), USCIS indicated "[a]lternatives are under review." In its May 30, 2007 final fee rule, USCIS eliminated the I-129F fee for K-3 status.

3. Application Support Centers and Fingerprinting of Applicants

As a routine part of the immigration benefits application process, customers visit USCIS contract facilities (ASCs) to have biometrics captured (fingerprints and photographs).⁶¹ In FY 06, USCIS submitted over three million fingerprints to the FBI for criminal history checks at a cost of more than \$48.8 million. The Ombudsman believes many of these were unnecessary, repeat fingerprint checks.

Additionally, USCIS continues to operate without "wrap around" security checks, *i.e.*, real time security updates from the law enforcement community on applicants who violate criminal laws. Wrap around security checks contemplate an arrangement with law enforcement to inform USCIS of any new security concerns that arise without USCIS needing to request additional biometrics or name checks from the applicant. In its 2006 Annual Report Response to AR 2006 –11 (at p. 18), that USCIS implement wrap around checks, which would provide the agency with real time security updates from law enforcement on applicants who violate criminal laws, USCIS stated:

⁶¹ There are approximately 130 ASCs located in separate sites or co-located with USCIS offices.

As the Ombudsman is aware, USCIS has been asking for this capability for a number of years. ‘Wrap back’ will give access to continuing data about a person’s criminal record, eliminating the need for multiple queries and the risks associated with the lack of real-time knowledge of security updates. For a number of years, USCIS has been in discussions with the FBI about ways to provide this ability. USCIS does now receive “wrap back” or “recurrent vetting” service from US-VISIT as it submits fingerprints to IDENT, based on the information stored within IDENT. When “wrap back” functionality is available, USCIS expects to take advantage of the service.

It is unclear whether USCIS actually has wrap-back capability, as the agency both is asking for the capability and receives the service from US-VISIT. In addition, it appears that USCIS is focused on providing the FBI name check program with resources, rather than concentrating on the necessary wrap-back service.

It often takes USCIS longer to adjudicate an application than the 15 months the agency considers fingerprint results to be valid. Consequently, applicants often must return to the ASC to have fingerprints retaken. Although USCIS currently has fingerprint storage capability, it cannot retrieve the prints from storage. If USCIS had this capability, it would reduce the need for applicants to visit ASCs multiple times for repeated fingerprint collection. In AR 2006 – 12, the Ombudsman recommended: (1) improvements in USCIS fingerprint storage and retrieval capabilities; and (2) use of innovative technology that allows for capture of flat fingerprints rather than traditional rolled prints.

In its 2006 Annual Report Response (at p. 19), USCIS stated that: (1) its Biometrics Storage System (BSS), the “central repository for all biometrics captured . . . should be implemented by early 2008”; (2) it is working with other federal agencies on capturing flat fingerprints and will adopt this capability when “the technology and equipment meet requirements that are cost effective”; and (3) the testing and system enhancements of the Biometric Check Service (BCS) should be “completed and implemented early in [calendar year] 2007.”⁶²

In recent conversations with the Ombudsman, the agency indicated that the BSS would be implemented in the summer of 2007. The Ombudsman is concerned that USCIS does not have clear deadlines on this extremely important program. Again, the Ombudsman urges expeditious implementation of the BSS to address this processing deficiency

4. Initial Case Screening and Widespread Issuance of Requests for Additional Evidence

USCIS issues requests for additional evidence (RFEs) in approximately 50 percent of family-based green card applications filed at the Chicago Lockbox and processed at the NBC, as shown in Figure 13. The issuance of receipt notices is tied to each field office’s annual budget

⁶² In addition, USCIS’ 2006 Annual Report Response (at p. 10) states that the “[t]esting and required system enhancements should be completed in late April with deployment beginning in May 2007.”

and staffing requirements. The more receipt notices issued to applicants living in the office's jurisdiction, the more resources that field office will receive from headquarters the next year. Thus, USCIS has no incentive to reject applications, regardless of their completeness, and instead will ask applicants for additional information through RFEs.

Issuing RFEs and denials is more time consuming for USCIS than rejecting an application at the outset or granting a benefit to an eligible customer who has filed a complete application.

COMMENTS FROM OMBUDSMAN'S TELECONFERENCE

A caller asked if there is a checklist that the service centers use when reviewing green card applications. If so, could applicants obtain a copy of it?



One caller indicated that it is unfair for USCIS to lower response time if the agency is not adjudicating the RFEs faster once they are received.



Several callers indicated that RFEs require information that already was submitted to the agency.



A caller said that if the case is approvable or deniable outside of the need for an RFE, the case should be approved or denied without it.



A caller mentioned that RFEs are often boilerplate and it appears that nobody has read the application. Moreover, she sent two identical "L" applications for the same company. One was approved and one got an RFE.

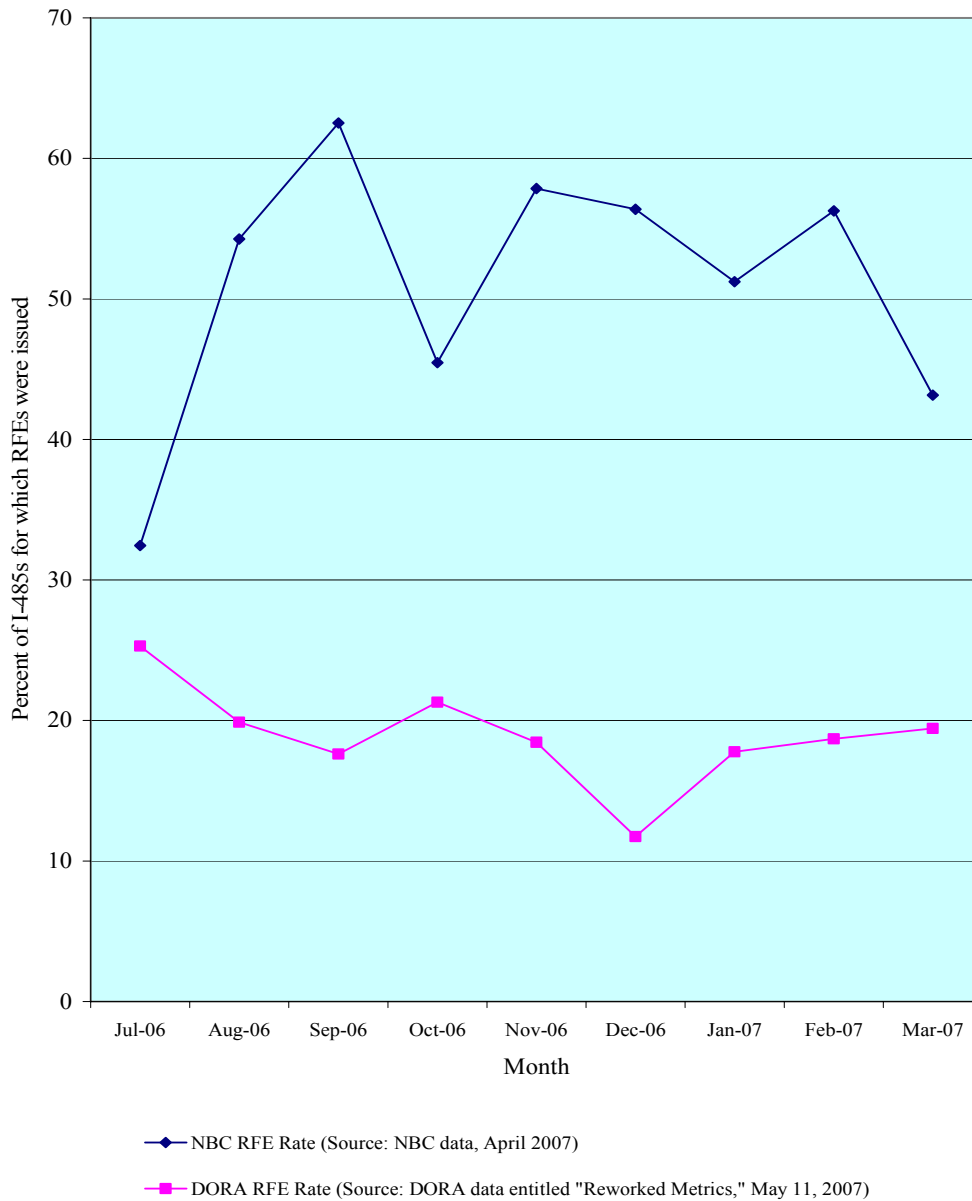


Generally, customers file family-based green card applications with the Chicago Lockbox. If accepted, the applications are forwarded to the NBC for administrative processing and then to a field office for interviews and final adjudications. At each stage of the application process, additional documents may be requested. The agency asks for many of these documents at the end of the process, rather than at the beginning before it accepts the application. Moreover, if the NBC issues an RFE, that request should cover all of the documents and information required for initial case completeness.

The Ombudsman is concerned that USCIS is issuing RFEs erroneously and requesting, for example, documents that were already submitted. In other cases, the filing instructions may not be clear and incomplete cases are accepted at the Chicago Lockbox when they should be rejected. Due to the extended processing time with RFEs, individuals also may be required to pay additional fees for interim benefits and/or make multiple visits for biometrics capture. Senior leadership at the NBC is aware of this problem, and the Ombudsman is encouraged by the efforts to reduce the issuance of unnecessary and unclear RFEs.

USCIS recently announced plans to reduce the time provided to customers for responding to RFEs.⁶³ This change may result in more denials of incomplete applications, but it does not address the problem of accepting incomplete applications at the outset. USCIS can solve this problem by a rigorous up-front review of the application.

Figure 13: Comparison of RFE Issuance by the National Benefits Center and the Dallas Office Rapid Adjustment Pilot Program



In the coming year, reducing the issuance of RFEs should be a priority for the agency. Up-front review and processing of cases is one option that mitigates the issuance of RFEs for incomplete cases.

⁶³ See "Removal of the Standardized Request for Evidence Processing Timeframe," 72 Fed. Reg. 19100 (Apr. 17, 2007).

RECOMMENDATION AR 2007 --12

USCIS currently uses substantial resources to issue and review RFEs for information that already was submitted or was unclear in the original application instructions. While the agency in its 2006 Annual Report Response (at p. 17) indicates that it continues to work to improve the clarity of form instructions, the Ombudsman recommends that USCIS develop:

(1) Clearer application instructions so that applicants provide the required documentation at the outset;

(2) Transparent and easily understandable rejection criteria; and

(3) RFEs written in simple, more direct language with less legalese and personalized to the recipient for the limited instances in which RFEs would be issued.

K. Coordination and Communication

In its 2006 Annual Report Response (at p. 14), USCIS indicated that “[c]oordination and communication between and among all USCIS offices has improved as technology [expanded].” The Ombudsman commends USCIS for providing “a great deal more information . . . to officers today than even just a year ago.” While there has been improvement, the issues and concerns expressed in the Ombudsman’s 2005 and 2006 Annual Report mostly remain. Coordination and communication continues to be one of USCIS’ biggest challenges, as observed by the Ombudsman during visits to field and service center offices during the reporting period.

1. Field Offices/Service Centers

Ineffective coordination and communication between field offices and service centers continues to be a serious and pervasive problem. Offices are not standardized in how they function, and communication between offices is difficult at best. Moreover, unconnected information systems inhibit employees from getting the information in a timely way to resolve issues and adjudicate cases. Lack of timely information inevitably causes processing delays and customer dissatisfaction. For example, each of the four service centers and the NBC continue to operate separate computer Local Area Network (LAN) systems with no connectivity to each other. Applicants file employment-based green card applications with one of two service centers, which forward applications requiring interviews to field offices nationwide. The field offices do not have access to the service center’s LAN system and, therefore, cannot: (1) update the LAN record with case completion information; or (2) connect to the LAN system to produce the green card. The field office must return the paper file to the service center to complete these tasks.


The investment must be made to equip all offices with the tools necessary to well serve the public. For example, the Ombudsman has suggested numerous times that USCIS establish telephone-based direct link connections into the LAN at field offices to allow them to do the

necessary tasks stated above and to research and obtain service center related information. The service centers have hundreds of these connections, while the field offices have none.

In addition, officer-to-officer communication between the field offices and service centers is minimal. Immigration officers often do not accept decisions and actions of other officers as cases are transferred. Such *de novo* review duplicates work already completed, causes delays in the adjudication process, and causes hardship, inconvenience, and expense to applicants and employers.


File transfer between offices continues to be a problem. Tracking, timeliness, and the loss of files continue to be concerns.

COMMENT FROM OMBUDSMAN'S TELECONFERENCE

A caller mentioned that some cases are lost when transferred from one service center to another. 

While the National File Tracking System (NFTS) has improved the file transfer process, the apparent lack of communication and coordination within USCIS is troubling. For example, once the application arrives in the field, there is no tracking of the file. The Ombudsman understood that beginning in May 2007, service centers would transfer cases to the NBC which would then disseminate the cases to the field to allow for better tracking. However, as of the writing of this report, this change has not yet occurred.

CASE PROBLEM

The applicant applied for an employment-based green card in late 1997. In early 2001, a service center where the application was filed transferred it to a local office. The local office interviewed the applicant and his wife and, subsequently, transferred the application back to the service center. Next, the service center transferred the file back to the local office and, in the middle of 2003, the couple had another interview. The local office transferred the file again to the service center. Subsequently, the service center again transferred it to the local office in late 2004. Since then, the applicant and his wife have been unable to obtain case status information. In early May 2007, the Ombudsman learned that the file had been at the National Records Center and was sent back to the local office at the end of 2006. The case remains pending. 


2. USCIS Headquarters/Field Office Coordination

There appears to be a continued lack of communication and coordination between USCIS headquarters and the field. For example, in attempting to determine the total number of family and employment-based cases at field offices, headquarters cannot rapidly obtain the information because every office has its own tracking system using different criteria. The Ombudsman

routinely hears from field office staff that many suggestions forwarded by staff to headquarters are ignored.

Immigration Information Officers, adjudicators, and other employees are often not getting information about changes to procedures or receiving accurate data. This lack of communication and coordination hinders their capability to provide accurate information to the customer and complete cases in a timely manner. This is particularly difficult for IIOs who are the front line employees expected to know the answers to difficult questions. As noted by one IIO, immigration attorneys and consultants often know about legal and procedural changes before IIOs have the information or instructions from USCIS headquarters. The result is delay, additional expense, frustration, and hardship for the customer.

RECOMMENDATION AR 2007 -- 13

The Ombudsman recommends that the USCIS budget for each headquarters element include sufficient funds for detailed visits with field office and service center line and supervisory staff to enable headquarters to better understand the needs of these offices. 

In AR 2006 – 07, the Ombudsman recommended that USCIS incorporate into its ASC contract the ability to use the underutilized ASC staff in co-located facilities to assist field office operations. USCIS rejected this recommendation in its 2006 Annual Report Response (at p. 15):

USCIS has been expanding the role of the ASCs. A prime example is that the ASCs are being used to assist with the process of renewing [green cards]. However, it is important to ensure that the ASCs remain tightly focused on their core mission of identity verification and biometric collection. USCIS does not plan to modify contracts to allow local USCIS managers to individually assign other forms of work not described specifically in the Statement of Work.

The Ombudsman reiterates the concerns identified previously and again suggests that USCIS reconsider its position in the interest of efficiency and good government.

3. USCIS Relations with Stakeholders and Other Government Agencies

Meaningful coordination and communication is essential between USCIS and other relevant government agencies and employer groups, yet it is lacking.


USCIS personnel who handle records have expressed concern to the Ombudsman about the poor adherence to file handling procedures by CBP and Immigration and Customs Enforcement (ICE). While training in NFTS and records handling procedures were provided to CBP and ICE, continuous training is necessary. USCIS and the customer would benefit greatly from regular communication and coordination with other such entities.

RECOMMENDATION AR 2007 -- 14

The Ombudsman recommends that USCIS define a program to ensure proper handling and monitoring of its records. The program should be assigned to a USCIS headquarters office element. 


As described in last year's annual report (at p. 39), USCIS still needs to work on better communication and coordination with employers and government agencies at the federal, state, and local levels. At the same time, the necessity for such coordination and communication with these groups is rapidly increasing.

CASE PROBLEM

A U.S. citizen petitioner filed a Form I-130 for her husband in August 2006 and the petition was approved in December 2006. The petitioner received the approval notice, which indicated that the notice was forwarded to the DOS National Visa Center (NVC). The petitioner waited the necessary period of time, called the NVC, and was told the case was not at the NVC. In early 2007, the petitioner filed Form I-824 (Application for Action on an Approved Application or Petition) with USCIS at an additional \$200 fee, to forward the petition to the NVC. This interagency transfer should have occurred without the filing of the I-824. As of the writing to the Ombudsman, the application remained pending. 

CASE PROBLEM

In 2006, an applicant filed for waiver of the two-year foreign residency requirement (Form I-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e)) and submitted a green card application based on marriage to a U.S. citizen. Later that year, the applicant received conflicting information on the case location. First, USCIS said it was forwarded to a service center, then that it was forwarded to a local office, and then to another local office, which was the office with jurisdiction. The applicant made an INFOPASS appointment at the local USCIS office. The IIO stated that USCIS did not know the location of the application, DOS was responsible for adjudication of the waiver, and the inquiry should be directed to DOS. Next, USCIS scheduled the couple for a green card interview. At the interview, USCIS told them that it could not proceed without DOS' response on the waiver. The applicant contacted DOS, which said that it did not have the necessary paperwork from USCIS. In early 2007, USCIS contacted the applicant and directed her to file a new waiver form.

The applicant indicated to the Ombudsman that she cannot renew her driver's license because the green card application is pending for more than one year and the application receipt is over a year old. The applicant is fearful that her green card application will be denied and without an EAD her job may be in jeopardy. 

4. Interaction Among Headquarters Entities

The recent announcement by Director Gonzalez regarding senior management rotation is encouraging. At least four senior policy and management officials rotated into new positions within USCIS.⁶⁴ This action should expand their experience and enhance communication and coordination within USCIS. The Ombudsman notes that the process by which senior staff were selected and rotated should be transparent to ensure that such career-enhancing opportunities are fairly distributed and fit the needs of the agency.

Despite these promising rotations, effective communication issues still exist among different USCIS headquarters entities. During the reporting period, the Ombudsman observed several situations in which a headquarters entity was not aware of the actions of another entity. For example, during a visit to a digitization facility, the Ombudsman learned that USCIS acquired 500 licenses for a program to access the digitized files for USCIS, CBP, and ICE, instead of an enterprise license to provide access to the many tens of thousands of prospective users of the system. The Ombudsman understands that this occurrence was due to the lack of coordination between two key headquarters operational units. The recent managerial rotations described above, combined with a focus on “enterprise decision-making” that transcends subjects and personalities, will assist in preventing these types of problems in the future.

⁶⁴ Email from USCIS Director to the Ombudsman (Apr. 30, 2007).

L. Information Technology Issues

1. Background

In this reporting period, the effective deployment of information technology (IT) systems to all service centers and field offices remained a significant challenge for USCIS. USCIS stated in its 2006 Annual Report Response (at p. 12):

A variety of changes at both the Department and agency level have required modifications or cancellations of [IT] efforts, thereby making progress very difficult. Some of these changes include: creation of DHS, transitioning from INS to USCIS, changes in appropriated funds available from the Department and Congress, and changes in management of technology within USCIS.

New IT system efforts have been affected by fluctuations in funding and changes in oversight and management structures. Before new systems can be deployed they must be designed, engineered, developed, and tested using state of the art change management resources.

The Ombudsman's continued efforts related to IT focused on three broad concerns: (1) most USCIS adjudications processes are paper-based; (2) existing USCIS information management systems do not provide robust data analysis tools necessary to monitor productivity and make changes when necessary; and (3) most USCIS information management systems are stand-alone systems with little or no interconnectivity. More than four years after the creation of USCIS, all of these issues remain. As DHS Inspector General Richard Skinner testified at a February House of Representatives hearing:

. . . USCIS remains entrenched in a cycle of continual planning with limited progress toward achieving its long-term transformation goals. Until USCIS addresses this issue, the bureau will not be in a position to manage existing workloads or handle the potentially dramatic increase in immigration benefits processing workloads that could result from proposed immigration reform legislation.⁶⁵

This annual report highlights some additional areas of concern identified during this reporting period:

2. IT Transformation

The Transformation Program Office is properly committed to using subject matter experts in the reengineering process. The Ombudsman commends the office's effort to host

⁶⁵ Inspector General Richard L. Skinner, Statement before the Committee on Homeland Security, U.S. House of Representatives, "An Overview of Issues and Challenges Facing the Department of Homeland Security" (Feb. 7, 2007); http://www.dhs.gov/xoig/assets/testimony/OIGtm_RLS_020707.pdf (last visited June 3, 2007).

workshops in the field to identify business requirements as the first step in transitioning from a paper-based system to an electronic environment.

Another initiative by the Transformation Program Office which is of particular interest is the Integrated Digitization Document Management Program through which paper-based A-files are scanned and stored digitally. While this program is designed to bring the agency into the 21st century, several problems exist. For example, the entire digitization effort and facility were set up and started without USCIS leaders understanding digitization efforts already occurring at the Chicago Lockbox facility. The digitization facility is designed to cover only a small fraction of the paper files maintained by USCIS. The Ombudsman understands from recent discussions with USCIS that testing will begin this summer to allow a small number of adjudicators to access the scanned files.

There appears to be a lack of coordination between the various USCIS offices charged with elements of this process, including digitization, the Lockbox, the forms redesign group, and the A-file content management group. The Transformation Program Office is the logical choice to coordinate these efforts. For example, the Ombudsman learned in a USCIS digitization facility visit shortly after it was set up that senior USCIS personnel responsible for setting it up had not yet visited the Lockbox facility, which was digitizing records for three years. Moreover, these personnel seemed unaware of the type and nature of equipment used at the Lockbox.

3. IT Support

While there is some progress, IT support for current systems as well as support during transformation is critical. USCIS staff at field offices raised the need for IT support numerous times with the Ombudsman during the reporting period. USCIS should institute a process to ensure that necessary transformation projects, such as the computer system updates, do not adversely impact local systems.


USCIS often relies on contract IT personnel for support, but in some cases, the IT support is not located on-site. Very often field offices rely on one of their own employees to provide the necessary on-site support for users and local systems. Use of other non-IT staff to perform IT functions may negatively impact production in the field office, but some offices have no other choice.

4. Local IT Solutions

Until the IT transformation is complete and USCIS has the computer management tools required to accomplish its mission, field offices continue to rely on local systems to provide data necessary to manage offices. Many talented and creative USCIS employees in USCIS offices nationwide have IT expertise and continue to create excellent local systems to: track statistics; generate Notices to Appear; provide receipts to track locally filed applications; and track mail and congressional inquiries, among others. These systems should be shared with all USCIS offices as best practices in the absence of national systems available to provide needed information and do necessary tasks. Moreover, USCIS should commend its staff on the innovative solutions created.

USCIS should support local systems during this transitional time. IT personnel need to be responsive to field office requirements.

BEST PRACTICE


In the absence of a case management system and other simple fixes to track the numbers of visas available, many offices use off-the-shelf software to track pending preference-based employment and family cases to readily identify when priority dates are current and cases can be adjudicated. 


For example, the Tampa Field Office uses a simple, yet highly effective, spreadsheet to accomplish this task. Similarly, the Texas Service Center uses a database system to track and account for this information, while the Vermont Service Center has another off-the-shelf database program with similar results.


**5. Lack of Purchasing Coordination**


A disconnect exists between field offices and headquarters in the purchase of IT-related equipment. One field office purchased webcams for approximately \$150 per unit, prior to establishment of a contract for this equipment. Now this equipment is no longer supported by USCIS IT because there is a contract for camcorders, at a cost of approximately \$2,000 each, to tape interviews. This equipment is not only considerably more expensive, but is also cumbersome and more difficult for the officers to use. As a result of the additional expense, only a few of the adjudicators in that field office have videotaping capability.


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

In the New York Field Office, managers heavily rely on local systems to track case production. As of December 2006, ICE no longer supports local systems for USCIS, and at the time of the visit, USCIS had not identified a replacement. 

The Philadelphia Field Office reported that when computers were refreshed with updated software, many previously available software packages were not reloaded. As a result, staff could not access previously created documents. At the time of the visit, this office operated with remote IT staff instead of onsite support. 




In Newark, the office reported that the IT Help Desk has conflicting priorities as it is responsible to ICE/CBP and their contracts are administered by ICE. 

Newark developed its own receipting system for tracking locally filed applications, but this database was lost when the mandated computer refresh took place. 

The Des Moines Field Office noted that headquarters sometimes issues directives without determining whether they can be implemented in local offices. For example, one memo required scanning EAD applications and forwarding them to the applicable service center, although Des Moines has no scanner. At the time of the visit, if Des Moines had IT problems, the office had to rely on an IT person located in Omaha. 

RECOMMENDATIONS AR 2007 -- 15

The Ombudsman also recommends that USCIS:

- (1) Ensure that a computer refresh does not adversely impact local systems.* 
- (2) Make available to each local office software that is authorized to enable offices to continue to use previously created documents in those systems; and* 
- (3) Consider a long-term solution to the onsite support issue such as a central system.* 


M. Staffing, Career Development, Training, and Strategic Workforce Planning and Recruiting

The following case problem demonstrates the consequences of a lack of training.

CASE PROBLEM

In late spring of 2003, an applicant and her two children applied for green cards based on her entry as a K-1 fiancée and her subsequent marriage to a U.S. citizen. In a summer 2004 interview, USCIS informed the applicant that she had a pending name check. Three weeks later, the children received conditional green cards. In a 2005 INFOPASS appointment, USCIS said that the name check was still pending for the applicant. She contacted the FBI via email and was informed that USCIS never submitted her name for checking. The applicant explained this to USCIS during an INFOPASS appointment. Ninety days later the applicant again contacted the FBI and received the same response – that USCIS had not submitted the name check. The individual continued to inquire via fax, email, and in-person visits, but all efforts were fruitless.

By mid-summer of 2006, the applicant still had no green card. The children's green cards were expired and the applicant made an INFOPASS appointment to inquire about how to remove the conditions for the children's cards where the principal applicant was not yet approved. After expressing surprise at this circumstance, the IIO advised that they file Form I-751 (Petition to Remove the Conditions of Residence), for the mother and children. USCIS then rejected the I-751s.

In late 2006, the applicant contacted the Ombudsman and her congressional representatives. As of the end of this reporting period, the applicant received her green card, but the children's cases remain pending. The local office appears to be actively working their cases. 

1. Background

During the reporting period, USCIS combined its human resources and training and career development components into a new office led by a career senior executive (SES)⁶⁶ as the agency's first Chief Human Capital Officer. As a result, the agency completed its first strategic workforce planning and integrated training effort. This effort addressed aspects of the staffing and training gaps identified in the Ombudsman's 2006 Annual Report.


As part of this strategic workforce planning and integrated training, USCIS: (1) completed a Strategic Workforce Plan to identify gaps in the workforce, future personnel needs,

⁶⁶ The GS, or General Schedule, is a federal government system used to identify a range of difficulty and responsibility levels for many positions, which ranges from GS-1 to GS-15. An SES, or Senior Executive Service, position is filled by an individual who meets certain Executive Core Qualifications.

and career paths; (2) issued its first agency-wide policy for a uniform training curriculum standard for all courses as well as instructor certification for presentation and content; (3) implemented a leadership program for all grade levels, GS-5 through GS-15, and SES, that also fulfills a Homeland Security Act requirement for managerial rotation of leaders at grades GS-14/15;⁶⁷ (4) initiated a labor-management relations plan to engender mutual understanding and reduce tensions as the agency transforms its operations; and (5) included in the proposed fee rule Individual Learning Accounts based on individuals' career paths and employee development plans.⁶⁸


Recruitment and training is as important as IT and financing in the USCIS transformation. To achieve the potential of these important initiatives, there must be continued and direct support from the USCIS Director. However, the position of Chief Human Capital Officer was downgraded from its initial SES rank to a GS-15 in the agency's first vacancy announcement following the retirement of the SES incumbent.

RECOMMENDATION AR 2007 -- 16

The Ombudsman recommends that the Chief Human Capital Officer have a rank position equal to the Chief Information Officer and Chief Financial Officer. USCIS should establish the role as a career reserved SES position. 

At present, training efforts and leadership programs appear to be pursued separate from career development and retention needs. The agency is providing off-the-shelf course offerings without a clear correlation to career development as career paths are not defined. Moreover, USCIS has multiple training needs: (1) mandatory training requirements (computer security); (2) training that is technical and related to the job currently assigned; (3) training required for the next job desired by the employee for career advancement; and (4) skills for general leadership.

RECOMMENDATION AR 2007 -- 17


The Ombudsman recommends that USCIS ensure there is a comprehensive merger of core job career paths with necessary training requirements – mandatory, technical, and leadership – oriented to future needs and groups, as well as transparency from entry to executive levels. 


During the reporting period, USCIS undertook a methodical review of job requirements and skill sets needed to adjudicate cases. The agency focused on redesigning the Basic Officer Training Course for adjudicators and set principles to provide real-time accuracy and a “blended approach” to training to make programs accessible through technology and classroom interactions.

⁶⁷ See 6 U.S.C. § 271(A)(4).

⁶⁸ See 72 Fed. Reg. at 4901.


RECOMMENDATION AR 2007 -- 18

The Ombudsman recommends that USCIS' blended approach to training continue and expand. USCIS should establish, regulate, and evaluate core training needs throughout its operations in the same manner for its review of the Basic Officer Training Course for adjudicators. 

Moreover, the quality of the curriculum, teaching methodology, and instructors needs to be assured. USCIS should establish a certification process for both federal and contracted instructors. 

USCIS has several strategies to meet uneven demands and surges of work. It hires temporary employees, sends cases to less busy offices, and shifts permanent employees to different offices on temporary assignments. As described in the Ombudsman's previous annual reports, USCIS has become dependent on temporary employees who have stayed for several years.

RECOMMENDATION AR 2007 -- 19

To reduce USCIS' dependency on temporary employees and assignments, the agency should establish a table of standard staffing levels and office organization to provide the requisite staff at any particular office. 

2. Staffing, Career Development, and Training Areas of Concern

The Ombudsman will continue to monitor the following issues:

a. Training After Immigration Reform

If comprehensive immigration reform is enacted and signed into law, the thoughtful and systematic training of officers contemplated in USCIS' Strategic Workforce Plan and illustrated in the process to redesign the Basic Office Training Course may be overwhelmed by the need for large numbers of narrowly trained employees to implement discreet provisions of the reform. Contingency plans must be in place to ensure that the systemic training and careful development of permanent USCIS staff to fill future gaps is not forgotten when management invariably diverts its attention to implementing immigration reform provisions.

b. Hiring of Temporary Employees

The agency also needs to be cautious that the expedient hiring of large numbers of workers does not replicate the situation of the large numbers of "term employees" hired originally for backlog reduction. Term employees became an essential part of the USCIS workforce, but they were not guaranteed careers, hired for growth potential, or trained as carefully and broadly as permanent employees. Staff morale and office efficiency suffered as the term contracts had to be renewed each year, often not until the last minute. Term employees also

sometimes prevented permanent employees from obtaining promotions, as the term employees occupied those positions. Moreover, to the extent the term employees left USCIS or were not renewed, the knowledge base left with them.

This year, to have enough funds to prevent the unacceptable loss of term employees, the hiring of permanent staff was frozen. Workforce planning is difficult at best under these circumstances.

c. Training of Non-Adjudicators

USCIS has focused on adjudicators and the upgrading of their skills. However, more attention is needed for training non-adjudicators such as IIOs, quality assurance officers, and support personnel. USCIS provides services, such as green card adjudications, but it also provides information, which requires the efficient movement of electronic data among physically separated offices. As a result, there is a need to evaluate the career paths and promotion opportunities for employees who have constant public contact and must understand electronic work flows.

d. Work-at-Home Challenges

Work-at-home arrangements can be part of the organization of a modern workforce, but USCIS' work-at-home arrangements have some challenges. Taking home paper files raises security and privacy concerns over the control of sensitive documents. Work-at-home arrangements isolate employees from the daily interactions and discussions with seasoned employees and mentors that cumulatively build their institutional awareness and judgment skills. This consideration for nurturing a pool of employees who have strong interpersonal skills is particularly important as one-third of the agency's supervisors will reach retirement age by the year 2010. During the next reporting period, the Ombudsman hopes to review further the challenges that current work-at-home policies may present for customer service.

e. Uncovering and Sharing Best Practices


Many offices have developed their own solutions to problems faced by most, if not all, offices, but these approaches often are not widely shared:

- Managers at some field offices were not aware of excellent training modules and material produced at the Los Angeles Field Office.
- The superb letter writing program used by the Nebraska Service Center has not been widely evaluated for use at other offices.
- The system and process to track and evaluate case flows at the Texas Service Center are not broadly appreciated.

Establishing both a culture and process that encourage the sharing of best practices will address many training needs at numerous offices and at little cost to the agency. Teleconferences

and virtual meetings have their value, but do not substitute for the face-to-face interaction of employees at meetings and regional conferences.

RECOMMENDATION AR 2007 -- 20

The Ombudsman recommends that USCIS expand the opportunities for vertical and horizontal communication among offices by supporting conferences focused on specific work issues and providing funds for travel of working level staff to share best practices. 


f. Recognizing and Training the Trainers

All offices have “go to” persons who, by virtue of longevity and refined judgment, advise officers on case situations and who act as mentors or trainers. Some offices have designated training positions and many offices have employees who are assigned collateral duties as trainers. These employees should be recognized and provided support for their important roles.

g. Training for Supervisors

A commonly-heard complaint among field managers is that training for supervising employees and managing workflows is lacking. There is a need for training beyond knowledge-based instruction on product lines or new laws and regulations. While knowledge and leadership training are important, first-line and other supervisors also should learn about employment regulations and agency policies on labor management. For example, supervisors should be provided techniques to resolve employee conflicts. The agency needs to clearly define and provide for a standard set of additional courses that employees at the journeyman level should take as they move into supervisory and leadership positions before they assume the most senior positions.


RECOMMENDATION AR 2007 -- 21

The Human Capital and Training Office in collaboration with field offices and service centers, should determine the skills and knowledge sets required for supervisors to be effective in their daily managing of people and resources. Specific resources or training programs should be identified on diversity requirements, discipline issues, handling problem employees, evaluating workflows, and budget management. Headquarters funds should be provided to field offices for employees to attend these sessions. 


In summary, USCIS has taken significant steps to address its leadership and training needs. Chief among these steps is the recognition and articulation of a strategic human capital development and recruitment plan. Several initiatives in the plan establish baselines and proposed further actions. The next steps are to build on the strategic plan, develop training material and methods, and continuously validate them. The agency needs to avoid short-term


hiring and narrow training solutions that replicate the problems associated with hiring term employees and might undermine the systemic and comprehensive approach sought by the strategic plan.


RECOMMENDATION AR 2007 – 22

The agency should establish actionable multi-year milestones that lead to fulfilling the objectives of the Strategic Workforce Plan and ensure a systemic and sustained effort to recruit and develop its personnel. Responsibility to implement the plan should be included as a specific job requirement for the Chief Human Capital Officer and in the job requirements statements of the senior officers in the Office of Human Capital and Training. 


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


The **Philadelphia Field Office** reported that new hires do not have the basic computer skills necessary to function within USCIS. 


In the **Baltimore Field Office**, formal training occurs once a month, usually for two to three hours. Management in Baltimore would like to institute a certification process wherein officers would have to meet certain benchmarks to move up to the next seniority level. 


El Paso officers are trained on all applications. The schedule is set up for officers to interview three days per week, leaving two days open for case completions, case review, special emphasis matters, and training. 


Stakeholders in **New York** believe the officers who conduct marriage fraud interviews are not well trained. 

At the **Washington Field Office**, training is conducted once a month, mostly to resolve green card issues. There is no other regularly scheduled training for adjudicators. 

In **Okalahoma City**, a support employee indicated she was required to answer the phone, yet had no training, could not answer any questions, and just referred individuals to the website. Other employees also indicated training was needed in their current positions and as they take on new tasks. 



An IIO in **Okalahoma City** indicated it would be helpful to have training for information gathering, as well as policy and procedure. 

USCIS is adding a block of training about the **NBC** to the basic course for officers so new hires can understand the process. 

The **NBC** itself has struggled to provide its staff with adequate training. There is a voluntary training program established for adjudications, but not for records. 

RECOMMENDATIONS AR 2007 -- 23

The Ombudsman recommends that USCIS:

- (1) Consider amending job requirements to include basic knowledge of certain commercially available computer programs used in the offices; and *
- (2) Provide all interviewing officers with Interviewing Techniques Training. Adjudicators who received this training indicated it helped them conduct better interviews. *

N. Delay in Updating U.S. Citizenship Designation in Records; Some Naturalized Citizens Cannot Apply for Passports

In the 2006 Annual Report (at p. 44), the Ombudsman discussed concerns with USCIS updating its records regarding citizenship acquisition (*i.e.*, naturalization records).

In its 2006 Annual Report Response, USCIS stated (at pp. 16-17):

For older cases, USCIS conducted an extensive comparison of records in several systems, systems sweeps and modifications to systems coding to ensure that previous records were correctly updated. For new cases, performance is monitored to ensure that when citizenship is granted, the associated status records are updated promptly after the naturalization ceremony.

The Ombudsman appreciates USCIS' response to this important issue and will continue to monitor it.

O. Green Cards Collected, Not Recorded, and Green Card Delivery Problems

In the 2006 Annual Report (at p. 43), the Ombudsman identified two green card problems: (1) the non-recording of green cards that were returned to USCIS field offices or ASCs (*e.g.* upon green card holders' naturalization or card expiration); and (2) verification of green card delivery.

Individual travelers who were referred to secondary processing at ports of entry had problems because inspection showed either that: (1) a green card was still in circulation for a naturalized citizen bearing a U.S. passport; or (2) a returning permanent resident bearing a new green card still possessed a superseded card. USCIS informed the Ombudsman during the reporting period that it had resolved the issue of green card returns which were not recorded.

The Ombudsman is pleased to report the agency's plans to adopt the essence of the 2006 Annual Report's recommendation (AR 2006 -- 08). For verification of green card delivery, USCIS reported in its 2006 Annual Report Response (at p. 16):

In FY 07, as we complete the transition to new postage meters, we plan to transition to new standards for mail delivery to allow mail forwarding with notification from the US Postal Service through its address service. As part of the proposed new fee structure, we further plan to move to 2-day delivery of cards with delivery confirmation. This will reduce delivery times, give customers tracking numbers so they can track mail delivery, while also providing for more secure delivery.

USCIS reported in its recent fee proposal, now final, that it was partnering with the U.S. Postal Service (USPS) to develop a way for USCIS “to track delivery of each document and to respond to queries from applicants regarding the status of document delivery.”⁶⁹ The proposed process change will apply to green cards and all USCIS secure documents (*i.e.*, EADs and travel documents). USCIS and USPS foresee secure documents delivered via priority mail, a higher class of service than first class, with delivery confirmation.⁷⁰ The Ombudsman will monitor the situation as the process is introduced.

IV. UP-FRONT PROCESSING

As in previous annual reports, the Ombudsman continues to recommend the expeditious national roll-out of the DORA program or a similar program that utilizes up-front processing of applications for immigration benefits. This roll-out would be consistent with the principles articulated in the Second Stage Review process for DHS.⁷¹ During the reporting period, USCIS expanded DORA to two offices – El Paso and Oklahoma City. Preliminary reports from those two offices have been negative, but inadequate resources and other circumstances need to be fully considered in an evaluation of DORA at those offices. In the meantime, the Ombudsman continues to recommend the expansion of DORA and up-front processing to all USCIS offices.

A. Background

Up-front processing is characterized by:

- Pre-screened applications to ensure completeness prior to filing;
- One form and one fee per immigration benefit filed by customers;

⁶⁹ 72 Fed. Reg. at 4899.

⁷⁰ *See id.*

⁷¹ DHS Secretary Michael Chertoff stated the following in prepared remarks at the Ronald Reagan Building regarding the DHS Second Stage Review: “Part of the problem is that the current business model fosters a long delay between application and the final adjudication of applications for residence and citizenship, during which many applicants stay here as temporary residents . . . [T]his system puts some of the most important security screening at the end of a lengthy process rather than the beginning, and leads to an unnecessary high rate of rejection late in the process.” (July 13, 2005); http://www.dhs.gov/xnews/speeches/speech_0255.shtm (last visited June 5, 2007).

- Same-day interviews and biometric capture, if required; and
- Applications completed within days, or even hours, of filing.

The goals of up-front processing are to:

- Identify national security threats and fraud as early as possible in the immigration process;
- Reduce the issuance of interim benefits to mitigate the risk of ineligible applicants acquiring legal status in the United States before adjudication of the green card application;
- Improve customer service by implementing a streamlined process that adjudicates applications in less than 90 days; and
- Allocate resources effectively by focusing on adjudicating primary benefits instead of interim benefits.

In responding to the 2006 Annual Report, the agency stated (at p. 21):

USCIS agrees with this premise as a long-term objective. It is USCIS' goal to process cases in ways that do not lead to interim benefits and provide high quality decisions within 90 days that reflect a full understanding and sensitivity to the national security and public safety of the United States and its citizenry.

The Ombudsman first recommended up-front processing in the 2004 Annual Report (at pp. 8-12). In May 2004, USCIS implemented several pilot programs including: DORA (the Family-Based Immigration Backlog Elimination Program); the California Service Center pilot (the Employment-Based Backlog Elimination Pilot), and the New York District Office pilot (the Backlog Elimination and Fraud Reduction Pilot). The Ombudsman's 2004, 2005, and 2006 annual reports provide extensive details on these programs.⁷²

In its 2006 Annual Report Response (at p. 21), USCIS commented that the Ombudsman's up-front processing recommendation "creates potential vulnerabilities as unsuccessful customers walk away with their applications." USCIS further observed that "[d]uring Legalization, the INS

⁷² Of the up-front processing pilot programs, DORA most closely matches the Ombudsman's recommendations. Under DORA, a USCIS field office initiates certain background and security 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 the NBC. The applicant receives a notice for an appointment at an ASC, which captures biometric information. The Chicago Lockbox then issues a receipt notice to the applicant and forwards the newly created case to the NBC. The NBC assembles receipted applications into A-file jackets and initiates additional background and security checks. The NBC then forwards the files to the Dallas Field Office. When all background checks are completed, Dallas completes the adjudication of the case and orders production of green cards for qualified applicants.

was sued for allegedly front-desking applicants, telling them that they were not eligible and then sending them away . . .” USCIS’ comments and observations are in reference to litigation resulting from INS administration of legalization provisions of the 1986 Immigration Reform and Control Act.⁷³ In the legal proceedings, litigants claimed that they were erroneously told by INS officers that they were not eligible and prevented from filing for relief under the Act. INS was unable to prove this did not happen to particular individuals and, thus, had difficulty defending itself against such charges.

The Ombudsman shares USCIS’ concern regarding front-desking. To address this issue at the Dallas office, ineligible applicants are informed by an IIO that they will not qualify for the program for a particular reason, such as visa unavailability. The applicant then can file the application, despite the likelihood that it will result in a denial or RFE. This feature of the DORA acceptance policy addresses the concerns raised by the U.S. Supreme Court in *Reno v. Catholic Social Services, Inc.*⁷⁴ It should be noted that the Ombudsman is unaware of any lawsuits filed against the Dallas District Office claiming front-desking in the three years of the DORA pilot.

B. The Dallas Office Rapid Adjustment Pilot Program

In the 2006 Annual Report Response (at p. 21), USCIS raises two key concerns with DORA. First, rigorous up-front screening of applications may result in customers visiting field offices multiple times. The Ombudsman agrees that customers should not return repeatedly to submit an application. Clearer instructions on USCIS forms and website, better information from the NCSC, and timely adjudications are the key factors to reducing repetitive field office visits. In DORA, customers have direct communication with IIOs and interviews are conducted on the day of application submission, which may reduce case status inquiries that often result from long-pending cases.

Second, USCIS states (at p. 21) that “[u]p-front processing can also lead to increased costs since each office must be staffed to handle fluctuating levels of case filings and remittances. Many of the processes in this model are currently handled in central locations, and the local offices do not staff for those processes.” Variability in the quantity and type of immigration filings presents a recurring challenge to USCIS. From time to time, field offices and service centers may receive a deluge of applications and petitions due to a statutory or regulatory deadline, a change in law, or an increase in filing fees. At other times, USCIS offices may have excess capacity. Historically and from the customer’s perspective, the principal issue has been processing backlogs, rather than excess capacity. Whether processing is at a centralized filing facility or at a field office, the challenge to USCIS is largely the same. Robust, proactive management of personnel and workflows is essential to efficient processing regardless of where USCIS performs processing and adjudications.

From its inception in the first week of May 2004 through May 4, 2007, DORA scheduled 33,538 appointments, of which 7,205 (21 percent) were no-shows. DORA rejected up-front

⁷³ See generally Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986).

⁷⁴ See 509 U.S. 43, 61-63. (1993).

5,297 (16 percent) of the total applications received. Of the 25,432 applications accepted for processing through May 4, 2007, 18,563 were approved, 949 denied, and 2,844 remained pending.⁷⁵

Figure 14: DORA and Servicewide Denial Rates, May 2004 – December 2006

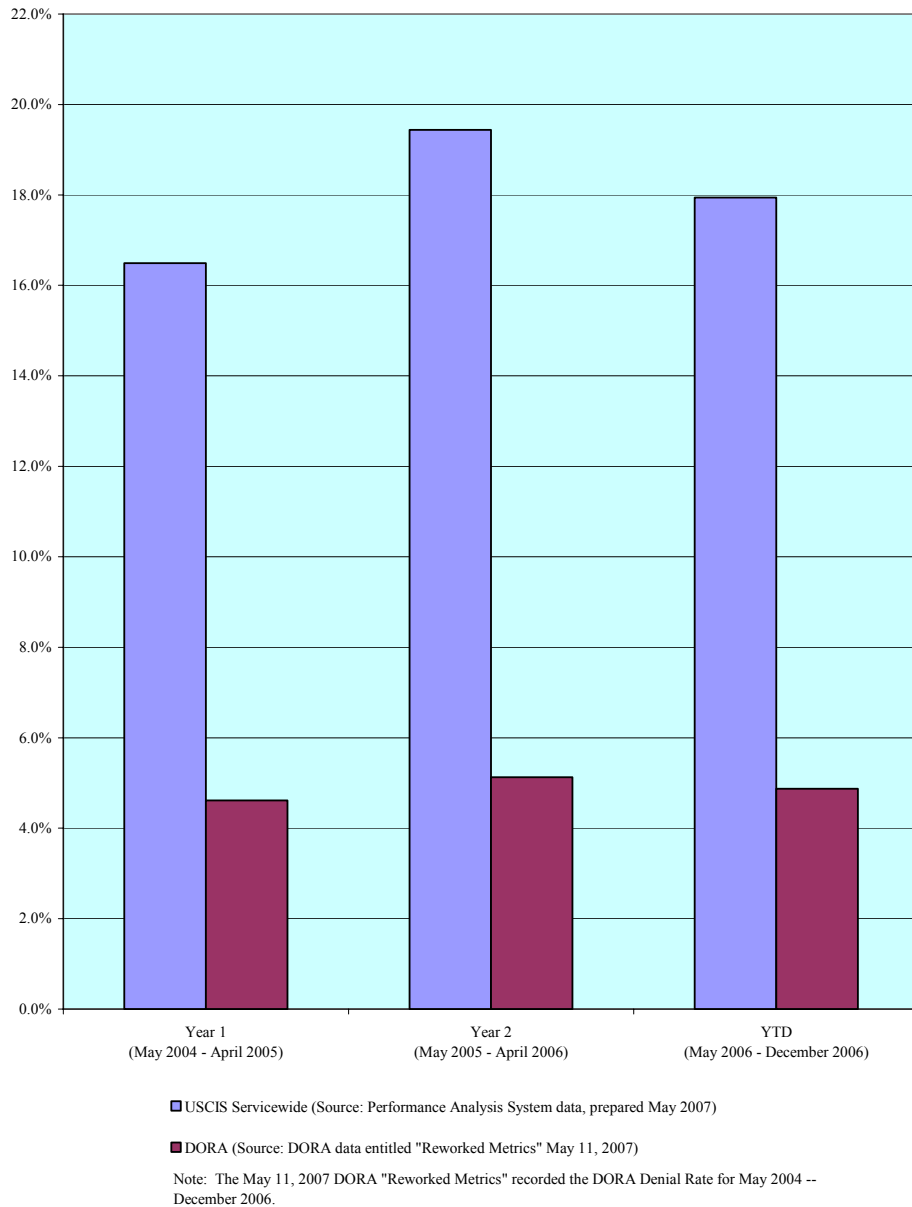


Figure 14 shows the dramatic difference in denials in the DORA process wherein many applicants are rejected up-front versus the USCIS national standard of accepting most applications even when incomplete.

⁷⁵ The Dallas District Office provided the raw data on DORA.

Approximately 46 percent of accepted cases were completed within 90 days of filing (11,997 approved of 25,432 considered). Had it not been for delays caused by FBI name check issues, the 90-day completion rate would have exceeded 66 percent. Only 3,677 interim benefits were issued to DORA applicants – 14 percent of the total number of DORA green card applications. Nationally, most applicants applying for green cards also apply for interim benefits because USCIS only publishes its 180 day processing goals, rather than actual processing times, if under 180 days.⁷⁶

Congress and the media have focused much attention on the REAL ID Act, which sets standards for new drivers' licenses and identification documents issued by the states.⁷⁷ If, however, foreign nationals are able to obtain interim benefits from USCIS, they can legally obtain drivers' licenses and Social Security cards – even if they are ultimately not eligible for a green card. Issuance of interim benefits to ineligible applicants undermines the larger objective of the REAL ID Act and, for that reason, the continuation of the current application processing methodology may compromise national security. DORA's up-front processing approach provides a fix that has proven itself for three years.

Unfortunately, the DORA data available only tell part of the story. The agency has not implemented any evaluation criteria to analyze up-front processing programs, despite numerous requests by the Ombudsman. USCIS welcomed the assistance of the Ombudsman to develop such metrics, but the Ombudsman understands that such metrics still are not in use months later. After three years of a successful pilot program, USCIS needs to move forward. The agency has a history of continuing pilot programs indefinitely, which it does not seem to be able to fully evaluate, implement, or shut down.

C. The 90-Day Program

Aside from the DORA up-front processing program, USCIS has implemented a 90-day program in nearly all of its field offices, but the agency has not made this program transparent to customers and stakeholders. This lack of transparency, combined with published processing dates showing a minimum of 180 days processing, has resulted in hundreds of thousands of applicants continuing to file interim benefit applications even though in many jurisdictions USCIS confirms that processing times are less than 90 days.

As currently designed, the 90-day program is identical to the New York District Office Backlog Elimination and Fraud Reduction Pilot, which often did not meet its processing time goal. The 90-day program seeks to compress the current process into 90 days, rather than use an up-front screening of applications to ensure completeness prior to submission. In the 90-day program, if USCIS requests additional evidence, the employment authorization is not issued until the customer provides the requested information.⁷⁸ The 90-day clock stops when USCIS

⁷⁶ See section III.C.

⁷⁷ See Div. B of Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat. 231, 310 (May 11, 2005).

⁷⁸ See 8 C.F.R. §§ 274a.13(d) and 103.2(b)(8) and (10). In its 2006 Annual Report Response (at p 22), USCIS stated that it "is directly attacking backlogs and the provision of interim benefits . . . through early, comprehensive

requests the additional information. While the Ombudsman is supportive of innovative approaches that reduce processing times for customers, in many cases the 90-day program has not provided timely and efficient delivery of immigration services. Additionally, unless actual processing times are published, instead of the current 180-day standard processing goal times, the applicant will be induced to apply for unnecessary interim benefits, which creates an appearance that USCIS continues this program for financial gain.

The target dates for actions to occur to meet the goal of 90-day adjudication are as follows:

Figure 15: Target Dates for 90-Day Adjudication Process

Day	Process
1	Application Filed
5	Application Received at NBC from Lockbox
20	Application Interview Ready
25	Interview Scheduled
50	File Sent to Field Office
65	Interview Conducted
90	Application Adjudicated

Specifically, in the 90-day program, applicants file applications at the Lockbox staffed mainly by a financial services contractor for USCIS. The Lockbox accepts and deposits the fees, sends receipts, and performs the initial data entry. The Lockbox then ships the cases to the NBC.

The NBC performs a *prima facie* review within ten days of the filing date and initiates background checks. Applicants then are scheduled for fingerprints and biometrics at ASCs. Next, cases either are available for interview at field offices or, where necessary, the NBC issues an RFE.

Field offices schedule available cases for interview at least 40 days in advance of the interview date, and the NBC generates an interview notice. The file is sent to the field office for interview with the ultimate goal of completing adjudications within 90 days.

The NBC processes ancillary applications such as EADs and travel authorizations beginning on day 75 to issue these documents by day 90, if required.

D. Expansion of DORA to El Paso and Oklahoma City Field Offices

While the Ombudsman is pleased that USCIS expanded DORA beyond the Dallas office, in both El Paso and Oklahoma City there has been insufficient training, staffing, or resources

prescreening of adjustment of status and related applications to identify deficiencies. Until the deficiencies are resolved, the processing clock is stopped so that employment authorization and similar benefits are not granted.” The use of the term “prescreening” may be misleading in this context. At that stage, USCIS already has accepted the green card application at the Lockbox facility, deposited the fees, and forwarded the case to the NBC for administrative processing before the comprehensive screening, which may result in the stopping of the processing clock and delay in issuance or denial of interim benefits.

devoted to the pilots to successfully implement them. Consequently, the results of the DORA expansion may not demonstrate the advantages of up-front processing.

When an up-front processing model is introduced at an office, there is a short-term need for additional staffing to enable the program to be implemented simultaneously with existing caseloads. Field offices often have interviews scheduled up to six months in advance. Until that workload is cleared, there may be a need for more adjudicators to conduct the additional interviews, and appropriate resources must be provided. The announcement in February 2007 of the proposed fee increases resulted in a surge in applications. As a result, implementation of the DORA program at the El Paso and Oklahoma City offices was even more challenging, especially since the offices received no additional short-term resources to begin the process. Additionally, in Oklahoma City, current lack of a field office director leaves the office without the leadership necessary to implement and test the up-front processing model.

In its 2006 Annual Report Response (at p. 23), USCIS stated that both the 90-day process and DORA have “advantages” and that the agency “will conduct a full analysis of both methods to decide which to adopt nationally.” A full and fair comparison of DORA and the 90-day program requires testing that includes controlling for the variables mentioned. The Ombudsman looks forward to receiving the results of that analysis.

RECOMMENDATION AR 2007 -- 24

The Ombudsman recommends that USCIS end the now three-year old DORA pilot. USCIS should evaluate the different up-front processing programs to determine the comparative value of each program and whether they should be expanded. The USCIS findings and empirical data should be made available to the public. The agency should either implement a version of DORA nationwide or another program which will achieve the same objectives with equal or better results.

V. RECOMMENDATIONS

This section includes summaries of the Ombudsman’s formal recommendations for the 2007 reporting period, as well as those prior recommendations to which the Ombudsman received new USCIS responses during the period.⁷⁹ The recommendations stem from a variety of sources, including problems reported to the Ombudsman by individuals and employers, discussions with immigration stakeholders, and suggestions of USCIS employees themselves. For the full text of the recommendations and USCIS responses, please refer to the Ombudsman’s website at www.dhs.gov/cisombudsman.

⁷⁹ The Homeland Security Act of 2002, 6 U.S.C. § 272(c)(1), states that the Ombudsman’s annual report shall include an inventory of the recommendations and indicate: (1) if action has been taken and the result of that action; (2) whether action remains to be completed; and (3) the period during which the item has been on this list.

The Ombudsman also submitted informal recommendations to USCIS. Problems, concerns, and observations reported by immigration benefit applicants, employers, immigration lawyers, community-based organization representatives, USCIS employees, and from the Ombudsman's observations and research formed the basis for these recommendations. The Ombudsman emailed these recommendations to USCIS senior leadership. Informal recommendations addressed USCIS internal processing, filing procedures for immigrant benefit applicants, visa usage, and immigration benefit applications delayed because of FBI name checks.

For example, the Ombudsman submitted an informal recommendation that suggested USCIS alter the language of Form G-731, a form to inquire about green card status. The form contained procedural explanations that assumed the applicant had filed a Form I-90, an application to replace a green card, when in fact the applicant may never have filed such a document. After receiving the informal recommendation, USCIS modified the language of Form G-731.

Figure 16: Recommendations

Number	Recommendation	Date	USCIS Response	Recommendation Web Link
2007 Reporting Period				
32	Deferred Action	April 6, 2007	N/A	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf
31	30-day Advance Notice for Changes in Policy and Operations Instructions	February 8, 2007	May 7, 2007	http://www.dhs.gov/xlibrary/assets/cisomb-rr-31-uscis-sop-020807.pdf
30	Improvement of FOIA Operations	July 12, 2006	October 5, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_30_FOIA_Processing_07-12-06.pdf
29	Extraordinary Ability "O", Petition Extension	June 30, 2006	October 3, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_29_O_Visa_Rules_06-30-06.pdf
2006 Reporting Period				
28	Address Change (AR-11)	June 9, 2006	September 8, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_28_Online_Change_of_Address_06-09-06.pdf
27	Up-front Processing	May 19, 2006	August 21, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_27_Up-Front_Processing_05-19-06.pdf
26	DNA Testing	April 12, 2006	April 12, 2006; July 5, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_26_DNA-04-13-06.pdf
25	Employment Authorization Documents (EADs)	March 20, 2006	April 27, 2006; June 20, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_25_EAD_03-20-06.pdf
24	Asylum Adjudication	March 20, 2006	April 27, 2006; June 20, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_24_Asylum_Status_03-20-06.pdf
23	Military Naturalization	March 20, 2006	April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_23_Military_Naturalization_03-20-06.pdf
22	Notices to Appear	March 20, 2006	April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_22-Notice_to_Appear_03-20-06.pdf
21	Asylum Division Use of Notice of Action Form I-797	December 7, 2005	December 27, 2005; March 17, 2006; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_21_Asylum_Office_Use_of_I_797_12-07-05.pdf
20	Administrative Appeals Office	December 6, 2005	April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_20_Administrative_Appeals_12-07-05.pdf
19	Elimination of Asylum Pick Up Decision Delivery Process	October 13, 2005	December 12, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_19_Asylum_Pick_Up_10-12-05.pdf
18	Public Reporting for Capped Categories	August 28, 2005	December 27, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_18_Public_Reporting_for_Capped_Categories_08-28-05.pdf
17	Elimination of Postal Meter Mark	July 29, 2005	December 27, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_17_Immigration_Postal_07-29-05.pdf
16	I-131 Refugee Travel Document	June 10, 2005	December 27, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_16_I_131_Refugee_Travel_Document_06-10-05.pdf

Number	Recommendation	Date	USCIS Response	Recommendation Web Link
2005 Reporting Period				
15	Issuance of Receipts to Petitioners and Applicants	May 9, 2005	May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_15_Lockbox_Contract_05-09-05.pdf
14	Pilot Program Termination	February 25, 2005	May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_14_Pilot_Program_Termination_02-25-05.pdf
13	Issuance of Permanent Resident Cards to Arriving Immigrants	December 15, 2004	May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_13_IV_I_551_12-15-04.pdf
12	Lockbox	November 29, 2004	December 17, 2004; May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_11_Lockbox_11-29-04.pdf
11	INFOPASS	November 29, 2004	December 17, 2004; May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_12_InfoPass_11-29-04.pdf
10	Naturalization for Survivors of Domestic Violence	October 6, 2004	December 17, 2004; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_10_INA_319_(a)_Naturalization_10-06-04.pdf
9	Standardized Forms	October 6, 2004	December 17, 2004; May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_9_Standardized_Forms_10-06-04.pdf
8	Premium Processing	September 27, 2004	December 17, 2004; May 25, 2005; December 27, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_8_Premium_Processing_09-27-04.pdf
7	I-9 Storage	August 16, 2004	December 17, 2004	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_7_I_9_Storage_08-16-04.pdf
6	E-filing	August 16, 2004	December 17, 2004; May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_6_E_filing_08-16-04.pdf
5	Customer Service Training for USCIS Employees	August 16, 2004	December 17, 2004; May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_5_Customer_Service_Training_for_USCIS_Employees_08-16-04.pdf
4	Fee Instructions	June 29, 2004	December 17, 2004; May 25, 2005; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_4_Fee_Instructions_06-29-04.pdf
2004 Reporting Period				
3	Reengineering Green Card Replacement Processing	June 18, 2004	December 17, 2004; April 27, 2006; May 23, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_3_Reengineering_Green_Card_Replacement_Processing_06-18-04.pdf
2	Streamlining Employment Based Immigrant Processing	June 18, 2004	December 17, 2004; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_2_Streamlining_Employment_Based_Immigrant_Processing_06-18-04.pdf
1	Streamlining Family-Based Immigrant Processing	June 18, 2004	December 17, 2004; April 27, 2006	http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_1_Streamlining_Family_Based_Immigrant_Processing_06-18-04.pdf

Pursuant to the Homeland Security Act of 2002,⁸⁰ USCIS responded to recommendations from the Ombudsman during the reporting period, and on May 18, 2007 the agency responded to the recommendations in the 2006 Annual Report.

USCIS has implemented some of the Ombudsman's recommendations. In certain cases, USCIS began initiatives based on the Ombudsman's recommendations, but did not follow through on them. The agency indicated basic agreement with many recommendations, but did not implement all of the recommended changes. The Ombudsman understands that implementation of these recommendations may involve an investment of time and resources at

⁸⁰ See 6 U.S.C. § 272(f).

the outset, which would lead to cost savings, enhanced efficiency, and improved customer service downstream. USCIS' limited or inconsistent attention to four years of recommendations, while not providing equal or better alternatives to serious customer service and security issues, is of concern.

For an agency in desperate need of rapid change, USCIS should devote sufficient resources to address these recommendations. In late 2003, USCIS took a positive step in establishing the Office of Customer Relations Management (OCRM). This office was to be staffed by at least 15 people to: (1) serve as the liaison to the Ombudsman; (2) evaluate customer service and recommend changes to the Director to improve this service consistent with national security and from problems identified by the Ombudsman; (3) review USCIS developing systems and programs regarding customer service; and (4) conduct focus groups and certain survey measures with non-governmental organizations on new customer service trends and needs. In actuality, USCIS funded only two OCRM positions for a short period of time, thereby severely limiting USCIS' capabilities to address the Ombudsman's concerns.

As of this writing, OCRM is not part of USCIS' plan. Instead, the USCIS Director's office has begun to handle all aspects related to the Ombudsman. There is no dedicated office or personnel, as originally contemplated in the formation of the OCRM, to be responsible for follow-up and correcting the problems identified by the Ombudsman. The Ombudsman is appreciative that the USCIS Deputy Director became attentive to issues raised by the Ombudsman. However, a return to the original OCRM concept is worth consideration.

2007 REPORTING PERIOD

A. Deferred Action, Recommendation # 32 (April 6, 2007)

(USCIS Response due in July)

On April 6, 2007, the Ombudsman recommended that USCIS: (1) post general information on deferred action on its website; (2) maintain statistics on the issuance and denial of deferred action requests; and (3) designate a headquarters official to review grants and denials of deferred action requests on a quarterly basis to ensure that there are consistent decisions nationwide.

Deferred action is an extraordinary, discretionary form of humanitarian relief that begins with a USCIS District Director's recommendation to the Regional Director. The majority of cases in which deferred action is granted involve medical grounds.

Currently, USCIS does not maintain statistics, or otherwise track the number of requests received and approved or denied, for deferred action. USCIS also does not review deferred action grants or denials between regions. Thus, USCIS can only estimate the number of requests and provide anecdotal information on the types of requests received, granted, or denied. Such an *ad hoc* approach may in part be necessary and appropriate because deferred action is extraordinary relief not based in statute or regulation. However, minimal measures, including tracking such requests and regular review by USCIS headquarters of such requests and

determinations, would help ensure that there is no regional disparity in approvals or denials of deferred action requests and that like cases are decided in a like manner.

B. 30-Day Advance Notice for Changes in Policy and Operations Instructions Recommendation # 31 (February 8, 2007)

(USCIS Response: May 7, 2007)

In February 2007, the Ombudsman recommended that USCIS adopt a standard operating policy under which there would be, absent exigent circumstances, at least 30-days advance notice to the public and posting on the USCIS website of changes to policy and operations instructions. The Ombudsman has been and continues to be concerned about changes to USCIS policy and procedure without adequate notice to the public. Implementation of this recommendation would improve USCIS efficiency and customer service by: (1) helping to ensure that customers understand precisely what is expected and required in a submission; and (2) allowing USCIS to focus on adjudicating applications, rather than issuing time consuming rejections, denials, and RFEs when customers do not know what has changed.

On May 7, 2007, USCIS responded to this recommendation. USCIS stated that it has “increasingly been notifying the public of changes to policy and operating instructions whenever appropriate . . . [and] will continue to improve and expand on its efforts to provide public notice as a standard practice, absent exigent circumstances.”⁸¹ However, USCIS noted that in certain instances, it will put forth policy changes without any delay, and that “[m]aking the 30-day advance notice requirement for all policy or procedural changes will unnecessarily delay implementation of important changes.”

C. Improvement of FOIA Operations Recommendation # 30 (July 12, 2006)

(USCIS Response: October 5, 2006)

USCIS receives the majority of all FOIA requests to DHS. Ninety-one percent of DHS’ FOIA backlog and 40 percent of the entire federal government’s FOIA backlog is from USCIS. From 2003 to 2005, the DHS FOIA backlog grew from 29,007 requests at year-end 2003 to 82,591 requests at year-end 2005, of which 74, 941 were to USCIS.⁸²

⁸¹ Response to Recommendation #31, 30-Day Advance Notice for Changes in Policy and Operations Instructions Recommendation (May 7, 2007); http://www.dhs.gov/xlibrary/assets/cisombudsman_rr_31_uscis_sop_uscis_response_05-07-07.pdf (last visited June 7, 2007).

⁸² The FOIA backlog problem has become a federal government crisis, not just attributable to USCIS. On March 5, 2007, Representatives William Lacy Clay, Todd Russell Platts, and Henry A. Waxman introduced H.R. 1309, the Freedom of Information Act Amendments of 2007. This proposed legislation contains substantive provisions to increase public access to government information by strengthening FOIA. H.R. 1309 also creates a new FOIA ombudsman to help requesters resolve problems without litigation. The FOIA ombudsman would be located at the National Archives and help requesters by providing informal guidance and nonbinding opinions regarding rejected or delayed FOIA requests. The FOIA ombudsman also would review agency compliance with FOIA. On March 14, 2007, the House of Representatives passed the bill and on March 15, 2007, it was received in the Senate and referred to the Committee on Homeland Security and Government Affairs. _

The Ombudsman's recommendation called for USCIS to improve its FOIA operations while ensuring that information was provided timely by implementing seventeen actions to address the backlog. This recommendation discussed the primary sources of the growing FOIA backlog problem, including use of the FOIA process as a source of information for genealogical studies and as a means of discovery in immigration enforcement, litigation, and other court proceedings.

This recommendation focused on three areas: (1) accountability; (2) centralization; and (3) updates to current policies, regulations, and guidance. The accountability section proposed ten actions regarding systems issues, reports, pending backlog, performance issues, as well as actions to improve FOIA training, upgrade IT, and address accountability. The centralization section proposed three actions which addressed consolidation and web-enabled tracking and coordination systems to comply with electronic FOIA (e-FOIA) requirements. The updates section proposed four actions on training and processing. The recommendation also included comprehensive discussions of useful levels to resource staffing as well as the benefits of technological enhancements.

USCIS indicated that of the Ombudsman's seventeen specific FOIA recommendations it is following ten of them due to centralization of work. For the remaining seven recommendations, four represent work that USCIS had started and is on track to complete. One recommendation may no longer be applicable due to centralization efforts. USCIS did not agree with two of the recommendations. USCIS also concurred with the recommendation's assessment of the benefits realized for USCIS and its customers of increased customer service, reduced costs, improved communication, increased efficiency, improved technology, and decreased litigation.

On March 26, 2007, the DHS Privacy Office issued the "2006 Annual Freedom of Information Act Report to the Attorney General of the United States," covering October 1, 2005-September 30, 2006. This report includes the DHS "FOIA Revised Operational Improvement Plan Report," which closely mirrors the Ombudsman's FOIA recommendation.

USCIS recognizes that the growing FOIA backlog is central to the challenges with the program. The agency issued two notices of proposed rulemaking to address it. The first would take requests for genealogy information out of the FOIA request process by channeling them into a newly established administrative information process.⁸³ The other rule would establish a third track for FOIA processing of litigation-related information requests to supplement the two existing tracks for simple and complex FOIA requests.⁸⁴

The Ombudsman hopes that these and other improvements to the USCIS FOIA program will make operations more efficient, effective, and most of all, compliant with statutory mandates.

⁸³ See "Establishment of a Genealogy Program," 71 Fed. Reg. 20357, 58 (Apr. 20, 2006).

⁸⁴ See "Special FOIA Processing Track for Individuals Appearing Before An Immigration Judge," 72 Fed. Reg. 9017 (Feb. 28, 2007).

D. Extraordinary Ability “O” Petition Extension Recommendation # 29 (June 30, 2006)**(USCIS Response: October 3, 2006)**

The Ombudsman recommended that USCIS amend “O” petition rules to facilitate the employment of foreign nationals with “extraordinary ability” in the United States by extending the maximum initial validity of O visas from three to five years, and increasing the maximum extension length from one to five years.

Current rules permit O visas (Extraordinary Ability) to be issued initially for a period of up to three years necessary to complete work, which term is renewable thereafter for one-year extensions without limit. Corresponding rules regarding “P” petitions (Athlete, Entertainer, and Artist) permit initial issuance for up to five years as needed to complete work, renewable as needed to complete work for up to five years, but subject to a 10 year maximum stay in this status. As a result, an O beneficiary granted the maximum length work permit must seek annual extensions after three years, with seven extensions needed to work for 10 consecutive years. A comparable P-1 performer may work for up to 10 years on only one extension.⁸⁵ The recommendation aligns O and P visa considerations and, as a result, simplifies the process for operational efficiency and policy consistency.

The agency cited concerns in its October 3, 2006 response that either: (1) O nonimmigrant visa holders must be vetted often to assure that they maintain their high qualifications; or (2) these visitors require regular screening on national security grounds. The Ombudsman finds these arguments unpersuasive and notes that USCIS plans to begin internal discussion on the validity issue.

On a related point, USCIS issued a press release on April 11, 2007 announcing that, effective May 16, 2007, O and P status seekers could petition twelve months prior to their scheduled event, competition, or performance, rather than only six months.⁸⁶ It acknowledged the impact of public support for the greater planning flexibility this change would afford customers seeking either status.

⁸⁵ P petitions are used by nonimmigrant artists, entertainers, and athletes coming to the United States to perform in shows or athletic events. *See generally*, 8 U.S.C. § 1101(a)(15)(P). Os and Ps have a degree of overlap, although the O category covers, in addition to the three types of P performers, persons engaged in business, education, science, and motion picture and television production. The standards are generally lower for Ps than for Os, as beneficiaries of the latter must be outstanding, not merely professional.

⁸⁶ *See* USCIS Press Release, “USCIS Announces Extension of Filing Time for Two Nonimmigrant Petitions” (Apr. 11, 2007); <http://www.uscis.gov/files/pressrelease/OandPvisarule041107.pdf> (last visited June 3, 2007).

2006 REPORTING PERIOD**A. Address Change (Form AR-11) Recommendation # 28 (June 9, 2006)****(USCIS Response: September 8, 2006)**

In June 2006, the Ombudsman recommended USCIS proceed immediately with plans to supplement current change-of-address procedures with an online process. This recommendation, if implemented, would improve customer satisfaction and confidence in the process and improve USCIS efficiency and data accuracy.

At the time of the recommendation, USCIS required customers to file Form AR-11 (Alien's Change of Address Card) to comply with the statutory requirement to report any change of address within ten days. No receipt was provided to the customer to indicate the AR-11 was received and/or processed by USCIS, despite the fact that the customer could be held criminally liable and removed from the United States for failing to file the AR-11.

Many USCIS customers assumed that by filing Form AR-11 and complying with the statutory requirement, they were updating their address in all records maintained by USCIS. However, USCIS did not use Form AR-11 to update addresses in the immigration benefits databases. Customers had to notify individual USCIS offices separately although there is no language on Form AR-11, or in the accompanying USCIS website instructions to inform customers of the need to provide separate notification.

On September 28, 2006, USCIS confirmed its intent to establish an online version of AR-11 by year's end for customers to notify USCIS of address changes. The Ombudsman is pleased to report that the USCIS electronic change of address form was introduced with few problems in early 2007. After introduction of the online process, customers now can file a change of address online, via the NCSC, or by mail.

Although a significant step forward, the online change of address process: (1) cannot record updates for naturalization applicants; and (2) does not automatically populate relevant immigration benefits databases. These updates must still be entered into the databases by USCIS staff. However, USCIS anticipates that the online change of address process soon will be available for naturalization cases and databases will be populated automatically with these data in the coming months.

B. Up-front Processing Recommendation # 27 (May 19, 2006)**(USCIS Response: August 21, 2006)**

Please see section IV for a detailed discussion of the recommendation on up-front processing.

C. DNA Testing Recommendation # 26 (April 12, 2006)**(USCIS Response: April 12, 2006; Additional USCIS Response: July 25, 2006)**

The Ombudsman recommended that USCIS: (1) accept DNA test results as secondary evidence of family relationship; (2) grant authority to directors to require DNA testing; and (3) initiate a DNA testing pilot project to study the impact of requiring DNA testing as evidence of family relationship. In conjunction with this recommendation, the Ombudsman provided USCIS with proposed regulatory revisions.

DNA test results are listed as neither primary nor secondary evidence of family relationship in USCIS regulations and forms, and customers face obstacles in providing DNA test results as initial evidence of family relationship. USCIS relies almost exclusively on documentary evidence and customer interviews to verify the legitimacy of claimed family relationships. The result is a resource-intensive and time-consuming process; a process in which all customers, honest or not, are subject to scrutiny and suspicion; and a process that occurs despite the effort and skill of adjudicators. Although USCIS directors have the regulatory authority to require less reliable blood tests of customers, current USCIS policy states that DNA testing is voluntary and only to be suggested to customers when other evidence is inconclusive.

In April 2006, USCIS stated that it would respond to this recommendation after studying the legal and operational impact of this recommendation. In July 2006, USCIS responded in full to the Ombudsman's recommendation. USCIS stated that: (1) although DNA testing is not listed as primary or secondary evidence of a family relationship, the former INS issued a policy memorandum to field offices allowing directors to suggest DNA testing as secondary evidence to establish a claimed family relationship; (2) it is already in the process of updating regulations that would require DNA testing where fraud is suspected, or where there is neither primary evidence of a claimed family relationship, such as a birth certificate, nor contemporaneous secondary evidence such as school records;⁸⁷ and (3) it is considering conducting a DNA pilot overseas, although a location was not yet determined.

D. Employment Authorization Documents Recommendation # 25 (March 19, 2006)**(USCIS Response: April 27, 2006; Additional USCIS Response: June 20, 2006)**

In March 2006, the Ombudsman recommended that USCIS: (1) issue multi-year EADs; (2) issue an EAD valid as of the date an earlier EAD received by the applicant expired; and (3) amend the regulations such that K-1 nonimmigrants are not subject to breaks in employment authorization.

⁸⁷ See 8 C.F.R. 204.2(d)(2)(vi).

Several classes of foreign nationals are authorized employment as part of their immigration status, but still must apply for an EAD. If USCIS approves the application, it issues the EAD.

In April 2006, USCIS noted that the issues addressed in the recommendation impact many program areas and are critical to customers. The agency stated that it “is carefully considering the recommendations made by the Ombudsman” and has “put together a working group to look at each issue” before writing a formal response.

In June 2006, USCIS agreed in part with the goals of this recommendation and rejected other parts of the recommendation. USCIS stated that it will begin issuing multi-year EADs, but only in limited circumstances. It noted that the issuance of multi-year EADs is becoming less important to green card applicants because processing times are declining due to backlog reduction. USCIS agreed that it would be preferable to synchronize the validity dates of new and expiring EADs. However, USCIS indicated that it uses automated batch processing for EAD renewals and is unable to issue the new EAD as of the date of expiration of the previously issued card under this automated process. Nevertheless, USCIS will assess the possibility of adjusting the batch processing system to allow it to produce EADs with the synchronized validity dates.

The Ombudsman is hopeful that the new fees will assist USCIS in making changes to the current process to facilitate this important customer service correction. Customers deserve to have the benefit of a full year of validity of their EAD card and not a partial year, as under the current process. Finally, USCIS disagreed with the third part of the recommendation and stated that issuing EADs is inconsistent with the purpose of the K-1 entry. Revenue concerns appear to be a factor in this decision.

E. Asylum Adjudication Recommendation # 24 (March 19, 2006)


(USCIS Response: April 27, 2006; Additional USCIS Response: June 20, 2006)


The Ombudsman recommended that USCIS limit its adjudication of Form I-589 applications for asylum and withholding of removal to those submitted by individuals in valid nonimmigrant status.


USCIS stated in April 2006 that the recommendation requires careful consideration, research, and discussion with the communities that would be affected. Therefore, USCIS solicited input from stakeholders, including the Executive Office of Immigration Review, ICE, Office of the Principal Legal Counsel, non-governmental organizations, and the immigration advocacy community. In addition, USCIS solicited input from the United Nations High Commissioner for Refugees and the U.S. Commission on International Religious Freedom. The Ombudsman commends USCIS’ initiative in asking for such input and encourages USCIS to similarly approach all of the Ombudsman’s recommendations.


On June 20, 2006, USCIS rejected the Ombudsman’s recommendations regarding asylum adjudications. Both USCIS and the Ombudsman consider this recommendation closed.

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


The Ombudsman's staff visited five USCIS asylum offices during the reporting period to observe the: (1) administration and efficiency of asylum processing and credible fear determination; (2) fraud detection practices, actual and proposed; (3) quality assurance methods employed; and (4) technological advances currently in operation. Offices visited were Newark, Los Angeles, Arlington, New York, and Miami. 

During these visits the Ombudsman's staff had discussions with individuals from office management, adjudication staff, clerical support, quality assurance and training, fraud detection, and security. The overall impression is of a workforce that wants to be customer-centric, but is affected by production goals. 

The asylum process starts with the asylum application, Form I-589, a 12-page form supplemented with 11 pages of instructions. Comprehending these instructions requires at minimum a reading ability at a high level, which is alarming when half of all Americans read at the 8th-grade or lower level.⁸⁸ Even more alarming is that Form I-589 specifically serves a population for whom English may be the second language, as a lack of English language ability is commonplace among asylum seekers. 

Asylum officers seem to have extremely limited access to any investigative support -- locally and internationally -- to help verify events, locations, and persons referenced in asylum applications. As applicant credibility is critical to asylum determinations, asylum officers should have timely access to investigative services to corroborate claims. 

RECOMMENDATION AR 2007 -- 25

The Ombudsman recommends that USCIS redraft Form I-589, the asylum application, so that it is less complicated and more understandable by the intended audience – persons who have been persecuted based on race, religion, nationality, membership in a particular social group, or political opinion. 

⁸⁸ See Darrell M. West, "State and Federal E-Government in the United States" at 6 (Sept. 2003); <http://www.insidepolitics.org/egovt03us.pdf> (last visited June 5, 2007).

**F. Notices to Appear Recommendation # 22 (March 19, 2006)
(USCIS Response: April 27, 2006)**

On March 19, 2006, the Ombudsman recommended that USCIS standardize its policy on issuing Notices to Appear, a summons to appear before an Immigration Judge. The recommendation provided that NTAs be issued and filed with the Immigration Court in all cases where applicants are out of status because their applications for green cards were denied.

On April 27, 2006, USCIS responded to the recommendation. The agency disagreed with the recommendation and stated that there will be cases where it will not issue an NTA because to do so would be against the public interest or contrary to humanitarian concerns.⁸⁹ In the national security context, USCIS noted that issuance of an NTA involves several layers of agency review, which make it impracticable to issue an NTA before the applicant leaves a USCIS facility following an interview.

On July 11, 2006, USCIS issued Policy Memorandum 110 (PM 110), "Disposition of Cases Involving Removable Aliens," internal guidance to USCIS officers on how to process and prioritize cases in which a foreign national appears to be removable.

PM 110 implemented a June 2006 Memorandum of Agreement between USCIS and ICE, that clarifies USCIS and ICE's respective roles in the NTA process. The Memorandum describes when USCIS will issue an NTA and when it will refer the case to ICE. An NTA will be issued in the following order of priority: (1) cases where fraud is established; (2) cases where the NTA is prescribed by law or regulation; and (3) all other cases. USCIS will forward cases involving matters of public safety to ICE for possible action/detention. PM 110 does not affect national security cases, which continue to be handled by the National Security Adjudications Unit within the Fraud Detection and National Security component of USCIS.

Additionally, service centers have been directed to devote more resources to the NTA process. USCIS issued 6,969, 10,008, and 13,350 NTAs for the periods June 2004 -- March 2005, June 2005 -- March 2006, and June 2006 -- March 2007, respectively.⁹⁰

The Ombudsman appreciates the attention USCIS has devoted to this issue and believes that standardizing the NTA issuance criteria improves USCIS efficiency and national security.

⁸⁹ USCIS Response to Recommendation #22 (Apr. 27, 2006); http://www.dhs.gov/xlibrary/assets/CISombudsman_RR_22_Notice_to_Appear_USCIS_Response-04-27-06.pdf. USCIS also asserted that in other situations it would be logistically inappropriate to issue an NTA, *e.g.*, where a green card application is denied because it was filed prior to when the preference category priority date became current.

⁹⁰ USCIS Performance Analysis System data as of March 2007. For April and May of 2005 and 2006 the total NTAs issued were 1,340 and 3,178, respectively.

USCIS' 2006 ANNUAL REPORT RESPONSE TO PRIOR YEARS' RECOMMENDATIONS

In its 2006 Annual Report Response (at p. 24), USCIS indicates that “[t]he prior USCIS responses to the recommendations still apply and require no further updates. In this section USCIS does respond to additional requests by the [Ombudsman]” included in the 2006 Annual Report.

A. Asylum Division Use of Notice of Action Form I-797 Recommendation # 21 (December 7, 2005)

In the 2006 Annual Report (at p. 72), the Ombudsman requested updates on an implementation timeline for the recommendation that the Asylum Division utilize the automated and standardized Notice of Action Form I-797 that includes Form I-94 Arrival/Departure Record for asylum approval notifications. In its 2006 Annual Report Response (at pp. 30-31), USCIS provided a timeline/work plan, which included planned implementation in March – May 2007.

However, according to information recently received from USCIS, the timeline for implementation of the asylum I-797 has been pushed back due to the prioritization of other Asylum Division projects. The pilot is now set for implementation in early 2008.

The Ombudsman understands that other Asylum Division projects implemented in the past year include: an automated process to issue secure I-766 employment authorization documents to individuals granted asylum; a procedure for enrolling all asylum and NACARA 203 applicants into the US-VISIT system; automatically loading all US-VISIT responses directly into RAPS (the asylum case management system); and a transformation of the Asylum Division’s business model to ensure that all asylum applicants are fingerprinted at an ASC prior to interview. Additionally, USCIS reports that they have initiated substantive modifications to the RAPS program to improve case tracking, including more comprehensive tracking of motions to reconsider/reopen and terminate proceedings.

B. Elimination of Asylum Pickup Decision Delivery Process Recommendation # 19 (October 13, 2005)

The Ombudsman recommended in the 2006 Annual Report (at pp. 70-71) that USCIS reexamine the recommendation that all asylum decisions, whether referrals to the immigration judge or conditional/final grants, should be sent certified return receipt or regular mail via U.S. Postal Service to all asylum applicants. This would eliminate the existing process, requiring that decisions be obtained in person, and establish a single process for delivery of notices.

In USCIS’ 2006 Annual Report Response (at pp. 28-30), it indicated that as of that writing the agency issued asylum decisions in person to approximately 85 percent of the affirmative asylum caseload. According to USCIS, the benefits of serving asylum decisions in person include: (1) “[t]he ability to serve NTAs on ineligible asylum applicants [which] supports ICE in its efforts to remove them”; (2) the “opportunity to take appropriate security-related actions, including coordination with ICE and other law enforcement agencies, on applicants who warrant apprehension based on the results of one or more security checks”; (3) prevention of

“unnecessary harm to certain genuine asylum seekers who are vulnerable to exploitation by unscrupulous preparers”; and (4) the ability to explain the decision and its consequences to the applicant and, for applicants issued an NTA, to “point out to the applicant the date and time of the hearing, and impress upon the applicant the importance of appearing at that hearing and [of] notifying the court of any change in address.”

In the same response, USCIS indicated that it is examining ways to control costs for issuing asylum decisions in-person. Moreover, the agency noted that it agrees with the Ombudsman that a single process for all applicants is better. USCIS also noted that it will try to increase the number of decisions served in-person, rather than eliminating this service.

C. Public Reporting for Capped Categories Recommendation # 18 (August 28, 2005)

In the 2006 Annual Report (at p. 70), the Ombudsman again raised the issue of the frequency of reporting H-1B cap usage and suggested that USCIS publish these data on the same day each week/month, if possible, to assist employers and individuals. USCIS stated in its 2006 Annual Report Response (at p. 28) that “USCIS now updates the status of each application/petition type that is subject to an annual numerical limit (“cap”) as necessary on its website, and has taken steps to make this information directly accessible. USCIS also is committed to continue publishing information about any “frontlog” affecting capped filings so that customers can better predict when particular caps might be reached.” The Ombudsman appreciates USCIS’ efforts to publish this information and will continue to monitor its progress.

D. Elimination of Postal Meter Mark Recommendation # 17 (July 29, 2005)

The Ombudsman expressed great concern in the 2006 Annual Report (at p. 70) regarding the continued cost of not implementing the simple recommendation of eliminating the postal meter mark “Return Service Requested” on USCIS envelopes. In its 2006 Annual Report Response (at p. 28), USCIS stated:

In FY 07, as USCIS completes the transition to new postage meters, it plans to transition to new standards for mail delivery to allow mail forwarding with notification from the US Postal Service through its address service. As part of the proposed new fee structure, USCIS further plans to move to a 2-day delivery of cards with delivery confirmation. This will reduce delivery times, give customers tracking numbers so they can track mail delivery, yet also increase associated controls.

The Ombudsman commends USCIS for these changes, which aim to improve customer service and reduce problems associated with mail delivery. The Ombudsman looks forward to learning more about the 2-day delivery of cards with delivery confirmation and the timeline for implementation.

**E. Issuance of Receipts to Petitioners and Applicants Recommendation # 15
(May 9, 2005)**

In the 2006 Annual Report (at p. 67), the Ombudsman stated an ongoing concern with the Lockbox process and associated delays. In addition, access to the Chicago and Los Angeles Lockbox facilities is so limited as to prevent senior USCIS management from seeing them. The Ombudsman also has encountered similar accessibility issues with these facilities.

USCIS described in its 2006 Annual Report Response (at p. 27) that “[t]here are extensive controls in place due to the large amount of funds processed in these locations, and to ensure complete control and accountability of funds and applications. USCIS believes these controls are appropriate, and do not hinder required oversight or access.” The Ombudsman appreciates the necessity of the controls at the lockboxes due to the large amount of funds. However, the Ombudsman continues to hear about problems with accessibility to these facilities, including from senior USCIS leadership who often are prevented from visiting them. Security concerns cannot and should not be used as a reason to prevent legitimate, business-related visits to these facilities by DHS and USCIS leadership.

F. Pilot Program Termination Recommendation # 14 (February 25, 2005)

The Ombudsman noted in the 2006 Annual Report (at p. 67) that USCIS does not provide adequate notice to customers regarding policy changes. In its 2006 Annual Report Response (at p. 27), USCIS explained ways in which it advises the public of policy changes: (1) posting on the website; (2) providing a separate public notice of a change, where appropriate; (3) via the agency’s Community Liaison Officers around the country who coordinate with community based organizations; and (4) working closely with media and stakeholders. The Ombudsman appreciates this additional detail and will continue to follow the notice issue in conjunction with new policies and procedures, specifically as it pertains to timeliness of such notice.

**G. Issuance of Green Cards to Arriving Immigrants Recommendation # 13
(December 15, 2004)**

The Ombudsman recommended that USCIS provide details of its ongoing efforts to resolve certain underlying problems regarding issuance of green cards to arriving immigrants.

In its 2006 Annual Report Response (at p. 27), USCIS responded that “[t]he long term goal . . . is to receive immigrant visas and associated biometrics and admission data electronically from DOS and [CBP] as those agencies can provide that information electronically to USCIS.” Unfortunately, USCIS did not answer the Ombudsman’s request to provide details of these efforts. As USCIS notes, “[t]his would expedite the issuance of green cards to arriving immigrants.” Again, it is important to provide details on these efforts for the Ombudsman to evaluate and report on progress made.

H. INFOPASS Recommendation # 11 (November 29, 2004)

The Ombudsman reported in the 2006 Annual Report (at p. 65) that customers and stakeholders continued to complain about appointment availability through the INFOPASS

system in some jurisdictions. In addition, the Ombudsman noted from field office visits that USCIS made limited progress on kiosk deployment.

USCIS responded in May 2007 that the availability of INFOPASS appointments has improved, and the Ombudsman agrees. Further discussion of this issue is in section III.D.1. USCIS also indicated that it made progress on kiosk deployment in field offices. Specifically, “[d]eployment will begin in late October and should be completed by late November.” The Ombudsman looks forward to this important addition to customer service. The Ombudsman is unaware of any kiosks that are fully operational as of this writing.

I. E-Filing Recommendation # 6 (August 16, 2004)

The Ombudsman originally recommended that USCIS reconsider this recommendation to establish a separate lower fee structure for e-filed applications and petitions to encourage customers to use this expanding capability. In the 2006 Annual Report (at p. 62), the Ombudsman asked USCIS to provide additional specific reasons why this is an impractical solution to encourage more e-filed applications, or provide information on what steps it is taking to move towards this goal.

In its 2006 Annual Report Response, USCIS responded that the Transformation Program is working on an end-to-end process that will increase the options for e-filing.

J. Customer Service Training for USCIS Employees Recommendation # 5 (August 16, 2004)

The Ombudsman recommended in the 2006 Annual Report (at p. 61) that USCIS go beyond its new training model to ensure that the agency has a training backup plan in the event that the model is not implemented.

In its 2006 Annual Report Response (at pp. 25-26), USCIS described its current activities such as providing customer training modules for adjudicators and IIOs as well as the EDvantage system (the agency’s web-based learning tool). The agency also described its first workforce analysis and 5-year action plan. The Ombudsman further discusses staffing and training in section III.M.2 of this report.

K. Reengineering Green Card Replacement Processing Recommendation # 3 (June 18, 1004)

In the 2006 Annual Report (at pp. 59-60), the Ombudsman expressed concern about time delays with the issuance of new green cards. In addition, the Ombudsman described how some USCIS field offices withhold ADIT (Alien Documentation, Identification, and Telecommunications System) stamps, which serve as temporary evidence of an individual’s green card status. The Ombudsman stated that the green card replacement and renewal process can be further streamlined and suggested up-front processing as a realistic goal.

In its 2006 Annual Report Response (at p. 25), USCIS noted:

The goal of USCIS is to schedule customers applying to renew their card for an appointment at an Application Support Center within 3 weeks of filing Form I-90 (which may be accomplished by e-filing), at which time we would verify the customer's identity and status. If record and background checks do not indicate issues, the personnel at the ASC order the new card electronically, and it is typically manufactured and mailed within 2 to 3 business days. This minimizes the need for an ADIT stamp as interim documentation, and USCIS is attempting to minimize its use since it is less secure than an actual card.

The ADIT stamp in the passport/I-94 Arrival-Departure Records is the only way for an individual to prove legal status after adjustment or lawful admission into the United States, but prior to receipt of the green card. A legal permanent resident has a statutory obligation to carry evidence of legal status at all times,⁹¹ and the ADIT stamp fulfills this requirement.

L. Streamlining Employment-Based Immigrant Processing Recommendation # 2 (June 18, 2004)

In the 2006 Annual Report, the Ombudsman recommended (at p. 58) that USCIS reconsider its decision to forego a comprehensive up-front processing pilot for employment-based green card cases in light of the customer service and security related benefits of the DORA family-based green card pilot program.

USCIS stated in its 2006 Annual Report Response (at p. 24):

This recommendation would require that USCIS conduct interviews on cases that are currently interview-waived, thereby creating additional and substantial backlogs. It would also require the movement of cases from a service center, where interviews cannot be conducted, to a field office that does not have the capacity to take on the additional workload. This would not enhance customer service and would only cause more problems for all customers as wait times would increase for all types of applications. Since all security checks are conducted in the same way at both a service center and at a field office, there would be no increased security benefit arising from this change.

The Ombudsman understands USCIS' concerns. However, the ability to apprehend an applicant with no prior history of fraud is enhanced when well-trained adjudication officers can have a face-to-face meeting with the applicant. USCIS currently requires applicants to send copies, rather than originals, of official documents such as birth certificates. Technology facilitates fraudulent submissions of such documents. As a result, a change to an up-front processing approach could prevent such fraudulent submissions.

⁹¹ See 8 U.S.C. §1304(e).

VI. OMBUDSMAN OUTREACH

During the Ombudsman's tenure and throughout the reporting period, the Ombudsman has strived to be open and accessible to customers and the general public. To that end, the Ombudsman has traveled to over 40 USCIS facilities, met with countless stakeholder organizations, and held numerous in-person and telephonic meetings with interested parties. The Ombudsman has urged USCIS to be a more transparent agency with better communication with its customers and, in this regard, the Ombudsman has sought to lead by example.

During the reporting period, the Ombudsman started new outreach initiatives and continued other programs to ensure that individuals and employers have access to the Ombudsman's services and to make certain that problems with USCIS are recognized and addressed.

A. Trips

During the reporting period, the Ombudsman visited over 40 USCIS facilities, including field offices, service centers, and other facilities. Since the office's inception in 2003, Ombudsman Prakash Khatri personally has visited over 150 USCIS facilities and the Ombudsman's staff has visited at least 14, as listed in Appendix 3. The purpose of these visits was to see first-hand the issues that individuals and employers encounter, identify systemic problems, and consult with USCIS field offices on proposed solutions. The travel and site visits provided the Ombudsman opportunities for candid dialogue on a variety of issues including: the impact of immigration processing backlogs on families and employers; the lack of standardization in immigration adjudications; and ongoing problems communicating with USCIS via the NCSC.

B. Teleconferences

During the reporting period, the Ombudsman began a pilot program series of teleconference calls entitled, "How Is It Working for You?" These teleconferences are an opportunity for USCIS customers and stakeholders to ask questions, express concerns, or identify best practices on specific topics or regarding particular USCIS offices.

Figure 17: “How Is It Working for You” Teleconferences

Discussion Topics	Date
Bi-specialization	December 15, 2006
National Customer Service Center	February 28, 2007
Temporary Worker Visas	March 27, 2007
Requests for Evidence	April 24, 2007
Affidavits of Support	April 24, 2007
I-90 Process	April 24, 2007
Field Offices	
Miami, FL	January 23, 2007
New York, NY	January 23, 2007
Philadelphia, PA	February 16, 2007
Newark, NJ	February 16, 2007
Washington, D.C.	March 27, 2007

The topics, dates, and times are posted in advance on the Ombudsman website, along with how to participate. As part of the pilot, the Ombudsman has invited USCIS representatives from the relevant offices to listen to the call to gain additional understanding of and address customers and stakeholders’ issues. The Ombudsman also recently began posting on the website questions and comments raised during the teleconference and USCIS’ responses. The Ombudsman encourages suggestions for future teleconferences, which can be emailed to cisombudsman.publicaffairs@dhs.gov. During the next reporting period, the Ombudsman plans to end the pilot and launch the “How Is It Working for You” program as a regular part of its outreach efforts.

C. Website

The Ombudsman’s 2006 Annual Report (at p. 5) included information on the number of visits to the website, www.dhs.gov/cisombudsman. Unfortunately, the Ombudsman cannot provide that information for this reporting period, due to updates and improvements to the DHS website. However, these numbers are currently tracked and will be available for next year’s report.

During the reporting period, the Ombudsman expanded the website to make available additional resources to individuals and employers.

The website includes the following:

- All recommendations submitted to USCIS, along with responses from the agency.
- Ombudsman priorities for the reporting period, as described further in section VI.F.

- Information on upcoming Ombudsman teleconferences, as well as questions and answers from those sessions.

DHS' recently reformatted immigration webpage also highlights links to the Ombudsman's website.

D. Trends Email

The Ombudsman maintains an email account, cisombudsman.trends@dhs.gov, specifically for customers and stakeholders who have concerns about trends and systemic issues and may have suggestions for solutions. During the reporting period, the majority of correspondence forwarded to the Ombudsman's trends email pertained to adjudication delays due to FBI name checks.

E. Virtual Ombudsman's Office

The issue of creating local ombudsman offices will be reviewed further, but there are no new budget requests to establish such local offices for FY 08. Alternatively, the Ombudsman is working with the relevant DHS components to develop a Virtual Ombudsman's Office. The Ombudsman expects this program to be fully operational and make all services of the Ombudsman more easily available to individuals and employers across the country via the internet by FY 08, or earlier.

The Virtual Ombudsman's Office will include the following:

- **Online Case Problem Submission** – The Virtual Ombudsman's Office will have a fillable case problem form to allow individuals and employers to enter and submit necessary case problem information online. Until the Virtual Office is fully operational, the Ombudsman is planning to post the fillable case problem form on the website as a pilot program to evaluate its usage. Individuals and employers will be able to complete the form online, print out a copy, and mail it to the Ombudsman.
- **Population of Data Fields** – When case problems can be submitted online, the information supplied will automatically populate data fields in the Ombudsman's database for review and analysis. This process will avoid time-consuming and costly data entry.
- **Improved Analysis and Reporting Capabilities** – The Virtual Office will allow the Ombudsman to more easily analyze and report on case problem data. The current system relies on an outside contractor for developing certain reports, which is time-consuming and often means desired reports are not generated.
- **Interface to Share Concerns and Solutions** – The Virtual Office also is to include an interface for stakeholders and customers to relay concerns and share possible solutions, thereby enabling the Ombudsman to identify areas for further analysis and recommendations to USCIS.

The Virtual Office offers an efficient method of providing government services, will minimize infrastructure and personnel costs, and uses advancements in information technology.

F. Ombudsman's Priorities

During the reporting period, the Ombudsman posted priorities on the office's website at http://www.dhs.gov/xabout/structure/editorial_0482.shtm. The Ombudsman will be regularly posting information on the progress made on these issues, as well as updating the priorities list. The priorities for this reporting period were:

1. Recommending Solutions to Systemic Issues that Continue to Cause Individual Case Problems

The Ombudsman assists individuals and employers who experience problems with USCIS by:

- Identifying individual case matters and the systemic problems revealed by case inquiries as well as making recommendations to prevent the same problem from recurring.
- Making available to the public an online form to expedite the processing of case problems submitted to the Ombudsman.
- Leveraging information technology resources to design a Virtual Ombudsman's Office that will provide similar services for a fraction of the cost of establishing local ombudsman offices.

2. Expanding Up-Front Processing Programs

The Ombudsman is actively working with USCIS on the expansion and national roll-out of up-front processing programs. These programs employ new and innovative processing models to improve customer service and increase efficiency, thereby enhancing national security.⁹²

3. Addressing USCIS Fundamental Budget Issues

Under current funding structures, USCIS is unable to maximize efficiency and provide true world-class customer service. As long as certain program costs are unfunded and the agency is expected to recover its costs almost entirely from fees, USCIS will continue to struggle to resolve the conflicting goals of improving efficiency and customer service, while ensuring revenue streams to provide for its unfunded mandates. The Ombudsman is working with DHS and USCIS leadership to identify new funding strategies to address this dilemma.⁹³

⁹² See section IV.

⁹³ See section III.H.

4. Reviewing Processing Delays Caused by USCIS Security Screening

FBI name checks significantly delay adjudication of immigration benefits for many customers and may not achieve their intended national security objectives. The Ombudsman fully supports robust and thorough screening of foreign nationals. At the same time, the Ombudsman is seeking a review of the current FBI name check process to ensure that it meets U.S. national security goals while not unduly delaying adjudications for legitimate applicants.⁹⁴

5. Improving USCIS Customer Service and Communications

USCIS service and communications with its customers are key concerns of the Ombudsman. Recently, the Ombudsman has seen some improvement in USCIS customer service and communications with customers, though these issues continue to be challenges for USCIS.⁹⁵

VII. CASE PROBLEMS

By statute, the Ombudsman receives and processes case problems to assist individuals and employers who experience problems with USCIS.⁹⁶ The case problem resolution unit helps identify systemic issues that, once corrected, will prevent the reoccurrence of future such case problems.

A. Case Problem Processing

1. How to Submit A Case Problem

The Ombudsman's website, www.dhs.gov/cisombudsman, provides detailed information on how to submit a case problem:

First, please write a letter or use DHS Form 7001, which was accessible on the Ombudsman's website as of June 6, 2007. If writing a letter, please provide the following information in the order below to assist in identifying your case.

- For the person with the case problem, please provide the person's: (1) full name; (2) address; (3) date of birth; (4) country of birth; (5) application/petition receipt number; and (6) "A" number;
- The USCIS office at which the application/petition was filed;
- The filing date of the application/petition; and
- A description of the problem.

⁹⁴ See section III.F.

⁹⁵ See sections III.D and K.

⁹⁶ See 6 U.S.C. § 272(b)(1).

Second, to protect your privacy, we need to verify the identity and the accuracy of the information. Please date and sign your letter and include the following statement:

“I declare (certify, verify, or state) under penalty of perjury under the laws of the United States that the foregoing is true and correct.”

In addition, please include either or both of the following, if applicable:

- If you are not the person whose case about which you are inquiring, you must obtain the person’s (applicant’s or the petitioner’s) consent. The person should include the following statement as part of the consent documentation submitted with the case problem:

“I consent to allow information about my case to be released to [name of requester].”

- If you are an attorney or accredited representative, please include a copy of your USCIS Form G-28 (Notice of Entry of Appearance as Attorney or Representative).

Finally, please mail your case problem, including your dated and signed letter and copies of documents relevant to your case inquiry, to either of the following addresses:

Via regular mail:

Citizenship and Immigration Services Ombudsman
ATTN: Case Problems
U.S. Department of Homeland Security
Mail Stop 1225
Washington, D.C. 20528-1225

Via courier service:

Citizenship and Immigration Services Ombudsman
ATTN: Case Problems
U.S. Department of Homeland Security
245 Murray Lane
Washington, D.C. 20528-1225

2. Processing

When the Ombudsman receives a case problem, the information is reviewed, issues analyzed, and an appropriate course of action determined. If appropriate, the case is electronically forwarded to the USCIS Customer Assistance Office for a response within 45 calendar days. If customers inform the Ombudsman that they did not receive a USCIS response within 45 calendar days, the Ombudsman’s office sends a follow-up letter via email to USCIS.

3. Assistance Available

a. Scope of Assistance

Many people with case problems seek to reverse USCIS decisions. However, the Ombudsman cannot adjudicate immigration applications or petitions, or reverse adverse USCIS decisions. Additionally, the submission of a case problem cannot substitute for the legal options available to correct problems. Finally, the Ombudsman cannot grant immigration benefits or request that USCIS grant exceptions to statutory mandates (such as the grant of a petition despite visa retrogression of the particular visa category.) The statutory authority for these actions rests with USCIS. Although the Ombudsman cannot provide legal advice, the office can give assistance in cases where the individual or employer is challenging a particular result and USCIS has not responded in a timely manner.

The Ombudsman is charged with identifying systemic problems in the immigration benefits process and proposing process changes to USCIS. Thus, individuals and employers should submit comments and suggestions for improving USCIS processes and procedures via the trends email box, cisombudsman.trends@dhs.gov.

b. Jurisdictional Issues

By statute, the Ombudsman only accepts case problems that pertain to applications and petitions for immigration benefits filed with USCIS. The Ombudsman does not have authority to assist customers in cases that are not within USCIS jurisdiction. Problems experienced with ICE, CBP, DOS (including the National Visa Center as well as U.S. embassies and consulates), DOL, Executive Office of Immigration Review, or any other federal, state, or local authority must be resolved directly with those entities.

Nevertheless, the Ombudsman recognizes that divisions of responsibility are not always clear to the public, which often views immigration processes as a single process handled by the government and not by discrete departments. The Ombudsman believes in a holistic approach to immigration. To promote this concept, the office is expanding its relationship with other agencies. The objective is to stimulate the establishment of an interagency understanding that supports complete and timely responses to individuals with immigration problems regardless of the source of the problems.

c. Legal Advice

The Ombudsman cannot provide legal advice to individuals and employers on immigration laws, regulations, policies, or procedures. For individual cases, the Ombudsman is statutorily limited to providing assistance to individuals and employers with pending applications/petitions who are experiencing problems with USCIS.

B. Case Problem Data

The Ombudsman receives letters, emails, and telephone calls from individuals seeking immigration assistance. The office also often receives inquiries via facsimile, but for privacy reasons the Ombudsman currently only accepts case problems received via U.S. mail or a courier

service. Case problems are based on the description of the facts provided to the Ombudsman by individuals seeking assistance.

The Ombudsman recently posted DHS Form 7001 on www.dhs.gov/cisombudsman, which will facilitate the submission of case problems by individuals and employers. It is a fillable form that customers can complete online, print, and mail to the Ombudsman. As described in the Outreach section above, the Ombudsman is coordinating with other DHS components to create a Virtual Ombudsman's Office which will allow individuals and employers to submit case problems through the internet.

During the reporting period, the Ombudsman received approximately 1,859 case problems by U.S. mail or courier service and referred them to the CAO for further action. Many of these case problems involved multiple issues ranging from long processing times to USCIS service errors; over 3,424 issues were identified by the Ombudsman within these case problems. The Ombudsman also received over 500 other written inquiries such as information requests, inquiries outside of the jurisdiction of this office, and inquiries for which the USCIS decision was subsequently issued.

The Ombudsman also received daily emails detailing problems and recommendations for USCIS, as well as providing information to this office. Since the start of the office in July of 2003, the Ombudsman has received 8,284 email inquiries of which 2,929 arrived during the current report period.⁹⁷ If an email inquiry is within the office's jurisdiction and the individual indicates having exhausted all avenues with USCIS, the Ombudsman requests that the individual submit a case problem via U.S. mail or courier service. In addition, the office often provides individuals with links to resources available on USCIS' website, as well as to other federal agencies, to assist them in finding solutions.

The most common types of complaints received through the mail or courier service during the reporting period are lengthy processing times and the perception of a lack of helpful responses from USCIS. Of the 1,859 case problems referred to USCIS for action, 1,593 complaints (over 85 percent of written case problems received) involved processing delays. The highest number of processing delay cases involved lack of helpful responses to USCIS inquiries, which totaled 1,006 complaints (over 54 percent of all written case problems received). Similar to the 2006 reporting period, another large number of processing delay case problems were due to FBI name checks; there were 479 complaints (over 25 percent of all written case problems received) in this category. There were several complaints related to general security check issues, totaling 191 (approximately 10 percent of all written case problems received). The Ombudsman also received many complaints from USCIS customers regarding USCIS errors.

The four USCIS service centers -- Vermont, Texas, Nebraska, and California -- had the highest number of complaints during the reporting period. This is expected as they process the highest number of cases. Identical to last year, the Vermont Service Center had the highest

⁹⁷ For this reporting period, the Ombudsman refined the count for the number of emails received. In the 2006 Annual Report (at p. 80), the Ombudsman reported on all emails contained in the cisombudsman@dhs.gov email box. During this reporting period, the email count only reflects correspondence with individuals and employers and no longer includes DHS, internal Ombudsman, or advertising emails.

number of service center complaints during the reporting period at 30 percent. The California Service Center had the lowest number of service center complaints with just over 20 percent.

The NBC, a field office pre-processing center, received 111 complaints. The New York and Miami field offices followed closely behind the NBC for number of complaints received by the Ombudsman at 100 and 99, respectively. Other field offices with significant complaint totals, from highest to lowest, were Washington D.C., Chicago, Baltimore, Atlanta, Newark, and Garden City, NY. In total, the Ombudsman received complaints regarding over 70 USCIS facilities during the reporting period.

C. Ombudsman's Access to USCIS

1. Limited Access to Selected USCIS Databases for Case Problem Resolution

As reported in previous reports, the Ombudsman has sought access to specific USCIS databases to facilitate understanding of case problems. Some staff have been granted read-only access to certain USCIS data systems. In this reporting period, efforts to give all staff with case problem responsibility access to these systems has not succeeded because of hardware problems and the lack of coordination at both USCIS and DHS. Once access is implemented, the Ombudsman will be able to validate information provided by customers, research more aspects of case problems, and develop better informed recommendations for USCIS remedial action.

2. No Access to USCIS Offices to Resolve Individual Case Problems

Since the inception of the office, the Ombudsman has sought to establish direct contact with USCIS personnel nationwide to facilitate the resolution of problems encountered by individuals and employers. Many of USCIS' senior employees have been helpful in resolving cases that indicate larger problems. However, in most cases, USCIS requires that the Ombudsman go through the CAO after a problem is received by the Ombudsman. Normally, the case is reviewed and then forwarded to the CAO for action. The CAO has 45 days to respond per rules established by USCIS.

The CAO usually refers case problems to the service center or field office for action. Once the field office responds, the CAO will respond by sending a letter or notice directly to the inquirer and the Ombudsman. Direct access by the Ombudsman to USCIS service centers and field offices to address case problems would save both USCIS and the Ombudsman time and effort. In addition, because of the added CAO layer and its standard form letters to respond to inquiries, the Ombudsman often cannot ascertain whether a particular inquiry is truly a case problem and whether the case is worth further review for systemic issues.

During the reporting period, the CAO has been increasingly responsive to the Ombudsman's inquiries. For example, this year the CAO established a liaison responsible for Ombudsman cases. In addition, the CAO and the Ombudsman now have regular meetings to discuss their common goal of assisting customers. Despite this progress, the Ombudsman hopes that USCIS will eliminate the headquarters layer between the Ombudsman and field offices or service centers where case files are located.

Notably, the CAO has other responsibilities. In addition to public inquiries, the CAO serves as a back-up unit for congressional and DHS Executive Secretary inquiries. It appears that the Ombudsman's inquiries receive lower priority to these other inquiries.

Moreover, oftentimes the CAO uses the Service Request Management Tool to contact field offices. Although the field office should get back to the CAO within 30 days, these SRMT requests sometimes go unanswered. By providing the Ombudsman direct access to USCIS offices, response to correspondence would be streamlined and, thereby, enhance the ability of the Ombudsman to meet the statutory mandate to assist individuals and employers.

Finally, in many instances, the CAO's standard form responses do not provide adequate information to customers. As a result, customers often return to the Ombudsman for further assistance. Many customers approach the Ombudsman because they could not obtain satisfactory assistance through USCIS channels, such as the toll free telephone number, appointments at the local field office via INFOPASS and the Case Status Online system, or through USCIS addressed congressional inquiries.

VIII. 2007-2008 REPORTING YEAR OBJECTIVES

In 2007-2008, the Ombudsman will continue to identify areas in which individuals and employers have problems dealing with USCIS and, to the extent possible, propose changes to mitigate identified problems. The Ombudsman will gather information and feedback from USCIS customers and stakeholders by continuing to: (1) conduct frequent site visits to USCIS facilities throughout the country; (2) meet regularly with community, employer, and immigration law organizations; and (3) expand individual and employer access to the Ombudsman.

The Ombudsman will improve the process for resolving problems individuals and employers face in dealing with USCIS by establishing a Virtual Ombudsman's Office to provide for online case problem submission, improved analysis and reporting capabilities, and electronic interface with customers and stakeholders to share concerns and solutions. As discussed in this report, the Ombudsman also looks forward to improving the partnership with USCIS to address both individual case problems and systemic issues.

The Ombudsman will continue to staff its operations with subject matter experts, who have both government and private sector experience, including federal employees and other experts contracted for specific projects. Issues for the next reporting period will include: (1) assessment of NCSC call centers and the USCIS response to public inquiries; (2) evaluation of the cost and efficiency of premium processing relative to regular processing; (3) review of the effectiveness of dividing responsibilities between field and service center operations; (4) assessment of the up-front processing pilots and the 90-day green card programs; (5) review of USCIS' progress in implementing a strategic human capital plan; and (6) assessment of the accuracy and value of the production data USCIS collects.

Additionally, the Ombudsman will continue to initiate and expand activities to promote interagency cooperation and holistic approaches to immigration, as illustrated by the existing monthly meetings with the DOS, DOL, and offices within USCIS focused on employment-based

green card processing workflows. The Ombudsman seeks to build understanding and partnerships where possible between stakeholders and USCIS through conferences and workshops on both general and specific immigration issues. In assisting individuals and employers as they interface with USCIS, the Ombudsman's objectives are to promote transparency and accountability in the agency's operations and policy.

APPENDICES

Appendix 1: USCIS Servicewide Domestic Data for Selected Application Types (FY 1992 – 2007 YTD), USCIS Performance Analysis System Data


	1992 Total	1993 Total	1994 Total	1995 Total	1996 Total	1997 Total	1998 Total	1999 Total
Service-wide Total¹								
Initial Receipts	4,234,919	4,498,017	4,137,670	4,878,930	5,447,097	6,276,857	5,562,803	5,398,594
Approved	3,990,705	4,009,598	3,612,379	3,917,624	4,966,986	4,485,217	4,201,666	4,513,318
Denied	217,239	278,930	299,313	347,822	579,822	468,332	491,019	706,151
Percent Denied	5%	7%	8%	8%	10%	9%	10%	14%
Pending (End of	656,065	679,982	987,484	1,667,606	1,651,850	3,050,701	3,891,365	3,972,943
I-485 Adjustment of Status/Green								
Initial Receipts	327,856	385,547	317,164	577,719	646,585	759,500	527,453	456,233
Approved	313,279	353,880	317,544	339,399	505,230	448,044	382,447	264,753
Denied	12,834	14,613	24,215	18,168	36,637	29,930	33,945	35,137
Percent Denied	4%	4%	7%	5%	7%	6%	8%	12%
Pending (End of	120,353	125,253	121,067	320,730	435,250	699,332	808,507	950,987
I-130 Petition for Relative								
Initial Receipts	922,919	736,483	663,472	630,138	708,727	886,053	742,917	466,044
Approved	924,470	776,174	573,339	573,456	692,936	703,925	540,066	401,052
Denied	38,394	54,155	45,874	55,707	65,452	59,897	53,249	48,487
Percent Denied	4%	7%	7%	9%	9%	8%	9%	11%
Pending (End of	130,735	83,897	181,740	230,662	241,745	407,115	554,275	593,235
I-140 Petition for Alien Worker								
Initial Receipts	67,043	50,721	47,130	51,511	61,046	68,824	67,511	78,879
Approved	60,371	55,450	47,563	48,935	55,484	61,367	44,912	50,498
Denied	4,816	4,666	4,750	6,180	8,295	7,508	9,005	8,585
Percent Denied	7%	8%	9%	11%	13%	11%	17%	15%
Pending (End of	4,316	5,272	6,961	5,757	6,743	7,737	20,309	43,418
I-765 Employment Authorization								
Initial Receipts	745,306	801,083	707,222	864,991	952,613	1,160,680	1,211,514	1,357,320
Approved	693,701	643,403	633,998	790,074	875,047	1,037,412	1,139,453	1,192,727
Denied	27,159	33,007	46,216	56,966	63,840	68,130	88,948	65,027
Percent Denied	4%	5%	7%	7%	7%	6%	7%	5%
Pending (End of	48,794	60,261	44,135	70,324	76,674	135,352	114,722	186,056
I-131 Travel Document								
Initial Receipts	216,065	261,596	280,741	283,013	335,426	384,508	453,323	449,438
Approved	209,549	247,701	237,934	254,937	306,552	334,571	475,080	368,664
Denied	8,564	14,302	26,520	28,520	24,429	21,887	31,451	29,690
Percent Denied	4%	5%	10%	10%	7%	6%	6%	7%
Pending (End of	11,490	9,376	27,615	28,187	33,757	78,337	42,418	73,371
I-90 Application to Replace Green								
Initial Receipts	476,789	715,248	543,919	460,753	408,849	321,107	335,956	359,578
Approved	478,825	677,563	436,680	533,237	470,137	248,562	138,900	250,034
Denied	4,419	4,142	6,229	9,934	16,769	11,447	7,541	9,352
Percent Denied	1%	1%	1%	2%	3%	4%	5%	4%
Pending (End of	54,086	37,942	200,324	174,242	44,446	47,886	167,578	170,400
I-751 Removal of Conditions on Residence								
Initial Receipts	92,530	97,748	105,847	112,578	114,231	95,468	119,718	107,422
Approved	80,523	72,217	91,201	94,228	105,988	92,526	85,582	88,873
Denied	6,414	4,250	6,671	3,701	9,359	6,918	3,270	4,070
Percent Denied	7%	6%	7%	4%	8%	7%	4%	4%
Pending (End of	8,888	14,514	20,286	25,762	23,187	26,201	54,005	57,116
N-400								
Initial Receipts	342,238	521,866	543,353	959,963	1,277,403	1,412,712	932,957	765,346
Approved	242,740	346,692	403,513	459,846	1,104,338	582,478	473,152	872,427
Denied	19,293	39,931	40,561	46,067	229,842	130,676	137,395	379,993
Percent Denied	7%	10%	9%	9%	17%	18%	23%	30%
Pending (End of	199,385	269,192	314,236	705,266	684,069	1,440,396	1,802,902	1,355,524
N600/N643 Certificate of Citizenship								
Initial Receipts	28,335	27,963	29,861	33,749	48,549	81,645	68,058	61,162
Approved	24,027	24,069	28,280	26,390	30,730	61,932	50,692	52,956
Denied	1,169	1,725	2,065	1,856	2,226	4,764	4,826	5,350
Percent Denied	5%	7%	7%	7%	7%	7%	9%	9%
Pending (End of	14,164	14,111	10,439	15,458	30,267	51,956	64,443	81,610

¹ Servicewide Totals include all USCIS forms.


	2000 Total	2001 Total	2002 Total	2003 Total	2004 Total	2005 Total	2006 Total	Oct. 2006-Apr. 2007
Servicewide Total¹								
Initial Receipts	6,058,298	7,949,554	7,137,988	7,043,721	6,017,694	6,293,255	6,317,159	3,452,386
Approved	5,716,542	6,341,470	6,405,391	5,379,790	6,289,682	6,577,399	5,795,111	3,017,006
Denied	770,762	704,587	796,206	774,989	885,540	902,716	943,779	409,343
Percent Denied	12%	10%	11%	13%	12%	12%	14%	12%
Pending (End of	3,892,056	4,815,869	5,090,511	6,073,156	4,871,014	3,793,841	3,415,409	3,486,838
I-485 Adjustment of Status/Green Card								
Initial Receipts	562,021	754,133	710,244	685,928	601,757	629,568	606,425	380,054
Approved	483,863	695,184	764,252	365,059	604,246	782,475	826,974	338,987
Denied	80,268	126,370	97,603	90,648	138,903	145,101	166,064	55,599
Percent Denied	14%	15%	11%	20%	19%	16%	17%	14%
Pending (End of	1,001,479	971,866	967,249	1,231,321	1,105,867	891,495	569,476	580,507
I-130 Petition for Relative								
Initial Receipts	597,569	1,495,375	714,232	719,837	697,950	661,204	747,012	406,821
Approved	342,260	565,875	695,433	372,188	690,642	1,105,918	777,222	301,773
Denied	41,208	52,306	77,264	71,379	116,289	130,352	127,875	39,625
Percent Denied	11%	8%	10%	16%	14%	11%	14%	12%
Pending (End of	797,343	1,585,410	1,605,016	1,875,108	1,833,905	1,276,598	1,129,602	1,228,079
I-140 Petition for Alien Worker								
Initial Receipts	96,001	137,695	104,361	96,578	80,348	75,009	140,158	114,783
Approved	89,583	99,659	93,533	62,281	67,552	94,211	104,168	65,098
Denied	8,908	14,084	35,866	17,673	18,294	24,325	19,699	10,669
Percent Denied	9%	12%	28%	22%	21%	21%	16%	14%
Pending (End of	48,076	68,928	49,005	67,585	73,595	32,414	50,132	92,356
I-765 Employment Authorization								
Initial Receipts	1,451,527	1,813,479	1,745,976	2,156,095	1,640,703	1,744,961	1,462,583	644,186
Approved	1,325,840	1,698,448	1,573,842	1,977,344	1,694,623	1,541,531	1,188,770	666,484
Denied	65,785	87,519	134,551	169,191	206,236	217,184	186,826	96,372
Percent Denied	5%	5%	8%	8%	11%	12%	14%	13%
Pending (End of	256,451	267,329	392,907	430,306	283,218	274,368	341,571	212,150
I-131 Travel Document								
Initial Receipts	522,054	476,830	471,366	469,962	452,026	379,165	371,880	220,524
Approved	442,421	420,301	447,628	335,035	520,517	391,027	318,021	188,339
Denied	26,005	29,645	31,829	23,182	37,539	30,800	29,649	13,522
Percent Denied	6%	7%	7%	6%	7%	7%	9%	7%
Pending (End of	102,045	116,562	106,237	217,603	108,887	60,770	66,977	84,301
I-90 Application to Replace Green Card								
Initial Receipts	705,086	773,865	880,462	717,174	630,663	681,407	680,957	354,578
Approved	706,196	815,306	668,660	470,286	1,071,443	668,647	632,121	360,549
Denied	11,976	10,696	9,411	19,941	40,035	29,314	50,360	13,537
Percent Denied	2%	1%	1%	4%	4%	4%	7%	4%
Pending (End of	238,631	257,628	500,422	761,953	276,293	244,226	246,491	206,308
I-751 Removal of Conditions on Residence								
Initial Receipts	103,937	56,375	99,752	131,832	163,395	107,031	132,952	77,111
Approved	88,044	53,280	91,157	38,045	115,281	168,825	135,328	68,206
Denied	3,872	4,980	7,342	4,516	7,643	8,342	11,252	5,463
Percent Denied	4%	9%	7%	11%	6%	5%	8%	7%
Pending (End of	84,227	76,965	68,467	159,708	150,523	63,054	40,156	57,486
N-400								
Initial Receipts	460,916	501,646	700,649	523,370	662,794	602,972	730,642	596,363
Approved	898,315	613,161	589,728	456,063	536,176	600,366	702,663	348,719
Denied	399,670	218,326	139,779	91,599	103,339	108,247	120,722	49,925
Percent Denied	31%	26%	19%	17%	16%	15%	15%	13%
Pending (End of	817,431	618,750	623,519	628,025	653,128	552,296	473,467	692,504
N600/N643 Certificate of Citizenship								
Initial Receipts	71,468	70,269	69,943	60,894	59,519	56,321	60,021	42,895
Approved	56,990	84,134	88,312	61,794	61,866	50,288	58,766	34,365
Denied	7,762	11,600	11,243	8,857	8,487	7,428	7,873	4,575
Percent Denied	12%	12%	11%	13%	12%	13%	12%	12%
Pending (End of	95,143	76,454	52,269	43,284	35,618	36,536	28,971	35,618

Appendix 2: International Visits


Australia. *The Ombudsman traveled to Australia in mid-August 2006 to exchange views with Australian government entities regarding immigration-related issues such as migration, detention, integration, citizenship, processing, and customer service. The Ombudsman had extensive discussions with Australian immigration officials, including the Commonwealth Ombudsman, on practices and systems related to the delivery of information, public outreach, and resolving complaints. U.S. Embassy Canberra and the Consulate General Sydney arranged a full schedule of meetings with Australian officials, including with the public and national radio as part of the Embassy's speaker program. The Ombudsman explained the role of this office and exchanged views on immigration.*


Among the government contacts the Ombudsman met in Sydney were the New South Wales (NSW) Deputy State Director, the NSW Detention Review Manager, officials of the Australian Migrant English Programme, and the Auburn Migrant Resource Center. In Canberra, the Ombudsman's hosts included several Assistant Secretaries in the National Office, including the First Assistant Secretary in the Citizenship, Settlement, and Multicultural Affairs Division, and the Commonwealth Ombudsman. 

Canada. *The Ombudsman met with Citizenship and Immigration Canada (CIC) officials and stakeholders about immigration best practices and processes.*

Best practices include: (1) a CIC values and ethics code; (2) senior public servants perform naturalization ceremonies; (3) two-year and six-week rotational assignments for domestic officers to work at CIC; (4) case conferencing where CIC officers share details of specific cases with other CIC officers to help clarify points and develop ideas; (5) call center operators having full access to CIC immigrant databases with case information; and (6) CIC plans to introduce email at its call centers as a way to inquire about case status and/or case comments and concerns. 

Italy. *The Ombudsman visited Rome to review operations at the USCIS Rome District Office and to participate in meetings at the U.S. Embassy, International Organization of Migration Mission, Italian Ministry of Interior, and the UNHCR Regional Office. Issues identified include:*

(1) Military naturalization. Overseas operations facilitate USCIS efforts to conduct military naturalization ceremonies. Interviews to validate military naturalization applicants' backgrounds are frequently conducted via video teleconference. 

(2) Refugee processing. USCIS obtains fingerprints for certain refugee applicants and conducts post-adjudication DNA testing for Form I-730, follow-to-join refugee petitions, applicants. 

Appendix 3: USCIS Facilities Visited

Number	Date Visited	Facility
1	9/11/2003	Administrative Appeals Unit
2	9/16/2003	New York District Office
3	9/18/2003	Miami Asylum Office
4	9/18/2003	Miami District Office
5	9/19/2003	Orlando Application Support Center
6	9/19/2003	Orlando Sub-Office
7	9/23/2003	Los Angeles Applicant Support Center
8	9/23/2003	Los Angeles District Office
9	9/24/2003	California Service Center
10	9/24/2003	Western Region Office
11	9/25/2003	Central Region Office
12	9/25/2003	Dallas District Office
13	9/26/2003	Texas Service Center
14	10/15/2003	San Antonio Application Support Center
15	10/15/2003	San Antonio District Office
16	11/6/2003	Detroit Applicant Support Center
17	11/6/2003	Detroit District Office
18	11/7/2003	Chicago Asylum Office
19	11/7/2003	Chicago District Office
20	12/12/2003	Washington District Office
21	12/23/2003	Baltimore District Office
22	1/15/2004	San Juan Applicant Support Center
23	1/15/2004	San Juan District Office
24	1/21/2004	Phoenix District Office
25	2/11/2004	Kansas City District Office
26	2/12/2004	Missouri Service Center
27	2/13/2004	National Records Center
28	3/23/2004	New York District Office
29	3/30/2004	Dallas District Office
30	3/31/2004	Central Region Office
31	3/31/2004	Texas Service Center
32	4/13/2004	Western Region Office
33	4/13/2004	California Service Center
34	4/14/2004	Los Angeles District Office
35	4/15/2004	San Diego District Office
36	5/3/2004	Chicago District Office
37	5/3/2004	Chicago Lockbox
38	5/4/2004	Chicago Asylum Office
39	5/14/2004	Tampa Sub-Office
40	7/16/2004	New York District Office
41	7/21/2004	Atlanta District Office
42	7/22/2004	USCIS Academy at the Federal Law Enforcement Training Center (FLETC)
43	7/26/2004	Vermont Service Center
44	7/28/2004	Eastern Region Office
45	7/28/2004	Eastern Forms Center
46	7/29/2004	Nebraska Service Center

47	7/31/2004	Omaha District Office
48	9/20/2004	San Jose Sub-Office
49	9/20/2004	San Francisco District Office
50	9/21/2004	Anchorage District Office
51	9/23/2004	Seattle District Office
52	9/29/2004	Corbin Card Production Facility
53	9/29/2004	Pearson Contract Corbin Call Center
54	9/30/2004	Louisville Sub-Office
55	10/12/2004	Buffalo District Office
56	10/13/2004	Cleveland District Office
57	10/14/2004	Detroit District Office
58	10/15/2004	Chicago District Office
59	10/28/2004	Tampa Sub-Office
60	11/3/2004	Central Region Office
61	11/4/2004	Dallas District Office
62	12/9/2004	Philadelphia District Office
63	12/10/2004	Newark District Office
64	1/4/2005	Central Region Office
65	1/4/2005	Dallas District Office
66	1/5/2005	Dallas District Office
67	2/22/2005	Norfolk Sub-Office
68	2/24/2005	Washington District Office
69	2/28/2005	National Benefits Center
70	3/1/2005	National Benefits Center
71	3/2/2005	National Records Center
72	3/3/2005	Seattle District Office
73	3/21/2005	Dallas District Office
74	3/21/2005	Central Region Office
75	3/21/2005	Texas Service Center
76	3/22/2005	Texas Service Center
77	3/23/2005	Western Region Office
78	3/23/2005	California Service Center
79	3/24/2005	California Service Center
80	4/4/2005	Chicago Lockbox
81	4/5/2005	Vermont Service Center
82	4/6/2005	Vermont Service Center
83	4/7/2005	Eastern Region Office
84	8/8/2005	Phoenix District Office
85	8/8/2005	Phoenix Call Center
86	8/9/2005	Los Angeles District Office
87	8/9/2005	Los Angeles Call Center
88	8/10/2005	Los Angeles Lockbox
89	8/10/2005	Los Angeles Asylum Office
90	8/11/2005	San Diego District Office
91	8/11/2005	Chula Vista Satellite Office ¹
92	8/24/2005	Boston District Office
93	8/29/2005	El Paso District Office

94	8/29/2005	Ciudad Juarez Sub-Office
95	8/31/2005	Houston District Office
96	9/1/2005	Dallas District Office
97	9/2/2005	Texas Service Center
98	9/26/2005	Orlando Sub-Office
99	9/27/2005	Miami District Office
100	10/25/2005	California Service Center
101	10/26/2005	California Service Center
102	11/15/2005	Hartford Sub-Office
103	11/17/2005	Chicago Lockbox
104	11/18/2005	National Benefits Center
105	11/20/2005	National Records Center
106	1/30/2006	Charlotte Sub-Office
107	1/31/2006	Atlanta District Office
108	1/31/2006	Atlanta Application Support Center
109	2/1/2006	Jacksonville Sub-Office
110	2/2/2006	West Palm Beach Sub-Office
111	3/1/2006	Pittsburgh Sub-Office
112	3/13/2006	Los Angeles District Office
113	3/15/2006	California Service Center
114	3/16/2006	Chula Vista Satellite Office
115	3/28/2006	New York District Office
116	3/29/2006	New York Tier II Call Center
117	4/18/2006	Portland, ME District Office
118	4/19/2006	Vermont Service Center
119	4/20/2006	St. Albans Sub-Office
120	4/20/2006	Field Support Center, Office of Procurement (Williston, VT)
121	4/21/2006	Eastern Region Office, VT
122	4/21/2006	Eastern Forms Center
123	5/12/2006	Orlando Sub-Office
124	5/25/2006	Dallas District Office
125	8/3/2006	Honolulu District Office
126	8/3/2006	Honolulu Application Support Center
127	8/28/2006	Kansas City District Office*
128	8/29/2006	Burlington Region Office*
129	9/13/2006	Des Moines Sub-Office*
130	9/13/2006	St. Paul District Office
131	9/14/2006	Chicago District Office
132	9/15/2006	Chicago Asylum Office
133	9/15/2006	Chicago Lockbox
134	9/19/2006	New York District Office
135	9/25/2006	Denver District Office
136	9/26/2006	Sacramento Sub-Office Office
137	10/3/2006	National Records Center

138	10/11/2006	Newark Asylum Office*
139	10/25/2006	California Service Center*
140	10/27/2006	Sacramento Sub Office*
141	11/8/2006	Vermont Service Center*
142	11/14/2006	Digitization Center, Kentucky
143	11/14/2006	Tier 1, Call Center in Kentucky
144	11/29/2006	Los Angeles Asylum Office*
145	12/11/2006	Harlingen District Office
146	12/12/2006	Texas Service Center
147	12/12/2006	Dallas District Office
148	12/12/2006	Chicago Lockbox*
149	1/10/2007	Arlington Asylum Office*
150	1/18/2007	New York Asylum Office*
151	1/30/2007	Miami District Office
152	1/31/2007	West Palm Beach Field Office
153	2/1/2007	Tampa District Office
154	2/1/2007	Miami Asylum Office*
155	2/2/2007	Orlando Field Office
156	2/12/2007	New York District Office
157	2/21/2007	Newark District Office
158	2/21/2007	Office of Contracting in Burlington*
159	2/21/2007	Vermont Service Center*
160	2/22/2007	Philadelphia District Office
161	3/8/2007	Baltimore District Office
162	3/17/2007	Rome, Italy Field Office
163	4/16/2007	El Paso Field Office
164	4/17/2007	Oklahoma City Field Office
165	4/18/2007	National Benefits Center
166	4/18/2007	National Records Center
167	4/26/2007	Washington District Office
168	5/8/2007	Nebraska Service Center

¹ Omitted from 2006 Report in error.

* Offices visited by Ombudsman's staff members.

Appendix 4: Homeland Security Act Excerpts**Homeland Security Act Sections 451, 452, and 453
(6 U.S.C. §§ 271, 272, and 273)****SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.****(a) ESTABLISHMENT OF BUREAU-**

- (1) **IN GENERAL-** There shall be in the Department a bureau to be known as the 'Bureau of Citizenship and Immigration Services'.
- (2) **DIRECTOR-** The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who--
 - (A) shall report directly to the Deputy Secretary;
 - (B) shall have a minimum of 5 years of management experience; and
 - (C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.
- (3) **FUNCTIONS-** The Director of the Bureau of Citizenship and Immigration Services--
 - (A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;
 - (B) shall oversee the administration of such policies;
 - (C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;
 - (D) shall establish national immigration services policies and priorities;
 - (E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and
 - (F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.
- (4) **MANAGERIAL ROTATION PROGRAM-**
 - (A) **IN GENERAL-** Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall--
 - (i) gain some experience in all the major functions performed by such bureau; and
 - (ii) work in at least one field office and one service center of such bureau.

- (B) REPORT- Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.
- (5) PILOT INITIATIVES FOR BACKLOG ELIMINATION- The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.
- (b) TRANSFER OF FUNCTIONS FROM COMMISSIONER- In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:
 - (1) Adjudications of immigrant visa petitions.
 - (2) Adjudications of naturalization petitions.
 - (3) Adjudications of asylum and refugee applications.
 - (4) Adjudications performed at service centers.
 - (5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.
- (c) CHIEF OF POLICY AND STRATEGY -
 - (1) IN GENERAL- There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.
 - (2) FUNCTIONS- In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for--
 - (A) making policy recommendations and performing policy research and analysis on immigration services issues; and
 - (B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.
- (d) LEGAL ADVISOR-
 - (1) IN GENERAL- There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.
 - (2) FUNCTIONS- The legal advisor shall be responsible for--
 - (A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and
 - (B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER-

- (1) IN GENERAL- There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.
- (2) FUNCTIONS-
 - (A) IN GENERAL- The Budget Officer shall be responsible for--
 - (i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;
 - (ii) financial management of the Bureau of Citizenship and Immigration Services; and
 - (iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) CHIEF OF OFFICE OF CITIZENSHIP-

- (1) IN GENERAL- There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.
- (2) FUNCTIONS- The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

- (a) IN GENERAL- Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the 'Ombudsman'). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.
- (b) FUNCTIONS- It shall be the function of the Ombudsman—
 - (1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
 - (2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
 - (3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).
- (c) ANNUAL REPORTS-
 - (1) OBJECTIVES- Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and--
 - (A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

- (B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;
 - (C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;
 - (D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;
 - (E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;
 - (F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and
 - (G) shall include such other information as the Ombudsman may deem advisable.
- (2) REPORT TO BE SUBMITTED DIRECTLY- Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.
- (d) OTHER RESPONSIBILITIES- The Ombudsman—
- (1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;
 - (2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;
 - (3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and
 - (4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.
- (e) PERSONNEL ACTIONS-
- (1) IN GENERAL- The Ombudsman shall have the responsibility and authority--
 - (A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and
 - (B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.
 - (2) CONSULTATION- The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.
- (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES- The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a

formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES-

(1) IN GENERAL- Each local ombudsman--

- (A) shall report to the Ombudsman or the delegate thereof;
- (B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;
- (C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and
- (D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS- Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

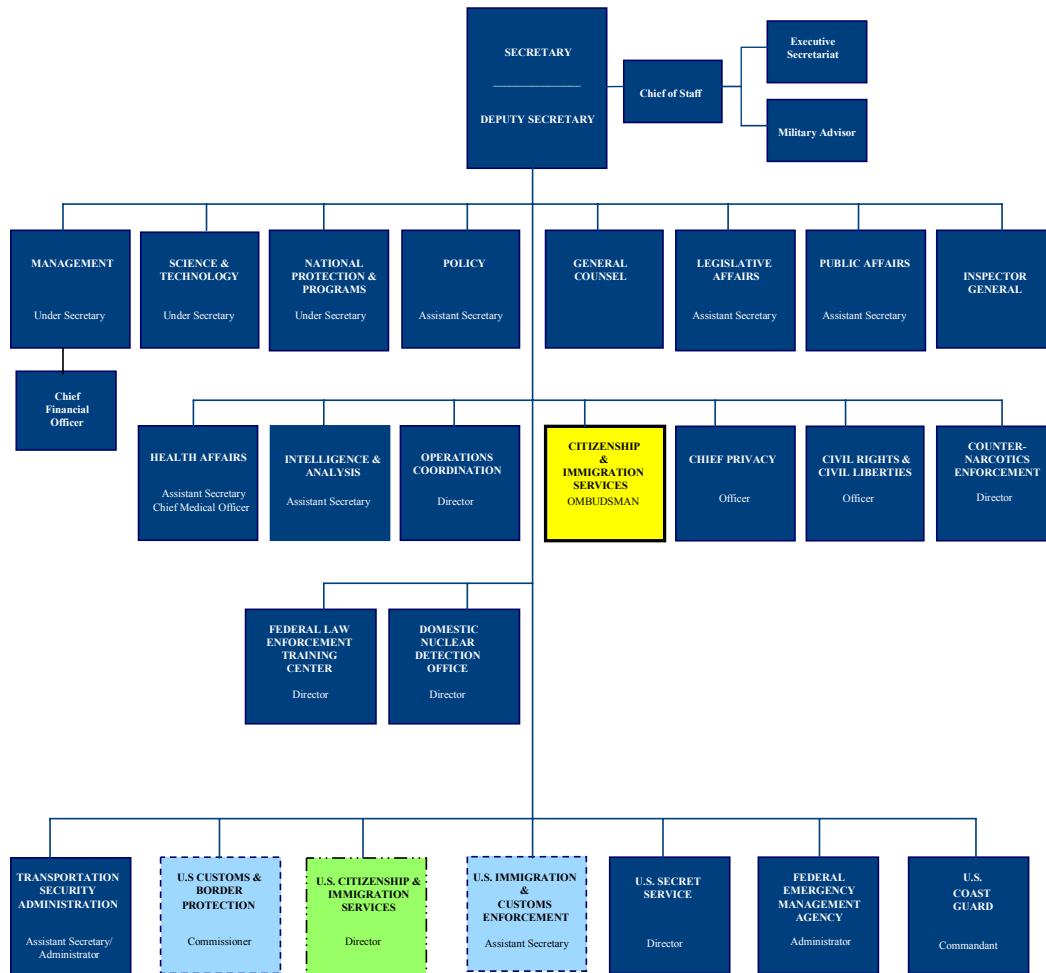
- (1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;
- (2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and
- (4) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to— H. R. 5005—66

- (1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;
- (2) any fraud or misrepresentation associated with the decision; and
- (3) the efficiency with which the decision was rendered.

Appendix 5: DHS Organization Chart

Department of Homeland Security Organizational Chart



- Part of the former INS which was combined with part of U.S. Customs
- Formerly part of the INS Immigration Services Division
- Newly created agency under Homeland Security Act

As of June 6, 2007 from www.dhs.gov



Homeland Security

Office of the
Citizenship and Immigration Services
Ombudsman
U.S. Department of Homeland Security
Mail Stop 1225
Washington, DC 20528-1225

Appendix 6: Biography of Prakash Khatri, Ombudsman

Prakash Khatri was appointed as the first Department of Homeland Security (DHS), Citizenship and Immigration Services Ombudsman in July 2003 by Secretary Tom Ridge. The Ombudsman assists individuals and employers who experience problems with United States Citizenship and Immigration Services (USCIS). He also identifies systemic problems with USCIS processes and recommends solutions. Mr. Khatri has provided executive leadership, vision, and direction to this office from its inception as a one-person entity to its authorized total of 24 full time staff plus six contractor staff.

As the Ombudsman, Mr. Khatri has made numerous recommendations to the Director of USCIS for changes to the immigration benefits process based on data collected through various outreach activities including: traveling to over 150 USCIS and other DHS facilities, meeting with DHS immigration officials, and conferring with countless private individuals and community based organizations. Mr. Khatri also meets with federal and state government leaders as well as stakeholder organizations to learn of the difficulties they experience with USCIS. In addition, Mr. Khatri has served as an advisor on numerous DHS immigration reform initiatives and acted in a key leadership role for the DHS Second Stage Review's Immigration Policy Team.

Mr. Khatri earned his B.A. from Stetson University (1981) and J.D. from Stetson University College of Law (1983). Mr. Khatri was admitted to the Florida State Bar in 1984, and at the age of 22 was the youngest attorney in the state's history. He was among the first 35 members of the Florida Bar to pass the Immigration and Nationality Board Certification examination. Mr. Khatri subsequently served on the Florida Bar Immigration and Nationality Board Certification Committee where he developed and evaluated board certification exams.

In private practice, Mr. Khatri spent almost two decades representing individuals and businesses from more than 100 countries in the area of immigration law providing strategic planning and visa processing advice to corporate clients. He also conducted immigration seminars in Taiwan, India, and South Africa.

Mr. Khatri also worked for five years as Manager of Immigration and Visa Processing for Walt Disney World in Florida. While working for Disney, Mr. Khatri traveled to U.S. consular posts in more than 18 countries. At Disney, he developed and implemented an automated high-volume visa processing system and other innovations that reduced unnecessary paperwork and improved efficiencies related to handling employee visa applications.

In addition to serving as a former President of the Central Florida Chapter of the American Immigration Lawyers Association, Mr. Khatri is a past President of the Asian-Pacific American Heritage Council of Central Florida.

