

Citizenship and Immigration Services

Ombudsman

# Annual Report 2012

June 25, 2012



Homeland  
Security





Citizenship and  
Immigration Services  
**Ombudsman**

# Annual Report 2012

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June 25, 2012



Homeland  
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Office of the Citizenship and Immigration Services  
Ombudsman  
U.S. Department of Homeland Security  
Mail Stop 0180  
Washington, DC 20528-0180



**Homeland  
Security**

June 25, 2012

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Lamar Smith  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Chairmen and Ranking Members:

The Office of the Citizenship and Immigration Services Ombudsman is pleased to submit, pursuant to section 452(c) of the Homeland Security Act of 2002, its 2012 Annual Report.

I am available to provide additional information upon request.

Sincerely,

A handwritten signature in blue ink that reads "Debra Rogers".

Debra Rogers  
Acting Citizenship and Immigration Services Ombudsman

[www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman)



*Cover Photos:*

1-7 \*Photos courtesy of National Park Service, Statute of Liberty National Monument.

8-15 \*Photos courtesy of USCIS and the National Archives.

# Message from the Acting Ombudsman

It is a privilege to present to you the Citizenship and Immigration Services Ombudsman's 2012 Annual Report. This report describes the work of the Ombudsman's Office for the past year and provides insight into our current projects. We hope you find it informative.

I am frequently asked, "What does an ombudsman do?" The term "ombudsman" is generally used to describe individuals serving as independent and impartial intermediaries who receive, investigate and help settle complaints. One translation of ombudsman is "defender of people," which describes not only a challenging job but a core American value. Although I have served as an official ombudsman for only a short time, I have always recognized and appreciated the importance of "ombudsman" work in the truest sense. A willingness to take ownership of a problem is the first step towards resolving it. Whether a pro-bono representative assisting an unaccompanied minor or an adjudicator dedicated to getting a case back on track and rendering a just decision, "ombudsmen" in and outside the government are critical to achieving a fair process. So, too, is the ability to see the person behind an application and acknowledge with care the consequences of our decisions. This is a skill that is not easily imparted or always appreciated. Throughout my career, I have been fortunate to work with individuals who possess this talent. They have made a difference. We have benefited from the results of their contributions in the form of good policy, meaningful programs and outstanding case assistance, some of which are described in this report.

Our mission is to assist individuals and employers who have encountered problems with the immigration benefits system. We are constantly striving to find new and better ways to perform this function. In this report, we identify some of the difficulties encountered by USCIS' customers and offer potential solutions. The Ombudsman's Office interacts with a wide array of stakeholders; this report attempts to clearly and effectively capture their concerns and recommendations. It also details internal process improvements and technological advancements we have made this year to better serve our customers.

In addition to thanking the many individuals and groups who helped shape and inform this report, I also would like to thank Director Alejandro Mayorkas, Deputy Director Lori Scialabba and the rest of the USCIS leadership for their dedication and constant service to the public. Our appreciation and gratitude extends further to USCIS field office staff and leaders who have directly assisted in resolving individual cases, and who have embraced referrals from the Ombudsman's Office as an important opportunity to identify issues and make necessary improvements. I would like to recognize January Contreras who during her recent tenure as Ombudsman made significant and lasting contributions to this office. I would also like to thank Secretary Janet Napolitano, Deputy Secretary Jane Holl Lute and Congress for supporting our work.

Finally, I would like to thank our team at the Ombudsman's Office for their deep commitment to the customers we serve and dedication to promoting an efficient and just immigration benefits system. Together, these 32 employees have accomplished a great deal and I am proud of this particular example of their outstanding work.

Sincerely,



Debra Rogers  
Acting Citizenship and Immigration Services Ombudsman

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# Executive Summary

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) 2012 Annual Report includes the following:

- An overview of the Ombudsman's Office mission and services;
- A review of U.S. Citizenship and Immigration Services' (USCIS) priorities and initiatives; and
- Summaries of pervasive and serious problems affecting the delivery of immigration services within the following areas: 1) Employment, 2) Family and Children, 3) Humanitarian, and 4) Customer Service.

## Overview of the Ombudsman's Office

The Ombudsman's Office, established by § 452 of the Homeland Security Act of 2002, assists individuals and employers in resolving problems with USCIS. The Ombudsman's Office also makes recommendations to USCIS on ways to fix systemic issues to improve immigration services. The Ombudsman's Office is independent, confidential, and impartial.

During the April 1, 2011 through March 31, 2012 reporting period, the Ombudsman's Office opened approximately 4,500 case inquiries, an increase of almost 38% from the previous year's total.

## USCIS Year in Review: Promoting Quality and Consistency

This year, USCIS focused on quality, consistency, and improved processes. In line with these goals, USCIS implemented new policies and launched new initiatives to improve quality and efficiency. This section of the 2012 Annual Report considers USCIS' ongoing effort to increase quality and consistency in benefit adjudications through enhanced outreach, policy review, and technology.

## 2012 Areas of Study: Pervasive and Serious Problems and Recommended Solutions

The Annual Report, as mandated by § 452(c)(1)(B) of the Homeland Security Act of 2002, must include a "summary of

the most pervasive and serious problems encountered by individuals and employers." This year the Ombudsman's Office examined issues affecting the delivery of immigration services and issued formal recommendations covering the following areas:

### Employment

- **Formal Recommendation: "Employment Authorization Documents: Meeting the 90-Day Mandate and Minimizing the Impact of Delay on Individuals and Employers."** On July 18, 2011, the Ombudsman's Office published a formal recommendation discussing the adjudication of Form I-765, Application for Employment Authorization.
- **Formal Recommendation: "Recommendations to Improve the Quality in Extraordinary Ability and Other Employment-Based Adjudications."** On December 29, 2011, the Ombudsman's Office published a formal recommendation regarding USCIS adjudication of extraordinary ability and other employment-based applications.
- **Healthcare Immigration Concerns.** The Ombudsman's Office met with stakeholders to discuss issues faced by healthcare professionals applying for immigration benefits. The Ombudsman's Office is formally reviewing these issues and plans to publish recommendations within the next 180 days.
- **Validation Instrument for Business Enterprises.** In March 2011, USCIS began using the Validation Instrument for Business Enterprises (VIBE) to evaluate the viability and other key characteristics of a petitioning company. The Ombudsman's Office continues to bring stakeholder concerns regarding the effects of VIBE to the attention of USCIS.
- **EB-5 Immigrant Investor Program.** The Ombudsman's Office continues to bring stakeholder concerns regarding the EB-5 Immigrant Investor Program to the attention of USCIS. Although the EB-5 program's popularity has increased, a large percentage of available EB-5 visas remain unused each year.

### Family and Children

- **Formal Recommendation: "Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices."** On April 15, 2011, the Ombudsman's Office

published a formal recommendation aimed at improving the adjudication of Special Immigrant Juvenile petitions.

- **Conditional Permanent Residence.** The Ombudsman’s Office is formally reviewing stakeholder concerns regarding the adjudication of Form I-751, Petition to Remove the Conditions of Residence, and plans to issue recommendations within the next 180 days.
- **Survivor Benefits: The Adjudication of Benefits Requests Made Pursuant to Immigration & Nationality Act § 204(l).** USCIS has not issued new regulations needed to implement Immigration & Nationality Act § 204(l) and ensure that petitions for eligible surviving beneficiaries are properly adjudicated. The Ombudsman’s Office is formally reviewing stakeholder concerns and plans to publish recommendations within the next 180 days.
- **Addressing the Needs of U.S. Service Members and their Families.** The Ombudsman’s Office continues to review USCIS’ role in serving members of the U.S. military and their families and continues to bring stakeholder concerns regarding these issues to the attention of USCIS.

## Humanitarian

- **Formal Recommendation: “Deferred Action: Recommendations to Improve Transparency and Consistency in the USCIS Process.”** On July 11, 2011, the Ombudsman’s Office published a formal recommendation regarding the USCIS deferred action process.
- **Formal Recommendation: “Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication.”** On August 26, 2011, the Ombudsman’s Office published a formal recommendation regarding the ability of asylum applicants to obtain employment authorization.
- **Ensuring a Fair and Efficient Asylum Process for Unaccompanied Children.** The Ombudsman’s Office is examining the procedures available for unaccompanied children who want to file asylum applications with USCIS. The Ombudsman’s Office is formally reviewing this issue and plans to publish recommendations within the next 180 days.
- **Employment Authorization for Vulnerable Populations.** The Ombudsman’s Office is examining USCIS’ procedures for issuing employment authorization for vulnerable populations, as identified in the Violence Against Women Act of 2005. The Ombudsman’s Office continues to bring stakeholder concerns regarding these issues to the attention of USCIS.

## Customer Service

- **Formal Recommendation: “USCIS Service Requests: Recommendations to Improve the Quality of Responses to Inquiries from Individuals and Employers.”** On March 7, 2012, the Ombudsman’s Office published a formal recommendation covering the USCIS Service Request Management Tool.
- **Formal Recommendation: “Recommendations Regarding USCIS’ Role in the Petition Information Management Service.”** On May 16, 2012, the Ombudsman’s Office published a formal recommendation regarding the Petition Information Management Service.
- **The Systemic Alien Verification for Entitlements Program: Improving the Process for Individuals, Employers, and USCIS Customer Agencies.** The Systemic Alien Verification for Entitlements Program is an inter-governmental initiative designed to aid federal, state, and local benefit-granting agencies in determining an applicant’s immigration status. The Ombudsman’s Office is reviewing the customer impact of this program and plans to issue formal recommendations within 180 days.
- **Notices to Appear, Removal Priorities, and Immigration Court Docket Efficiency.** Legally sound charging documents, U.S. Department of Homeland Security removal priorities, and careful coordination among USCIS, U.S. Immigration and Customs Enforcement, and the Executive Office for Immigration Review (EOIR) are essential to the efficient processing of immigration benefits applications, as well as efficient administration of the EOIR docket. The Ombudsman’s Office is reviewing measures to enhance interagency cooperation and plans to issue formal recommendations within 180 days.
- **Representation Issues: The Role of Attorneys and Other Representatives in a Non-Adversarial Process.** On January 17, 2012, USCIS issued a proposed policy memorandum focused on the role of attorneys and other representatives. The Ombudsman’s Office provided comments to USCIS regarding the proposed changes and continues to monitor this issue.
- **The USCIS Administrative Appeals Office.** The Ombudsman’s Office is examining delays encountered by stakeholders when submitting appeals to the Administrative Appeals Office.



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# The 2012 Annual Report

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) submits an annual report to Congress by June 30 of each calendar year, pursuant to § 452(c) of the Homeland Security Act of 2002. The current report focuses primarily on information from April 1, 2011 through March 31, 2012 (the reporting period).



*\* Photos courtesy of USCIS and the National Archives.*

# Overview of the Office of the Citizenship and Immigration Services Ombudsman

The Ombudsman's Office, established by the Homeland Security Act of 2002, assists individuals and employers in resolving problems with USCIS by addressing case inquiries and recommending ways to fix systemic issues to improve immigration services.<sup>1</sup>

The Ombudsman's Office is:

- **Independent.** The Ombudsman's Office is an independent office within the U.S. Department of Homeland Security (DHS) that reports directly to the Deputy Secretary of DHS. It is not part of USCIS.
- **Confidential.** The Ombudsman's Office does not disclose confidential information without prior consent.
- **Impartial.** The Ombudsman's Office does not advocate for stakeholders or USCIS; it works impartially to improve the delivery of immigration services by USCIS.

## Case Assistance

Individuals and employers contact the Ombudsman's Office for assistance with problems affecting the adjudication of applications and petitions pending with USCIS. During the April 1, 2011 through March 31, 2012 reporting period, the Ombudsman's Office opened approximately 4,500 case inquiries, an increase of almost 38% from the previous year's total.

**Case Assistance Form.** On December 16, 2011, the Ombudsman's Office released an updated Case Assistance Form (Form DHS-7001), reducing the number of pages and making it more user friendly.

## Improved Online Services

The Ombudsman's Office has made considerable efforts to improve its customer service through the use of technology. In September 2011, the Ombudsman's Office launched "Ombudsman Case Assistance Online," which allows customers to electronically submit requests for assistance. The new system reduces resources needed for data entry, the use of paper and case files, and the time required to respond to individuals and employers. The Ombudsman's Office continues to accept requests for assistance through email, mail, and fax.

**New Case Management System.** The Ombudsman's Office is developing a new case management system. The system will capture multiple issues relating to the same individual or employer and will track all phases of the case resolution process. It is designed to reduce inefficiencies, improve reporting, and transition to a paperless work environment.

In addition, increased reporting and analytical capabilities will enable the Ombudsman's Office to formulate case management metrics. These metrics will assist the Ombudsman's Office in providing USCIS with more targeted feedback on issues that are unique to local offices, service centers, and specialized units, such as the Administrative Appeals Office. This feedback will assist USCIS leadership in addressing issues before they become serious and pervasive systemic problems.

## Systemic Issues

The Ombudsman's Office identifies systemic issues through:

- Analysis of individual complaints and requests for case assistance;
- Discussions with applicants, petitioners, employers, non-governmental organizations including community and faith-based organizations, and immigration professionals across the country; and
- Information and data received from USCIS and other governmental officials.

The Ombudsman's Office then makes formal recommendations to the USCIS Director. By statute, USCIS is required to submit a response within three months.<sup>2</sup>

**Comprehensive Recommendation Review.** On February 24, 2012, the Ombudsman's Office released the initial phase of its Comprehensive Recommendation Review.<sup>3</sup> This project presents the results of a comprehensive analysis of formal recommendations the Ombudsman's Office has submitted to USCIS since 2002.

Periodic reviews are a necessary part of the Ombudsman's Office mission in order to account for legislative and regulatory changes; alterations to USCIS programs, policies, and operational priorities and approaches; and to ensure that the Ombudsman's Office focuses on recommendations and issues that continue to require review and analysis.

The Comprehensive Recommendation Review is a multi-phase project. The February 24, 2012 version represents the initial phase. This project will allow the Ombudsman's Office to focus on continuing areas of concern with USCIS operations, and will also provide stakeholders with a central location to review all of the formal recommendations made by the Ombudsman's Office.

The Ombudsman's Office reviewed each prior formal recommendation and assigned a classification to indicate whether the recommendation remains active and whether it requires further action by USCIS. The classifications include:

- Implemented—Recommendations that USCIS has agreed to and implemented are designated as “implemented.”

### Figure 1: Ombudsman's Office Case Assistance Process

## Helping Individuals and Employers Resolve Problems with USCIS

Individuals and employers can request assistance from the Ombudsman's Office by taking the following steps:

- Step 1** Before asking the Ombudsman's Office for help with an application or petition, customers should try to resolve the issue with USCIS through the following methods:
  - Obtain information about the case at USCIS My Case Status at [www.uscis.gov](http://www.uscis.gov).
  - Contact the USCIS National Customer Service Center for assistance at 1-800-375-5283.
  - Make an appointment to speak directly with USCIS through InfoPass at [www.infopass.uscis.gov](http://www.infopass.uscis.gov).
- Step 2** Complete an online request for case assistance available on the Ombudsman's Office website at [www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman).  
The Ombudsman's Office also provides a printable case assistance form (Form DHS-7001) available on our website.
- Step 3** Submit a signed request and supporting documentation to the Ombudsman's Office by one of the following methods:  
**Ombudsman Case Assistance Online:** [www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman) (Recommended)  
—or—  
**Email:** [cisombudsman@hq.dhs.gov](mailto:cisombudsman@hq.dhs.gov)  
**Fax:** 202-357-0042  
**Mail:** Citizenship and Immigration Services Ombudsman  
U.S. Department of Homeland Security  
Attention: Case Assistance  
Mail Stop 0180  
Washington, D.C. 20528-0180

All information submitted to the Ombudsman's Office is collected and protected under the provisions of the Privacy Act.

- Active—Recommendations addressing ongoing operations, activities, and business processes still of concern to stakeholders are designated as “active.”
- Declined—Recommendations rejected or largely rejected by USCIS are designated as “declined.”
- Closed—Recommendations pertaining to obsolete programs, or to activities that have changed significantly, are designated as “closed.”

In the upcoming phases of the project, the Ombudsman’s Office will provide further analysis of each formal recommendation, including a brief description of its current status, and a discussion of any further activity that may be required by USCIS.

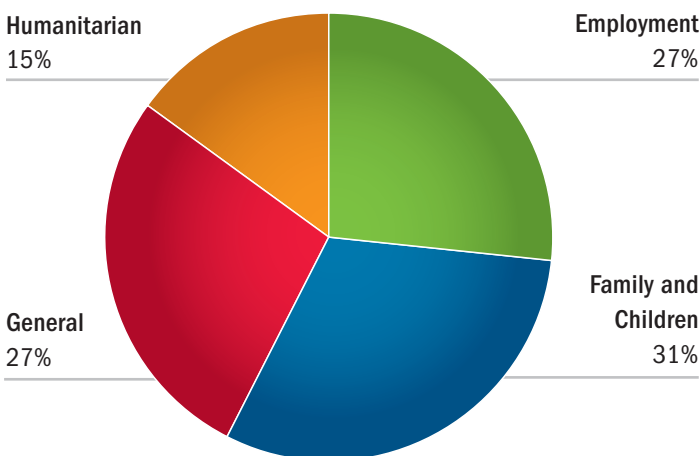
**Communication and Problem Solving with USCIS.** The Ombudsman’s Office meets regularly with USCIS. These meetings range from informal discussions of specific issues with operational leaders to formal meetings between the Ombudsman and the Director of USCIS. Continuous dialogue between the Ombudsman’s Office and USCIS provides opportunities to identify potential difficulties before they become problems, and address existing issues before they significantly impact customers.

During the reporting period, issues discussed include:

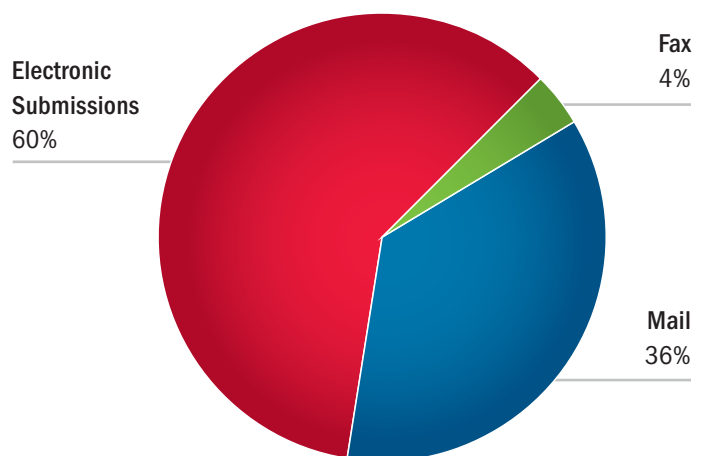
- **USCIS procedures to remedy problems caused by administrative error.** Previously, the Ombudsman’s Office recommended that USCIS establish a process to resolve clear service error.<sup>4</sup> USCIS concurred with the recommendation in 2009.<sup>5</sup> On April 4, 2012, USCIS issued an instructional memorandum entitled, “Expedited Case Review Process for Specifically-Defined Administrative Errors,” establishing an “expedited process for reviewing and correcting decisions resulting from certain administrative errors.”<sup>6</sup> The Ombudsman’s Office is studying the impact of this new policy and welcomes customer feedback.
- **Periods of stay for H-2A shepherders.** The Ombudsman’s Office raised with USCIS certain issues regarding H-2A petitions filed on behalf of shepherders. Shepherders are subject to confusing time-in-status limitations that became effective on January 17, 2009.<sup>7</sup> Due to these limitations, USCIS granted varying periods of stay to shepherders. As a result, many of the most experienced shepherders were given H-2A expiration dates that fell during the critical lambing season, forcing them to depart the United States prior to assisting in the delivery of lambs. Stakeholders reported that without experienced shepherders to assist in the lamb-

**Figure 2: Case Assistance**

### Type



### Mode of Submission



\* Percentages are approximate and based on a sample of overall caseload.



ing process, a large percentage of the lambs would die. In March 2012, USCIS issued a temporary extension of authorized stay for certain sheepherders, allowing farmers to focus on caring for their livestock and supporting the U.S. wool, meat, and speciality products industries.<sup>8</sup>

### Ombudsman’s Office Outreach

The Ombudsman’s Office routinely interacts with a wide range of stakeholders. This year outreach focused on emerging immigrant communities that may experience challenges in accessing immigration services due to language barriers and limited availability of legal assistance.

During the reporting period, the Ombudsman’s Office conducted a total of 125 outreach activities. Outreach efforts over the past year include:

**Stakeholder and Congressional Meetings.** During the reporting period, the Ombudsman’s Office conducted 70 stakeholder meetings, and 29 speaking engagements, as part of its efforts to connect with attorneys, industry associations, trade groups, faith-based groups, and community-based organizations that have an interest in immigration issues. Stakeholders provided feedback regarding difficulties

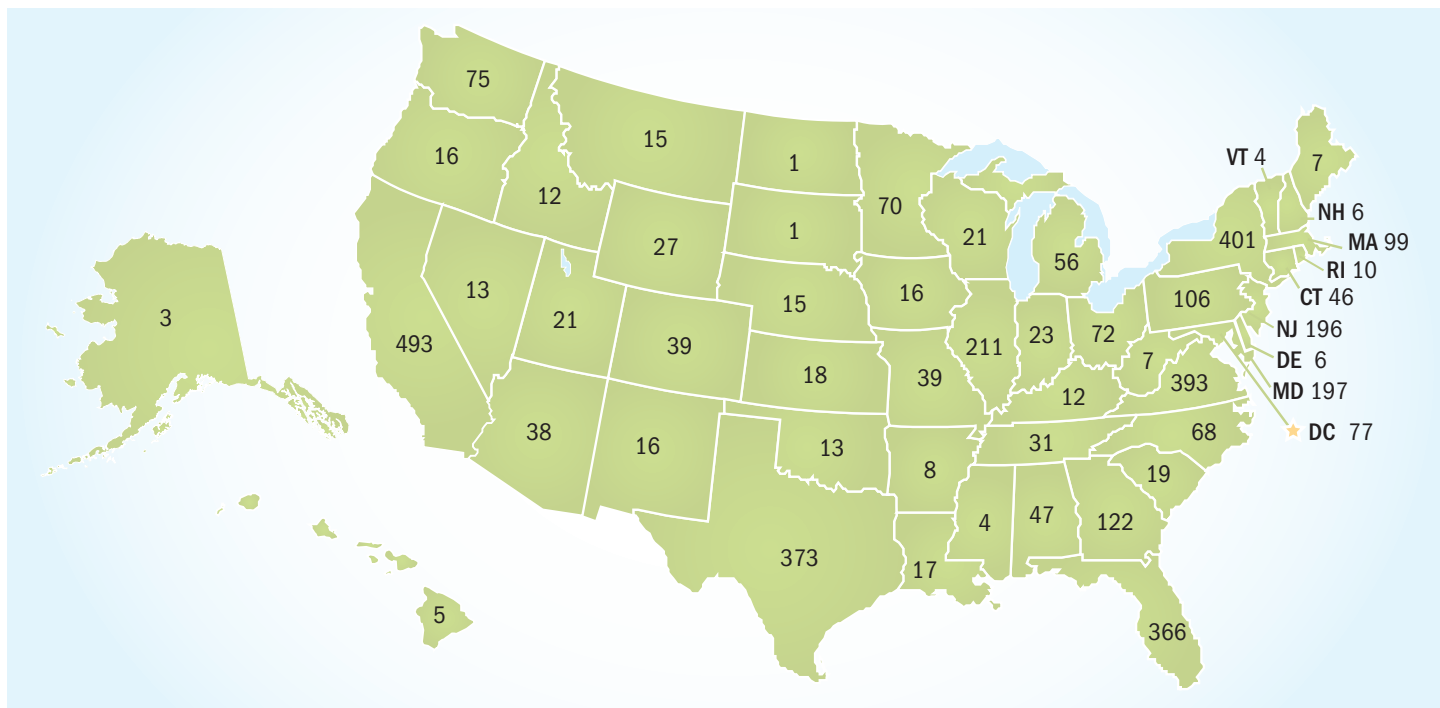
encountered when applying for a wide variety of immigration benefits. The Ombudsman’s Office is able to confidentially relay this information to USCIS at the local, regional, and national levels in real time.

The Ombudsman’s Office also regularly meets with Congressional offices across the country. During the reporting period, the Ombudsman’s Office conducted 16 Congressional meetings.

**Interagency Liaison.** The Ombudsman’s Office often facilitates or participates in interagency discussions that promote the responsive delivery of immigration services. Recent interagency liaison efforts include:

- *Co-hosting stakeholder outreach sessions with the U.S. Department of Justice’s Office of Special Counsel for Immigration-Related Unfair Employment Practices.* These sessions provided information to emerging immigrant groups regarding immigration-related employment issues.
- *Leading an interagency working group that monitors the annual allocation of immigrant visas.* This group includes participants from the U.S. Department of State (DOS) and USCIS.
- *Participating in a working group on Immigration Court docket efficiency.* This group includes participants from USCIS, U.S.

**Figure 3: Case Assistance by State**



\* Reflects cases submitted from within the U.S., each year a small number of cases are submitted by individuals outside the U.S.

Immigration and Customs Enforcement (ICE), and the Executive Office for Immigration Review (EOIR). The group's efforts focused on the efficient adjudication of immigration benefits in order to ensure that immigration proceedings are completed in a timely fashion.

In addition, on behalf of the White House Council on Women and Girls, the Ombudsman facilitated a number of activities focused on protecting immigrant women and girls in vulnerable situations. They include:

- *Hosting roundtable sessions with stakeholders across the country.* These sessions provided a forum to share advancements at DHS that support the protection of immigrant women and girls.
- *Bringing together DHS officials<sup>9</sup> with local, state, and national law enforcement associations.* DHS provided training on federal laws offering protection for immigrant victims of human trafficking and other crimes, including U and T nonimmigrant status and humanitarian parole.
- *Coordinating the production of the DHS U Visa Law Enforcement Resource Guide.* Released in December 2011, this guide provides law enforcement officials with information about U visa requirements and answers to frequently asked questions from law enforcement agencies.<sup>10</sup>

**Teleconferences.** The Ombudsman's Office regularly hosts public teleconferences. The purpose of the teleconferences is to encourage callers to share information on immigration-related topics. Typically, a moderator from the Ombudsman's Office will interview a subject matter expert (or experts) from USCIS, other government agencies, or the private sector. At the conclusion of the interview, the conference call is opened to questions or comments from participants. Recent teleconferences have highlighted topics including:

- April 25, 2012—Conditional Permanent Residence: How Is It Working For You?
- March 28, 2012—Enforcement and Removal Operations (ERO) Public Advocate: A Conversation with the U.S. Immigration and Customs Enforcement (ICE).
- February 7, 2012—The Adjudication of L1-B "Specialized Knowledge" Worker Petitions: How Is It Working For You?
- January 11, 2012—USCIS Validation Instrument for Business Enterprises (VIBE)—How Is It Working For You?



- November 27, 2011—Change of Address: How Is It Working For You?
- October 25, 2011—Small & Start-Up Business Immigration Issues.
- October 6, 2011—Unaccompanied Children: A Conversation with U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review.
- July 27, 2011—Survivor Benefits under INA §204(l): A Conversation with USCIS.
- June 20, 2011—U Visas: A Conversation with the Department of State and USCIS.
- May 25, 2011—Immigration Status Verification for Drivers' Licenses, Public Benefits, and Social Security Cards: A Conversation with USCIS.

**Ombudsman Quarterly Updates.** In January 2011, the office launched the *Ombudsman Quarterly Update*, an e-newsletter that highlights current projects, casework, and issues that have been resolved both formally and informally with USCIS. Currently, the *Ombudsman Quarterly Update* is electronically delivered to over 2,290 stakeholders.

## 2011 Annual Conference

On October 20, 2011, the Ombudsman's Office hosted its first Annual Conference, bringing together more than 300 participants with diverse backgrounds and interests to discuss improving the delivery of immigration services. Participants included government officials and representatives from community and faith-based organizations, business and industry associations, law schools, and legal practices. Issues covered during the conference include:

- Trends in employment-based immigration adjudications;
- Developments in definitions of particular social groups for asylum applicants;
- Processing of waivers of inadmissibility;
- Improving coordination between USCIS, ICE, and the EOIR to ensure immigration benefits are adjudicated efficiently and immigration proceedings are completed in a timely fashion;

- Impact of Systemic Alien Verification for Entitlements on access to public benefits, employment, drivers' licenses, and social security;
- The DOS monthly Visa Bulletin and interagency collaboration regarding the allocation of immigrant visas under annual caps; and
- The role of bloggers in influencing immigration policies.

## Second Annual Conference

The Ombudsman's Office will hold its second Annual Conference on October 18, 2012 at the National Archives and Records Administration Building. The conference panels will feature public and private sector experts, who will focus on problem-solving, interagency dialogue, and collaboration in the delivery of immigration services.

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# USCIS Year in Review: An Effort to Increase Quality and Consistency in Benefit Adjudications

During this reporting period, U.S. Citizenship and Immigration Services (USCIS) stated in various forums that its priorities should be guided by a commitment to quality, consistency, and improved, more transparent processes.<sup>11</sup> Director Mayorkas announced in a February 17, 2011 press conference that USCIS' strategic goals and initiatives would focus on "promoting quality and consistency" in the adjudication of immigration benefit applications.<sup>12</sup> He added, "[T]here are areas in which our policies are not necessarily consistent or consistently applied. We are one agency and we are dedicated to realizing the legislative intent of the laws that we administer. And consistency is a critical attribute."<sup>13</sup> This section considers USCIS' ongoing effort to increase quality and consistency in benefit adjudications through enhanced outreach, policy review and technology.

## Outreach

Director Mayorkas has steadfastly encouraged outreach and public engagement in an effort to define critical agency priorities. The USCIS Office of Public Engagement has hosted an array of comprehensive, information-sharing events designed to educate and accommodate stakeholders.<sup>14</sup> As an organization, USCIS has effectively institutionalized community outreach and the dissemination of information through local field offices. In addition to hosting interviews, all local offices offer information services and public workshops on a range of topics including citizenship and adjustment of status requirements. This approach, emphasizing customer service as a shared responsibility, has allowed USCIS to provide important information in a timely, accurate manner. Similarly, the USCIS website and 1-800 line continue to offer users ready access to general and case specific information.

Other noteworthy outreach efforts include:

**Expanded Information Services.** USCIS added to its award-winning website, [www.uscis.gov](http://www.uscis.gov), enhanced tools including a news ticker, live streaming and improved data tracking.<sup>15</sup>

**Multilingual Engagements.** With the success of USCIS' quarterly engagement series entitled "Enlace" (the Spanish term for engagement), USCIS also launched a Chinese-language series called "Jiao Liú."<sup>16</sup> Each multilingual engagement focuses on a different immigration or citizenship topic. This year, USCIS has coordinated more than 30 national and local events in Spanish, Arabic, French, Amharic, Chinese and Vietnamese.<sup>17</sup>

**Immigration Services for the U.S. Military.** USCIS has demonstrated an impressive commitment to ensuring access to immigration information and services for military members and their families. Through outreach to bases and other military installations, the agency has offered valuable training to legal and human service personnel. USCIS further maintains a toll free military help line, 1-877-CIS-4MIL (1-877-247-4645).<sup>18</sup>

USCIS has fully implemented the "Naturalization at Basic Training Program"<sup>19</sup> in partnership with the U.S. Department of Defense (DOD). Since the program began in 2010, more than 3,800 U.S. service members have become U.S. citizens upon graduation from basic training.<sup>20</sup>



As of 2012, the Army, Navy, Air Force and Marines have undertaken to provide U.S. service members the opportunity to apply for naturalization during basic training. This initiative embodies a true partnership between DOD and USCIS. Prior to implementation of the Naturalization at Basic Training Program, many service members experienced difficulty becoming U.S. citizens due to overseas deployments and repeated station changes. As a result of this initiative, the number of service members naturalizing overseas has decreased substantially. Processing naturalization requests stateside is far safer for all involved and also cost-effective.

#### **The Unauthorized Practice of Immigration Law Initiative.**

In June 2011, USCIS launched this “national, multi-agency initiative to combat immigration services scams.”<sup>21</sup> Since the inception of this initiative, USCIS has distributed more than 260,000 brochures in 14 different languages, and hosted 88 dedicated engagements.<sup>22</sup> By providing information to immigrant communities on risks associated with obtaining legal advice from individuals who are not bar-certified attorneys or accredited representatives, USCIS is helping its customers make “smart choices.”<sup>23</sup> Commenced as a pilot program in Atlanta, Baltimore, Detroit, Fresno, Los Angeles, New York, and San Antonio, USCIS plans to expand the Unauthorized Practice of Immigration Law Initiative (UPLI) in 2012.<sup>24</sup>

**The Entrepreneurs in Residence Program.** On October 11, 2011, USCIS announced together with the President’s Council on Jobs and Competitiveness, the Entrepreneurs in Residence (EIR) program to bring private sector insights and expertise into the government.<sup>25</sup> Through the U.S. Department of Homeland Security (DHS) Loaned Executive Program, USCIS has enlisted entrepreneurs and academics with expertise in business innovation and information technology to help refine USCIS policies, practices and training.<sup>26</sup> The EIR program illustrates the commitment of DHS and USCIS to spur job creation and promote startup enterprises where possible.<sup>27</sup>

#### **Policy Review**

In last year’s Annual Report, the Ombudsman’s Office indicated that stakeholders reacted favorably to USCIS’ scheduled policy review and related public engagement efforts,<sup>28</sup> but expressed concern that it frequently takes months, if not years, for USCIS to implement substantive regulations, whether interim or final. In this reporting period, USCIS issued approximately 30 policy and procedural memoranda, including updates. While several of these documents are clarifying or administrative in nature, a few are substantively significant.

In June 2011, in support of the UPLI initiative, USCIS issued guidance clarifying the roles and responsibilities of District Directors in the Board of Immigration Appeals (BIA) recogni-



tion and accreditation process.<sup>29</sup> Stakeholders have reported that USCIS’ role in this process has not always been clear or timely addressed. The guidance responds to these concerns by requiring District Directors to participate in the recognition and accreditation process, and sets forth the specific steps they are required to take vis-à-vis applications submitted to the BIA.

On November 7, 2011, USCIS issued a memo entitled “Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.”<sup>30</sup> The guidance superseded “Policy Memorandum No. 110, Disposition of Cases Involving Removable Aliens,” previously in effect since July 11, 2006.<sup>31</sup> Many aspects of the new NTA guidance are of interest to stakeholders. The Ombudsman’s Office is reviewing this memorandum and stakeholder concerns, and plans to formally review USCIS’ NTA procedures later this year.

On January 17, 2012, USCIS published proposed revisions to its Adjudicator’s Field Manual (AFM) on “The Role of Private Attorneys and Other Representatives.” This long overdue completion of AFM Chapter 12 expressly “provides guidance to adjudicators and balances the meaningful role of attorneys and representatives in the interview process with the important responsibility of adjudicators to conduct fair, orderly interviews.”<sup>32</sup>

On April 4, 2012, USCIS issued an instructional memorandum entitled, “Expedited Case Review Process for Specifically-Defined Administrative Errors” that invites customers to contact the National Customer Service Center to report data entry and/



or administrative errors resulting in adverse adjudicative action.<sup>33</sup> The memorandum addresses four specific types of administrative error, all involving USCIS' failing to register receipt of information submitted by an applicant or petitioner in response to a Request for Evidence (RFE), Notice of Intent to Deny, or Notice of Intent to Revoke. Customers must be able to demonstrate that they timely submitted the required information. USCIS, in turn, has promised to "make every possible effort to respond to" expedited case review requests within five business days. While a definite step in the right direction, stakeholders thus far report delays in implementation of the memorandum.

USCIS committed to implementing a series of policy, operational, and outreach efforts to promote foreign investments and to grow the U.S. economy.<sup>34</sup> This followed the White House-led "Startup America"<sup>35</sup> initiative and the Secretary's own pledge to "continue to attract the best and the brightest from around the world" to invest in America.<sup>36</sup> In August 2011, USCIS issued a job creation fact sheet identifying ways it hopes to attract entrepreneurs to the United States.<sup>37</sup> USCIS issued Frequently Asked Questions for entrepreneurs applying for employment-based second preference national interest immigrant visas.<sup>38</sup> The agency has further promised to expand premium processing for employment-based first preference multinational executives and managers.<sup>39</sup>

In an effort to address a common challenge facing entrepreneur applicants, USCIS issued guidance on establishing the "employee-employer relationship" in H-1B petitions.<sup>40</sup> It proposed for public comment enhancements to the EB-5 Investor Visa program, specifically, accelerated processing times, the hiring of a specialized intake team to assess new EB-5 filings, and creation of an expert decision board.<sup>41</sup> Also, USCIS launched new engagement opportunities to share information and learn from the business and entrepreneur community.<sup>42</sup> These initiatives show great promise and stakeholders await results.

Finally, on January 9, 2012, USCIS published a Notice of Intent in the Federal Register considering a regulatory change that would allow certain immediate relatives of U.S. citizens to request provisional waivers of inadmissibility prior to departing the United States for consular processing.<sup>43</sup> This proposed change was supplemented by a second posting on April 2, 2012.<sup>44</sup> The stated goal of the new rule is to allow "certain immediate relatives of U.S. citizens to apply for a provisional waiver of the unlawful presence ground of inadmissibility while still in the United States if they can demonstrate that being separated from their U.S. citizen spouse or parent would cause that U.S. citizen relative extreme hardship."<sup>45</sup> Many stakeholders welcome the proposed change, but urge USCIS to consider offering provisional waivers to relatives of lawful permanent residents.<sup>46</sup>



## Technology

USCIS has embraced and effectively utilized, cutting-edge technology to perform its duties. While these improvements have clearly helped USCIS provide better services, they cannot replace the experience and sound judgment of qualified adjudicators, supervisors, and those tasked with eliciting and responding to customer concerns. At its core, USCIS exists to serve the public; technology offers an important, but ultimately limited, tool toward that end.

**Validation Instrument for Business Enterprises.** In February 2011, USCIS deployed the Validation Instrument for Business Enterprises (VIBE) at all four service centers.<sup>47</sup> VIBE was intended to enable USCIS to rapidly and easily vet businesses filing employment-based petitions.<sup>48</sup> Immediately following its rollout, stakeholders reported that the Dun & Bradstreet database underlying VIBE, at times, contained inaccurate and outdated information.<sup>49</sup> Throughout the current reporting period, stakeholders continued to note problems connected with VIBE that have led to burdensome RFEs and erroneous denials.

**Transformation.** USCIS has experienced a number of setbacks and delays in its attempt to change from a paper-based organization with a fragmented information technology



*\* Photo courtesy of USCIS and the National Archives.*

structure to a customer-centric electronic environment. On May 22, 2012, USCIS launched the first phase of the Electronic Immigration System (ELIS), which, in its initial phase, is limited to facilitating filing of Form I-539, Request to Extend or Change Nonimmigrant Status.<sup>50</sup> The Ombudsman's Office will continue to monitor progress related to USCIS' Transformation, including its potential to alter fundamentally the manner in which the organization receives and adjudicates immigration benefit requests.

Over the past year, USCIS has proposed many programs and initiatives, some of which remain in a developmental stage. Other efforts appear to have lost momentum or suffered serious setbacks. This Annual Report examines these programs and initiatives, and offers recommendations for improvement. Understanding the inherent, even daunting challenges associated with full-scale implementation, the Ombudsman's Office and immigration stakeholders remain hopeful that USCIS' ambitious programs and initiatives will be realized.

# 2012 Areas of Study: Pervasive and Serious Problems and Recommended Solutions

Under the Homeland Security Act of 2002,<sup>51</sup> the Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) Annual Report must include a "summary of the most pervasive and serious problems encountered by individuals and employers." Consistent with its mandate to assist individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS), the Ombudsman's Office continues to identify and monitor areas in which individuals and employers experience delays, difficulties, errors, and gaps in service when seeking immigration benefits.

The 2012 Annual Report covers issues and developments affecting the delivery of immigration services within the following areas: 1) Employment, 2) Family and Children, 3) Humanitarian, and 4) Customer Service. Within each section, the report emphasizes formal recommendations submitted to USCIS, issues the Ombudsman's Office plans to formally review within the next 180 days, and areas of ongoing concern.





\* Photo courtesy of New York Public Library.

# Employment

*A landscape contractor encountered difficulty hiring sufficient U.S. workers. In light of this shortage, the contractor began looking for workers to assist during the busy season, between April and November, and filed a petition with USCIS for several H-2B temporary workers. The petition was approved and the H-2B workers began to apply for visas through the U.S. Department of State. Due to concerns relating to the workers' inability to clearly explain their intended job functions, the consular official returned the petition to USCIS for possible revocation. Concerned about a delay, and with contract obligations in excess of \$1 million at risk, the contractor turned to the Ombudsman's Office for assistance. The Ombudsman's Office worked with the contractor, the consulate, and USCIS to facilitate interagency coordination to ensure a timely review of the returned petition. The contractor was able to address the government's concerns, and the temporary workers were issued visas, allowing the contractor to meet its obligations and sustain its business.*





## Formal Recommendations

### Employment Authorization Documents: Meeting the 90-Day Mandate and Minimizing the Impact of Delay on Individuals and Employers

The Ombudsman's Office found that certain procedural challenges persist in the processing of Employment Authorization Documents (EADs). These challenges include: 1) failure to process EADs in 90 days or issue interim EADs; 2) the lack of a mechanism for rapid issuance of an EAD when an application has been pending significantly longer than 90 days; and 3) processing delays related to the resolution of security background checks.

Many immigration benefits applicants cannot legally work without an EAD. When EAD processing is delayed, individuals and employers often experience adverse consequences such as job loss and the disruption of business operations.

On July 18, 2011, the Ombudsman's Office made recommendations to help USCIS reduce EAD processing delays, meet its regulatory mandate, and improve customer service. The Ombudsman's Office recommended that USCIS:

1. Establish methods at local offices to facilitate immediate resolution;
2. Establish a uniform processing time goal of 45 days for adjudication and 60 days for issuance of an EAD;
3. Improve monitoring and ensure real-time visibility through an automated system for tracking processing times;
4. Follow established internal procedures for issuing interim EADs in cases where background checks are pending; and



## 5. Issue replacement EADs with validity dates beginning on the date the old EAD expires.

USCIS responded to these formal recommendations on April 11, 2012, and initiated a data review to better understand the scope of the problem. USCIS also agreed that local field offices play a role in assisting customers with employment authorization issues, and should notify the appropriate service center or National Benefits Center of inquiries, so that it may prioritize cases for review. The agency also noted that an automated system to track processing times will be implemented as part of USCIS Transformation.

USCIS stated that its goal is to comply with the regulations and adjudicate all EAD applications within the mandated 90-day period. USCIS did not concur with the recommendation that it establish an internal processing goal of 45 days for adjudication and 60 days for issuance of an EAD. USCIS also advised that it is exploring the feasibility of issuing replacement EADs with validity dates beginning on the date the old EAD expires.

The Ombudsman's Office continues to closely monitor a variety of issues connected with employment authorization and provide information and assistance to stakeholders as needed.

### Recommendations to Improve the Quality in Extraordinary Ability and Other Employment-Based Adjudications

On December 29, 2011, the Ombudsman's Office published recommendations for improving the quality of extraordinary ability and certain other employment-based adjudications.

The Immigration and Nationality Act (INA) permits employers and individuals to petition USCIS for an immigrant visa based on job skills or potential contributions to the U.S. economy. There are five employment-based preference categories that are used to determine whether a foreign national is eligible for an immigrant visa.<sup>52</sup> The first preference category includes individuals with extraordinary ability; and outstanding professors, and researchers. The second preference category includes individuals of exceptional ability in the sciences, the arts, or business.<sup>53</sup>

On March 4, 2010, the Ninth Circuit Court of Appeals issued a decision, *Poghos Kazarian v. U.S. Citizenship and Immigration Services (Kazarian)*, reviewing USCIS' application of the regulations governing extraordinary ability petitions.<sup>54</sup> On December 22, 2010, USCIS issued a policy memorandum based on the *Kazarian* holding entitled, "Evaluation



of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the *Adjudicator's Field Manual (AFM)* Chapter 22.2, AFM Update AD11-14.”<sup>55</sup> This memo provides a new two-pronged test to determine eligibility for the extraordinary ability, outstanding professor or researcher, and exceptional ability categories. The test requires: 1) an evaluation of whether the petitioner provided the requisite evidence; and 2) a final merits determination.

Stakeholders raised the following concerns: 1) the subjective nature of a final merits determination; and 2) consistency in the application of the new policy. Stakeholders contended that the policy memorandum permitted Immigration Services Officers (ISOs) too much discretion in making the final merits determination, leading to arbitrary decisions by adjudicators. In response to these concerns, USCIS invited stakeholders to submit *amicus curiae* briefs to the USCIS Administrative Appeals Office (AAO).<sup>56</sup>

The Ombudsman's Office published the following recommendations:

1. Conduct formal rulemaking to clarify the regulatory standard, and if desired, explicitly incorporate a final merits determination into the regulations;
2. In the interim, provide public guidance on the application of a final merits determination; and
3. In the interim, provide ISOs with additional guidance and training on the proper application of preponderance of the evidence standard when adjudicating EB-1-1, EB-1-2, and EB-2 petitions.



As of the publication of the 2012 Annual Report, USCIS had not yet issued a formal response to these recommendations.

## Issues the Ombudsman's Office Plans to Formally Review within the Next 180 Days

### Healthcare Immigration Concerns

Approximately a quarter of U.S. physicians are international medical graduates that require USCIS authorization to work in the United States.<sup>57</sup> The Ombudsman's Office is examining issues related to the continuity of medical services provided by foreign national physicians.<sup>58</sup>

Each fiscal year, there are a limited number of new H-1B visas available (referred to as the "cap").<sup>59</sup> In recent years, the entire annual allotment of new H-1B visas has been exhausted early into the filing period.<sup>60</sup> Some employers are not subject to the cap, such as: institutions of higher learning, or related/affiliated nonprofit entities or research organizations, or governmental research organizations.<sup>61</sup>

Many international medical graduates are employed by cap-exempt institutions while completing their residencies and, subsequently, wish to accept positions with cap-subject employers. Consider a physician working for a university hospital on an H-1B cap-exempt nonimmigrant visa scheduled to complete her residency in June. If the H-1B cap has been reached for the current fiscal year, the physician may not start new employment with a cap-subject employer until the next fiscal year begins on October 1. As a result, certain foreign



national physicians encounter gaps in employment authorization when transferring to cap-subject employers.

Without a corrective provision, foreign national physicians facing this gap in employment are not only unable to work, but many are required to leave the United States until the approved start dates for their positions with the cap-subject employers.

The Ombudsman's Office is reviewing this issue and plans to publish recommendations within the next 180 days.

## Ongoing Concerns

### Validation Instrument for Business Enterprises

In March 2011, USCIS service centers began using the Validation Instrument for Business Enterprises (VIBE) as part of their standard adjudication routine.<sup>62</sup> VIBE allows USCIS to verify business information submitted in support of employment-based petitions using source data collected by Dun & Bradstreet, a commercial provider of business information services.<sup>63</sup> VIBE was intended to reduce the amount of time required to adjudicate those petitions, and reduce the amount of fraud encountered in employment-based immigration.

Stakeholders have reported that, at times, VIBE data on joint ventures, new companies, and entities with complex corporate structures is inaccurate. As a result, USCIS has been issuing burdensome Requests for Evidence (RFEs), often to companies with a long history of petition approval.

In addition, stakeholders report that Dun & Bradstreet applies aggressive marketing tactics when contacted to correct outdated or inaccurate information that served as the basis for a VIBE-related RFE. Stakeholders have also expressed concerns that USCIS' use of VIBE forces employment-based immigration petitioners to purchase services from a private enterprise, in order to ensure that information listed for their business entities is up-to-date and accurate.

In its 2011 Annual Report, the Ombudsman's Office addressed a variety of stakeholder concerns regarding VIBE.<sup>64</sup> For 45 days, beginning on June 1, 2011, USCIS suspended the use of VIBE in the H-2A program.<sup>65</sup> This suspension was based largely on feedback from stakeholders indicating that Dun & Bradstreet's information on small agricultural business was inaccurate and that VIBE checks on H-2A petitions were leading to an inordinate number of RFEs being issued to established business entities with extensive histories of successful H-2A petitions.

On January 11, 2012, the Ombudsman’s Office held a nationwide teleconference on VIBE.<sup>66</sup> Nearly all the participants expressed concern over the impact VIBE is having on the adjudication of employment-based petitions.

The Ombudsman’s Office continues to bring concerns about VIBE to the attention of USCIS.

### EB-5 Immigrant Investor Program

In 1990, Congress established the fifth employment-based (EB-5) preference category for immigrants seeking to enter the United States to engage in a commercial enterprise that will benefit the U.S. economy and directly create at least ten<sup>67</sup> full-time jobs.<sup>68</sup> The minimum qualifying investment amount is \$500,000 for commercial enterprises located within a rural area<sup>69</sup> (or targeted employment area),<sup>70</sup> and is otherwise \$1,000,000.<sup>71</sup> This investment-based immigration category attracts individuals to the United States to supply venture capital, create jobs for U.S. workers, and stimulate the U.S. economy.<sup>72</sup>

In March 2009, the Ombudsman’s Office made recommendations to USCIS regarding improvements to the EB-5 pro-

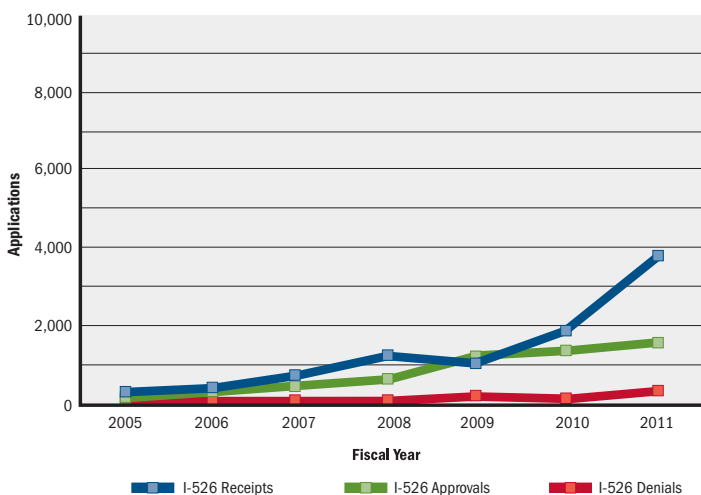
gram.<sup>73</sup> At that time, the Ombudsman’s Office reported that many of the 10,000 available EB-5 visas remained unused<sup>74</sup> due to “a confluence of factors, including program instability, the changing economic environment, and more inviting immigrant investor programs offered by other countries.”<sup>75</sup>

Throughout 2012, USCIS conducted extensive public engagement regarding the EB-5 program.<sup>76</sup> Although the program has increased in popularity, stakeholders continue to note that many of the same challenges encountered in 2009 continue today. Stakeholders also report receiving RFEs seeking information that is not related to the individual investor, but attempting to revisit issues settled during the adjudication of associated regional center applications. In addition, stakeholders also report delays in adjudication and increased processing times.

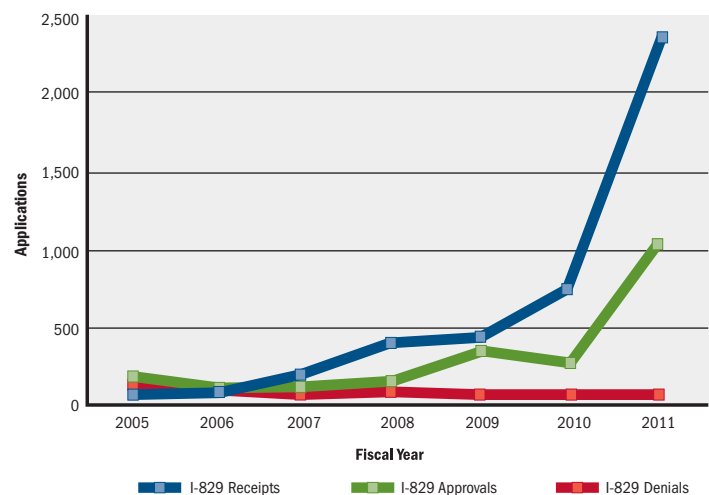
The Ombudsman’s Office continues to monitor USCIS progress concerning the EB-5 program, and stakeholders are encouraged to contact the Ombudsman’s Office with case specific challenges as well as suggestions for future recommendations to improve the EB-5 program.

**Figure 4: USCIS Receipts, Approvals, and Denials—Fiscal Years 2005-2011**

#### Form I-526, Immigrant Petition by Alien Entrepreneur



#### Form I-829, Petition by Entrepreneur to Remove Conditions



Source: USCIS Office of Performance and Quality (OPQ), Immigrant Petition by Alien Entrepreneur (I-526) and Petition by Entrepreneur to Remove Conditions (I-829) Service-wide Receipts, Approvals, Denials Fiscal Year(s): 2005-2012 (2nd Quarter) (April 23, 2012).

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\* Photo courtesy of USCIS and the National Archives.

## Family and Children

*A mother and child came to the United States as refugees. The mother became a permanent resident, but did not realize that she needed to file separately for her daughter. As an adult, the daughter needed proof of her lawful status and filed with USCIS to obtain a green card. Unfortunately, she filed the wrong form. USCIS accepted this form in error and improperly issued her a green card. After marrying a U.S. serviceman, she decided to pursue U.S. citizenship. When she contacted USCIS to ask how to become a U.S. citizen, USCIS advised her to file an application for a Certificate of Citizenship as her mother became a U.S. citizen when she was a child. She filed and paid the required fee. USCIS denied her application. Confused by the denial, the couple sought assistance from the Ombudsman's Office, which requested that USCIS review the file to determine her status. USCIS identified the previous error, recalled the green card, and encouraged the military spouse to file for adjustment of status. She is now on the right path and understands the steps needed to become a U.S. citizen.*





## Formal Recommendations

### Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices

On April 15, 2011, the Ombudsman's Office published a formal recommendation aimed at strengthening the Special Immigrant Juvenile (SIJ) program.<sup>77</sup> The Ombudsman's Office recommended that USCIS:

1. Standardize its practices of:
  - a. Providing specialized training for those officers adjudicating SIJ status;
  - b. Establishing dedicated SIJ units or points of contacts at local offices; and
  - c. Ensuring adjudications are completed within the statutory timeframe.

2. Cease requesting the evidence underlying state court determinations of foreign child dependency.
3. Issue guidance, including agency regulations, regarding adequate evidence for SIJ filings, including general criteria for what triggers an interview for the SIJ petition, and make this information available on the USCIS website.

USCIS responded to the Ombudsman's recommendations on July 13, 2011, verifying that it will continue to develop specialized training for officers who adjudicate SIJ status.<sup>78</sup> In addition, USCIS concurred with the recommendation that SIJ adjudications be completed within the statutory timeframe and advised that it has taken proactive measures to ensure that SIJ filings are adjudicated within the 180-day requirement. USCIS also concurred with the recommendation to issue guidance regarding adequate evidence for SIJ filings.

However, USCIS rejected the Ombudsman’s Office recommendation that it “[c]ease requesting the evidence underlying state court determinations of foreign child dependency.”<sup>79</sup> Although USCIS appears to have only limited authority to request information underlying state court juvenile dependency orders, it has described its review of such orders as a “discretionary determination” that the petition is *bona fide*.<sup>80</sup>

Approximately two months later, on September 6, 2011, DHS published a proposed rule for SIJ petitions.<sup>81</sup> The proposed rule would significantly expand USCIS’ ability to review a state court order, permitting it to consider additional evidence before issuing consent to the SIJ classification. Stakeholders continue to note that such an increase in USCIS’ authority to request the evidence underlying a state court dependency order appears to be directly contrary to the expanded protections enacted via the William Wilberforce Trafficking Victims’ Protection Reauthorization Act of 2008 (TVPRA 2008), which permits broader findings by a juvenile court to serve as the basis for an SIJ status application.<sup>82</sup>

As of the publication of the 2012 Annual Report, DHS had not issued a final rule for the SIJ program.

## Issues the Ombudsman’s Office Plans to Formally Review within the Next 180 Days

### Conditional Permanent Residence

Under INA § 216, the spouse of a U.S. citizen or lawful permanent resident, married for less than two years at the date of admission, receives conditional permanent resident status for a period of two years.<sup>83</sup> In order to remove the conditions, the petitioner and beneficiary must file Form I-751, Petition to Remove the Conditions of Residence, within 90 days of the second anniversary of the grant of conditional residence.<sup>84</sup> If the parties cannot file jointly,<sup>85</sup> the beneficiary must file a waiver of the joint petition requirements.<sup>86</sup> Failure to file Form I-751 may result in the termination of conditional permanent resident status, and may cause the beneficiary to be placed in removal proceedings. USCIS has discretion to accept a late filed Form I-751 where the conditional resident can establish that there was good cause for the failure to file.<sup>87</sup>

During the reporting period, the Ombudsman’s Office met with stakeholders to discuss concerns with conditional residence adjudications. Some of the issues raised by stakeholders were: 1) absence of any notification that conditional resident status is expiring;<sup>88</sup> 2) problems in obtaining proof



of status while a Form I-751 is pending; 3) lack of guidance on how a conditional resident can change a petition from a joint filing to a waiver application; 4) problems connected with files being unavailable to adjudicators; 5) issuance of unclear Requests for Evidence (RFEs); 6) inconsistent decisions; and 7) insufficient training regarding the adjudication of battered spouse waiver petitions.<sup>89</sup>

The Ombudsman’s Office is committed to working with USCIS and stakeholders to identify solutions to conditional residence issues and plans to publish recommendations within the next 180 days.

### Survivor Benefits: The Adjudication of Benefits Requests Made Pursuant to Immigration & Nationality Act § 204(l)

On October 28, 2009, Congress enacted INA § 204(l), which expanded immigration benefits for certain surviving relatives in the family and employment preference categories, asylees, and those who have T (trafficking) or U (crime victim) non-immigrant status. In the past, only widows and widowers of U.S. citizens could continue to seek permanent resident status following the death of a petitioning spouse.

The new law became effective as of the date of enactment. For approximately 14 months after the statute was enacted, USCIS did not implement INA § 204(l) and was not granting the benefits contemplated under the law. USCIS did not provide guidance instructing adjudicators how to implement the



law until January 2011, when the agency published a policy memorandum entitled, "Approval of Petitions and Applications after the Death of the Qualifying Relative."<sup>90</sup>

To date, USCIS has not issued new regulations and has advised the Ombudsman's Office that it does not intend to do so.<sup>91</sup> The limited guidance that has been made available thus far has generated many questions regarding the processes for filing and adjudicating survivor benefits applications. The lack of sufficient information on how to proceed has had a particularly onerous effect on *pro se* applicants, although many attorneys and accredited representatives have also found the USCIS memorandum to be complicated and confusing.<sup>92</sup>

The Ombudsman's Office is engaging with both USCIS and stakeholders in order to address various problems that affect individuals applying for survivor benefits and plans to issue recommendations within the next 180 days.

## Ongoing Concerns

### Addressing the Immigration Needs of U.S. Service Members and their Families

On July 9, 2010, 18 members of Congress sent a letter to Secretary of Homeland Security Janet Napolitano, urging her to address the immigration needs of U.S. service members.<sup>93</sup> In addition, the letter encouraged DHS to join in

motions to reopen where legal relief may be available, consider deferred action where no permanent relief is available but strong equities exist, and consider favorably exercising parole authority for close family members who entered without inspection.

In response to this letter, Secretary Napolitano outlined a number of options available to members of the military and their families, including the Naturalization at Basic Training program, and the use of discretionary authorities to help military dependents secure permanent immigration status.<sup>94</sup> The letter states that, on a case-by-case basis, DHS will consider parole and deferred action to minimize periods of family separation and to facilitate adjustment of status for spouses, parents and children of military members. Most of the programs and initiatives, outlined in the Secretary's letter, fall within the authority of USCIS.

To date, USCIS has not provided its field offices with guidance on how to administer discretionary relief for family members of U.S. service members. The lack of guidance has led to troubling inconsistency in the application of these options.

The Ombudsman's Office has repeatedly raised these issues with USCIS, emphasizing the impact on military families. On May 22, 2012, the Acting Ombudsman sent a letter to Director Mayorkas, urging him to issue guidance to field offices, in order to ensure that critical services available to military families are fully and consistently administered.<sup>95</sup>

\* Image courtesy of the National Archives.

U. S. DEPARTMENT OF LABOR  
**List 10**  
**LIST OR MANIFEST OF ALIEN PASSENGERS FOR THE UNITED STATES**  
 ALL ALIENS arriving at a port of continental United States from a foreign port or as a part of the lander possessions of the United States, and all aliens arriving at a port of said lander possessions from a foreign port, a port of continental United States or a port of said lander possessions.  
 This (yellow) sheet is for the Office of Immigration and Naturalization.

**S. S. ROTTERDAM** Passengers sailing from **ROUEN-SUR-MER, TO NEW YORK**, ON **AUGUST 8TH**, 19**23**.

1 No. on List.	2 HEAD-TAX STATUS. (This column for use of Customs officials only.)	3 NAME IN FULL		4 Age.	5 Sex.	6 Color of hair.	7 Color of eyes.	8 Able to—		9 Nationality. (Country of which citizen or subject.)	10 Race or people.	11 * Last permanent residence.		12 Final destination. (*Should leave permanent address.)		13 Place of birth.	
		Family name.	Given name.					Tr.	Res.			East.	West.	Country.	City or town.		State.
1		PROVINCIAL	LOUIS	76	M	M	NONE	YES	FR	FRANCE	FRENCH	FRANCE	FRANCE	ROUBAIX	NEPHEW, MR. CH. POTTIER, 79 RUE DE N. MOONBOCKET, ROUBAIX, NO. PD. FRANCE.		
2		CHEVALIER	ETIENNE	48	M	M	WOL	YES	FR	FRANCE	FRENCH	FRANCE	FRANCE	ROUBAIX	SISTER, MRS. WANDOUKE, RUE ST. JOSEPH, 4, ROUBAIX, NO. PD.		
3		-DO-	PAULINE	48	F	M	HOUSE	YES	-DO-	FRANCE	FRENCH	FRANCE	FRANCE	ROUBAIX	SISTER IN LAW. -DO- -DO- -DO-		
4		EPPL	ELBA	22	F	S	BEANS	-YES	GERMAN	FRANCE	GERMAN	FRANCE	FRANCE	PATERBON	MOTHER, MRS. W. EPPL, SPANLEBERG N. J. PATERBON ST. BASEL, SWITZERLAND.		
5		HANDECHIN	MARIE	31	F	M	WALD	YES	-DO-	FRANCE	GERMAN	-DO-	-DO-	GELTENKINDEN	FATHER, MR. DAN. HANDECHIN, TECH. MINN. ZIMMERMAN		
6															FUTURE HUSBAND, MR. A. SPRECK, 167 3TH AVE. RIVERSIDE, PATERBON, N. J.		
7															AUNT, MR. GUDERIAN, ZIMMERMAN MINNEBOTA.		
8															ALWAYS YES NQNONQNO NO NO GOOD NO 5.7 FAIRBRODGREY NONE SWITZER. BASEL.		
9															ALWAYS YES NQNONQNO NO NO GOOD NO 5.3 FAIRBRODGREY NONE -DO- BELTERKINDEN		





\*Photo courtesy of USCIS and the National Archives.

## Humanitarian

*A single mother was the victim of domestic violence. Her abusive ex-husband kidnapped their U.S. citizen children and returned to their country of origin. She immediately followed to rescue her children and applied for a U visa from abroad. While the application was pending, her ex-husband threatened her, and the police in her home country could not ensure her safety. She was forced into hiding with her children, and contacted USCIS and the Ombudsman's Office seeking assistance in expediting her application. With the cooperation of USCIS and the U.S. Department of State, she was able to submit fingerprints and the documents necessary to make a decision on her case. Her U visa application was ultimately approved and she worked with the U.S. consulate to enter the United States with her children. She finally feels safe and is working to provide a loving and stable home for her children, free from violence.*





\* Photo courtesy of U.S. Coast Guard.

## Formal Recommendations

### Deferred Action: Recommendations to Improve Transparency and Consistency in the USCIS Process

On July 1, 2011, the Ombudsman’s Office published a formal recommendation aimed at improving consistency in processing deferred action requests filed with USCIS.

USCIS, along with U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), holds the authority to consider deferred action.<sup>96</sup> When granting deferred action, USCIS declines to exercise its authority to place an individual in removal proceedings, thereby allowing an individual to remain temporarily in the United States.

Stakeholders have reported a lack of clear, consistent information regarding who may request deferred action and how a request should be submitted. USCIS offices often lack the standardized process necessary to manage requests in a

consistent manner, particularly when there is a change in the type or number of submissions. Stakeholders have also reported that deferred action requests remain pending for extended periods of time.

The Ombudsman’s Office recommended that USCIS take the following actions to improve the processing of requests for deferred action:

1. Issue public information describing deferred action and the procedures for making a request for this temporary form of relief with USCIS;
2. Establish internal procedures for accepting and processing deferred action requests in order to promote consistency and assist local offices in responding to urgent, periodic increases in the demand for deferred action;

3. Inventory all pending deferred action requests to verify that each request received confirmation of receipt with estimated processing timeframes and USCIS contact information; and
4. Consistently track data related to deferred action requests and make available statistics identifying the number of requests received and the numbers of requests approved and denied.



On October 27, 2011, USCIS issued a response, and committed to the following actions:<sup>97</sup>

1. USCIS will issue internal standard operating procedures to ensure consistency in the processing and determination of deferred action requests; and
2. USCIS will continue to track data regarding the number of deferred action requests, the disposition of those requests, and other relevant metrics.

Information regarding deferred action should be easily accessible to the public so that eligible individuals may request this type of relief. At this time, the process for requesting deferred action is not clearly defined.

### **Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication**

Regulations require that USCIS or the Executive Office for Immigration Review (EOIR) adjudicate an asylum application within 180 days.<sup>98</sup> If more than 180 days have passed since the filing of an application and the delay is not the fault of the asylum seeker, he/she may apply for employment authorization.<sup>99</sup> USCIS and EOIR commonly refer to the monitoring of the time the asylum application has been pending as the “asylum clock.”<sup>100</sup> If the asylum application is before USCIS, the asylum clock is managed by the USCIS Asylum Office where the application is pending. If an individual is in immigration court proceedings, the asylum clock is managed by EOIR.

USCIS adjudicates Form I-765, Application for Employment Authorization, regardless of whether the applicant filed for asylum with USCIS or EOIR. When reviewing employment authorization applications submitted by asylum seekers, USCIS must determine whether the applicant’s asylum application has been pending for 180 days or more. USCIS relies on the asylum clock calculations recorded in USCIS and EOIR systems.

Stakeholders reported concerns regarding information sharing and communication problems between EOIR and USCIS. These concerns were compounded by the fact that USCIS does not control the asylum clock when an asylum case is pending before EOIR. Asylum applicants and their representatives have expressed frustration at the scarcity of public information about how the asylum clock functions and the lack of avenues available to promptly and effectively resolve asylum clock problems.

With these concerns in mind, the Ombudsman’s Office recommended that USCIS:

1. Engage in ongoing interagency dialogue to clearly define the roles of USCIS and EOIR regarding the asylum clock.
2. Establish more effective internal communication channels to improve coordination on asylum clock issues:
  - a. Increase communication between USCIS components regarding asylum clock-related issues; and
  - b. Provide updated asylum clock training to appropriate USCIS personnel.
3. Make asylum clock information easily available to asylum applicants:
  - a. Provide direct public access to USCIS service centers on asylum clock issues;
  - b. Allow customers to view their asylum clock online; and
  - c. Give clear, written notice when a clock has been stopped.



On January 4, 2012, USCIS issued a response concurring with the Ombudsman’s Office recommendations.<sup>101</sup> USCIS stated that it meets periodically with EOIR regarding problems connected with the calculation and maintenance of the asylum clock and methods for correcting asylum clock errors. USCIS also stated it is engaged in talks with EOIR regarding a Memorandum of Agreement intended to facilitate the exchange of immigration case data to more accurately calculate the asylum clock.

In order to improve notice to the public on asylum clock issues, the USCIS Asylum Division conducted a comprehensive review of its notices, and created updated form letters that provide more useful information regarding work authorization eligibility. The USCIS Asylum Division also provided the public with points of contact who deal specifically with asylum clock matters.

USCIS noted various training opportunities provided to its employees on the handling of employment authorization applications filed by asylum seekers, and indicated that it will review scripts used by the National Customer Service Center as they relate to the asylum clock.<sup>102</sup> USCIS also noted that the Office of Policy and Strategy leads an Employment Authorization Policy Working Group that is developing a national work authorization policy manual. The Service Center Operations Directorate, the Asylum Division, and the Office of Chief Counsel are drafting a

national standard operating procedure providing guidance for adjudications based on the asylum clock. As of publication of the 2012 Annual Report, USCIS had not issued the aforementioned guidance. Since the issuance of the Ombudsman’s recommendations, EOIR released further guidance on this matter.<sup>103</sup>

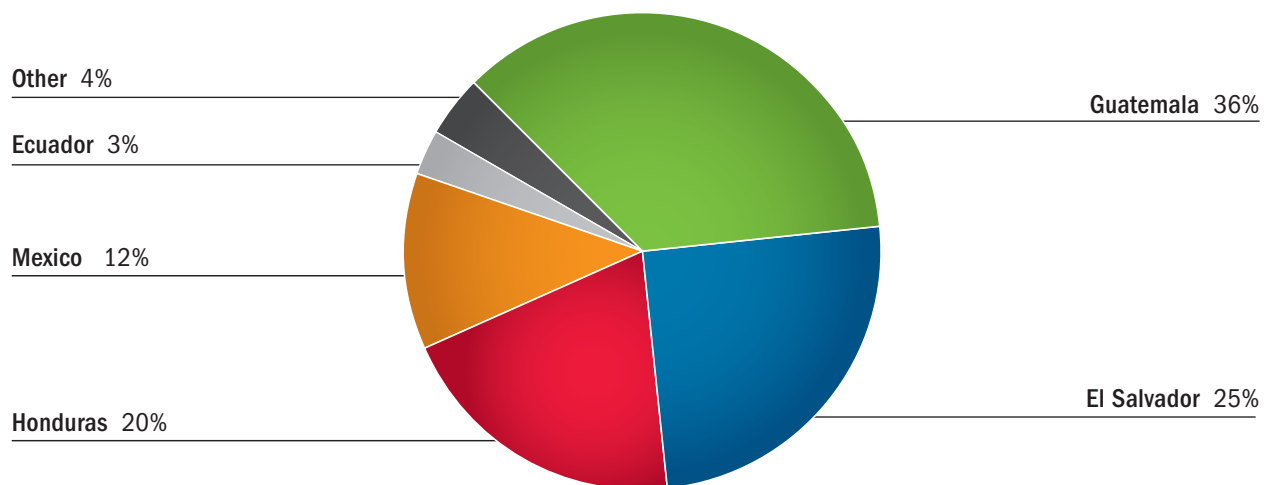
Stakeholders continue to report concerns regarding overlapping jurisdiction, incompatible information systems, and cumbersome internal policies that create challenges for applicants, attorneys, and adjudicators alike. The Ombudsman’s Office will continue to monitor this issue.

## Issues the Ombudsman’s Office Plans to Formally Review within the Next 180 Days

### Ensuring a Fair and Efficient Asylum Process for Unaccompanied Children

With the passage of the William Wilberforce Trafficking Victims’ Protection Reauthorization Act of 2008 (TVPRA), Congress identified specialized needs for “unaccompanied alien children” (UACs) seeking asylum, and recognized the importance of governing regulations.<sup>104</sup> The term “unaccompanied alien child” means a child who has no lawful immi-

**Figure 5: UAC Countries of Origin**



Source: U.S. Department of Health and Human Services, Administration for Children & Families, Office of Refugee Resettlement, Unaccompanied Alien Children (UAC) Program Overview (April 23, 2012).

gration status in the United States; has not attained 18 years of age; and with no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody.<sup>105</sup>

UACs apprehended by CBP, ICE, or another federal agency are placed into the custody of the Department of Health and Human Services, Office of Refugee Resettlement.<sup>106</sup> Pursuant to § 235(d)(7)(B) of the TVPRA, an Asylum Officer has initial jurisdiction over any asylum application filed by a UAC.<sup>107</sup>

After receiving an asylum application from a UAC, an Asylum Officer interviews the UAC on the merits of the child's asylum claim and verifies the child's UAC status. Upon conclusion of the interview, the Asylum Officer prepares an assessment for review by USCIS Asylum Division headquarters.<sup>108</sup> Following headquarters review, the case is returned to the Asylum Officer to prepare the decision and provide it to the UAC. If USCIS determines that the child is not a UAC, the child must pursue the asylum claim before an Immigration Judge.<sup>109</sup>

When the UAC asylum provisions of the TVPRA took effect, USCIS issued guidance regarding the UAC asylum process.<sup>110</sup> Stakeholders have raised concerns regarding the policies governing UAC determinations made by USCIS, indicating that the process can be confusing and inconsistent. USCIS has not

yet published regulations regarding UACs in accordance with Congressional intent.<sup>111</sup>

The Ombudsman's Office is formally reviewing these issues and plans to publish recommendations within the next 180 days.

## Ongoing Concerns

### Employment Authorization for Vulnerable Populations

**T and U Visa Applicants.** In 2009, the Ombudsman's Office recommended that USCIS implement procedures to provide T and U visa applicants with employment authorization during the pendency of their applications.<sup>112</sup>

At the time of its response, USCIS explained that there was no backlog of T visa applications, and, therefore, the issuance of interim employment authorization documents was not necessary.<sup>113</sup> USCIS further explained that if processing times for T visa applications "exceed 90 days, the agency would conduct bona fide determinations for the purpose of issuing employment authorization."<sup>114</sup> USCIS also stated that "once USCIS has worked through the U visa application backlog,



USCIS would assess the possibility of issuing interim employment authorization to those individuals whose cases were held in abeyance while awaiting visa availability.”<sup>115</sup>

As of May 2, 2012, the USCIS posted processing time is seven months for T visa applications, and nine months for U visa applications.<sup>116</sup> Stakeholders continue to express concerns regarding the inability of T and U visa applicants to work during the pendency of their applications.<sup>117</sup>

The Ombudsman’s Office plans to follow up on its 2009 recommendation regarding employment authorization for vulnerable populations and provide further recommendations to USCIS.

**Abused Spouses of Nonimmigrant Visa Holders.** The Violence Against Women Act of 2005 (VAWA) includes important protections for nonimmigrant spouses and children who are victims of domestic violence.<sup>118</sup> INA §106(a) authorizes the Secretary of Homeland Security to provide nonimmigrant spouses with employment authorization when the spouse or children have been the victim of battery or extreme cruelty.<sup>119</sup> As of the publication of the 2012 Annual Report, USCIS had not published regulations, or policy guidance, implementing INA §106(a).





\* Photo courtesy of USCIS and the National Archives.

## Customer Service

*A U.S. company petitioned for a temporary worker to become a permanent resident based on his job skills. While this petition was pending, the employee's wife became a naturalized U.S. citizen and also filed a petition for him to qualify for an immigrant visa as her spouse. The customer requested that USCIS convert his pending employment-based application to a family-based application. He waited for months, but did not receive an acknowledgement of his request from USCIS. The customer then called the USCIS customer service line on numerous occasions and visited the closest USCIS office, which was over 300 miles from his home. Unfortunately, he was unable to get his case back on track. The Ombudsman's Office requested that the USCIS offices involved coordinate action on his case. USCIS offices around the country worked together to resolve his case. He received his green card, allowing him to continue working and living in the United States with his family.*





*\* Photo courtesy of USCIS.*

## Formal Recommendations

### **USCIS Service Requests: Recommendations to Improve the Quality of Responses to Inquiries from Individuals and Employers**

On March 7, 2012, the Ombudsman's Office made recommendations regarding USCIS' Service Request Management Tool (SRMT). The SRMT is an electronic system used to manage inquiries submitted to USCIS by customers requiring assistance. The system tracks the customer's inquiry from origination to completion; logs the customer issue and the form type; and provides USCIS an opportunity to identify real-time trends. In 2011, USCIS generated approximately 78,000 service requests each month,<sup>120</sup> and regularly met its 15-day response target for most inquiries.<sup>121</sup>

While SRMT has enhanced USCIS' ability to quickly respond to customer inquiries, stakeholders report that many of the

responses fail to address the underlying issues or provide a substantive response.

The Ombudsman's Office made the following recommendations regarding increased efficiency and effectiveness in the use of the SRMT:

1. Implement national quality assurance review procedures for service requests;
2. Establish a follow-up mechanism in the SRMT system so that USCIS employees can provide customers with multiple responses (e.g. initial, follow-up, final) under the same service request;
3. Complete the expansion of self-generated e-Requests to all form types;

4. Pilot mandatory supervisory review of certain SRMT responses; and
5. Post SRMT reports on the USCIS website and standardize the use of SRMT reports to identify spikes, trends or other customer service issues.

On June 14, 2012, USCIS issued a response, outside of the 2012 reporting period.

### Recommendations Regarding USCIS' Role in the Petition Information Management Service

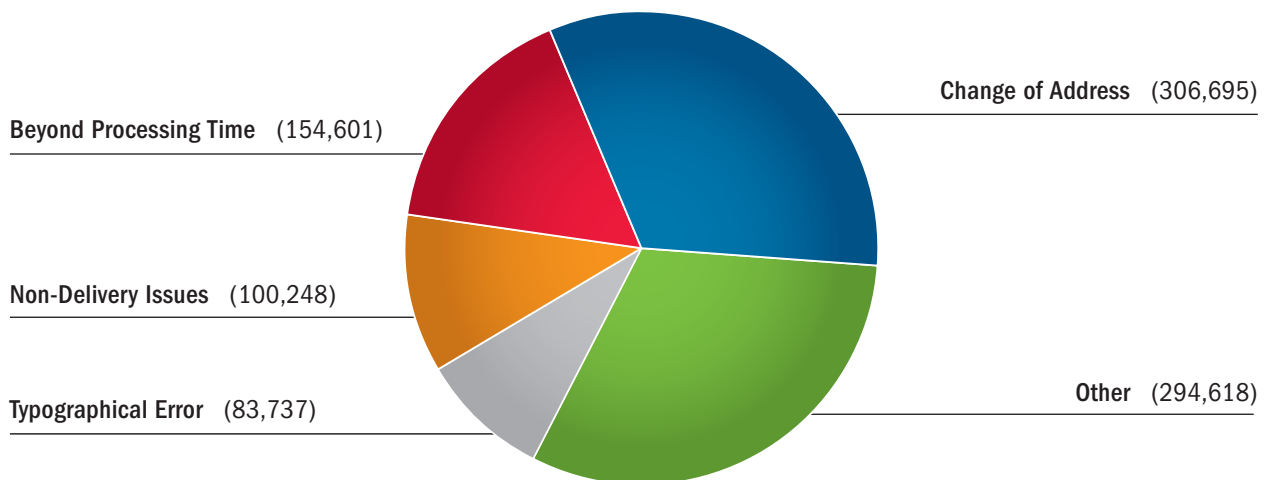
In 2007, the U.S. Department of State (DOS) began using the Petition Information Management Service (PIMS) to improve the security and efficiency of the visa issuance process.<sup>122</sup> PIMS enables consular officers to electronically verify employment-based, nonimmigrant petition approval. Petitioners are required to file employment-based, nonimmigrant petitions and supporting documents (petition packages) in duplicate with USCIS.<sup>123</sup> Upon approval, USCIS sends the petition packages to the DOS Kentucky Consular Center (KCC) for scanning and uploading into PIMS. When information is

transmitted properly, consular officers are able to use PIMS to quickly call up and review petition approval data and certain documents submitted in support of the petition. This allows officers to conduct more thorough visa interviews, thereby enhancing the integrity of the visa interview process.

Since the implementation of PIMS, stakeholders have reported that DOS has refused visas or delayed issuance to some nonimmigrant worker beneficiaries because required petition information was not found in PIMS. According to DOS, in approximately nine percent of employment-based nonimmigrant cases, petition information is not available to DOS officers overseas.<sup>124</sup>

USCIS does not forward a petition package to the KCC when the petitioner fails to submit a duplicate copy of their petition package. In some cases, this failure to transmit petition information causes a delay in the issuance of nonimmigrant visas to eligible applicants. As a result, many individuals and employers experience increased travel expenses, additional relocation costs, and possible economic losses due to an employee's inability to begin employment in the United States. Similarly, the government incurs increased costs when resources and officer time must be dedicated to the rescheduling of interviews and PIMS work-around procedures.

**Figure 6: USCIS Service Requests (April 1, 2011 – March 31, 2012)**



Source: Information provided to the Ombudsman's Office by USCIS (May 30, 2012).

In May 2012, the Ombudsman’s Office made the following recommendations to USCIS to improve communication with DOS in ways that would enhance the accuracy and effectiveness of PIMS:

1. Instruct USCIS service centers to make a copy of the Form I-129, Petition for a Nonimmigrant Worker, submission (petition package) regardless of whether a duplicate petition package has been submitted with the filing, and send it to the KCC for uploading into PIMS; or,
2. Send the original petition package to the KCC, for scanning of documents, data entry, and—upon completion—forward the original petition package to the USCIS National Records Center for storage; or,
3. Scan all approved petition packages at a USCIS facility, so electronic copies can be forwarded to the KCC for uploading into PIMS.

As of the publication of the 2012 Annual Report, USCIS had not yet issued a response.

## Issues the Ombudsman’s Office Plans to Formally Review within the Next 180 Days

### The Systematic Alien Verification for Entitlements Program: Improving the Process for Individuals, Employers, and USCIS Customer Agencies

Established by statute in 1986, the Systematic Alien Verification for Entitlements (SAVE) Program is an inter-governmental initiative designed to aid federal, state, and local benefit-granting agencies in determining an applicant’s immigration status. Use of the SAVE Program is mandatory for certain federal, state and local agencies that administer select federally funded benefits.<sup>125</sup>

SAVE currently provides services to over 980 benefit-granting agencies, including entities that administer benefits such as Medicaid, food stamps, drivers’ licenses, and Supplemental Security Income.<sup>126</sup> SAVE verifications are conducted to ensure that only eligible individuals receive public benefits, licenses, permits, etc.

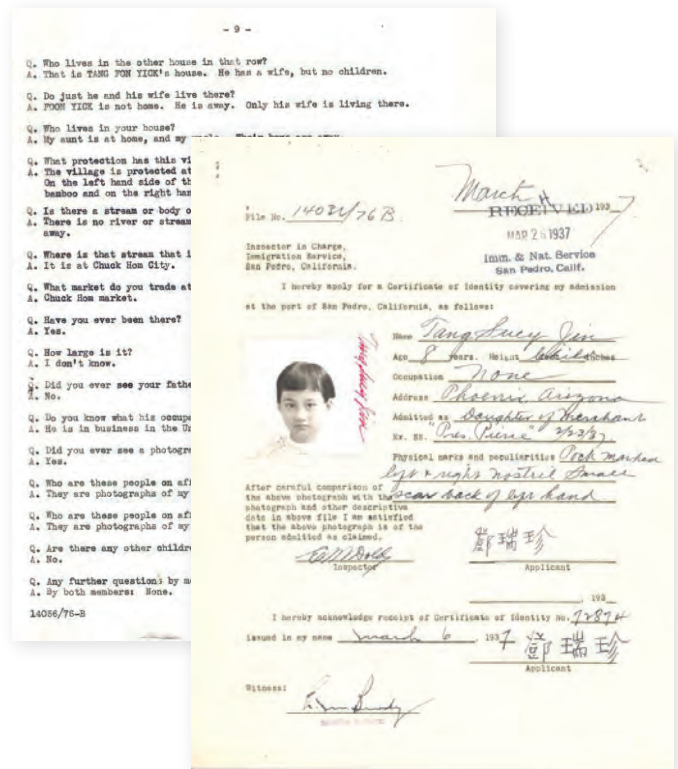
Stakeholders have reported various concerns regarding SAVE to the Ombudsman’s Office, particularly with regard to data integrity. When experiencing problems connected with SAVE queries, individuals seeking public benefits are advised to contact the agency that owns the record in question.<sup>127</sup> This typically requires a visit to a CBP Deferred Inspection Site,<sup>128</sup> or an InfoPass appointment at a USCIS office.<sup>129</sup>

Many stakeholders contact the Ombudsman’s Office for information about how to correct erroneous information. The Ombudsman’s Office is formally reviewing these issues and plans to issue recommendations within the next 180 days.

### Notices to Appear, Removal Priorities, and Immigration Court Docket Efficiency

**Legal Sufficiency Review of Notices to Appear.** USCIS has the authority to issue Notices to Appear (NTAs) placing individuals into removal proceedings.<sup>130</sup> NTAs lodge charges that may result in a person’s removal from the United States. These documents require careful review prior to being filed with the Immigration Court.

On November 7, 2011, USCIS issued a policy memorandum entitled, “Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.”<sup>131</sup> The revised



\* Image courtesy of the National Archives.



guidance does not require any NTA to undergo a legal sufficiency review, or any other type of review, prior to filing the documents with the immigration court. NTAs are sometimes reviewed by USCIS supervisors, or teams of designated adjudicators who are not employed by USCIS in attorney positions. By contrast, ICE submits 100% of its NTAs to their attorneys for legal sufficiency review.<sup>132</sup>

**Removal Priorities.** On June 17, 2011, ICE issued a policy memorandum entitled, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens.”<sup>133</sup> This memorandum outlines the criteria that ICE will use to determine who it will place in removal proceedings and under what circumstances it will do so.

USCIS established new guidelines for referring cases to ICE in a manner that promotes the sound use of the resources of DHS and the U.S. Department of Justice.<sup>134</sup> The guidance does not directly establish priorities for the use of prosecutorial discretion in the same manner as the June 17, 2011 ICE memorandum.

**Immigration Court Docket Efficiency.** USCIS plays several essential roles connected with the fair administration of removal proceedings:

- When a respondent in immigration proceedings has an application or petition pending with USCIS that may serve as the basis for relief from removal, or provide an immigration status that renders removal proceedings unnecessary, USCIS coordinates the processing of that application/petition with ICE’s Office of the Chief Counsel.<sup>135</sup>
- USCIS Application Support Centers capture biometrics on behalf of the Immigration Court.
- USCIS fees-in, provides a receipt for, and processes (but does not adjudicate) certain applications that are filed with the Immigration Court and that will be reviewed and adjudicated by the Immigration Judge.
- USCIS works with the ICE Office of Enforcement and Removal Operations to capture biometrics and/or provide immigration benefit interviews for individuals who are detained pending the outcome of removal proceedings.<sup>136</sup>

Delays in the processing of immigration benefits applications filed by individuals in proceedings can cause backlogs both at USCIS and at the Immigration Court. Delays in the delivery of

services needed by individuals in removal proceedings—such as the collection of biometrics, or the provision of receipts for applications filed with the Immigration Court—can extend the time necessary to complete removal proceedings.

Early in 2009, USCIS, ICE, and EOIR began negotiations to establish policies for the efficient use of resources and to coordinate sub-functions within the removal process.<sup>137</sup> An August 20, 2010 ICE Memorandum entitled, “Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions,”<sup>138</sup> established priorities to address docket inefficiency and delay. USCIS issued companion guidance in February 2011, in the form of an update to the Adjudicator’s Field Manual (AFM), entitled, “Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator’s Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16.”<sup>139</sup>

Legally sound charging documents, DHS-wide removal priorities, and careful coordination among USCIS, ICE, and EOIR are essential to the efficient processing of immigration benefits applications, as well as efficient administration of the EOIR docket. The Ombudsman’s Office is reviewing measures to enhance interagency cooperation and plans to issue formal recommendations within 180 days.





## Ongoing Concerns

### Representation Issues: The Role of Attorneys and Other Representatives in a Non-Adversarial Process

On January 17, 2012, USCIS issued a proposed policy memorandum entitled, “The Role of Private Attorneys and Other Representatives; Revisions to Adjudicator’s Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-4”<sup>140</sup> and solicited comments from interested parties. This policy memorandum touched on several areas affecting the appearance of attorneys and other representatives during USCIS interviews. It provided a proposed update to AFM Chapter 12: Attorneys and Other Representatives, which was unavailable due to ongoing revisions that USCIS began on June 16, 2006.<sup>141</sup> Thus, Immigration Services Officers (ISOs) were interacting with attorneys and other representatives during USCIS interviews without a clear set of guidelines.

Attorneys and accredited representatives have raised concerns that USCIS interviews can become adversarial. Clarifying the role of attorneys and other representatives during the interview process through guidance and training will allow ISOs to effectively and efficiently adjudicate applications and petitions for immigration benefits without unnecessary conflicts or interruptions.

On February 14, 2012, the Ombudsman’s Office provided feedback regarding the policy memorandum and suggested that USCIS:

- Clearly define what is meant by “inappropriate line of questioning” to allow attorneys and other representatives to better identify when it is appropriate to object to an ISO’s line of questioning during interviews;
- Clearly define what is meant by “clarifying questions” so that attorneys and other representatives have a clear understanding of when to respond to an ISO’s question during interviews;
- Provide guidelines on submitting a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, at the time of interview;
- Explain how representatives may present evidence during interviews; and
- Provide further guidance and training to ISOs on how to conduct non-adversarial interviews.

After the close of the current reporting period, on May 23, 2012, USCIS issued an update to the AFM, entitled, “Representation and Appearances and Interview Techniques; Revisions to Adjudicator’s Field Manual (AFM) Chapters 12 and 15.”<sup>142</sup>

The Ombudsman’s Office will continue to solicit feedback from stakeholders regarding USCIS’ implementation of this policy memorandum, and will continue to work with USCIS to ensure that the role of attorneys and other representatives is defined in a manner that fosters a non-adversarial interview process.



## The USCIS Administrative Appeals Office

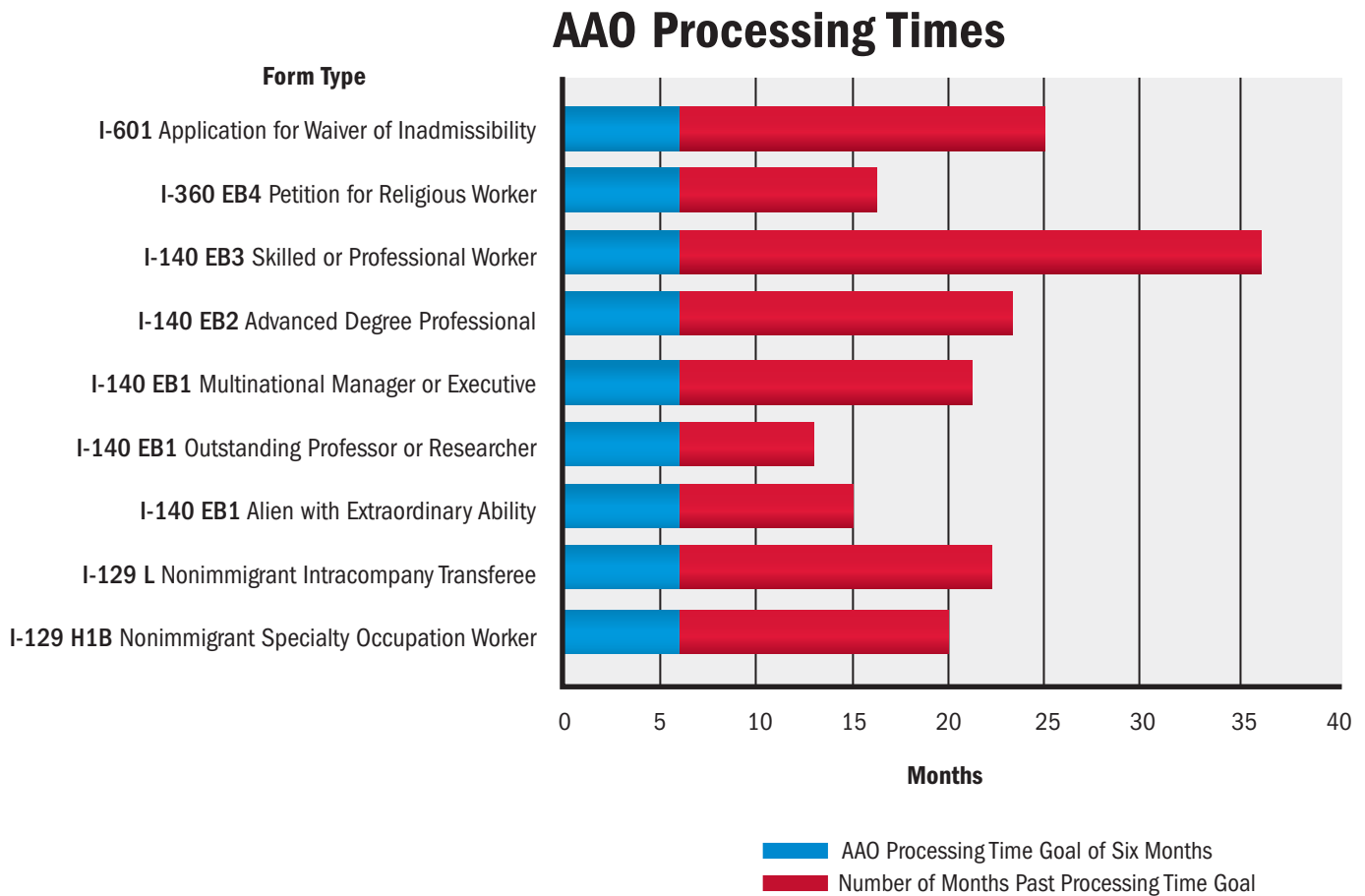
When USCIS denies certain applications or petitions, affected individuals and employers may appeal the denial to the Administrative Appeals Office (AAO). The Ombudsman’s Office is examining the AAO’s role in ensuring an effective and efficient appeals process.

The amount of time required to receive an appellate decision from the AAO varies depending upon the type of benefit

sought and can take up to 36 months. USCIS reports AAO processing times for intra-company transferee petitions as 22 months. Such extensive delays severely disadvantage businesses attempting to compete in today’s dynamic business environment. As a result of such delays many stakeholders have elected to avoid the appeals process all together. In this case, justice delayed is, in fact, justice denied.

The Ombudsman’s Office will be conducting a thorough review of AAO procedures during the coming reporting period.

**Figure 7: AAO Processing Times**



Source: USCIS, Administrative Appeals Office Processing Times (April 10, 2012).

# The Year Ahead: Priorities and Objectives for the Ombudsman’s Office

The global movement of people is a complex process, influenced by everything from economic success to natural disasters. In order to accommodate the changing needs of the United States, immigration law and policy must not become static, or mired in administrative red tape. Consistent with its statutory mission, over the course of the next year, the Ombudsman’s Office will continue to review USCIS’ policies and processes, with an emphasis on:

- Use of technology to enhance the adjudication process.
- Improving customer service provided to applicants and petitioners.
- Ensuring access to immigration benefits for vulnerable and “at-risk” groups.
- Implementing rules and regulations in a fair, consistent, and effective manner.

Immediately prior to the publication of this report, Secretary Janet Napolitano announced that certain young people, who were brought to the United States as children, who do not present a risk to national security or public safety, and who meet several key criteria will be considered for relief from removal. The Ombudsman’s Office will observe USCIS’ implementation of the Secretary’s directive and offer recommendations to ensure a sound process.

Finally, improvements to our internal processes, including a new case management system and expanded outreach, will enhance the ability of the Ombudsman’s Office to serve individuals and employers experiencing difficulties in navigating the immigration benefits process.



### **Homeland Security Act—Section 452— Citizenship and Immigration Services Ombudsman**

#### **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 recommendation 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.



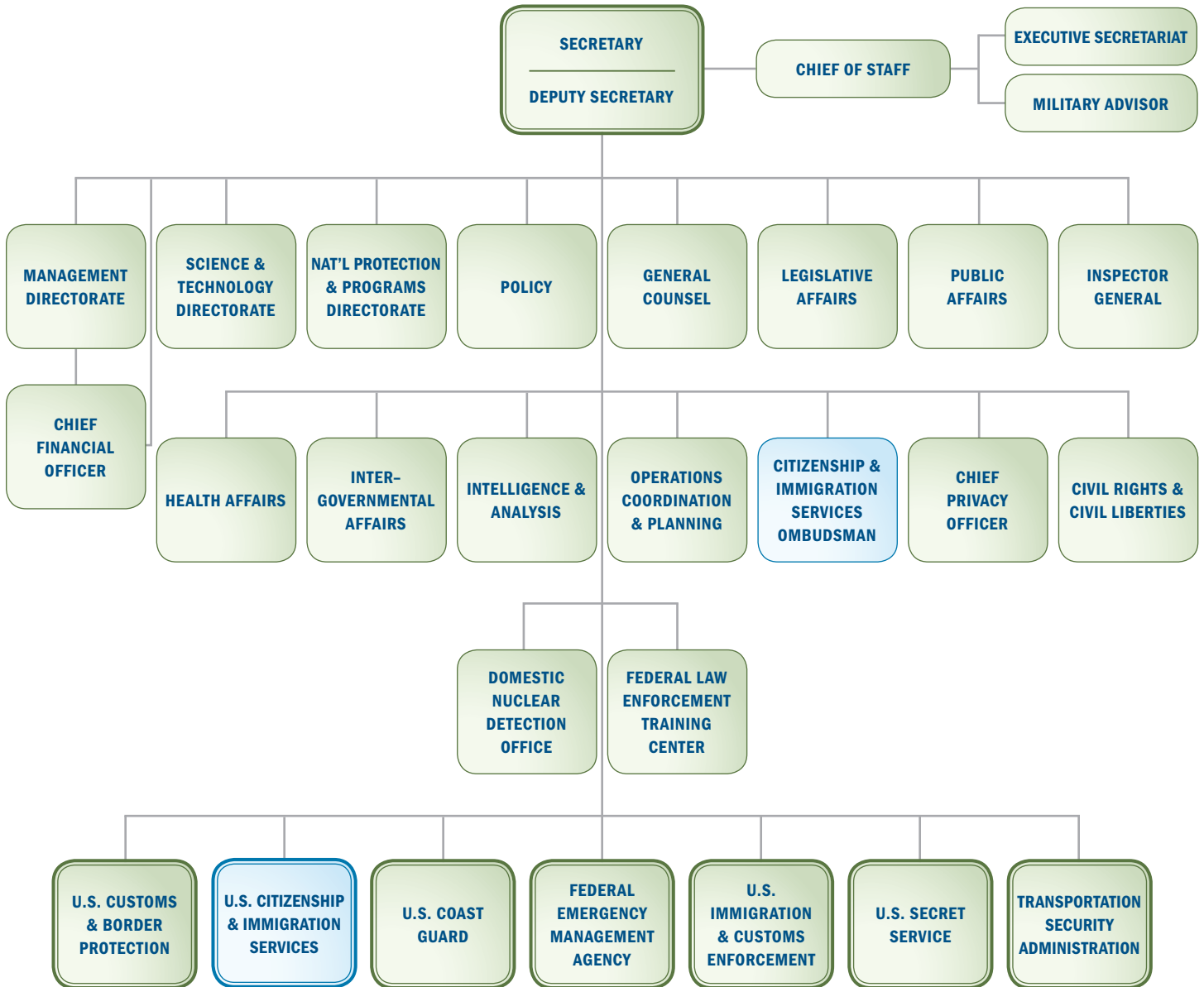
## Appendix 2: Prior Formal Recommendations Chart

The following chart lists each prior formal recommendation and its current classification.

RECOMMENDATION	DATE	IMPLEMENTED	ACTIVE	DECLINED	CLOSED
53. Recommendations Regarding USCIS' Role in the Petition Information Management Service	05/16/12				
52. USCIS Service Requests: Recommendations to Improve the Quality of Responses to Inquiries from Individuals and Employers	03/07/12				
51. Recommendations to Improve the Quality in Extraordinary Ability and Other Employment-Based Adjudications	12/29/11				
50. Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication	08/26/11				
49. Employment Authorization Documents: Meeting the 90 Day Mandate and Minimizing the Impact of Delay on Individuals and Employers	07/18/11				
48. Deferred Action: Recommendations to Improve Transparency and Consistency in the USCIS Process	07/11/11				
47. Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices	04/15/11				
46. Customer Complaints: A Tool for Quality Customer Service and Accountability	03/23/11				
45. Waivers of Inadmissibility: Additional Improvements Needed to Enhance the Current Filing Process and Minimize Reluctance to File	06/10/10				
44. Emergent or Denied Refugee Applications: Expediting Cases, Articulating Reasons for Denial, and Issuing Guidance for Requests for Reconsideration	04/14/10				
43. Temporary Acceptance of Filed Labor Condition Applications (LCAs) for Certain H-1B Filings	10/23/09				
42. Motions Matter: Improving the Filing and Review Process for Motions to Reopen or Reconsider	05/15/09				
41. Improving the Process for Payment of USCIS Filing Fees and Other Costs	04/01/09				
40. Employment Creation Immigrant Visa (EB-5) Program Recommendations	03/18/09				
39. Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa	01/29/09				
38. Observations on the E-Verify Experience in Arizona and Recommended Customer Service Enhancements	12/22/08				
37. Study and Recommendations on Naturalization Oath Ceremonies	12/16/08				
36. Improving the Processing of "Schedule A" Nurse Visas	12/05/08				
35. Recommendations on USCIS Processing Delays for Employment Authorization Documents	10/02/08				
34. Recommendation that USCIS Clarify its Refund of Fees Procedures and Revise the Adjudicator's Field Manual, Section 10.10 "Refund of Fees" Accordingly	04/08/08				
33. Petitions Returned by the U.S. Department of State to USCIS	08/24/07				

RECOMMENDATION	DATE	IMPLEMENTED	ACTIVE	DECLINED	CLOSED
32. Deferred Action	04/06/07				
31. Advance Notice for Changes in USCIS Policy	02/08/07				
30. Freedom of Information Act Issues	07/12/06				
29. O Petition Regulations	06/30/06				
28. Online Change of Address Procedure	06/09/06				
27. Family-Based Processing	05/19/06				
26. DNA Testing	04/12/06				
25. Employment Authorization	03/20/06				
24. Asylum Procedures	03/20/06				
23. Military Fingerprint Requirements	03/20/06				
22. Notice to Appear Procedures	03/20/06				
21. Asylum Grant (I-94 Issues)	12/07/05				
20. AAO Procedures	12/06/05				
19. Asylum Decision Mail Procedures	10/12/05				
18. H-1B Cap Notice	08/28/05				
17. Removal of "Return Service Requested" from USCIS Correspondence	07/29/05				
16. Refugee Travel Documents	06/10/05				
15. Lock-Box Operations Number Two	05/09/05				
14. Termination of Pilot Programs	02/25/05				
13. Permanent Resident Card Issuance	12/15/04				
12. Lock-Box Operations Number One	11/29/04				
11. InfoPass Implementation	11/29/04				
10. Naturalization (Section 319(a) of the INA)	10/06/04				
9. Availability of USCIS Forms	10/06/04				
8. Expansion of Premium Processing	09/27/04				
7. E-filing Fee Structure	08/16/04				
6. I-9 Electronic Storage	08/16/04				
5. Customer Service Training	08/16/04				
4. Modification of Fee Instructions	06/29/04				
3. Legal Permanent Resident Card Replacement Procedures	06/18/04				
2. Streamlining Employment-Based Adjudications	06/18/04				
1. Streamlining Family-Based Adjudications	06/18/04				
<b>TOTAL (53)</b>		<b>11</b>	<b>19</b>	<b>7</b>	<b>16</b>

# Appendix 3: U.S. Department of Homeland Security Organizational Chart



Source: U.S. Department of Homeland Security, Organizational Chart (April 1, 2012).

U.S. Department of Homeland Security  
Washington, DC 20528-1225



**Homeland  
Security**

May 22, 2012

Alejandro Mayorkas, Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue, N.W.  
Washington, D.C. 20001

Dear Director Mayorkas:

I would like to bring to your attention issues that are adversely affecting U.S. Servicemen and women and their families, and urge you to provide USCIS field directors with guidance on how to effectively implement programs to support the U.S. Military.

As you know, on July 9, 2010 eighteen Members of Congress sent a letter to DHS Secretary Napolitano urging her to address, within her authority, the immigration needs of U.S. Servicemen and women.<sup>1</sup> The letter stressed that keeping families together is a military readiness issue, quoting Retired Lieutenant General Ricardo Sanchez, former commander of ground forces in Iraq: "We should not continue to allow our citizenship and immigration bureaucracy to put our war-fighting readiness at risk."<sup>2</sup> In addition, the letter encouraged DHS to join in motions to reopen where legal relief may be available, consider deferred action where no permanent relief is available but strong equities exist, and consider favorably exercising parole authority for close family members that entered without inspection.

In response to this letter, Secretary Napolitano outlined a number of options available to members of the military and their families, including the Naturalization at Basic Training Program and the use of discretionary authorities to help military dependents secure permanent immigration status.<sup>3</sup> The letter states that, on a case-by-case basis, DHS will consider parole and deferred action to minimize periods of family separation and to facilitate adjustment of status for spouses, parents and children of military members. Most of the options outlined in Secretary Napolitano's letter are within the purview of USCIS.

Your agency is commended for fully implementing the Naturalization at Basic Training initiative in partnership with the Department of Defense (DOD). The four largest branches of the U.S. Military now provide U.S. Servicemen and women the opportunity to apply for naturalization and, if found eligible by USCIS, become citizens upon graduation from basic training. This initiative required a great deal of coordination with the DOD and an abiding commitment from USCIS Headquarters and Field leadership; it offers a lasting benefit to all who participate.

<sup>1</sup> Letter from Congress of the United States House of Representatives, July 9, 2010.

<sup>2</sup> *Id.*

<sup>3</sup> Letter from Secretary Janet Napolitano, U.S. Department of Homeland Security, August 30, 2010.

[www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman)



Unfortunately, USCIS has not provided its field offices with consistent guidance on how to administer available discretionary options for family members of U.S. Servicemen and women. The lack of guidance has led to troubling inconsistency across the country. For example:

- Some USCIS field offices consider parole requests on a case-by-case basis for any immediate family member of a U.S. Serviceman or woman; others consider requests from spouses only; and the remainder does not consider requests at all.
- Some USCIS field offices will consider parole requests for immediate family members of U.S. Servicemen or women and also accept and adjudicate related adjustment of status applications; and other offices will only consider parole requests, but will not accept or consider adjustment of status applications, claiming they lack guidance from USCIS Headquarters to proceed.
- Some USCIS field offices require an I-131 application with fee before they will consider a parole request; and other offices require only a letter from the family requesting parole.

In addition, there is no instruction to the public or those who assist military families on how to request a review of their circumstances to determine which discretionary benefits are available to them.

Our office has expressed concern about these issues for over a year, emphasizing the customer impact and the need for resolution. Permitting widespread inconsistency across USCIS field offices is untenable. Just recently, the spouse of a deployed U.S. Serviceman was apprehended by local police for a minor traffic violation on her way to pick up candles for their young daughter's birthday party. She was turned over to Immigration and Customs Enforcement and spent two nights at an immigration detention center before being released. Meanwhile, her request for parole had been pending for months at a local USCIS office. Imagine the impact on their child.

Our office is asking you to empower your field directors to fully and fairly exercise the authority entrusted to them, and to work in collaboration with the DOD to address the urgent needs of U.S. Servicemen and women. Our troops need to know that their government, specifically USCIS, will do everything in its power to care for their families while they are protecting our country and when they return home. USCIS has the honor of demonstrating a true commitment to our Servicemen and women and we urge you to do so.

Sincerely,



Debra Rogers  
Acting CIS Ombudsman

## Endnotes

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- 1 Homeland Security Act of 2002 (HSA) § 452, Pub. L. No. 107-296.
- 2 *Id.*
- 3 Ombudsman Report, “Comprehensive Recommendation Review” (Feb. 24, 2012); <http://www.dhs.gov/xlibrary/assets/cisomb-rec-rev-final.pdf> (accessed May 22, 2012).
- 4 Ombudsman Recommendation, “Motions Matter: Improving the Filing and Review Process for Motions to Reopen or Reconsider” (May 15, 2009); [http://www.dhs.gov/xlibrary/assets/cisomb\\_recommendation\\_42\\_5-15-09.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_recommendation_42_5-15-09.pdf) (accessed May 30, 2012).
- 5 USCIS Memorandum, “Response to Recommendation 42, Motions Matter: Improving the Filing and Review Process for Motions to Reopen or Reconsider” (Aug. 18, 2009); [http://www.uscis.gov/USCIS/Office%20of%20Communications/Homepage/Ombudsman%20Liaison%20Unit/OLU%20Responses%20to%20Formal%20Recommendations/rec42\\_18aug09.pdf](http://www.uscis.gov/USCIS/Office%20of%20Communications/Homepage/Ombudsman%20Liaison%20Unit/OLU%20Responses%20to%20Formal%20Recommendations/rec42_18aug09.pdf) (accessed May 24, 2012).
- 6 USCIS News Release, “USCIS to Expedite Review for Certain Cases Affected by Specific Administrative Inaccuracies” (Apr. 4, 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=30e001e301b76310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 22, 2012).
- 7 USCIS News Release, “USCIS Grants Temporary Extension of Accommodation for Shepherders in H-2A Status” (Mar. 20, 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=437c93b551f76310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 22, 2012).
- 8 *Id.*
- 9 Participants in the creation of this guide included representatives from ICE, USCIS, CBP, the DHS Office of Civil Rights and Civil Liberties, and the DHS Blue Campaign (an initiative aimed at coordinating and enhancing DHS anti-human trafficking efforts).
- 10 DHS Guide, “U Visa Law Enforcement Certification Resource Guide” (Dec. 2011); [http://www.dhs.gov/xlibrary/assets/dhs\\_u\\_visa\\_certification\\_guide.pdf](http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf) (accessed May 22, 2012).
- 11 USCIS Report, “USCIS Fiscal Year 2011 Highlights Report” (Mar. 2012); <http://www.uscis.gov/USCIS/About%20Us/Budget,%20Planning%20and%20Performance/USCIS%20Fiscal%20Year%202011%20Highlights%20Report.pdf> (accessed May 22, 2012).
- 12 USCIS Press Release, “U.S. Citizenship and Immigration Services Press Conference on Strategic Goals and Initiatives for 2011” (Feb. 17, 2011); [http://www.uscis.gov/USCIS/News/2011%20New%20Items/February%202011/transcript\\_StrategicGoalsInit\\_2011.pdf](http://www.uscis.gov/USCIS/News/2011%20New%20Items/February%202011/transcript_StrategicGoalsInit_2011.pdf) (accessed May 22, 2012).
- 13 *Id.*
- 14 USCIS Webpage, “Public Engagement” (Nov. 10, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ea015fc544007210VgnVCM100000082ca60aRCRD&vgnnextchannel=ea015fc544007210VgnVCM100000082ca60aRCRD> (accessed May 25, 2012).
- 15 *See supra* note 11.
- 16 *See e.g.* USCIS Webpage, “Chinese-Language Public Engagement” (Feb. 24, 2012); <http://www.uscis.gov/jiaoliu> (accessed May 25, 2012).
- 17 *See supra* note 11.
- 18 USCIS Webpage, “Questions and Answers for Members of the Military” (Jan. 6, 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=51c515ecdd732210VgnVCM100000082ca60aRCRD&vgnnextchannel=f1a03e4d77d73210VgnVCM100000082ca60aRCRD> (accessed May 25, 2012).
- 19 USCIS Fact Sheet, “Naturalization Through Military Service” (Nov. 4, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=26d805a25c4c4210VgnVCM100000082ca60aRCRD&vgnnextchannel=ce613e4d77d73210VgnVCM100000082ca60aRCRD> (accessed May 25, 2012).
- 20 Information provided to the Ombudsman’s Office by USCIS (May 24, 2012).
- 21 USCIS Fact Sheet, “National Initiative to Combat Immigration Services Scams” (Jun. 9, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3a983ffa91570310VgnVCM100000082ca60aRCRD&vgnnextchannel=8a2f6d26d17df110VgnVCM1000004718190aRCRD> (accessed May 25, 2012).
- 22 *See supra* note 11.
- 23 *See supra* note 11.
- 24 *See supra* note 11.
- 25 USCIS Webpage, “Entrepreneurs in Residence (EIR)” (Apr. 13, 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=d44eee876cb85310VgnVCM100000082ca60aRCRD&vgnnextchannel=d44eee876cb85310VgnVCM100000082ca60aRCRD> (accessed May 30, 2012) (“[t]he EIR initiative allows federal agencies to engage with outside experts who bring state-of-the-art thinking in business processes, innovation and information technology. USCIS is the second federal agency to embrace the EIR model. The U.S. Food and Drug Administration first piloted an EIR model focused on medical devices. Using the DHS Loaned Executive Program to stand up EIR, USCIS sought external experts including entrepreneurs, business leaders, and academics to work in-house reviewing USCIS policies, practices and training. As one of the first federal agencies to embrace this tool for government innovation, USCIS will focus this inaugural initiative on immigrant entrepreneurs. Internal experts for the tactical team come from across the agency and include policy and legal experts as well as seasoned operations and fraud professionals.”).

- 26 USCIS Press Conference, “USCIS Announces Entrepreneurs In Residence Initiative” (Oct. 2011); [http://www.uscis.gov/USCIS/News/2011/October%202011/transcript\\_eir\\_11Oct11.pdf](http://www.uscis.gov/USCIS/News/2011/October%202011/transcript_eir_11Oct11.pdf) (accessed May 24, 2012).
- 27 DHS Press Release, “Secretary Napolitano Announces Initiatives to Promote Startup Enterprises and Spur Job Creation” (Aug. 2011); <http://www.dhs.gov/ynews/releases/20110802-napolitano-startup-job-creation-initiatives.shtm> (accessed May 24, 2012).
- 28 Ombudsman Annual Report 2011, (Jun. 2011); <http://www.dhs.gov/xlibrary/assets/cisomb-annual-report-2011.pdf> (accessed May 22, 2012).
- 29 USCIS Executive Summary, “USCIS Unauthorized Practice of Immigration Law Initiative” (Jun. 9, 2011); [http://www.uscis.gov/USCIS/Outreach/Upcoming%20National%20Engagements/National%20Engagement%20Pages/2011%20Events/June%202011/FINAL%20executive%20summary%20-%20UPL%20engagement%20sessions%20%20\(6-8-11\).pdf](http://www.uscis.gov/USCIS/Outreach/Upcoming%20National%20Engagements/National%20Engagement%20Pages/2011%20Events/June%202011/FINAL%20executive%20summary%20-%20UPL%20engagement%20sessions%20%20(6-8-11).pdf) (accessed May 25, 2012).
- 30 USCIS Memorandum, “Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens” (Nov. 7, 2011); [http://www.uscis.gov/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/NTA%20PM%20\(Appealed%20as%20final%2011-7-11\).pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20(Appealed%20as%20final%2011-7-11).pdf) (accessed May 25, 2012).
- 31 *Id.*
- 32 USCIS Memorandum, “The Role of Private Attorneys and Other Representatives; Revisions to Adjudicator’s Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-42” (Jan. 17, 2012); [http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/Role\\_of\\_Private\\_Attorneys\\_PM\\_Approved\\_122111.pdf](http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/Role_of_Private_Attorneys_PM_Approved_122111.pdf) (accessed May 25, 2012).
- 33 USCIS Memorandum, “Expedited Case Review Process for Specifically-Defined Administrative Errors” (Apr. 2012); [http://www.uscis.gov/USCIS/Laws/Memoranda/2012/April/Correcting\\_Administrative\\_Error.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/2012/April/Correcting_Administrative_Error.pdf) (accessed May 25, 2012).
- 34 DHS Press Release, “Secretary Napolitano Announces Initiatives to Promote Startup Enterprises and Spur Job Creation” (Aug. 2011); <http://www.dhs.gov/ynews/releases/20110802-napolitano-startup-job-creation-initiatives.shtm> (accessed May 30, 2012).
- 35 White House Webpage, “Startup America” (Jan. 2011); <http://www.whitehouse.gov/economy/business/startup-america> (accessed May 30, 2012).
- 36 DHS Fact Sheet, “DHS Reforms to Attract And Retain Highly Skilled Immigrants” (Jan. 2012); <http://www.dhs.gov/ynews/factsheets/20120131-dhs-retain-highly-skilled-immigrants.shtm>, (accessed May 30, 2012); *see supra* note 35.
- 37 USCIS Fact Sheet, “USCIS Initiatives to Promote Startup Enterprises and Spur Job Creation” (Aug. 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3f412bf4cf81310VgnVCM100000082ca60aRCRD&vgnnextchannel=8a2f6d26d17df110VgnVCM1000004718190aRCRD> (accessed May 30, 2012).
- 38 USCIS Webpage, “Frequently Asked Questions Regarding Entrepreneurs and the Employment-Based Second Preference Immigrant Visa Category” (Aug. 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=93da6b814ba81310VgnVCM100000082ca60aRCRD&vgnnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD> (accessed May 30, 2012).
- 39 USCIS Webpage, “How Do I Use the Premium Processing Service?” (Sep. 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=971b60657dd68210VgnVCM100000082ca60aRCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 30, 2012).
- 40 USCIS Webpage, “Questions & Answers: USCIS Issues Guidance Memorandum on Establishing the ‘Employee-Employer Relationship’ in H-1B Petitions” (Mar. 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3d015869c9326210VgnVCM100000082ca60aRCRD&vgnnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD> (accessed May 30, 2012).
- 41 USCIS Webpage, “USCIS Proposes Significant Enhancements to EB-5 Visa Processing to Help America Win the Future” (May 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a4b57b52e5800310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (May 30, 2012).
- 42 *See supra* note 14.
- 43 “Provisional Waivers of Inadmissibility for Certain Immediate Relatives of U.S. Citizens” 77 Fed. Reg. 5 (Jan. 9, 2012).
- 44 “Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Proposed Rule” 77 Fed. Reg. 63 (Apr. 2, 2012).
- 45 USCIS News Release, “USCIS Proposes Process Change for Certain Waivers of Inadmissibility” (Mar. 30, 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=e784875decf56310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 22, 2012).
- 46 Information provided to the Ombudsman’s Office.
- 47 USCIS Webpage, “Validation Instrument for Business Enterprises (VIBE) Program” (Jan. 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=521d735652f9d210VgnVCM100000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM100000082ca60aRCRD> (accessed May 30, 2012).
- 48 *Id.*
- 49 *See supra* note 28.
- 50 USCIS Webpage, “USCIS Launches Online Immigration System, USCIS ELIS” (May 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4eaa169ccc477310VgnVCM100000082ca60aRCRD&vgnnextchannel=9e991d9c18f67310VgnVCM100000082ca60aRCRD> (accessed May 30, 2012).
- 51 *See supra* note 1.

- 52 INA § 203(b).
- 53 8 C.F.R. § 204.5(h), (i), and (k) (2012).
- 54 596 F. 3d 1115 (9th Cir. 2010).
- 55 USCIS Memorandum, “Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14” (Dec. 2010); <http://www.uscis.gov/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf> (accessed May 30, 2012).
- 56 USCIS Webpage, “USCIS Administrative Appeals Office: Request for Amicus Curiae Briefs” (Aug. 2011) [http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Amicus%20Briefs/Amicus\\_Brief\\_Request\\_081611%20v2.pdf](http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Amicus%20Briefs/Amicus_Brief_Request_081611%20v2.pdf) (accessed May 30, 2012).
- 57 Journal of the American Medical Association, September 15, 2010 – Vol 304, No. 11, *Graduate Medical Education, 2009-2010*, Sarah E. Brotherton, Ph.D., Sylvia I. Etzel. Citizenship/Visa Status of All Resident Physicians and International Medical Graduates (IMGs) on Duty in Accreditation Council for Graduate Medical Education (ACGME)-Accredited and in Combined Specialty Programs, Dec. 31, 2009.
- 58 INA §§ 212(j)(2) and 101(a)(15)(H)(i)(b).
- 59 INA § 214(g).
- 60 *See generally* “Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to the Numerical Limitations” 76 Fed. Reg. 42 (Mar. 3, 2011).
- 61 INA § 214(g)(5)(A) - (B).
- 62 USCIS Webpage, “New Validation Tool Aids Adjudication of Certain Employment-Based Petitions Questions and Answers” (Jan. 24, 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3cb744db86bd210VgnVCM10000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM10000082ca60aRCRD> (accessed May 30, 2012).
- 63 Award Notice, Solicitation Number HSSCCG-09-R-00005 (Aug. 5, 2009); Dun & Bradstreet (D&B), “D&B Briefing for USCIS Information Sharing Session” (May 27, 2010).
- 64 *See supra* note 28.
- 65 USCIS Alert, “H-2A Optional Checklist and Questions & Answers in Light of USCIS’s Implementation of VIBE” (Jun. 1, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ff44be4e1c740310VgnVCM10000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM10000082ca60aRCRD> (accessed Jun. 13, 2011).
- 66 Ombudsman Teleconference, “USCIS Validation Instrument for Business Enterprises (VIBE) — How Is It Working For You?” (Jan. 11, 2012).
- 67 A qualifying investment in a new commercial enterprise must create full-time employment for at least ten U.S. citizens, lawful permanent residents, or other immigrants lawfully authorized to be employed in the United States. INA § 203(b)(5)(a)(ii).
- 68 Full time employment means “employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.” INA § 203(b)(5)(D).
- 69 “Rural area” is defined as “any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).” INA § 203(b)(5)(B)(iii).
- 70 “Targeted employment area” means that “at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).” INA § 203(b)(5)(B)(ii).
- 71 INA § 203(b)(5)(C)(i).
- 72 *See e.g.* GAO Report, “Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors” GAO-05-256 (Apr. 2005).
- 73 Ombudsman Recommendation, “Employment Creation Immigrant Visa (EB-5) Program Recommendations” (May 18, 2009); [http://www.dhs.gov/xlibrary/assets/CIS\\_Ombudsman\\_EB-5\\_Recommendation\\_3\\_18\\_09.pdf](http://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf) (accessed May 4, 2012).
- 74 Information provided to the Ombudsman’s Office by DOS (May 24, 2012). In Fiscal Year 2009, 58% of EB-5 visas were unused; in Fiscal Year 2010, 81% were unused; in Fiscal Year 2011, 65% were unused.
- 75 *See supra* note 73.
- 76 USCIS Webpage, “EB-5 Stakeholder Engagement” (Mar. 28, 2012); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c4d08e0732344310VgnVCM10000082ca60aRCRD&vgnnextchannel=61ca6ec2ac3ee210VgnVCM10000082ca60aRCRD> (accessed May 30, 2012).
- 77 Ombudsman Recommendation, “Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices” (Apr. 15, 2011); <http://www.dhs.gov/xlibrary/assets/Citizenship-and-Immigration-Services-Ombudsman-Recommendation-Special-Immigrant-Juvenile-Adjudications.pdf> (accessed May 10, 2012).
- 78 USCIS Memorandum, “Response to Recommendation 47, Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices” (Jul. 13, 2011); <http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/cisomb-2011-response47.pdf> (accessed May 10, 2012).
- 79 *See supra* note 77.
- 80 *See supra* note 78.
- 81 “Special Immigrant Juvenile Petitions” 76 Fed. Reg. 54978 (Sep. 6, 2011).
- 82 William Wilberforce Trafficking Victims’ Protection Reauthorization Act of 2008 (TVPPRA 2008), Pub. L. No. 110-457 (2008).
- 83 INA § 216.
- 84 8 C.F.R. §216.4 (2012).



- 85 Form I-751 can be filed jointly or by the conditional resident alone as a waiver of the joint filing requirement when: (a) The marriage was entered into in good faith but was terminated (other than through death); (b) The marriage was entered into in good faith but the petitioning spouse subjected the conditional resident to battery or extreme cruelty; or (c) Removal of the conditional resident from the U.S. would cause him or her extreme hardship.
- 86 8 C.F.R. §216.5 (2012).
- 87 INA §216(d)(2)(B); 8 C.F.R. §216.4(a)(6) (2012).
- 88 INA §216(a)(2); 8 C.F.R. §216.2(a),(b) (2012).
- 89 Information provided to the Ombudsman's Office.
- 90 USCIS Memorandum, "Approval of Petitions and Applications After the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act; Revisions to the Adjudicator's Field Manual (AFM): New Chapter 10.21 and an Amendment to Chapter 21.2(h)(1)(c) AFM Update AD-10-51" (Dec. 16, 2010); <http://www.uscis.gov/USCIS/Laws/Memoranda/2011/January/Death-of-Qualifying-Relative.pdf> (accessed May 30, 2012).
- 91 Information provided to the Ombudsman's Office by USCIS (Nov. 4, 2011).
- 92 Information provided to the Ombudsman's Office.
- 93 Letter from Lofgren, Thornberry, Conyers, Pence, et al., Members of the U.S. House of Representatives, to Janet Napolitano, Secretary of the Department of Homeland Security (Jul. 9, 2010).
- 94 Letter from Janet Napolitano, Secretary of Homeland Security, to Zoe Lofgren, Member of the House of Representatives (Aug. 20, 2010).
- 95 Letter from Debra Rogers, Acting CIS Ombudsman, to Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (May 22, 2012) (Appendix 4).
- 96 DHS Memorandum, "Delegation to the Bureau of Citizenship and Immigration Services" (Mar. 1, 2003) (delegating authority to grant voluntary departure under § 240B of the INA and deferred action); *see also* INS Fact Sheet, "Prosecutorial Discretion Guidelines" (Nov. 28, 2000).
- 97 USCIS Memorandum, "Response to Recommendation 48, Deferred Action: Recommendations to Improve Transparency and Consistency in the USCIS Process" (Oct. 27, 2011); <http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/cisomb-2011-response-48.pdf> (accessed May 30, 2012).
- 98 INA § 208(d)(2); 8 CFR § 208.7(a)(2011); 8 CFR § 1208.7(a)(2011); 8 CFR § 274a.12(c)(8)(2011).
- 99 *Id.*
- 100 Ombudsman Recommendation, "Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication" (Aug. 26, 2011); <http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-for-asylum-08262011.pdf> (accessed May 30, 2012).
- 101 USCIS Memorandum, "Response to Recommendation 50, Employment Authorization for Asylum Applications: Recommendations to Improve Coordination and Communication" (Jan. 4, 2012); <http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/USCIS%20Response%20to%20Formal%20Recommendation%2050.pdf> (accessed May 30, 2012).
- 102 *Id.*
- 103 EOIR Memorandum, "Operating Policies and Procedures Memorandum 11-02: The Asylum Clock" (Nov. 15, 2011); <http://www.justice.gov/eoir/efoia/ocij/oppm11/11-02.pdf> (accessed May 30, 2012).
- 104 TVPRA 2008 § 235(d)(8).
- 105 HSA § 462(g)(2); TVPRA 2008 § 235.
- 106 HSA § 462; *and see* TVPRA 2008 §§ 235(a)(4), (b)(3); *and see* HHS Webpage, "Unaccompanied Children's Services" [http://www.acf.hhs.gov/programs/orr/programs/unaccompanied\\_alien\\_children.htm](http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm) (accessed May 30, 2012).
- 107 TVPRA 2008 § 235(d)(7)(B).
- 108 *See generally* USCIS Manual, "Affirmative Asylum Procedures Manual" (Nov. 2007); [http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/2007\\_AAPM.pdf](http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/2007_AAPM.pdf) (accessed May 30, 2012); *and see* USCIS Agenda Items, "USCIS Asylum Division Quarterly Stakeholder Meeting" (Mar. 11, 2010); <http://www.uscis.gov/USCIS/Outreach/Upcoming%20National%20Engagements/National%20Engagement%20Pages/2010%20Events/October%202010/Asylum%20Quarterly%20QA.pdf> (May 30, 2012).
- 109 USCIS Memorandum, "Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children" (Mar. 25, 2009); [http://www.uscis.gov/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/uac\\_filings\\_5f25mar09.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/uac_filings_5f25mar09.pdf) (accessed May 30, 2012).
- 110 *Id.*
- 111 *See supra* note 104.
- 112 Ombudsman Recommendation, "Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa Recommendation" (Jan. 29, 2009); [http://www.dhs.gov/xlibrary/assets/cisomb\\_tandu\\_visarecommendation\\_2009-01-26.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-26.pdf) (accessed May 30, 2012).
- 113 USCIS Memorandum, "Response to Recommendation 39, Improving the Process for Victims of Trafficking and Certain Criminal Activity: The T and U Visas" (May 2009); [http://www.dhs.gov/xlibrary/assets/uscis\\_response\\_cisomb\\_rec\\_39.pdf](http://www.dhs.gov/xlibrary/assets/uscis_response_cisomb_rec_39.pdf) (accessed May 30, 2012).
- 114 *Id.*
- 115 *Id.*
- 116 *See* USCIS Webpage, "USCIS Processing Time Information" <https://egov.uscis.gov/cris/processingTimesDisplay.do> (accessed May 2, 2012).
- 117 Information provided to the Ombudsman's Office.

- 118 Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162 (2006).
- 119 INA § 106(a).
- 120 Information provided to the Ombudsman’s Office by USCIS (Jan. 12, 2012).
- 121 Information provided to the Ombudsman’s Office by USCIS (May 25, 2011). USCIS provides a five day target for inquiries requesting expedited service or change of address and a seven day target deadline for special accommodations during an interview or appointment.
- 122 *See generally* National Association of Foreign Student Advisors Summary, “NAFSA /Department of State Liaison Call” (Sep. 15, 2010); [www.nafsa.org/uploadedFiles/DOS%20Liaison%20Call%20091510.doc](http://www.nafsa.org/uploadedFiles/DOS%20Liaison%20Call%20091510.doc) (accessed May 10, 2012).
- 123 *See* USCIS Instructions for Form I-129, Petition for a Nonimmigrant Worker (Jan. 19, 2011); <http://www.uscis.gov/files/form/i-129instr.pdf> (accessed May 24, 2012) (Instructions state, “Submit a duplicate copy of the petition and all supporting documentation.”).
- 124 Information provided to the Ombudsman’s Office by DOS (Jun. 21, 2011).
- 125 *See* Immigration Reform and Control Act of 1986, Public Law 99-603. *See also* Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193; Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); Real ID Act of 2005; and Patient Protection and Affordable Care Act of 2010, Public Law No. 111-148.
- 126 USCIS Webpage, “Who Can Use SAVE?” (Oct. 18, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=36bfd63b1a43b210VgnVCM100000082ca60aRCRD&vgnnextchannel=36bfd63b1a43b210VgnVCM100000082ca60aRCRD> (accessed May 30, 2012).
- 127 USCIS Webpage, “How to Correct Your Records” (Jul. 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=77d3feb9a2ca8210VgnVCM100000082ca60aRCRD&vgnnextchannel=1721c2ec07c8110VgnVCM1000004718190aRCRD> (accessed May 30, 2012).
- 128 *Id.*; *see also* CBP Webpage, “Deferred Inspection: Overview” (Jan. 2012); [http://www.cbp.gov/xp/cgov/toolbox/contacts/deferred\\_inspection/overview\\_deferred\\_inspection.xml](http://www.cbp.gov/xp/cgov/toolbox/contacts/deferred_inspection/overview_deferred_inspection.xml) (accessed May 30, 2012).
- 129 *See supra* note 127; *and see* USCIS Webpage, “InfoPass” <http://infopass.uscis.gov/> (accessed May 30, 2012).
- 130 INA §§ 103, 221 and 239.
- 131 USCIS Memorandum, “Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens” (Nov. 7, 2011); [http://www.uscis.gov/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/NTA%20PM%20\(Approved%20as%20final%2011-7-11\).pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20(Approved%20as%20final%2011-7-11).pdf) (accessed May 25, 2012).
- 132 Information provided to the Ombudsman’s Office by ICE (Sep. 22, 2011).
- 133 ICE Memorandum, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens” (Jun. 17, 2011); <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> (accessed May 25, 2011).
- 134 *See supra* note 131.
- 135 EOIR Manual, “Immigration Court Practice Manual: Glossary” p. 9 (Apr. 2008); <http://www.justice.gov/eoir/vll/OCIJPracManual/glossary.pdf> (May 30, 2012).
- 136 *See generally* USCIS Fact Sheet, “USCIS and ICE Procedures Implementing EOIR Regulations on Background and Security Checks on Individuals Seeking Relief or Protection from Removal in Immigration Court or Before the BIA” (Aug. 2011); [http://www.uscis.gov/USCIS/Laws/Laws%20Static%20Files/EOIR\\_FactSheet\\_2011\\_FINAL.pdf](http://www.uscis.gov/USCIS/Laws/Laws%20Static%20Files/EOIR_FactSheet_2011_FINAL.pdf) (2012).
- 137 Information provided to the Ombudsman’s Office by USCIS (May 27, 2010).
- 138 ICE Memorandum, “Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions” (Aug. 20, 2010); <http://www.ice.gov/doclib/detention-reform/pdf/aliens-pending-applications.pdf> (accessed May 25, 2012).
- 139 USCIS Memorandum, “Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator’s Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16” (Feb. 4, 2011); <http://www.uscis.gov/USCIS/Laws/Memoranda/2011/April/guidance-adjudication-remove-proceedings.pdf> (accessed May 25, 2012).
- 140 USCIS Memorandum, “The Role of Private Attorneys and Other Representatives; Revisions to Adjudicator’s Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-4” (Dec. 23, 2011); [http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/Role\\_of\\_Private\\_Attorneys\\_PM\\_Approved\\_122111.pdf](http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/Role_of_Private_Attorneys_PM_Approved_122111.pdf) (May 30, 2012).
- 141 *See* USCIS Adjudicator’s Field Manual, “Chapter 12. Attorneys and Other Representatives” <http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=afm> (accessed May 30, 2012).
- 142 USCIS Memorandum, “Representation and Appearances and Interview Techniques; Revisions to Adjudicator’s Field Manual (AFM) Chapters 12 and 15; AFM Update ADII-42” (May 23, 2012); <http://www.uscis.gov/USCIS/Laws/Memoranda/2012/May/AFMs5-23-12.pdf> (accessed June 11, 2012).
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