



Highlights of [GAO-06-735](#), a report to the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

In fiscal year 2005, U.S. citizens and lawful permanent residents filed about 730,000 petitions with the U.S. Citizenship and Immigration Services (USCIS) to sponsor noncitizen family members, including spouses, fiancé(e)s, and children, to immigrate to the United States. Those doing the sponsoring are called petitioners; those benefiting from the sponsoring are called beneficiaries. If USCIS approves the petition, overseas beneficiaries must also file a visa application with the Department of State to enter the United States. In January 2002, USCIS started to conduct background security checks on all petitioners in addition to the beneficiaries. These background checks revealed that some of the petitioners had convictions for criminal sex offenses; further, some of those criminal sex offenders were filing family-based petitions for children (those under the age of 21). This report addresses the number of convicted sex offenders who filed family-based petitions in fiscal year 2005 based upon a computer match of USCIS data with individuals in the Federal Bureau of Investigation’s National Sex Offender Registry and discusses USCIS’s and the Department of State’s framework for disclosing a sponsor’s criminal sexual background to the beneficiary. DHS, the Department of State, and the Department of Justice reviewed a draft of this report. Only technical comments were provided and have been incorporated into this report.

www.gao.gov/cgi-bin/getrpt?GAO-06-735.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Paul Jones at (202) 512-8777 or jonespl@gao.gov.

IMMIGRATION BENEFITS

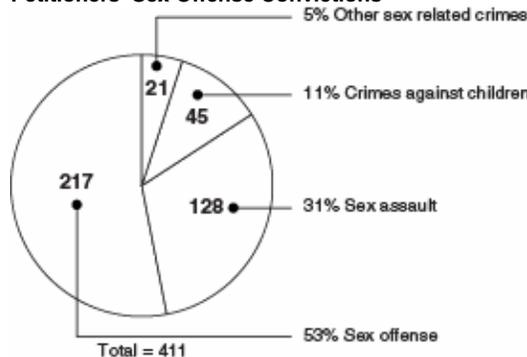
Circumstances under Which Petitioners' Sex Offenses May Be Disclosed to Beneficiaries

What GAO Found

At least 398 convicted sex offenders filed a total of 420 petitions in fiscal year 2005 for spouses, fiancé(e)s, children, and other relatives. Immigration law does not prohibit convicted sex offenders from petitioning to bring their spouses, fiancé(e)s, or children into the United States and generally USCIS cannot deny a petition based solely on the fact that the petitioner is a convicted sex offender. The sex offenders were convicted of at least 411 sex-related crimes, including sexual assault and rape, according to data in the Federal Bureau of Investigation’s National Sex Offender Registry. At least 45 convictions involved crimes against children. While most beneficiaries were spouses and fiancé(e)s, criminal sex offenders petitioned for at least 60 children.

According to USCIS and Department of State officials, an exception to the Privacy Act of 1974 gives them authority to disclose a petitioner’s criminal sex offender history if there are “compelling circumstances affecting the health and safety” of the beneficiary. For certain noncitizen beneficiaries, disclosure of the petitioner’s criminal background information is now mandatory based on new authority granted to USCIS and the Department of State. The International Marriage Broker Regulation Act of 2005 (IMBRA) requires disclosure of a U.S. citizen’s criminal background information, including sex crimes, to certain prospective immigrants, essentially noncitizen fiancé(e)s, but some spouses and minor children as well. Mandatory disclosure is not required for beneficiaries not covered by IMBRA, though these beneficiaries may receive information about a petitioner’s criminal background on a discretionary basis under the Privacy Act exception. GAO estimates that IMBRA’s mandatory disclosure requirement will cover about 20 percent of family-based beneficiaries based on fiscal year 2005 data. On May 3, 2006, USCIS issued interim guidance to its adjudicators on when it may be appropriate to disclose information related to a petitioner’s criminal history under the “compelling circumstances” exception to the Privacy Act. USCIS plans to issue separate guidance related to disclosure requirements under IMBRA. Department of State officials said that they are preparing to issue Privacy Act disclosure guidance and are finalizing separate IMBRA disclosure guidance.

Petitioners’ Sex Offense Convictions



Source: GAO analysis of USCIS and FBI data.