

A. Backlogs and Prolonged Processing Times

Backlog Definition. In July 2001, President Bush stated “. . . the goal for the [Immigration and Naturalization Service (INS) is] a six-month standard from start to finish for processing applications for immigration. It won't be achievable in every case, but it's the standard of this administration and I expect the INS to meet it.”¹³ Congress supported this backlog elimination objective with \$500 million in appropriated funds over five years from FY 02 through FY 06. The Ombudsman anticipates that USCIS will not meet this clearly enunciated goal by the end of FY 06 (on September 30, 2006), as described below.

As reported in the 2005 Annual Report (at pp. 3-4), the majority of complaints and inquiries the Ombudsman received during this reporting period continue to involve customer frustration with USCIS processing times. These processing times add to the backlog and undercut efforts to eliminate it.

CASE PROBLEM

*An applicant filed for naturalization in July 1998 with a USCIS service center. As of the date of the inquiry with the Ombudsman in March 2006, the application remained pending.*¹⁴

CASE PROBLEM

In 2004, a U.S. citizen petitioned for his fiancée to come to the United States as a K-1 visa holder. Despite several case status inquiries to the USCIS service center where the petition was filed properly, the petitioner could not obtain information about the delay of the petition. As of the date of inquiry with the Ombudsman in March 2006, the petition remained pending.

The following charts show current processing times in USCIS field offices for the green card application and the N-400 application for naturalization. The large disparity in processing times from office to office is of great concern. For example, Orlando, FL had processing times in excess of 700 days for green cards, while processing times in Buffalo, NY were under 90 days.

¹³ See Remarks by the President at INS Naturalization Ceremony (July, 10, 2001) <http://www.whitehouse.gov/news/releases/2001/07/print/20010710-1.html> (Last visited May 19, 2006).

¹⁴ All case examples provided in this Annual Report are from actual cases received by the Ombudsman during this reporting period. They are based on the description of facts provided to the Ombudsman by individuals seeking the Ombudsman's assistance; specific names, dates, and places are omitted to protect confidentiality.

As described in section VII.C.1, the Ombudsman recently received limited read-only permission to view certain USCIS data systems. However, the Ombudsman still does not have access to verify all of the facts provided by individuals seeking assistance due to continuing USCIS and DHS Headquarters information technology challenges in installing the requested systems.

Figure 2: District Office Green Card (Form I-485) Processing Times

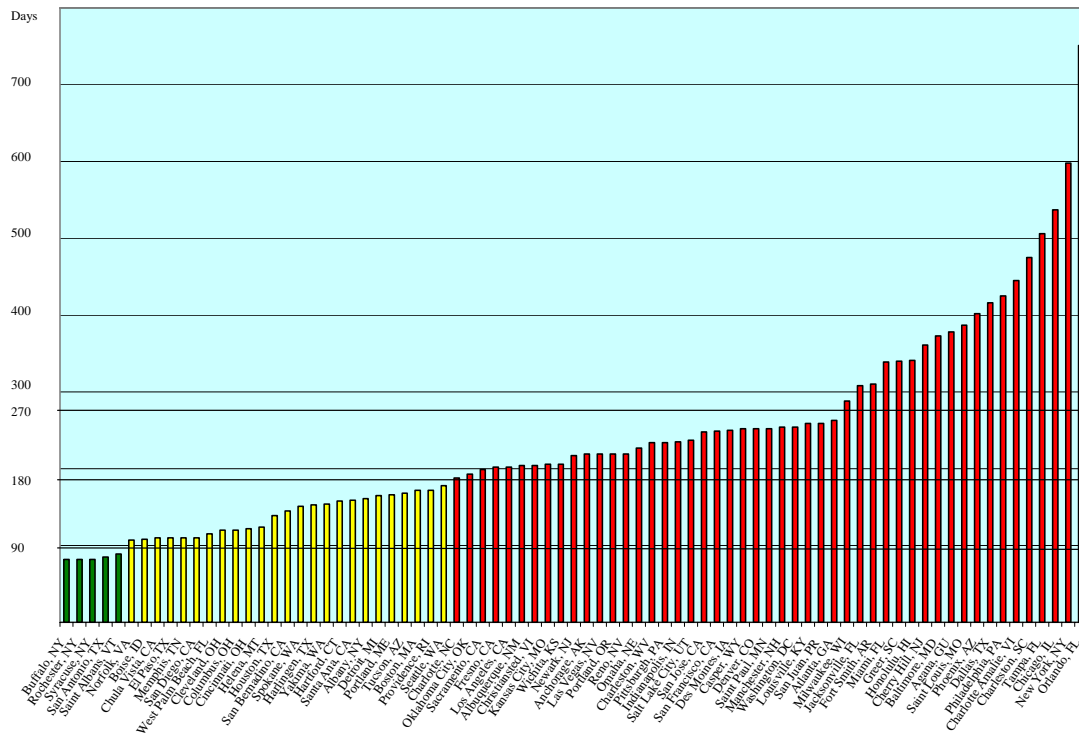
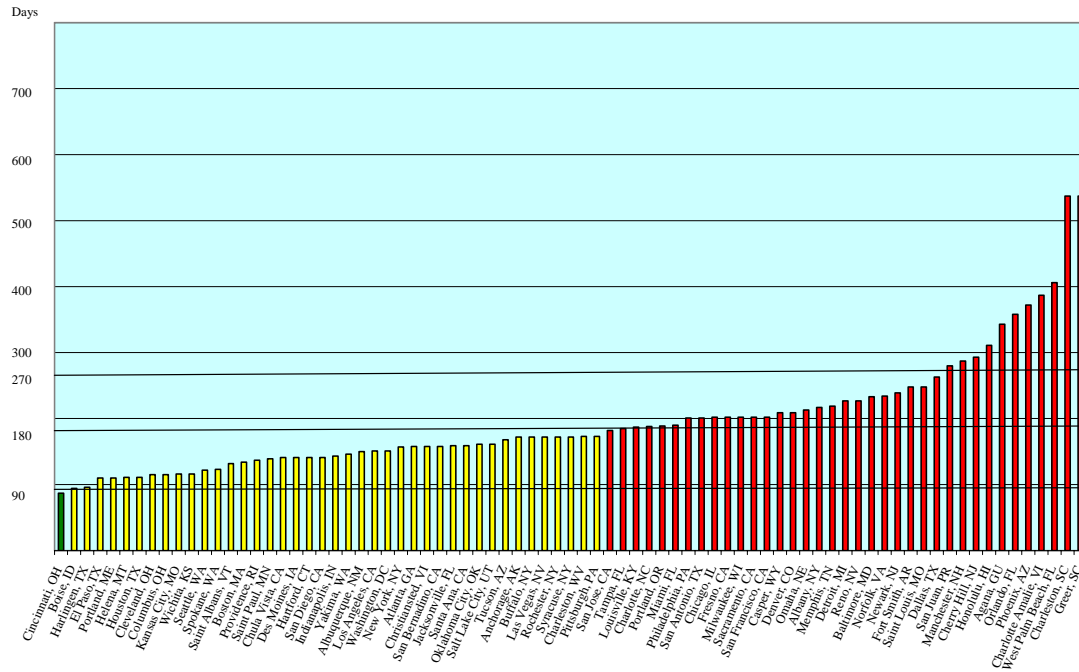


Figure 3: District Office Naturalization (Form N-400) Processing Times



Source for Figures 2 and 3: USCIS Website, as of May 22, 2006.¹⁵

¹⁵ USCIS reported no data for the New Orleans District Office because it temporarily closed after Hurricane Katrina.

USCIS should complete cases as rapidly as possible while maintaining the system's integrity. However, USCIS' definition of backlog results in the agency falling short of this goal. In its June 16, 2004 Backlog Elimination Plan (BEP), at p. 4, USCIS described its backlog calculation as follows:¹⁶

The new definition in [USCIS' Backlog Elimination Plan] quantifies the backlog by basing the figure on the number of receipts during the previous number of months that corresponds with target cycle time (usually six) and the current pending count for a given application type. This calculated amount can then be used to assess and determine concrete production targets for backlogged application types and the resources necessary to meet those targets. Therefore, backlog is defined as the difference between pending and receipts for the number of months of target cycle time. (Backlog = Pending – Last Six Months' receipts). This new definition of backlog better reflects the idea that as long as USCIS is processing its receipts within the designated target cycle time, there is no backlog for those applications as the pending count only reflects cases within [USCIS] target cycle time.

The following month, in July 2004, USCIS reported 1.5 million backlogged cases, which was an apparent reduction from the 3.5 million backlogged cases in March 2003. However, the agency also reclassified 1.1 million of the 2 million cases eliminated, as described below:¹⁷

During July, USCIS distinguished in its calculation of 'backlog' those cases that were ripe for adjudication, where a benefit was immediately available through the approval of an application or petition, and those that were not ripe, where even if the application or petition were approved today, a benefit could not be conferred for months or years to come. [Unripe cases] were excluded from the number of cases in the backlog but remain in the pending.¹⁸

The DHS Inspector General (IG) noted that:

Such reclassifications, as well as the strategy of relying upon temporary employees, may benefit USCIS in the short-term. However, they will not resolve the long-standing processing and IT problems that contributed to the backlog in the first place. Until

¹⁶ USCIS publishes its backlog elimination plans on the agency's website <http://www.uscis.gov/graphics/aboutus/repstudies/backlog.htm>.

¹⁷ See DHS Office of the Inspector General (IG) 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.

¹⁸ USCIS Backlog Elimination Plan (BEP), 3rd Quarter FY 04 Update (Nov. 5, 2005), at 4.

these problems are addressed, USCIS will not be able to apply its resources to meet mission and customer needs effectively.¹⁹

USCIS' most recent BEP, 4th quarter update for FY 05 dated April 7, 2006, at p. 1, again redefined the backlog:

USCIS removes from the calculated backlog total those pending applications that it is unable to complete due to statutory caps or other bars and those cases 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) Our initial sense was to immediately factor all these cases into the backlog, increasing the backlog in June by 174,000. After further evaluation, USCIS has modified this conclusion. The number of applications freed for processing is so large that, combined with a 6 month production cycle, USCIS could not complete these cases in this timeframe without significantly affecting production and processing time for other products.

After the redefinition, the backlog supposedly declined from 1.08 million cases to 914,864 cases at the end of FY 05. Yet, individuals whose cases were factored out of the backlog still awaited adjudication of their applications and petitions.

USCIS clearly signaled its intention to continue using such periodic backlog redefinitions in FY 06:

Over [FY 06] USCIS will continue to quantify those cases but will remove from the calculated backlog work it cannot complete because of factors outside its control, such as cases awaiting customer responses to requests for information, cases in suspense to afford customers another opportunity to pass the naturalization test, cases awaiting an FBI name check or other outside agency action, or where USCIS has determined a naturalization case is approvable and the case remains pending only for the customer to take the oath.²⁰

The Ombudsman shares the IG's concern that these definitional changes hide the true problem and need for change. To permit accurate assessment of backlog elimination progress, USCIS should provide alongside its "redefined backlog numbers" the total numbers without such recalculations. Only when USCIS provides such similarly defined data can true progress be evaluated. Although redefinition may provide a new and different measure of backlog elimination progress, and be partly the result of advice to separate out delayed cases beyond

¹⁹ See DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," at 28.

²⁰ See USCIS BEP, 4th quarter FY 05 (Apr. 7, 2006), at 5.

USCIS control, such fine-tuning also makes historical comparisons between differently defined numbers a difficult “apples and oranges” problem.

The contradiction becomes apparent in comparing two USCIS BEP goal statements nearly two years apart. In the June 16, 2004 report preceding the initial redefinition, USCIS noted, “[t]he original Backlog Elimination Plan challenged the INS to reach a national average cycle time of six months or less for all applications by the end of 2003. The remaining years, 2004 – 2006, would then be used to further reduce cycle time targets for selected applications [. . .].”²¹ Twenty-one months later, in its March 15, 2006 response to the Ombudsman’s 2005 Annual Report, USCIS reiterated, “[t]he goal has been to process all categories of cases within [six] months from the time of filing and to meet that goal by the end of [FY 06].”²² In the same response, USCIS indicated that it “agrees that the best way to avoid issuing interim documents is to speed processing times.”²³ In addition, the report states that “USCIS has determined that a 90-day process, as opposed to a 6-month process, is preferable, and that speed and quality of processing is a major goal beyond mere backlog elimination.”²⁴ However, USCIS managed only to remain arguably close to the six month cycle time target by altering the definition in effect when the goal originally was set.

RECOMMENDATION AR 2006 -- 01

The Ombudsman recommends that USCIS provide a breakdown of all cases that have not been completed by number of months pending and application type. This data will provide a better understanding of the true nature of USCIS’ backlog to determine if USCIS achieved a six-month processing standard from start to finish for all applications.

Global Impact. Backlog elimination is essential to the Rice Chertoff initiative’s²⁵ goal of “encouraging citizens from all over the world to visit, study, and do business.” By promoting a “welcoming spirit,” the United States fosters both its economic and national security. Failure to meet goals central to the initiative will have serious consequences for national security and the economy, and will be reflected in low levels of customer satisfaction, as articulated in last year’s report (at p. 3).

- **National Security/Public Safety:** Individuals who may be risks to national security or public safety are permitted to remain in the United States while their applications for benefits are pending. While awaiting decisions on their applications, these individuals accrue equities in the United States which make it

²¹ USCIS BEP, Update (June 16, 2004), at 2; *see id.*, at ii.

²² USCIS’ Response to the Ombudsman’s 2005 Annual Report (Mar. 15, 2006), at 12.

²³ *Id.*

²⁴ *Id.* at 15.

²⁵ The Rice-Chertoff Joint Vision, announced by DOS and DHS on January 17, 2006, includes, among other ideas, a commitment to employ technology to better harmonize security concerns and the need to facilitate travel. *See* <http://www.state.gov/r/pa/prs/ps/2006/59242.htm>.

difficult to remove them from the country if their applications are ultimately denied.

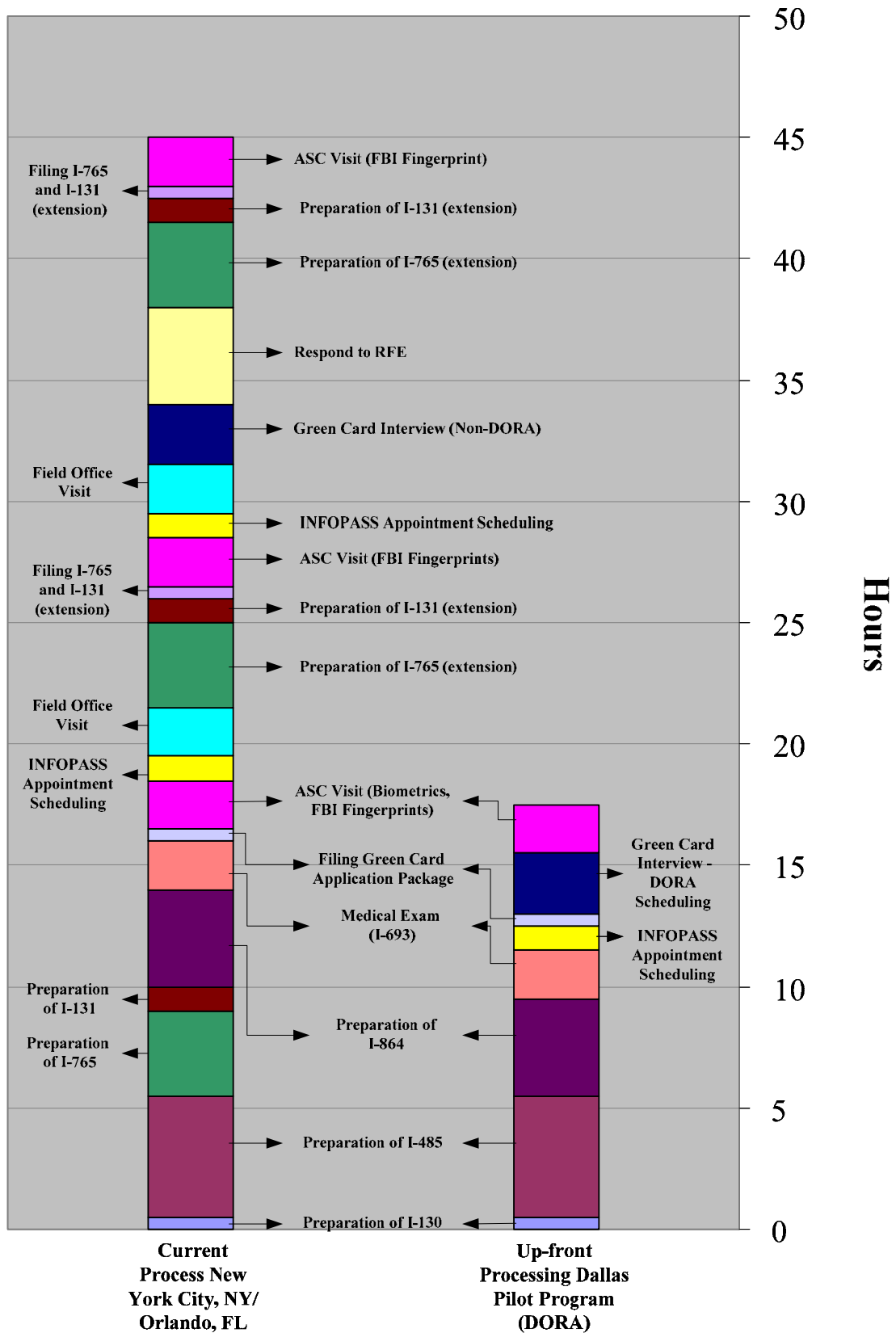
- **Economic Impact:** Historically, U.S. businesses have sought skilled and essential workers from other countries. Long processing delays have deprived these businesses of talent and skills needed for innovation and for strengthening the national economy. Processing delays seriously affect U.S. educational institutions because of their dependence on foreign students, researchers, and instructors for knowledge exchanges and revenue. These delays have caused businesses and schools to consider locating their conferences, academic programs, and new business sites offshore.
- **Customer Service:** Processing delays for qualified and meritorious applicants cause lost employment opportunities, financial hardships, and unnecessary family separation.

CASE PROBLEM

In the fall of 2003, an applicant applied for a green card based on marriage to a U.S. citizen (I-130/I-485 one-step filing). The applicant contacted the Ombudsman in the spring of 2006 to receive a case status update. In the inquiry, the applicant indicated that while waiting for adjudication of these applications, the applicant applied for four EADs. When USCIS finally adjudicated and approved one EAD, it had expired by the time the applicant received it. The applicant wants USCIS to complete the adjudication of the I-130/I-485 so that the applicant can move on with life and eliminate the financial burden of continuing to apply for interim benefits.

Customer's Perspective. The Ombudsman's 2005 Annual Report focused on the cost to the customer of lengthy processing times (at pp. 3-5). The disparity in the time customers spend waiting for adjudication of their applications is unacceptable. Figure 4 below provides a comparison of estimates of customer efforts for the up-front (DORA) process and those efforts based on USCIS processes in two sample offices. As indicated in the figure, the current USCIS processes cause multiple interim benefit filings by the customer and results in substantial expenditure of customer time and resources.

Figure 4: Estimated Time A Customer Spends To Obtain A Green Card (Hours)



The demand for timely and predictable service is demonstrated by customer willingness to pay premium filing fees.²⁶ The success of premium processing and public satisfaction with the reliably speedy service raises questions of why the premium processing methodology is not the norm and why 15 days is not the goal for backlog reduction efforts. If USCIS can produce a better, faster, and more secure product for one line of applications, it should be able to produce the same level of service to all applications in that product line and for all other products.

BEST PRACTICE

The Boston District Office created a “continued case” team that handles cases continued for any reason. This team sits separately from the rest of the adjudications section. It is staffed by specially trained immigration officers who are taught to examine only those items that prevented case approval. With this team, the Boston District Office is better able to complete continued cases after a quick review of requested documents without time lost on re-adjudication.

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

Although addressed in last year’s Annual Report (at pp. 9-11), significant issues with the timely processing of employment-based immigrant petitions and applications for green card status remain.²⁷

The Immigration and Nationality Act (INA) establishes formulas and numerical limits for regulating immigration to the United States. Employment-based immigration is set at 140,000 visas per year.²⁸ Employers in the United States who have permanent positions available may petition to bring immigrants to fill these positions. Such petitions are made using Form I-140 (Immigrant Petition for Alien Worker). In most cases, these petitions are supported by a Labor Certification Application approved by the Department of Labor (DOL). Upon submission, the proper filing of Labor Certification Applications or an I-140 (if labor certification is not necessary) sets a “priority date.” Priority dates determine a beneficiary’s “place in line” relative to other visa petitions in the same category for visa allocation. For instance, a priority date of January 31, 2000 would give a beneficiary priority over a beneficiary with a priority date of June 30, 2001.

Once individuals establish a basis for immigration, they may apply for green cards (immigrant status) in one of two ways. The traditional method is to apply for an immigrant visa at a U.S. consular office abroad. The second option, for those who are already in the United

²⁶ Premium processing was authorized by statute for employment-based petitions. See 8 U.S.C. § 1356(u). USCIS is currently offering premium processing for certain nonimmigrant worker petitions (Form I-129). On May 23, 2006, USCIS published a notice providing for the expansion of premium processing. See 71 Fed. Reg. 29662.

²⁷ See generally GAO Report “Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications,” GAO-06-20 (Nov. 2005), at 42-44; <http://www.gao.gov/new.items/d0620.pdf>.

²⁸ See 8 U.S.C. § 1151(d)(1)(A). This figure may be increased if family-based visas are unused or through congressional action.