



Citizenship and Immigration Services Ombudsman

Annual Report 2006

Submitted to:

**United States Senate
Committee on the Judiciary**

**United States House of Representatives
Committee on the Judiciary**

June 29, 2006



**Homeland
Security**

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MESSAGE FROM THE OMBUDSMAN



The challenges facing U.S. Citizenship and Immigration Services (USCIS) are substantial, but the commitment from the Secretary and the Deputy Secretary of the Department of Homeland Security (DHS) and thousands of USCIS public servants will help the United States meet these challenges and create a world-class immigration benefits system. During the reporting period I traveled to 39 USCIS offices, met with countless immigration service officials and stakeholder organizations, and made numerous formal and informal recommendations to improve immigration processing.

I am an immigrant and a naturalized citizen. I know that U.S. citizenship represents freedom and opportunity for millions of people around the world. Our families, our economy, and our culture are strengthened by immigrants who come to this country to realize the American dream. We all deserve an immigration process that meets the needs and aspirations of employers and individuals – citizens and non-citizens alike – that efficiently, effectively, and expeditiously provides immigration benefits, and that takes full account of DHS' national security mandate.

World-class customer service and national security are not mutually exclusive concepts; one need not be sacrificed for the other. We have made numerous recommendations for USCIS to streamline immigration processing enabling it to approve eligible green card applications within days or even hours, while enhancing the country's security. In USCIS field offices, pilot programs show that such new and innovative approaches can provide substantial improvements.

This is just the beginning. New technologies and ideas, based on the up-front processing model, will make clear that improvements in customer service and benefits processing do not come at the expense of existing backlog reduction initiatives or security, but rather go hand-in-hand with them. This office will continue to play an integral role in identifying and developing solutions to assist individuals and employers in resolving problems they encounter with USCIS.

Since July 2003, I have been privileged to work with dedicated public servants, including Secretary Michael Chertoff, Deputy Secretary Michael P. Jackson, former Secretary Tom Ridge, former Deputy Secretary Jim Loy, former Deputy Secretary Gordon England, USCIS Director Emilio Gonzalez, and former Director Eduardo Aguirre. In addition, I have been privileged to work with Joseph Mancias, Jr., who was the Director's liaison to the Ombudsman and a career member of the Senior Executive Service.

The preparation of this annual report could not have been accomplished without the tireless efforts of my dedicated staff of professionals who spent many hundreds of hours reviewing and validating facts and figures, as well as drafting and editing the report. I thank them for assisting me in completing it. I especially would like to thank Wendy Kamenshine who skillfully managed this complicated project.

Much work remains to build a twenty-first century immigration benefits system. We have identified the major roadblocks to success and proposed a number of workable solutions, and we are committed to working in partnership to achieve dramatic improvements in the system.

A handwritten signature in blue ink that reads "Prakash Khatri". The signature is written in a cursive style and is positioned above the printed name.

Prakash Khatri
Citizenship & Immigration Services Ombudsman

EXECUTIVE SUMMARY

The statutory mission of the Ombudsman is to:

- Assist individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS);
- Identify areas in which individuals and employers have problems in dealing with USCIS; and
- Propose changes to mitigate identified problems.

During the reporting period, the Ombudsman continued to provide assistance to USCIS customers, identify problems, and recommend solutions to a number of systemic problems confronting USCIS. These recommendations focused on customer service, while enhancing security and efficiency. This report provides details on activities undertaken by the Ombudsman from June 1, 2005 through May 31, 2006. Information boxes provide readers with: (1) USCIS best practices; (2) additional recommendations; and (3) descriptions of actual case problems.

Pervasive and Serious Problems

Pervasive and serious problems faced by USCIS and its customers include:

A. **Backlogs and Prolonged Processing Times** – USCIS customers continue to face lengthy and costly waiting periods for benefits, while many ineligible or fraudulent applicants enjoy interim benefits such as employment authorization;

B. **Untimely Processing and Systemic Problems with Employment-Based Green Card Applications** – USCIS' inability to process enough green card applications in prior years has resulted in a backlog of employment-based green card applications;

C. **Lack of Standardization Across USCIS Business Processes** – Processing times and the quality of decisions between offices are inconsistent;

D. **Pending I-130 Petitions** – Over one million family-based immigration petitions are pending with USCIS leaving customers frustrated and creating extra work for USCIS. Most of these petitions have been pending for many years and may not be adjudicated for many more years; USCIS does not consider them as part of its backlog;

E. **Interim Benefits** – Legitimate customers pay for services they would not need if the underlying petition were timely processed, while ineligible and fraudulent applicants receive work authorization and travel documents because of processing delays;

F. **Name Checks and Other Security Checks** – Some security checks significantly delay adjudication of immigration benefits for many customers, hinder backlog reduction efforts,

and may actually compromise security as they allow potential security risks to remain in the United States for extended periods of time;

G. Funding of USCIS – Because of the congressional requirement that it be self-funded from fees, USCIS often makes decisions that compromise operational efficiency to ensure revenue flow;

H. Information Technology Issues – Despite years of study and effort aimed at modernization, USCIS continues to use paper-based processes instead of modern technological advances. This leaves immigration officers without access to critical data due to legacy agency information systems which cannot communicate with one another;

I. Limited Case Status Information Available to Applicants – Customers are frustrated with the lack of reliable information available to them because of: limited customer access to USCIS immigration officers who have knowledge of individual cases; questionable accuracy of the information provided; insufficiently detailed information provided to answer specific inquiries; and the practice of providing minimal information to customer inquiries;

J. Coordination and Communication – A general lack of coordination and communication between USCIS offices and between USCIS and other agencies cause processing delays, inconsistency in adjudications, and costly inefficiencies;

K. Training and Staffing – A general lack of relevant training and staffing problems leave the USCIS workforce ill-equipped to handle the volume and complexity of the workloads they face;

L. Green Cards Collected, Not Recorded, and Green Card Delivery Problems – Untimely and inaccurate updating of records results in major inconveniences for some USCIS customers and misdirected green cards for others;

M. Delay in Updating U.S. Citizenship Designation in Records – Some naturalized citizens cannot apply for passports because naturalization cannot be verified.

Many of these problems are not new. More discussion and recommended solutions are provided in the report.

USCIS Revenue

While an entire section is devoted to USCIS funding and budgets, revenue-related statements recur throughout the report because of the centrality of that issue across all USCIS operations. Under current funding structures, USCIS is unable to maximize efficiency and make USCIS a true world-class customer service provider. Of even greater concern, funding needs distract from implementing processes that would enhance national security.

Up-front Processing

The report highlights the value of up-front processing of applications for USCIS benefits. This is a key Ombudsman recommendation. Modeled on the Dallas Office Rapid Adjustment (DORA) pilot program, such a process could dramatically improve customer service and efficiency, while deterring fraud and enhancing national security. Up-front processing modifies current USCIS processing procedures to complete as many actionable items on a case as possible when USCIS accepts the application/petition for processing.

Data from the DORA pilot program, when projected against USCIS national statistics, demonstrate the tremendous savings that could be achieved. Those statistics also illustrate how the practice of obtaining interim benefits by individuals who abuse the process can be virtually eliminated.

Recommendations

This report discusses the Ombudsman's 13 formal recommendations to the USCIS Director during the reporting period, which include:

- A. Extend the validity periods of refugee travel documents and process I-131 applications within six weeks (the average U.S. passport processing time) (Recommendation # 16);
- B. Eliminate the "Return Service Requested" postal meter mark to reduce the quantity of mail returned to USCIS and improve the likelihood that customers will receive critical correspondence and documents from USCIS on a timely basis (Recommendation # 17);
- C. Provide more and better information regarding the availability of visas in certain nonimmigrant categories (Recommendation # 18);
- D. Standardize asylum decision delivery processes and modify the asylum pickup decision delivery process for purposes of efficiency and convenience to USCIS customers (Recommendation # 19);
- E. Change Administrative Appeals Office operations and practices to be more transparent (Recommendation # 20);
- F. Use of Notice of Action Form I-797 by the Asylum Division to reduce the need for USCIS customers to make repeat visits to an asylum office (Recommendation # 21);
- G. Issue Notices to Appear (NTAs) whenever a green card application is denied and the applicant does not have a lawful immigration status (Recommendation # 22);
- H. Eliminate fingerprint requirements for all active duty military personnel who are applying for naturalization (Recommendation # 23);

I. Amend current USCIS asylum adjudication procedures to eliminate duplicative processes, discourage abuse, and update procedures to follow the provisions of the Homeland Security Act of 2002 (Recommendation # 24);

J. Issue multi-year EADs in cases where USCIS knows that processing times exceed one year and amend regulations and processes to eliminate gaps in employment authorization currently experienced by many applicants (Recommendation # 25);

K. Accept DNA testing to improve accuracy of decisions on family-based visa petitions and reduce delays in adjudicating those petitions (Recommendation # 26);

L. Implement up-front processes nationally (Recommendation # 27);

M. Establish an online address change process to improve customer service and USCIS efficiency (Recommendation # 28).

Each of these recommendations, along with the fifteen recommendations from previous years, is discussed in detail within the report. The report also provides a summary of USCIS responses to each of the recommendations and any progress on implementation of the recommendations.

Case Problems

During the reporting period, the Ombudsman expanded services to individuals and employers by developing guidance for all USCIS officers and employees regarding the office's mission and the criteria for accepting individual inquiries. The Ombudsman also refined communication processes between this office and USCIS to standardize transmission of information on case problems. In addition, the Ombudsman improved the systems to collect data and identify problems and solutions.

Looking Forward

The Ombudsman expects to continue urging implementation of up-front application processes, while identifying potential solutions to the USCIS funding dilemma. In addition, the Ombudsman expects to improve the office's public outreach.

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I. INTRODUCTION

The position of Citizenship and Immigration Services Ombudsman (Ombudsman) was established by the Homeland Security Act of 2002 § 452, 6 U.S.C. § 272 (2002).¹ The Ombudsman is appointed by the Secretary of the Department of Homeland Security (DHS) and reports directly to the Deputy Secretary of DHS. Secretary Tom Ridge appointed Prakash Khatri as the first Ombudsman on July 28, 2003.²

This annual report is submitted pursuant to 6 U.S.C. § 272(c)(1) and covers the activities of the Ombudsman³ from June 1, 2005 through May 31, 2006.⁴

A. Mission

The statutory mission of the Ombudsman is to:⁵

- Assist individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS);
- Identify areas in which individuals and employers have problems dealing with USCIS; and
- Propose changes to mitigate identified problems.

The Ombudsman serves as a spokesperson and advocate for individuals and employers who encounter problems with our immigration benefits system.⁶ The Ombudsman believes the best way to assist individuals and employers is to encourage efficiency and better customer service at USCIS by recommending solutions to systemic problems in USCIS' processes.

The Ombudsman continues to work with USCIS and DHS headquarters to create more efficient, secure, and responsive methods for providing immigration services that respect the dignity of individuals and enhance our economy, while simultaneously protecting the country from those who seek to do us harm.

¹ See Appendix 5 for excerpts of relevant sections of the Homeland Security Act.

² See Appendix 7 for Mr. Khatri's biography.

³ In this report, the term "Ombudsman" refers interchangeably to Ombudsman Prakash Khatri, his staff, and the Ombudsman's office.

⁴ The statute gives USCIS 90 days to respond to the Ombudsman's Annual Report. See 6 U.S.C. § 271(a)(3)(F). USCIS responded to the Ombudsman's June 30, 2005 Annual Report on March 15, 2006.

⁵ See 6 U.S.C. § 272(b).

⁶ "Immigration benefits" is the term used to describe the services side of the immigration system, versus enforcement. Primary immigration benefits include lawful nonimmigrant status, permanent residence (also called adjustment of status, evidenced by a "green card"), naturalization, asylum, etc. Secondary immigration benefits or interim benefits include work permits, *i.e.*, Employment Authorization Documents (EADs), and travel documents, *i.e.*, advance parole, obtained while awaiting a primary benefit.

B. Vision

The Ombudsman envisions an immigration benefits system that securely, efficiently, and expeditiously – within a few days or even hours – provides the right benefit to the right person, while screening out ineligible applicants at the earliest point possible.

C. State of USCIS

In this Annual Report, among other issues, the Ombudsman details the funding problems which appear to drive USCIS policy and contribute to inefficiencies in processing immigration benefits. USCIS has ongoing difficulties in providing timely service for customers and is required to clear its application backlogs. Like many major organizations, USCIS has been unable to commit to fundamentally reengineering the way it does business – its approach to accepting and processing immigration benefits petitions and applications. The root problem for USCIS is money – or, more precisely, the way in which the agency is funded and the mandate that USCIS recovers all of its costs from fees charged to applicants.

As a fee-funded agency, USCIS is almost entirely dependent on application fees to pay for operating expenses. USCIS also operates some programs for which it collects no fees and that are not funded by appropriations or other means, such as the asylum and refugee programs and military naturalizations. USCIS recovers the costs for these important programs with surcharges added to fees paid by applicants for other USCIS services.

In addition, the premium processing program guarantees a 15-day processing time for certain immigration benefits applications upon payment of an additional \$1,000 fee. Customers demand and USCIS provides premium processing because of the slow processing caused by workload backlogs and general USCIS inefficiencies. This program is a major revenue source – in FY 04 the program generated \$202 million and in FY 05 \$139 million.

Similarly, due to slow processing, the green card application process requires the issuance of interim employment authorization documents (EADs) while the green card application is pending. EADs for green card applicants are also a major revenue source – in FY 04 EADs generated \$135 million and in FY 05 \$187 million. Additionally, USCIS generated \$51 million in FY 04 and \$43 million in FY 05 for advance parole applications from these same green card applicants.

Efficient and timely processing would reduce the need to file applications for EADs or to use premium processing. However, by improving efficiency, USCIS could suffer a significant funding shortfall, estimated to be approximately \$350 million or more based on FY 05 revenue.

The revenue is built into the USCIS annual budget and, according to its counsel,⁷ the loss of this revenue would make it deficient in violation of the Antideficiency Act.⁸

Processing inefficiencies not only impact USCIS funding, they also compromise security. In most cases where green card applications are not completed within 90 days, customers apply for – and receive – EADs. EADs allow individuals to work in the United States, obtain Social Security cards, and qualify for drivers' licenses. Over the last three years, between 17 to 21 percent of green card applications were denied nationally and most of those people received EADs prior to the denial of the underlying application.⁹ These applicants resided in the United States for lengthy periods of time through EADs even though a timely adjudication of the primary benefit application would have found them ineligible and removable.

Beyond security issues, allowing ineligible applicants to file for benefits also compromises customer service and adds unnecessary costs for eligible applicants. Denying a benefit application takes longer to process than an approval. Thus, by allowing thousands of ineligible applicants to file for benefits, USCIS consumes resources that could be used to speed the delivery of benefits for those who deserve them. Even worse, prolonged processing times make it necessary for most eligible applicants to apply for interim benefits – an unneeded cost if there were an efficient system.

It is critical that USCIS find a solution to its funding dilemma. To fund programs for which USCIS currently does not charge a fee, a possible solution would be for USCIS to receive appropriations. As recommended by the DHS' Second Stage Review, a possible solution for the entire agency would be for Congress to create a revolving fund account. The initial account would include appropriated funds and be replenished from future fees.

The Ombudsman looks forward to further discussing the state of USCIS and its funding dilemma so that USCIS can realize its goal of efficient and secure delivery of immigration benefits.

⁷ A November 29, 2005 email to the Ombudsman from USCIS, the Chief Counsel stated “[USCIS] would violate the [Antideficiency Act (ADA)] if we obligated in excess of our receipts, in excess or in advance of our annual appropriation, in excess of an apportionment, or in a manner that violates the Purpose Statute, the agency would violate the ADA.”

⁸ The ADA is composed of various sections in Title 31 of the United States Code. Key ADA sections are 1341 and 1517, regarding spending limitations, and sections 1515 and 1516 stating exceptions; separate sections specify consequences for violations. The ADA provisions were promulgated over time to prevent federal departments and agencies from spending their entire appropriations during the first few months of the year. They govern the budget process from inception of an agency in enabling legislation through the actual disbursement of funds via an outlay or expended appropriation. There are administrative and criminal penalties for violation of the ADA.

⁹For FY 05, USCIS reported a nationwide green card application denial rate of 17.19 percent. Most of these ineligible applicants received interim benefits while awaiting adjudication of their green card application. In some jurisdictions, the denial rate was much higher. For example, in New York City, the annual green card application denial rates from 2001 through 2005 were: 43.3 percent, 31.5 percent, 47.6 percent, 42.1 percent, and 29.4 percent, respectively. *See* USCIS Performance Analysis System (PAS). Under the Dallas Office Rapid Adjustment (DORA) pilot program, however, the denial rate was much lower; only 2.5 percent (204 out of 8,097 cases) processed from the beginning of the program through February 3, 2006 were denied.

D. Accomplishments

During the 2006 reporting period the Ombudsman made 13 formal recommendations to USCIS. These recommendations covered a wide variety of USCIS systemic problems and activities, including up-front processing, administrative appeals, and military naturalization. In addition, the Ombudsman worked closely with USCIS and DHS leadership to address certain pervasive and serious problems that, if solved, would increase USCIS efficiency, improve customer service, and enhance national security.

To identify problems and collect data, the Ombudsman held numerous meetings with representatives from community-based organizations, the immigration legal community, and employer organizations. The Ombudsman also met with other federal government agency partners including representatives from the Departments of State, Commerce, Justice, and Labor to address interagency coordination.

During the reporting period, the Ombudsman visited 39 USCIS facilities, including district offices, service centers, and other facilities. Since the Ombudsman office's inception in 2003, the Ombudsman personally has visited 125 USCIS facilities, as listed in Appendix 1. The purpose of these visits was to see first-hand the issues that individuals and employers encountered, identify systemic problems, and consult with USCIS field offices on proposed solutions.¹⁰ The travel and site visits provided the Ombudsman opportunities for candid dialogue on a variety of issues including: the impact of immigration processing backlogs on families and employers; the lack of standardization in immigration adjudications; and ongoing problems communicating with USCIS via the National Customer Service Center and INFOPASS, USCIS' online appointment scheduler.

During the reporting period, the Ombudsman expanded the office's outreach and developed guidance to be distributed to all USCIS officers and employees that outline criteria for referring inquiries to the Ombudsman's local offices. In addition, the Ombudsman began posting formal recommendations in December 2005 on the website, www.dhs.gov/cisombudsman. There has been a tremendous growth in the number of people accessing the website since that time, as shown in the figure below.

¹⁰ This report refers to field offices or local offices to include district offices, sub-offices, and satellite offices.

Figure 1: Visits to the Ombudsman’s Website

Month	Visits
Jul-04	3,936
Aug-04	3,774
Sep-04	4,337
Oct-04	3,923
Nov-04	3,804
Dec-04	3,786
Jan-05	5,127
Feb-05	4,731
Mar-05	5,465
Apr-05	4,460
May-05	4,234
Jun-05	4,163

Month	Visits
Jul-05	4,881
Aug-05	7,139
Sep-05	Data Unavailable
Oct-05	4,705
Nov-05	2,416
Dec-05	4,957
Jan-06	7,047
Feb-06	44,043
Mar-06	32,196
Apr-06	67,761
May-06	66,846

Other developments include: (1) an outreach initiative to distribute posters in English and Spanish to provide customers and USCIS employees with the necessary information to contact the Ombudsman about case problems (see Appendix 2); and (2) a communications initiative to expand the Ombudsman’s webpage on the DHS website that will include an online form for submitting case problems. Currently, this online form is in the final Office of Management and Budget (OMB) process and should be published in the Federal Register in the coming months for public comment.

II. PERVASIVE AND SERIOUS PROBLEMS

The Homeland Security Act requires the Ombudsman to highlight problems, which most significantly impact individuals and employers in their pursuit of immigration benefits, and to make recommendations for change.¹¹ It further requires the Ombudsman to report on USCIS’ responses to these recommendations.¹² Although the Act does not require the Ombudsman to report on the many best practices of USCIS staff, this report highlights a few of them. The Ombudsman recognizes the talent and professional dedication of USCIS employees, particularly those in the field. These civil servants perform their jobs each day, continuing the important work of this country often with inadequate facilities, equipment, and training.

While USCIS has made progress in addressing some of the pervasive and serious problems identified in previous reports, many of the core problems remain.

¹¹ See 6 U.S.C. § 272 (b)(1).

¹² See 6 U.S.C. § 272 (c)(1).

A. Backlogs and Prolonged Processing Times

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

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

CASE PROBLEM

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

CASE PROBLEM

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

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

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

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

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

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

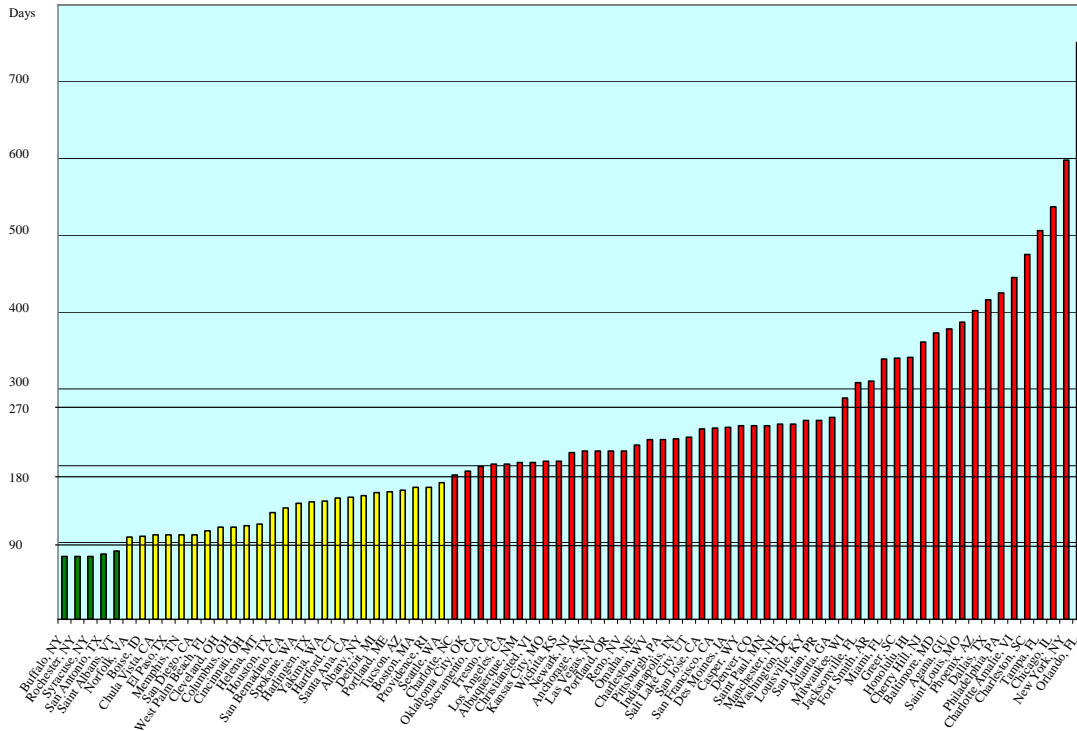
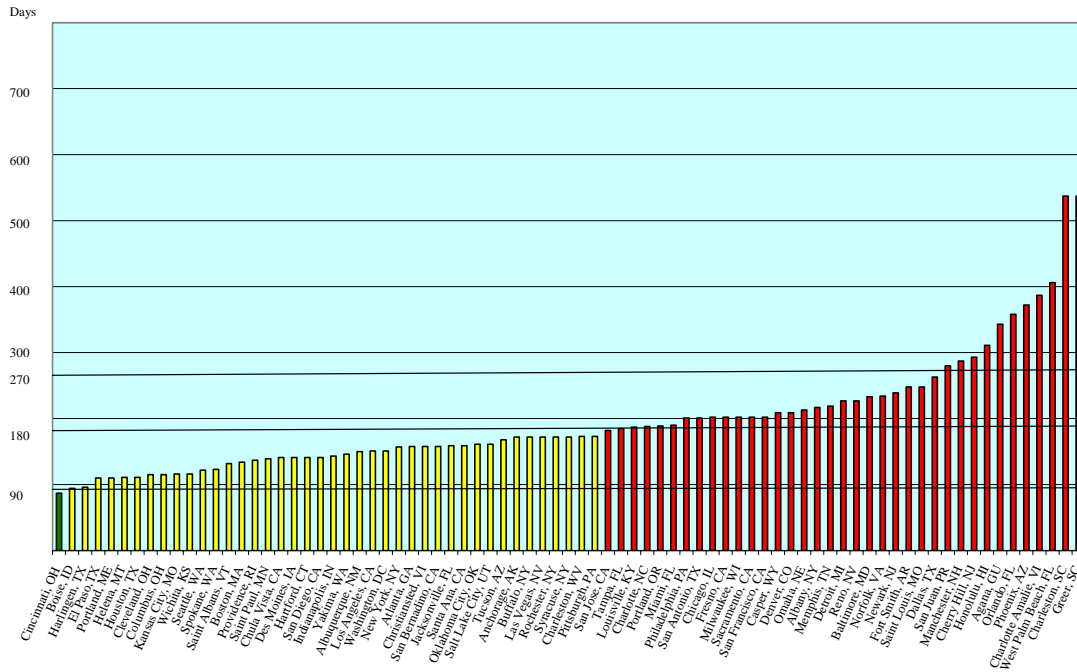


Figure 3: District Office Naturalization (Form N-400) Processing Times



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

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

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

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

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

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

The DHS Inspector General (IG) noted that:

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

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

¹⁷ See DHS Office of the Inspector General (IG) Report, "USCIS Faces Challenges in Modernizing Information Technology," OIG-05-41 (Sept. 2005) at 28; http://www.dhs.gov/interweb/assetlibrary/OIG_05-41_Sep05.pdf.

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

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

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

USCIS removes from the calculated backlog total those pending applications that it is unable to complete due to statutory caps or other bars and those cases where a benefit is not immediately available to the applicant or beneficiary (such as "non-ripe" Form I-130, Relative Alien Petitions where a required visa number is not available) Our initial sense was to immediately factor all these cases into the backlog, increasing the backlog in June by 174,000. After further evaluation, USCIS has modified this conclusion. The number of applications freed for processing is so large that, combined with a 6 month production cycle, USCIS could not complete these cases in this timeframe without significantly affecting production and processing time for other products.

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

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

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

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

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

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

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

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

RECOMMENDATION AR 2006 -- 01

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

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

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

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

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

²³ *Id.*

²⁴ *Id.* at 15.

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

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

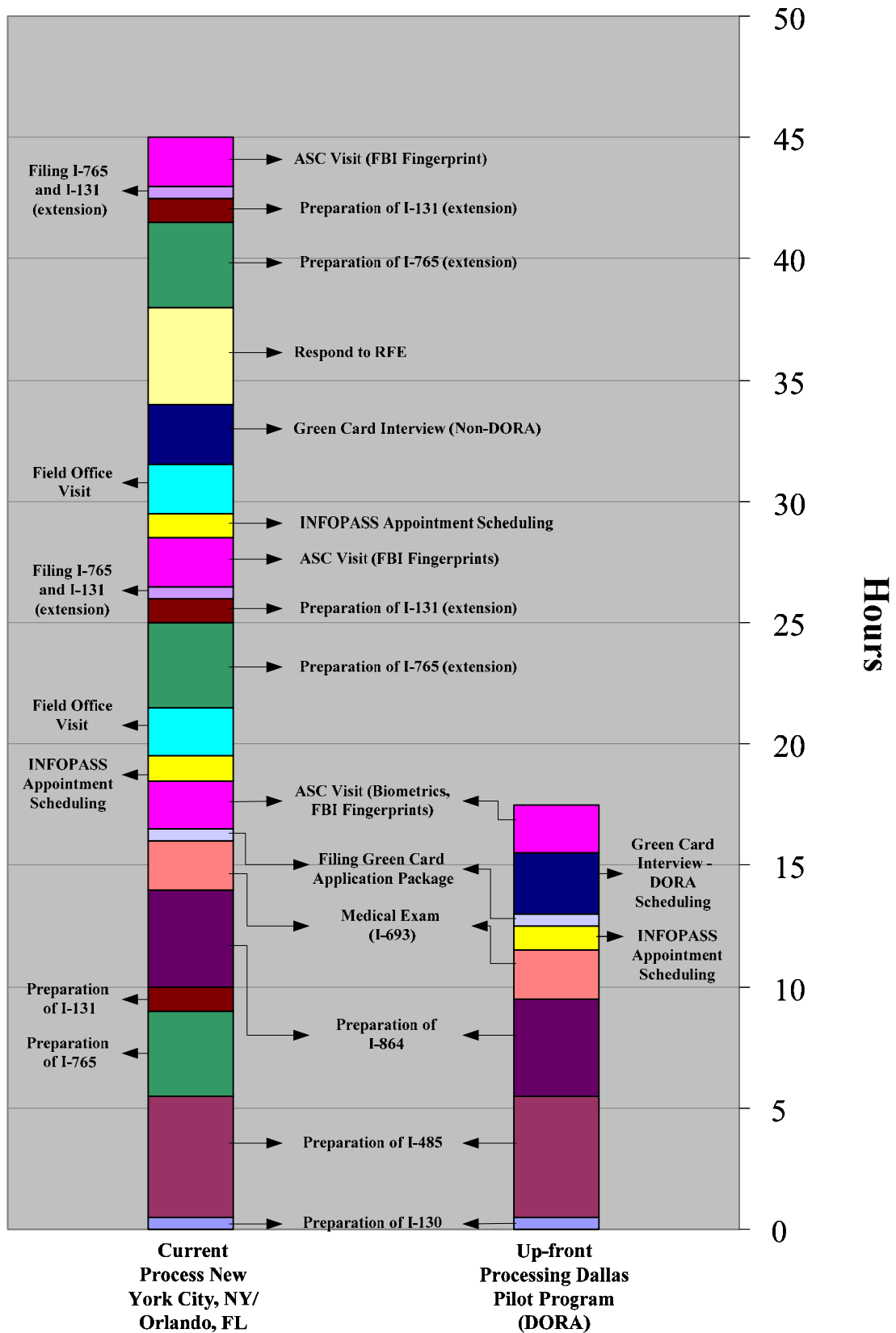
- **Economic Impact:** Historically, U.S. businesses have sought skilled and essential workers from other countries. Long processing delays have deprived these businesses of talent and skills needed for innovation and for strengthening the national economy. Processing delays seriously affect U.S. educational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

CASE PROBLEM

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

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

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



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

BEST PRACTICE

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

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

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

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

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

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

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

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

States, is to apply for adjustment of status²⁹ with USCIS provided: the individuals have established a legal basis for immigration (in this case, an approved I-140 visa petition); are eligible to immigrate; and visas are immediately available to them.

The Department of State (DOS) regulates allocation of visas and the relevant statutory provision provides formulas and limits for the employment-based visa category.³⁰ DOS applies these complex formulas monthly to estimate how many immigrant visas will be available and publishes the results in a monthly “Visa Bulletin.”³¹ If visa availability in a category exceeds demand, the Visa Bulletin will reflect that the category is “current.” If there are no visas available in a category, it is listed as “unavailable.” When visas are available, but expected demand exceeds the available supply, the DOS publishes a cutoff date at which time the issuance of visas is restricted to applicants whose priority dates predate the cutoff date. In general, if an application is based on a labor certification application or visa petition with a priority date that is earlier than the cutoff date, a visa is available for that application and the applicant—if otherwise eligible—can obtain a green card.

Visa Bulletin cutoff dates also are used by USCIS to regulate receipts of green card applications. In general, if an applicant seeks to file an application for a green card, the priority date on the supporting visa petition must predate the Visa Bulletin cutoff date. For example, an applicant who is the beneficiary of an I-140 visa petition that has a priority date of January 31, 2000 may apply for a green card if the Visa Bulletin lists a cutoff date of February 1, 2000 or later.

Between FY 01 and FY 04, USCIS employment-based green card application production shortfalls created an artificially low demand for third preference employment-based visas.³² In not completing enough green card applications, USCIS precluded allocation of visa numbers at levels that would have triggered a cutoff date. Thus, DOS continued to list the categories as “current” and USCIS continued to accept new applications. The result of high demand for visas at a time when demand artificially appeared to be low created a situation wherein USCIS accepted many more applications than it completed—or could have completed—within the same fiscal year.³³

In a January 2005 email to the President’s Council of Economic Advisors (CEA), USCIS reported that it had 270,533 *pending* employment-based applications for green cards and 191,221 of these applications were backlogged. In addition, USCIS reported to the CEA that there were 66,832 employment-based immigrant petitions (Form I-140) pending and 28,111 of these applications were backlogged.³⁴ For over two years, the Ombudsman has attempted to obtain

²⁹ See 8 U.S.C. § 1255.

³⁰ See 8 U.S.C. § 1153(b).

³¹ See DOS’ Visa Travel Bulletins at http://travel.state.gov/visa/frvi/bulletin/bulletin_1770.html.

³² Third preference visas include “skilled, professionals, and other workers.” 8 U.S.C. § 1153(b)(3).

³³ While USCIS is unable to provide exact data, it has indicated that USCIS service centers *received* 187,583 employment-based green card applications in FY 01; 221,223 in FY 02; 225,897 in FY 03; 159,873 in FY 04; and 140,006 in FY 05.

³⁴ See *infra* section II.H.

this specific information, yet USCIS has repeatedly stated that this type of specific data cannot be obtained due to USCIS' lack of reporting capability.

In April 2006, USCIS estimated the number of pending employment-based applications for green cards to be between 170,975 and 229,291.³⁵ USCIS further estimated that it will complete 136,254 employment-based applications in FY 06. Based on its lower estimate, USCIS has 22 percent (30,975) more applications than it can possibly approve in a year. From its higher estimate, USCIS has 64 percent (89,291) more applications than it can approve. Thus, it remains the case that USCIS—based on its own estimates—cannot end a fiscal year without cases pending visa allocation. This, in effect, creates a perpetual backlog of green card cases.

Moreover, once an applicant has filed for a green card, he or she is eligible to file for interim benefits (EADs and advance parole). The applicant may continue to apply for and receive these benefits for as long as the application is pending. Current USCIS data indicate that approximately 20 percent of pending employment-based green card applications will be denied. Based on USCIS estimates of pending cases, between 34,000 and 46,000 currently pending applicants are holding EAD cards despite their ineligibility for a green card. USCIS issues EADs valid for one year. When USCIS is unable to make a decision on a green card application within one year of the applicant receiving an EAD, that applicant must apply for a second card to continue employment.

In August, 2005, the Ombudsman began hosting a series of meetings between USCIS and DOS. Since September 2005, the DOL also has participated. The meetings were to develop useful communication among these entities regarding visa availability and expected demand. Based on these meetings, DOS was able to better determine visa availability at the beginning of FY 06 to reflect actual and expected demand.

The DOL labor certification application backlog also represents a potential problem. If DOL approves large numbers of these labor certification applications—some of which date back to early 2001—in a relatively short period of time, the number of employment-based visa petitions and applications for green cards would surge. The result would be a tremendous and immediate demand for employment-based visas. Without an effective way to regulate this expected workload surge, thousands of applicants will find themselves waiting for visas, and USCIS will be unable to reduce its processing times or application backlog. Thus, it is imperative that an efficient process be developed to systematically move applications into and through USCIS.

³⁵ In a March 17, 2006 email to the Ombudsman, USCIS indicated that between 16,957 and 45,477 employment-based green card applications were pending at district offices and between 154,018 and 183,814 such applications were pending with service centers.

RECOMMENDATION AR 2006 -- 02

The Ombudsman recommends reform of employment-based green card application processes to limit annual applications to a number that will not exceed visa availability, while also reducing abuse of the process by those who seek interim benefits through fraud or misrepresentation. The following recommendations emphasize real-time accountability and effective communication between USCIS and DOS:

1) Track data relating to employment-based green card applications at the time of filing with USCIS, including immigrant visa classifications, priority dates, and countries of chargeability.

Currently, USCIS does not collect these vital data on employment-based green card applications upon acceptance for processing. These data are noted by contractors as part of the intake process, but not systematically captured. This leaves USCIS unable to provide DOS with accurate data regarding these applications. Therefore, DOS must set cutoff dates without a clear understanding of pending applications. Data that are currently captured by contract staff should be forwarded to DOS for use in more accurately determining how many visas will be used.

2) Assign visa numbers to employment-based green card applications as they are filed with USCIS.

By assigning visa numbers to these applications upon receipt, USCIS will ensure that it will not accept more applications than it can legally process. When USCIS denies such applications, it must notify DOS immediately so that the visa can be reallocated.

C. Lack of Standardization Across USCIS Business Processes

Lack of standardization in USCIS adjudications among service centers, among field offices, and between officers within the same office remains a pervasive and serious problem. The Ombudsman's 2005 Annual Report (at pp. 15-18) identified this problem and the Ombudsman has observed little, if any, improvement.

As previously reported, service centers and field offices continue to operate with considerable autonomy. Although Headquarters establishes production goals, substantial differences in management approaches exist at the local levels. USCIS faces growing production goals and public expectations, but it has little opportunity to affect fundamental organizational change. As a result: (1) immigration officers inconsistently apply statutory discretion; (2) there is reliance on superseded regulations, policy memoranda, and procedures; and (3) wide variations exist in processing times for the same application types at different USICS offices.

Examples of Insufficient Standardization.

The Ombudsman provides the following updates to examples observed in the 2005 Annual Report (at pp. 16-17) and discusses additional examples observed during the reporting period. Unfortunately, complaints continue at meetings with the Ombudsman around the country.

- **Nonimmigrant/Immigrant Adjudication.** Lack of consistent adjudication is still a problem for all applicants. USCIS has made limited progress in addressing this important issue and implemented no effective national process.
- **Forms Kits.** In the 2005 Annual Report (at p. 16), the Ombudsman reported that the Eastern Forms Center maintained 37 different forms packages for people seeking the same type of immigration benefit. During the reporting period, some reduction occurred in the number of packages, particularly since USCIS consolidated the forms process through the Lockbox. Standardization of filing procedures through the Lockbox is one of its few benefits amid other Lockbox operational problems. USCIS needs to further clarify application instructions to prevent many requests for additional evidence (RFEs) which are generated after applications are filed.
- **Processing Times.** Processing times continue to vary widely around the country. In this Report, the Ombudsman devotes section II.A to this issue.
- **Insufficient Standardization and Local Policies.** In the reporting period, the Ombudsman continued to identify specific service center and field office policy variations in so-called “gray areas” where there was no Headquarters guidance on the application of statutes, regulations, and policy. For example, some USCIS field offices adjudicate naturalizations in a one-step process. In other offices, there is a substantial time delay between separate steps for the interview and swearing-in. In other offices, the applicant must be sworn in under a judicial process, in addition to a separate administrative process, as required by the state and local judiciary.
- **Insufficient Standardization and Training.** This issue was addressed in the 2005 Annual Report (at p. 17), yet there is no substantial progress. Training is further discussed below in sections II.K and V.5.

BEST PRACTICE

The Ombudsman commends the Newark, NJ District Office for implementing a same-day naturalization process. This process saves resources both for USCIS and the applicant. At the same time, communities still can hold large ceremonies subsequent to the individual oath ceremony.

The Ombudsman understands that same-day naturalization also is available in Charlotte, NC and a number of other offices and strongly recommends that USCIS continue the expansion of this valuable program.

- **Quality Assurance.** After the INS breakup, the Internal Audit Division of INS was absorbed into Customs and Border Protection (CBP). Since that time, USCIS quality assurance (QA) has been the responsibility of the Chief of QA and Production Management for service center and district office operations.³⁶ In most offices at the local level, USCIS directors and officers-in-charge vest an adjudications officer with responsibility for overseeing quality assurance. The officer reports to a supervisor, district director, and/or officer-in-charge who do not have adequate training in standardized QA procedures. This situation has contributed to the continuing lack of standardization of processes.

The Ombudsman's 2005 Annual Report (at p. 17) discussed a February 2005 USCIS initiative to standardize USCIS decision-making processes to increase the processes' integrity. USCIS established working groups to examine this goal. The Ombudsman endorsed USCIS efforts to promote the work of the Standardization Decision-Making Project and participated as an observer at several working group meetings. Unfortunately, after a few months, USCIS abandoned the Standardization Decision-Making Project without explanation.

D. Pending I-130 Petitions

As of April 2006, USCIS had 1,129,705 pending I-130s, Petitions for Alien Relative, with most pending for many years. However, over the last few years, completion rates per hour for these petitions have decreased, despite stated successes in backlog reduction and the increased use of technology. As explained above at section II.A at p. 9, USCIS excluded most of these pending I-130 petitions from its backlog count.

Three factors appear to be responsible for increased Form I-130 processing times. First, in May 2002, USCIS began requiring Interagency Border Inspection Systems (IBIS) name checks for all Form I-130 petitioners and beneficiaries. The IBIS check added time to the I-130 adjudication process, yet USCIS did not allocate additional resources or change its processing methods to offset this additional processing step. Second, with processing delayed, customers are more likely to have moved but USCIS cannot, or did not, update addresses across all relevant

³⁶ The Office of Refugee, Asylum and International Operations is responsible for its own quality assurance monitoring.

databases.³⁷ Finally, the Ombudsman learned in March 2006 that at least one service center was issuing blanket RFEs for certain long pending I-130s regardless of the completeness of the file. As a consequence, USCIS spent additional resources to respond to inquiring customers who did not understand the nature and requirements of these RFEs and sent in duplicate documents.

RECOMMENDATION AR 2006 -- 03

The Ombudsman recommends that USCIS process I-130 petitions as soon as they are received. This would prevent the substantial cost involved in storing and retrieving the applications as well as the resources expended for follow-ups, customer inquiries, address changes, etc.

E. Interim Benefits

Identified in last year's report (at pp. 5-9) as a pervasive and serious problem, the issuance of interim benefits continues to be a concern. Generally, USCIS issues interim benefits – EADs and advance parole documents (international travel documents) – to individuals who have green card applications pending with the agency.³⁸

Despite their temporary nature, EADs allow individuals to obtain other federal and state forms of identification such as Social Security cards and drivers' licenses. These documents enable an individual to secure property and obtain credit in the United States. Further, these documents create an appearance of legitimacy to their presence in the United States, although legal status is not yet fully determined. It is not uncommon for individuals to receive EADs for years, only to have the underlying green card application ultimately denied.

USCIS case backlogs have made EADs valuable in their own right because the benefits confer many of the privileges that the green card provides, including to live and work in the United States. Realizing that EADs are almost automatically approved, many individuals who only want employment authorization file green card applications simply to obtain the interim benefits rather than from a genuine desire to be a lawful immigrant.³⁹ A robust screening process, wherein USCIS reviews basic eligibility requirements before accepting green card applications, would result in the rejection of such fraudulent or frivolous applications.

Thousands of Ineligible Green Card Applicants Receive EADs. In 2004, the Ombudsman recommended an up-front processing model (see sections IV and V.27) that would eliminate the need to issue EADs in most instances. USCIS implemented a pilot program to test a version of this model in Dallas, which became known as the Dallas Office Rapid Adjustment program (DORA). It is unclear why USCIS has failed to recognize the success of the program in providing efficient processing while eliminating the receipt of EADs by most ineligible applicants.

³⁷ See section V.28 for the Ombudsman's recommendation on change of address issues.

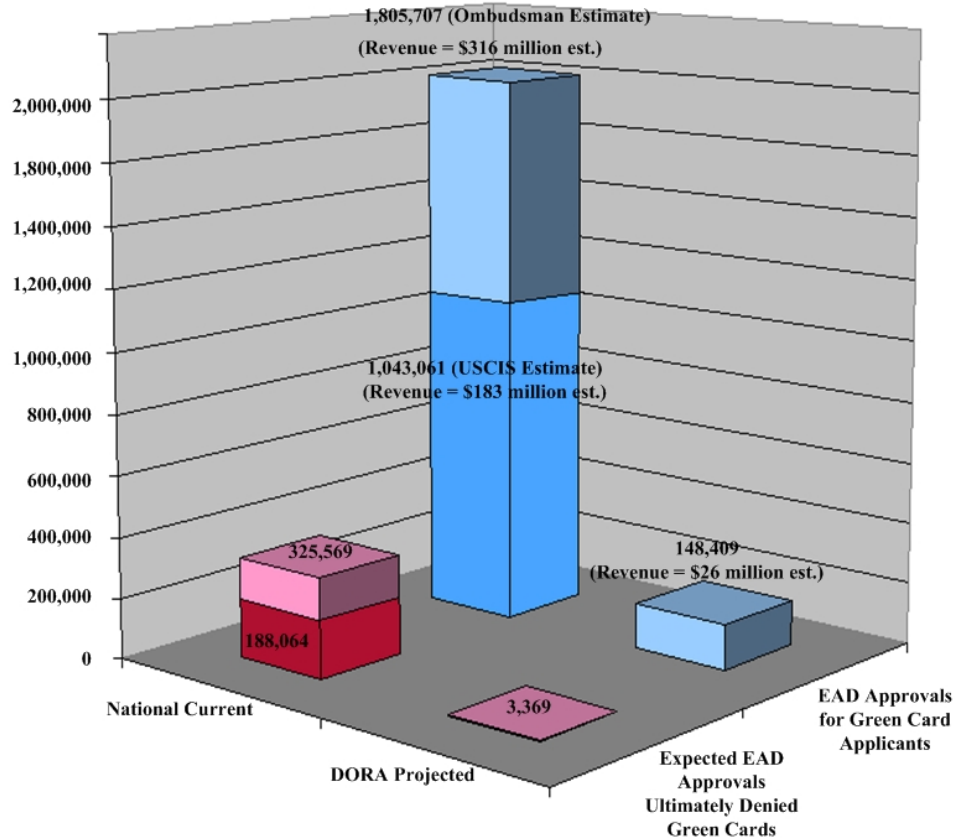
³⁸ See 8 C.F.R. §§ 223, 274a.13(d).

³⁹ See GAO, Additional Controls and a Sanctions Strategy Could Enhance DHS' Ability to Control Benefit Fraud, GAO-06-259 (Mar. 2006), at 18; <http://www.gao.gov/new.items/d06259.pdf>.

During the 21-month period for which data are available from DORA, May 2004 to February 2006, the program resulted in a dramatic reduction in the issuance of EADs to ineligible applicants because applicants approved for immigrant status received their green cards within 90 days. In DORA, cases are reviewed at the time they are accepted for processing. As a result, many ineligible applicants are rejected before their cases are even filed. The remaining applicants whose cases are accepted for processing are interviewed on the day of application and a preliminary determination of eligibility is made subject to security checks. This up-front process has resulted in a substantial reduction in the denial rate, as most ineligible applicants do not file.

As shown in the figure below, the Ombudsman estimates that as many as 1.8 million EADs were nationally issued during the 21-month period for which data are available. From this total, USCIS issued 325,569 EADs to applicants who were ultimately determined to be ineligible for green cards. USCIS estimates are different. Data from the Performance Management Division indicate that there were approximately 1.04 million EADS issued during the considered period. Extrapolating from USCIS estimates, USCIS may have issued 188,064 EADs (compared to the 325,569 estimated by the Ombudsman) to applicants who were ultimately denied green cards. In either case, EADs were issued to an unacceptably high number of ineligible green card applicants.

Figure 5: Comparison of Employment Authorization Documents Issued (May 2004 to February 2006 = 21 months) (National Current versus DORA Projected)

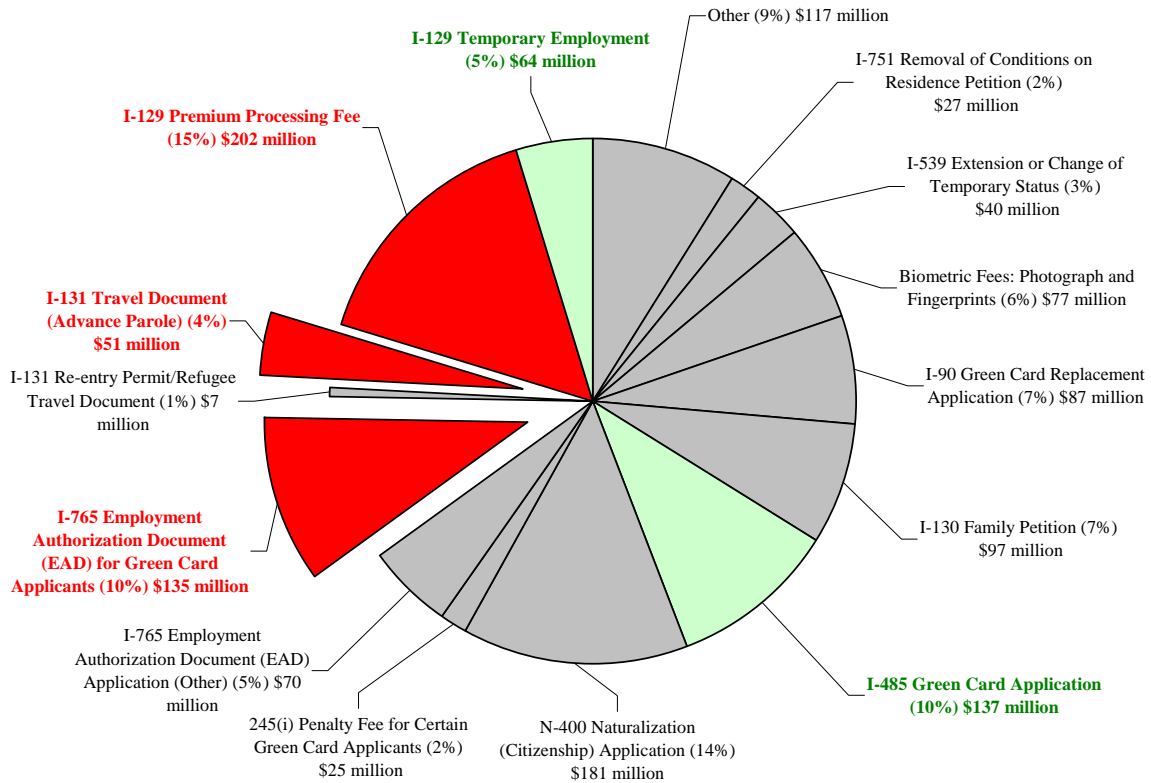


Regardless of the different estimates in number of EADs issued during the 21-month period, the difference in workloads to issue EADs between the current process and a DORA process is considerable. Had DORA been in place nationally, the number of EADs issued would have totaled approximately 148,409. Of that number, 3,369 EADs would have been issued to ineligible green card applicants compared to either the 325,569 estimated by the Ombudsman or the 188,064 estimated by USCIS. See Appendix 3 for an explanation of these calculations.

While reducing the number of EADs issued to ineligible applicants is desirable, these applications are a significant source of revenue for USCIS. Total fees from interim benefits were approximately 23 percent of USCIS’ FY 05 budget.⁴⁰ Eliminating the need for interim benefits would reduce revenue to USCIS. Cost savings realized from scaling down interim benefits operations would not completely offset the decrease in revenue because only a small percentage of an EAD application fee actually is used for processing costs associated with that application.

⁴⁰ See Figure 7: USCIS Fee Revenue for FY 05.

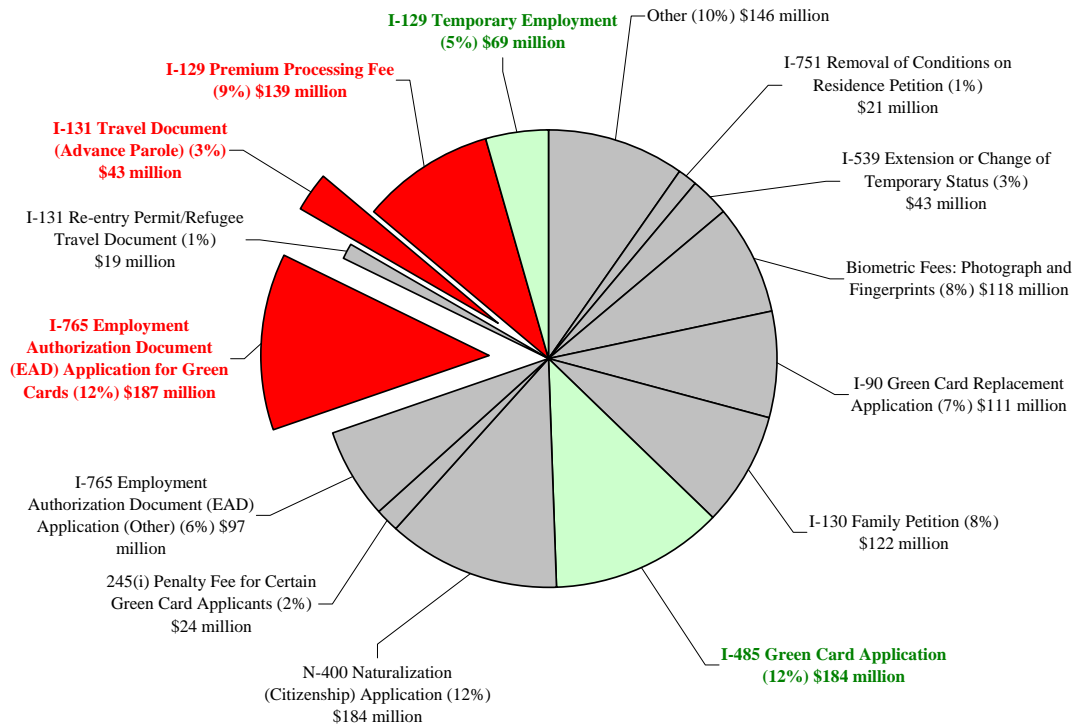
Figure 6: USCIS Fee Revenue for FY 04



Note: The I-765 Employment Authorization value attributed to green card applicants reflects the Ombudsman’s estimate of EADs issued to those applicants.

Form	Form Type
I-90	Green Card Replacement Application
I-129	Temporary Employment
I-130	Family Petition
I-131	Travel Document Application (Advance Parole)
I-485	Green Card Application
I-539	Extension or Change of Temporary Status
I-751	Removal of Conditions on Residence Petition
I-765	Employment Authorization Document (EAD) Application
N-400	Naturalization (Citizenship) Application
Biometric Fees	Photograph and Fingerprint Fee
245(i) Penalty Fees	Penalty Fee for Certain Green Card Applicants

Figure 7: USCIS Fee Revenue for FY 05



Note: The I-765 Employment Authorization revenue attributed to green card applicants reflects the Ombudsman’s estimate of EADs issued to those applicants. The data used to generate Figures 6 and 7 do not directly match data used to generate Figure 5. To maintain consistency with the Ombudsman’s 2005 Annual Report at p. 8, Figure 7 was generated using the same formulas as in last year’s revenue chart. Better reporting of certain data led to a refinement in the calculations, which were used to generate Figure 5 above, as explained in Appendix 3. The percentage difference in the calculated values is minimal.

USCIS’ response to the 2005 Annual Report stated that the agency is “taking steps to ensure that interim documents are not provided to applicants who have not cleared basic security checks or who have not provided the essential evidence of eligibility for permanent residence.”⁴¹ While this may appear to deal with the issue, it is only a short-term approach. EADs are not the problem. Rather, they are symptoms of inefficient green card application processes that, if corrected, automatically would reduce the need for USCIS to issue EADs except for the exceptional circumstance. Moreover, reducing the number of applications for interim benefits allows USCIS to allocate staff to tackle backlog elimination and prevention efforts.

F. Name Checks and Other Security Checks

FBI name checks, one of the security screening tools used by USCIS, significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their intended national security objectives.⁴²

⁴¹ USCIS’ Response to the Ombudsman’s 2005 Annual Report (Mar. 15, 2006) at 12.

⁴² The Ombudsman’s 2005 Annual Report (at p. 11) included a discussion of the pervasive and serious issue of background and security checks.

Currently, USCIS conducts several security checks to: (1) determine whether applicants have a history of criminal or terrorist activity that would make them ineligible for a benefit; and (2) notify law enforcement agencies of the presence and intentions of individuals who might be of interest. The Ombudsman receives numerous inquiries about FBI name check delays. During the reporting period, processing delays due to FBI name checks were an issue in 15.7 percent of all written case problems received. Stakeholder organizations and USCIS personnel across the country also regularly raise the issue of FBI name check delays as the most pervasive problem preventing completion of cases.

CASE PROBLEM

The principal applicant and his wife (the derivative beneficiary) filed their employment-based green card applications in October 2001. At the time of inquiry with the Ombudsman in March 2006, their applications remained pending due to FBI name checks.

CASE PROBLEM

An applicant filed a naturalization application in March 1999 with a USCIS service center that had jurisdiction over the case. In August 2003, USCIS transferred the application to the applicant's local USCIS district office for the applicant to be interviewed. The interviewing officer requested additional evidence at the interview, which the applicant provided in a timely fashion. When the Ombudsman received the inquiry in April 2006, the application remained pending due to an outstanding FBI name check and additional security checks.

The FBI provides information to USCIS as a paying customer on anyone who is the principal subject of an investigation or is a person referenced in a file. USCIS adjudicators and the Fraud Detection and National Security (FDNS) unit use this information to determine if applicants are ineligible for benefits. The name checks are not sought by the FBI as part of ongoing investigations or from a need to learn more about an individual because of any threat or risk perceived by the FBI. Instead, the name checks are a fee-for-service that the FBI provides to USCIS at its request. Moreover, the FBI does not record any additional information about the names USCIS submits and does not routinely take any further action. Instead, the FBI reviews its files much like a credit reporting entity would verify and report on information to commercial entities requesting credit validations.

Some types of background and security checks return results within a few days and do not significantly prolong USCIS processing times or hinder backlog reduction goals. However, while the overall percentage of long-pending cases is small, as of May 2006, USCIS reported 235,802 FBI name checks pending, with approximately 65 percent (153,166) of those cases pending more than 90 days and approximately 35 percent (82,824) pending more than one year.⁴³

⁴³ See USCIS FBI Pending Name Check Aging Report (May 17, 2006).

In November 2005, based on earlier data, the DHS IG reported that FBI name checks take more than a month to complete for six percent of submissions and more than six months to complete for one percent of submissions.⁴⁴ The longer time is required because the FBI must conduct a manual review of its files to verify that the applicant is actually the subject of an FBI file. This review can include the FBI reporting on fragments of names on people who are not necessarily central or directly related to a case.

USCIS has limited capability to produce reports detailing the status of long-pending FBI name check cases. In addition, USCIS systems do not automatically indicate when a delayed name check is complete and the case can be adjudicated. Often, this leads to a situation where the validity of other checks expire before USCIS reviews the case. Those checks then need to be reinitiated, adding financial and time costs for applicants and USCIS. The high volume of FBI name check cases and the relatively limited resources devoted to background and security checks are major problems. The FBI's manual processing exacerbates delays. USCIS' planned Background Check Service (BCS), a new IT system that will track the status of background and security checks for pending cases, needs to be implemented as soon as possible. The Ombudsman looks forward to more information from USCIS on the BCS implementation schedule.

Considering the cost and inconveniences caused by the delays, the value of the FBI name check process should be reexamined. In almost every name check case that the FBI conducts for USCIS, the foreign national is physically present in the United States during the name check process. Thus, delays in the name check process actually prolong an individual's presence (albeit in an interim status) in the United States while the check is pending. In that sense, the current USCIS name check policy may increase the risk to national security by prolonging the time a potential criminal or terrorist remains in the country. Further, checks do not differentiate whether the individual has been in the United States for many years or a few days, is from and/or has traveled frequently to a country designated as a State Sponsor of Terrorism, or is a member of the U.S. military. Most individuals subject to lengthy name checks are either already green card holders or have been issued EADs allowing them to receive Social Security cards and state drivers' licenses. Additionally, most green card applicants are also eligible to receive advance parole to enable them to travel outside the United States and return as long as their cases are pending, which can be for years under the current process.

USCIS requires that the FBI name check be completed before issuing a green card. However, in removal proceedings before an Immigration Judge, the judge will require confirmation of all background and security checks by DHS before the judge can grant any relief (for example, ordering USCIS to issue a green card). Immigration and Customs Enforcement (ICE – another DHS agency) attorneys indicate to the judge that all background and security checks have been initiated. The judge proceeds with issuing an order which grants green card status to the individual. Based on this order, USCIS, as the producer of the actual card, must issue the green card despite the outstanding FBI name check. These two policies need to be harmonized.

⁴⁴ See DHS IG Report "A Review of U.S. Citizenship and Immigration Services' Alien Security Checks," OIG-06-06 (Nov. 2005), at 24; http://www.dhs.gov/interweb/assetlibrary/OIG_06-06_Nov05.pdf.

On March 16, 2005, Secretary Chertoff outlined a risk-based approach to homeland security threats, vulnerabilities, and consequences:

Risk management must guide our decision-making as we examine how we can best organize to prevent, respond, and recover from an attack Our strategy is, in essence, to manage risk in terms of these three variables – threat, vulnerability, consequence. We seek to prioritize according to these variables, to fashion a series of preventive and protective steps that increase security at multiple levels.⁴⁵

In addition, the IG recommended that USCIS establish a comprehensive, risk-based plan for the selection and completion of security checks.⁴⁶ Despite Secretary Chertoff's statement and the IG's recommendation, USCIS recently stated that "[r]esolving pending cases is time-consuming and labor-intensive; some cases legitimately take months or even several years to resolve."⁴⁷ Unfortunately, the process is not working and consideration should be given to re-engineering it to include a risk-based approach to immigration screening and national security.

RECOMMENDATION AR 2006 --04

The Ombudsman encourages USCIS to adopt the recommendation from the DHS Secretary's Second Stage Review to establish an adjudication process in which all security checks are completed prior to submission of the petition or application for an immigration benefit.

G. Funding of USCIS

The manner in which USCIS currently obtains its funding affects every facet of USCIS operations, including the ability to: (1) implement new program and processing initiatives; (2) begin information technology and other modernization efforts; and (3) plan for the future. USCIS is required to recover the full costs of operations with funds generated from filing fees. However, the process by which USCIS can change fees hampers its ability to receive fees commensurate with the actual costs to process particular application types. As discussed below, USCIS does not enjoy financial flexibility and thus finds itself making difficult operational decisions to provide services while meeting financial goals.⁴⁸

⁴⁵ DHS Secretary Michael Chertoff, Prepared Remarks at George Washington University Homeland Security Policy Institute (Mar. 16, 2005); <http://www.dhs.gov/dhspublic/display?theme=44&content=4391&print=true>.

⁴⁶ See generally DHS IG Report "A Review of U.S. Citizenship and Immigration Services' Alien Security Checks."

⁴⁷ See USCIS Fact Sheet, "Immigration Security Checks – How and Why the Process Works" (Apr. 25, 2006); http://www.uscis.gov/graphics/publicaffairs/factsheets/security_checks_42506.pdf.

⁴⁸ See generally GAO Report "Immigration Application Fees: Current Fees Are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operation," GAO-04-309R (Jan. 2004); <http://www.gao.gov/new.items/d04309r.pdf>.

Currently, USCIS calculates its budget by multiplying current fees by projected application volume and then conforms the budget to those numbers. Thus, USCIS develops the budget mostly without consideration for anticipated needs or costs, but rather from projected revenues. As USCIS backlogs increased and processing slowed over the past few years, the agency incorporated associated revenue projections into its annual budget calculation, *i.e.*, anticipated EAD applications from green card applicants and premium processing fees from nonimmigrant worker applications (Form I-129).

Furthermore, USCIS must provide Congress with an estimate of the agency's revenue needs for a new fiscal year and Congress then assigns a cap over which USCIS cannot spend. If USCIS has an operational need to expend funds in excess of the cap, the agency must ask Congress' permission through a lengthy and complex "reprogramming" process. Moreover, as a fee-funded agency, USCIS receives appropriated money only for specified projects, as it did for the backlog reduction effort.

Fee Calculations. USCIS calculates current filing fees based on a legacy INS 1997 time-and-motion fee study of application processing costs at a particular time.⁴⁹ While the filing fees developed in the 1997 study have been adjusted for inflation in succeeding years, reliance on this study resulted in many significant problems: (1) the nearly ten-year-old data have no relation to current processes or costs due to evolving processes over the years and additional adjudication requirements imposed after September 11, 2001; (2) subsequent filing fee adjustments build on incomplete data not included in the original fee study; and (3) the 1997 time-and-motion fee study was based on receipts and projected costs, not completions and actual costs.

All filing fees imposed since 1998 are derived from the legacy INS 1997 time-and-motion fee study. Adjustments to filing fees imposed since 1998 do not account for processing changes and, therefore, the filing fees first developed in 1997 do not enable USCIS to recover the full cost of administering the immigration benefit. USCIS is improving the way that it studies fees with the recent development of a new fee model that can factor in current data and address-certain "what if" scenarios and policy changes. However, the Ombudsman understands that the model still is based on projected application volume and fees charged.

The fees actually received from applicants often are quite different from the results of a USCIS fee model due to the lengthy regulatory process. The Ombudsman understands that the fee implementation process includes reviews by USCIS, DHS, and the OMB. The public also has an opportunity to submit comments on the proposed fee. The entire process can take many months before notice of a new fee is published in the Federal Register. As a result, a decision can be made to charge a smaller fee for an application than will allow USCIS to recover full costs to process the application.

⁴⁹ INS began charging fees in 1968 and Congress established the Examinations Fee Account in 1989. INS has completed two fee studies to date, in 1997 and 1999, based on an activity based costing model. INS previously used traditional cost accounting in which they examined direct costs (payroll, benefits, fingerprint checks, and card production costs) as well as indirect costs (everything else), which were evenly distributed among all applications.

Creation of USCIS. After the breakup of INS and the creation of USCIS, the agency encountered three funding difficulties:

- Certain efficiencies were eliminated, for example, whereas previously one INS person accomplished a particular task before the reorganization, the task itself became divided and involved action by personnel from USCIS, ICE, and CBP.
- Several services became “shared services.” For example, USCIS became the records manager for all three agencies. USCIS has since had difficulty obtaining reimbursement for these shared services.
- USCIS has been required to absorb the cost for certain legacy INS programs, for example, the processing of Freedom of Information Act requests and the Systematic Alien Verification for Entitlements (SAVE) program.

BEST PRACTICE

The Ombudsman commends USCIS for recently creating the office of the Chief Financial Officer, which was staffed during this reporting period and centralized all of the agency’s financial concerns in one office.

Unfunded Programs. USCIS operates some programs for which it collects no fees and receives no additional appropriations. For example, the asylum and refugee program, military naturalizations, and fee waivers are funded by a surcharge added to the fees paid by applicants for other benefits. In the past, Congress removed the surcharge, but without appropriations to fill the gap, the surcharge was reinstated promptly.⁵⁰

Paying for unfunded programs with fees from other petitions and applications exacerbates USCIS funding problems. This is best illustrated with premium processing and interim benefits.⁵¹ Each of these services is necessary because of slow and inefficient processing. The requirement to finance unfunded programs with filing fees from other application types creates a conundrum for USCIS because as backlogs are reduced, fees are lost from premium processing and applications for interim benefits. As long as USCIS conducts operations for which it does not collect fees, and for which it does not receive appropriated funds, USCIS will be confronted with competing demands. USCIS must maintain sufficient revenue from filing fees and programs with which to operate the agency, but reducing processing times through increased efficiency also would largely cut off these needed funding streams.

RECOMMENDATION AR 2006 -- 05

There are at least two impediments to USCIS implementing the cost and resource savings inherent in up-front and expedited (premium type) processing. As case

⁵⁰ See 68 Fed. Reg. 3798 (Jan. 24, 2003); 68 Fed. Reg. 8989 (Feb. 27, 2003).

⁵¹ For a detailed discussion of premium processing and interim benefits, see sections II.E and III.D.

backlogs grew, USCIS became reliant on the filing fee revenue to fund other unfunded programs. By expecting USCIS to be largely self-funded through fees, Congress created competing demands for USCIS management. USCIS must ensure revenue streams are adequate for the entire agency. At the same time, eliminating backlogs and improving USCIS efficiency risks the agency cutting off a significant percentage of its revenue. Unless alternative revenue sources are identified that are not dependent on slow processing or a backlog of cases, USCIS will have difficulty foregoing fee-based revenue without running afoul of antideficiency laws.⁵² Under the current USCIS financial structure, USCIS simply cannot afford to eliminate the backlogs or slow processing of regular applications.

Based on the findings of Secretary Chertoff's Second Stage Review, the Ombudsman suggests that Congress consider a revolving fund account or other appropriated funding source for USCIS. A revolving fund used to defray current costs would be replenished from future fees and would: (1) enable the agency to test innovative processes; (2) address unexpected program requirements from new legislation; (3) avoid potential temporary anti-deficiency concerns; and (4) encourage USCIS leadership to innovate processes instead of continuing programs which do not enhance customer service, efficiency, and national security, but nevertheless generate essential revenue.

H. Information Technology Issues

The USCIS Information Technology (IT) Transformation Initiative, now part of USCIS' overall transformation program, is presented as a comprehensive effort to provide USCIS with a modern, world-class digital processing capability to enhance national security, improve customer service, and increase efficiency. However, USCIS has devoted considerable resources to various types of transformations since the 1990s with minimal progress. In addition, there are questions whether all field offices will obtain technology updates if dependent upon available funds. The effective and efficient deployment of IT systems to all field offices remains a major challenge for USCIS.⁵³

Three broad IT areas of concern are: (1) most USCIS adjudications processes are paper-based; (2) existing USCIS information management systems do not provide robust data analysis tools necessary to monitor productivity and make changes when necessary; and (3) most USCIS information management systems are stand-alone systems with little or no information interconnectivity.

Paper-Based Adjudications. In comparable private sector business processes, digital technology speeds turnaround times and improves the quality of decisions. However, USCIS customers generally file paper applications and petitions, and officers must transfer paper files

⁵² See *supra* note 8.

⁵³ See generally DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," The Ombudsman notes that USCIS still has not implemented many of these and other IT-related recommendations.

between different offices and locations before adjudications can be completed. Additionally, USCIS spends millions of dollars each year moving paper files between offices.⁵⁴ An electronic file system would provide real-time access to relevant documents and case histories, and substantially reduce the cost of adjudicating cases. USCIS' current e-filing initiatives require the agency to print the e-filed applications and place them in paper folders for regular paper-based processing.

Lack of Data Analysis and Reporting Tools. Existing USCIS information management systems do not permit adequate case tracking and reporting. In addition, they do not provide USCIS with the ability to analyze data in a meaningful way. Generally, USCIS file tracking systems provide information on the physical location of a file, but not on its contents. Moreover, USCIS information management systems are generally legacy INS stand-alone systems that do not allow USCIS employees to make operational assumptions and adjust to trends derived from the captured data. Reporting capabilities for these legacy systems are often very limited. Their inadequacies are highlighted by efforts to use them for operations far beyond what was contemplated when they were designed and deployed. For these reasons, USCIS is unable to manage its workflow proactively and provide customers with real-time case status information.

Specific case tracking and reporting problems include:

- **Backlog Reduction.** USCIS has been unable to provide precise information on the number of cases pending at its offices, particularly for employment-based green card cases, in part due to antiquated and inadequate information management systems. For over two years, the Ombudsman has had an outstanding data request to USCIS for this information. While USCIS has provided estimates, the Ombudsman understands that the agency is unable to provide this basic data.⁵⁵
- **Form-Centric Versus Person-Centric Systems.** USCIS systems remain form-centric (based on the benefit sought, rather than on the individual seeking it). The adoption of a person-centric system would improve customer service, while simultaneously enhancing national security, by allowing USCIS to rapidly update information about an individual's employment, address, family status, and other important data points.
- **CLAIMS Case Management System.** The Computer Linked Application Information Management System (CLAIMS), versions 3 and 4, is the primary case management system for USCIS. CLAIMS is not user-friendly; it is a proprietary, antiquated system developed and deployed by a contractor in the early 1990s. The ability to access and update CLAIMS is limited to certain staff

⁵⁴ See *id.* at 10.

⁵⁵ The President's Council of Economic Advisors reported in the "Economic Report of the President: Transmitted to the Congress February 2005 Together with the Annual Report of the Council of Economic Advisers" that USCIS had 271,000 employment-based pending applications for green cards with about 191,000 of them backlogged. See http://www.gpoaccess.gov/eop/2005/2005_erp.pdf. USCIS could not confirm this data for the Ombudsman.

at particular offices. Information in CLAIMS is often incomplete and inaccurate. At this time, USCIS still does not possess a real-time case management system accessible to all USCIS employees.

BEST PRACTICE

The Boston District Office created the Standardized Automatic Tracking System (STATS), now also used in Atlanta, which is an automated data reporting system to streamline reporting, improve productivity, perform data analysis, and ensure the integrity of reported data. This system replaces the manual G-22 reports and manual daily log sheets for immigration officers to report case productivity.

Lack of Interconnectivity Between USCIS Stovepipe Systems. USCIS IT systems do not support integrated and efficient business processes. Security checks and adjudications require USCIS immigration officers to check many systems that are not interconnected. These antiquated “stove pipe” information management systems do not share data and are expensive to modify. It also is difficult for systems users who must log into and out of numerous systems, while trying to review a single case. In addition, some of the systems time out, disrupting officers’ thought processes as they seek to collect, verify, and collate information.

The lack of interconnected systems leads to duplicative work: (1) USCIS immigration officers in different offices may be conducting and resolving background and security checks on the same individual; (2) an officer may conduct and resolve a hit that was finished weeks or months earlier by another officer; or, (3) one person may conduct a check on a temporary file (T-file) while another one performs identical checks on the main file (A-file).⁵⁶

In the 2005 Annual Report (at pp. 12-13), the Ombudsman suggested that USCIS explore “off the shelf” technologies used by the private sector. USCIS apparently explored these technologies during this reporting period, but they appear not to be in use. USCIS initiated a number of projects to explore consolidation of data, *e.g.* the Digital Dashboard, which would provide USCIS immigration officers one-stop access to all necessary information. These projects provide management tools, which USCIS currently does not have, for making necessary decisions.

USCIS has chosen not to provide these important tools, which would enable managers, supervisors, and officers to do their jobs and account for work completed. The agency remains reliant on legacy INS systems that have proven inadequate and problematic for customer service, USCIS efficiency, and national security. Improvements to USCIS’ information management systems must enhance and streamline all USCIS business processes rather than perpetuate duplicative and inefficient ones. At the same time, these systems must be flexible to accommodate new technologies and the requirements of changing demands on immigration processing.

⁵⁶ For example, this situation arises when an EAD application is in a T-file and the supporting green card application is in an A-file.

Inadequate Connectivity between USCIS and Other Agencies or Departments.

Inadequate connectivity between USCIS and other agencies, such as ICE or CBP, or other departments such as DOS, DOJ – EOIR, DOL, and the Social Security Administration (SSA), often leads to duplicative work. For example, an immigrant entering the United States must go to a SSA office to apply for a Social Security card. The SSA has to contact USCIS to validate the entry and authenticity of the immigration documents. Instead, USCIS, CBP, and SSA should work together so that an immigrant or an employment-based nonimmigrant is issued such a card upon entry into the country.

Another example is the lack of direct connectivity between USCIS' approval of a petition and DOS requiring an original approval notice to issue a visa. Resources that could be used to focus on certain security problems are instead used to do the same work in different government entities.

I. Limited Case Status Information Available to Applicants

USCIS' lack of communication with its customers continues to be a significant problem. In the 2005 Annual Report (at pp. 13-14), the Ombudsman observed: (1) limited customer access to USCIS immigration officers who have knowledge of individual cases; (2) questionable accuracy of the information provided; (3) insufficiently detailed information provided to answer a specific inquiry; and (4) the practice of providing minimal information in response to customer inquiries. The effect is that "[c]ustomers resort to generating numerous telephone calls to USCIS and/or making frequent visits to USCIS facilities and finally opt for congressional assistance in determining the status of pending cases."⁵⁷

CASE PROBLEM

In 1997, the applicant filed an application to adjust status based on the applicant's refugee status (Form I-485). In 2002, the applicant learned from USCIS that the application was lost. The applicant reapplied in early 2003, but later learned that USCIS could not locate this second application. The applicant applied a third time in 2005. When the applicant tried to obtain a case status update at the applicant's local USCIS office, USCIS told the applicant that the agency approved the green card, but sent it to an address where the applicant lived ten years ago, not the address stated on the third application. Next, the applicant filed for the I-90 replacement card.

At the time of the applicant's inquiry with the Ombudsman in 2006, the application for the replacement of the green card remained pending with USCIS.

INFOPASS. The Ombudsman's comments in the 2005 Annual Report (at pp. 13-14) regarding INFOPASS remain valid. INFOPASS added a valuable on-line service to allow some applicants to secure an appointment time with a USCIS field office representative. However, in

⁵⁷ Ombudsman's 2004 Annual Report, at 6.

some locations INFOPASS replaced physical waiting lines with invisible, digital waiting lines. In addition, customers who cannot access USCIS officers outside of INFOPASS for relatively minor case inquiries often incur significant delays. While the agency has met customer expectations in some districts, substantial work still remains to ensure best practices from successful districts are adopted nationally.

Aware of issues with INFOPASS, USCIS leadership favorably received the Ombudsman's formal recommendation last year and sought to enhance the workability of the system. However, the lack of strong, centralized management has undermined INFOPASS' transition from its successful beginnings as a Miami District Office best practice to a national customer resource. Although promised, USCIS has not yet placed computer kiosks in all field offices, making appointment scheduling difficult for some.⁵⁸

National Customer Service Center. The NCSC provides USCIS customers inside the United States with toll-free telephone access to a call center for live operator assistance: to ask general questions about USCIS filing procedures; submit inquiries about pending USCIS cases; obtain forms; and/or schedule an INFOPASS appointment. However, the conclusion stated in the 2005 Annual Report (at p. 14) is still true – NCSC contract employees do not always have the necessary training or the requisite information on the status of cases to provide meaningful and timely information.

CASE PROBLEM

The applicant contacted the Ombudsman in the spring of 2006 because the applicant had not yet received a green card after USCIS approved the application for a green card in 2005. The applicant applied together with other family members. However, when other family members received their green cards, the applicant called the toll free number to ascertain the reasons for delay. The applicant also informed the customer service representative that previous USCIS communications were sent to an incorrect address. The representative changed the address in the system and asked the applicant to wait 30 days. After 30 days with no response from USCIS, the applicant called a second time and was told to wait another 30 days. Upon calling a third time, the applicant was directed to file an I-90.

In early 2006 and after the applicant filed the I-90, USCIS Case Status Online indicated that USCIS' last mailing to the applicant a few weeks before, regarding an application for a green card, was returned as undeliverable by the post office. Case Status Online directed the applicant to call the toll free number to change the address. The applicant called the toll free number and was told to wait another 30 days and that the applicant should not have filed the I-90 because the application for a green card was still open. The applicant then wrote to the local district office that had handled the application for a green card, but received no reply. A couple of weeks later, the applicant called the toll free number again

⁵⁸ See *infra* section V.11 for the Ombudsman's INFOPASS recommendation.

and received a confirmation number for the call. When the applicant contacted the Ombudsman, the applicant still had no green card or answers to the above inquiries.

USCIS' efforts to improve the responsiveness of contract employees through the Service Request Management Tool (SRMT) tracking system exacerbated the problem for many customers. The Information and Customer Service Division (ICSD) implemented SRMT on July 13, 2005 to track and handle public inquiries received on its toll-free telephone number or at local offices and in written correspondence. Originally, SRMT was designed to handle public requests via the USCIS website and sought to respond to inquiries within 30 days. Additionally, SRMT reports provided to all management levels were to help manage tracking and accountability. However the SRMT has not achieved the intended outcomes.

Telephone operators, *i.e.*, customer service representatives, screen public inquiries, ranging from routine address changes to complicated case situations that require an expert's knowledge or research, and then enter the inquiries into the SRMT system. These contract employees are assigned to one of four "Tier 1" call centers. They receive less than one month of training and are expected to access nearly 1700 pages of scripts to respond to callers. Moreover, they have no access to applicant information beyond that already available to applicants online. Two "Tier 2" call centers handle complicated inquiries. Immigration Information Officers (IIOs) staff Tier 2 call centers and receive Tier 1 referrals as well as direct calls. The IIOs often have years of training and access to USCIS databases of confidential applicant profiles and case status information. If neither call center can respond adequately to the inquiry, the customer service representative or IIO enters the inquiry into the SRMT system, which forwards the inquiry electronically to the appropriate USCIS service center or field office for a response.

Problems have arisen with access and efficiency. Access problems involve difficulty connecting telephonically with a customer service representative. Once connected, there are inherent difficulties with a contractor who has limited immigration knowledge processing a request. Contractors have difficulty identifying the actual problems and nature of the inquiry. They often do not know the follow-up questions to ask to have a complete picture of the inquiry. As a result, the IIO who receives the summarized inquiry from the contractors must gather additional information or provide an inadequate response.

The call centers were designed to take a substantial amount of the information workload from the district offices and service centers. Instead, SRMT sends the workload back to these offices without all of the information necessary for officers to provide answers to customers. As a result, the immigration officers at the field office often must obtain additional information directly from the caller. Moreover, the SRMT system itself is backlogged. As of April 2006, approximately 90,000 SRMT requests were assigned and pending, or yet to be assigned, at the National Benefits Center.⁵⁹ Implementation of the originally conceived customer-to-IIO connection via the USCIS website would allow inquirers to explain problems directly to competent and experienced IIOs, eliminating extra intermediate steps, and provide cost savings.

⁵⁹ See DHS SRMT Referral Analysis Summary Report (May 5, 2006).

USCIS' decision last year to continue the current call center contract for an additional option year, despite performance shortcomings, leaves open the question whether identified contractor performance issues will be effectively addressed in the future.⁶⁰ While USCIS indicates that it receives positive customer feedback, the Ombudsman is concerned about how USCIS measures that feedback. USCIS is making progress in many areas, yet call centers' customer interaction continues to be one of the largest sources of dissatisfaction based on customers' treatment and the centers' lack of effectiveness.

BEST PRACTICE

The Pittsburgh, Phoenix, and San Diego offices, among others, should be commended for using email systems to directly receive and timely respond to answer customer concerns. This simple process of direct communication with the customer would save the agency millions of dollars in wasted resources now used for the SRMT system and substantial portions of the Tier 1 response system.

RECOMMENDATION AR 2006 -- 06

The Ombudsman recommends that USCIS leadership support such local direct communication initiatives nationally to replace the SRMT system described above. Otherwise, the SRMT system should use Tier 2 responders whose access to USCIS systems allows them to alleviate the burden on field offices and service centers.

Case Status Online. USCIS customers can use the Internet-based Case Status Online to check the status of cases on the Internet if they have application/petition receipt numbers. Several of the shortcomings noted in last year's report (at p. 14) persist today: (1) case status information is often inaccurate or unreliable; (2) published processing times are frequently not the actual processing times; and, (3) cases that have been denied sometimes appear to be "pending" long after the date of decision because of updating problems or delays.

During the reporting period, the Ombudsman also observed other serious problems with this system. Moreover, several of USCIS' antiquated database systems cannot upload information to the Case Status Online. Consequently, certain update information is missing. In addition, the system is only capable of reporting a maximum of three digits for processing days. For example, for a wait of 1500 days, the system would show 999. The system also cannot distinguish between different categories of cases filed on the same petition each of which has a different processing time. For example, the I-130 is used for siblings as well as spouses of U.S.

⁶⁰ A June 2005 GAO report entitled "Better Contracting Practice Needed at Call Centers" (GAO-05-526) is consistent with the Ombudsman's concerns regarding USCIS contractor performance issues. Specifically, the report states "USCIS failed to meet contractual, regulatory, and the GAO standards pertaining to how the contractor's performance was documented . . ." *Id.* at 3. The report recommended that USCIS take two actions: "(1) finalize contract terms related to specific performance measurement requirements, before awarding new performance-based call center contracts; and (2) maintain readily available written records of performance assessment and performance evaluation meetings with the contractor." *Id.*; <http://www.gao.gov/new.items/d05526.pdf>.

citizens. A sibling petition will often take many years to process, whereas a spousal petition can be processed within a few months. However, the system will report the same processing time for both applicants.

CASE PROBLEM

In late 2004, the applicant and the applicant's minor child filed an application for a green card based on the applicant's marriage to a U.S. citizen. The applicant entered the United States in K-1 status. About one year after the filing for a green card, USCIS invited the couple for an interview at a local USCIS office. One month before the scheduled interview, the Case Status Online system indicated that the interview was cancelled and, therefore, they did not attend the interview. Subsequently, USCIS invited the applicant to take fingerprints at an Application Support Center (ASC) the following month. Shortly after receipt of that notice, USCIS denied the green card applications of the applicant and the minor child for failure of the married couple to attend the interview. Yet, the minor child later received a notice to attend a green card application interview, although USCIS had already denied the child's application based on the mother's alleged failure to attend the interview. The family contacted the Ombudsman for assistance during the reporting period.

J. Coordination and Communication

Effective interagency and intra-office coordination and communication is vital to providing good public service and improving the efficiency of operations. However, issues and concerns addressed in the 2005 Annual Report (at pp. 14-15) remain and should be addressed.

1. Field Offices/Service Centers

CASE PROBLEM

In 2001, the applicant properly filed a green card application with a service center based on the applicant's refugee status. Shortly thereafter, the service center transferred the application to a local USCIS district office to speed adjudication. After the applicant notified USCIS of an address change, USCIS transferred the applicant's file to another local office with jurisdiction of the case, but the file never arrived. USCIS then informed the applicant that the file was rerouted to the service center where the application was filed originally. Since then, the applicant has been unable to obtain case status information. The applicant contacted the Ombudsman in early 2006.

In the 2005 Annual Report (at pp. 14-15), the Ombudsman identified the transfer of files between offices as a problem. Although the introduction of the National File Tracking System (NFTS) has helped, the problem of transferring bulk files from one facility to another persists. Inadequate communication between service centers and district offices causes poor coordination. For example, files are transferred without notification to the receiving office.

CASE PROBLEM

In 1998, a legal permanent resident filed an I-130 petition for a relative. In 2003, the petitioner became a naturalized citizen and requested an upgrade to the original petition. In late 2003, USCIS transferred the file to a different service center and in mid-2004 to yet another service center to speed up adjudication. Subsequently, a congressional inquiry revealed that USCIS possibly transferred the file one more time back to the service center where the petition was filed originally. The beneficiary will soon age out. In 2006, the petitioner contacted the Ombudsman for assistance in receiving case status information as previous inquiries to USCIS were unanswered.

In addition, because field offices are more accessible than service centers, they sometimes receive customer inquiries for cases pending at service centers. However, USCIS policies requiring that communication between offices go through supervisors create bottlenecks and obstacles to exchanging information needed to respond to public inquiries.

At the management level, there are few formal avenues to address issues between the field offices and service centers. In most locations, regularly scheduled meetings do not occur between service center and field office employees. Each office has its own chain of command to USCIS Headquarters.

CASE PROBLEM

In September 2005, the applicant applied for the renewal of an EAD by using USCIS' e-filing procedures. After the application had been pending for over 90 days, the applicant visited the local district office to obtain interim work authorization. There, USCIS informed the applicant that it had approved the EAD application in November and could not grant an interim work authorization because the new EAD was issued. As the applicant never received the card, and because the applicant's previous EAD had expired, the applicant was unable to work. USCIS told the applicant to file for a replacement EAD card. The applicant submitted an inquiry to the Ombudsman in 2006.

During the reporting period, USCIS stated that it began a pilot program to address the statutorily required management rotation program.⁶¹ The Ombudsman's review of the USCIS'

⁶¹ The following is the statutory provision requiring this program:

“(4) Managerial Rotation Program

(A) In general

Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services [USCIS] shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, as a GS-14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

report to Congress leaves many unanswered questions on this program. While it appears that some managers are participating in a pilot program, the Ombudsman understands that the managerial rotation program proposal has not yet been approved by USCIS leadership.

At the immigration officer level, communication among immigration officers is minimal. Immigration officers often do not accept decisions and actions made by other immigration officers as cases are transferred. For example, when a case is transferred from one USCIS field office to another because the applicant changes address, the immigration officer at the receiving field office rarely accepts previous preliminary findings or decisions. Such *de novo* review duplicates efforts, adds expense, and causes delays in the adjudication process, which often results in applicants paying additional fees for interim benefits.

CASE PROBLEM

USCIS approved the applicant's green card application and informed the applicant that the green card would be mailed within several days. When the applicant did not receive it, the applicant filed an Application to Replace Permanent Resident Card (Form I-90). When the applicant still did not receive the green card, the applicant inquired with the local USCIS office. The information officer at the local office indicated that USCIS had an incorrect address on file, which could explain why the applicant did not receive the card. The officer corrected the address and advised the applicant to file another I-90. A few days later, the applicant received a letter confirming the address change. Several weeks later, the applicant received a letter from a different USCIS district office, which stated that USCIS forwarded the application to the appropriate service center for processing and that no further action was required by the applicant. In addition, USCIS returned the biometric fee.

Shortly thereafter, USCIS returned the second I-90 application and indicated that it was not properly completed. USCIS instructed the applicant to submit the I-90 application to a different service center, which the applicant did. The applicant never received acknowledgement of the filing and submitted another I-90. Next, the applicant received a USCIS request to return the previously issued green card. The applicant promptly responded indicating that the applicant never received the green card because USCIS sent it to the incorrect address.

About three months later, at the time of the inquiry with the Ombudsman in March 2006, the applicant still did not have a green card.

(ii) work in at least one field office and one service center of such bureau.

(B) Report

Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program." 6 U.S.C. § 271(a)(4) (Homeland Security Act §451(a)(4)).

2. Headquarters/Field Office Coordination

As reported in the Ombudsman's 2005 Annual Report (at p. 15), USCIS needs to improve dissemination of policy and procedural guidance to field offices and ensure it is current. Guidance sent to field offices often is not distributed to immigration officers or added to training curricula. As a result, immigration officers apply regulations and Headquarters guidance inconsistently based on personal knowledge or local interpretation of national policy.

It is vital that employees in the field offices receive uniform training materials and updated guidance from Headquarters to provide consistent service to USCIS customers nationwide. A nationally-managed and continuous career development and training program for employees would mitigate the problems of staff turn-over and improve the quality of customer service.⁶²

Another coordination issue involves the ASCs. These centers capture fingerprints and other biometrics of applicants. Although some ASCs are co-located with USCIS field offices, contract specifications limit the ability of district directors to utilize the ASC contract staff for similar administrative duties within the district office. Consequently, overworked USCIS immigration officers cannot ask for support from co-located ASC contract staff. The problem appears to be related to nationally implemented contracts which do not account for local variations in offices that vary in size and scope. The shortcomings of these nationally implemented contracts and their impact on customer service merit further review to be undertaken in the next reporting period.

RECOMMENDATION AR 2006 -- 07

The Ombudsman recommends that USCIS should incorporate into its ASC contract the ability to use the underutilized ASC staff in co-located facilities to assist field office operations.

3. USCIS, Employers, and Other Government Agencies

Employers and other government entities (e.g., the SSA and state departments of motor vehicles) increasingly rely upon USCIS to verify the immigration status of applicants for employment and various federal and state benefits. USCIS' capacity to communicate and coordinate with employers and government agencies at the federal, state, and local levels has not kept pace with demand. The situation only will worsen as more entities require this information under current and proposed legislation.

CASE PROBLEM

An applicant applied for change of status, which USCIS granted. However, USCIS did not update its database to reflect the change of status. As a result, the applicant was unable to obtain a Social Security number from the SSA. The applicant sought the Ombudsman's assistance at the beginning of 2006.

⁶² See *infra* section II.K.

CASE PROBLEM

A petitioner filed a Form I-824 for USCIS to notify a U.S. Embassy/Consular Section of an immigrant petition approved by USCIS. USCIS Case Status Online indicated that USCIS approved the petition in late 2004 and transferred the case to the requested consulate. However, neither the petitioner nor the petitioner's attorney received notification of approval. In addition, the consulate informed the petitioner that it never received the case from USCIS and that further inquiries should go to USCIS. Petitioner's inquiries with USCIS did not elicit a response. The petitioner contacted the Ombudsman during the reporting period for assistance.

K. Training and Staffing

A key to timely and professional delivery of immigration benefits is a properly trained and flexible workforce. USCIS training and staffing shortfalls remain pervasive and serious problems.

BEST PRACTICE

The Los Angeles District Office has developed its own extensive adjudicator training materials and devoted substantial time to training its officers, even though limited training dollars are available. This has resulted in a better trained staff with a positive attitude inspired by the District Director and her dedicated management team. In addition, they regularly review lists of concerns raised by the community and Los Angeles office staff. They prioritize and set deadlines for correcting the problems and meet weekly to review progress on resolving them.

The Ombudsman considers Los Angeles to be the best run large USCIS field office.

1. Training

In the 2005 Annual Report, the Ombudsman noted (at pp. 18-19) that the USCIS training program essentially maintained the system provided by INS. USCIS offers basic training for certain job types to most of its operations staff at formal courses conducted at the USCIS Academy located at the Federal Law Enforcement Training Center (FLETC). This basic job training is predominately knowledge-based. It offers little in the way of skills training and almost no performance testing or certification of the employee's ability to accomplish tasks successfully. As previously reported, training after graduating from FLETC is provided only as local offices perceive a need and as they are able to allocate resources.

The USCIS Office of Training and Career Development (OCTD) directs the USCIS Academy staffing and operations at FLETC. Although it has authority to direct training and career development for several thousand immigration officers serving worldwide, this important

office does not have a professional educator (GS-1710 or GS-1750 series) who is degreed and skilled in instructional systems analysis, design, development, implementation, and evaluation. Instead, USCIS relies on immigration officers, who have received little or no training, to determine the competencies, topics, and delivery systems for meeting USCIS' 21st century training needs.

USCIS is working on a new training model to use technology rather than traditional classroom training and the Ombudsman looks forward to its implementation. As described in last year's report (at pp. 18-19), the Ombudsman again recommends that USCIS allocate a percentage of its budget to necessary and regular training.

In addition, as a member of the DHS Training Council, USCIS has access to many high quality training operations, which can provide assistance on an as-needed basis or give an example of how to meet the training needs of a professional worldwide workforce. The U.S. Coast Guard, another DHS entity, has a Performance Technology Center located in Yorktown, Virginia, which is an excellent example for USCIS to emulate as a modern instructional systems development activity.⁶³ This Center uses human performance technology techniques and tools to analyze workforce performance problems. Through continuous research, the Center identifies the most effective and efficient emerging technologies to solve those problems. The Ombudsman hopes that USCIS will seek to upgrade its training to a standard comparable with agencies such as the U.S. Coast Guard.

BEST PRACTICE

Similar to the Los Angeles District Office described above, the San Diego District Office management utilizes a team with expertise in production management and statistical analysis, and uses these talents in its daily operations and for management decisions.

Furthermore, the Chula Vista sub-office of the San Diego District provides its customers with a comfortable waiting area, including a wonderful play area for children who often accompany customers to appointments.

San Diego is one of the two best mid-sized USCIS offices visited by the Ombudsman.

⁶³ A "modern instructional systems development activity" employs a systems approach to training through the utilization of qualified instructional technologists, subject matter experts, and other technical experts to determine the cost, audience, and delivery of training. This activity utilizes scientifically based technology and learning competency measurements and contrasts with subject matter experts teaching knowledge topics versus skill acquisition.

BEST PRACTICE

The Dallas District Office director purchases and provides to each of her management team the latest books or articles on successful management and encourages discussion on them in weekly team meetings. The Ombudsman encourages such supplements to standardized training. The utilization of these and other creative management tools make the Dallas District Office the other best mid-sized USCIS field office visited by the Ombudsman.

2. Staffing

A well-trained workforce is essential. However, USCIS also must have a workforce to train. Its ability to recruit and nurture a stable core of professional and committed employees remains a challenge.

BEST PRACTICE

The Jacksonville, FL sub-office cross trains all immigration officers to adjudicate all types of applications. In addition, to help the nearby Orlando, FL sub-office, Jacksonville began processing some of the Orlando's cases to assist with its backlogs. This kind of innovative thinking will allow USCIS to succeed.

As reported in the 2005 Annual Report (at p. 19), INS, and now USCIS, has relied heavily on employees hired on a term, rather than permanent, basis. The workload was seen as temporary, related to backlog reductions. Authority to hire on a term basis has been renewed annually since it was first authorized in 1995. The current term authority is set to expire on September 30, 2006.

The agency employs hundreds of term employees to assist with backlog reduction. However, by the end of September 2006, there will be no more appropriated money to pay for their salaries. Aside from the backlog reduction efforts, new legislation or initiatives may require USCIS to have more staff at the same time as these trained term employees are leaving. To be fully functional, it takes a new hire approximately one year from the start of the hiring process through training to begin actual work, and USCIS cannot initiate the hiring process without the funds to pay for the labor. It is imperative that USCIS, with Congress' help, adopt hiring processes that will recognize term service as a positive hiring consideration for the agency.

As of the date of this report, USCIS has not announced plans to extend its term employees. This has resulted in some employees leaving USCIS and some operations already have begun to suffer. The Ombudsman is concerned about the impact of term employee departures on USCIS' ability to continue to fulfill its mission, especially if new legislation imposes additional demands.

L. Green Cards Collected, Not Recorded, and Green Card Delivery Problems

In 2004, the Ombudsman learned of an issue regarding the recording of green cards that were returned to USCIS. These cards are returned to USCIS field offices and ASCs when an individual naturalizes or when the card is about to expire. Systems will reflect that the cards are still in circulation, unless updated to reflect that the cards were surrendered. This can have a negative impact on customers when they attempt to travel. The Ombudsman urged USCIS to update records several times, but it was not until May 2006 that USCIS informed the Ombudsman that the problem was resolved.

The Ombudsman remains concerned about the USCIS solution to the unrecorded green card dilemma and will continue to follow up with USCIS on the issue.

Other green card problems noted in past years continue. One major issue continues to be the delivery of a green card. Due to typographical errors in USCIS databases, green cards are sometimes sent to incorrect addresses. In other cases, due to a lack of connectivity, communication, and training, CBP officers sometimes record the USCIS Texas Service Center address (where green cards for arriving immigrants are produced) as the home address for new immigrants when they arrive at a port of entry. As a result, USCIS sends the newly produced card to itself. USCIS systems will reflect simply that the card was produced and mailed, but the applicant must pay an additional fee to replace the improperly sent card. To the Ombudsman's knowledge, USCIS has not implemented any procedure for redirecting these cards to the proper recipient.

As USCIS does not send green cards to individuals by certified mail with return receipt requested, USCIS is unable to verify that the applicant receives the card. This situation poses customer service and security concerns. As for customer service, applicants who do not receive their cards must file a new application and pay a fee, even where USCIS bears responsibility for the misdirected card. From a security perspective, individuals who want a second green card (to loan to family members or to sell) can claim that they have not received a card and then apply for a replacement. Without verification that the first card actually was received, USCIS has to produce a new one. The Ombudsman has heard of many instances of green card abuse. More importantly, the Ombudsman has heard of even more instances of honest applicants who are forced to pay additional fees because USCIS has failed them.

RECOMMENDATION AR 2006 -- 08

The USCIS Vermont Service Center suggested sending green cards by "return receipt requested," but USCIS Headquarters rejected this idea. The Ombudsman recommends that USCIS implement this simple solution. It requires a small expenditure up-front but would save significant time and resources, while enhancing customer service.

M. Delay in Updating U.S. Citizenship Designation in Records; Some Naturalized Citizens Cannot Apply for Passports

Currently, the USCIS standard operating procedure after a naturalization ceremony is to update its database one or two days later with information that certain individuals obtained citizenship. If information about the newly naturalized citizen differs from information related to the citizen in another USCIS database, the immigration officer has ten days to resolve the differences and update the records.⁶⁴ The delay in inputting data and lengthier delays in correcting differences in the records can cause problems for affected individuals, particularly for those who immediately apply for U.S. passports. These individuals often encounter suspicious government officials who cannot immediately verify citizenship status electronically. In such cases, passport officials must contact USCIS to confirm applicants' status forcing USCIS to spend additional time and resources to research and confirm that the individual was naturalized.

III. USCIS REVENUE

Congress mandates that USCIS be self-funded.⁶⁵ Following the requirement that INS recover full operational costs, the agency requested increases in its fee schedules to recover those costs. Not all fee increase requests were approved, but there was a general recognition that higher fees per application were justified to recover costs incurred for providing non-fee INS services. At the same time, Congress required that INS add a surcharge to certain filing fees to recover the costs of providing services to individuals unable to pay. In later years, the surcharge extended to fund asylum and refugee applications as well as military naturalizations.⁶⁶

Simultaneously, case processing backlogs caused alarm. In 2001, the Administration required that INS improve its slow processing time to six months or less for all applications within five years.⁶⁷ Congress appropriated \$500 million over five years from FY 02 through FY 06 to accomplish that task. However, the underlying objective of achieving faster processing times was undermined by the need for revenue to support the agency.

Applications for ancillary services necessitated by the backlogs generated substantial additional revenue estimated to be in excess of \$350 million in FY 05,⁶⁸ particularly from three sources: (1) EAD applications for green card applicants;⁶⁹ (2) advance parole applications; and (3) premium processing for nonimmigrant employment based applicants (Form I-129). USCIS

⁶⁴ See DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," at 17 (describing that "[a]ccording to one USCIS official, about 700 of the 5,000 naturalizations performed in one ceremony were identified on a mismatch report . . .").

⁶⁵ See 8 U.S.C. 1356 (m), establishing an "Immigration Examinations Fee Account"; see also Homeland Security Act Amendments of 2003, Pub. L. No. 108-7, at § 107, repealing section 457 of the Homeland Security Act of 2002.

⁶⁶ See generally 63 Fed. Reg. 1775 (Jan. 12, 1998).

⁶⁷ See *supra* note 13.

⁶⁸ See *supra* Figure 7.

⁶⁹ An applicant for a green card is required to be issued an EAD within 90 days after an application for the EAD, which can be filed simultaneously with the green card application. See 8 C.F.R. § 274a.13(d).

increased the EAD and advance parole application fees beyond the amount needed to recover the actual costs of the service. USCIS has become dependent on revenue derived from these applications, which are required only because of the slow processing of applications for core services. Section II.A provides additional detail on slow green card processing. Similarly, the employment-based green card process has resulted in substantial revenue to the agency and is further discussed at section II.B.

In addition, USCIS incurred other costs, which had to be recovered by fees. For example, in 2003, shared services agreements following the INS breakup required USCIS to perform certain services for ICE and CBP including all records functions for which USCIS was to be reimbursed. In addition, USCIS' budget incorporated many costs associated with shared services, including information technology, security checks, personnel, and fingerprinting. Moreover, USCIS had to set aside funds for investment purposes or to start-up new programs imposed by Congress without any appropriations. These unfunded costs for USCIS had to be recovered from fees on applications for services.

As long as program costs are mostly unfunded and the agency is expected to recover its costs almost entirely from fees, USCIS will be confronted by the conflicting goals of improving efficiency for all its clients versus redirecting revenue to provide for all its unfunded mandates. USCIS needs a new funding mechanism to help it out of this dilemma.

In the meantime, USCIS has several other processes that generate revenue from customers for seemingly unnecessary services.

A. Lockbox Process Failure to Screen Deniable Cases

Currently, when an application or petition arrives at the Chicago Lockbox, the contract clerk reviews it to verify that it has a signature and the correct fee. If the application satisfies both elements, it is accepted for processing. The contract clerk does not screen for applicant eligibility or the completeness of the documents supporting the application or petition.⁷⁰ The current case receipt policy creates substantially more work for USCIS because it accepts incomplete or deficient applications and petitions, and issues interim benefits for cases that ultimately will be denied. Processing a denial demands more USCIS time and resources than processing an approval. Moreover, the policy shifts resources and attention away from eligible applications and petitions, but allows USCIS to collect fees from applicants who may be ineligible for the benefit sought.

USCIS has indicated to the Ombudsman that it must issue a denial letter to ineligible applicants and that the agency must recover adjudication costs for both approvals and denials. However, USCIS did not address the policy described above. With adequate training, up-front

⁷⁰ The Ombudsman understands that the USCIS Standard Operating Procedure for green card applications requires that USCIS check for jurisdiction and visa availability in addition to checks for signatures and correct fees. However, further "initial evidence" checks are performed at the National Benefits Center (NBC), after the application has already been received and after USCIS has committed to processing it. The NBC checks for documents that would establish: (1) proof of the claimed relationship, (2) proof of legal entry, (3) medical examination reports, and (4) affidavits of support.

review for obvious deficiencies would be useful and would not subject USCIS to charges that it is “front-desking” applications.⁷¹

RECOMMENDATION AR 2006 -- 09

Currently, USCIS only reviews applications and petitions to ensure that fees are paid and forms are signed. When the form is otherwise not complete or when the applicant is not eligible for the claimed benefit, USCIS will deny the case usually after expenditure of considerable time and resources. Regulations require submission of applications and petitions according to the instructions on the forms.⁷² In adhering to its regulations and requiring application and petition packages to be complete before accepting them, USCIS would improve efficiency and customer service. Checks for necessary documents should be made before an application fee is accepted via a thorough pre-screening process. This process would prevent customer dissatisfaction from the number of later requests for additional documents, while also allowing USCIS to forego time-consuming denial procedures.

B. Multiple Filings for Foreign National Spouses

To address delayed processing for spouses of U.S. citizens, Congress passed a law designed to expedite processing, but USCIS interpreted the law to require actions that took more money, agency resources, and documentation. Specifically, in 2000, Congress passed the Legal Immigration Family Equity (LIFE) Act.⁷³ This Act created the K-3 visa category for alien spouses so that they can obtain a nonimmigrant visa and more quickly join their U.S. citizen spouses in the United States. The spouse could apply for a green card in the United States, or wait for the overseas application to be adjudicated.

For this nonimmigrant visa petition, USCIS adopted an existing form used for fiancé(e) petitions (Form I-129F) and charges a separate fee. However, USCIS applies the same criteria to approve Form I-129F as for the I-130 immigrant visa petition, normally used for sponsoring a spouse or child of an U.S. citizen.⁷⁴ In general, the distinction is that the I-129F requires submission of the I-130. USCIS conducts substantially the same security checks and requires approximately the same number of hours to process each of these forms. However, USCIS processes Form I-129F in 60-90 days, whereas the I-130 processing times are approximately six months.⁷⁵ It is unclear why it takes so long to process the I-130 immigrant petition when the

⁷¹ This term stems from the legacy INS practice of rejecting certain applications during the legalization program instituted under Immigration Reform Control Act (IRCA). See Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986). Following the program, a number of individuals and organizations brought litigation against INS, alleging that applications were erroneously rejected by frontline INS officers.

⁷² See 8 C.F.R. §103.2(a).

⁷³ See “The Legal Immigration Family Equity Act,” Pub. L. No. 106-553, 114 Stat. 2762 (Dec. 21, 2000).

⁷⁴ Similarly, DOS issuance of an IR-1 immigrant visa on an approved I-130 petition and of a K-3 nonimmigrant visa on an approved I-129F petition involves overlapping criteria.

⁷⁵ See <https://egov.immigration.gov/cris/jsps/ptimes.jsp;jsessionid=ccjehik2G6Ac> (last visited June 15, 2006).

required elements for the nonimmigrant I-129F are greater than for the I-130, the original delayed petition that was the impetus for this Life Act provision. USCIS and DOS jointly collect as much as \$965 (\$865 to USCIS and \$100 to DOS) when an applicant files both an I-130 and an I-129F,⁷⁶ compared to \$640 for the I-130 (\$190 to USCIS and \$450 to DOS).

RECOMMENDATION AR 2006 -- 10

The Ombudsman currently is evaluating several solutions to address this issue. In the meantime, to prevent the waste of resources and address customer concerns that originally prompted the legislation, the Ombudsman recommends that USCIS consolidate and rapidly process petitions for spouses and children of U.S. citizens. This would prevent duplication of processes and alleviate the need to use the provisions set forth in the legislation.

C. Application Support Centers and Fingerprinting of Applicants

USCIS established ASCs on a contract basis to collect biometric data (including fingerprints and photographs) and initiate security checks. There are 130 ASCs located in separate sites or co-located with USCIS offices. The annual budget for ASC operations in FY 05 was approximately \$80 million, which included funding for 134 government and 1,242 contract employees.⁷⁷

In FY 05, USCIS submitted 2.5 million fingerprints to the FBI for criminal history checks at a cost of approximately \$36.67 million. Currently, USCIS considers fingerprint results to be valid for 15 months even though the FBI does not consider fingerprints to expire. Unfortunately, it often takes USCIS longer than 15 months to adjudicate an application. Consequently, the applicants must return to the ASC to have fingerprints recaptured. A November 2005 DHS IG report noted that although the security check is fingerprint-based, USCIS has limited ability to re-verify the applicant's identity. Specifically, the FBI does not keep fingerprints obtained for non-law enforcement purposes to crosscheck them against previous submissions to USCIS.⁷⁸

RECOMMENDATION AR 2006 -- 11

The Ombudsman recommends that USCIS implement "wrap around"⁷⁹ security checks, which would provide it with real time security updates from the law enforcement community on applicants who violate criminal laws. Current

⁷⁶ For this option, there are additional fees due to filing Form I-485 (a green card application) and Form I-765 (EAD).

⁷⁷ The Ombudsman obtained these statistics from a December 2005 meeting with USCIS.

⁷⁸ See DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," at 8.

⁷⁹ Wrap-around security checks contemplate an arrangement with law enforcement to inform USCIS of any new security concerns that arise without the need for USCIS to require additional biometrics or name checks from the applicant. Currently, USCIS periodically conducts duplicate security checks instead of law enforcement providing an update on USCIS applicants after the initial check.

resources used for duplicative security and biometrics checks would become available for other agency needs.

Although USCIS currently has fingerprint storage capability, it cannot retrieve the prints from storage. Fingerprint storage and retrieval capability would reduce the need for multiple visits to ASCs for repeated fingerprint collection and would allow for cross-checking of fingerprint submissions. The Ombudsman understands that USCIS is working on a biometrics storage system (BSS) for implementation in early 2007. Additionally, flat fingerprints, now piloted with the government and private sector, can be captured more quickly and easily, as well as use fewer USCIS resources.

RECOMMENDATION AR 2006 -- 12

To enhance national security, lower costs to USCIS, avoid generating revenue from an inefficient process, and improve customer service, the Ombudsman recommends: (1) improvements in USCIS fingerprint storage and retrieval capabilities; and (2) use of innovative technology that allows for the capture of flat fingerprints rather than traditional rolled prints.

D. Premium Processing Likely Less Costly Than Regular Processing

Premium processing service guarantees a 15-day processing time for certain immigration benefits applications upon payment of an additional \$1,000 fee. In FY 04 and FY 05 USCIS collected \$202 million and \$139 million in premium processing fees, respectively. For regular processing in FY 04 and FY 05, USCIS collected \$64 million and \$69 million in regular filing fees, respectively.⁸⁰ USCIS used the income from premium processing fees to offset the costs of a variety of non-premium process related USCIS functions. The cost of providing premium processing is likely to be less than regular processing because fewer repeated steps exist and fewer people handle these applications.

⁸⁰ See *supra* Figures 6 and 7.

Figure 8: Comparison of Premium and Regular Processed Cases in FY 04 and FY 05

	FY 04 Petitions Filed	FY 05 Petitions Filed
Petitions Filed with Premium Processing	202,000	139,000
Premium Processed Cases as a Percentage of Total New Employment and Change of Status*	94%	80%
New Employment	116,386	94,926
Change of Status	99,538	78,656
Total (New Employment and Change of Status)	215,924	173,582
Extension of Status*	202,201	197,659
Total of All Petitions Filed (New Employment, Change of Status and Extension of Status)	418,125	371,241
Premium Processed Cases as a Percentage of Total of All Petitions Filed	48%	37%
<p>* Most petitioners filing for extension of their beneficiary employees will file well in advance of the termination of the employees' authorized period of stay. Moreover, the law permits the beneficiaries to continue employment while awaiting USCIS' decision on extension even after expiration of their current period of stay. Therefore, it is likely that only a small percentage of extension of stay petitions will be filed using premium processing.</p> <p>Source: USCIS PAS Data</p>		

Premium processing depends on the slow, inefficient processing of regular applications to give reason for customers to pay the higher fee for this service. USCIS immigration officers obviously give priority to applicants who pay more. However, applicants who pay the regular fee may be getting less service than before the start of premium processing.

USCIS deserves credit for developing innovative approaches to expedite case processing, but premium service should be a temporary fix until USCIS resolves the more fundamental problem of funding the agency. However, far from the exception to regular processing, premium processing is now the rule. In FY 04 and FY 05, 202,000 and 139,000 Form I-129 applicants,

respectively, paid for premium processing. In fact, shortly before this report, USCIS announced the expansion of premium processing to other visa categories that have long processing delays.⁸¹

All customers should receive a premium type of process that costs no more than customers pay for the current regular process. Currently, funds collected from premium processing fees should be used to support efforts that directly and visibly reduce the cycle time for processing all applications and petitions, but particularly within the category for which higher fees are charged.

RECOMMENDATION AR 2006 -- 13

The Ombudsman recommends that USCIS implement premium-type processing for all regular processed applications at a uniform cost to the applicant. Implementation of this recommendation would save the agency some resources that it currently expends for repeated actions in regular processing. It also would have a tremendous positive impact on customer service and efficiency at no additional net cost to the agency.

IV. UP-FRONT PROCESSING

A. Up-front Processing – Introduction and Results

In response to recommendations made by the Ombudsman in the 2004 reporting period, as described in section V, USCIS implemented “up-front processing” pilot programs. The programs tested alternative processing models to enhance national security, improve customer service, and increase the efficiency of immigration services.

Up-front processing is characterized by:

- Pre-screened applications to ensure completeness prior to filing;
- One form and one fee per immigration benefit filed by customers;
- Same-day interviews and biometric capture, if required, and
- Applications completed within days, or even hours, of filing.

The goals of up-front processing are to:

- Identify national security threats and fraud as early as possible in the immigration process.

⁸¹ See *supra* note 26.

- Reduce the issuance of interim benefits to mitigate the risk of ineligible applicants acquiring legal status in the United States before adjudication of the green card application.
- Improve customer service by implementing a streamlined process that adjudicates applications in less than 90 days.
- Allocate resources effectively by focusing on adjudicating primary benefits instead of interim benefits.

USCIS initiated several pilot programs starting in May 2004.⁸² These included programs at the California Service Center (the Backlog Elimination Pilot) and the New York District Office (the Backlog Elimination and Fraud Reduction Pilot). The Ombudsman's 2005 Annual Report (at pp. 28-30) discussed in detail the New York and California pilot programs, which are no longer operational.

Under DORA, a USCIS field office initiates certain background and security checks, reviews documents, and conducts eligibility interviews on the day of filing and then forwards the application for data entry and administrative processing at the Chicago Lockbox and National Benefits Center (NBC). The applicant receives an appointment notice to come to an ASC where biometric information is captured. The Chicago Lockbox then issues a receipt notice to the applicant and forwards the newly created case to the NBC. The NBC assembles receipted applications into A-file jackets and initiates additional background and security checks. The NBC then forwards the files to the Dallas District Office. When all background checks are completed, the Dallas District adjudicates the case and orders production of green cards for qualified applicants.

From its inception in the first week of May 2004 through February 3, 2006, DORA scheduled 23,570 appointments, of which 5,196 (22 percent) were no-shows.⁸³ DORA rejected 3,805 (16 percent) applications of the total received. Of the 14,576 applications accepted for processing through February 3, 2006, 12,440 (85 percent), were completed by May 2006. Of these, 14,576 applications were accepted, 11,954 approved, 486 denied, and 2,116 remained pending.

Approximately 56 percent of accepted cases were completed within 90 days of filing (8,097 completed of 14,576 considered). Had it not been for delays caused by FBI name check issues, the 90-day completion rate would have exceeded 81 percent. Only 2,337 interim benefits were issued to DORA applicants – 13 percent of the total number of DORA green card

⁸² Pilot programs serve as a means for USCIS to test innovative approaches to processing immigration benefits. The Homeland Security Act of 2002, section 451(a)(5), authorizes USCIS to implement “innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefits applications” The Ombudsman recognizes USCIS for its use of pilot programs and urges USCIS to move rapidly to expand pilot program initiatives and best practices where the pilots have shown substantial improvements in customer service, USCIS efficiency, and enhancements in process integrity and national security.

⁸³ Data in this recommendation are from the USCIS PAS program; the Dallas District Office provided the raw data on DORA.

applications. Nationally, virtually all applicants applying for green cards receive interim benefits because processing in nearly all offices takes longer than 90 days.

Figure 9: Cases Rejected Under DORA (June 2005 – May 2006)

Reason for Rejection	Rejected
Incorrect Fee / No Fee	595
Visa Unavailable	271
Insufficient Documentation	261
Inquiries	111
No Identification (Over age 16)	76
G-56 (appointment to supply more evidence)	68
Petitioner/Beneficiary Not Present	64
Petitioner/Beneficiary/Attorney Late	59
Incorrect Jurisdiction	56
Duplicate Filings	47
Attorney No Show -- Attorney Has Documents	18
Other	307
Total:	1,933

Note: As of November 2005, the Dallas District Office expanded its categories to provide more detail on the reasons for rejection.

DORA demonstrates how up-front processing eliminates the need to issue interim benefits to the vast majority of green card applicants. In DORA, most of the cases that would eventually be denied under the current USCIS process—approximately 16 percent of all DORA applications—are rejected at the outset. Of the cases that were accepted and completed under DORA within 90 days, only 2.52 percent were denied. For DORA cases delayed beyond the 90-day processing time target the denial rate is only 2.27 percent. Therefore, if USCIS had processed all green card cases from May 2004 to February 2006 consistent with the DORA process, it would only have issued approximately 3,369 EADs to ineligible green card applicants, just over one percent of the number of benefits it actually issued. DORA would have provided even more substantial improvements had it required pre-application security screening, another element of the Ombudsman’s up-front processing model.

DORA has not adversely affected the other operations and programs carried out by the Dallas District Office, including its backlog reduction program. The district office realized substantial backlog reductions. Notably, the startup costs to implement DORA were minimal.

B. Expansion of Up-front Processing

1. Recommendation

As described in section V.27., in May 2006 the Ombudsman recommended that USCIS implement up-front processing of immigration benefits, beginning with those for family-based green card applications.⁸⁴

2. USCIS Expansion of Pilot

The Ombudsman urges immediate national rollout of an up-front processing program and suggests the existing DORA program as a model.⁸⁵

3. Ombudsman's Comments

The up-front model provides the basis for a 21st century process that will ultimately deliver benefits to qualified applicants within days or even hours of filing, while enhancing national security.

Through DORA, USCIS has demonstrated that an up-front processing model works within current USCIS capabilities:

- Compared to other USCIS field offices, the Dallas District Office has dramatically reduced issuance of interim benefits.
- DORA has not negatively affected the regular operations of the Dallas District Office, including backlog reduction efforts.
- DORA had minimal start-up costs.

Up-front processing has provided the following benefits:

- **Customer Service.** Up-front processing dramatically improves customer service by providing for the adjudication of green card applications within 90 days. Customers save time and money that they currently spend on follow-up appointments with USCIS and application fees for interim benefits.
- **USCIS Efficiency.** Up-front processing saves hours of officer and clerical time. Pre-screening avoids the need for the time-consuming issuance of RFEs, notices

⁸⁴ Family-based green card applications have an interview component, whereas employment-based applications generally do not and are mailed to service centers for adjudication. Thus, employment-based cases could utilize an up-front processing model with some variations.

⁸⁵ In April 2005, USCIS expanded the New York District Backlog Elimination and Fraud Reduction Pilot – a USCIS inspired pilot which compressed the existing process into 90 days – to Buffalo, San Antonio, and San Diego (and now to other field offices), despite USCIS findings that the pilot often did not meet its processing time goal. In a May 22, 2006 meeting with the Ombudsman, senior USCIS managers stated that these offices were not true “pilot” offices, but that they became “90-day” offices simply because they reduced green card application processes to less than 90 days.

of intent to deny and/or denial notices and resources expended on processing interim benefits.

- **National Security.** Up-front processing enhances national security by: (1) preventing ineligible or unscrupulous applicants from obtaining government-issued identity documents while their cases are pending; and (2) allowing USCIS to detect and act on fraudulent cases at the earliest possible point.

The Ombudsman strongly supports the expansion of the DORA pilot, and looks forward to working with USCIS management and staff to roll out up-front processing programs nationally. The Ombudsman commends the work of USCIS staff at headquarters, in field offices, and at service centers, who have implemented up-front pilot programs.

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As stated by DHS Secretary Chertoff:

“Part of the problem is that the current business model fosters a long delay between application and the final adjudication of applications for residence and citizenship, during which many applicants stay here as temporary residents [T]his system puts some of the most important security screening at the end of a lengthy process rather than the beginning, and leads to an unnecessary high rate of rejection late in the process.”⁸⁶

Conducting security screening after a foreign national has submitted an application for an immigration benefit raises several problems: (1) prolongs processing times, often due to circumstances beyond USCIS control; (2) hinders backlog reduction efforts; (3) allows ineligible foreign nationals, who may be a security threat, to apply for and obtain interim benefits (EADs and travel documents) while the application is pending; (4) slows further immigration benefits processing because issuance of requests for additional evidence and denials are time-consuming for USCIS adjudications officers; (5) exposes USCIS to litigation for long-pending applications; and (6) increases customer case status inquiries for long-pending applications.

Although the majority of background and security checks are resolved within hours or days of initiation, the small percentage of FBI name checks that do not clear on a timely basis represent a substantial and problematic workload for USCIS.⁸⁷ Resolving possible FBI name checks “hits” is time consuming and resource-intensive for both the FBI and USCIS. Current USCIS policies require that all checks must be complete and current before an adjudications officer can make a final determination on a primary immigration benefits application.

⁸⁶ DHS Secretary Michael Chertoff, Prepared Remarks at the Ronald Reagan Building regarding DHS Second Stage Review (July 13, 2005); <http://www.dhs.gov/dhspublic/display?theme=44&content=4597&print=true>.

⁸⁷ See *supra* section II.F.

By completing security checks prior to accepting an application for immigration benefits: (1) inquiries about delayed security checks from Congress, the public, and the media would be focused on the precise source of the delays. Today, scrutiny is on USCIS processing times, which are delayed by other agencies; (2) fees would become more transparent and set specifically to cover the costs of the screening; and (3) USCIS resources would be focused on accomplishing the agency's primary mission of determining immigration eligibility.

The Ombudsman recommends that USCIS implement a pre-application security screening process consistent with the Secretary's vision. Such a process would allow DHS to identify threats early in benefits application processes, while maximizing efficiency in adjudications processes.

V. RECOMMENDATIONS

This section includes summaries of the Ombudsman's formal recommendations since the office's inception in July 2003.⁸⁸ The recommendations stem from a variety of sources including problems reported to the Ombudsman by individuals and employers, in discussions with immigration stakeholders, and from suggestions of USCIS employees themselves. For the full text of the recommendations and USCIS responses, please refer to the Ombudsman's website at www.dhs.gov/cisombudsman.

⁸⁸ The Homeland Security Act of 2002 states that the Ombudsman's Annual Report shall include an inventory of the recommendations and indicate: (1) if action has been taken and the result of that action; (2) whether action remains to be completed; and (3) the period during which the item has been on this list. See 6 U.S.C. § 272(c)(1).

Figure 10: Recommendations

Number	Recommendation	Date
2004 Reporting Period		
1	Streamlining Family Based Immigrant Processing	June 18, 2004
2	Streamlining Employment Based Immigrant Processing	June 18, 2004
3	Reengineering Green Card Replacement Processing	June 18, 2004
2005 Reporting Period		
4	Fee Instructions	June 29, 2004
5	Customer Service Training for USCIS	August 16, 2004
6	E-filing	August 16, 2004
7	I-9 Storage	August 16, 2004
8	Premium Processing	September 27, 2004
9	Standardized Forms	October 6, 2004
10	Naturalization for Survivors of Domestic Violence	October 6, 2004
11	Infopass	November 29, 2004
12	Lockbox	November 29, 2004
13	Issuance of Permanent Resident Cards to Arriving Immigrants	December 15, 2004
14	Pilot Program Termination	February 25, 2005
15	Issuance of Receipts to Petitioners and Applicants	May 9, 2005
2006 Reporting Period		
16	I-131 Refugee Travel Document	June 10, 2005
17	Elimination of Postal Meter Mark	July 29, 2005
18	Public Reporting for Capped Categories	August 28, 2005
19	Elimination of Asylum Pick Up Decision Delivery Process	October 13, 2005
20	Administrative Appeals Office	December 7, 2005
21	Asylum Division Use of Notice of Action Form I-797	December 7, 2005
22	Notices to Appear	March 19, 2006
23	Military Naturalization	March 19, 2006
24	Asylum Adjudication	March 19, 2006
25	Employment Authorization Documents (EADs)	March 19, 2006
26	DNA Testing	April 12, 2006
27	Up-front Processing	May 19, 2006
28	Address Change (AR-11)	June 9, 2006

In December 2004, May 2005, December 2005, March 2006, and April 2006, USCIS provided formal responses to the Ombudsman's recommendations, pursuant to the Homeland Security Act of 2002.⁸⁹ Beyond formal recommendations and responses, the Ombudsman and USCIS informally discuss content and implementation of recommendations.

USCIS has implemented some of the Ombudsman's recommendations. In some cases, USCIS actually began several initiatives based on the Ombudsman's recommendations, but did not follow through on them for many reasons. USCIS indicated basic agreement with many recommendations, but did not implement the recommended changes. In nearly three years, USCIS' limited attention to these recommendations, while not providing any equal or better alternatives to serious customer service and security issues, is of concern.

For an agency in desperate need of rapid change, USCIS needs to devote sufficient resources to address these recommendations. In late 2003, USCIS took a positive step in establishing the Office of Customer Relations Management (OCRM). This office was to be staffed by at least 15 people to: (1) serve as the liaison to the Ombudsman; (2) evaluate customer service and recommend changes to the Director to improve this service consistent with national security and from problems identified by the Ombudsman; (3) review USCIS developing systems and programs regarding customer service; and (4) conduct focus groups and certain survey measures with non-governmental organizations on new customer service trends and needs. In a November 20, 2003 Interoffice Memorandum announcing the OCRM, former Director Eduardo Aguirre stated that "USCIS has established an [OCRM] that will be responsible for receiving and coordinating matters between the [Ombudsman] and USCIS. OCRM will also evaluate the effectiveness of USCIS' various customer service programs and initiatives, as well as serve as my principal customer service advocate." In actuality, USCIS funded only two positions for this office thereby severely limiting the OCRM's capabilities.

As of this writing, the future of OCRM is unclear in light of the recent promotion of OCRM's leader and the one other employee to other USCIS divisions. While the Director's office has begun to handle all aspects related to the Ombudsman, it is uncertain if the Director plans to reestablish the OCRM as originally intended or create another team whose sole responsibility is to follow-up and correct the problems identified by the Ombudsman.

2004 REPORTING PERIOD

1. Streamlining Family-Based Immigrant Processing (June 18, 2004) (USCIS Response: December 17, 2004)

In 2004, the Ombudsman called for a one-step, front-end, family-based adjudication process in which an applicant would appear at a USCIS field office to file an application for a green card and be interviewed on the same day. USCIS responded to this recommendation by implementing pilot programs, which included some elements of the Ombudsman's recommendation and are fully discussed in the Ombudsman's 2005 Annual Report (at pp. 26-34).

⁸⁹ See 6 U.S.C. § 272(f).

During the current reporting period, the Ombudsman forwarded a detailed recommendation on family-based up-front processing to USCIS, as further described in section IV.

2. Streamlining Employment-Based Immigrant Processing (June 18, 2004)

(USCIS Response: December 17, 2004; Additional USCIS Response: April 27, 2006)

The Ombudsman recommended a one-step, front-end, employment-based green card application process in which an applicant would appear at a USCIS field office to file the green card application and be interviewed on the same day. Qualified applicants would be issued a green card in less than 90 days. At the time of this recommendation, in early 2004, an estimated 400,000 employment-based green card applications were pending at service centers and district offices.⁹⁰

In March 2004, USCIS began a pilot at the California Service Center that considered a narrow set of cases—second preference employment-based green card applications.⁹¹ These cases typically do not require referral to a USCIS field office for an interview and the applicants typically have fewer admissibility issues than applicants in the third preference category. The pilot program sought to complete cases, including card issuance, within 75 days of the filing date before it became necessary to issue interim benefits. The Ombudsman's 2005 Annual Report (at pp. 28-29) includes an in-depth analysis of the California Service Center employment-based processing pilot.

The Ombudsman recommends that USCIS implement the recommendations on employment-based cases described at section II.B. The Ombudsman also urges USCIS to revisit the original recommendation and reconsider the agency's decision to forego a comprehensive up-front processing pilot for employment-based green card cases in light of the customer service and security related benefits of the DORA family-based green card pilot program.

3. Reengineering Green Card Replacement Processing (June 18, 2004)

(USCIS Response: December 17, 2004; Additional USCIS Response: April 27, 2006)

The Ombudsman recommended that USCIS create a one-step, up-front process for replacing green cards. The Ombudsman envisioned a process wherein applicants could visit local USCIS offices where USCIS would verify identities, confirm status, perform security

⁹⁰ See generally Ombudsman's 2005 Annual Report. Additionally, in an April 2006 response to recommendations by the Ombudsman, USCIS provided detailed information on the technology challenges that prevent the immigration service from obtaining this specific data. See also *supra* section II.B.

⁹¹ Second preference employment-based applicants are members of the professions holding advanced degrees or their equivalent and who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit the economic, cultural, or educational interests of the United States. See 8 U.S.C. § 1153(b)(2).

checks, and render preliminary decisions. Qualified applicants would receive their green cards within a few days.

As discussed in the Ombudsman's 2005 Annual Report (at p. 27), in March 2004, the Los Angeles District Office began testing alternatives to the traditional green card replacement or renewal processes. In June 2005, USCIS nationally instituted a process requiring individuals to send their Applications to Replace Permanent Resident Card (Form I-90) to the Los Angeles Lockbox. Under the new process, applicants are scheduled to appear at an ASC to provide biometric information that initiates background and security checks. If no derogatory information is uncovered, the ASC orders a new card.⁹² At that point, a card is produced and mailed. If questions arise (such as indications of criminal records), applications are referred to field offices for more comprehensive reviews, which usually result in a check of the A-file and an interview by an immigration officer.

The Ombudsman commends USCIS for moving forward on a process that better utilizes technology and standardization. At the same time, the Ombudsman continues to hear complaints about the I-90 process from customers and USCIS employees.

One complaint regularly heard involves receipt notices that the Los Angeles Lockbox mails to applicants. In many instances, applicants either do not receive these notices or receive them several weeks after filing their applications. These time delays can cause serious difficulties for applicants who need the receipts to prove that they filed an I-90.

Compounding the receipt notice delays are apparent decisions by some field offices to withhold ADIT (Alien Documentation, Identification, and Telecommunications System) stamps. ADIT stamps serve as temporary evidence of an individual's green card status. Traditionally, these stamps are placed in passports or on I-94 Arrival-Departure Records so that individuals can travel and work while their green cards are produced. Following an attempt to discontinue the issuance of ADIT stamps, USCIS announced on October 21, 2004 that it would continue issuing ADIT stamps at the same time that it would ". . . aggressively pursue technological improvements to allow the prompt issuing of permanent resident alien cards without the need to issue these stamps."⁹³ Despite this statement, the Ombudsman has learned that some offices now refuse to issue ADIT stamps, believing that the new I-90 processes will deliver green cards within days of the filing of an application. While USCIS has made improvements in card production and delivery processes, the Ombudsman still hears complaints from customers and USCIS employees who confirm the same types of issues. Therefore, the Ombudsman urges USCIS to continue the issuance of ADIT stamps until those problems have been resolved.

In addition to card delivery problems, USCIS employees note that many applicants complain about card production errors. Errors occur most often when several members of a family apply for replacement cards at the same time. Frequently, photos of family members are mismatched with biographic information of another person. For instance, a husband's photo will be on a card with his wife's name and date of birth, and vice versa. In other cases, several cards

⁹² For a discussion of problems associated with card delivery, please see section II.L.

⁹³ USCIS Statement, October 21, 2004; http://www.uscis.gov/graphics/publicaffairs/newsrels/adit_10_21_04.pdf.

bear the same A-number, even though they relate to different applicants. Such errors create confusion for applicants and can create serious problems when they travel or apply for further immigration benefits. It is unclear what specific steps USCIS has taken to address these concerns that are repeatedly raised by applicants and IIOs around the country, or if USCIS is addressing the problem systematically.

Another problem that compromises USCIS' ability to timely produce and deliver cards is that some ASCs do not have the capacity to process applicants as scheduled. Cards cannot be produced and mailed until collection of biometric data and completion of security checks. Added to the delay in card delivery are practical inconveniences experienced by applicants. Many applicants travel great distances and miss work or school to appear at an ASC. If the ASC is unable to accommodate them as scheduled, they must reschedule the appointment for another day, again travel what can be a great distance, and often miss yet another day of work or school.

The Ombudsman is encouraged by process changes that have saved resources and improved efficiency, but urges USCIS to correct the remaining problems when recognized. Much revenue and many resources are wasted when USCIS fails to immediately address systemic problems that result in avoidable repetitive errors.

The Ombudsman continues to believe that green card replacement and renewal processes can be further streamlined and points to up-front processing as a goal towards which to work. USCIS should conduct further analysis of the Lockbox program and implement additional process improvements to ensure timely, secure, and accurate service.

2005 REPORTING PERIOD

4. Fee Instructions (June 29, 2004)

(USCIS Response: December 17, 2004; Additional USCIS Responses: May 25, 2005 and April 27, 2006)

The fee amounts stated in printed instructions accompanying USCIS forms are often out-of-date. To correct this situation, the Ombudsman recommended that USCIS replace references to specific fees on agency forms with the following statement (or an equivalent): "A fee is required to process this action. Information on the current fee for this action is available on the Internet at www.uscis.gov and by telephone from the National Customer Service Center at (800) 375-5283. If the correct fee is not included, the action will not be accepted by USCIS."

As reported in the 2005 Annual Report (at p. 21), USCIS agreed with this recommendation and noted several helpful steps it has taken to keep the public informed, update fees, and reduce confusion caused by discrepancies in information about filing fees.⁹⁴ USCIS also reported last year that funding was approved to change the forms themselves and that modification of the forms was underway.

⁹⁴ USCIS noted in one of its responses to this recommendation that it would: (1) post forms on the USCIS website with the correct fees; (2) add a list of current filing fees with each set of form instructions to the website; and (3) send a list of current fees with any set of forms.

USICS noted in its April 2006 response that Forms Centers include lists of fees when they mail forms to customers and reaffirmed its December 2004 comment that it is considering “just-in-time” printing instead of bulk printing to ensure that forms are current. To the Ombudsman’s knowledge, USCIS has not yet implemented just-in-time printing. However, USCIS recently updated all forms available electronically with the correct fee information. Thus, an applicant who downloads from the USCIS website now will receive current filing fee information.

In addition, as a part of USCIS’ transformation initiative, the agency is considering replacing the numerous existing immigration forms with a smaller number of electronic forms. The Ombudsman looks forward to learning more about the initiative and timelines for implementation.

**5. Customer Service Training for USCIS Employees (August 16, 2004)
(USCIS Response: December 17, 2004; Additional USCIS Responses:
May 25, 2005 and April 27, 2006)**

The Ombudsman recommended that all USCIS employees who interact with immigration customers be required to receive formal training in customer service. As an interim measure, these employees should be required to complete the free customer service training courses available at the Government Online Learning Center.⁹⁵

USCIS agreed with this recommendation in the last reporting period, but has not fully implemented it. At that time, USCIS stated that the basic training program includes customer service training for all USCIS adjudication officers (four hours) and immigration information officers (eight hours). In addition, in October 2005, OCTD introduced EDvantage, a web-based, e-learning system. EDvantage offers all USCIS employees access to Skillsoft, an online library of more than 2,000 courses. Of these, 42 are categorized as customer service courses. The Ombudsman applauds these developments but formal training in customer service, beyond web-based learning, would substantially improve USCIS customer service. In May 2006, in response to a question on implementation of specific training programs, USCIS reiterated that no new programs are contemplated for this year. However, a new model, which incorporates a blended approach involving classroom training and computer-based training is currently in an R&D phase.

The Ombudsman recommends that USCIS go beyond this approach to ensure a training backup plan in the event the above-described project in the research and development phase is not implemented.⁹⁶ USCIS should consider aligning its training with the type of employee training provided in DHS’ human resources initiatives. It is critical that an agency responsible for processing over six million applications and overseeing an almost two billion dollar annual budget have continuous and appropriate training.

⁹⁵ See www.usalearning.gov/USALearning.

⁹⁶ See also *supra* section II.K.

6. E-filing (August 16, 2004)**(USCIS Response: December 17, 2004; Additional USCIS Responses: May 25, 2005 and April 27, 2006)**

To encourage customers to use USCIS' expanding e-filing capability, the Ombudsman recommended that USCIS establish a separate lower fee structure for e-filed applications and petitions.

USCIS agreed in principle with this recommendation in its December 2004 response. However, it has delayed providing such incentives until e-filed applications become less costly for the agency.

In a May 2005 response, USCIS indicated that an IT Transformation Strategy was under review with DHS, but USCIS did not provide a timeline for this IT strategy. USCIS continues to pursue an IT transformation, which would allow USCIS to shift from paper to electronic information processes and reap greater cost efficiencies from e-filing as well as improved customer service. However, the timeline for completing the IT transformation remains unclear more than one year later.

USCIS stated in its April 2006 response that implementation of this recommendation remains impractical and that it considers this recommendation closed. Given the basic agreement with this recommendation and because it has yet to be implemented, the Ombudsman does not agree with USCIS' determination that this recommendation is closed. Therefore, the Ombudsman recommends that USCIS reconsider this recommendation and provide additional specific reasons why this is an impractical solution to encourage more e-filed applications, or provide information on what steps it is taking to move towards this goal.

7. I-9 Storage (August 16, 2004)**(USCIS Response December 17, 2004)**

In keeping with current business practices, the Ombudsman recommended that employers be authorized to store Employment Eligibility Verifications (Form I-9s) electronically, in addition to the formats currently authorized, *i.e.*, original form, photocopy, microfilm, and microfiche.

USCIS agreed with this recommendation but noted that ICE has primary jurisdiction over employment eligibility verification issues. On October 30, 2004, the President signed into law H.R. 4306 (Pub. L. No. 108-390), which required the same change as recommended by the Ombudsman. ICE made public guidance for electronic storage and retention of Forms I-9 on April 26, 2005. On June 15, 2006, ICE published an interim rule permitting employers to retain electronic file copies of the Form I-9 and provided standards for doing so.⁹⁷ The rule is subject to change via the public comment process ending August 14, 2006.

⁹⁷ See 71 Fed. Reg. 34510 (June 15, 2006).

8. Premium Processing (September 27, 2004)

(USCIS Response: December 17, 2004; Additional USCIS Responses: May 25, 2005, December 27, 2005, and April 27, 2006)

The Ombudsman recommended that premium processing be made available to certain employment-based change-of-status applications (Form I-539).⁹⁸ At the time of this recommendation, the nonimmigrant worker petition (Form I-129) was the only petition eligible for premium processing. The purpose of the Ombudsman's original recommendation was to ensure that family members were not negatively impacted by the failure to allow them to benefit from I-129 premium processing when their applications were filed separately. It was a family reunification recommendation, not a means to apply premium processing to a range of processes.

USCIS stated in its December 2004 response that it agreed with the recommendation and was examining the feasibility, policy implications, and statutory authority related to the expansion of premium processing to employment-based and other cases.

Premium processing is a temporary solution to lengthy adjudications and there should be no need for premium processing if the adjudications process can be shortened. Customer use of premium processing should not be the standard, but the exception. Regular processing should offer an acceptable level of service for the vast majority of customers and thereby obviate the need for premium processing in all but emergent circumstances. Thus, any expansion of premium processing without a concurrent effort to streamline regular processing appears to be for the purposes of expanding revenue collection to cover other USCIS costs.

USCIS stated in April 2006 that Congress gave USCIS statutory authority to recover the full costs of its operations through its immigration benefit application and petition fees:

Thus, USCIS has little incentive to continue to rely on premium revenues, or any other fee revenue source in particular, as it fully intends to adjust its fee structure to cover its normal operating costs of base operations in its fee review in accordance with [f]ederal fee guidelines, freeing any premium processing revenues for investments in modernization initiatives.

This argument seems sound, but is problematic. The Ombudsman agrees that fees can and should be adjusted to cover actual costs. However, fees – including for premium processing – seem arbitrarily determined. At the very least, fees collected should be transparently applied to activities that visibly and directly benefit the applicant.

⁹⁸ See *supra* section III.D for a definition and discussion of premium processing.

9. Standardized Forms (October 6, 2004)**(USCIS Response: December 17, 2004; Additional USCIS Responses: May 25, 2005 and April 27, 2006)**

The Ombudsman recommended that USCIS provide customers with a standard forms package for each petition or application type. At the time of the recommendation, the forms and information available to customers varied significantly depending on the USCIS field office. For example, the Eastern Forms Center maintained 37 different forms packages, depending on the district office or sub-office, for family-based green card applications.

USCIS stated in its December 2004 response that it agrees with the intent of this recommendation and believes that using the centralized Lockbox filing procedures will result in fewer variations. All family-sponsored green card applications are now centrally filed. Similarly, applications for replacement of lost, stolen, or expired green cards (Form I-90) are standardized and must be filed with the Los Angeles Lockbox facility.

USCIS again agreed with the recommendation in its April 2006 response and further stated that “where applications are received at one location, standardization has been accomplished.” The Ombudsman believes strongly that forms must be standardized as a part of overall USCIS processing and adjudications not only within a particular field office but across all USCIS locations and facilities.

10. Naturalization for Survivors of Domestic Violence (October 6, 2004)**(USCIS Response: December 17, 2004; Additional USCIS Response: April 27, 2006)**

The Ombudsman recommended that USCIS correct a Naturalization Policy Memorandum to fully comply with section 319(a) of the Immigration and Naturalization Act, as amended by the Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA). The VTVPA allows certain survivors of domestic violence to become naturalized citizens after residing in the United States for three years, rather than the usual five, as a green card holder. An October 15, 2002 USCIS policy memorandum mistakenly excluded one of the three categories of individuals eligible to naturalize under this provision – conditional residents who gained green card status by approval of Form I-751 with a waiver of the usual joint filing requirement due to battery or subjection to extreme mental cruelty by a spouse.

USCIS agreed with this recommendation. The new memorandum was distributed to USCIS components on January 17, 2006 and, on April 17, 2006, a memorandum was posted on the USCIS website entitled “Clarification of Classes of Applicants Eligible for Naturalization under section 319(1) of the INA, as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386.”⁹⁹

⁹⁹ See <http://www.uscis.gov/graphics/lawsregs/handbook/Sec319a012705.pdf>.

11. INFOPASS Recommendation (November 29, 2004)**(USCIS Response: December 17, 2004; Additional USCIS Responses: May 25, 2005 and April 27, 2006)**

INFOPASS is an online appointment scheduler that enables customers to make appointments at USCIS field offices thereby reducing the public's need to queue up outside USCIS facilities to talk with an immigration officer. To ensure equitable access, the Ombudsman recommended that USCIS issue national policy guidance on INFOPASS such that: (1) all districts should make available as many INFOPASS appointments as possible; (2) each district office should either reserve time for walk-in appointments or implement clear procedures for same-day appointments for emergent circumstances as defined by USCIS Headquarters; and (3) each district office should have a kiosk or computer available for customers to make appointments online or, if not possible, should distribute compile a list of organizations that help customers make appointments.

As reported in the 2005 Annual Report (at p. 23-24), USCIS agreed with this recommendation and: (1) reported that most offices could see customers within two weeks; (2) reported that field offices were provided with written guidance on reserving appointment slots for individuals with emergencies; (3) noted that its customer service strategy also included updates to its website and public access through the NCSC; and (4) planned to install kiosks or computers on-site at a limited number of USCIS field offices so that customers can schedule INFOPASS appointments.

The Ombudsman still hears complaints from customers and stakeholders that appointments are not available through the INFOPASS system in some jurisdictions. USCIS stated in an April 2006 response that kiosks have been developed and USCIS established a contract vehicle for offices to procure them. The Ombudsman notes from visits to field offices that USCIS has made limited progress and needs to move more expeditiously to provide this important service.

12. Lockbox Recommendation (November 29, 2004)**(USCIS Response: December 17, 2004; Additional USCIS Responses: May 25, 2005 and April 27, 2006)**

At the Chicago Lockbox, a contractor provides centralized imaging of documents and petitions, fee collection and fee processing, and systems development for certain applications and payments to USCIS. In 2004, the Ombudsman recommended that USCIS terminate the Chicago Lockbox arrangement when the Memorandum of Understanding (MOU) with the U.S. Department of Treasury expired on September 30, 2005 because the Lockbox resulted in: (1) tracking and management difficulties due to inefficient shipment of files between USCIS offices; (2) inefficient processing resulting in delayed issuance of receipts to customers; and (3) incorrect rejection of valid filings because of inadequate guidance and oversight.

As reported in last year's Annual Report (at p. 24), USCIS disagreed with this recommendation. USCIS noted that it adopted a business strategy to centralize processing. USCIS distinguishes between its core business of adjudicating benefit applications from non-

adjudicatory clerical tasks (such as managing receipts associated with those applications), which may be delegated to non-government employees. USCIS attributed many problems identified by the Ombudsman to start-up challenges. However, the Ombudsman remains concerned about many facets of the Lockbox operations.

**13. Issuance of Green Cards to Arriving Immigrants (December 15, 2004)
(USCIS Response: May 25, 2005; Additional USCIS Response:
April 27, 2006)**

To take advantage of new technology, the Ombudsman forwarded the following recommendations on the issuance of green cards to arriving immigrants: (1) revise its processing procedures for the short term to electronically verify lost visa cases; and (2) for the long term, USCIS should enter into a MOU with the DOS to provide for the electronic transfers of immigrant visa packages between overseas posts, USCIS, and CBP such that automatic production of green cards would begin upon CBP inspection and admission of arriving immigrants.

USCIS agreed with both the short and long term recommendations. It acknowledged that outdated procedures in a 1997 memorandum should be replaced. USCIS is currently working with DOS to ensure that information in relevant databases is accessible to the other agency and to develop the necessary MOUs to govern the electronic sharing of information. As of last year's Annual Report, USCIS had not provided a timeline to complete discussions with DOS. As of this writing the Ombudsman is not aware of any MOU with either DOS or CBP, as recommended. Additionally, in an April 2006 response, USCIS stated that it began issuing Certificates of Citizenship to IR-3 applicants (adopted children of U.S. citizens) and that it is working with service and enforcement components of DHS and DOS to develop the ability to transfer information electronically.

Although most aspects of this recommendation have not been implemented, USCIS considers it closed. The Ombudsman recommends that USCIS provide details on its ongoing efforts to resolve the underlying problems.

**14. Pilot Program Termination (February 25, 2005)
(USCIS Response: May 25, 2005; Additional USCIS Response:
April 27, 2006)**

For USCIS pilot programs directly affecting customer service, the Ombudsman recommended that USCIS either: (1) publish public notice at the onset of the program of when it will begin and end; or (2) provide 30-day notice before terminating a pilot program. In either case, the Ombudsman recommended that USCIS publish specific information on the handling of cases affected by the program after conclusion of the pilot.

USCIS generally agreed with this recommendation, as reported in the 2005 Report (at p. 25). USCIS stated its intention to provide public notice regarding initiation and termination of pilot programs, using either the Federal Register or a press release, if benefits processing is affected and no law enforcement considerations exist that would be negatively affected by such notices.

The Ombudsman remains concerned that USCIS often does not provide adequate notice to customers regarding policy changes. For example, the Ombudsman received several complaints about the lack of sufficient advance public notification or explanation of USCIS' new bi-specialization program this year.¹⁰⁰ While USCIS considers the recommendation closed, the Ombudsman is following the notice issue in conjunction with new policies and procedures.

**15. Issuance of Receipts to Petitioners and Applicants (May 9, 2005)
(USCIS Response: May 25, 2005; Additional USCIS Response:
April 27, 2006)**

The Ombudsman recommended that USCIS correct apparent failures to perform by the Department of Treasury and its Chicago Lockbox contractor for its inability to issue timely receipts to petitioners and applicants.

As reported in the Ombudsman's 2005 Annual Report (at pp. 25-26), USCIS disagreed with this recommendation and attributed problems observed at the Chicago Lockbox to a surge in filings for Temporary Protected Status. In USCIS' view, surges are not uncommon and the backlog did not represent a failure to perform by the Department of Treasury or the contractor. USCIS reported that an operational plan for surges in volume was in place and implemented, and that Department of Treasury procedures allowed for an alternative, mutually agreed upon processing time for deposits under such circumstances. USCIS stated that the backlog observed in March 2005 now is eliminated.

The Ombudsman remains concerned with the Lockbox process and associated delays. In addition, access to the Chicago and Los Angeles Lockbox facilities is so limited as to prevent senior USCIS management from seeing them. The Ombudsman also has experienced similar accessibility issues with these facilities.

¹⁰⁰ In a March 24, 2006 News Release, USCIS announced that starting on April 1, 2006, employers filing a Petition for a Non-immigrant Worker (Form I-129) should mail that form directly to the Vermont Service Center, and employers filing an Immigrant Petition for an Alien Worker (Form I-140) should mail it directly to the Nebraska Service Center. This "bi-specialized adjudication" initiative represents a fundamental change in the location for filings and adjudications. Specifically, just two of the four service centers will process certain applications rather than a service center receiving an application based upon regional jurisdiction.

The California and Vermont Service Centers will process I-129s and related dependent applications, while the Nebraska and Texas Service Centers will process the I-140s and related permanent resident applications. According to the release, pairing work between service centers will allow USCIS to better manage cases and improve customer service. See http://www.uscis.gov/graphics/publicaffairs/newsrels/BiSpecPh01_24Mar06PR.pdf.

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16. I-131 Refugee Travel Document (June 10, 2005)

(USCIS Response: December 27, 2005; Additional USCIS Response: April 27, 2006)

The Ombudsman recommended that USCIS: (1) revise its regulation, 8 C.F.R. § 223.3(a)(2), to extend the period of validity of refugee travel documents from one year to ten years; and (2) establish a policy of adjudicating I-131 applications for refugee travel documents and reentry permits within six weeks, the same amount of time it takes a U.S. citizen to acquire a passport.¹⁰¹

Extending the validity period for refugee travel documents to ten years is consistent with policies concerning similar documents, alleviates the burden and cost imposed on applicants who apply for multiple refugee travel documents prior to becoming green card holders and citizens, and significantly decreases the number of I-131 applications processed.

USCIS did not agree with this recommendation. In a December 2005 response, USCIS provided two reasons for not adopting this recommendation: (1) “asylum and refugee status are limited to one year, at the end of which the individual must apply for adjustment of status to permanent residence”; and (2) the “REAL ID Act’s removal of [the yearly 10,000] numerical limitation on [asylee adjustment of status] obviates the need for multi-year travel documents.” However, USCIS’ assertion that asylum status is limited to one year and that asylees must apply for a green card is incorrect. Individuals in refugee status are “required to apply [for adjustment] one year after entry,” but asylees “may be adjusted” if they apply one year after asylum is granted.¹⁰² Consequently, USCIS grants asylum indefinitely, with no expiration date specified.

The elimination of the yearly cap on asylee adjustments may obviate the need for multi-year refugee travel documents in many cases. However, USCIS customers will continue to need multi-year travel documents if USCIS is unable to timely process applications, or if asylees choose not to apply for a green card as soon as possible for any number of reasons, such as financial concerns. Furthermore, asylees and refugees can and often do apply for refugee travel documents even after they are granted green cards to avoid possible delays when re-entering the United States.¹⁰³ Thus, extending the validity period for refugee travel documents, particularly for asylees, remains useful.

USCIS agreed that “timely processing is critical when it comes to travel documents” and stated that it had established an internal average processing time goal of two months for I-131 applications. The agency expressed the desire to further reduce the processing time, but noted that this would not be immediately possible due to backlog elimination in other areas. In an

¹⁰¹ Refugee travel documents are issued to individuals holding valid refugee or asylee status, or to lawful permanent residents who received such status as a direct result of their refugee or asylee status. This benefit is comparable to the benefit sought by U.S. citizens who apply for a passport.

¹⁰² See 8 C.F.R. § 209.1 and 209.2.

¹⁰³ See 8 C.F.R. § 223.2(b)(2)(i).

April 2006 response, USCIS stated that, as part of its transformation initiative, it hopes to let customers choose between service level options because “no matter how fast the average, some customers need expedited service.” USCIS noted that it considers this recommendation closed, despite the pending outstanding issues discussed above.

17. Elimination of Postal Meter Mark (July 29, 2005)

(USCIS Response: December 27, 2005; Additional USCIS Response: April 27, 2006)

The Ombudsman recommended eliminating the postal meter mark “Return Service Requested” on USCIS envelopes. Doing so would allow the U.S. Post Office to forward USCIS correspondence to applicants and petitioners. Failure to forward USCIS correspondence adversely impacts customers and USCIS as it causes unnecessary and excessive delays, and burdens the system and processes.

Customers often miss appointments, interviews, and hearing dates; fail to receive approval and receipt notices; and may not obtain incomplete applications that are returned or blank immigration forms. Petitions or applications sometimes are closed prematurely because the USCIS office did not receive timely responses to USCIS letters sent to old addresses and not forwarded. Applicants often know something is wrong only because they have not received correspondence from USCIS for a prolonged period. To re-open a case, applicants re-file their petitions or applications or file a Motion to Reopen, which requires another payment. In effect, the applicant pays twice for the same service. USCIS procedures do not automatically update petitions and applications with address changes, despite the filing of a notice to change an address with Form AR-11.¹⁰⁴ Although an AR-11 is required, USCIS relies on the information in the original application or petition and other change of address mechanisms to send notices and other correspondence to applicants. In fact, USCIS forms do not contain instructions for updating addresses and, as cases can be pending for several years, this omission causes problems. The cost, time, and effort for employers and individuals, due to this USCIS policy, are considerable.

USCIS agreed with the need to standardize the way it processes mail. In a December 2005 response, USCIS stated that it formed a working group to discuss when it would be appropriate to request return service and when to allow forwarding of mail. In an April 2006 response, USCIS stated that once these issues are resolved, guidance will be distributed to field offices.

In response to the Ombudsman’s recent questions as to whether USCIS replaced 100 percent of the “Return Service Requested” postal meter marks, USCIS stated on May 19, 2006:

We are still in the process of replacing the postage meters. The decision regarding whether or not to retain the “Do not forward” stamp on the mail has not been made. USCIS has a working group looking into the issue. We are looking at whether or not the USPS

¹⁰⁴ See *infra* section V.28.

can forward the mail and then send a change of address notice to us so that we have the information. However, there are some documents that we may not want forwarded under any circumstance. Once the discussion has been completed and a decision made, we will notify the [Ombudsman].

The continued cost of not implementing this simple recommendation is of great concern.

18. Public Reporting for Capped Categories (August 28, 2005)

(USCIS Response: December 27, 2005; Additional USCIS Response: April 27, 2006)

In August 2005, the Ombudsman recommended that USCIS publish monthly the number of nonimmigrant visas issued against the annual numerical limitation on H-1B and H-2B visas, including exempted classes that are capped, and to publish more frequently when the numerical cap is projected to be reached in one month.

The Ombudsman commends USCIS for implementing this recommendation in 2005. However, recent issues surrounding H-1B cap reporting are of concern and the Ombudsman looks forward to working with USCIS to resolve identified issues in the coming weeks.

USCIS should continue to report on H-1B cap usage throughout the year, but do so with greater care and accuracy, and should publish data on the same day each week/month, if possible, to assist employers and individuals.

19. Elimination of Asylum Pickup Decision Delivery Process (October 13, 2005)

(USCIS Response: December 12, 2005; Additional USCIS Response: April 27, 2006)

In October 2005, the Ombudsman recommended that all asylum decisions, whether referrals to the immigration judge or conditional/final grants, should be sent certified return receipt or regular mail via the U.S. Postal Service to all asylum applicants. This would eliminate the existing process that requires decisions to be picked up. It establishes a single process for the delivery of notices for all cases.

Different processes to deliver notices of decisions may be logical for different decision types. However, this is not the current situation. The only difference between requiring asylum applicants to pick up the decision or sending them the notice is geographic distance from the asylum office. Applicants within a certain radius must personally appear to receive their decision. Those outside the radius receive their decision, including any applicable charging documents, by mail. USCIS efficiency is served best by establishing standardized and uniform processes where possible.

In December 2005, USCIS stated that it disagreed with the recommendation for several reasons: (1) requiring an applicant to come into the office to pick up his/her decision helps to ensure the security and integrity of the immigration system and promotes customer service and

efficiency; (2) the current process reduces litigation over sufficiency of service of decisions; and (3) in-person pick-up allows asylum offices to conduct required security checks and take necessary follow-up action. According to USCIS, in-person service ensures that decisions are completed in a timely manner and provides several additional customer service benefits, including immediate issuance of EADs to applicants granted asylum.

USCIS considers this recommendation closed. However, USCIS' justification for personal service does not hold for cases where the asylum interview is accomplished at a circuit-ride location. For example, an asylum applicant residing in Sanford, FL (approximately 255 miles from the Miami Asylum Office) must attend the interview in Miami and travel back to Miami for the decision. However, if that applicant lived in Palm Coast, FL (approximately 280 miles from the Miami Asylum Office) the applicant would be interviewed at the detail site in Jacksonville, (approximately 55 miles away) and would receive the case decision, including an NTA at Immigration Court, if appropriate, by mail because this is a circuit-ride case. Thus, convenience to the government in this case appears to outweigh the inconvenience to the applicant. The Ombudsman recommends that USCIS reexamine this recommendation.

**20. Administrative Appeals Office Recommendation (December 7, 2005)
(USCIS Response: April 27, 2006)**

The Ombudsman recommended that USCIS make available to the public, through publication of a regulation or another mechanism, the appellate standard of review employed at the Administrative Appeals Office (AAO), the process by which cases are deemed precedent decisions, the criteria for selecting cases oral argument, and the statistics on decision-making by the AAO. The AAO has administrative appellate jurisdiction over approximately 55 petition and application types filed with USCIS. Stakeholders raised concerns with the Ombudsman regarding AAO procedures, standards, and how AAO decisions help ensure that like cases are decided in a like manner.

USCIS generally agreed with this recommendation except for one item regarding the internal guidelines for deliberations regarding precedent decisions. The Ombudsman urges USCIS to proceed expeditiously with the rulemaking to implement the accepted provisions of this recommendation.

**21. Asylum Division Use of Notice of Action Form I-797 (December 7, 2005)
(USCIS Response: December 27, 2005; Additional USCIS Responses: March 17, 2006 and April 27, 2006)**

The Ombudsman recommended that the Asylum Division utilize the automated and standardized USCIS Notice of Action Form (I-797) that includes Form I-94 for asylum approval notifications. USCIS currently informs other applicants regarding approvals on other applications/petitions with automated notices used system-wide. This effective process should be implemented within the Asylum Division so that the eight asylum offices utilize the automated I-797 for approval notification and Form I-94 issuance/update. The use of separate approval notification systems and Form I-94 processes/documents at different USCIS operations is counterproductive, confusing, and increases the likelihood for fraud.

USCIS agreed with the recommendation in March 2006. However, it stated that implementation will take time and should be coordinated with the ongoing transformation initiative. Despite agreement on this recommendation and the need for implementation, USCIS stated in an April 2006 response that it considers this recommendation closed. The Ombudsman looks forward to receiving updates on an implementation timeline for this recommendation from USCIS.

22. Notices to Appear (March 19, 2006)
(USCIS Response: April 27, 2006)

The Ombudsman recommended that USCIS standardize its policy on issuing Notices to Appear (NTAs), a summons to appear before an Immigration Judge. The recommendation provided that NTAs be issued and filed with the Immigration Court in all cases where applicants are out of status because their applications for green cards were denied. USCIS has jurisdiction to consider green card applications for aliens who are not in removal proceedings, while EOIR has jurisdiction to consider adjustment applications filed while an individual is in removal proceedings.¹⁰⁵ Current regulations establish no less than 24 categories of federal officer who may issue and file NTAs.¹⁰⁶ Policies and procedures in place before the breakup of INS still grant these immigration officers the discretion not to issue NTAs.

USCIS has indicated that it does not have the resources to issue NTAs in every case where a green card application is denied. Moreover, it is expected that the Immigration Court would not have the ability to process the volume of removal cases that would result. On the other hand, USCIS would receive fewer fraudulent filings if USCIS standardized NTA issuance policy and, as a result, fewer cases would come before USCIS and EOIR.

USCIS disagreed with this recommendation. USCIS stated that there will be a number of cases where it will decide not to issue an NTA upon finding that to do so would be against the public interest or contrary to humanitarian concerns. USCIS asserted that in other situations it would be logistically inappropriate to issue an NTA, *e.g.*, where a green card application is denied because it was filed prior to when the preference category priority date became current. In addition, in the national security context, USCIS noted that issuance of an NTA involves several layers of agency review, which make it impracticable to issue an NTA before the applicant leaves the USCIS after an interview.

The Ombudsman appreciates and agrees with the concerns raised by USCIS. The recommendation does not contemplate that USCIS would not provide for exceptions, as USCIS suggests. Instead, it was intended to address the many thousands of applicants who either deserve or seek to have an NTA issued and do not receive one because the agency has indicated it does not have sufficient staffing to accomplish this task. As a result, these individuals not only remain in the United States without status, but the problem of unscrupulous applicants re-filing green card applications perpetuated, which would not happen if the NTA were issued.

¹⁰⁵ See 8 C.F.R. § 245.2(a).

¹⁰⁶ See 8 C.F.R. § 239.1.

23. Military Naturalization (March 19, 2006)
(USCIS Response: April 27, 2006)

As part of general background and security procedures, and to help establish good moral character, USCIS requires naturalization applicants to be fingerprinted. For active duty U.S. military personnel, fingerprinting requirements can create a hardship, particularly for those assigned to a combat zone or about to be deployed into such a situation. Therefore, for U.S. military personnel applying for naturalization, the Ombudsman recommended that USCIS eliminate fingerprint requirements.

USCIS agreed with the Ombudsman's intent to improve the fingerprint process for military naturalization applicants, but does not concur with waiving the fingerprint-based criminal history check at this time. The agency recognizes the special needs of military personnel and, together with the military, FBI, and Office of Personnel Management, USCIS is developing a fingerprint process that will eliminate the need for soldiers to appear for fingerprint appointments. Over time, USCIS envisions automatically receiving fingerprints from the military at the time of enlistment.

In an April 2006 response, USCIS deemed this recommendation closed. Given that USCIS agreed with the intent of the recommendation, the Ombudsman looks forward to working with USCIS to find an appropriate way to facilitate the naturalization application process for active duty U.S. military personnel.

24. Asylum Adjudication (March 19, 2006)
(USCIS Response: April 27, 2006)

The Ombudsman recommended that USCIS limit its adjudication of I-589 applications for asylum and withholding of removal to those submitted by individuals in valid nonimmigrant status. The recommended procedure adheres to the appropriate roles/responsibilities from the breakup of INS into USCIS, CBP, and ICE. When USCIS adjudicates an out-of-status/non-status applicant, it is technically conducting an enforcement activity that is within the purview of ICE and EOIR, not USCIS.¹⁰⁷

In 2004, USCIS received 32,682 asylum applications.¹⁰⁸ In the same year, the Asylum Division adjudicated 31,582 asylum cases and approved 10,101 of those cases (approximately 32 percent).¹⁰⁹ The remaining 68 percent of the cases were denied or referred to an Immigration Judge. Individuals with no basis for asylum can abuse the process to delay or prevent their removal from the United States. Due to the unfunded mandate problem described in section II.G above, the asylum issue concerns all individuals and employers whose payment of fees for other services funds asylum adjudication.

¹⁰⁷ See 8 U.S.C §§ 1227(a)(1) and 1229a(a)(1).

¹⁰⁸ See 2004 Yearbook of Immigration Statistics, at 51;
<http://www.uscis.gov/graphics/shared/statistics/yearbook/Yearbook2004.pdf>.

¹⁰⁹ See *id.* (The Ombudsman calculated this approximate percentage based upon the asylum cases adjudicated and approved).

The current affirmative asylum process: (1) encourages disregard of the law; (2) results in absolving immigration violations; and (3) promotes abuse of process.¹¹⁰ For example, an individual who has overstayed a visa for nine months may file for affirmative asylum within the one year filing deadline and thereby delay departure from the United States for several months.¹¹¹ Processing delays of more than 150 days will allow the applicant to receive an EAD as the case works its way through Immigration Court proceedings, appeals before the Board of Immigration Appeals, and any federal Circuit Court of Appeals.¹¹²

At times, attorneys want to have out-of-status clients or individuals who enter the United States without inspection or through fraud to appear before an Immigration Judge. This is required because relief from removal (such as a court order for Cancellation of Removal) is only available in Immigration Court. However, before appearing at Immigration Court, an individual must receive an NTA issued by an authorized government official. One way of obtaining an NTA is to apply for asylum with an expectation that USCIS will deny or refer it. This is a common practice and exists primarily because of agencies' reluctance to issue an NTA when the perceived result is a grant of relief from removal. USCIS must expend resources to receive the applications, establish files for individuals, conduct appropriate security checks, schedule interviews, research cases, formulate decisions (always a referral), prepare NTA and other documents, file cases with the Immigration Court, present/serve NTA, and transfer case files to the ICE office that represents the government in Immigration Court. This constitutes an expensive use of USCIS resources when the individual's goal is to appear before the Immigration Court.

USCIS stated in April 2006 that the recommendation requires careful consideration, research and discussion with the communities that would be affected. Therefore, USCIS is soliciting input from stakeholders that would be significantly impacted if the recommendation were to be adopted, including the EOIR, ICE office of the Principal Legal Counsel, non-governmental organizations, and the advocacy community. In addition, USCIS is soliciting input from the United Nations High Commissioner for Refugees and the U.S. Commission on International Religious Freedom. The Ombudsman commends USCIS' initiative to solicit input on this recommendation and encourages USCIS to take that approach for all of the Ombudsman's recommendations. Since submitting this recommendation, the Ombudsman has received letters both opposing and supporting it.

¹¹⁰ The affirmative asylum process consists of filing an application for asylum (Form I-589) with one of eight USCIS asylum offices. The application is adjudicated and decided (grant, denial, or referral) by a USCIS asylum officer, not an Immigration Judge (Executive Office of Immigration Review (EOIR)).

¹¹¹ See 8 U.S.C. § 1158 (a)(2)(B)-(D).

¹¹² See 8 C.F.R. § 274a.12(c)(8)(i).

25. Employment Authorization Documents (EADs) (March 19, 2006)
(USCIS Response: April 27, 2006)

In March 2006, the Ombudsman recommended that USCIS begin issuing multi-year EADs. Previously, on July 30, 2004, USCIS published an interim rule providing for issuance of multi-year EADs, but it was not implemented.

The recommendation also called on USCIS to issue EADs valid as of the date any previous issuance expires and amend the regulations so that K-1 nonimmigrants are not subject to breaks in employment authorization.

In April 2006, noting that the issues addressed in the recommendation impact many program areas and are critical to customers, USCIS stated that it “is carefully considering the recommendations made by the Ombudsman,” and has “put together a working group to look at each issue” before writing a formal response.

26. DNA Testing (April 12, 2006)

The Ombudsman recommended that USCIS: (1) accept DNA test results as secondary evidence of family relationship; (2) grant authority to directors to require DNA testing; and (3) initiate a DNA testing pilot project to study the impact of requiring DNA testing as evidence of family relationship. In conjunction with this recommendation, the Ombudsman provided USCIS with proposed regulatory revisions.

DNA test results are listed as neither primary nor secondary evidence of family relationship in USCIS regulations and forms, and customers face obstacles in providing DNA test results as initial evidence of family relationship. USCIS relies almost exclusively on documentary evidence and customer interviews to verify the legitimacy of claimed family relationships. The result is a resource-intensive and time-consuming process; a process in which all customers, honest or not, are subject to scrutiny and suspicion; and a process, despite the concerted effort and considerable skill of adjudicators, which is prone to error. Although USCIS directors have the regulatory authority to require less reliable blood tests of customers, current USCIS policy states that DNA testing is voluntary and only to be suggested to customers when other evidence is inconclusive.

In April 2006, USCIS stated that it will respond to this recommendation after studying the legal and operational impact of this recommendation.

27. Up-front Processing (May 19, 2006)

Please see section IV for a detailed discussion of the recommendation on up-front processing.

28. Address Change (Form AR-11) (June 9, 2006)

In June 2006,¹¹³ the Ombudsman recommended USCIS proceed immediately with plans to supplement current change-of-address procedures with an online process. This

¹¹³ The Ombudsman submitted the draft recommendation to USCIS in May 2006, during the reporting period, and finalized it in early June.

recommendation, if implemented, would improve customer satisfaction and confidence with the process, while improving USCIS efficiency and enhancing data accuracy.

Currently, USCIS requires customers to file Form AR-11, Alien's Change of Address Card, to comply with the statutory requirement to report any change of address within ten days.¹¹⁴ No receipt is provided to the customer to indicate the AR-11 has been received and/or processed by USCIS, despite the fact that the customer can be held criminally liable and removed from the United States for failing to file the AR-11.¹¹⁵ Many USCIS customers presume that by filing Form AR-11 and complying with the statutory requirement, they are updating their address in all records retained by USCIS. However, USCIS does not use Form AR-11 to update customer addresses in its immigration benefits databases. As a result, customers must notify individual USCIS offices separately. However, no language on Form AR-11, or in the accompanying USCIS website instructions, informs customers of the need to provide such separate notification.

A September 2005, DHS IG Report discussed problems relating to applicants who change addresses after applying for benefits.¹¹⁶ The report notes that this problem impacts customers, who lose a place in line and with it a chance at earlier benefits, and USCIS employees, who waste time determining why applicants did not show up for interviews. Similar to the Ombudsman's recommendation, the IG Report observed that change of address issues can be resolved by USCIS transitioning from paper-based processes to modern electronic, person-centric, integrated systems.

Earlier this year, USCIS stated its agreement in principle with this recommendation and informed the Ombudsman that it was developing an online change-of-address procedure that would effectively resolve the problems identified. The Ombudsman commends USCIS for its initiative to resolve customer concerns with the current process, but also observes that USCIS has yet to implement an online change-of-address procedure.

ANTICIPATED RECOMMENDATIONS

The Ombudsman is considering many recommendations to address other problems identified. For example, these include: (1) processing of Freedom of Information Act requests; (2) "O" visa extension of stay issues¹¹⁷; (3) improvement of quality assurance process; (4) foreign spouses of U.S. citizens' sponsorship issues related to the I-130 and the I-129F; (5) I-601 waiver of ineligibility issues; and (6) N-648 medical waiver for naturalization applicants.

¹¹⁴ See 8 U.S.C. § 1305.

¹¹⁵ See 8 U.S.C. § 1306(b).

¹¹⁶ See DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," at 18-19.

¹¹⁷ Individuals of extraordinary ability in the sciences, arts, education, business, or athletics can apply for "O" visas.

VI. LOCAL OMBUDSMAN PILOT PROGRAM

The Homeland Security Act of 2002 states that the Ombudsman shall have the responsibility and authority to appoint local ombudsmen and make available at least one local ombudsman per state.¹¹⁸ In preparing to exercise this responsibility and authority, the Ombudsman initiated a pilot program to design and develop a local ombudsman office.

The Local Ombudsman Pilot Program commenced in May 2005 and was completed in November 2005. It created model operations for local ombudsman offices or field offices. The program met its goals by establishing personnel and support requirements, determining liaison responsibilities and limitations, and creating quality assurance standards and program objectives.

The pilot program also developed cost models to identify personnel, facilities, and operating costs for local ombudsman offices in various locations across the country. The pilot estimated that average establishment and annual operating costs of a single, local ombudsman's office was \$556,000. It would cost an estimated \$27.8 million to place and operate one such office in each state, in addition to the cost of operating the Ombudsman's Headquarters Office in Washington, D.C.

The issue of creating local offices will be reviewed further, but there are no budget requests for establishing such offices in FY 07. Instead, the Ombudsman is developing a "Virtual Access Ombudsman Office" to make such services available via the Internet. In addition, current FY 07 budget increases will provide additional travel funds which will enable personal contact by office representatives based in Washington, D.C., visiting various locations on a circuit-ride basis. This will enable the Ombudsman to objectively identify areas to visit based on problems presented by individuals and employers in dealing with USCIS. It will provide an efficient method of providing government services by limiting infrastructure and personnel costs and using advancements in communication.

VII. CASE PROBLEMS

By statute, the Ombudsman receives and processes case problems to assist individuals and employers who experience problems with USCIS.¹¹⁹ During the reporting period, the Ombudsman committed considerable time, resources, and attention to the case problem resolution unit. This unit also helps identify systemic problems so that the case problems encountered by individuals and employers can be avoided in the future.

It should be emphasized that petitioners or applicants still will need to pursue whatever legal avenues are available upon denial of a petition or application, even if they submit a case problem with the Ombudsman. The Ombudsman's office is not an office for filing appeals of adverse decisions.

¹¹⁸ See 6 U.S.C. § 272(e)(1).

¹¹⁹ See 6 U.S.C. § 272 (b)(2).

A. Case Problem Processing

1. How to Submit A Case Problem

The Ombudsman's website, www.dhs.gov/cisombudsman, provides detailed information on how to submit a case problem:

First, please write a letter and provide the following information in the order below to assist in identifying your case.

- For the person with the case problem, please provide the person's: (1) full name; (2) address; (3) date of birth; (4) country of birth; (5) application/petition receipt number; and (6) "A" number;
- The USCIS office at which the application/petition was filed;
- The filing date of the application/petition; and
- A description of the problem.

Second, to protect your privacy, we need to verify the identity and the accuracy of the information. Please date and sign your letter and include the following statement:

"I declare (certify, verify, or state) under penalty of perjury under the laws of the United States that the foregoing is true and correct."

In addition, please include either or both of the following, if applicable:

- If you are not the person whose case about which you are inquiring, you must obtain the person's (applicant's or the petitioner's) consent. The person should include the following statement as part of the consent documentation submitted with the case problem:

"I consent to allow information about my case to be released to [name of requester]."
- If you are an attorney or accredited representative, please include a copy of your USCIS Form G-28, Notice of Entry of Appearance as Attorney or Representative.

Finally, please mail your case problem, including your dated and signed letter and copies of documents relevant to your case inquiry, to either of the following addresses:

Via regular mail:

Citizenship and Immigration Services Ombudsman
ATTN: Case Problems
U.S. Department of Homeland Security
Mail Stop 1225
Washington, D.C. 20528-1225

Via courier service:

Citizenship and Immigration Services Ombudsman
ATTN: Case Problems
U.S. Department of Homeland Security
245 Murray Lane
Washington, D.C. 20528-1225

2. Processing

When the Ombudsman receives a case problem, the information is reviewed, issues analyzed, and an appropriate course of action determined. After this internal process, and if there is a determination that the case requires a USCIS action or review, the case is electronically forwarded to the USCIS/Customer Assistance Office (CAO) for USCIS resolution within 45 calendar days. If an answer is not forthcoming within 45 calendar days, the Ombudsman's office sends a follow-up letter via email to USCIS.

3. Assistance Available

a. Scope of Assistance

Many case problems seek to reverse USCIS decisions. However, the Ombudsman cannot adjudicate immigration applications or petitions, or reverse adverse USCIS decisions. Additionally, case problems cannot serve as substitutes for the legal options available to applicants/petitioners/beneficiaries to correct problems. Finally, the Ombudsman cannot grant immigration benefits or request that USCIS grant exceptions to statutory mandates (such as the grant of a petition despite visa retrogression of the particular visa category.) The statutory authority for these actions rests solely with USCIS. Although the Ombudsman cannot provide legal advice, the office can give assistance in cases where the individual or employer is challenging a particular result and USCIS has not timely responded, such as a motion to reopen/reconsider or an appeal.

Additionally, the Ombudsman is charged with identifying systemic problems in the immigration benefits process and proposing process changes to USCIS. Thus, individuals and employers should submit comments and suggestions for improving USCIS processes and procedures.

b. Jurisdictional Issues

By statute, the Ombudsman only accepts case problems that pertain to applications and petitions for immigration benefits filed with USCIS. The Ombudsman does not have authority to assist customers in cases that are not within USCIS jurisdiction. Problems experienced with

ICE, CBP, DOS (including the National Visa Center as well as U.S. embassies and consulates), DOL, EOIR, or any other federal, state, or local entity must be resolved directly with those entities. The Ombudsman is currently expanding its relationship with these departments and agencies with the hope of ensuring better and timely responses to individuals regardless of the source of their problems.

c. Legal Advice

The Ombudsman cannot provide legal advice on immigration laws, regulations, policies, or procedures to individuals and employers. For individual cases, the Ombudsman is statutorily limited to providing assistance to individuals and employers with pending applications/petitions who are experiencing problems with USCIS.

B. Case Problem Data

The office receives letters, emails, facsimiles, and telephone calls from individuals seeking assistance from the Ombudsman. However, at this time, the Ombudsman only accepts case problems via the U.S. mail or courier service for privacy concerns. Case problems are based on the description of facts provided to the Ombudsman by individuals seeking assistance.

During the reporting period, the Ombudsman received a total of 1,263 case problems by U.S. mail or courier service, which were referred to USCIS for further action.¹²⁰ Many of these case problems involved multiple issues; there were over 2,200 issues received within these case problems. Since the start of the office in July 2003, the Ombudsman also received 5,708 email inquiries, of which 2,527 were during the current reporting period, covering a wide range of immigration issues. The Ombudsman attempts to be responsive to emails, while asking those customers with case problems to send in a written inquiry.

The most common types of complaints received from written case problems during the reporting period involved processing delays and USCIS errors. Of the 1,263 written case problems received, 1,172 complaints (over 92 percent) involved processing delays. Specifically, 198 complaints (15.7 percent of all written case problems received) involved processing delays in which FBI name checks were an issue. An additional 94 complaints (7.4 percent) addressed processing delays due to general security check issues, which in most cases likely involved FBI name checks, though the customer did not identify them as such.

Of the written case problems received this period, 577 complaints (over 45 percent) concerned USCIS errors. Of these, 320 complaints (over 25 percent) were due to USCIS' failure to respond to a customer inquiry. The Ombudsman also received many complaints from USCIS customers who received no *helpful* response from the agency as well as complaints regarding changes of address.¹²¹

¹²⁰ The Ombudsman also received over 130 written inquiries, which were outside the jurisdiction of this office.

¹²¹ See *supra* section V.28.

The four service centers, Vermont, Texas, Nebraska, and California (in the order of complaints received) had the highest number of complaints during the reporting period. This is expected as they process the highest number of cases. However, complaints from California and Nebraska were far fewer than from Texas and Vermont.

The National Benefits Center, which is a field office pre-processing center, received the highest number of complaints of all of the field offices followed by New York City, Atlanta, Washington, D.C., Chicago, Miami, and Newark. In total, the Ombudsman received complaints regarding 63 USCIS facilities during the reporting period.

C. Ombudsman's Concerns About Access to USCIS

1. Limited Access to Selected USCIS Databases for Case Problem Resolution

During the past two years, the Ombudsman has sought access to select USCIS databases to facilitate resolution of case problems. The Ombudsman recently received limited read-only permission to view certain USCIS data systems. However, the Ombudsman still does not have the capability to verify all of the facts provided by individuals seeking assistance due to continuing USCIS and DHS Headquarters information technology challenges in installing the requested systems. Once implemented, the Ombudsman will be able to validate information provided by the customer and research aspects of the case problem before referring it to USCIS for remedial action.

2. No Access to USCIS Offices to Resolve Individual Case Problems

Although personnel at service centers and field offices are most directly able to take action to resolve issues underlying the complaints received by the Ombudsman, USCIS objects to allowing the Ombudsman direct contact with agency personnel for this purpose. Consequently, the Ombudsman must go through the additional layer of the USCIS CAO to resolve cases.

This additional layer creates more problems. During the current reporting period, the Ombudsman has noted that responses to case problems forwarded to the CAO are often inadequate and unresponsive. This is partially explained by the fact that the CAO cannot access certain files electronically due to the antiquated nature of USCIS computer systems.¹²² Therefore, the CAO ordinarily will refer case problems to a USCIS service center or field office for action, which raises the questions about the usefulness of the CAO.

Additionally, not all CAO personnel are immigration officers with the experience to recognize or resolve complicated problems. Therefore, CAO responses are limited and, in many instances, of little assistance to customers. When this occurs, the customer returns to the Ombudsman for resolution. Many customers approach the Ombudsman for assistance because they cannot obtain satisfactory assistance through normal USCIS channels. These channels include the NCSC toll-free telephone number, appointments at the local field office via INFOPASS, and the Case Status Online system.

¹²² See *supra* section II.H.

Finally, during the reporting period, the Ombudsman noted that the CAO was referring case problems to the service centers and field offices using SRMT to obtain more detailed responses to difficult case problems.¹²³ CAO informed customers that answers should be forthcoming from local offices within thirty days. The CAO's utilization of SRMT actually shifts public case problems to field offices despite the fact that the CAO and call centers were established to relieve field offices from having to respond to numerous questions from the public. Consequently, the current approach seemingly has created a redundant bureaucratic process that merely delays resolution of customer inquiries.

The Ombudsman has requested attention to this situation on numerous occasions during this and previous reporting periods, but USCIS has not been as responsive as expected. The Ombudsman and USCIS have enrolled in the Department's correspondence tracking system program administered by the DHS Executive Secretary to create an organized system for referring and responding to correspondence received by DHS component offices. With this effort, the Ombudsman has started to work with the USCIS Executive Secretary who is now responsible for CAO oversight. As of this writing, the Ombudsman and the USCIS Executive Secretary have begun to develop better means of communication between the Ombudsman and CAO that include: (1) the establishment of a CAO liaison responsible for Ombudsman case problems referred to USCIS; (2) modification of workflow activities to generate aging reports to ensure timely responses by the CAO; and (3) completion of deployment of USCIS computer systems so Ombudsman personnel may fully analyze case problems and recommend action when referring case problems to the CAO.

VIII. 2006-07 REPORTING YEAR OBJECTIVES

Since 2003, the Ombudsman has identified the major systemic issues affecting individuals and employers seeking USCIS services such as: USCIS funding; prolonged processing times and the related issuance of interim benefits; lack of standardization in USCIS decisions; deficient customer service; and lack of IT modernization. In the coming year, the Ombudsman will continue to focus on these and other technical areas that may require procedural, regulatory, and possible legislative changes to improve the quality of service for customers, enhance national security, and increase USCIS efficiency.

The Ombudsman also will continue to focus on the expansion of up-front processing programs, such as DORA in the Dallas District Office, which dramatically improve customer experiences, while increasing security and reducing costs. The Ombudsman looks forward to working with USCIS in the coming year on the expansion of such programs.

Another 2006-07 reporting year objective is to analyze the critical role of contractors in application processing and record handling, and the many problems that stem from processes now handled primarily by contractors. Contractor arrangements currently account for over 50 percent of the USCIS budget and are an important part of the overall USCIS effort to improve customer service, national security, and efficiency.

¹²³ See *supra* section II.I.

In addition, the Ombudsman will continue to expand public outreach and explore development of a “Virtual Ombudsman” system available online to enhance the public’s ability to communicate directly with the office.

Finally, the next reporting year will include a continuation of regular trips to USCIS facilities, including return visits to determine if proposed changes were implemented and a continuation of meetings with individuals, employers, community based organizations, and employer organizations. The Ombudsman will focus on new, innovative business processes to streamline adjudications and the use of emerging technologies to improve customer service, USCIS efficiency, and national security.

APPENDICES

Appendix 1: USCIS Facilities Visited

Number	Date Visited	Facility
1	9/11/2003	Administrative Appeals Unit
2	9/16/2003	New York District Office
3	9/18/2003	Miami Asylum Office
4	9/18/2003	Miami District Office
5	9/19/2003	Orlando Application Support Center
6	9/19/2003	Orlando Sub-Office
7	9/23/2003	Los Angeles Applicant Support Center
8	9/23/2003	Los Angeles District Office
9	9/24/2003	California Service Center
10	9/24/2003	Western Region Office
11	9/25/2003	Central Region Office
12	9/25/2003	Dallas District Office
13	9/26/2003	Texas Service Center
14	10/15/2003	San Antonio Application Support Center
15	10/15/2003	San Antonio District Office
16	11/6/2003	Detroit Applicant Support Center
17	11/6/2003	Detroit District Office
18	11/7/2003	Chicago Asylum Office
19	11/7/2003	Chicago District Office
20	12/12/2003	Washington D.C. District Office
21	12/23/2003	Baltimore District Office
22	1/15/2004	San Juan Applicant Support Center
23	1/15/2004	San Juan District Office
24	1/21/2004	Phoenix District Office
26	2/11/2004	Kansas City District Office
27	2/12/2004	Missouri Service Center
28	2/13/2004	National Records Center
29	3/23/2004	New York District Office
30	3/30/2004	Dallas District Office
31	3/31/2004	Central Region Office
32	3/31/2004	Texas Service Center
33	4/13/2004	Western Region Office
34	4/13/2004	California Service Center
35	4/14/2004	Los Angeles District Office
36	4/15/2004	San Diego District Office
37	5/3/2004	Chicago District Office
38	5/3/2004	Chicago Lockbox
39	5/4/2004	Chicago Asylum Office

40	5/14/2004	Tampa Sub-Office
42	7/16/2004	New York District Office
43	7/21/2004	Atlanta District Office
44	7/22/2004	USCIS Academy at the Federal Law Enforcement Training Center (FLETC)
45	7/26/2004	Vermont Service Center
46	7/28/2004	Eastern Region Office
47	7/28/2004	Eastern Forms Center
48	7/29/2004	Nebraska Service Center
49	7/31/2004	Omaha District Office
50	9/20/2004	San Jose Sub-Office
51	9/20/2004	San Francisco District Office
52	9/21/2004	Anchorage District Office
53	9/23/2004	Seattle District Office
54	9/29/2004	Corbin Card Production Facility
55	9/29/2004	Pearson Contract Corbin Call Center
56	9/30/2004	Louisville Sub-Office
57	10/12/2004	Buffalo District Office
58	10/13/2004	Cleveland District Office
59	10/14/2004	Detroit District Office
60	10/15/2004	Chicago District Office
61	10/28/2004	Tampa Sub-Office
63	11/3/2004	Central Region Office
64	11/4/2004	Dallas District Office
65	12/9/2004	Philadelphia District Office
66	12/10/2004	Newark District Office
67	1/4/2005	Central Region Office
68	1/4/2005	Dallas District Office
69	1/5/2005	Dallas District Office
70	2/22/2005	Norfolk Sub-Office
71	2/24/2005	Washington D.C. District Office
72	2/28/2005	National Benefits Center
73	3/1/2005	National Benefits Center
74	3/2/2005	National Records Center
75	3/3/2005	Seattle District Office
76	3/21/2005	Dallas District Office
77	3/21/2005	Central Region Office
78	3/21/2005	Texas Service Center
79	3/22/2005	Texas Service Center
80	3/23/2005	Western Region Office
81	3/23/2005	California Service Center
82	3/24/2005	California Service Center
83	4/4/2005	Chicago Lockbox

84	4/5/2005	Vermont Service Center
85	4/6/2005	Vermont Service Center
86	4/7/2005	Eastern Region Office
87	8/8/2005	Phoenix District Office
88	8/8/2005	Phoenix Call Center
89	8/9/2005	Los Angeles District Office
90	8/9/2005	Los Angeles Call Center
91	8/10/2005	Los Angeles Lockbox
92	8/10/2005	Los Angeles Asylum Office
93	8/11/2005	San Diego District Office
94	8/11/2005	Chula Vista Satellite Office
95	8/24/2005	Boston District Office
96	8/29/2005	El Paso District Office
97	8/31/2005	Houston District Office
98	9/1/2005	Dallas District Office
99	9/2/2005	Texas Service Center
100	9/26/2005	Orlando Sub-Office
101	9/27/2005	Miami District Office
102	10/25/2005	California Service Center
103	10/26/2005	California Service Center
104	11/15/2005	Hartford Sub-Office
105	11/17/2005	Chicago Lockbox
106	11/18/2005	National Benefits Center
107	11/20/2005	National Records Center
108	1/30/2006	Charlotte Sub-Office
109	1/31/2006	Atlanta District Office
110	1/31/2006	Atlanta Application Support Center
111	2/1/2006	Jacksonville Sub-Office
112	2/2/2006	West Palm Beach Sub-Office
113	3/1/2006	Pittsburgh Sub-Office
114	3/13/2006	Los Angeles District Office
115	3/15/2006	California Service Center
116	3/16/2006	Chula Vista Satellite Office
117	3/28/2006	New York District Office
118	3/29/2006	New York Tier II Call Center
119	4/18/2006	Portland, ME District Office
120	4/19/2006	Vermont Service Center
121	4/20/2006	St. Albans Sub-Office
122	4/20/2006	Field Support Center, Office of Procurement (Williston, VT)
123	4/21/2006	Eastern Region Office
124	4/21/2006	Eastern Forms Center
125	5/12/2006	Orlando Sub-Office

Appendix 2: Ombudsman Outreach Poster



Need help resolving problems with USCIS?

*Do you have a recommendation or a suggestion
to improve the immigration benefits process?*

We want to hear from you!

**Contact the
Citizenship & Immigration Services
Ombudsman!**

E-mail: cisombudsman@dhs.gov

Internet: www.dhs.gov/cisombudsman



**Homeland
Security**

CITIZENSHIP & IMMIGRATION SERVICES OMBUDSMAN
The CIS Ombudsman is a Homeland Security office that is not part of USCIS.

OMB #####



*Necesita ayuda resolviendo sus problemas con
El Servicio de Inmigración y Ciudadanía (USCIS)?*

*Tiene alguna recomendación o sugerencia para mejorar
el sistema de beneficios de inmigración?*

Queremos saber de usted!

**Contacte al
Ombudsman del Servicio de Inmigración y
Ciudadanía!**

Correo electrónico: cisombudsman@dhs.gov

Internet: www.dhs.gov/cisombudsman



Homeland
Security

Ombudsman del Servicio de Inmigración y Ciudadanía

El Ombudsman del SIC es una oficina del Departamento de Seguridad Nacional y no hace parte de USCIS.

OMB #####

Appendix 3: Explanation for Figure 5

This Appendix explains the methodology and calculations used to compare EAD issuance from the DORA pilot program as projected nationwide during the period May 2004 to February 2006.

A. National Current

These figures represent current national data for the period May 2004 to February 2006.

1. Green Card Application (I-485) Receipts (924,092)

This figure is the number of green card receipts for newly filed applications accepted for processing. This figure is from the USCIS PAS program.

2. EAD Receipts for Green Card Applicants (2,094,303)

This figure is the estimated number of total applications for EADs based on an applicant with a pending green card application. The Ombudsman considered the total number of EAD receipts reported by USCIS for this period.

While USCIS does not specify the number of EADs based on pending green card applications in PAS, it does provide data for other application types for which EADs are issued. The Ombudsman averaged the number of other application types for which USCIS issues EADs for the previous five fiscal years for each of these application types based upon PAS data using two different methodologies with PAS data: (1) completions plus the number of applications pending at the end of the period (end pending) for these application types; and (2) applications pending at the beginning of the year (begin pending) plus receipts for these application types. For the first method, the average was approximately 69 percent of the EADs issued for green card cases (31 percent for non-green card cases), whereas the second method resulted in approximately 67 percent (33 percent for non-green card cases). The Ombudsman used an average of these two figures, *i.e.*, 68 percent, and multiplied it by EAD receipts for the period to obtain the approximate number of EAD receipts attributable to applicants with pending green card applications.

3. EAD Approvals for Green Card Applicants (1,805,707)

This figure is the number of estimated EADs issued based on pending green card applications during the period. Again, while USCIS does not specify the exact number of EADs issued to applicants with pending green card applications, the Ombudsman has estimated this number based upon the available data for other application types for which EADs are issued. Using the same methodology for obtaining the number of EAD receipts attributable to green card applicants (68 percent on average based upon the last five fiscal years from 2,655,451 approved EAD applications), the Ombudsman estimates this number to be 1,805,707.

4. Denial Rate for Green Card Applicants (18.03 percent)

This figure is the denial rate for green card applications during the period.

5. Estimated EAD Approvals Ultimately Denied A Green Card (325,569)

This figure represents the estimated number of EADs issued to individuals whose green card applications were denied during the period. This calculation is as follows: USCIS green card denial rate (18.03 percent) * estimated number of EADs issued to green card applicants (1,805,707) = 325,569. This figure represents green card applicants who received an EAD but who were ultimately denied a green card.

B. DORA National Projected

These figures represent projected USCIS EAD receipt and approval figures if the DORA pilot program were implemented nationally over the same time period.

1. Green Card Application (I-485) Receipts (924,092)

This figure is the total number of green card receipts from the USCIS PAS program. This figure will be used to project the success of the DORA program on a national scale.

2. Estimated EAD Receipts for Green Card Applicants (913,493)

This figure represents the estimated number of EAD applications that would have been received if DORA were implemented nationally. This calculation is as follows: (actual number of EAD receipts from DORA (6,339) / the total green card applications received during the period (14,533)) * estimated national green card application-based EAD receipts (2,094,303) = 913,493.

3. EAD Approvals for Green Card Applicants (148,409)

This figure represents the estimated number of EADs that would have been issued based on an applicant's pending green card application. This calculation is as follows: DORA EAD issuance rate (EADs issued under DORA (2,334) / DORA applications sent to the Chicago Lockbox (14,553)) * the actual green card application receipts as reported by USCIS PAS (924,092) = 148,409.

4. Denial Rate After 90 Days to Green Card Applicants (2.27 percent)

This figure represents green card applications denied under DORA compared with the DORA pilot program case completions using DORA pilot program statistics. This calculation is as follows: green card applications denied under DORA after 90 days (282) / DORA pilot program case completions (12,417) = 2.27 percent.

5. Estimated EAD Approvals Ultimately Denied A Green Card (3,369)

This figure is estimated EADs that would be issued nationally to individuals who are ultimately denied green card, *i.e.*, individuals who would receive an immigration benefit who should not have received one. This calculation is as follows: DORA green card denial rate (2.27 percent) * estimated EAD approvals under a national DORA program (148,409) = 3,369.

Appendix 4: Key Forms Utilized in Green Card Application Processing

Figure 11: Key Forms Utilized in Green Card Application Processing – Historical Annual Receipt Totals (FY 95- FY 05)

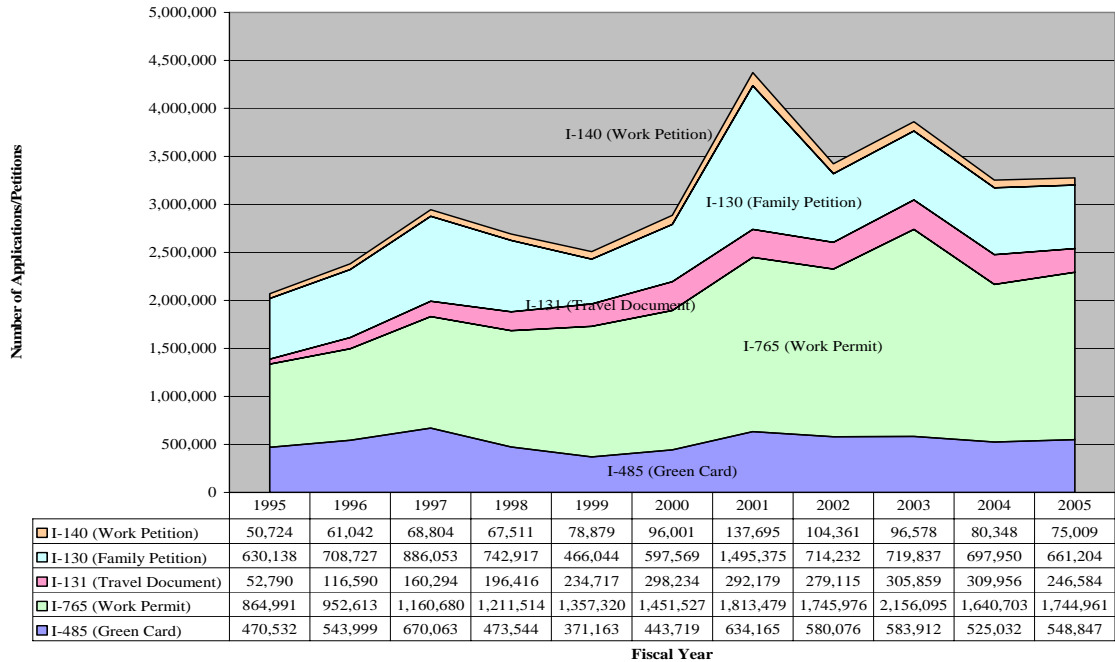


Figure 12: Key Forms Utilized in Green Card Application Processing – Historical Monthly Receipt Totals (2002 – 2006)

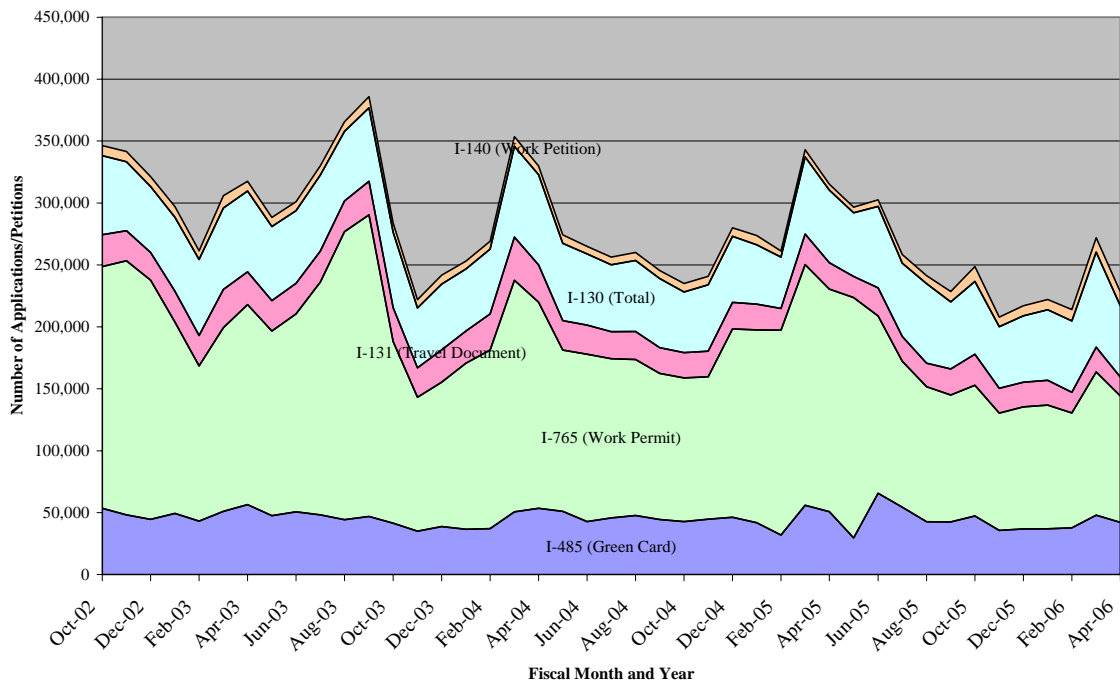


Figure 13: Key Forms Utilized in Green Card Application Processing – Historical End of Year Pending Totals (FY 95- April 2006)

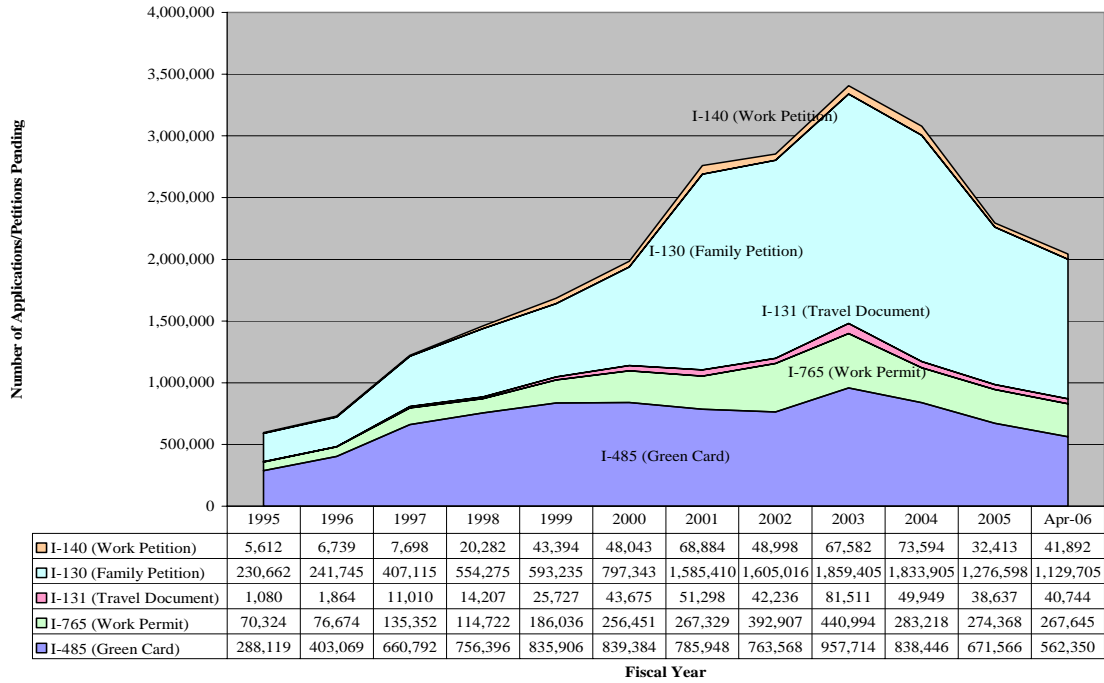
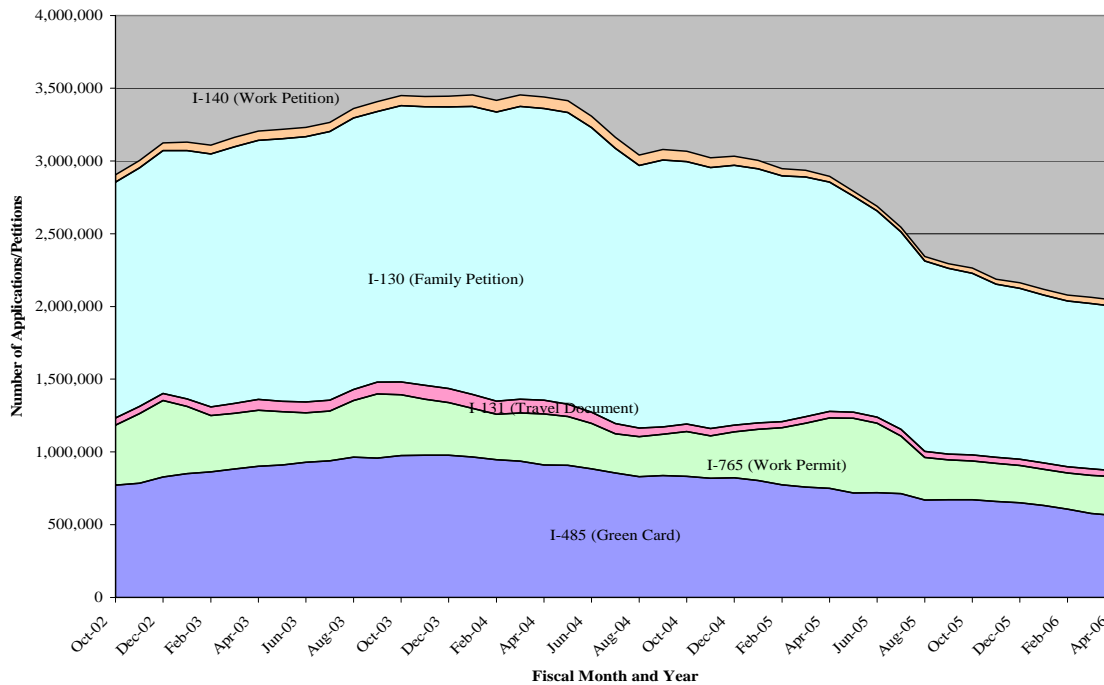


Figure 14: Key Forms Utilized in Green Card Application Processing – Historical End of Month Pending Totals (2002 – 2006)



Appendix 5: Homeland Security Act Excerpts**Homeland Security Act Sections 451, 452, and 453
(6 U.S.C. §§ 271, 272, and 273)****SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.**

(a) ESTABLISHMENT OF BUREAU-

- (1) IN GENERAL- There shall be in the Department a bureau to be known as the 'Bureau of Citizenship and Immigration Services'.
- (2) DIRECTOR- The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who--
 - (A) shall report directly to the Deputy Secretary;
 - (B) shall have a minimum of 5 years of management experience; and
 - (C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.
- (3) FUNCTIONS- The Director of the Bureau of Citizenship and Immigration Services--
 - (A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;
 - (B) shall oversee the administration of such policies;
 - (C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;
 - (D) shall establish national immigration services policies and priorities;
 - (E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and
 - (F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.
- (4) MANAGERIAL ROTATION PROGRAM-
 - (A) IN GENERAL- Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall--
 - (i) gain some experience in all the major functions performed by such bureau; and
 - (ii) work in at least one field office and one service center of such bureau.

- (B) REPORT- Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.
- (5) PILOT INITIATIVES FOR BACKLOG ELIMINATION- The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.
- (b) TRANSFER OF FUNCTIONS FROM COMMISSIONER- In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:
 - (1) Adjudications of immigrant visa petitions.
 - (2) Adjudications of naturalization petitions.
 - (3) Adjudications of asylum and refugee applications.
 - (4) Adjudications performed at service centers.
 - (5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.
- (c) CHIEF OF POLICY AND STRATEGY -
 - (1) IN GENERAL- There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.
 - (2) FUNCTIONS- In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for--
 - (A) making policy recommendations and performing policy research and analysis on immigration services issues; and
 - (B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.
- (d) LEGAL ADVISOR-
 - (1) IN GENERAL- There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.
 - (2) FUNCTIONS- The legal advisor shall be responsible for--
 - (A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and
 - (B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER-

(1) IN GENERAL- There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS-

(A) IN GENERAL- The Budget Officer shall be responsible for--

- (i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;
- (i) financial management of the Bureau of Citizenship and Immigration Services; and
- (ii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) CHIEF OF OFFICE OF CITIZENSHIP-

(1) IN GENERAL- There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS- The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL- Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the 'Ombudsman'). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS- It shall be the function of the Ombudsman—

- (1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
- (2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
- (3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS-

(1) OBJECTIVES- Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and--

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

- (B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;
 - (C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;
 - (D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;
 - (E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;
 - (F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and
 - (G) shall include such other information as the Ombudsman may deem advisable.
- (2) REPORT TO BE SUBMITTED DIRECTLY- Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.
- (d) OTHER RESPONSIBILITIES- The Ombudsman—
- (1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;
 - (2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;
 - (3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and
 - (4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.
- (e) PERSONNEL ACTIONS-
- (1) IN GENERAL- The Ombudsman shall have the responsibility and authority--
 - (A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and
 - (B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.
 - (2) CONSULTATION- The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.
- (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES- The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a

formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES-

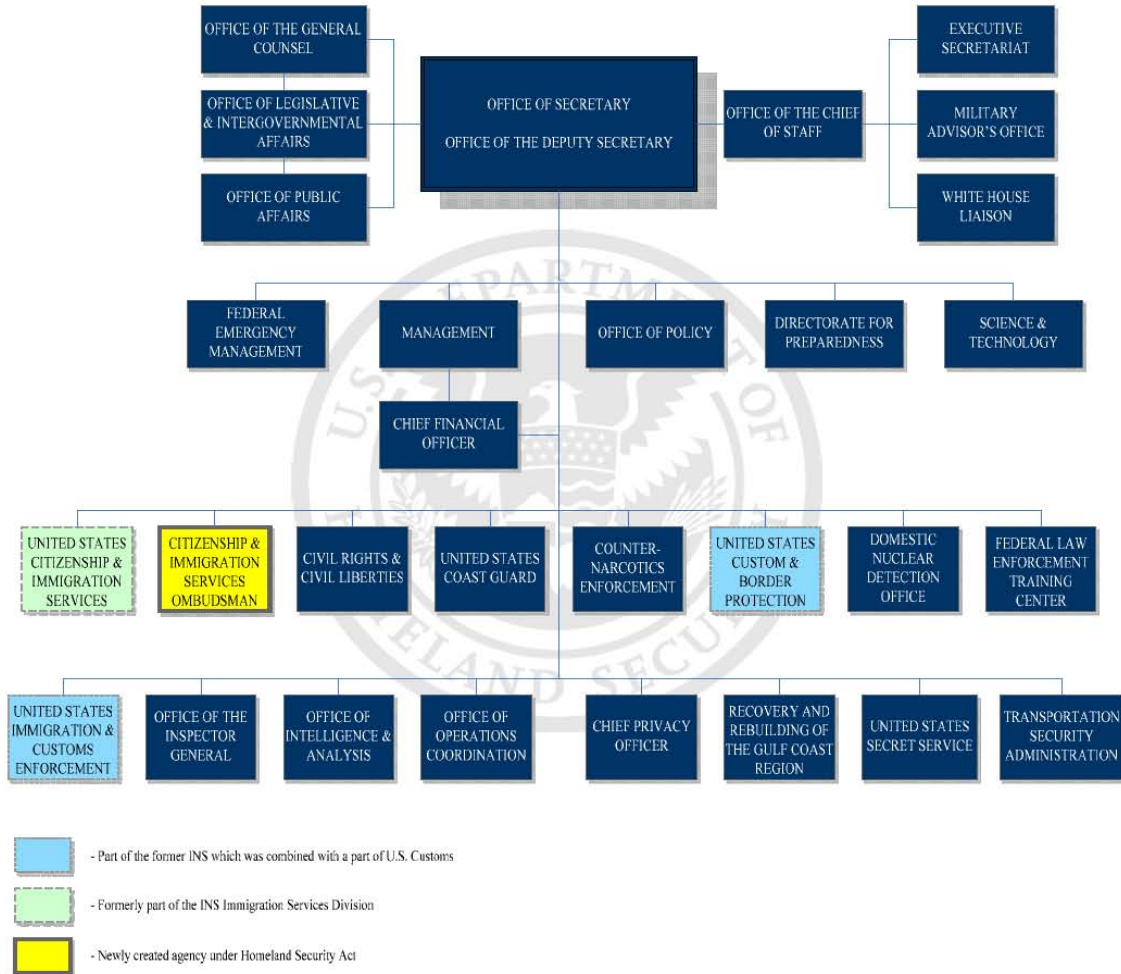
- (1) IN GENERAL- Each local ombudsman--
 - (A) shall report to the Ombudsman or the delegate thereof;
 - (B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;
 - (C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and
 - (D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.
- (2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS- Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

- (a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—
 - (1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;
 - (2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and
 - (3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.
- (b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to— H. R. 5005—66
 - (1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;
 - (2) any fraud or misrepresentation associated with the decision; and
 - (3) the efficiency with which the decision was rendered.

Appendix 6: DHS Organization Chart

Department of Homeland Security Organization Chart



<b style="font-size: 24px; margin-left: 10px;">Homeland Security	<p style="margin: 0;"><i>Office of the Citizenship and Immigration Services Ombudsman</i> U.S. Department of Homeland Security Mail Stop 1225 Washington, DC 20528-1225</p>
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Appendix 7: Biography of Prakash Khatri, Ombudsman

Prakash Khatri was appointed as the first Department of Homeland Security (DHS), Citizenship and Immigration Services Ombudsman in July 2003 by Secretary Tom Ridge. The Ombudsman assists individuals and employers who experience problems with United States Citizenship and Immigration Services (USCIS). He also identifies systemic problems with USCIS processes and recommends solutions. Mr. Khatri has provided executive leadership, vision, and direction to this office from its inception as a one-person entity to its current status as a team of 30 professionals and administrative staff.

As the Ombudsman, Mr. Khatri has made numerous recommendations to the Director of USCIS for changes to the immigration benefits process based on data collected through various outreach activities including: traveling to over 120 USCIS and other DHS facilities, meeting with DHS immigration officials, and conferring with countless private individuals and community based organizations. Mr. Khatri also meets with federal and state government leaders as well as stakeholder organizations to learn of the difficulties they experience with USCIS. In addition, Mr. Khatri has served as an advisor on numerous DHS immigration reform initiatives and acted in a key leadership role for the DHS Second Stage Review's Immigration Policy Team.

Mr. Khatri earned his B.A. from Stetson University (1981) and J.D. from Stetson University College of Law (1983). Mr. Khatri was admitted to the Florida State Bar in 1984, and at the age of 22 was the youngest attorney in the state's history. He was among the first 35 members of the Florida Bar to pass the Immigration and Nationality Board Certification examination. Mr. Khatri subsequently served on the Florida Bar Immigration and Nationality Board Certification Committee where he developed and evaluated board certification exams.

In private practice, Mr. Khatri spent almost two decades representing individuals and businesses from more than 100 countries in the area of immigration law providing strategic planning and visa processing advice to corporate clients. He also conducted immigration seminars in Taiwan, India, and South Africa.

Mr. Khatri also worked for five years as Manager of Immigration and Visa Processing for Walt Disney World in Florida. While working for Disney, Mr. Khatri traveled to U.S. consular posts in more than 18 countries. At Disney, he developed and implemented an automated high-volume visa processing system and other innovations that reduced unnecessary paperwork and improved efficiencies related to handling employee visa applications.

In addition to serving as a former President of the Central Florida Chapter of the American Immigration Lawyers Association, Mr. Khatri also is a past President of the Asian-Pacific American Heritage Council of Central Florida.

