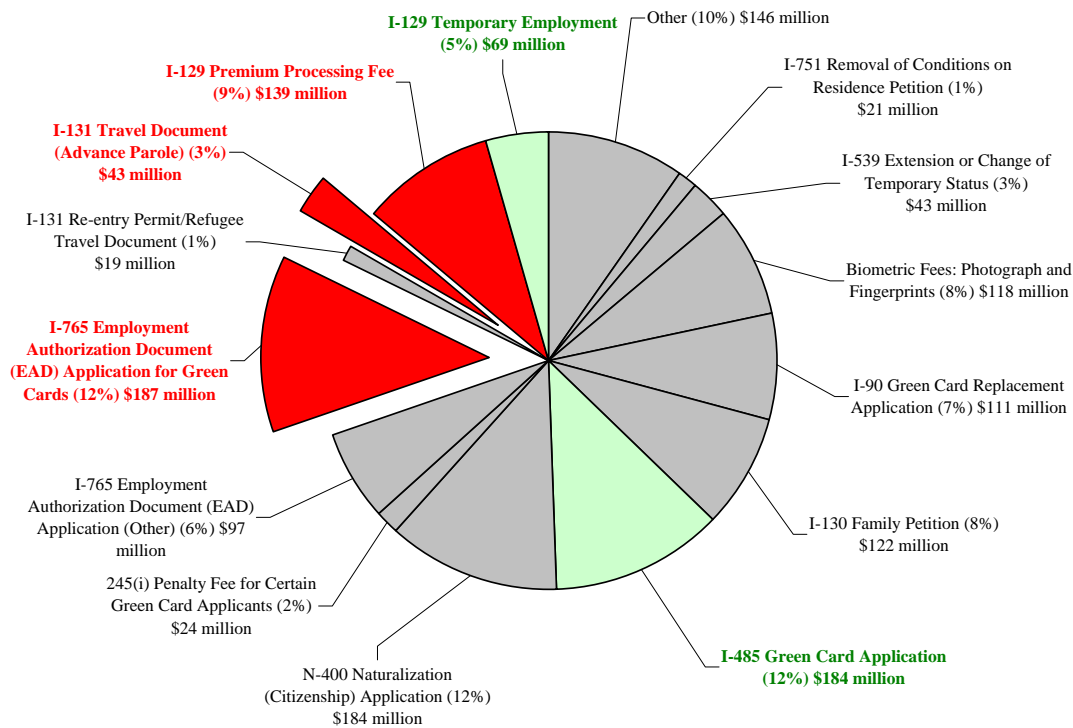


Figure 7: USCIS Fee Revenue for FY 05



Note: The I-765 Employment Authorization revenue attributed to green card applicants reflects the Ombudsman’s estimate of EADs issued to those applicants. The data used to generate Figures 6 and 7 do not directly match data used to generate Figure 5. To maintain consistency with the Ombudsman’s 2005 Annual Report at p. 8, Figure 7 was generated using the same formulas as in last year’s revenue chart. Better reporting of certain data led to a refinement in the calculations, which were used to generate Figure 5 above, as explained in Appendix 3. The percentage difference in the calculated values is minimal.

USCIS’ response to the 2005 Annual Report stated that the agency is “taking steps to ensure that interim documents are not provided to applicants who have not cleared basic security checks or who have not provided the essential evidence of eligibility for permanent residence.”⁴¹ While this may appear to deal with the issue, it is only a short-term approach. EADs are not the problem. Rather, they are symptoms of inefficient green card application processes that, if corrected, automatically would reduce the need for USCIS to issue EADs except for the exceptional circumstance. Moreover, reducing the number of applications for interim benefits allows USCIS to allocate staff to tackle backlog elimination and prevention efforts.

F. Name Checks and Other Security Checks

FBI name checks, one of the security screening tools used by USCIS, significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their intended national security objectives.⁴²

⁴¹ USCIS’ Response to the Ombudsman’s 2005 Annual Report (Mar. 15, 2006) at 12.

⁴² The Ombudsman’s 2005 Annual Report (at p. 11) included a discussion of the pervasive and serious issue of background and security checks.

Currently, USCIS conducts several security checks to: (1) determine whether applicants have a history of criminal or terrorist activity that would make them ineligible for a benefit; and (2) notify law enforcement agencies of the presence and intentions of individuals who might be of interest. The Ombudsman receives numerous inquiries about FBI name check delays. During the reporting period, processing delays due to FBI name checks were an issue in 15.7 percent of all written case problems received. Stakeholder organizations and USCIS personnel across the country also regularly raise the issue of FBI name check delays as the most pervasive problem preventing completion of cases.

CASE PROBLEM

The principal applicant and his wife (the derivative beneficiary) filed their employment-based green card applications in October 2001. At the time of inquiry with the Ombudsman in March 2006, their applications remained pending due to FBI name checks.

CASE PROBLEM

An applicant filed a naturalization application in March 1999 with a USCIS service center that had jurisdiction over the case. In August 2003, USCIS transferred the application to the applicant's local USCIS district office for the applicant to be interviewed. The interviewing officer requested additional evidence at the interview, which the applicant provided in a timely fashion. When the Ombudsman received the inquiry in April 2006, the application remained pending due to an outstanding FBI name check and additional security checks.

The FBI provides information to USCIS as a paying customer on 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 name checks are not sought 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 at its request. Moreover, the FBI does not record any additional information about the names USCIS submits and does not routinely take any further action. Instead, the FBI reviews its files much like a credit reporting entity would verify and report on information to commercial entities requesting credit validations.

Some types of background and security checks return results within a few days and do not significantly prolong USCIS processing times or hinder backlog reduction goals. However, while the overall percentage of long-pending cases is small, as of May 2006, USCIS reported 235,802 FBI name checks pending, with approximately 65 percent (153,166) of those cases pending more than 90 days and approximately 35 percent (82,824) pending more than one year.⁴³

⁴³ See USCIS FBI Pending Name Check Aging Report (May 17, 2006).

In November 2005, based on earlier data, the DHS IG reported that FBI name checks take more than a month to complete for six percent of submissions and more than six months to complete for one percent of submissions.⁴⁴ The longer time is required because the FBI must conduct a manual review of its files to verify that the applicant is actually the subject of an FBI file. This review can include the FBI reporting on fragments of names on people who are not necessarily central or directly related to a case.

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 checks then need to be reinitiated, adding financial and time costs for applicants and USCIS. The high volume of FBI name check cases and the relatively limited resources devoted to background and security checks are major problems. The FBI's manual processing exacerbates delays. USCIS' planned Background Check Service (BCS), a new IT system that will track the status of background and security checks for pending cases, needs to be implemented as soon as possible. The Ombudsman looks forward to more information from USCIS on the BCS implementation schedule.

Considering the cost and inconveniences caused by the delays, the value of the FBI name check process should be reexamined. In almost every name check case that the FBI conducts for USCIS, the foreign national is physically present in the United States during the name check process. Thus, delays in the name check process actually prolong an individual's presence (albeit in an interim status) in the United States while the check is pending. In that sense, the current USCIS name check policy may increase the risk to national security by prolonging the time a potential criminal or terrorist remains in the country. Further, 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. Most individuals subject to lengthy name checks are either already green card holders or have been issued EADs allowing them to receive Social Security cards and state drivers' licenses. Additionally, most green card applicants are also eligible to receive advance parole to enable them to travel outside the United States and return as long as their cases are pending, which can be for years under the current process.

USCIS requires that the FBI name check be completed before issuing a green card. However, in removal proceedings before an Immigration Judge, the judge will require confirmation of all background and security checks by DHS before the judge can grant any relief (for example, ordering USCIS to issue a green card). Immigration and Customs Enforcement (ICE – another DHS agency) attorneys indicate to the judge that all background and security checks have been initiated. The judge proceeds with issuing an order which grants green card status to the individual. Based on this order, USCIS, as the producer of the actual card, must issue the green card despite the outstanding FBI name check. These two policies need to be harmonized.

⁴⁴ See DHS IG Report "A Review of U.S. Citizenship and Immigration Services' Alien Security Checks," OIG-06-06 (Nov. 2005), at 24; http://www.dhs.gov/interweb/assetlibrary/OIG_06-06_Nov05.pdf.

On March 16, 2005, Secretary Chertoff outlined a risk-based approach to homeland security threats, vulnerabilities, and consequences:

Risk management must guide our decision-making as we examine how we can best organize to prevent, respond, and recover from an attack Our strategy is, in essence, to manage risk in terms of these three variables – threat, vulnerability, consequence. We seek to prioritize according to these variables, to fashion a series of preventive and protective steps that increase security at multiple levels.⁴⁵

In addition, the IG recommended that USCIS establish a comprehensive, risk-based plan for the selection and completion of security checks.⁴⁶ Despite Secretary Chertoff's statement and the IG's recommendation, USCIS recently stated that "[r]esolving pending cases is time-consuming and labor-intensive; some cases legitimately take months or even several years to resolve."⁴⁷ Unfortunately, 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.

RECOMMENDATION AR 2006 --04

The Ombudsman encourages USCIS to adopt the recommendation from the DHS Secretary's Second Stage Review to establish an adjudication process in which all security checks are completed prior to submission of the petition or application for an immigration benefit.

G. Funding of USCIS

The manner in which USCIS currently 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 modernization efforts; and (3) plan for the future. USCIS is required to recover the full costs of operations with funds generated from filing fees. However, the process by which USCIS can change fees hampers its ability to receive fees commensurate with the actual costs to process particular application types. As discussed below, USCIS does not enjoy financial flexibility and thus finds itself making difficult operational decisions to provide services while meeting financial goals.⁴⁸

⁴⁵ DHS Secretary Michael Chertoff, Prepared Remarks at George Washington University Homeland Security Policy Institute (Mar. 16, 2005); <http://www.dhs.gov/dhspublic/display?theme=44&content=4391&print=true>.

⁴⁶ See generally DHS IG Report "A Review of U.S. Citizenship and Immigration Services' Alien Security Checks."

⁴⁷ See USCIS Fact Sheet, "Immigration Security Checks – How and Why the Process Works" (Apr. 25, 2006); http://www.uscis.gov/graphics/publicaffairs/factsheets/security_checks_42506.pdf.

⁴⁸ See generally GAO Report "Immigration Application Fees: Current Fees Are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operation," GAO-04-309R (Jan. 2004); <http://www.gao.gov/new.items/d04309r.pdf>.