

Recommendation 2

Streamlining Employment-Based Immigrant Processing

In 2004, the Ombudsman stated that the existing process for employment-based immigrant applications caused applicants to apply for multiple employment and travel documents, an expense to the applicant and a burden to USCIS. He recommended that we change our process so that the applications could be adjudicated within 90 days, thereby eliminating the need for the additional documents.

USCIS implemented a pilot program at the California Service Center (CSC) in April 2004. The pilot group consisted of Form I-140 (Immigrant Petition for Alien Worker) for Employment-Based Second Preference Classification (Member of professions with an advanced degree), with the Form I-485 (Application to Register for Permanent Residence or Adjustment of Status), day forward cases.

USCIS determined that the pilot was not a success because only 25% of the total cases were processed within 75 days, therefore interim benefits had to be issued in 75% of the cases. After 6 months, only 38% of the total pilot cases were processed. The delays were due to external factors outside the direct control of CSC, such as pending security background checks.

In a memorandum dated August 11, 2004 to Admiral Loy, Deputy Secretary at DHS, the Ombudsman discusses the growing backlogs at the service centers that are caused by the inability of USCIS to determine the number of I-140s that are pending in each employment-based category. The Department of State is unable to accurately determine the cut-off dates for the various categories because USCIS has no way to report the number of pending visa petitions. This information is not captured until approval of the application. Without an accurate cut-off date, applicants may file for adjustment of status because the visa category is open. USCIS ends up with many more adjustment applications than there are visas numbers available. Each of these applicants is entitled to work and travel documents while their application remains pending.

On April 27, 2004, the Ombudsman sent an information request to USCIS for a breakdown of data for pending employment-based applications for adjustment of status to be broken down by preference classification, priority date and country of chargeability. This request attempted to reflect similar data contained within the Immigration Annual Statistical Handbook, Chart 5, for completed cases. The Ombudsman's interest in pending employment-based workload is in part a reflection of the broader issue relating to USCIS' ability to support the Department of State in accurately forecasting immigrant visa requirements and the visa issuance process.

USCIS recognizes its critical role in the immigrant visa issuance process and has taken several steps to improve its data collection capabilities to more accurately identify and report pending and regressed employment-based immigrant workload. However, current information technology infrastructure does not support the Ombudsman's data requests. The changes necessary to meet these data requests would be both costly and timely.. USCIS responded on several occasions that it could not supply pending workload data in the Chart 5 format as requested.

USCIS' initial response was predicated on the fact that the detailed information request, including priority date, is not contained within the electronic system of record for

pending cases. The priority date is not entered into the electronic record for Form I-140, Petition for Immigrant Worker, until the time of final approval. In addition, Service Center Operations discovered that for a large portion of the I-140s at the time of approval the A number was not entered into the data field. Failure to electronically record the A number on these cases, prevented USCIS from conducting system bounces and queries to match the approved I-140 with the pending I-485. The desire to conduct system queries to support data collection on pending employment-based immigrant workload is further complicated by the concurrent filing process which allows the applicants for adjustment to file their I-485 concurrently with the I-140 petition. With the I-140 in pending status, important data fields are not available in the system to support the system scrapes and queries. Another issue, albeit involving a significantly smaller subgroup of this workload, is for those adjustment cases that are sent to the local district offices for interview. Current IT infrastructure does not allow USCIS to query for those cases in CLAIMS 3. All of these system deficiencies were the cause of the initial USCIS response that in the current environment this data could not be forwarded as requested and caused the basis for the delay.

Despite these systemic obstacles, USCIS has embarked on several labor-intensive work-arounds to provide data to itself for case management, to the Department of State for visa number management and other uses, and to the Ombudsman. Currently Service Center Operations is engaged in a manual exercise utilizing contract staff to update the electronic system of record related to the pending I-485s. This update will enable USCIS to identify 100% of the pending employment-based visa cases. It is anticipated that this exercise will be completed by April 28, 2006. Once this exercise is complete, USCIS will be able to extract data relating to the priority date, country of chargeability and preference classification. USCIS has already entered into discussions with the Department of State to provide this detailed information not only for pending workload but for visa regressed cases as well to allow DOS to accurately manage future visa allocations in regressed workloads.

In addition to the above-outlined efforts, since May 2005, USCIS has been conducting system scrapes of its electronic record on all I-485s pending at the Service Centers. USCIS has provided DOS with these reports. This report admittedly has been deficient based upon the fact that approximately 50% of the workload did not have the requisite A-file match as discussed above. However, even with this deficiency, DOS indicated that this information proved useful. It must be noted that this electronic query was both labor intensive and time consuming.

While USCIS is confident that by early May 2006 it will be able to provide more accurate information for the majority of pending employment-based immigrant workload, it must be noted that there is still the outstanding issue that complete accuracy will not be possible because of the nuances associated with concurrently filed cases and those cases transferred to the district offices. USCIS is continuing to review possible alternative solutions both at the data intake phase to determine whether or not required information can be gathered and recorded as well as a review of possible system solutions to track cases that are transferred to local district offices. In addition, USCIS recognizes that case management requirements for this workload must be built into the future system that is under discussion in support of the Transformation Initiative.

While USCIS has not been able to replicate the request as defined vis-à-vis Chart 5, USCIS has taken concrete steps to ensure that it will soon be able to support data queries that will provide the requisite level of detail for the vast majority of pending workload that will satisfy its own need to manage cases and the Department of State's information requirement to more accurately forecast visa issuance and usage.

During a meeting with the Department in March 2006, the Ombudsman stated, "USCIS, in our opinion, cannot eliminate slow and backlogged processing because USCIS has become dependent on backlogs and slow processing to generate revenue to keep operating." This statement would seem to indicate that USCIS could be motivated to purposely increase case processing times for certain workloads in order to force applicants and petitioners to file applications for interim benefits solely to enhance revenues. Given the fact that Congress has given USCIS the statutory authority to recover the full costs of its operations through fees, USCIS has no incentive to continue to rely on interim benefit revenues. USCIS is preparing, in its fee review in accordance with Federal fee guidelines, to adjust its fee structure in the short term to account for the loss of these interim benefit revenues and associated workloads as we continue to reduce processing times. USCIS is engaged in an exercise to fully analyze all actual and projected operational costs to reflect these costs in the revised fee structure and to align benefits in a manner that operational costs are accurately reflected in the petition costs as opposed to the interim application costs.

USCIS is into the final six-month stretch of a two and a half year aggressive backlog elimination campaign. USCIS has reduced its backlogs for petitions for adjustment of status from approximately 696,084 in October 2003, to approximately 314,286 in February 2006. In addition, USCIS reduced cycle times for these petitions from 21.17 months in October 2003 to 12.37 months in February 2006. Further review indicates that similar reductions in backlogs have occurred for the Form I-765, Request for Employment Authorization as well as the Form I-131, Request for Advanced Parole (from a backlog of 9,894 and cycle time 3.31 months in October 2003 to a backlog of 0 and cycle time of 2.32 months in February 2006). Overall receipts for both the Forms I-765 and I-131 have decreased by 47% and 20% respectively from October 2003 to February 2006.