

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 first-hand 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.

⁷ See Appendix 3 for complete list of facilities visited.