

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-r-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).