

Department of Homeland Security **Office of Inspector General**

The Effects of USCIS Adjudication
Procedures and Policies on
Fraud Detection by
Immigration Services Officers





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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This report addresses the strengths and weaknesses of the United States Citizenship and Immigration Services effort to detect fraud in immigration benefit adjudications. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink that reads "Charles K. Edwards".

Charles K. Edwards
Acting Inspector General

Table of Contents/Abbreviations

Executive Summary	1
Background	2
Results of Review	5
Greater Support for the Fraud Detection Mission Is Necessary	5
The New Performance Measurement System Is Developing Slowly	10
Inappropriate Pressure on the Adjudications Process Must Be Avoided	14
The Standard of Proof in Immigration Benefit Cases Affects the USCIS Mission.....	28
Management Comments and OIG Analysis	33

Appendices

Appendix A: Purpose, Scope, and Methodology.....	40
Appendix B: Management Comments to the Draft Report	41
Appendix C: The Survey of District and Field Office ISOs	49
Appendix D: Major Contributors to this Report.....	53
Appendix E: Report Distribution	54

Abbreviations

AAO	Administrative Appeals Office
CSC	California Service Center
DHS	Department of Homeland Security
DOJ	Department of Justice
FDNS	Fraud Detection and National Security
FOD	Field Operations Directorate
FY	fiscal year
GAO	Government Accountability Office
HCT	Office of Human Capital and Training
INS	Immigration and Naturalization Service
IO	Immigration Officer
ISO	Immigration Services Officer
OCC	Office of Chief Counsel
OIG	Office of Inspector General
OSI	Office of Security and Integrity
RFE	request for evidence
SCOPS	Service Center Operations Directorate
USCIS	United States Citizenship and Immigration Services

OIG

*Department of Homeland Security
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Executive Summary

Senator Charles Grassley expressed concern to the Department of Homeland Security's Inspector General about United States Citizenship and Immigration Services' (USCIS) efforts to process requests for immigration benefits while protecting the system from fraud. We reviewed policies related to fraud detection in the immigration benefit caseload.

Requests for immigration benefits are submitted to USCIS. USCIS employees known as Immigration Services Officers process most of these requests. Immigration benefits include citizenship, lawful permanent residence, and a variety of other benefits. We examined whether USCIS policies could have a negative effect on the detection of immigration benefit fraud.

We interviewed 147 managers and staff, and received 256 responses to an online survey. We reviewed USCIS policies related to the effort to detect benefit fraud. We identified a range of possible improvements to practices in areas such as performance measurement, training, and collaboration between adjudications and fraud detection staff.

Through process improvements and additional systems checks, USCIS has taken important steps to improve national security and fraud detection. USCIS has also increased fraud detection resources and training. Additional changes would help Immigration Service Officers improve fraud detection. USCIS can take further steps to insulate the benefit adjudication process from internal and external pressures that continue to hinder the adjudications function. We are making 11 recommendations to advance the fraud detection mission in the immigration benefit adjudication process.

Background

United States Citizenship and Immigration Services (USCIS) determines the eligibility of individuals who seek immigration and citizenship benefits. Each year, USCIS processes more than 6 million applications or petitions, including requests for U.S. citizenship, lawful permanent residence, employment authorization, humanitarian relief, and other benefits. Most benefit requests are processed domestically at four service centers, the National Benefits Center, 26 district offices, and 81 field offices. More than 18,000 USCIS employees and contractors process benefit requests. USCIS is the front-line defense against individuals who seek to abuse or defraud the immigration benefit system in the United States. Before the Department of Homeland Security (DHS) was created, the United States Immigration and Naturalization Service (INS) processed immigration benefits.

Benefit fraud detection is challenging and has always created difficulties for federal agencies. In 2002, the then General Accounting Office (GAO) reported that the government's approach to immigration benefit fraud was fragmented and unfocused. GAO also concluded that the INS employees who adjudicated requests for benefits, now known as Immigration Services Officers (ISOs), lacked important tools to protect the immigration system.¹ That same year, the Department of Justice Office of Inspector General (DOJ OIG) concluded that INS did not closely scrutinize student aliens who requested entry into the United States. There was also inconsistency regarding the documentation required prior to benefit issuance.²

Threats to the immigration benefit system have not abated. In the 2012 DHS Appropriations Bill, the House of Representatives described recent attempted terrorist attacks on the United States as “ongoing efforts by extremists to infiltrate our country through the exploitation of legitimate travel and immigration processes.”³ USCIS recently revised its policies and reorganized its organizational structure to address immigration security concerns and facilitate fraud detection. One key change is a shift from

¹ GAO is now known as the Government Accountability Office. See *Immigration Benefit Fraud: Focused Approach Is Needed To Address Problems* (GAO-02-66), January 2002.

² Department of Justice Office of Inspector General, *The Immigration and Naturalization Service's Contacts With Two September 11 Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, Its Processing of Their Change of Status Applications, and Its Efforts to Track Foreign Students in the United States*, Special Report, May 2002. <http://www.justice.gov/oig/special/0205/fullreport.pdf>

³ House Report 112-091.

employee performance measures that focus on the number of applications or petitions that an ISO processes.

The former Domestic Operations Directorate is now divided into two directorates, Service Center Operations Directorate (SCOPS) and Field Operations Directorate (FOD). SCOPS and FOD develop and revise policy to meet legislative mandates and provide policy guidance to ISOs and managers throughout the country. SCOPS managers direct the service centers in California, Nebraska, Texas, and Vermont. ISOs at these four centers adjudicate more than 70% of all immigration benefit applications and petitions. FOD manages the district and field offices across four national regions. ISOs at the district and field offices conduct interviews on nonasylum applications and work closely with Application Support Centers, which provide fingerprinting and related services.

USCIS also elevated the Office of Fraud Detection and National Security (FDNS) to directorate status. The USCIS Director told us that this change reflects a focus on antifraud and national security responsibilities. Although FDNS issues fraud policy, fraud detection Immigration Officers (IOs) are based in the field and supervised by the service center or office where they are located. Additionally, FDNS field staff organization and funding is managed locally. The IOs work with ISOs at USCIS offices throughout the country. IOs are responsible for reviewing information when ISOs have a concern about possible fraud. Therefore, the policies and practices that govern the relationship between ISOs and IOs on particular cases are central to the success of the adjudication process.

Immigration law is complex, and USCIS administers benefits of great value. For cases where fraud is suspected, strong partnerships and collaboration between ISOs and IOs are necessary to strengthen national security and protect public safety. ISOs and IOs must work together to ensure that the best benefit eligibility determination is made in each case. During the adjudication of a case, the ISO considers all of the information available in the case file to decide whether the benefit can be granted. Some benefit requests can be easily approved based on the information they submit, whereas others may stretch the truth or commit fraud in an effort to gain a benefit inappropriately.

In October 2010, Senator Charles Grassley wrote a letter to the USCIS Director, the Inspector General, and the Secretary of

Homeland Security. The Senator expressed several concerns about the immigration benefit adjudication system. He was uncertain about the effectiveness of USCIS efforts to protect national security and prevent fraud. Senator Grassley requested that we review—

- The performance evaluation process for ISOs to determine what incentives to detect fraud exist;
- Whether pressure to process cases hinders national security and fraud detection;
- How employees view management efforts to promote process integrity; and
- Whether ISOs are encouraged to adjudicate benefit applications favorably without thorough review.

Although this report recommends several process improvements, three important points are relevant to our findings. First, the testimonial evidence that our interviewees provided may not be views shared by other employees. Quotations from our interviews and survey responses reflect the views and personal experiences of individuals, not necessarily the experience of most ISOs across the United States. Second, USCIS has taken action to diminish threats to the immigration benefits system. General employee concerns about the impact of production pressure on the quality of an ISO's decisions do not mean that systemic problems compromise the ability of USCIS to detect fraud and security threats. No ISOs presented us with cases where benefits were granted to those who pose terrorist or national security threats to the United States. Even those employees who criticized management expressed confidence that USCIS would never compromise national security on a given case. Third, as our September 2010 report noted, employees are required to report certain incidents to the USCIS Office of Security and Integrity (OSI).⁴ One reportable incident is any case of misconduct by an employee at the GS-15 level or higher. Senior USCIS leadership suggested that we use our current report to reiterate employee reporting requirements. The Director of USCIS informed us that managers and supervisors must ensure the integrity of each benefit determination, based on the evidence presented in the case file. ISOs who are pressured to approve cases that do not warrant approval should report such incidents to OSI.

⁴ DHS OIG, *Efforts to Detect and Deter Fraud Committed by Immigration Services Officers*, (OIG-10-118), September 2010.

Results of Review

Greater Support for the Fraud Detection Mission Is Necessary

More Training and Collaboration Is Needed To Improve the Fraud Referral Process

ISOs use both national and local fraud indicators to determine whether a file contains possible fraud information. Files are referred to an IO when fraud indicators are evident. The file is accompanied by a written referral memorandum in which the ISO articulates questions and suspicions. The IO conducts research, including Internet searches and queries of databases not available to ISOs, to review the referral. Based on what the IO discovers, a statement of findings is returned to the ISO.

In our survey of ISOs in district and field offices, we asked for an assessment of the frequency of direct personal interaction with IOs on the resolution of fraud concerns. In response, 179 out of 254 ISOs (70.5%) said there was not enough interaction with IOs. None of the respondents said there was too much interaction. Our interviewees and survey respondents support greater personal collaboration between the two groups to improve fraud detection.

Additional communication between ISOs and IOs would allow ISOs to engage in meaningful dialogue on the reasons for a fraud referral, and how particular information would assist adjudication of the case. Before deciding to send a file to an IO, the ISO would have an opportunity to ask an IO questions about the case, discuss fraud indicators, and determine whether the case warrants a referral. In addition, the ISO could obtain an IO's comments on the adequacy of the referral memo that the ISO sent. ISOs desire confirmation that the information sent to an IO was useful.

Communication improvements would make both the ISO and the IO more effective and create process efficiencies. In some cases, ISOs are concerned that an IO's response to a case referral might yield little of value. In other cases, the ISO may not know what happens after the referral is sent to the IO. ISOs need to know what information helps an IO research possible fraud cases. Some survey respondents and interviewees informed us that when an IO returns the case file, the statement of fraud findings is often just a paraphrase, if not a copy, of the ISO's fraud referral language. The absence of new information in such cases leads to confusion among ISOs. One respondent argued that ISOs could perform

many IO functions with additional systems access or research tools. It is common for ISOs to view IOs as overwhelmed with referrals, which may explain the ISO perception that certain cases languish after a fraud referral is submitted. Another source of frustration for ISOs occurs when the statement of findings notes that fraud is “possible” in the case. One supervisory ISO said that inconclusive Statements of Finding are not useful. “Either fraud is found or not,” the supervisor noted. Many ISOs and supervisors are not sure how to resolve such cases. With limited dialogue between ISOs and IOs, the adjudicators are disappointed and confused when, without explanation, the fraud they suspected is not found. Regular interaction between ISOs and IOs would offer a means to resolve these cases.

The level of communication between ISOs and IOs varies among offices. During our fieldwork, we visited offices where we observed little or no direct contact between IOs and ISOs. In other offices, there were frequent information exchanges. At the service centers, the fraud units are larger and farther away, which gives some ISOs the impression that the two groups are not intended to interact.

Although some ISOs and IOs reported satisfaction with the referral process, others told us that inconsistent ISO-IO collaboration diminished the effectiveness of fraud detection. Interviewees and survey respondents said that some managers discourage in-person or telephone contact with IOs. One respondent wrote, “ISOs in my office have been instructed not to communicate directly with our FDNS officers, when obviously, the opposite would be beneficial in assessing and finding fraud.” Another ISO said that some supervisors verbally reprimand ISOs who discuss cases with those outside the chain of command. The ISO wrote, “This results in important and critical information regarding fraud trends not being properly relayed to all officers.”

ISOs desire more information on fraud detection practices and trends so they can make better fraud referrals. Improved training on fraud issues is a reasonable way to meet this need. IOs could provide general training on immigration benefit fraud, as well as examples of what types of cases should be referred.

Our interviewees and survey respondents offered several ideas about how and when training can be provided. The most common suggestion was for IOs to brief ISOs during meetings. At these sessions, IOs could provide handouts that contain information on

fraud trends or particular individuals of concern. One survey respondent said FDNS briefings of this type “are very helpful in combating fraud at our office.” Another respondent suggested that the ISOs should take the IO training course to expand their knowledge of fraud issues. Staff at one service center mentioned a Fraud Intelligence Database, which was a local collection of information on fraud trends, indicators, and persons of interest, as a reference tool for ISOs. Unfortunately, the database was not maintained and is no longer used.

In our review of the special immigrant nonminister religious worker visa program, we reported that ISOs and IOs “lamented the infrequent nature” of collaborative meetings and fraud roundtables.⁵ Additional efforts in this area would improve the fraud detection mission across USCIS. Regular informative meetings between ISOs and IOs would be a strategic tool in the fraud detection process over the long term.

We recommend that United States Citizenship and Immigration Services:

Recommendation #1: Promote better collaboration and cross training between Immigration Services Officers and Immigration Officers in support of fraud detection efforts.

Recommendation #2: Assess, document, and correct as needed the level of fraud training and collaboration between Immigration Services Officers and Immigration Officers across all USCIS offices.

ISO Detailees Benefit From Time Spent in Fraud Offices

We interviewed two center ISOs who were detailed to the local fraud unit. Both ISOs said the detail was a great learning opportunity. The ISOs worked with experienced IOs to learn about fraud indicators and trends. Additional input from staff and managers substantiates that ISOs gain valuable knowledge when they are temporarily assigned to a fraud unit. A detail in the local fraud office enables ISOs to apply an expanded knowledge of fraud detection after returning to adjudicating cases. Details also promote understanding between ISOs and IOs, because detailed ISOs gain a better understanding of the fraud unit’s responsibilities. One IO at a service center said that interaction

⁵ DHS OIG, *The Special Immigrant Nonminister Religious Worker Program* (OIG-09-79), June 2009, p. 6.

with ISOs ensures that the two groups of employees understand each role. Our interviews indicate that the perspective that ISOs gain enhances subsequent fraud referrals.

Because of the knowledge ISOs gain after completing details at the local fraud unit, USCIS should create a national policy in this area that would increase the number of ISOs who could complete a fraud unit detail assignment. ISOs can benefit from the enhanced fraud detection skills a detail would offer. Detailed ISOs gain insights from IOs that will assist in the further development of an ISO's fraud identification skills.

We recommend that United States Citizenship and Immigration Services:

Recommendation #3: Develop a process to promote more detail assignments for Immigration Service Officers to local fraud units.

USCIS Immigration Security Check Process Has Difficulty Identifying Aliases in Certain Cases

Section 10.1(c) of the *Adjudicator's Field Manual* lists requirements that the applicant or petitioner must meet before an ISO can adjudicate the case. These requirements include submitting the applicable signed benefit form and paying applicable fees. During the adjudication process, ISOs complete security checks on law enforcement and immigration systems to determine whether an applicant is a possible security or criminal risk.

Individual aliases or multiple spellings of names complicate the security check process. A staff report of the National Commission on Terrorist Attacks Upon the United States reported that the 9/11 hijackers used 364 different names and aliases.⁶ Because files can be large—hundreds of pages in some cases—ISOs can miss aliases during the review of a case file.

Supervisors and managers noted that ISOs miss aliases on occasion. Production pressure to adjudicate quickly may hinder an ISO's ability to identify and query names and aliases during the security check process. An OSI manager informed us that USCIS internal review staff analyze cases where the ISO overlooks aliases in the file. This process helps mitigate risk in this area.

⁶ http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf

Quality assurance data we reviewed demonstrate that further work is needed to identify more aliases in some benefit applications and petitions. Challenges in alias identification are compounded because USCIS uses cumbersome and outdated immigration data systems. Both USCIS employees and some law enforcement agency users express frustration with USCIS systems. Our recent report on overseas screening noted that information on foreign nationals is fragmented among 17 data systems. Officers must conduct labor-intensive, system-by-system checks to verify or eliminate each possible match to terrorist watch lists and other derogatory information.⁷

To decrease this burden, and improve the security and integrity of the immigration system, USCIS is implementing the Transformation program. The Office of Transformation has established teams across USCIS directorates and solicited information from third parties to enhance operational capabilities. The Vermont Service Center is scheduled to test and evaluate the Transformation System in early fiscal year (FY) 2012. By 2013, all service centers will have implemented Transformation. Additional short-term solutions should be studied to ensure that aliases are not missed so frequently. Because of the importance of name checks to the security of the immigration system, USCIS needs to focus on this problem prior to the USCIS-wide implementation of Transformation.

Transformation will consolidate data systems and include state-of-the-art enhancements. One goal of Transformation is automated fraud detection, which will streamline the referral process for possible fraud cases. Transformation's fraud efforts will use a risk analyzer for adjudication, which will make it difficult for individuals who use different names and aliases to circumvent fraud and national security system checks.

We were informed that the risk analyzer will identify all aliases, which will provide greater protection for the immigration system. Transformation will provide access to data from the applicant, USCIS data systems, and any aliases discovered from other immigration and law enforcement data systems. The system will identify aliases much more efficiently than ISO review of paper files, according to a Transformation official.

⁷ DHS OIG, *Information Sharing on Foreign Nationals: Overseas Screening* (OIG-11-68), April 2011.

Even with these improvements, we suggest that USCIS use the existing supervisory review and quality assurance processes to focus on alias identification before Transformation is fully implemented. The national security implications of alias identification are obvious. Additional steps in this area are needed now, even with the changes that Transformation is expected to bring.

We recommend that United States Citizenship and Immigration Services:

Recommendation #4: Develop additional quality assurance or supervisory review procedures to strengthen identification of all names and aliases of individuals seeking an immigration benefit.

The New Performance Measurement System Is Developing Slowly

In FY 2011, USCIS began to implement a new ISO performance evaluation process. This revised process originated from the 2008 DHS Employee Performance Management Program, which mandated that an agency's employee performance goals be aligned with DHS strategic priorities. In FY 2010, the USCIS Office of Human Capital and Training (HCT) updated performance management procedures to transfer bargaining unit employees to the DHS system. USCIS development of the FY 2011 ISO performance measures followed.

The revised ISO performance measures prioritize quality and national security as critical elements. The forms used to evaluate employee performance contain several elements, some of which are critical to successful performance, while others are noncritical. In the past, performance evaluations established production as a critical element. This meant that an ISO had to process a certain number of benefit requests over a given period to earn an excellent rating.

With the new FY 2011 performance measures, production is noncritical to performance. This change aligns performance measurement for ISOs with USCIS and DHS strategic goals. The new ISO performance measures are designed to protect the integrity of the immigration system through a focus on national security and fraud identification.

The FY 2011 performance measures are a pilot initiative. A USCIS workgroup met in the spring of 2011 to discuss changes to the measures for FY 2012. These discussions focused on standardization of performance measures across different work locations. HCT noted that each directorate in USCIS participated in the workgroup, which will ensure meaningful

comments and better implementation of the new measures. In FY 2012, USCIS will focus on continued improvements to the FY 2011 measures, based on what is learned from the FY 2011 performance management cycle. FY 2013 is the target to finalize the new measures.

We assessed whether ISO performance evaluation criteria encourage and reward the appropriate denial of ineligible or fraudulent immigration benefit applications and petitions. The decision to make production noncritical is a significant change that should improve fraud detection and national security.

Additional Field Outreach Is Needed To Explain the New Performance Measures

In FY 2011, 50% of an ISO's overall performance rating was based on fraud detection and national security identification. The quality and accuracy of an ISO's decisions accounted for the other 50% of the rating. Some variance existed between service center and field office ISOs, because of the different work that ISOs performed in different locations. Performance measures for fraud detection IOs differed from those of ISOs.

USCIS faces a complex task as the new measures are finalized. We learned that ISOs and supervisors are concerned that—

- Insufficient training on the performance measures hinders their success;
- Production remains the focus, even under the new measures;
- Rating an ISO's fraud detection skills is difficult; and
- Certain ISOs will be disadvantaged because of the form types they adjudicate.

ISOs and supervisors received limited training on the new performance measures. Because of resource and time limitations, HCT's effort to inform staff about the new measures could not eliminate all ISO confusion about the new process.

Survey respondents and interviewees informed us that insufficient guidance led to confusion in the field. One individual said that supervisors have not instructed ISOs to do anything differently, since they have always performed fraud detection efforts. Additional onsite training for ISOs and IOs offers the chance to inform ISOs about how the evaluation process will change.

ISOs are eager to receive information from HCT on new performance measures. One ISO said that employees wanted to know what the expectations were so they can exceed them. HCT provided training and reference guides for management, but it could not visit all USCIS centers and field offices. HCT provided us information about plans in FY 2012 to conduct onsite national training throughout USCIS offices. Also, training courses for rating and reviewing officials have been developed, and workgroups have helped disseminate information. These steps are necessary and appropriate. Additional work in this area will prepare supervisors and ISOs for the new performance measurement system. The assistance of operational directorates and the USCIS Director is necessary to ensure that the planned training will have maximum effect. Many interviewees and several survey respondents expressed some confusion about the new measures. More extensive training on the purpose, scope, and content of the performance management system changes is a key to successful implementation.

We recommend that United States Citizenship and Immigration Services:

Recommendation #5: Perform onsite outreach efforts nationwide to discuss the performance management system with Immigration Services Officers and Immigration Officers.

Comments From Field Personnel Would Improve ISO Performance Measures

In previous years, INS and USCIS performance measures emphasized production. In January 2002, GAO reported on production pressure that adjudication officers faced and the effect of this pressure on fraud referrals. That same year, the DOJ OIG reported that production pressures were a factor in how quickly adjudications officers worked and the decisions they made. The report noted that officers would disregard certain steps in the adjudications process when they risked not being able to complete the required number of cases.

Many ISOs expressed concern that production will remain a central managerial focus, although production is now a noncritical performance element. Many ISOs believe that, despite the new measures, supervisors will continue to judge ISOs by the quantity, not the quality, of their work. An ISO explained that job performance success is based on the number and timeliness of

completions. “It is a known fact that it is easier and faster to approve an application than to deny an application.” Concerns that production will still guide USCIS decisions affect how ISOs perceive the new performance measures.

At the time our fieldwork ended, HCT had yet to receive comments from officials and employees about the FY 2011 midyear review. HCT views input from employees as a way to gain insight into how the performance measures are viewed in the field. USCIS leadership should ensure that HCT has the resources to gain input from ISOs across the country.

Our survey of district and field office ISOs informed us of concerns that could help USCIS revise performance measures. ISOs were asked, “What do you expect from the new 2011 ISO performance evaluation criteria?” Of the 249 ISOs who responded, 165 (66.3%) expect little or no change. Employees’ apprehension about the new measures may stem from their perspective on how supervisors previously evaluated ISOs. Another survey question asked ISOs whether past performance evaluation criteria were “applied to ensure that employees made appropriate denials of ineligible or potentially fraudulent applications.” Although 107 of 252 ISO respondents (42.5%) said that the criteria were applied appropriately, a majority believed otherwise. Eighty-two respondents (32.5%) had some concern about how performance evaluation criteria were used. These respondents knew of instances when a supervisor’s emphasis on productivity led to ISOs feeling rushed, making proper case determination less likely. Another 35 ISOs (13.9%) had serious concerns that employees who focus on fraud or ineligibility were evaluated unfairly.

It is unclear to many ISOs how their fraud referral skills will be measured. Interviewees and survey respondents conclude that managers do not know how to compare an ISO’s fraud detection work with USCIS expectations. Field office managers asked how a supervisor would know whether ISOs are missing fraud. Survey respondents wrote that fraud detection for ISOs is “a very vague concept” because “there is no way to measure referrals.” Some respondents said that better, not more, referrals should be the true measure of an ISO’s fraud detection skills.

Under the new performance management system, an ISO who meets 70% of the performance goal for fraud detection will achieve a satisfactory rating. We were informed that some ISOs

adjudicate form types that have little or no fraud, and experience in fraud cases varies across USCIS offices. An ISO wondered, “What if I have very complex denials that do not involve issues of fraud?”

Some ISOs opined that the new measures set expectations too high, which will make satisfactory performance difficult to achieve. The new quality component in the FY 2011 measures was mentioned as an example. One error, ISOs said, could mean that an employee would be unable to achieve excellence in the quality area.

These concerns demonstrate the need for ISOs and supervisors to participate more in identifying potential problems of which headquarters personnel may not be aware. Because of the preliminary nature of the FY 2011 measures, USCIS should endeavor to learn as much as possible from the field about how employees view the performance measures. This would facilitate the continued development of performance measures and improve the measures over time. The resources required for an online survey are negligible, and the feedback gained should improve the performance measures in future years.

We recommend that United States Citizenship and Immigration Services:

Recommendation #6: Solicit comments from Immigration Services Officers and supervisors regarding the new performance measures.

Inappropriate Pressure on the Adjudications Process Must Be Avoided

The Perception of Pressure To Process Cases Remains a Concern

Even with implementation of performance measures with production a noncritical element, ISOs informed us that production pressure remains a part of the adjudication process. ISOs in multiple locations are concerned that production expectations are too high. The consensus among ISOs throughout the country is that quantity is still at least as important to their supervisors and managers as quality. An important part of our interviewees’ concern about production pressure is the perception that USCIS strives to satisfy benefit requesters in a way that could affect national security and fraud detection priorities.

The DOJ OIG identified similar problems prior to the creation of USCIS. Its reports noted that adjudicators may skip systems checks that could be done quickly because some parts of the process would interfere with timely completion of the required number of cases.⁸ In 2000, the DOJ OIG reported that time pressures “discouraged the pursuit of potentially disqualifying issues” in immigration benefit adjudications. At that time, many adjudications officers said that “the pressure they were under was, in fact, pressure to *approve* applications and not just to complete as many naturalization cases as possible.” The increased likelihood of benefit approvals under such circumstances was obvious.⁹

Recent inspections provided us views of production pressure from district and field offices. In 2010, a field office manager informed us that USCIS is “very production driven,” which “sets the wrong tone” for ISOs. Also in 2010, a field office ISO said that simple mistakes will be made in the adjudication of cases as long as time pressures existed. A manager in the same office concluded that USCIS was “drastically failing” to comprehend how time pressure affects an ISO’s ability to make the best decision on individual cases.

A service center ISO can take only certain actions after review of a case:

- Issue a letter to request specific additional evidence,
- Write a fraud referral to transfer the case to the fraud unit,
- Issue a Notice of Intent to Deny, with an explanation,
- Deny the application and write a detailed justification, or
- Approve the case.

Approval of a case takes significantly less time and effort than any of the other actions. ISOs who feel pressed for time or behind in their work, and wish to meet production goals, might opt to approve a marginal case and move on to the next file.

Survey responses revealed concern about production pressure. When asked how well USCIS balances national security and promoting immigration, 130 of 252 respondents (51.6%) said that USCIS policy is too heavily weighted toward promoting

⁸ DOJ OIG, *The Immigration and Naturalization Service’s Contacts With Two September 11 Terrorists: A Review of the INS’s Admissions of Mohamed Atta and Marwan Alshehhi, Its Processing of Their Change of Status Applications, and Its Efforts To Track Foreign Students in the United States*, May 2002, pp. 91–104.

⁹ DOJ OIG, “Interviews and Adjudications,” in *An Investigation of the Immigration and Naturalization Service’s Citizenship USA Initiative*, July 2000, pp. 13, 47, and 116–118.

immigration. Only 25 of 251 respondents (10%) concluded that they have sufficient time to complete interviews of those who seek immigration benefits. On another question, 63 of 254 ISOs (24.8%) responded that they have been pressured to approve questionable applications. Although fewer than one in four respondents had this concern, we view the number of pressured ISOs as a threat to the integrity of the benefit issuance system.

ISOs in district and field offices stressed the need for more time to interview those who seek benefits. Our interviews and survey responses indicate that district and field office ISOs generally must complete between 12 and 15 interviews per day. ISOs said that the amount of time to conduct interviews is insufficient. According to Section 15.1 of the Adjudicator's Field Manual, the length of interviews depends on several factors, including the complexity of the case, possible fraud issues, officer experience, and cooperation of the interviewee. Most of the ISOs we interviewed said that they must complete interviews in less than 30 minutes. Fifteen interviews per day, with 30 minutes for each interview, is 7.5 hours per day. These ISOs have other responsibilities, and some interviews last longer than 30 minutes. Such time pressure does not allow the ISO to review cases prior to interviews, or ask questions of coworkers or supervisors.

One survey respondent wrote that "adjudicators should not be 'rushed' to complete an interview, especially interviews with past and/or potential fraud indicators present." Most of the ISOs we interviewed were concerned with the insufficient time to review cases thoroughly. Some ISOs arrive for duty before their scheduled start time so they can get a few extra minutes to review cases before the day's first interview. ISOs explained that once the interviews start, there is not time to conduct database checks or simply review the next file.

The speed at which ISOs must process cases leaves ample opportunities for critical information to be overlooked. One ISO said that an ISO is likely to "grant and just move on," rather than use information to make a better determination in certain cases.

Additional ISO positions, rather than production pressure, are the better way to reduce production backlogs. For USCIS to prioritize fraud detection and national security, a reduction in case numbers per day is necessary. This would allow ISOs time to review case files and interact with employees and supervisors on fraud issues or other relevant case matters.

A SCOPS manager said that USCIS is not yet sure how the move to noncritical production for ISOs will affect a service center's production. The comments we received suggest that ISO production expectations have not changed, although an ISO's performance rating no longer treats production as a critical job element. The new performance measurement system based on fraud and national security identification skills faces significant challenges if production goals remain as prominent across USCIS as our interviewees and survey respondents reported.

We recommend that United States Citizenship and Immigration Services:

Recommendation #7: Develop standards to permit more time for an Immigration Services Officer's review of case files.

Directed Decisions Need Clarification

Section 10.14 of the *Adjudicator's Field Manual* describes what should occur when an ISO and a supervisor cannot agree on the outcome of a case. When there is disagreement, additional research and discussion should occur. If disagreement remains, the supervisor's perspective prevails in what is known as a directed decision.¹⁰ This terminology is misleading, because the supervisor is not permitted to direct the subordinate to approve the case. Instead, the supervisor is expected to exercise his or her superior experience and judgment regarding the case.

Several USCIS employees informed us that ISOs have been required to approve specific cases against their will. Some ISOs told us that they complied with the demands of their supervisors and approved visa applications containing suspect information.

Although the higher ranking officer's view dictates the outcome, the manual establishes that:

[An] ISO should never sign something when he or she disagrees with the decision merely because a supervisory officer directs such action. If the adjudicator has reason to believe that the directed decision is wrong either because he or she does not believe a favorable exercise of discretion is warranted or because there is a disagreement over what is permitted by statute or regulation, the decision should be signed by the supervisory officer and the file noted by the adjudicator.

¹⁰ The disputed case could also be sent to the USCIS Administrative Appeals Office (AAO) for review.

USCIS practice deviates from this policy. Several interviewees and survey respondents informed us that a supervisor will reassign a case to another ISO rather than sign a directed decision. One district ISO wrote, “Cases are sometimes taken away from us and given to officers who the supervisor knows will approve the case.” A SCOPS senior manager said that supervisors can reassign work in general, so an ISO should not be surprised when a debatable case goes to a colleague. One service center provided us a local policy similar to the senior manager’s views.

Reassignment in such a situation does not conform to USCIS policy. Section 10.4 of the manual, which discusses the transfer of cases, does not instruct the supervisor to reassign a case to another ISO when the first ISO made an incorrect decision. The supervisor can give a case to another ISO if the original ISO has been transferred to other duties, but not because the supervisor and the ISO disagree on the disposition of a case.

ISOs may not be aware of the policy on directed decisions. A survey respondent, who was concerned about production pressure and the drive for approvals, did not know that an ISO could refuse to sign a directed decision. Another survey respondent was threatened with a formal reprimand if a case was not approved as the supervisor required. When discussing another directed decision, one ISO wrote, “management found someone else” after the ISO did not concur with the approval.

Reassigning a file to a second ISO could foster rivalry between ISOs, lead ISOs to please supervisors through approval of problematic cases, and decrease office morale. A supervisor may be correct to override an ISO’s judgment in certain cases, but the supervisor should then be required to sign the case as the deciding officer, in accordance with USCIS policy. Reiteration of existing policy would improve process integrity, make more efficient use of resources, and conform to the manual’s policy on directed decisions and the transfer of cases.

We recommend that United States Citizenship and Immigration Services:

Recommendation #8: Enforce the policy in the *Adjudicator’s Field Manual* regarding directed decisions, and ensure that staff and supervisors are aware of their responsibilities when such decisions are made.

Policy on Requests for Evidence Needs Clarification

If additional information is needed before an ISO can make a decision on a case, a request for evidence (RFE) is sent to the applicant or petitioner. An RFE allows the individual who seeks the benefit to provide further proof of entitlement. Stakeholders and the USCIS Ombudsman have expressed concern that some RFEs needlessly delay adjudications and create public confusion. Complaints suggest that some RFEs are unclear, incomplete, or otherwise of low quality. USCIS has responded with an effort to revise internal templates so that an RFE recipient will better understand what additional information is needed before an ISO can render a decision.

When an ISO first examines a file, it contains mostly information that the applicant submitted. This information will probably support the applicant's claim. Some cases are clearly approvable or clearly deniable, but for many cases the ISO will need more information to make a determination. One source for this additional information is the applicant. In those cases, an ISO will send the applicant an RFE.

The USCIS Ombudsman has a statutory responsibility to examine adjudication processes and suggest changes to USCIS policy.¹¹ Three recent annual reports from the Ombudsman expressed concern about inefficiencies in the RFE process. In 2008 and 2009, the Ombudsman determined that RFEs place burdens on benefit requesters and increase costs for USCIS. In 2010, the Ombudsman determined that RFEs are not uniform, are duplicative, and ask for information that petitioners are not required to provide.

After examining specific RFEs, the Ombudsman corroborated some public complaints, but also determined that other RFEs were justified. The Ombudsman's June 2010 report also reminded petitioners and applicants that an RFE can be a second chance to establish eligibility for the requested benefit.

USCIS issued three RFE policy memos between 2004 and 2007. The first memo, released in May 2004, concluded that denials can be made without RFEs in certain cases, such as when there is clear evidence of ineligibility. In February 2005, the May 2004 memo

¹¹ P.L. 107-296 § 452(b).

was rescinded because it gave the mistaken impression that denials should be issued even if the RFE might give the beneficiary a chance to provide evidence that established eligibility. The February 2005 memo informed ISOs that a case did not require an RFE if initial evidence was sufficient to establish eligibility for the requested benefit. The 2005 memo stressed two other points: An RFE is appropriate when needed evidence is missing, and RFEs should be limited to documentation needed to adjudicate the case.

This reasonable balance was lost when a third RFE memo was released in June 2007. That memo might confuse ISOs and the public. Although the need for RFEs in some situations is obvious, ISOs were informed that “RFEs should, if possible, be avoided,” while also guiding ISOs “to request the evidence needed for thorough, correct decision-making.” This contradictory guidance remains in the *Adjudicator’s Field Manual*.

Many ISOs said that USCIS leans too heavily toward limiting RFEs and increasing approvals. Some ISOs told us that they have insufficient time to create RFEs, or RFEs are not issued in marginal cases because of concern that management will question their necessity. Supervisors have legitimate reasons to reduce the issuance of unnecessary RFEs, but existing manual policy establishes a bias against RFEs.

Quality assurance data demonstrate the effect of ISO confusion about RFE policy. Quality reviewers noted incomplete evidence in some approved petitions. RFEs, rather than approval letters, should be issued in cases where evidence is unclear. Also, there were inconsistencies in RFE issuances in some cases where denial letters were sent, although additional evidence could have demonstrated entitlement to the benefit. USCIS should rewrite current policy, which establishes the avoidance of RFEs as a policy preference. New policy would diminish ISO confusion about the role of RFEs in the adjudication process.

For applicants who have not submitted persuasive evidence or whose eligibility is unclear, the RFE process creates an opportunity to provide more information for USCIS’ consideration. Conversely, the response to an RFE provides the ISO with more information upon which to base the decision that best advances the interests of the government.

We examined certain files and had supervisors or ISOs discuss some previously decided cases with us. In some instances,

supervisors told us that there was insufficient evidence in the file to justify its approval. These included instances where Department of State consular officers returned files to USCIS after beneficiaries were interviewed overseas prior to visa issuance. In other instances, the expert ISOs said that a particular case was likely approvable, but an RFE should have been issued to ensure that all regulatory requirements were met in the application or petition.

One senior ISO opined about the file of an L-1A visa petitioner that needed additional evidence, although an approval was issued. An L-1A visa petition is submitted when an overseas company wishes to transfer a manager to a U.S. subsidiary. The beneficiary must manage professionals and be detached from day-to-day work. Thus, an L-1A manager cannot be extensively involved in providing products or services. For this particular file, there was limited evidence that the individual would manage staff. Additionally, the beneficiary's job description included a requirement to interact with clients and do other nonmanagerial work. An RFE might have clarified these issues and demonstrated eligibility, but a quick approval was made without an effort to gain additional evidence. The ISO who discussed this file said that many ISOs would not request evidence for such cases, since supervisors usually question RFEs and petition denials, not approvals.

Because of contradictions in the *Adjudicator's Field Manual*, USCIS' RFE policy is not clear. This lack of clarity, coupled with continued pressure to process applications and petitions, decreases the chance that RFEs will be issued. Suppressing RFE issuance is not the best response to the problem of inconsistent or improper RFEs. Clarification of USCIS policy in this area, in tandem with the RFE template improvements that are being implemented, should lead to better RFEs, less public confusion, and improved adjudication decisions.

We recommend that United States Citizenship and Immigration Services:

Recommendation #9: Revise policy on requests for evidence to clarify the role that the requests play in the adjudication process.

Efforts To Change O Visa Policy and Approve Certain Cases Were Misguided

Congress created the O visa classification for aliens who have extraordinary ability in science, arts, education, business, or

athletics. The extraordinary ability that aliens must demonstrate varies depending on the field of expertise. For the arts, the beneficiary must exhibit “distinction,” while those in motion picture and television productions must have attained “extraordinary achievement.” For other fields, the level of skill requires “sustained national or international acclaim.”¹²

Individuals must submit Form I-129, Petition for a Nonimmigrant Worker, to initiate the O visa benefit adjudication process. ISOs at the California and Vermont service centers, where O visa petitions are processed, adjudicated 44,386 O visa petitions from January 2008 through March 2011.

Many employees expressed concerns about how a small number of individuals in the USCIS Office of Chief Counsel (OCC) attempted to increase the approval of O visa benefit petitions. OCC informed service centers that certain questionable petitions should be approved and initiated changes to USCIS policy on O visas.

While we question the efforts of certain managers in the OCC, including individuals who are no longer employed at USCIS, we do not mean to criticize all OCC staff. Our comments in this report should not cast doubt on the legal advice that USCIS professional attorneys provide ISOs on a daily basis across the country.

An O visa petition that a university filed led to much internal USCIS debate in late 2009. Based on our interviews, unease about this case and others like it still lingers throughout the agency. The California Service Center (CSC) denied the petition, based on insufficient evidence that the beneficiary had achieved the extraordinary ability that the statute requires. Senior OCC officials disagreed with the CSC’s decision. This prompted a great deal of discussion and email about the appropriateness of the denial. OCC attorneys at the CSC generally supported the center’s decision, but the former USCIS Chief Counsel remained adamant that an approval was necessary. Subsequently, the center’s denial was upheld by a 26-page opinion from the USCIS Administrative Appeals Office (AAO). Although the AAO upheld the original CSC decision, a belief that USCIS headquarters wanted to push a high level of approvals has affected USCIS managers and ISOs.

¹² 8 U.S.C. § 1101(a)(46) and (a)(15)(O).

OCC management attempted to change USCIS policy on O visas shortly after the university's petition was denied. In early 2010, OCC expressed heightened interest in O visa adjudications as a result of public complaints. One private attorney was concerned specifically about O visa petition denials from the CSC. This attorney admitted that he had not reviewed each of the cases, but he wrote directly to an OCC manager with his concerns that ISOs at the CSC issued inappropriate denials.

Like the complainant, the OCC manager had not examined the case files. Nonetheless, in an email to the CSC, which included a draft memo on O visa adjudications policy, the OCC manager noted the attorney's complaint and perceived problems with the CSC's denial decisions. The OCC manager declared an interest in "a more flexible and liberal policy for weighing the evidence and granting petitions."

The CSC had another viewpoint on the overall problem. A CSC manager suggested, "We have a bit of a different perspective given the review of the actual files and the caliber of the beneficiaries." The manager suggested that OCC made incorrect assumptions based on the private attorney's complaints.

Quality assurance information we examined demonstrates that excessive O visa approvals are more likely than denials. SCOPS staff conducts random reviews of completed I-129 adjudications. We analyzed 10 reports from these reviews that took place between November 2008 and February 2011. The quality reviews included statements such as, "No evidence to establish that the beneficiary qualifies as an alien of extraordinary ability," or "insufficient evidentiary criteria" to support the approval. No inappropriate O visa petition denials were included in the quality assurance data we reviewed. These data confirm that USCIS was more likely to grant O visa status incorrectly than to deny a legitimate petition.

Examples of erroneous approvals like those that USCIS quality staff found may explain why O visa petitions are granted at such a high rate. From January 2008 through March 2011, the California and Vermont service centers approved 40,719 of 44,386 O visa petitions (91.7%). This approval rate exceeds the approval rate for many other nonimmigrant worker petitions. During the same time period, the two centers approved 78.5% of H-1B (specialty occupations) and 76.1% of L-1B (specialized knowledge worker) petitions. OCC's efforts to increase the approval rate of the

relatively small O visa case load that has a much higher approval rate are mysterious.

As occurred in the university's case, the USCIS AAO frequently supports the ISO's decision on appeal. From January 2010 through February 2011, O visa petition appeals succeeded only 4 times out of 44 cases, a 9.1% success rate. The quality assurance and AAO data suggest that ISOs generally make good O visa petition denial decisions.

There may be a basis for clarifying adjudication policy for O visa petitions. A low approval rate is not one of them. The attorney who prompted the attempt to change O visa policy said that petitioners should receive the benefit of the doubt, because "none of these organizations hires untalented performers." This clearly contradicts the statutory standard of "distinction," which does not say that any employable artist can gain O visa status. The regulation requires that beneficiaries possess a "degree of skill and recognition substantially above that ordinarily encountered" and be "renowned, leading, or well known."¹³ For the university case, the former USCIS Chief Counsel suggested that a prestigious university should get an approval, since ISOs are not qualified to question the petitioner's evidence. Universities obviously wish to hire excellent candidates, but Congress did not establish that extraordinary ability exists among all those who gain university employment.

The intent of OCC's efforts in this area is unclear. Without reviewing individual cases, we are unable to determine how OCC could conclude that ISOs made improper decisions based on the statute or regulations. Because data and our analysis refute OCC's contentions, we believe that in certain instances OCC may have improperly responded to outside complaints through undue pressure on adjudication decisions.

USCIS attorneys must have contact with ISOs to provide legal advice on the correctness of decisions, what evidence is necessary, and other areas pertinent to adjudication decisions. Our concern is with those cases where OCC leaders may create pressure on the adjudications process so that improper approvals are or could be made. Some limitation on OCC's ability to affect the adjudications process is necessary.

¹³ 8 C.F.R. § 214.2(o)(3)(ii).

We interviewed a senior OCC manager after we had become familiar with the details of the university case and other controversial decisions. We asked about the appropriateness of the OCC efforts to push for approval in marginal cases. The manager said that new restrictions on OCC interaction with those inside or outside of USCIS are not necessary, because state bar requirements and executive branch ethical guidelines for conflict of interest limit the conduct of USCIS attorneys. We did not evaluate OCC's actions based on these professional norms, but we know these rules did not prevent OCC's questionable intervention in some O visa cases. USCIS needs written rules to keep OCC attorneys from placing inappropriate pressure on the adjudications process. The integrity of the benefit issuance process is vital, especially since special treatment of complainants fosters a sense among ISOs that USCIS inappropriately grants benefits in certain cases. Because we were informed that no internal policy governs the conduct of OCC regarding petitioner complaints, incidents like the university case could recur. Additional guidance in this area is necessary.

We recommend that United States Citizenship and Immigration Services, in consultation with the DHS Office of General Counsel:

Recommendation #10: Develop a policy to establish limitations for managers and attorneys when they intervene in the adjudication of specific cases.

Concern Exists About the Level of Outside Influence on the Adjudications Process

The effort to increase O visa petition approvals is one type of inappropriate pressure in the adjudications process. We identified other cases where private attorneys or other parties contacted USCIS managers or attorneys to request a review of cases that an ISO had denied. Some USCIS employees expressed concern that these situations subvert the formal appeals process.

Many USCIS petitioners submit only one or two applications. Other petitioners submit petitions for a large number of employees. Experienced filers have great interest in the USCIS benefit adjudications process. However, instances have arisen where USCIS has experienced difficulty aligning improved "customer service" with the approval of only those applications or petitions that are entitled to the benefit. We understand that USCIS must engage with outside experts and be responsive to public questions.

Caution should be exercised, however, when appearance of favors or special consideration exists.

On the issue of outside complaints creating a climate that stresses benefit approvals, USCIS faces the burden of history. In 2000, the DOJ OIG, in a review of INS actions during the Citizenship USA initiative, identified cases where outside entities “attempted to influence or manipulate” adjudications in a variety of ways, including pressure to approve cases or requests to transfer cases to adjudicators perceived as more lenient. The DOJ OIG wrote that adjudicators “perceived a perpetuation of the historical favoritism shown to certain organizations.”¹⁴ According to interviewees and survey respondents, a culture of “get to yes” continues to exist at USCIS.

Recent examples exist of senior leaders disagreeing with the statements made in requests for special treatment. One senior manager provided email messages that showed headquarters defending ISO decisions or challenging a private attorney’s views. Nonetheless, numerous staff said that private attorneys will often complain to management, which leads to special review of cases. We examined email messages where these requests were granted. Survey respondents and interviewees noted that this type of pressure compromises the adjudications process, and therefore the overall USCIS mission. A survey respondent wrote of a sense that private immigration attorneys are “running our offices.”

OCC’s response to outside pressure has contributed to this impression. Although it is not currently filled, OCC does have a position for a special liaison counsel. The responsibilities of this position include receiving outside complaints, then inquiring with the USCIS office that rendered the adjudications decision. OCC interviewees told us that plans exist to designate another liaison counsel in the future. ISOs and other USCIS employees suggested that this position generated concern about OCC’s impartiality. We were informed of cases where OCC inquiries created frustration and concern, resulting in ISOs simply approving cases. One manager noted the chilling effect of such inquiries, especially because OCC appeared to be promoting the cases of private attorneys.

¹⁴ DOJ OIG, “Interviews and Adjudications,” in *An Investigation of the Immigration and Naturalization Service’s Citizenship USA Initiative*, July 2000, pp. 103–104.
<http://www.justice.gov/oig/special/0007/intervus.pdf>

Some private attorneys recognize that their requests for special review are improper. In a note to an OCC manager, a private immigration attorney was “very aware that it is not permissible” to ask for special review of a case, but the attorney asked for OCC intervention. OCC forwarded the email to certain individuals in USCIS, which led the CSC to review the case again. After that review, the denial determination was reaffirmed.

ISOs and managers in some USCIS offices said that efforts to undercut some denial decisions waste USCIS resources and send an implicit message to approve petitions and eliminate outside complaints. We were informed that special treatment remains prevalent. An ISO said that the American Immigration Lawyers Association “owns” USCIS. USCIS is aware of this perception and has taken some steps to treat this organization less uniquely. For example, a regularly scheduled conference call with the association is now open to other interested parties.

ISOs and supervisors claimed that any informal process where an ISO is asked to review a case again implies that an approval is expected. One supervisor said that when a special review is requested, the center will “try to find a way to approve something.”

An appeals case illustrates how special treatment adds inefficiency and cost to the adjudication process. After a service center denied a group of petitions, SCOPS leadership had the center reexamine the cases, and the denials were affirmed. SCOPS then ordered the cases to be transferred to a second center, which also denied the petitions. The appeal decision, which agreed with the centers, notes that a private attorney influenced the requests for special review of the cases.

These types of actions have the potential to create a two-tier immigration benefit system: Those with private attorneys or contacts at USCIS get special treatment, while others do not. Although we received evidence that the Director of USCIS does not support special treatment for complainants, more attention must be paid to this matter.

An individual who is denied a benefit may submit an appeal to the USCIS AAO. AAO is also useful for adjudicators who need guidance on particular cases. During the 14 months from January 2010 through February 2011, AAO received an average of 1,013 cases each month. ISOs and OCC attorneys informed us that

AAO's written decisions to sustain or dismiss an appeal assist ISOs in future adjudications of similar cases.

AAO occupies a unique position in USCIS. The AAO Chief reports to the USCIS Director, and AAO, like all other parts of USCIS, cannot ignore USCIS policy. Nonetheless, AAO decisions must be an impartial legal and policy review of a case's merits. In our interviews with AAO managers, we determined that AAO is insulated from undue pressure. One common public complaint, that AAO takes too long to issue opinions, is being addressed through the allotment of new staff to AAO.

USCIS has yet to find an effective balance between its interaction with the public, especially immigration attorneys, and the need to protect the integrity of the adjudications process. This is a dilemma, because many people have an interest in USCIS decisions, and public comment is vital to the regulatory process. USCIS should strive to recognize the differences between legitimate public opinions about its processes and requests to change individual case decisions. Those who gain a special review of their case essentially receive a second adjudication without having to file an appeal.

We recommend that United States Citizenship and Immigration Services:

Recommendation #11: Issue policy that ends any informal appeals process and the special review of denied cases.

The Standard of Proof in Immigration Benefit Cases Affects the USCIS Mission

A Low Standard of Proof Is Used for Most USCIS Adjudications

The issuance of immigration benefits entails many important considerations, ranging from national security, fraud prevention, family reunification, and efforts to improve the economy through use of alien labor and expertise. As a result, ISOs have a very complex and important task. Implementation of the USCIS mission requires a merge, not just a balance, of all relevant governmental and societal concerns. ISOs must evaluate evidence, check a range of information, consult all applicable rules, and then approve or deny the benefit.

ISOs are the fact finders in benefit adjudications. They must decide whether the evidence justifies an approval or denial. As part of the adjudication process, an ISO applies a standard of proof to the materials submitted in a benefit application or petition. A standard of proof refers to the level of information or the degree of persuasion needed to prove a fact.¹⁵ The Supreme Court has written that evidentiary standards are “an attempt to instruct the fact-finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions.”¹⁶ When the standard of proof is met in immigration benefit cases, the ISO has the level of confidence needed to approve the benefit.

The difference between the burden of proof and the standard of proof is important. The burden of proof in immigration proceedings is the responsibility of the individual requesting the benefit.¹⁷ Thus, the information that an applicant or petitioner submits to USCIS must demonstrate entitlement to the benefit. The standard of proof helps an ISO determine whether the submitted evidence permits an approval.

In most USCIS adjudications, the evidentiary standard is “a preponderance of the evidence,” a common standard in civil proceedings.¹⁸ Two other common standards, “clear and convincing evidence” and evidence “beyond a reasonable doubt,” require a higher level of certainty.

Like many others, ISO managers view a preponderance of the evidence as greater than a 50% certainty that a fact is true. Clear and convincing evidence is seen as approximately 75% certainty. Proof beyond a reasonable doubt is 95% or more certainty. These percentages illustrate the differences between standards, although an exact percentage may not be easy to quantify in a given case.

To satisfy the preponderance of the evidence in immigration proceedings, applicants or petitioners must demonstrate only that the facts in their case are slightly more likely true than not true. In most instances, a benefit must be granted after the ISO concludes that the preponderance of the evidence is met. A recent AAO decision illustrates this point. The decision establishes that doubt about truth cannot justify a denial if relevant and credible evidence

¹⁵ *Analysis of Evidence*, 2nd edition, Cambridge University Press (2005), p. 385.

¹⁶ *In re Winship*, 397 U.S. 358, 370 (1970).

¹⁷ 8 U.S.C. § 1361.

¹⁸ *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

establishes that the claim for a benefit meets the preponderance of the evidence threshold.¹⁹

A Higher Standard of Proof Would Improve Program Integrity Without Undue Burden on the Public

National security and public safety can be compromised when individuals take advantage of the immigration system. The 9/11 attacks were the ultimate example of how terrorists abused the adjudications process. All of the hijackers lied on their immigration applications, and some were granted benefits to which they were not entitled.²⁰

To further protect the immigration system, Congress may wish to raise the standard of proof for some or all USCIS benefit issuance decisions. An immigration benefit determination is not a typical civil proceeding. Each day, ISOs make decisions that directly relate to the integrity of the immigration system. The Supreme Court has written that evidentiary standards “are important for their symbolic meaning, as well as for their practical effect.” A higher standard “is one way to impress the fact finder with the importance of the decision ...”²¹ A relatively low standard of proof does not account for all societal interests involved in the issuance of immigration benefits.

The beyond a reasonable doubt standard, used in criminal cases, has very limited applicability to USCIS adjudications. However, the Supreme Court has concluded that the clear and convincing standard “is no stranger to the civil law.”²² Congress has legislated use of the clear and convincing standard for certain benefit decisions, such as establishing a good-faith marital relationship within 5 years of gaining lawful permanent residence through a previous marriage.²³ If clear and convincing evidence is required for more benefit adjudication decisions, the ISO would need greater certainty before a case was approved. Even then, this standard “does not require that the evidence be unequivocal or of

¹⁹ *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

²⁰ *9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States*, August 2004, pp. 138–139; DOJ OIG, *The Immigration and Naturalization Service’s Contacts With Two September 11 Terrorists: A Review of the INS’s Admissions of Mohamed Atta and Marwan Alshehhi, Its Processing of Their Change of Status Applications, and Its Efforts To Track Foreign Students in the United States*, May 2002, pp. 91–104.

²¹ *Addington v. Texas*, 441 U.S. 418, 426–427 (1979).

²² *Woodby v. INS*, 385 U.S. 276, 285 (1966).

²³ 8 U.S.C. § 1154(a)(2)(A).

such a quality as to dispel all doubt.”²⁴ Clear and convincing evidence, as an intermediate standard of proof, offers a better balance among all of the factors applicable to USCIS benefit adjudications.

A 1998 appeals case demonstrates that the clear and convincing standard need not create undue burdens on benefit requesters. Even with this higher standard, the petitioner was entitled to the “same fair and reasonable evaluation of his evidence and factual situation as that given to any petitioner in visa petition proceedings.” Thus, the “firm belief and conviction” required under the clear and convincing standard should not lead the ISO to believe that the evidence is false or fraudulent.²⁵ Additional documentation, or further insight gained through more interview questions, would ensure that ISOs have greater confidence before making a decision.

Process improvements and the national security checks currently in place have improved the ability to detect criminal or terrorist threats. Also, consular officers overseas, site visits after a benefit is issued, or additional evidence revealed later can catch benefit fraud. Nonetheless, the ongoing strategic deficiencies we identified in the USCIS fraud detection effort hinder an ISO’s ability to make the best determination on some cases. Greater certainty that an application or petition is legitimate would decrease the chance of issuing benefits to the wrong individual.

The benefit issuance system cannot be fully successful when ISOs across the country express concern about the time pressure to process cases, even though production is ostensibly noncritical. Deficiencies in the interaction between ISOs and fraud staff can cause ISOs to feel less confident about some decisions. Since notable levels of doubt can exist in cases that are approved, the preponderance of the evidence standard does not instill confidence that risk in the immigration benefit system has been minimized sufficiently.

Even with the additional security checks and process improvements USCIS has made in the past several years, national security and fraud concerns may require more thorough review of immigration applications and petitions. These concerns may increase the time needed to process benefit requests. Concern about delays in

²⁴ *Matter of Patel*, 19 I&N Dec. 774, 783 (BIA 1988).

²⁵ *Matter of Patel*, 19 I&N Dec. 774, 784–785 (BIA 1988).

issuing benefit determinations should not override all other interests. Before the 9/11 terrorist attacks, the Court recognized additional interests at stake. In 1982, the Court wrote,

Both the number of the applications received . . . and the need to investigate their validity may make it difficult for the agency to process an application as promptly as may be desirable. . . . An increasingly important interest, implicating matters of broad public concern, is involved in cases of this kind. Enforcing the immigration laws, and the conditions for residency in this country, is becoming more difficult.²⁶

The complexity of immigration law and the threats to the United States have increased since the Court reached this conclusion. In another case that same year, when discussing standards of proof, the Court wrote that the preponderance of the evidence “allocates the risk of error nearly equally.”²⁷ Significant aspects of the benefit issuance process, as this report has demonstrated, are not reliable enough to identify all fraud, even when national security checks work to protect the system from criminals and known or suspected terrorists. Although most fraud cases may not involve national security, USCIS should rely on a higher standard than a belief that an applicant probably is entitled to a requested benefit.

Our perspective is made more pressing because many of the problems ISOs and managers expressed are not new. In a 1997 congressional hearing, the DOJ Inspector General suggested that fraud detection difficulties in the immigration system were “a reflection of the primacy of other priorities and a lack of resources.”²⁸ As previously cited reports noted, a year before the 9/11 attacks, the DOJ OIG suggested that the adjudications process was subject to immense production pressure that should be lessened. In a report released 8 months after the attacks, the DOJ OIG cited problems with immigration benefit issuance for two 9/11 hijackers. A recommendation in that 2002 report suggested that those who adjudicate immigration benefit requests needed “more time to review files and seek additional information.” Even so, it was 2011 before USCIS made production noncritical to an ISO’s performance. Concern from some ISOs and managers about ongoing production pressure, the desire for longer interviews of applicants, and the incomplete nature of the new performance

²⁶ *INS v. Miranda*, 459 U.S. 14, 18–19 (1982).

²⁷ *Santosky v. Kramer*, 455 U.S. 745, 766 (1982).

²⁸ http://commdocs.house.gov/committees/judiciary/hju44195.000/hju44195_of.htm

measures means that much work remains before USCIS instills a culture that emphasizes quality over quantity. A higher standard of proof, and implementation of this report's recommendations, offer a variety of means to improve the benefit issuance process.

Management Comments and OIG Analysis

USCIS submitted formal comments to our report. We made changes to the report where we deemed appropriate. A copy of the USCIS response is included as appendix B. We also received technical comments from USCIS, and we have made corrections to the report based on these comments.

USCIS concurred with eight of our 11 recommendations. Although USCIS did not concur with recommendations 7, 10, and 11, it offered alternative corrective action.

Our analysis of the USCIS response to the recommendations follows a brief discussion of the concerns about our use of surveys. USCIS suggested that our use of an online survey could lead us to flawed conclusions. Our use of surveys is not new. We use surveys to collect data that we cannot directly observe without significant expenses of time and money for extensive travel. For this report, our survey was sent to ISOs in each of the 26 domestic district offices. The survey universe included all ISOs who work in those offices, and USCIS provided this list of employees. We did not select survey recipients based on prior complaints we received or particular concerns about any USCIS office. We agree that individual survey responses may not reflect the opinions of most ISOs across the United States. However, the survey was supplemented by interviews with other managers, supervisors, and ISOs across the country.

Recommendation #1: Promote better collaboration and cross training between Immigration Services Officers and Immigration Officers in support of fraud detection efforts.

Management Response: USCIS concurred with Recommendation #1. Additional steps will supplement actions already taken to encourage greater cooperation between ISOs and IOs. USCIS said that FDNS will work with SCOPS and FOD to create a fraud detection training program for ISOs. With its learning management and training expertise, HCT intends to assist the operational directorates to implement this recommendation.

OIG Analysis: The general USCIS comments are responsive to the intent of this recommendation. In its corrective action plan, USCIS should provide further details about the planned ISO fraud detection training program.

Recommendation #2: Assess, document, and correct as needed the level of fraud training and collaboration between Immigration Services Officers and Immigration Officers across all USCIS offices.

Management Response: USCIS concurred with Recommendation #2. The management response reiterated a commitment to a new fraud detection training program. The training program will include recommendations for ISOs to improve the information provided in fraud referrals.

OIG Analysis: The intent of this recommendation was to ensure that USCIS assesses, documents, and corrects as needed, the level of ISO-IO collaboration across the country. USCIS demonstrates a commitment to the new training program, but it must ensure continued efforts in the field to maintain the necessary level of ISO-IO interaction. To be responsive to this recommendation, the USCIS corrective action plan should describe the steps planned to assess, document, and, if necessary, correct the level of interaction taking place in USCIS offices across the country.

Recommendation #3: Develop a process to promote more detail assignments for Immigration Service Officers to local fraud units.

Management Response: USCIS concurred with Recommendation #3. HCT will work with the operational directorates to implement a pilot initiative to expand ISO detail opportunities. USCIS will identify how workload issues and staffing could affect an ISO detail program. The pilot will focus on the creation of optimal detail experiences for individuals. USCIS concluded that the possibility of IO details into adjudication units will be explored.

OIG Analysis: USCIS comments are responsive to this recommendation. In the corrective action plan, USCIS should provide further information about the pilot initiative, and any policy under development on the use of detail assignments.

Recommendation #4: Develop additional quality assurance or supervisory review procedures to strengthen identification of all names and aliases of individuals seeking an immigration benefit.

Management Response: USCIS concurred with Recommendation #4. A workgroup will be established to develop policy in response to this recommendation. USCIS said that this group will consider revisions to improve alias identification, as well as comprehensive changes to the background check and security review process. Development and testing of new alias identification efforts would occur before changes are implemented throughout USCIS offices.

OIG Analysis: We agree that USCIS could use this workgroup to suggest changes to the existing background check process. Details about the workgroup and an update on the workgroup's process should be included in the USCIS corrective action plan.

Recommendation #5: Perform onsite outreach efforts nationwide to discuss the performance management system with Immigration Services Officers and Immigration Officers.

Management Response: USCIS concurred with Recommendation #5. Current outreach efforts will be expanded. HCT plans additional travel to gain onsite comments from USCIS staff across the country.

OIG Analysis: USCIS efforts in this area are responsive to this recommendation. In its corrective action plan, USCIS should provide a travel schedule for those visits that address the recommendation. We also request additional information about how the points of contact will work with USCIS offices on performance management outreach efforts.

Recommendation #6: Solicit comments from Immigration Services Officers and supervisors regarding the new performance measures.

Management Response: USCIS concurred with Recommendation #6. HCT will use online surveys, USCIS said, which will allow for staff input on the performance measures.

OIG Analysis: The use of surveys, which could supplement HCT's onsite visits, is responsive to this recommendation. Additional details about the number of surveys used and the

information learned should be provided in the USCIS corrective action plan.

Recommendation #7: Develop standards to permit more time for an Immigration Services Officer’s review of case files.

Management Response: USCIS did not concur with Recommendation #7. Additional time without analysis, according to USCIS, is not the solution to address national security and fraud concerns. USCIS suggests an analysis of the appropriate amount of time needed to process immigration cases. Risk assessment, legal requirements, and the likelihood of material evidence would be part of this analysis.

OIG Analysis: As USCIS conducts analysis of this issue, the participation of ISOs across the country is necessary. Historically, and during our fieldwork for this report, ISOs have perceived time pressure as an unspoken managerial preference for approval of marginal cases. This remains a concern under the new quality-based performance measures. Further details on how USCIS can address that problem are necessary to corrective action.

Recommendation #8: Enforce the policy in the *Adjudicator’s Field Manual* regarding directed decisions, and ensure that staff and supervisors are aware of their responsibilities when such decisions are made.

Management Response: USCIS concurred with Recommendation #8. USCIS said that Section 10.4 of the *Adjudicator’s Field Manual* is not intended to prohibit a supervisor from reassigning work in all cases, because a particular ISO may have enhanced skills in adjudicating specific cases. Section 10.14 was not intended to prohibit reassignment of a case for what USCIS calls an “independent adjudication.” USCIS intends to clarify case reassignment responsibilities in a pending revision to the manual.

OIG Analysis: Revisions to the *Adjudicator’s Field Manual* could be responsive to the recommendation. USCIS should not prohibit all reassignment of work, since there can be legitimate reasons to assign a case to another ISO. However, we are not sure what an “independent adjudication” is in the context of our recommendation. An ISO who disagrees with a supervisor may still have an independent view of a case. Policy change would be undesirable if ISOs must sign a decision with which they disagree.

There is nothing wrong with correction of an ISO who made incorrect legal determinations. However, USCIS should ensure that changes do not foster a culture where ISOs curry favor through the approval of marginal cases. Supervisors themselves should continue to be responsible in policy and practice when they direct that a certain decision be made, and USCIS should require further education to clarify policy that currently exists.

Recommendation #9: Revise policy on requests for evidence to clarify the role that the requests play in the adjudication process.

Management Response: USCIS concurred with Recommendation #9. USCIS intends to issue revised RFE policy in FY 2012.

OIG Analysis: Details of the policy revision should be provided in the corrective action plan.

Recommendation #10: Develop a policy to establish limitations for managers and attorneys when they intervene in the adjudication of specific cases.

Management Response: USCIS did not concur with the wording of Recommendation #10. USCIS said that it considers it the responsibility of managers and attorneys to help ensure the quality of adjudications; specifically, to help ensure that an adjudication adheres to the law and is supported by the facts. Broad references to OCC could be seen as a negative view of individuals throughout the office, rather than a small number of managers.

USCIS opposes any individual effort to reach a case result that is not legally correct. Further guidance could clarify the requirements placed on USCIS employees and managers so that the best decision is made in each case.

OIG Analysis: Although USCIS did not concur with the wording of Recommendation #10, plans to provide additional guidance are responsive to our intent. We recognize that USCIS attorneys and managers have a role in the oversight and management of the adjudications process. Nonetheless, we discovered several examples that rose to the level of interference to affect the outcome of an ISO's decision. It is, after all, the ISO who bears primary responsibility to "ensure that adjudication adheres to the law and is supported by the facts." New guidance would be helpful to ensure that such problems do not recur. We agree with USCIS that

employees have an obligation to report improper interference with the adjudications process.

Recommendation #11: Issue policy that ends any informal appeals process and the special review of denied cases.

Management Response: USCIS did not concur with the wording of Recommendation #11. A variety of options are available for customers to interact with USCIS, including toll-free numbers, public and congressional engagement, the USCIS Ombudsman, and the special liaison counsel. USCIS addresses public inquiries based on the complexity of the specific issue. In certain cases, an extensive review of the case file may occur. USCIS responds to outside inquiries to ensure that the best decision is made on each case. These are not considered special reviews, but rather efforts to improve decisional uniformity. This could lead to a change in the ISO's original determination and remedial action. Rendered decisions occasionally reveal a need for policy changes. The precedent created when a decision is made must be consistent with policy.

This does not mean that USCIS condones improper case intervention. USCIS agrees that incidents of undue pressure are troubling. This has prompted additional educational efforts so ISOs understand the manner in which public inquiries are addressed, including the possibility of further review of adjudicated cases. The OIG report demonstrates the need for vigilance, rather than proof of systemic problems with USCIS policies. Planned written guidance includes reinforcement of USCIS policy that does not condone undue pressure on ISOs, and instructions on how employees can respond to such pressure.

OIG Analysis: New USCIS written guidance could be responsive to the recommendation. Customer service is a necessary goal at USCIS, and legitimate policy change may result from public comments. Caution must be exercised, however, when USCIS addresses outside inquiries. Automatic deference to public views can, and has, negatively affected the integrity of certain adjudications. The regulatory, national security, and fraud prevention duties of USCIS should lead to the rejection of some public complaints. Without clearly articulated expectations, the potential exists that USCIS will face challenges as it tries simultaneously to regulate immigration and to promote issuance of immigration benefits. The complexity of this dual role is why we remain concerned about the use of a special liaison counsel. Our

fieldwork demonstrated that in the past the position led to efforts to alter adjudication decisions. The specific steps USCIS intends to take to eliminate such problems should be described in the corrective action plan. There may be occasions when public attorneys and other complainants are incorrect. We remain concerned that some USCIS managers and staff may not understand the difficulty in distinguishing between appropriate customer service and pressure to approve marginal cases.

Appendix A

Purpose, Scope, and Methodology

We initiated this review at the request of U.S. Senator Charles Grassley, based on his concerns about USCIS policies that could hinder national security and the detection of immigration benefit fraud.

In addition to review of USCIS policies and data, we conducted 147 interviews, including the Director of USCIS. Other interviewees included staff and managers at each of the four service centers, the National Benefits Center, and six field offices. We also interviewed headquarters leadership in the Service Center Operations, Field Operations, and Fraud Detection and National Security directorates. Our file review included conversations with expert ISOs about particular cases.

Our analysis included results from an online survey that we sent to a random selection of the ISOs in all 26 USCIS district offices. We received 256 responses, 193 (75.4%) of which came from respondents who had been ISOs for more than 3 years. Survey questions dealt with the FY 2011 performance measures, pressure to adjudicate cases, and overall impressions about the USCIS mission. The results of the survey are discussed throughout the report; the survey appears in appendix C.

We conducted our review between January and May 2011 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Appendix B

Management Comments to the Draft Report

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

Memorandum

TO: Charles K. Edwards
Acting Inspector General

FROM: Alejandro N. Mayorkas /s/ 12-5-2011
Director

SUBJECT: USCIS Response to OIG Project No. 11-079-ISP-USCIS, *The Effects of USCIS Adjudication Procedures and Policies on Fraud Detection by Immigration Services Officers*

U.S. Citizenship and Immigration Services (USCIS) has reviewed the DHS Office of Inspector General (OIG) report entitled, "*The Effects of USCIS Adjudication Procedures and Policies on Fraud Detection by Immigration Services Officers.*" USCIS recognizes and appreciates the time and energy the OIG dedicated to the report and values OIG's independent assessment of USCIS's work. This report both validates and reinforces USCIS's focus on one of its critical missions: to help safeguard our national security and protect the integrity of our immigration system.

As set forth below, USCIS concurs with the majority of OIG's formal recommendations and already is in the process of acting upon them. As a preliminary matter, there are two aspects of the report that USCIS comments upon separately here. First, there are many statements and assumptions throughout the report with which USCIS disagrees. However, USCIS focuses its attention in this response on the formal, final recommendations themselves. Second, and more broadly, OIG's conclusions are based on anecdotal statements regarding USCIS's purported policies and practices and not on fact-based data; the report's Executive Summary on page one identifies that OIG received 256 responses to an on-line survey. Within the quality arena these types of surveys are referred to as "self-selected opinion polls" that scholarly research concludes can produce flawed results. Nevertheless, USCIS is focused on the formal recommendations and responds to them below.

USCIS has proven its commitment to strengthening the security and integrity of the U.S. immigration system. This commitment includes combating immigration benefit fraud

Appendix B

Management Comments to the Draft Report

and ensuring that individuals or organizations filing for immigration benefits do not pose a threat to national security or public safety. USCIS has made significant advances in achieving these goals, as the OIG recognizes in its report. Again, we thank the OIG for assisting in this critical effort.

DHS-OIG recommends that U.S. Citizenship and Immigration Services:

Recommendation 1: Promote better collaboration between ISOs and IOs in support of fraud detection efforts.

USCIS Response: USCIS concurs with this recommendation.

While USCIS has already implemented measures to encourage greater cooperation and exchange between Immigration Officers (IO) and ISOs, we will examine ways to further this effort. The Fraud Detection and National Security Directorate (FDNS) will work with Service Center Operations (SCOPS) and Field Operations Directorate (FOD) leadership to better promote these types of meetings and consider formal guidance or requirements relating to such collaboration. Where practical and appropriate, USCIS will consider temporary assignments or details of ISOs to FDNS and vice versa. USCIS will also support fraud detection efforts by providing more operational and analytical information to ISOs and IOs across the agency.

Understanding that relevant and focused anti-fraud training is most impactful, USCIS will develop a fraud detection training program for ISOs. FDNS will work with SCOPS and FOD to determine the types of training needed and how best to deploy it to maximize effect. The Office of Human Capital and Training (HCT) will support SCOPS, FOD, and FDNS in implementing this recommendation. This support may include, among other things, advice to the Directorates on how to most effectively analyze the training needs, collaboration on the development and delivery of appropriate training programs, and access to learning management tools that can facilitate sharing of training materials across the organization.

Recommendation 2: Assess, documents, and correct as needed the level of fraud training and collaboration between ISOs and IOs across all USCIS offices.

USCIS Response: USCIS concurs with this recommendation.

USCIS is committed to improving the quality of fraud detection training for ISOs. FDNS will work with SCOPS and FOD, in consultation with HCT, to develop training programs that target specific programs, ensuring that training is relevant to officers adjudicating particular categories of applications or petitions. When deployed, the course will provide field officers with information on how to identify fraud, how to refer fraud cases to FDNS, and how to use the information FDNS returns in Statements of Findings. In turn, training will be developed for IOs regarding the various visa categories represented by the applications and petitions referred to FDNS so that they can return more informed

Appendix B

Management Comments to the Draft Report

reports to the referring ISOs. HCT plans to coordinate closely with SCOPS, FOD, and FDNS to design and help implement appropriate evaluation and assessment tools to identify training needs, areas for future collaboration, and the success of ongoing collaboration. For example, HCT is finalizing a survey instrument to gather from ISOs and supervisors information regarding training needs for experienced adjudicators. Fraud detection and related issues are some of the areas of possible training need that will be addressed by this planned survey.

While training will encourage greater collaboration between ISOs and IOs, USCIS will also encourage such collaboration through other methods (see response to Recommendation 1 above).

Recommendation 3: Develop a process to promote more detail assignments for Immigration Service Officers to local fraud units.

USCIS Response: USCIS concurs with this recommendation.

HCT will work with SCOPS, FOD, and FDNS to establish a process to implement detail assignments of ISOs into fraud units. A pilot initiative would be undertaken to determine the parameters of the detail assignments and allow for an evaluation of the effectiveness of the assignments. Issues to be explored during the pilot would include identification of a flexible schedule for detail assignments based on workload-driven requirements, as well as staffing considerations to ensure optimal information sharing and learning experiences. We will explore with SCOPS, FOD, and FDNS the value of also detailing FDNS IOs into adjudications units.

Recommendation 4: Develop additional quality assurance or supervisory review procedures to strengthen identification of all names and aliases of individuals seeking an immigration benefit.

USCIS Response: USCIS concurs with this recommendation.

A cross-cutting work group consisting of members from FOD, SCOPS, FDNS, and the Office of Performance and Quality, will be established to review, identify, and develop the necessary enhancements to existing quality assurance and/or supervisory reviews performed to ensure USCIS officers properly identify all names and aliases of individuals seeking an immigration benefit. The work group will be established and will review all existing standard operating procedures (SOPs) and quality assurance (QA) review procedures to identify and assess the areas within the current background/security check process that are in need of improvement. Following a review of the SOP and QA procedures, the workgroup will determine whether additional quality assurance procedures and/or supervisory reviews are warranted or, alternatively, whether a new, more comprehensive background/security check quality assurance process should be developed. One element of that process would be the identification of names and aliases. If the review were to identify that only adjustment to existing QA and/or supervisory

Appendix B

Management Comments to the Draft Report

reviews was needed, the workgroup would be expected to complete the updates and implement the changes by mid-FY12. However, if the review identified that a new expansive background/security check quality review process was needed, this work would not be completed until the latter part of FY12. Quality review procedures would need to be developed and tested, and results obtained would need to be fully analyzed and validated before a final review process was officially introduced within USCIS field offices and service centers.

Recommendation 5: Perform onsite nationwide outreach efforts to discuss the performance management system with Immigration Services Officers and Immigration Officers. Solicit comments from ISOs and supervisors regarding the new performance measures.

USCIS Response: USCIS concurs with this recommendation.

Communication and information sharing regarding the USCIS performance management program already occurs on a consistent basis through targeted messages and regular telephonic interaction with Performance Management Points of Contact (PM POCs). Moreover, heightened attention to and awareness of enhancing the USCIS performance management program has occurred over the past several months as the agency continues its efforts to bring performance goals standardization to a wider group of occupational series. These efforts to provide comprehensive guidance and communication will continue and be expanded as performance management program changes are implemented and evaluated.

The Performance Management Team in the USCIS HCT is prepared to travel to different sites within the agency (field offices and service centers) to educate and advise officers, their supervisors and PM POCs on the proposed goals, standards, and metrics in preparation for either mid-cycle FY12 or FY13 changes. It will be especially important for the PM POCs to understand the expectations of officers (formerly called ISO or IO) as a consequence of the changes to their Performance Plans & Appraisals (PPA), as ongoing training and assistance will need to be conducted through the PM POCs. The timeline will be dependent on two important factors: (1) when the USCIS Standardization Advisory Board completes its recommendations for impact and implementation of Officer Goals; and (2) when bargaining on said goals is completed with *AFGE, National Council 119*.

Recommendation 6: Solicit comments from ISOs and supervisors regarding the new performance measures.

USCIS Response: USCIS concurs with this recommendation.

Upon implementation of the aforementioned Officer Goals, surveys will be conducted throughout the rating cycle to ensure compliance and understanding of expectations and

Appendix B

Management Comments to the Draft Report

to gain feedback on how the goals, standards, and metrics are working for field employees and supervisors.

Recommendation 7: Develop standards to permit more time for an Immigration Services Officer's review of case files.

USCIS Response: USCIS non-concurs with this recommendation insofar as it broadly identifies additional time as the solution to improving the analysis of a case for issues related to national security and fraud detection.

USCIS concurs that an analysis of the tasks that contribute to a quality adjudication is needed, concurrent with or followed by an analysis of the appropriate amount of time needed to accomplish these tasks. Such an analysis will involve, among other things, an assessment of risks, legal requirements, and the likelihood of gathering material evidence beyond what is contained in the record at the time of file review.

Recommendation 8: Enforce the policy in the *Adjudicator's Field Manual* regarding directed decisions, and ensure that staff and supervisors are aware of their responsibilities when such decisions are made.

USCIS Response: USCIS concurs with this recommendation.

Section 10.4 of the *Adjudicator's Field Manual (AFM)* only provides examples of situations involving the transfer of jurisdiction; it is not intended to be an exhaustive list, nor is it intended to preclude supervisors from assigning and reassigning work as they deem appropriate. It may be proper to reassign a case from one employee to another based on the supervisor's assessment of the knowledge, skills, and abilities of each employee and the issues presented in a specific case.

Section 10.14 of the *AFM* describes the process to properly document accountability when a supervisor directs a decision over the objection of the assigned adjudicator. It does not guide or restrict the reassignment of cases to another for an independent adjudication. USCIS intends to further clarify responsibilities by revising this section of the *AFM* and communicating expectations to staff and supervisors. This should be completed by January 31, 2012.

Recommendation 9: Revise policy on requests for evidence to clarify the role that the requests play in the adjudication process.

USCIS Response: USCIS concurs with this recommendation.

The policy governing requests for evidence is being reviewed and the goal is to issue a new policy in FY12.

Appendix B

Management Comments to the Draft Report

Recommendation 10: Develop a policy to establish limitations for managers and attorneys when they intervene in the adjudication of specific cases.

USCIS Response: USCIS non-concurs with this recommendation as framed.

USCIS considers it the responsibility of managers and attorneys to help ensure the quality of adjudications; specifically, to help ensure that an adjudication adheres to the law and is supported by the facts.

Accordingly, USCIS construes the OIG’s use of the term “intervene” to refer to the improper involvement of managers or attorneys to steer an adjudication to a particular result not supported by the law and the facts. To this, USCIS responds as follows:

- In its report the OIG makes references to the USCIS Office of Chief Counsel (or to broad groups within the Office of Chief Counsel) when, in fact, focus on a particular former employee and perhaps another individual would be most accurate. USCIS has addressed this issue and the broad-brush reference in the OIG report is unfair.
- USCIS does not condone any individual’s effort to reach a case result that does not adhere to the law and is not supported by the facts.
- While USCIS has ethical and other guidelines that are dispositive, USCIS will issue or reinforce guidance to ensure that adherence to the law and the facts is not impeached through the involvement of attorneys, managers, or anyone else. This ethical requirement cannot be overemphasized.

Recommendation 11: Issue policy that ends any informal appeals process and the special review of denied cases.

USCIS Response: USCIS non-concurs with this recommendation and respectfully offers a modification below.

As part of the USCIS Mission Statement and Strategic Goals, USCIS is committed to strengthening the security and integrity of the immigration system by providing effective customer-oriented immigration benefit and information services. A core value of USCIS is to strive for the highest level of integrity in its dealings with USCIS customers, fellow employees, and the public by administering the nation’s immigration system fairly, honestly, and correctly.

In meeting this responsibility, USCIS offers a variety of resources and mechanisms for its customers, the organizations and legal practitioners that serve them, Congress, educators, researchers, and the general public. Among the various resources USCIS offers are: the National Customer Service Center toll free number for nationwide assistance for immigration services and benefits offered by USCIS; InfoPass for customers to schedule appointments at Field Offices to speak with Immigration Information Officers to have their questions answered; USCIS Service Center email addresses for customers to send

Appendix B

Management Comments to the Draft Report

their inquiries regarding cases; the HQ Public Engagement program or a Community Relations Officer email address; and, the contact information for the USCIS Ombudsman Liaison Unit, which works with the USCIS Ombudsman's Office in addressing customer inquiries and complaints. In addition, the OCC Special Liaison Counsel is available to receive incoming inquiries and address complaints s any USCIS stakeholder submits.

The manner in which USCIS handles or addresses a stakeholder inquiry or complaint depends on the nature and complexity of the incoming information. Some inquiries are very straightforward and can be addressed quickly with readily available information. However, other inquiries or complaints are more complex and may involve allegations of case mishandling, inconsistency in USCIS decisions, or violations of privacy and civil rights or civil liberties. In such instances, USCIS's review of the incoming information could lead to a substantive review of any decision associated with the allegation. While the adjudicator involved may subjectively perceive a request to review a decision as putting undue pressure to ensure a certain outcome, such is not the intention of the request. Rather, USCIS's responsibility is to ensure that the decision was correct and that the allegations are addressed.

This process is not an "informal appeals process" whereby applicants are receiving special review of denied cases. Rather, this is the process by which USCIS ensures that its decisions are in conformity with the applicable laws and regulations. There is a legitimate USCIS interest in reviewing decisions and the adjudication process when inquiries or complaints are received. If review of the matter results in a change in a decision or a modification in an existing process, these remedial measures are evidence of USCIS's continued efforts to make certain that the nation's immigration system is administered fairly, honestly, and correctly.

USCIS does not, and must not, tolerate pressure on its adjudicators to reach particular outcomes. If any such pressure occurs, it should be reported and USCIS will investigate promptly and thoroughly. But sometimes adjudicative decisions, once rendered, expose problems that a change in USCIS policy could effectively remedy. On those occasions, USCIS has a responsibility to constantly improve its policies. It also has a responsibility to ensure that the combination of adjudicative precedent and other formal expressions of agency policy mesh coherently. To inhibit the effective discharge of those functions would be counter-productive.

USCIS does acknowledge that the subjective feeling of undue pressure among some of its personnel is troubling. In an effort to ensure that such a perception is addressed and changed, USCIS is committed to further educating its staff on the manner in which inquiries and complaints are received, the types of inquiries and complaints that are commonly received, the USCIS components that are responsible for handling and addressing these inquiries and complaints, and the steps that may be necessary in resolving the information received, such as review of a decision or adjudicative process.

Appendix B

Management Comments to the Draft Report

Although USCIS does not perceive any pervasive or systemic problem along the lines implied in the lead up to recommendations 10 and 11, the OIG report usefully highlights the need to be vigilant. Accordingly, we think there would be value in providing written guidance to all USCIS employees (including the OCC attorneys) that: (a) reinforces the prevailing culture of avoiding actions that might cause adjudicators to perceive pressure to reach particular results; and (b) instructs employees how best to respond to external requests or complaints concerning both pending and decided cases. We would concur with a recommendation to that effect.

Appendix C
The Survey of District and Field Office ISOs

1. How long have you been an ISO/adjudicator for USCIS/INS?		
	Number	Percentage
Less than 1 year	4	1.6%
More than 1 but less than 3 years	59	23.0%
More than 3 years	193	75.4%

2. What district or field office serves as your work location?

248 of the survey's 256 respondents answered this question. The respondents represented each of the 26 USCIS districts in the United States.

3. Have you personally ever been asked by management or a supervisor to ignore established policy or pressured to approve applications for benefits that should have been denied based on the Adjudicator Field Manual, other USCIS policy documents, or fraud/ineligibility concerns?		
	Number	Percentage
Yes	63	24.8%
No	191	75.2%

Appendix C
The Survey of District and Field Office ISOs

4. What do you expect from the new 2011 ISO performance evaluation criteria, which focus on measuring referrals for potentially fraudulent applications/petitions rather than production?		
	Number	Percentage
I expect a lot of positive change	84	33.7%
I expect little or no change	165	66.3%

5. Regarding past performance evaluation criteria for adjudicators/ISOs, to what extent were the criteria applied to ensure that employees made appropriate denials of ineligible or potentially fraudulent applications?		
	Number	Percentage
In my experience and in discussions with colleagues, the performance evaluation criteria were applied appropriately in order to ensure that petitions were processed correctly	107	42.5%
Any deviation from the proper evaluation of an ISO's work did not impact the USCIS mission to protect the immigration system	28	11.1%
I have some concern about how performance evaluation criteria were used; there were instances which compromised an ISO's ability to make proper decisions	82	32.5%
In my office there has been serious concern that employees who focus on fraud/ineligibility in their adjudications were being evaluated or disciplined unfairly	35	13.9%

Appendix C
The Survey of District and Field Office ISOs

6. What is your opinion of how well USCIS balances or merges the promotion of immigration with the protection of national security?		
	Number	Percentage
USCIS policy is too heavily weighted toward promotion of immigration, rather than the protection of national security	130	51.6%
In general, USCIS has a reasonable balance between promotion of immigration and national security	116	46.0%
USCIS policy makes national security concerns too prominent in the immigration benefit petition process	6	2.4%

7. Do you have access to USCIS estimates or data on the percentage of fraudulent or ineligible applications, and does this data improve your ability to identify potentially inappropriate applications?		
	Number	Percentage
No, I do not have access to fraud estimates, and I do not see how such data would help process a specific application	58	22.8%
No, I do not have access to fraud estimates, but such data might be helpful in the processing of specific applications	170	66.9%
Yes, I have access to fraud estimates, but the data do not help me identify potentially inappropriate applications	6	2.4%
Yes, I have access to fraud estimates, and the information does help me process specific applications	20	7.9%

Appendix C
The Survey of District and Field Office ISOs

8. What is your opinion of the amount of time allowed for your interviews of petitioners/applicants in regard to the goal of identifying fraudulent or ineligible requests for benefits?		
	Number	Percentage
I have enough time to interview applicants in order to ensure that suspicions of fraud or ineligibility can be found and reviewed	25	10.0%
Current policy on the length of time for an interview should change, but only to a limited extent, as a way to increase the integrity of the immigration system	117	46.6%
I have serious concerns that the time allowed for interviews is too short for me to make a good determination on whether a benefit should be granted	109	43.4%

9. What is your assessment of the frequency of direct personal interaction between ISOs and fraud detection immigration officers in your office on issues of common concern, such as ways to identify potential fraud in benefit applications?		
	Number	Percentage
We meet too much with local fraud detection staff	0	0.0%
The frequency of our interaction does not need to change	75	29.5%
We do not meet enough with fraud detection officers	179	70.5%

Appendix D
Major Contributors to this Report

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Department of Homeland Security

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Assistant Secretary for Office of Legislative Affairs
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Congressional Oversight and Appropriations Committees, as appropriate

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