



Citizenship and Immigration Services

Ombudsman

Annual Report 2011

June 29, 2011



Homeland
Security

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Immigration Services
Ombudsman

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Office of the Citizenship and Immigration Services
Ombudsman

U.S. Department of Homeland Security
Mail Stop 1225

Washington, DC 20528-1225



**Homeland
Security**

June 29, 2011

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 2011 Annual Report.

I am available to provide additional information upon request.

Most sincerely,

A handwritten signature in black ink that reads "January Contreras".

January Contreras
Citizenship and Immigration Services Ombudsman

www.dhs.gov/cisombudsman

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Message from the Ombudsman

Serving as the Ombudsman is a privilege. In this role, I have had the opportunity to interact with people from around the world who have immigrated, or are trying to immigrate, to the United States. They never cease to inspire me. They come as spouses, parents, children, brothers, and sisters seeking to reunite with family. They come as healthcare professionals, who aid our rural and underserved communities. They come as entrepreneurs and innovators. They come fleeing trafficking, violence, or persecution, and seeking haven from natural disasters. Still others come to serve in the U.S. Armed Forces of their adopted homeland and become U.S. citizens.

At the Department of Homeland Security, the Ombudsman's Office has the responsibility for and privilege of helping all of these individuals, along with those who petition on their behalf, to navigate the citizenship and immigration process. On a one-on-one basis, we help resolve problems encountered by those seeking immigration benefits, and we make solution-oriented proposals to help improve the immigration benefits system.

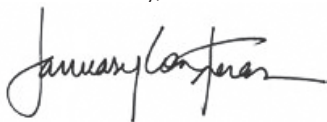
In our 2011 Annual Report, we discuss the challenges that immigrants, families, and employers face in the humanitarian, family, and employment-based areas. We examine problems in customer service, opportunities for greater consistency in adjudications, and the need for modernized systems and processing. We also highlight areas – such as new public engagement initiatives, and other advancements and best practices – where citizenship and immigration services have improved, becoming more transparent, efficient, and customer-friendly.

I thank U.S. Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas and USCIS officials in Headquarters and in offices around the country. Each time the Ombudsman's Office helps resolve issues with pending applications and petitions, it does so with the help of USCIS adjudicators and supervisors. In addition, on issues ranging from attorney representation regulations to foreign investor adjudications, USCIS leaders have engaged with the Ombudsman's Office in problem-solving dialogue and actions.

I am thankful for the continued support of Secretary Janet Napolitano, Deputy Secretary Jane Holl Lute, and Congress, who are critical to our ability to serve the public.

Finally, I want to thank my staff for their dedication to our mission and for their work to help individuals and employers navigate the sometimes rough waters of the immigration benefits system. I have never before served in a role where I so consistently accept words of appreciation and blessings. I attribute this entirely to the deep commitment of my colleagues in the Ombudsman's Office. We will continue to work diligently to identify systemic problems and improve the quality of services provided by USCIS.

Most sincerely,



January Contreras
Citizenship and Immigration Services Ombudsman

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Executive Summary

The Office of the Citizenship Immigration Services Ombudsman 2011 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) major public engagement and policy initiatives; and
- A detailed discussion of pervasive and serious problems and best practices in the humanitarian, family, and employment areas, as well as challenges in customer service and Transformation, the agency-wide effort to move immigration services from a paper-based model to an electronic environment.

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. The Ombudsman’s Office is independent, confidential, and impartial. During the April 1, 2010 through March 31, 2011 reporting period, the Ombudsman’s Office opened 3,247 case inquiries. The Ombudsman’s Office also recommends ways to fix systemic issues to improve immigration services.

USCIS Year in Review: Public Engagement and Policy Initiatives. During the reporting period, USCIS has pursued ambitious goals for public engagement and an agency-wide review of the policy and procedures that guide USCIS’ administration of immigration benefits. These efforts have demonstrated USCIS’ commitment to providing better immigration services. At the same time, many announced goals and initiatives remain outstanding.

2011 Areas of Study: Pervasive and Serious Problems and Best Practices

The Ombudsman’s Annual Report, as mandated by section 452(c)(1)(B) of the Homeland Security Act, must include a “summary of the most pervasive and serious problems encountered by individuals and employers.”

Humanitarian. U.S. immigration law provides humanitarian avenues for immigrants in the most vulnerable and desperate of situations.

- **Enhancing Protections for Trafficking and Crime Victims through Humanitarian Programs and Training for USCIS and Law Enforcement.** The U.S. Department of Homeland Security (DHS) has fostered initiatives focused on combating violence and enhancing protection for victims of human trafficking, domestic violence, and other crimes, while strengthening law enforcement’s ability to investigate and prosecute perpetrators. Interagency efforts, dedicated personnel, collaboration with external partners, and community outreach have led to major developments that further ensure victim safety.
- **USCIS Processing of Deferred Action Requests.** Deferred action is a discretionary form of relief delegated by the Secretary of the Department of Homeland Security to USCIS, as well as to ICE and CBP. Stakeholders have expressed concerns regarding delayed processing of deferred action requests submitted by Haitian nationals following the earthquake in January 2010. The Ombudsman’s Office is reviewing USCIS processing of deferred action requests.
- **The Asylum Clock: Asylum-Based Employment Authorization.** The Ombudsman’s Office is examining a number of options for resolving difficulties encountered by asylum seekers attempting to obtain employment authorization, an issue commonly known as the “asylum clock.” Calculating time accrued for EAD eligibility presents a set of complex issues for applicants, advocates, USCIS personnel, and Immigration Court staff.

Family and Children. Family unity has long been a foundation of U.S. immigration policy. The majority of individuals who obtain lawful permanent resident status in the United States do so based on a family relationship.

- **Family-Based Visa Retrogression and the USCIS Response.** The Ombudsman’s Office has devoted significant attention to the interagency administration of the

visa lines for both employment and family-based immigration. This section focuses on family-based visa lines, the backward movement of the U.S. Department of State Visa Bulletin cut-off dates (referred to as retrogression), the impact on individuals and families, and the USCIS response.

- **Survivor Benefits: Implementation of New Statutory Provisions.** Enacted in 2009, Immigration and Nationality Act (INA) section 204(l) provides relief when the petitioner seeking an immigration benefit on behalf of a beneficiary dies before final adjudication of the beneficiary's case. Historically, such beneficiaries lost eligibility to become a permanent resident upon the petitioner's death. Following enactment of the statute, stakeholders reported to the Ombudsman's Office that USCIS field offices were often unaware of the new provisions. This situation was not completely remedied by publication of USCIS policy guidance and requires additional USCIS action.
- **Military Immigration Issues: Supporting Those Who Serve.** USCIS continues to enhance and refine outreach efforts to service members, and their spouses and children. Despite USCIS efforts, problems persist regarding certain discretionary relief for military families.
- **Recommendation: "Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices."** On April 15, 2011, the Ombudsman's Office published a multi-part recommendation to improve adjudications involving Special Immigrant Juvenile (SIJ) petitions. Establishing dedicated USCIS units to adjudicate and, where necessary, administer interviews would help fully realize the intention of the SIJ provisions.

Employment. An efficient employment-based immigration system enhances overall U.S. economic growth; responds to labor market needs; and improves U.S. global competitiveness.

- **VIBE: USCIS' New Business Validation Tool.** USCIS Service Center Operations designed the Validation Instrument for Business Enterprises (VIBE) to help Immigration Services Officers evaluate the viability and other key characteristics of a petitioning company. USCIS has informed the Ombudsman's Office that it is not tracking the issuance of VIBE-related Requests for Evidence (RFEs) or Notices of Intent to Deny, raising questions about USCIS' ability to assess VIBE's impact. The Ombudsman's Office is closely monitoring stakeholder experiences with VIBE.

- **Revisiting the Immigrant Investor Visa Program.** The Ombudsman's Office continues to hear concerns from stakeholders regarding USCIS administration of the fifth employment-based (EB-5) preference category for immigrant investors. Stakeholders report that inconsistent administration of the EB-5 program is undermining confidence in the program and, ultimately decreasing the job growth potential that it was designed to create.
- **Ongoing Issues with Requests for Evidence.** Employers continue to express a high level of frustration with USCIS issuance of RFEs, and provide the Ombudsman's Office with examples of inappropriate and unduly burdensome RFEs. Elevated RFE rates are impeding legitimate business operations. Focused and timely efforts are needed to address unclear and conflicting guidance, insufficient training on the application of the preponderance of the evidence standard, and quality assurance. This section also provides updated RFE data.
- **E-Verify Update.** During the 2011 reporting period, USCIS made upgrades to E-Verify that improved interoperability with the U.S. Social Security Administration and U.S. Department of State. While the accuracy of E-Verify has improved, challenges remain, including E-Verify's susceptibility to identity fraud and USCIS' ability to ensure employer compliance.
- **USCIS Processing of Employment Authorization Documents.** When employment authorization applications remain pending beyond USCIS' 90 day regulatory processing period, applicants and employers experience negative effects ranging from job disruption to termination, and any resulting financial burden. The Ombudsman's Office is reviewing USCIS processing of EADs and possible solutions.

Customer Service. As a component of DHS that interacts with millions of customers each year, USCIS continues to invest resources to improve its timeliness and responsiveness to customer service requests.

- **USCIS Processing Times.** During the reporting period, processing times generally met agency goals in the key areas of naturalization and adjustment of status; this report provides nationwide data for these processing times. However, certain applications and petitions continue to experience ongoing or sporadic delays, despite an overall decline in receipts for the entire agency.

- **USCIS Call Centers and Service Requests.** USCIS has made significant improvements in customer service, yet stakeholders continue to report frustration with the call centers and the service request process.
- **Interagency Coordination and Cooperation.** In order for USCIS to make timely and legally appropriate decisions on certain immigration benefits applications, it must communicate accurately and quickly with other DHS and Federal entities.
- **Recommendation: “Customer Complaints: A Tool for Quality Customer Service and Accountability.”** On March 23, 2011, the Ombudsman’s Office published a recommendation regarding standardized USCIS processing of customer service complaints.

USCIS Transformation: The Promise of Modernization for USCIS Systems and Immigration Benefits Processing.

Transformation is USCIS’ comprehensive modernization initiative to convert business processes to an integrated, digitized environment. Until Transformation meaningfully improves the experience of customers interacting with USCIS, its potential remains unrealized.

Previously Made Recommendations. This report includes a chart summarizing recommendations issued during the 2009 and 2010 reporting periods. Of the 38 recommendations the Ombudsman’s Office issued during this time, USCIS implemented nine, accepted but did not implement 18, and declined to implement 11. For a more detailed discussion of previously made recommendations, see Appendix 3.

Looking Ahead: Ombudsman’s Office Objectives and Priorities for the Coming Year. In the 2012 reporting year, the Ombudsman’s Office will continue to enhance its ability to help individuals and employers through case assistance, policy work, and outreach. The Ombudsman’s Office is redesigning its current case assistance process to improve outcomes and minimize its response time to case inquiries. The Ombudsman’s Office will conduct a comprehensive review of previously issued recommendations to ensure that problem-solving and operationally sound proposals that have not been implemented are given renewed consideration. In addition to other outreach initiatives, the Ombudsman’s Office will host its first annual conference on October 20, 2011.

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Overview of the Office of the Citizenship and Immigration Services Ombudsman

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office), established by the Homeland Security Act of 2002, assists individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS). The Ombudsman's Office addresses individual case inquiries and recommends ways to fix systemic issues to improve immigration services.¹

The Ombudsman's Office is:

- **Independent.** The Ombudsman's Office is an independent office within Department of Homeland Security (DHS) Headquarters that reports directly to the Deputy Secretary of DHS. It is not a part of USCIS.
- **Confidential.** The Ombudsman's Office treats information received from stakeholders and customers as confidential. It does not disclose such information without prior consent.
- **Impartial.** The Ombudsman's Office works in an impartial manner to improve USCIS' delivery of immigration services.

Case Assistance

Individuals and employers seek case assistance from the Ombudsman's Office by submitting Form DHS-7001, Case Problem Submission Worksheet. The Ombudsman's Office evaluates the case matter, legal authorities, and selected USCIS electronic information systems, and then may make a recommendation to USCIS to resolve the matter. See *Figure 1: Ombudsman's Office Case Assistance Process*.

During the April 1, 2010 through March 31, 2011 reporting period, the Ombudsman's Office opened 3,247 case inquiries.

Systemic Issues

The Ombudsman's Office identifies systemic issues through:

- Individual complaints and requests for case assistance;
- Discussions with applicants, petitioners, employers, non-governmental organizations, including community and faith-based organizations, and immigration professionals; and
- Information received from USCIS and other government officials.

The Ombudsman's Office may then make formal recommendations to the USCIS Director. By statute, USCIS must respond in writing within 90 days to such formal recommendations.

In addition to issuing formal recommendations, the Ombudsman's Office utilizes informal channels to monitor many areas and help shape developments. Among the issues the Ombudsman's Office addressed with USCIS during the reporting year were stakeholder concerns about relief for victims of the earthquake in Haiti; national training needs

Figure 1: Ombudsman's Office Case Assistance Process

Helping Individuals and Employers Resolve Problems with USCIS

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

- STEP 1** Fill out and sign Form DHS-7001, Case Problem Submission Worksheet, which allows the Ombudsman's Office to share confidential information with USCIS.
- STEP 2** Include on Form DHS-7001 all USCIS receipt numbers related to the application or petition.
- STEP 3** Make copies of important documentation, such as:
 - Paperwork submitted *to* USCIS;
 - Documents received *from* USCIS; and
 - Any other documentation important to the application or petition.
- STEP 4** Submit the signed Form DHS-7001 and any related documentation to the Ombudsman's Office by one of the following:
 - Email: cisombudsman@dhs.gov (Recommended)
 - Fax: 202-357-0042
 - Mail: Citizenship and Immigration Services Ombudsman
Department of Homeland Security
Attention: Case Assistance
Mail Stop 1225
Washington, D.C. 20528

** Due to security measures with the government mail system, cases mailed (even those sent by express mail) may be delayed for up to 14 days.*

After receiving a request for assistance, the Ombudsman's Office:

- STEP 1** Acknowledges receipt of the inquiry.
- STEP 2** Reviews the inquiry to make sure that we are able to help.
 - If we are not able to help, we may provide information to the customer on the appropriate government office to contact.
- STEP 3** If we are able to help, the Ombudsman's Office:
 - Researches USCIS databases for current status of the application or petition.
 - Identifies customer issue(s).
 - Reviews laws, regulations, policies, and procedures.
 - Makes a recommendation to the appropriate USCIS field office, service center, or Headquarters office on how to resolve the case.
 - Follows-up with USCIS until the issue is resolved.
- STEP 4** Ensures the individual or employer is contacted with the result of the inquiry and current status of the application or petition.

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

for adjudicators who interview victims of violence and other forms of trauma; EB-5 immigrant investor issues; the new USCIS business verification tool Validation Instrument for Business Enterprises (VIBE); and the DHS interim rule, “Professional Conduct for Practitioners: Rules, Procedures, Representation and Appearances,” and its requirements for Form G-28 filings.

Outreach

The Ombudsman’s Office interacts with a wide range of stakeholders. Outreach activities include:

Stakeholder Meetings. The Ombudsman’s Office regularly engages with a variety of stakeholders from the private sector, faith-based organizations, grassroots coalitions, and industry associations across the country. In meetings and roundtable discussions, stakeholders give feedback about systemic issues across a wide spectrum of immigration benefit programs. Concerns, as well as best practices, are regularly discussed. In addition, these outreach sessions often bring to the attention of the Ombudsman’s Office interagency problem areas, where the functions of multiple Federal entities require coordination. Learning about the public’s experience with USCIS, DHS, and other government organizations is key to helping the Ombudsman’s Office identify areas in need of improvement.

Teleconferences. The Ombudsman’s Office regularly hosts public teleconferences. Callers participate anonymously and include individuals, employers, attorneys, congressional staff, and other stakeholders. During the teleconferences, the Ombudsman’s Office shares information relating to specific topics, often by interviewing officials from USCIS and other government agencies, and then opens the conference call to participant questions or comments. Teleconferences have highlighted topics including the Freedom of Information Act; the Child Status Protection Act; family-based visa retrogres-

sion; export control requirements; application and petition processing times; and the Systematic Alien Verification for Entitlements (SAVE) Program. Participation in these teleconferences has grown during the reporting period with high interest topics drawing over 200 callers.

Interagency Liaison. The Ombudsman’s Office serves as an interagency liaison among various DHS components and Federal agencies, including the U.S. Departments of Commerce, Justice, and State, to facilitate discussions that promote responsive delivery of immigration services.

Ombudsman’s Quarterly Updates. In January 2011, the office launched the *Ombudsman’s Quarterly Updates*, a newsletter that highlights current projects, casework, and issues that have been informally addressed by the Ombudsman’s Office. It also encourages stakeholders to provide feedback.

Improved Online Services

In May 2011, the Ombudsman’s Office launched a redesigned website that includes new resource pages to help individuals and employers find information about and address problems relating to citizenship and immigration services. Additionally, the Ombudsman’s Office successfully initiated internal testing of expanded online services that will allow customers to electronically submit a request for individual case assistance.

The Ombudsman’s Annual Report

The Ombudsman submits an annual report to Congress by June 30 of each calendar year, pursuant to section 452(c) of the Homeland Security Act. The current report references data from April 1, 2010 through March 31, 2011, but also includes significant developments outside the reporting period.

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USCIS Year in Review: Public Engagement and Policy Initiatives

During the reporting period, USCIS pursued ambitious goals for public engagement and an agency-wide review of the policy and procedures that guide USCIS' administration of immigration benefits. With public engagement, USCIS sought to be "open and transparent" about the delivery of services.² Regarding the policy review, Director Alejandro Mayorkas stated, "As an agency, we must achieve consistency in the policies that guide us and in how we implement them for the public benefit."³ USCIS has committed to the objectives of consistency, integrity, transparency, and efficiency. Over the past year, the agency has achieved some of these goals.

Public Engagement

USCIS' public engagement ushered in a new era of outreach and raised expectations that the agency would resolve long-standing programmatic issues. For the first time, the agency held a nationwide series of open houses at its offices in an effort to "enhance [its] presence in the community and strengthen its partnership with stakeholders."⁴ USCIS also took the following actions: launched a Spanish-language engagement series;⁵ held numerous meetings in response to the ongoing humanitarian concerns surrounding Haiti;⁶ engaged with stakeholders regarding employment eligibility verification programs, such as E-Verify;⁷ and continued development of the Transformation initiative.⁸ Additionally, USCIS met with stakeholders in advance of issuing a new fee rule that increased filing fees for most applications and petitions by a weighted average of 10 percent effective November 23, 2010.⁹

Public engagement has allowed more members of the public to hear firsthand about agency initiatives and pose questions about USCIS developments. Some stakeholder engagement sessions have led to important policy developments such as ameliorative action related to the H-1B cap exceptions for university-affiliated healthcare and research organizations.

While stakeholders have been encouraged by USCIS' efforts, many have described the sessions as more unidirectional

than expected. Individuals, employers, and organizations report that they provided input, but found USCIS hesitant to engage in problem-solving dialogue in these public forums. USCIS has not made clear how the agency implemented the feedback received, causing stakeholders to question whether USCIS duly considered their input.

Policy Review

This reporting year, USCIS announced an agency-wide policy review. The initial review addressed ten broad areas, including customer service, employment-based preference categories, and inadmissibility waivers.¹⁰ USCIS collected approximately 5,600 public survey responses, as well as internal responses from agency personnel.¹¹

USCIS stated the review would be divided into four stages: (1) assembling and categorizing all existing policy documents; (2) prioritizing the issue areas for review, with input from surveys of the workforce and external stakeholders; (3) completing review of policies in each identified issue area; and (4) consolidating and publishing updated policy documents (as appropriate). This review is ongoing but has not yet resulted in published policy revisions.

Posting Draft Policy Memoranda for Stakeholder Comment. In the last reporting period, USCIS announced that it

would begin posting draft policy memoranda on its website and accept public comments generally for ten days. Many stakeholders welcomed this commitment as a significant departure from USCIS' historical approach to policy-making. Since April 2010, USCIS has posted 36 memoranda for public comment and finalized 12.¹² Stakeholders report that the public comment process could be improved by providing stakeholders with more time to comment and by publishing USCIS responses. Specifically, stakeholders express concern both with the effort required to respond constructively in short timeframes and with the lack of USCIS feedback on the comments they provided. USCIS has indicated to the Ombudsman's Office that the agency will be providing more time for comment for complex draft policy. While stakeholders recognize that not all suggestions will be accepted, they report being discouraged when final policy guidance does not reflect their input or USCIS consideration of it.

Stakeholders have described the new USCIS process as a notable move towards transparency and engagement, but have also identified the continued need for agency adherence to the formal notice and comment process of the Administrative Procedure Act.¹³

Action Following Public Engagement

Request for Evidence Project. Stakeholders nationwide have expressed concerns with unnecessary or unduly burdensome Requests for Evidence (RFEs) and the delays associated with

them. In response, USCIS initiated a review of RFEs, held stakeholder listening sessions, and issued new RFE templates for select product lines, after posting them for public comment. Further, USCIS indicated that it will be conducting training on the evidentiary burdens and standards of proof used in adjudications, as recommended in the Ombudsman's 2010 Annual Report. Despite these efforts, stakeholders continue to report and have provided examples of inappropriate RFEs that are inconsistent with applicable law and policy.

Fee Waiver Initiative. USCIS realized one of its many public engagement and policy review goals through the introduction of Form I-912, Request for Fee Waiver.¹⁴ On July 16, 2010, USCIS published the first-ever proposed fee waiver form.¹⁵ Prior to the creation of Form I-912, USCIS met with stakeholders who expressed concern that the absence of a standardized fee waiver form had caused confusion and inconsistent adjudication standards. USCIS both solicited stakeholder feedback during the creation of the form and posted the draft form for comment. On November 23, 2010, the form went into effect with the new USCIS fee schedule.¹⁶

Conclusion

The 2011 reporting period marks a year of firsts for USCIS: increasing public engagement efforts and involving stakeholders in policy decisions. These achievements have demonstrated USCIS' commitment to providing better immigration services. At the same time, many announced goals and initiatives remain outstanding.

2011 Areas of Study: Pervasive and Serious Problems and Best Practices

The Ombudsman’s Annual Report, as mandated by section 452(c)(1)(B) of the Homeland Security Act, must include a “summary of the most pervasive and serious problems encountered by individuals and employers.” In previous reports, the Ombudsman’s Office has discussed certain pervasive and serious problems, such as the USCIS funding structure and intra-agency communications, that remain unresolved but which are not reviewed again in this annual report.

This year’s annual report details pervasive and serious problems and best practices in the following areas:

- Humanitarian;
- Family;
- Employment;
- Customer service; and
- Transformation.



Humanitarian

U.S. immigration law provides humanitarian avenues for immigrants in the most vulnerable and desperate of situations. This practice acknowledges that the United States has served as a beacon to individuals fleeing oppression and mistreatment.



Enhancing Protections for Trafficking and Crime Victims through Humanitarian Programs and Training for USCIS and Law Enforcement

Over time, the U.S. Department of Homeland Security (DHS) has fostered initiatives focused on combating violence and enhancing protection for victims of human trafficking, domestic violence, and other crimes, while strengthening law enforcement’s ability to investigate and prosecute perpetrators. Interagency efforts, dedicated personnel, collaboration with external partners, and community outreach have led to major developments that further ensure victim safety. The following is a brief summary of these efforts.

Background

The Violence Against Women Act (VAWA), landmark legislation enacted in 1994 to combat domestic violence; the Trafficking Victims Protection Act (TVPA); and various reauthorizations provide critical immigration protections for victims of trafficking and other violent crimes.¹⁷ VAWA and TVPA

established three remedies that support law enforcement in investigating and prosecuting crimes while enabling victims to seek immigration relief. The specific remedies are: (1) the VAWA self-petition (domestic violence victims); (2) the T visa (trafficking victims); and (3) the U visa (victims of specified crimes). DHS, including USCIS and the Ombudsman’s Office, have developed resources to further the effectiveness of VAWA and TVPA.

DHS Efforts

In 2010, DHS established an intra-agency task force, led by the Federal Law Enforcement Training Center, in response to public concern that DHS personnel were unaware of immigration remedies available to support criminal investigations and victims of crime, as well as VAWA confidentiality provisions. This collaboration included USCIS, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the DHS Office for Civil Rights and Civil Liberties, the DHS Office of Policy, and the Ombudsman’s Office. The task force developed the “Violence Against Women

Act (VAWA): Confidentiality Provisions and Immigration Remedies” training module to inform DHS personnel about VAWA confidentiality requirements and the special immigration remedies available for immigrant victims of trafficking and certain crimes. The training is expected to debut in late summer 2011.

USCIS Initiatives

In 2000, USCIS established the VAWA Unit at the Vermont Service Center (VSC) to promote consistency in adjudications.¹⁸ Over the past ten years, USCIS expanded the VAWA Unit from ten officers to approximately 65 and renamed it the Crime Victims Unit. This unit has reduced processing times and accommodated new workloads such as the adjudication of T and U nonimmigrant visas. At the same time, the unit has made itself publicly accessible by establishing a dedicated email account to receive questions regarding VAWA, T, and U matters. Stakeholders regularly express appreciation for the access that the Crime Victims Unit affords both through email and via stakeholder engagement sessions.

USCIS provides VAWA, T, and U visa program training to local, state, and Federal law enforcement agencies as well as to victim advocates. Additionally, certain USCIS staff receive training on VAWA confidentiality provisions.

In FY 2010, USCIS granted 10,000 U visas, for the first time exhausting the full statutory allotment.¹⁹ To lessen the impact on those whose U visa petitions were pending when the cap was reached, as well as on applicants who subsequently filed, USCIS adopted a new approach: qualified applicants receive a supplemental notice of deferred action, placing them in line for the next available U visa, and become immediately eligible to apply for employment authorization.²⁰

On December 1, 2010, USCIS issued an alert for its database systems to ensure DHS personnel identify and maintain VAWA-mandated confidentiality. The alert informs DHS personnel that the applicant-victim’s information must not be compromised. Further, it provides notice to DHS personnel about the applicant’s status, so the individual is not erroneously subjected to an immigration enforcement action.

During the past year, USCIS issued guidance on statutory changes enacted in the 2005 and 2008 reauthorizations of VAWA and TVPA.²¹ Through these policy memoranda, USCIS has implemented crucial relief: for example, extending eligibility for VAWA self-petitions to the abused parents of U.S. citizens, and providing employment authorization for certain trafficking victims during civil litigation of their cases.

Continuing USCIS Challenges Connected with the VAWA, T, and U Programs

In an effort to serve victims of violence, the Ombudsman’s Office regularly meets with stakeholders who have raised the following issues:

Need for Updated Regulations. USCIS states it is in the process of updating VAWA and TVPA regulations to ensure that victims of violence receive the full benefit of the updated legislation. The Ombudsman’s Office has highlighted to USCIS areas in need of regulatory action, including the T visa “trauma exception” to the requirement that victims cooperate with law enforcement and employment authorization for abused spouses in certain nonimmigrant categories.

Status Issues for Derivatives (Age-Outs). According to the current USCIS interpretation, when a derivative of a U visa holder reaches the age of 21, the individual “ages out” and is no longer eligible to remain in derivative U status.²² Therefore, USCIS will only authorize U status until a derivative’s 21st birthday. Similarly, USCIS will deny a U visa petition filed by a derivative who turns 21 while it is pending.

Congress extended U visa status to derivatives to ensure that victims of violence feel secure knowing that their families will remain intact and safe from retribution.²³ The Ombudsman’s Office urges USCIS to issue guidance to preserve the derivative’s eligibility based on the age at the time of filing.

OMBUDSMAN CASE ASSISTANCE

A longtime victim of domestic violence and mother of three children cooperated with police in the investigation and prosecution of her abuser. She applied for and was granted a U visa. She included her three sons on her petition and her two youngest sons received U visas. However, the oldest son, a college student who is helping his mother become independent from the abuser, turned 21 while the petition was pending and, therefore, was denied a visa. He now faces the prospect of returning alone to his home country.

VAWA Permanent Residence Interviews. Stakeholders nationwide have reported to the Ombudsman’s Office concerns regarding insensitive and inappropriate questioning by USCIS adjudicators conducting VAWA permanent residence interviews. The Ombudsman’s Office has addressed these concerns with USCIS and, as part of the interaction, has been reviewing best practices.

Thus far, the Ombudsman’s Office has identified two USCIS district offices with practices that serve as effective models for training on this issue. First, in November 2009, the Washington District Office conducted a training entitled “Working with Immigrant Survivors of Violence” for its adjudications staff. This training was a partnership between the Washington District Office and a local community-based organization. An attorney and a social worker from the local organization discussed their experiences working with victims of violence and how to approach victim applicants during an immigration interview. Second, the New York District Office created a VAWA unit comprised of five dedicated officers and approximately ten additional officers trained to perform VAWA adjudications, as needed. The New York District Office has designated two officers with special training to answer questions the VAWA adjudicators may have.

The Ombudsman’s Office understands that USCIS will be starting a nationwide adjudicator training program on techniques appropriate for interviewing victims of violence. The Ombudsman’s Office suggests that USCIS pair this training initiative with designation of points of contact knowledgeable about VAWA in each field office.

OMBUDSMAN CASE ASSISTANCE

A woman from Eastern Europe married a U.S. citizen who constantly threatened to kill himself if she left him. He also was physically abusive to her. To prevent her from leaving, he refused to file her permanent residency application. After enduring years of abuse, she obtained a protective order against him. On returning to the marital home with a police escort to retrieve her belongings, she found her husband had committed suicide. At her VAWA interview, the adjudicating officer asked if she had driven her husband to commit suicide, whether his death was a suicide, and repeatedly said that her role in the suicide was relevant to the adjudication of her permanent residence application. The applicant left the interview crying and traumatized.

Conclusion

USCIS has been proactive in many of its crime victims programs. It has strengthened resources and accessibility at the Vermont Service Center, and advanced policy through the USCIS Office of Policy and Strategy to carry out congressional intent. At the same time, stakeholders have expressed the need for additional adjudicator training and updated regulations that accurately reflect legal provisions added by reauthorizations to VAWA and TVPA. Examples of such legislative changes include the derivative issue discussed above; guidance on the “trauma exception” to the requirement that victims cooperate with law enforcement; and language allowing abused spouses on A, E-3, G, and H visas to obtain work authorization.²⁴

USCIS Processing of Deferred Action Requests

The Ombudsman’s Office is reviewing USCIS processing of individual deferred action requests submitted at local offices.

Background

When USCIS grants deferred action, it permits a person to remain temporarily in the country by declining to initiate removal proceedings. For decades, the government has exercised this discretionary authority in order to promote the efficient and effective enforcement of immigration laws and in the interest of justice.²⁵ The employment authorization regulations describe deferred action as “an act of administrative convenience to the government which gives some cases lower priority....”²⁶ A deferred action request is decided based on the positive and negative factors of an individual’s case, including humanitarian concerns, criminal history, and family ties to the United States.²⁷

Stakeholder Concerns

Stakeholders have expressed concerns to the Ombudsman’s Office regarding the delayed processing of numerous deferred action requests submitted by Haitian nationals following the earthquake in January 2010. Stakeholders reported to the Ombudsman’s Office that individuals have waited for more than seven months for decisions on their requests.²⁸ While awaiting USCIS action, many individuals accrued unlawful presence that could impact their eligibility for future immigration benefits. These concerns led to broader conversations among stakeholders about the way that USCIS processes deferred action requests.

The Ombudsman’s Office met with various USCIS field and regional offices, and obtained deferred action request data from USCIS Headquarters. The Ombudsman’s Office found that USCIS was not comprehensively tracking deferred action

decisions prior to 2011.²⁹ These meetings revealed that USCIS is not communicating essential guidance on how to make or renew a deferred action request. General guidance from USCIS would help stakeholders determine whether to advise clients to seek this temporary relief. Stakeholders further note that preparing a deferred action request is complex and costly.

USCIS Processing of Individual Deferred Action Requests

While USCIS does not provide public information about how to seek deferred action, the agency has long accepted deferred action requests through local offices. Generally, a district director evaluates these requests on a case-by-case basis, and forwards them for review by the regional director. While deferred action is an exercise of discretion, greater transparency would further the goals of accessibility, fairness, and efficient use of resources.

USCIS has granted deferred action in cases involving individuals with serious medical conditions and persons temporarily prevented from returning to their home country by a natural disaster. No form exists for seeking deferred action and no fee is collected for a deferred action request. Deferred action tolls accrual of further unlawful presence and individuals granted deferred action are able to apply for employment authorization.³⁰ USCIS usually grants deferred action for one to two years.³¹

There is no formal, agency-wide procedure for handling deferred action requests and no standardized timeframe in which to deliver a decision. Accordingly, when a local office experiences an increase in submissions, that office must adapt its procedures to accommodate the change in demand. It appears that solutions developed locally are not systematically shared with other offices.

USCIS field offices receive a range of submissions, from two to 65 per month.³² Offices faced with an unexpected surge in deferred action requests often experience significant delays in the delivery of a final decision on such requests.

Prior Ombudsman's Office Recommendations

On April 9, 2007, the Ombudsman's Office issued the following recommendations on deferred action: (1) post general information on the USCIS website; (2) maintain deferred action statistics; and (3) designate a Headquarters official to review decisions.³³

USCIS responded that deferred action requests are reviewed on a case-by-case basis, and that published guidance would not be a meaningful addition to USCIS' website.³⁴ Nor did the agency find it necessary to review deferred action decisions at USCIS Headquarters. USCIS did commit to collecting deferred action statistics on a quarterly basis.

Recent inquiries to the Ombudsman's Office and comments during stakeholder meetings have identified the ongoing need for public guidance regarding deferred action.

Conclusion

The Ombudsman's Office is examining the following options for improved processing of deferred action requests:

- (1) issuing public information describing deferred action and the procedures for making a request to USCIS for this temporary form of relief;
- (2) establishing internal protocols for accepting and processing deferred action requests to promote consistency and assist local offices in responding to periodic increases in the demand for this form of relief;
- (3) taking inventory of all pending deferred action requests to verify that each received a confirmation of receipt with estimated processing timeframes and USCIS contact information; and
- (4) reporting statistics on deferred action requests and decisions.

The Asylum Clock: Asylum-Based Employment Authorization

During the past year, the Ombudsman's Office received requests for assistance from asylum applicants seeking Employment Authorization Documents (EADs). Asylum seekers are individuals who have come to the United States seeking protection because they have suffered persecution or fear that they will suffer persecution due to their race, religion, nationality, political opinion, or membership in a particular social group.³⁵ The Ombudsman's Office is reviewing issues with the employment eligibility process for asylum applicants and focusing specifically on what is commonly known as the "asylum clock."

Background

Absent exceptional circumstances, individuals are to receive a decision from USCIS on their asylum claim within 180 days of filing their Form I-589, Application for Asylum and for Withholding of Removal.³⁶ After the 180 days, qualified applicants³⁷ may seek employment authorization.³⁸

Stakeholders and USCIS personnel attribute many of the difficulties concerning the asylum clock to communication problems between USCIS and the Executive Office for Immigration Review. Stakeholders also report a lack of internal communication between the USCIS Asylum Division and service centers. Asylum applicants and attorneys note that there is limited information available regarding how the asylum clock works and who to contact when there are problems in determining employment authorization eligibility.

Impact on Asylum Seekers. Without the ability to work, many applicants are without sufficient financial resources to support themselves and their families in the United States. Addressing asylum clock issues would ensure that applicants receive appropriate benefits in a timely manner.

Conclusion

Calculating time accrued for EAD eligibility presents a set of complex issues for applicants, advocates, USCIS personnel, and Immigration Court staff. The Ombudsman's Office is examining a number of options for resolving difficulties encountered by asylum seekers attempting to obtain employment authorization. Considerations include increased transparency, access, notice, and interagency cooperation. The Ombudsman's Office continues to review the employment authorization process for asylum seekers and the efficiency of USCIS adjudications.



Family and Children

Family unity has long been a foundation of U.S. immigration policy. The majority of individuals who obtain lawful permanent resident status in the United States do so based on a family relationship.³⁹ The United States has a vested interest in a transparent, easy to navigate immigration benefits system for families.



Family-Based Visa Retrogression and the USCIS Response

The Ombudsman’s Office has devoted significant attention to the interagency administration of the visa lines for both employment and family-based immigration. The office hosts monthly interagency meetings with USCIS and the U.S. Department of State (DOS) to facilitate information sharing and to improve predictability and transparency in the visa allocation process. This section focuses on family-based visa lines, the backward movement of the DOS Visa Bulletin cut-off dates (referred to as retrogression), the impact on individuals and families, and the USCIS response.

Background

The Immigration and Nationality Act (INA) regulates immigration to the United States based, in part, on formulas and numerical limits. Visas are allocated among preference categories defined by the status of the petitioner and the closeness of the family relationship. Where demand exceeds the annual

allotment of visas, individuals and their families must wait to obtain permanent residence in the United States.

DOS oversees the distribution of visa numbers and publishes a Visa Bulletin that is adjusted monthly to reflect the usage of visas. Each family-based application is assigned a priority date, generally the same date that USCIS receives Form I-130, Petition for Alien Relative. Eligibility for a visa number is determined by an individual’s priority date. An individual may apply for permanent residence and obtain a visa number when the priority date precedes the date listed in the Visa Bulletin, which is referred to as a cut-off date. When high demand for immigrant visas in a particular time period causes visa usage to accelerate, the Visa Bulletin may be adjusted so that cut-off dates move backward instead of forward. This backward movement is called retrogression.

People typically wait years in the family preference categories for the cut-off date to move forward to their priority date. Waiting times for permanent residence visas vary by category and country. In 2010, a visa applicant who is the adult son or

daughter of a lawful permanent resident from certain countries, such as the Philippines, typically had to wait more than ten years to receive permanent residence. The spouse or minor child of a permanent resident from most other countries had a waiting period of less than a year by December 2010, but other family members, such as siblings, typically have waiting periods that span several years.

Family-Based Retrogression

Family-based cut-off dates for nearly all categories and countries retrogressed significantly in January 2011. This broad backward movement in so many family categories is unusual. No similar retrogression has happened since 2001.⁴⁰

In FY 2010 and at the beginning of FY 2011, low demand for immigrant visas created the prospect that thousands of family-based visas would go unused. To help inform the public, the Ombudsman’s Office issued an Ombudsman Update on Unused Family-Based Visas on June 23, 2010. DOS advanced the Visa Bulletin dates to make more applicants eligible to apply. By December 2010, demand had increased beyond the number of available visas. As a result of increased demand, DOS retrogressed the dates in the Visa Bulletin to ensure a fair distribution of visas in FY 2011. In response to inquiries regarding retrogression, the Ombuds-

man’s Office hosted a public teleconference on March 15, 2011, in which the office interviewed DOS officials to explain why the retrogression occurred and inform the public about these changes.

Impact on Families

Retrogression delays case processing and family reunification until cut-off dates advance. Individuals and families eligible to complete processing prior to the December 2010 retrogression may now have to wait months or years to immigrate. See *Figure 2: Example of Visa Retrogression for Family-Based Second Preference (F2A)*.

Moreover, stakeholders have reported confusion about the effect of retrogression on their applications and petitions.⁴¹

USCIS Response

While USCIS does not control the movement of priority dates, it plays a critical role in providing information to family-based petitioners and applicants. USCIS issued a January 11, 2011 memorandum to staff governing file movement for retrogressed cases, and issued public guidance on June 14, 2011 addressing the retrogression.

Figure 2: Example of Visa Retrogression for Family-Based Second Preference (F2A)

	WORLDWIDE	CHINA-mainland born	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
December 2010	August 1, 2010	August 1, 2010	August 1, 2010	August 1, 2010	March 1, 2010	August 1, 2010
January 2011	January 1, 2008	January 1, 2008	January 1, 2008	January 1, 2008	April 1, 2005	January 1, 2008
Approximate Retrogression	2.5 years	2.5 years	2.5 years	2.5 years	5 years	2.5 years

Note: The Ombudsman’s Office created the approximate retrogression times using data provided by the U.S. Department of State’s Visa Bulletin for December 2010 and January 2011.
Source: U.S. Department of State, Visa Bulletin for December 2010 and January 2011.

The USCIS policy memorandum informs offices that, for applicants with retrogressed cases filing Form I-485, Application to Register Permanent Residence or Adjust Status, interviews will be done locally, after which files are to be moved to the USCIS National Benefits Center (NBC) for storage.⁴² The memorandum references the USCIS Adjudicator's Field Manual, Chapter 20.1(e), which states that applicants with retrogressed visa cases who are already present in the United States may remain in the country until a visa number again becomes available. Their applications are held in abeyance and they are eligible for employment authorization and advance parole during this waiting period.

Further Public Information Needed and the Importance of Address Changes

Individuals have informed the Ombudsman's Office that it is important to know: (1) what will happen after an interview on a retrogressed case; (2) where their files will be located; (3) what documents they may need to update; (4) and how best to ensure that their addresses are kept current in USCIS databases so that all notifications in the case will be received by the applicant.⁴³

It is important to file a change of address for each type of pending application or petition, for each family member. Besides being a legal requirement, maintaining a current address on file with USCIS has practical implications: it is particularly critical for retrogressed cases because USCIS may send out notices when a priority date becomes current. Due to the lack of an updated address, a notice may not be received. In turn, the individual may miss an interview or filing date, the application or petition may be subject to denial, and other adverse immigration consequences may ensue. To emphasize the importance of address changes and clarify the process, the Ombudsman's Office issued on June 25, 2010 an update entitled, "Change of Address with USCIS."⁴⁴ A focused change of address campaign by USCIS would be of great value to both family and employment-based petitioners and beneficiaries.

Conclusion

Lack of timely information increases the likelihood of individuals with pending applications losing eligibility or priority dates. While USCIS does not control the DOS Visa Bulletin's movement of cut-off dates, the agency should ensure its own processes and communications serve families waiting in the visa lines.



Survivor Benefits: Implementation of New Statutory Provisions

Enacted in 2009, Immigration and Nationality Act (INA) section 204(l) provides relief when the petitioner seeking an immigration benefit on behalf of a beneficiary dies before final adjudication of the beneficiary's case. Historically, such beneficiaries lost eligibility—and their place in line—to become a permanent resident upon the petitioner's death.

Prior to enactment of section 204(l), only spouses of U.S. citizens and their children had a statutory right to continue seeking permanent residence after death of the petitioner.

Congress made two major changes relating to immigration survivor benefits on October 28, 2009:⁴⁵

- Amended the definition of immediate relative spouse at INA section 201(b)(2)(A)(i) to allow the surviving foreign national spouses of a U.S. citizen to apply for lawful permanent residence even if married for less than two years prior to the death of the petitioning spouse.
- Added a new list of potential survivor beneficiaries at section 204(l) that includes certain relatives in the family and employment preference categories, asylees, and those who have T (trafficking) or U (victim of specified crimes) nonimmigrant status.

Section 204(l) applies only to beneficiaries residing in the United States at the time of the petitioner's death.

Background

Prior to 2009, USCIS did not permit the beneficiary of a visa petition to obtain approval of the petition if the petitioner died while the petition remained pending.⁴⁶ Revocation of approved visa petitions was automatic upon the petitioner's death.⁴⁷

Reinstatement on humanitarian grounds was available to a limited class of beneficiaries, but was infrequently granted.⁴⁸ As a result, the surviving relatives of a deceased petitioner were often required to cope with the demise of a loved one, while simultaneously facing the potential loss of immigration benefits and possible relocation abroad.

Section 204(l) was intended to lessen the adverse immigration impact on surviving beneficiaries. It permits the approval of a visa petition or refugee/asylee relative petition, as well as any adjustment application and related application in certain circumstances.⁴⁹ The initial petition, asylum application, or T/U nonimmigrant status application must have been filed by a "qualifying relative."⁵⁰ USCIS now has the authority to continue processing, and approve, a petition or application filed by a deceased individual, provided that such processing is not determined to be against the "public interest."⁵¹

Beneficiaries of petitions approved prior to the petitioner's death but before the availability of visa numbers that allowed for filing of a permanent residence application, as well as beneficiaries residing outside the United States at the time of the petitioner's death, must still seek humanitarian reinstatement of their petitions.

Issuance of USCIS Policy Memorandum

Section 204(l) became effective October 28, 2009. For 14 months after the statute was enacted, USCIS did not implement section 204(l) with final guidance and, therefore, was not granting benefits contemplated under the new law. Stakeholders regularly reported to the Ombudsman's Office that USCIS field offices were often unaware of the new survivor provisions and that guidance on the handling of survivor benefits was needed.⁵²

USCIS provided guidance via the publication of a December 16, 2010 memorandum entitled "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)."⁵³ Issues with the adjudication of survivor benefits were not completely remedied by the publication of this policy memorandum. Subsequent to its issuance, stakeholders expressed concern that, despite the clear intent of the 2009 law, automatic revocation of approved petitions upon the death of the petitioner continued. In addition, the process for seeking humanitarian reinstatement of petitions not covered under section 204(l) remains confusing, especially for *pro se* applicants.⁵⁴

Needed Clarification

Clarification would be helpful in several areas:

Implement Conforming Regulations to Address Automatic Revocation. Under the new provision, approved petitions should proceed as if the petitioner were alive, unless the Secretary of Homeland Security determines that such adjudication is not "in the public interest."⁵⁵ However, USCIS appears to have continued acting in accordance with the existing regulations, automatically revoking approved petitions upon the petitioner's death. Updated regulations are required in order to properly implement section 204(l).

Fees for Denied Cases. USCIS stated that it would reopen, upon motion, with applicable fee, survivor cases denied prior to enactment of the new law on October 28, 2009, if new section 204(l) would now allow approval of a petition or application. Some survivors filed such motions for petitions denied prior to enactment of the new law. They sought coverage after the new statute passed, but before USCIS published the memorandum. USCIS denied these motions. Absent guidance applicable to these motions to reopen, it appears that survivors must re-file their motions and again pay the \$630 fee. Requiring another fee for these second motions to reopen is inconsistent with the remedial intent of the statute.

Case Tracking. USCIS stated in its memorandum that it would reopen and review cases that were affected by the enactment of section 204(l), but that were denied after October 28, 2009. As such, it is unclear how USCIS will find and review cases that may have been erroneously decided between the effective date of section 204(l) and the issuance of the December 16, 2010 policy memorandum. Additionally, there is no specified method for individuals or counsel to bring such cases to USCIS' attention.⁵⁶

OMBUDSMAN CASE ASSISTANCE

A lawful permanent resident filed a petition for her husband, a citizen of Mexico. The petitioning wife died in a tragic accident. USCIS denied the petition after being informed of the death by the widower. The government began removal proceedings against him, and he then filed a motion to reopen based on INA section 204(l), which provides relief to surviving spouses. USCIS denied the motion without reference to the new law. The widower sought the assistance of the Ombudsman's Office, and the petition was reopened and approved.

Conclusion

When a petitioner dies, leaving surviving beneficiaries residing in the United States, INA section 204(l), protects those beneficiaries from automatic revocation of the visa petitions filed on their behalf. USCIS has issued a memorandum instructing adjudicators how to apply Section 204(l). However, inconsistencies between the new law and existing regulations have led to decisions by USCIS that seem contrary to legislative intent. In addition, certain beneficiaries must still seek humanitarian reinstatement when the relative who filed a visa petition on their behalf dies, and the process for such humanitarian reinstatement is vague and confusing. Stakeholders indicate that additional clarification and training are needed, particularly conforming regulations to implement section 204(l), as well as public outreach materials to provide *pro se* applicants with instructions. Prioritizing the implementation of conforming regulations would ensure that adjudicators are able to make decisions in survivor benefits cases that are consistent, correct, and accomplish congressional intent.

Military Immigration Issues: Supporting Those Who Serve

In previous years, the Ombudsman's Office has reviewed and commented on the USCIS military naturalization process and the delivery of immigration services to military family members.⁵⁷ Through site visits to field offices, teleconferences with USCIS staff, and stakeholder engagement, the Ombudsman's Office has learned that USCIS continues to enhance and refine outreach efforts to service members, and their spouses and children. Stakeholders report that problems persist regarding certain discretionary relief for military families.

Background

During FY 2010, USCIS naturalized 11,146 military service members both in the United States and overseas.⁵⁸ This represents an ongoing increase in military naturalizations: in FY 2009, USCIS completed 10,505 military naturalizations, and in FY 2008, the agency completed 7,865.⁵⁹ It also constitutes the largest number of military naturalizations completed in any year since 1955.⁶⁰

Providing Immigration Services to Military Members and Their Families

Throughout the reporting period, USCIS has taken steps to improve the delivery of immigration services to military members and their families. These steps include the following:⁶¹

- USCIS naturalizes U.S. Army recruits during basic training at five sites: (1) Fort Benning, GA; (2) Fort Jackson, SC; (3) Fort Knox, KY; (4) Fort Leonard Wood, KS; (5) and Fort Sill, OK; USCIS naturalizes U.S. Navy recruits during basic training at the Great Lakes Naval Training Center, MI.⁶²
- In 2010, USCIS amended the regulations to eliminate the Form G-325B, Biographic Information requirement, simplifying the naturalization filing process.
- Beginning in 2010, fees are now waived for all military applicants filing Forms N-600, Application for Certificate of Citizenship and N-336, Request for a Hearing on a Decision in Naturalization Proceedings. Form N-400, Application for Naturalization fees have been waived for military personnel since October 1, 2004.⁶³



In districts with large military populations, USCIS now has designated Immigration Services Officers (ISOs) who coordinate with military liaison officers to provide immigration benefits information; expedite fingerprinting; perform interviews; and conduct naturalization ceremonies for service members and their families at most major military installations.⁶⁴

Plans for Continued Improvement

USCIS plans to continue expanding the services offered to military members and their families and reports that the following programs will be implemented during FY 2011:⁶⁵

- Based on its successful collaboration with the U.S. Army and Navy, USCIS is coordinating with the U.S. Air Force to establish a program to naturalize recruit airmen during basic training at Lackland Air Force Base, TX and with the U.S. Marine Corps to establish a Marine naturalization program at the U.S. Marine Corps Schools of Infantry at Camp Lejeune, NC and Camp Pendleton, CA.
- USCIS plans to propose changes to the Civil Surgeon program to give physicians employed by the U.S. Department of Defense (DOD) and working on military installations a “blanket designation” to conduct physical examinations for military personnel and their family members applying for permanent residence. This change would allow military families to have military doctors complete their medical examinations, thereby sparing them additional costs associated with having nonmilitary personnel perform these exams.⁶⁶
- USCIS is currently assessing the need for USCIS “satellite offices” on military installations. This assessment is based on the positive response USCIS received after it assigned two ISOs full-time to a sub-office on the grounds of Fort Jackson, SC.

Areas of Ongoing Concern

While USCIS has successfully implemented several special programs in collaboration with the U.S. Armed Forces, areas of concern remain:

Coordination with the U.S. Department of Defense. Both USCIS and stakeholders have identified the need for a high-level point of contact and coordination of military immigration matters from within DOD.

Liaison with Military Legal Offices. Both USCIS and stakeholders have noted the importance of greater liaison, regarding immigration matters, with the internal legal offices in each branch of the U.S. Armed Forces, known as the Judge Advocate General.

Discretionary Relief for Military Families. Members of Congress and U.S. military leaders have consistently emphasized to the Department of Homeland Security that military immigration issues (e.g. military naturalization; regularization of military dependent immigration status; preserving military family unity) are aspects of military readiness that USCIS must address.⁶⁷ Assistance to military family members who do not have immigration status remains a challenge.

On a case-by-case basis, USCIS uses parole and deferred action to minimize periods of family separation and to facilitate applications for permanent residence by immigrant spouses, parents, and children of military members.⁶⁸ Where military dependents have already departed the United States to seek an immigrant visa through consular processing, USCIS collaborates with the U.S. Department of State to expedite the adjudication of all necessary waivers.⁶⁹ Finally, as a matter of policy, USCIS will not initiate removal proceedings involving a military dependent, absent serious negative factors, such as threats to public safety or national security.⁷⁰

USCIS has committed to issuing policies on the use of discretionary relief for military family members.⁷¹ To date, however, the agency has not indicated when it will publish these policies. Stakeholders report a great deal of confusion regarding the exact nature of the relief available to military family members and how to request it. Meanwhile, overseas deployments of military members continue, as do their concerns regarding the immigration status of dependent spouses, children, and parents who remain in the United States during such deployments.

Conclusion

The Ombudsman’s Office supports USCIS efforts to assist the Armed Forces of the United States in their essential mission, and will continue to monitor the actions taken to support military personnel and their families.

Recommendation: “Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices”

On April 15, 2011, the Ombudsman’s Office published a multi-part recommendation for improving efficiency and standardization of interviews and adjudications involving Special Immigrant Juvenile (SIJ) petitions.

The Ombudsman’s Office reviewed four aspects of USCIS handling of petitions for SIJ status: (1) timeliness and consistency of adjudications; (2) officer expertise in conducting interviews and performing adjudications; (3) Requests for Evidence (RFEs) improperly seeking evidence relating to the

facts and circumstances underlying a juvenile court determination of dependency; and (4) the need for public guidance indicating how USCIS will process these cases under expanded eligibility criteria.

Background

Through SIJ status, U.S. immigration law provides a method for abused, abandoned, or neglected children without legal status to remain lawfully in the United States. USCIS is required by statute to adjudicate SIJ petitions within 180 days of filing. Nonetheless, the Ombudsman's Office has received a number of SIJ cases showing adjudication delays beyond 180 days.

If problem areas such as adjudication delays and inappropriate interview techniques are not properly addressed, eligible child applicants may be discouraged from seeking a benefit specifically designed to help them rebuild their lives in the United States. Such an outcome contravenes the spirit of the law that expanded SIJ status eligibility.⁷²

Formal Recommendations

The Ombudsman recommended that USCIS:

- (1) Standardize its practice of: (a) providing specialized training for those officers adjudicating SIJ status; (b) establishing dedicated SIJ units or points of contact at local offices and; (c) ensuring adjudications are completed within the statutory timeframe;
- (2) Cease requesting the evidence underlying juvenile court determinations of dependency; and
- (3) Issue guidance, including 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 its website.



Conclusion

Establishing dedicated USCIS units to adjudicate and, where necessary, administer interviews for these cases would help fully realize the intention of the SIJ provisions. By standardizing training, USCIS will improve the efficiency and consistency of SIJ adjudications. USCIS should provide specific guidance informing petitioners how to show their eligibility with the initial filing. Implementation of these recommendations would better serve children and conserve USCIS resources.



Employment

An efficient employment-based immigration system fosters U.S. economic growth; responds to labor market needs; and improves U.S. global competitiveness. In the context of employment-based immigration, the U.S. Government seeks to enhance domestic job security, while stimulating new business development and encouraging foreign investment in the United States. In a time of economic turmoil, the Ombudsman's Office has focused on ways to use the employment-based immigration system to help the economy.



VIBE: USCIS' New Business Validation Tool

USCIS Service Center Operations designed the Validation Instrument for Business Enterprises (VIBE) to help Immigration Services Officers (ISOs) adjudicate employment-based petitions. ISOs use VIBE to evaluate the viability and other key characteristics of a petitioning company.⁷³ According to USCIS, VIBE is a first step in leveraging both technology and information to yield increased integrity, consistency, and efficiency in the adjudication process.

Background

USCIS uses VIBE to generate a report containing publicly available business information about employers filing immigrant and nonimmigrant petitions.⁷⁴ USCIS runs a VIBE status report as part of pre-adjudication processing. When assigned a file for adjudication, the ISO accesses the report through a web-based portal and uses it as part of the review of most employment-based filings including, Form I-140, Immigrant Petition for Alien Worker, Form I-360, Petition

for Amerasian, Widow(er) or Special Immigrant when filed for religious workers, and Form I-129, Petition for a Non-immigrant Worker.

From July 2010 through mid-January 2011, USCIS beta tested VIBE. Beginning in March 2011, ISOs at all service centers started using VIBE as part of their standard adjudication routine.⁷⁵ USCIS demonstrated VIBE for the Ombudsman's Office and answered questions on various operational issues that ISOs and stakeholders may encounter. The Ombudsman's Office also attended VIBE training sessions for ISOs held at the Texas Service Center in February 2011.

USCIS plans to update VIBE reports with adjudicator notes and other information. Over time, USCIS expects that VIBE will reduce the need for Requests for Evidence (RFEs) that question an employer's *bona fides*. It even has the potential to reduce the burdens on petitioners of submitting paper documentation to validate the legitimacy of their business.⁷⁶ This outcome, if realized, would decrease costs for both petitioners and the agency, enable ISOs to focus solely on the

merits of the petition, such as the job offer and the proposed beneficiary's eligibility, and allow USCIS to perform adjudications in a more environmentally friendly manner.

VIBE's Information Provider: Dun & Bradstreet

Pursuant to an approximately \$35.5 million contract awarded on September 29, 2009, VIBE will access source data collected by an independent information provider, Dun & Bradstreet (D&B).⁷⁷ D&B's sources include company financial statements, banking information, court and legal filings, and business websites. According to D&B data are generally no more than three months old.⁷⁸ Although D&B updates its information regularly, up to 30 calendar days may pass before newly formed businesses appear in the database.

How USCIS Adjudicators Will Use VIBE

VIBE has a scoring system that helps adjudicators interpret its reports. The VIBE report may:

- Indicate that there are no concerns regarding the petitioner's viability;
- Flag certain elements concerning the petitioner on which the ISO should focus when reviewing the record; or
- Return a "low match confidence" concern (i.e., the information in the system marginally matches the information submitted).

ISOs use RFEs and Notices of Intent to Deny (NOIDs) based on templates, to inform petitioners that a VIBE report raised issues that must be resolved. The templates also alert petitioners that they may wish to correct or update information about their company with D&B.⁷⁹

According to USCIS, even when VIBE casts doubt on a petitioner's submission, this result alone should not automatically trigger the issuance of an RFE, a NOID, or a denial.⁸⁰ Rather, as instructed during training, and in written guidance materials, ISOs are expected to review the entire record, of which the VIBE report is one aspect. Adjudicators should continue to exercise judgment and act in accordance with established guidance in determining how to proceed in a given case.⁸¹



Preliminary Concerns with VIBE

The Ombudsman's Office has identified the following concerns:

Unincorporated Enterprises. Employers filing petitions under unofficial trade names that do not appear in VIBE have received VIBE-related RFEs. The D&B database underlying VIBE provides limited data on unincorporated entities such as sole proprietorships and certain types of partnerships.⁸² Therefore, it may fail to identify an entire range of legitimate businesses. USCIS has informed its adjudicators of this issue and instructed them not to issue RFEs solely due to the absence of a VIBE report. Agricultural employers filing H-2A petitions for temporary workers appear to have been disproportionately impacted. The Ombudsman's Office has worked to resolve a number of VIBE-related H-2A cases involving the agricultural growing season and potential losses, and USCIS has taken action to address such concerns.

On June 1, 2011, USCIS announced that it would temporarily suspend the use of VIBE in the H-2A program for 45 days.⁸³ USCIS also issued an H-2A Optional Checklist, Questions and Answers, established a dedicated email address to expedite the review of pending petitions delayed due to a VIBE-related issue,⁸⁴ and held a public teleconference on VIBE for H-2A petitioners.⁸⁵ The Ombudsman's Office continues to monitor the situation.

OMBUDSMAN CASE ASSISTANCE

An employer encountered difficulties obtaining timely approval of petitions for 120 H-2A agricultural workers from Mexico to harvest fruit. The orchard owner was facing significant economic losses because an unusual frost had placed his entire harvest at risk. Although the employer had received approvals for temporary workers every year since 2006, the employer received a VIBE-related RFE and, after responding, received a NOID. The Ombudsman's Office worked with the employer to provide USCIS with supporting information, and USCIS approved the petition.

Joint Ventures. VIBE may not successfully identify and match U.S. companies with their foreign-based affiliates, if one of the two businesses operates as a joint venture.

New Companies. It may take several weeks for D&B to construct a profile, as it seeks to gather and verify public information on a new company's trade activity and business attributes. Petitions filed by such companies may draw VIBE-related RFEs.

Accommodation Addresses. Historically, USCIS has permitted the use of accommodation addresses (e.g., those of an attorney or other agent). However, USCIS has advised the Ombudsman's Office that VIBE is likely to return a mismatch if a petitioner fills out the address portion of a form using an accommodation address.⁸⁶

Old Data and Reports of D&B Marketing. Employers have expressed concerns regarding D&B's data and the company's marketing practices. Upon receiving a VIBE-related RFE, employers have contacted D&B and learned that D&B had failed to note an address change, or other data change. In some cases, D&B told employers that they can expedite the process to have a company profile established or updated by purchasing various commercial D&B services, ranging in price from \$299 to \$1,500. The Ombudsman's Office has discussed these emerging issues with USCIS, and the agency stated that it is in discussions with D&B to address these concerns.

Conclusion

Recently, USCIS has informed the Ombudsman's Office that it is not tracking the issuance of VIBE-related RFEs or NOIDs,⁸⁷ which raises questions regarding USCIS' ability to conduct an

assessment of VIBE's performance, impact, and efficacy. Issues with VIBE, discussed in this report, reveal shortcomings. The Ombudsman's Office expects to closely monitor stakeholder experiences with VIBE during the next reporting period.

Revisiting the Immigrant Investor Visa Program

The Ombudsman's Office continues to hear concerns from stakeholders regarding USCIS administration of the fifth employment-based (EB-5) preference category for immigrant investors. Stakeholders report that inconsistent administration of the EB-5 program is undermining confidence in the program and, ultimately hindering the job growth potential that it was designed to create.

Background

Congress established the EB-5 category in 1990 to encourage immigrant entrepreneurs to make large investments in the United States that create new commercial enterprises benefitting the U.S. economy and, directly or indirectly, create jobs for U.S. workers.⁸⁸ Usage of this category historically has remained far below the statutory allotment. From 1992 to 2010, EB-5 visa usage averaged approximately 700 visas out of the 10,000 available per year.⁸⁹

On May 19, 2011, USCIS proposed changes to EB-5 processing.⁹⁰ Specifically, for certain regional center petitions, USCIS plans to offer adjudications performed by a review panel, composed of two EB-5 adjudicators and a USCIS economist, as well as premium processing for select filings.

Prior Ombudsman's Office Recommendations

In March 2009, the Ombudsman's Office proposed eight recommendations to USCIS to stabilize and reinvigorate this important job-creation program.⁹¹ USCIS concurred with several recommendations and deferred others, such as premium processing adjudications.⁹²

Stakeholder Concerns

The Ombudsman's Office has relayed the following EB-5 stakeholder concerns to USCIS.

New Regulations Needed. The economy has changed, and financial practices have changed, yet EB-5 regulations written nearly 20 years ago have not. The existing EB-5 rules consist of a patchwork of regulations, precedent decisions, and policy guidance. Updated regulations are needed to clarify new requirements in a centralized body of law, taking into account new economic and financial practices.

Policy Interpretations and Case Decisions Destabilize the Program. USCIS reconsideration at later stages in the EB-5 process, of issues believed to have been settled, generates uncertainty for investors. This uncertainty may push them to seek investment-based immigration opportunities in other countries.

Pursuant to the USCIS December 2009 guidance memorandum,⁹³ USCIS does not allow for amendments to the regional center business plan subsequent to approval. Material changes to the approved regional center project require that investors abandon Conditional Lawful Permanent Residence status and restart the two-year conditional period. Requiring a new petition in the case of material changes denies protection to investors' children who, after turning 21, are no longer eligible for immigration benefits based on the parents' status (commonly referred to as "aging-out").

Additionally, the Ombudsman's Office has been provided with case examples indicating that USCIS is not consistently accepting state high unemployment Targeted Employment Area determinations that can qualify an area for the lower \$500,000 investment requirement, versus \$1 million.⁹⁴

Meaningful Pre-filing Engagement for Regional Centers. Despite USCIS' quarterly EB-5 public engagement events, regional centers report that providing them with a role in the process would lead to more informed petitions and plans being filed. Specifically, they seek an opportunity to explore with USCIS the details of their business models and other legal issues prior to filing for regional center designation.

Representation Issues and Challenges to Approved Regional Center Business Models. On occasion, even after approving a regional center proposal, USCIS issues to individual investors RFEs or NOIDs questioning the underlying regional center proposal, rather than the merits of the investor's petition. In

such cases, the affected regional center developers are not notified because USCIS does not consider them parties-in-interest in adjudications of Forms I-526, Immigrant Petition by Alien Entrepreneur, and I-829, Petition by Entrepreneur to Remove the Conditions. However, regional centers do have a stake in the outcome, and may be better able than the investors to explain the merits of regional center business models.

Processing Times for Regional Center Project Developer and Investor Petitions. According to the USCIS March 17, 2011 Quarterly EB-5 stakeholder engagement, petitions for regional center designation, filed both before and after the November 23, 2010 implementation of Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, are exceeding the four month processing time goal.⁹⁵

Recent Ombudsman's Office EB-5 Activities

Since last year's annual report, the Ombudsman's Office has continued to engage EB-5 stakeholders and has learned of concerns that USCIS policy interpretations not only appear to be unnecessarily restrictive, but that they also conflict with existing law and regulations. The Ombudsman's Office met with USCIS management, legal staff, and senior leadership to voice these concerns. Following the meetings, USCIS issued an important clarification confirming that regional center job methodologies and economic analyses may legitimately "rely on jobs indirectly created outside of [their] geographic boundaries."⁹⁶ Additionally, on December 10, 2010, USCIS posted for public comment its December 11, 2009 Guidance Memorandum.⁹⁷

Conclusion

Most recently, USCIS has announced potential changes to the EB-5 program. Given the complex nature of the EB-5 program and related business plans, the Ombudsman's Office encourages USCIS to continue to engage with stakeholders, including practitioners, municipalities, investors, and regional centers, to improve the adjudication process. USCIS would better serve investors by initiating formal rulemaking to address the concerns highlighted herein, and implementing the eight EB-5 recommendations made in March 2009, which remain applicable in 2011.

Ongoing Issues with Requests for Evidence

Much like stakeholders across the humanitarian and family areas, employers and their attorneys continue to express a high level of frustration with USCIS issuance of Requests for Evidence (RFEs). The Ombudsman's Office continues to receive requests for assistance with reportedly inappropriate or unduly burdensome RFEs connected with employment-based applications and petitions.



Background

The Ombudsman’s Office has made recommendations regarding RFEs in previous years.⁹⁸ In the Ombudsman’s 2010 Annual Report, the Ombudsman’s Office examined, in detail, USCIS’ use of RFEs in three nonimmigrant product lines: (1) H-1B Specialty Occupation Workers, (2) L-1A Intracompany Executives and Managers, and (3) L-1B Specialized Knowledge Workers.⁹⁹

RFE Data

This section provides updated RFE data on the same three nonimmigrant product lines examined last year. The data reveal that RFE rates in all three categories remain high. See *Figure 3: RFE Rates for Certain Employment-Based Nonimmigrant Categories*.

Stakeholder Concerns

Stakeholders continue to express concern to the Ombudsman’s Office with the lack of consistency in adjudications. Attorneys report they cannot effectively advise employers about RFEs that are delaying or preventing the hiring or transfer of personnel to the United States. Multinational employers

report choosing to place personnel abroad, or relocate key facilities outside the United States, due to USCIS policy and adjudications they believe undermines U.S. competitiveness in global markets.

Ombudsman’s 2010 RFE Recommendations and USCIS’ Response

The Ombudsman’s Office recommended that USCIS:

- Develop expanded training on applying the “preponderance of the evidence” standard;¹⁰⁰
- Specify the facts, circumstances, and/or derogatory information necessitating an RFE;
- Create a uniform checklist and require officers to complete it prior to issuing an RFE;
- Initiate a pilot program requiring 100 percent supervisory review of one or more product lines; and,
- Establish clear adjudicatory L-1B guidelines through the structured notice and comment process of the Administrative Procedure Act.¹⁰¹

Figure 3: RFE Rates for Certain Employment-Based Nonimmigrant Categories

H-1B Requests for Evidence—FY 1995 - 2010

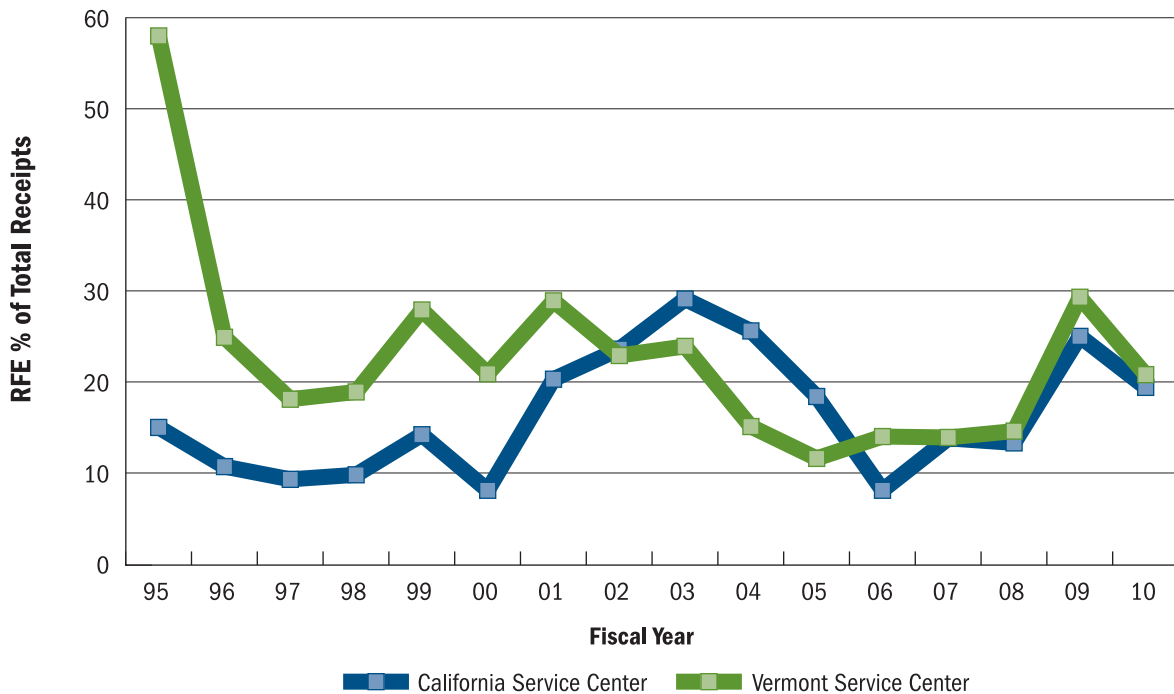
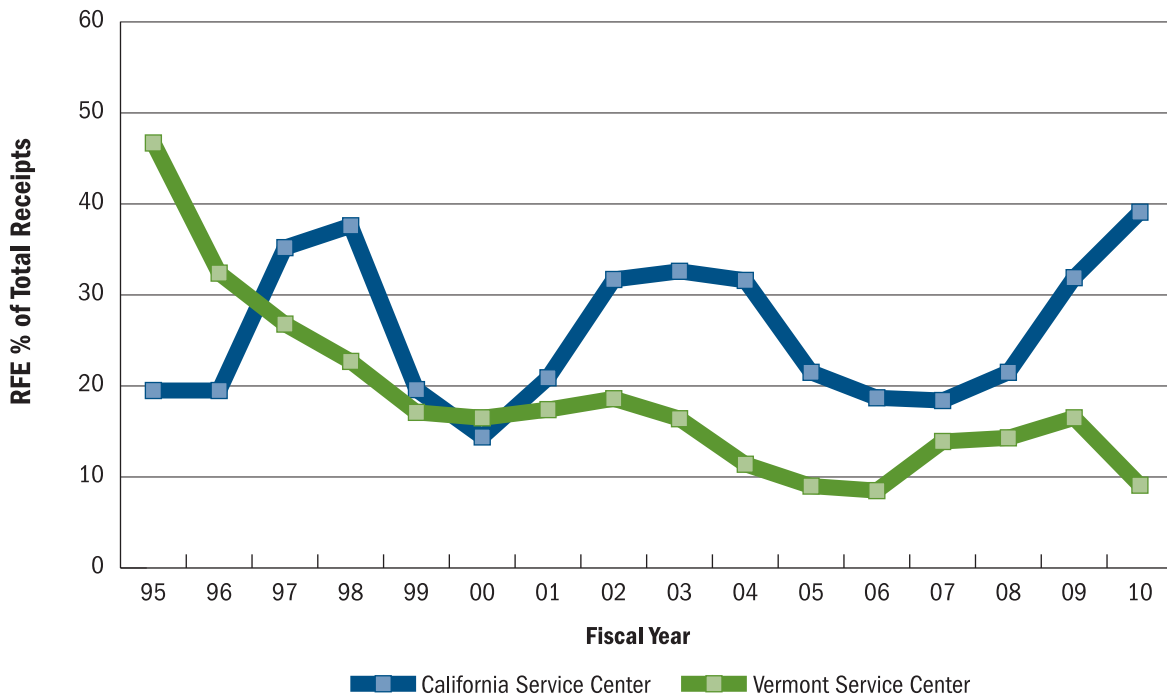
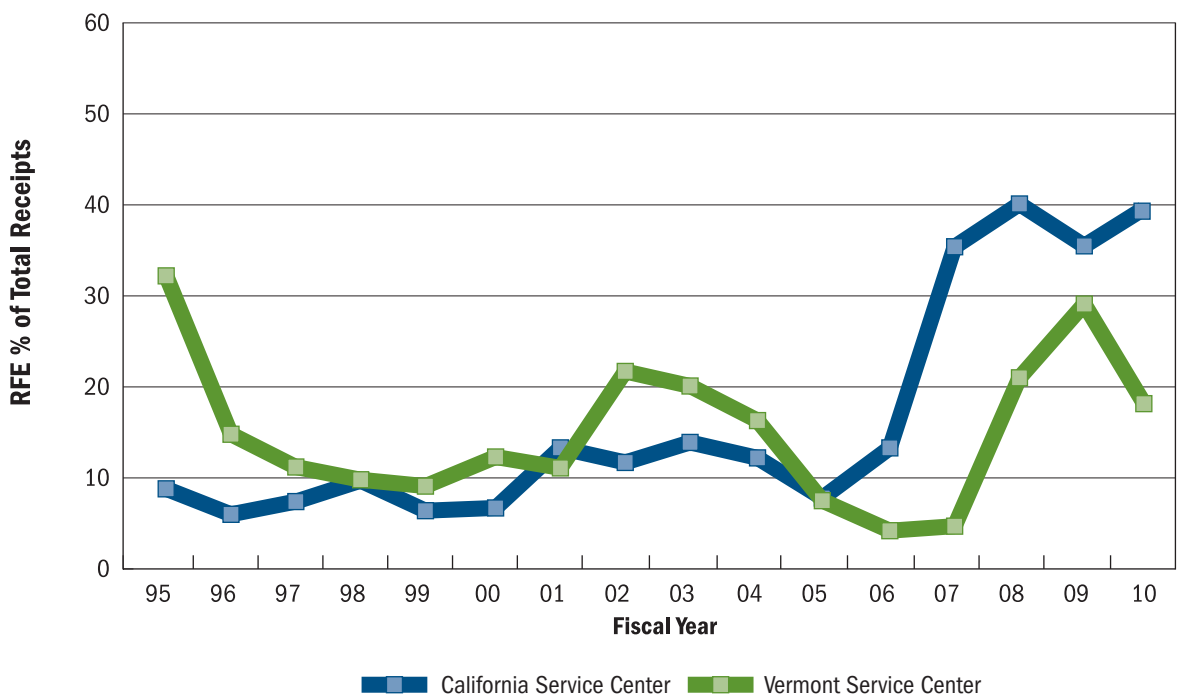


Figure 3 (cont.)

L-1A Requests for Evidence—FY 1995 - 2010



L-1B Requests for Evidence—FY 1995 - 2010



Source: Information provided by USCIS to the Ombudsman's Office (Nov. 23, 2009; Jan. 26, 27, 2011; May 18, 2011).

USCIS responded¹⁰² that it initiated an RFE template project and would specifically engage stakeholders regarding RFEs.¹⁰³ To date, USCIS has not engaged in a thorough examination of the factors causing stakeholder RFE concerns.

Upon inquiry by the Ombudsman's Office, USCIS indicated it has not yet collected and analyzed RFE data, or developed a comprehensive plan of action to address RFE concerns. The agency has indicated that there is no one person or office leading the RFE project. USCIS acknowledged it must do more to enhance education and training on the preponderance of the evidence standard and, while unable to provide a concrete timeline on when this will occur, confirms that such training will be provided.¹⁰⁴

USCIS has posted several RFE templates for public comment,¹⁰⁵ specifically for the P (Artists, Athletes, and Entertainers) and Q (Cultural Visitors) nonimmigrant categories, as well as for the EB-1(1) (Aliens of Extraordinary Ability)¹⁰⁶ immigrant category. Yet, the agency has not reviewed or issued new RFE templates for the higher filing volume H-1B, L-1A, and L-1B categories that were the specific focus of the Ombudsman's 2010 Annual Report discussion of RFEs.¹⁰⁷

The Ombudsman's Office has provided comments directly to USCIS on several of the RFE templates posted for public comment. Stakeholders have reported their concern with the RFE template review process. Specifically, they note that USCIS does not post for public consideration all template review comments received, nor does the agency indicate why it accepts or rejects suggested modifications offered during the public review process.

Notably, in the 2010 Annual Report, the Ombudsman's Office recommended that USCIS engage stakeholders in formal notice and comment rulemaking.¹⁰⁸ USCIS rejected this recommendation, stating:

... USCIS believes that its current approach, which includes issuance *in the near future* of one or a series of L-1B precedent decisions, in combination with an updated "specialized knowledge" memorandum and a corresponding revision of Chapter 32 of the AFM, is sufficient, without a notice and comment process.... (*emphasis added*).¹⁰⁹

USCIS held an outreach teleconference on May 12, 2011, inviting stakeholders to provide input on the "interpretation of the term specialized knowledge and what standards and evidentiary requirements should be followed in determining eligibility for L-1B classification."¹¹⁰ However, USCIS has

issued neither new L-1B precedent decisions nor an updated "specialized knowledge" memorandum.

Conclusion

Elevated RFE rates are impeding legitimate business operations. Specifically, they have a corrosive impact on the "specialized knowledge" category as a viable means for employers to access essential personnel for U.S. operations. Focused and timely efforts are needed to address unclear and conflicting guidance, insufficient training on the application of the preponderance of the evidence standard, and quality assurance. The Ombudsman's Office is examining additional options for USCIS to address RFE concerns, including, for example, appointing an agency-wide RFE project manager who reports to a senior USCIS leader (such as the Deputy Director, Chief of Staff, or Director). The Ombudsman's Office will continue to engage with USCIS on its RFE template review project, but this project alone will not address the root causes of many RFEs.

E-Verify Update

In December 2008, the Ombudsman's Office issued recommendations on E-Verify to USCIS, and has commented on E-Verify developments in subsequent annual reports.¹¹¹ According to USCIS, as of February 11, 2011, more than 246,000 employers were enrolled in E-Verify, representing more than 850,000 locations. During the 2011 reporting period, USCIS made upgrades to E-Verify that improved interoperability with the U.S. Social Security Administration (SSA) and U.S. Department of State.

Background

Since June 2008, USCIS has more than doubled its monitoring and compliance capabilities by hiring additional staff, opening new offices, conducting educational outreach, and implementing faster technology. These activities strengthen system integrity by identifying employers or individuals seeking to exploit E-Verify and ensuring that employers are using E-Verify correctly.

Currently, USCIS' E-Verify Monitoring and Compliance branch staff manually reviews E-Verify data to identify six employer behaviors: (1) multiple use of the same Social Security Number; (2) failure to use E-Verify; (3) termination of an employee who receives a Tentative Non-Confirmation (TNC); (4) failure to perform verification within three business days of hire; (5) verification of existing employees; and (6) verification of employees hired prior to 1986.¹¹² The Ombudsman's Office understands, however, that USCIS soon

expects to implement an advanced data review system to assess employer behaviors.¹¹³ According to USCIS, this upgrade should result in a faster and more uniform review process.

E-Verify Self-Check

On March 21, 2011, USCIS launched its E-Verify Self Check (Self Check) feature, a free service that allows individuals to check their employment eligibility status.¹¹⁴ If a problem is detected, Self Check will provide information on how to address the issue either with USCIS or with SSA.

Self Check is being released in phases, with its initial roll-out covering individuals who reside in Arizona, Colorado, the District of Columbia, Idaho, Mississippi, and Virginia. Use of Self Check is voluntary. USCIS expects Self Check to clarify the employment eligibility confirmation process and, thereby, to reduce the incidence of TNCs due to name and other database mismatches on otherwise work eligible individuals.

OMBUDSMAN CASE ASSISTANCE

A longtime lawful permanent resident contacted the Ombudsman's Office requesting assistance. The woman had received a Tentative Non-Confirmation from her employer, but did not understand how to remedy the issue. She feared she would lose her job. The Ombudsman's Office referred the woman to USCIS' E-verify webpage and guided her through the process of responding to the TNC. The woman worked with her employer and the issue was resolved. Access to the Self Check system would have allowed her to verify her employment authorization status and correct any inconsistencies before submitting her documentation to her employer, thus avoiding a stressful and complicated experience to correct the problem.

Identity Fraud

USCIS informed the Ombudsman's Office that it is exploring ways to address, within E-Verify, identity theft and inappropriate use of Social Security Numbers. Additional tools and authorities may be needed to realize this goal.

State and Local E-Verify Legislation

In the past several years, a number of states and municipalities have passed legislation mandating that employers use E-Verify.¹¹⁵ In a May 26, 2011 decision, the U.S. Supreme Court upheld the constitutionality of one such law enacted in 2007 in Arizona.¹¹⁶ With other states enacting or considering similar legislation, stakeholders have raised concerns regarding the capacity of E-Verify and Federal staffing necessary to expand rapidly and provide practical guidance.

Conclusion

DHS and USCIS continue to work collaboratively with SSA to improve E-Verify. While the accuracy of E-Verify has improved, challenges remain, including E-Verify's susceptibility to identity fraud and USCIS' ability to ensure employer compliance. Combating identity theft will require effort and cooperation among multiple Federal entities.

USCIS Processing of Employment Authorization Documents

When employment authorization applications remain pending beyond USCIS' 90 day regulatory processing period, applicants and employers experience negative effects ranging from job disruption to termination, and any resulting financial burden.¹¹⁷ The Ombudsman's Office is reviewing USCIS processing of Employment Authorization Documents (EADs).

Background

USCIS is required by regulation to adjudicate applications for EADs within 90 days of receipt or issue an interim EAD valid for 240 days.¹¹⁸ However, customers continue to report EAD processing delays, the impact of which USCIS local offices cannot mitigate because they no longer produce interim documents.

Impact on EAD Applicants

Applicants with expired EADs are unable to continue employment while waiting for renewal. Many applicants report being placed on unpaid leave and are understandably concerned about job security. Some have also experienced suspension of medical benefits and loss of drivers' licenses. Employers have also been negatively affected, with some subject to the disruption of their workforce and operations, and the ensuing loss of productivity and revenue.

Ombudsman's Office Prior Recommendations

In October 2008, the Ombudsman's Office recommended that USCIS improve compliance with its 90 day adjudication requirement, and provide customers reasons for processing delays and the agency's efforts to address them.¹¹⁹ In response, USCIS acknowledged the concerns raised in the recommendation, and instituted measures to reduce delays. These measures included routine system sweeps to find cases pending for 60 days that were not yet assigned to an Immigration Services Officer, the acceptance of service requests via the National Customer Service Center at day 75, and the adjudication, within 10 days, of expedite requests for cases pending past 90 days.¹²⁰

Ombudsman's Office Case Assistance with EAD Applications

The Ombudsman's Office assists individuals whose EAD applications have been pending close to 90 days by working directly with USCIS to resolve these cases.¹²¹ During the summer of 2010, USCIS received an increased number of service requests relating to EADs. See *Figure 4: EAD Service Requests*.

Similarly, during this period, the Ombudsman's Office received an increased number of requests for assistance related to long pending EAD applications. While the volume of in-



quiries fluctuated during the reporting period, the Ombudsman's Office has continued to receive a steady number of case problems related to EAD processing delays.

While assisting applicants, the Ombudsman's Office became aware of a number of procedural and operational challenges in USCIS EAD processing. These challenges include: (1) lack of consistent and reliable capability for monitoring processing times at service centers; (2) unclear and inconsistent expedite request procedures; and (3) inappropriate delays due to background checks associated with underlying benefits applications.

Figure 4: EAD Service Requests

NCSC Service Requests-Beyond Regulatory Processing Time

(October 1, 2009 - September 30, 2010)

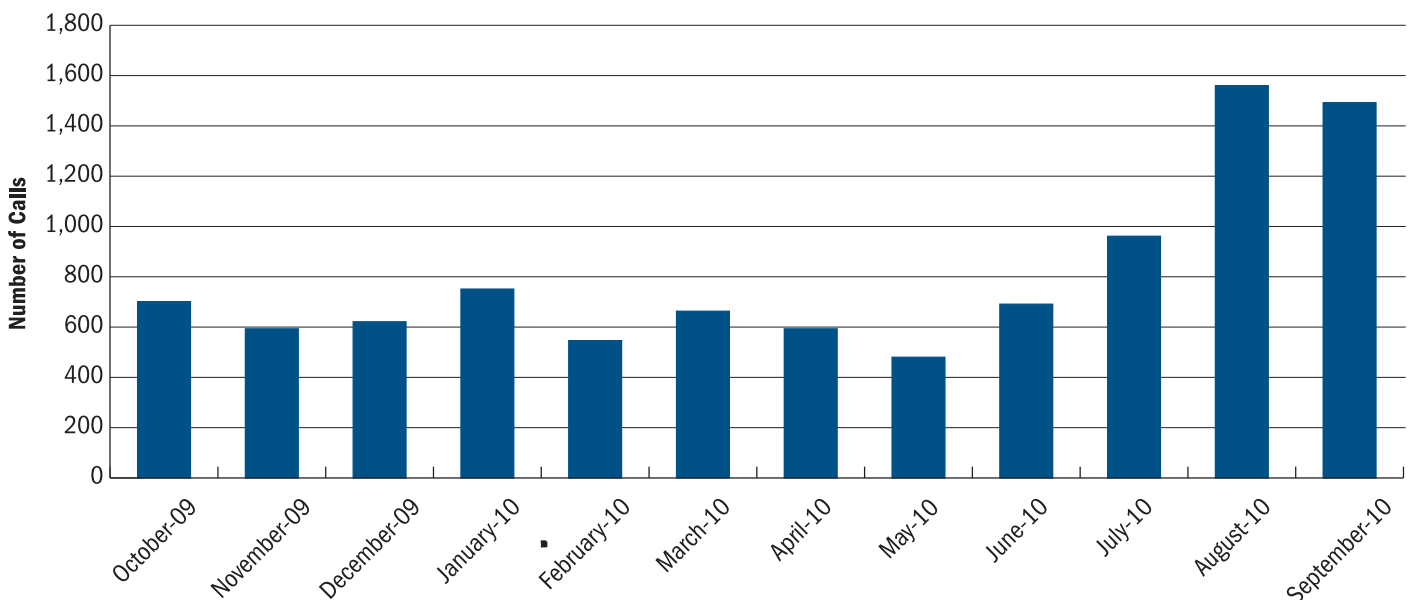
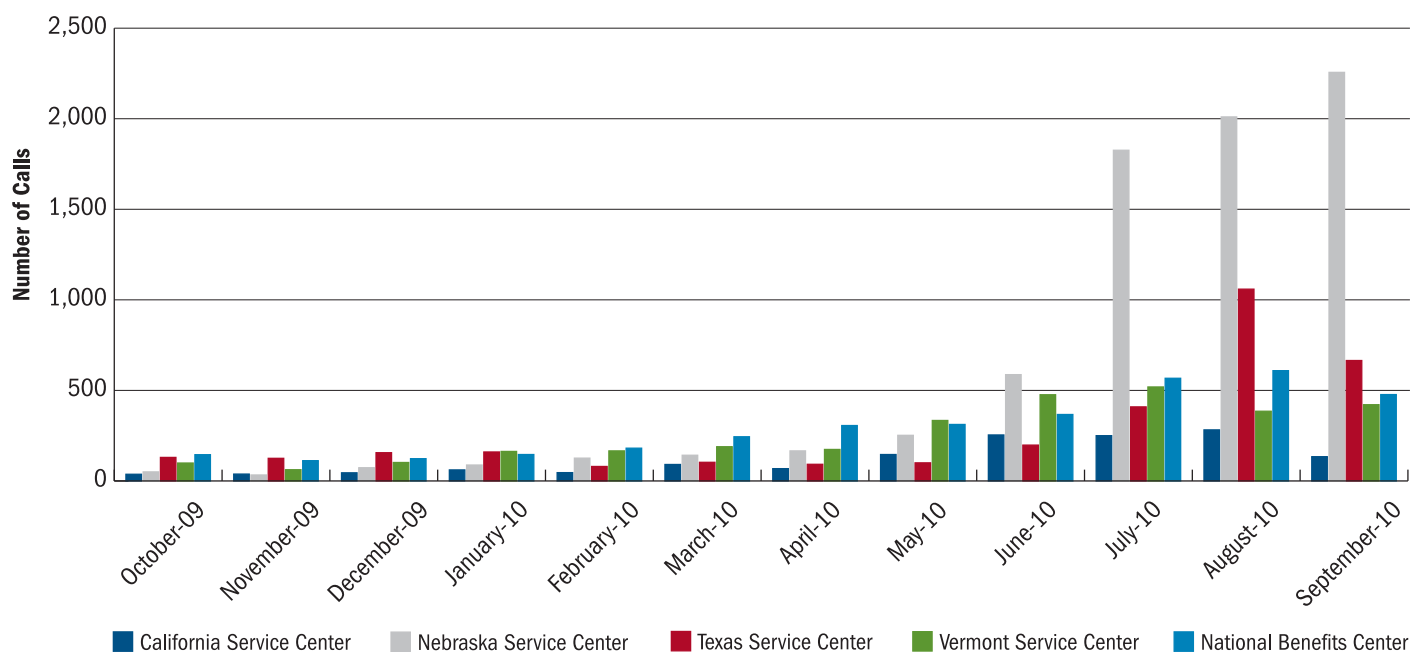


Figure 4 (cont.)

NCSC Service Requests-Expedites

(October 1, 2009 – September 30, 2010)



Source: Information provided by USCIS to the Ombudsman's Office (Nov. 15, 2010; May 10, 2011).

Conclusion

The Ombudsman's Office is examining the following options for USCIS to improve processing of EADs: (1) re-establishing procedures for "interim" EAD adjudications at local offices; (2) establishing a uniform processing time goal of 30 days for adjudication and 60 days for issuance of an EAD; and, (3) following existing internal procedures for issuing interim EADs in cases where background checks are pending.

OMBUDSMAN CASE ASSISTANCE

A woman filed for a renewal EAD 120 days before the expiration of her then current EAD. USCIS approved the application and submitted a request for card production on day 93. However, the applicant never received her EAD, and was later informed that USCIS destroyed the card on day 110, for reasons that were never specified. Meanwhile, the applicant's EAD expired. As a result, the applicant was unable to work for her current employer and unable to accept a pending offer of new employment tendered by another employer. After being informed that USCIS had destroyed her EAD, the applicant contacted the NCSC and visited the local USCIS office multiple times. When none of these efforts resulted in her receiving the EAD, the applicant contacted the Ombudsman's Office on day 136. The Ombudsman's Office staff worked with USCIS to expedite card production, and a new EAD was produced and delivered to the applicant nine days later.

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Customer Service

Secretary Janet Napolitano of the Department of Homeland Security stated, “[T]ransparency and openness are critical to effective immigration and citizenship policies.”¹²² As a component of DHS that interacts with millions of customers each year, USCIS continues to invest resources to improve its timeliness and responsiveness to customer service requests. However, transitioning to new ways of achieving this goal creates challenges for some stakeholders who report a decrease in accessibility and one-on-one problem solving.



USCIS Processing Times

During the reporting period, processing times generally met agency goals in the key areas of naturalization and adjustment of status. However, certain application categories, such as Form I-601, Application for Waiver of Grounds of Inadmissibility, and Administrative Appeals Office filings, continue to experience significant delays despite an overall decline in receipts for the entire agency.¹²³ In addition, the Ombudsman's Office received during this time sporadic reports of longer processing times for certain employment-based nonimmigrant and humanitarian categories. See *Figure 5: Application Processing Times at USCIS Field Offices*.

USCIS Call Centers and Service Requests

Background

Past Ombudsman's annual reports made recommendations regarding the policies of the USCIS National Customer Service Center (NCSC).¹²⁴ In preparing this year's report, the

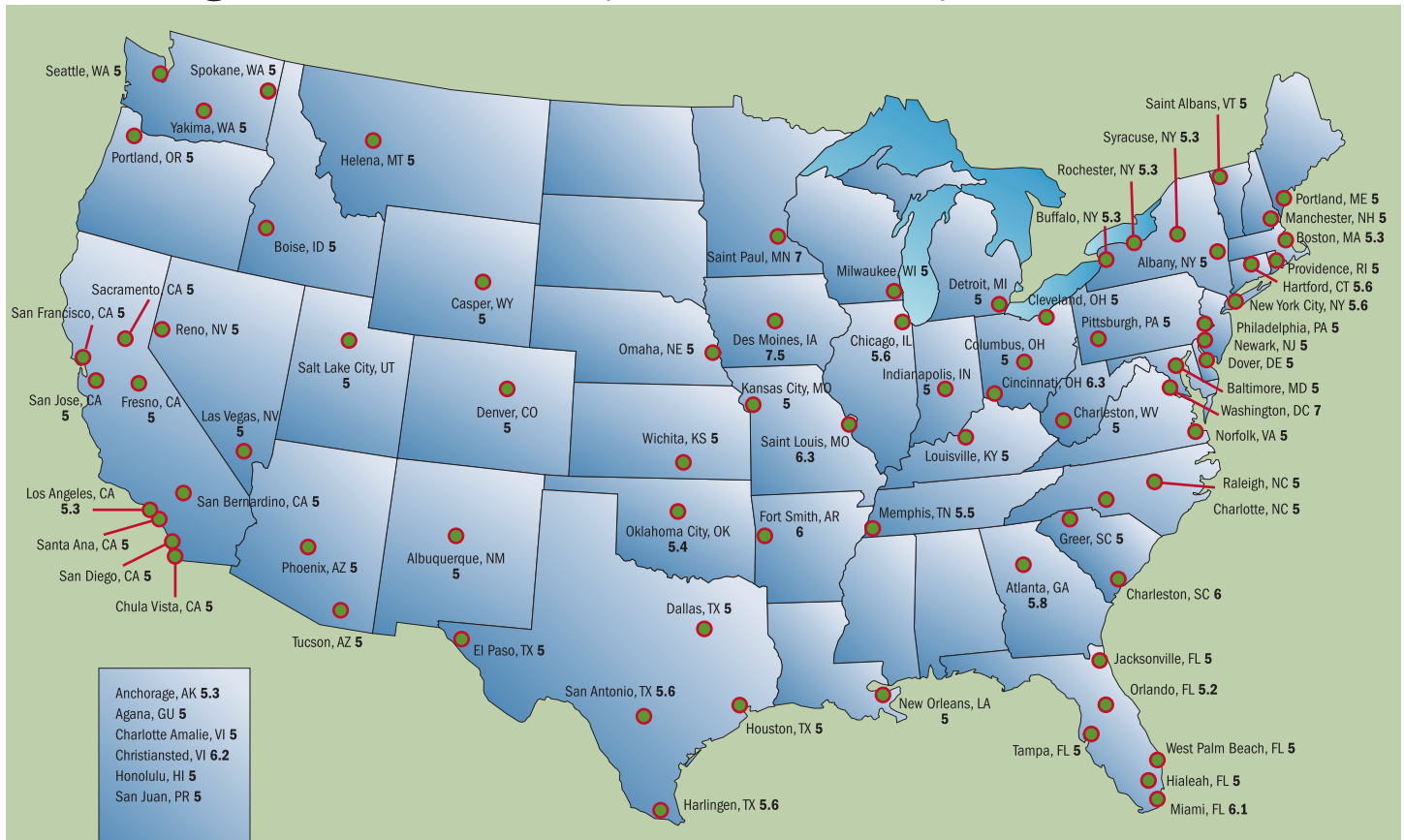
Ombudsman's Office observed operations at USCIS facilities, met with field office and Customer Service Directorate leadership and staff, and monitored USCIS stakeholder meetings. The Ombudsman's Office also receives information on customer service issues when individuals and employers contact the office after being unable to resolve problems directly with USCIS.

Call Centers

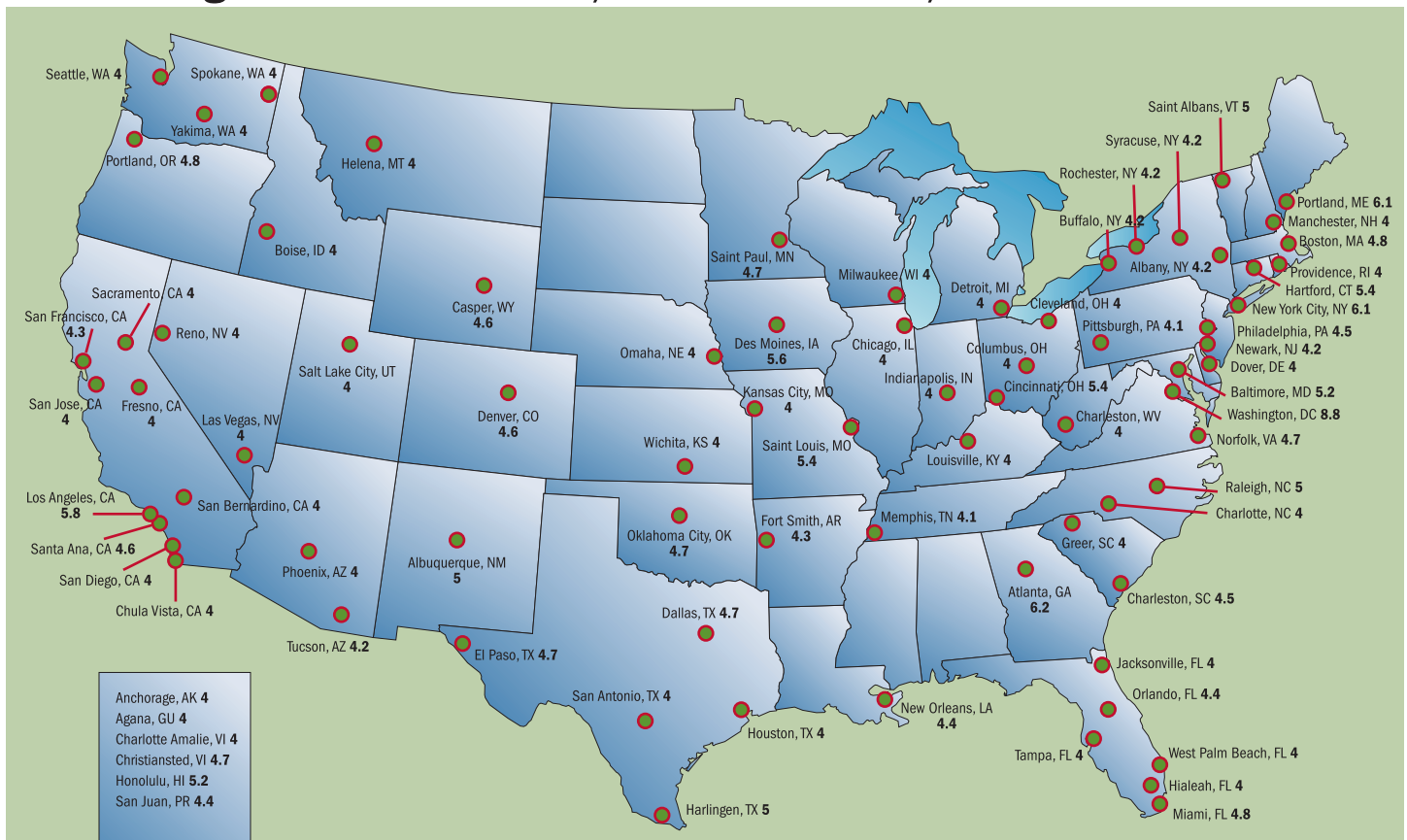
USCIS encourages customers seeking general or case specific information to contact the NCSC toll free number (1-800-375-5283), which offers recorded and live assistance options. Regardless of the nature of the call, USCIS customers must first listen to automated messages organized by an Interactive Voice Response (IVR), which sorts calls by broad information categories. The NCSC also includes two tiers of live assistance: Tier 1, staffed with Customer Service Representatives (CSRs) who have access to scripted information provided by USCIS, and Tier 2, staffed with USCIS Immigration Services Officers (ISOs) with access to certain USCIS systems. The NCSC averages about 12 million calls a year.¹²⁵

Figure 5: Application Processing Times at USCIS Field Offices

Processing Times Data N-400, As of March 31, 2011



Processing Times Data I-485, As of March 31, 2011



Source: USCIS Processing Time Data.

Stakeholders continue to report a high level of frustration when interacting with the NCSC. In a USCIS Quarterly National Stakeholder Engagement in February 2011, USCIS cited the following stakeholder remark:

Individuals indicate that they often get the “run-around” or are told a response is pending and they should receive something soon, but never do. This then prompts [individuals] to escalate their questions or issues to their congressional representatives, ambassadors....¹²⁶

In the USCIS response to last year’s annual report, the agency committed to addressing such concerns. Specifically regarding the IVR, USCIS stated it would take the following steps:

- Improve the current IVR structure by deleting lengthy messages contained within existing menus and streamlining menu selections;
- Remove all “dead end” scenarios providing easy access to live assistance throughout the IVR; and
- Launch a completely new IVR with direct routing to Tier 1 CSRs or Tier 2 ISOs based on the type of inquiry.¹²⁷

During this reporting period, USCIS completed the first two enhancements and began working on the third.¹²⁸ Despite these changes, negotiating the automated menu options to reach live assistance remains difficult.

Customers also have expressed frustration at having to re-explain their issue each time a call is transferred between tiers. As of March 2011, USCIS has addressed this concern with a technological fix permitting the Tier 1 CSR to transfer information directly to the Tier 2 ISO. Critical information such as A-number, name, and a narrative of the problem will be available to the ISO immediately after the transfer. Additionally, attorneys and accredited representatives who identify themselves at Tier 1 are immediately transferred to Tier 2 where specific problems may be resolved.¹²⁹

Although the Ombudsman’s Office recommended phasing out Tier 1 scripts,—during a transitional period of time sufficient to allow USCIS to train staff to answer basic immigration questions—USCIS did not accept this recommendation.¹³⁰ The Ombudsman’s Office continues to receive stakeholder complaints about the scripted answers read by CSRs.

The Ombudsman’s Office also recommended that USCIS provide Tier 2 ISOs with full access to relevant USCIS data systems so they can provide better responses to case specific inquiries.

Earlier this year, USCIS expanded access to these systems, a positive change that promotes both improved customer service and more efficient use of government resources.

While recognizing the improvements made to the NCSC, the Ombudsman’s Office will continue to gauge the success of USCIS’ ongoing efforts.

Service Request Management Tool

When NCSC personnel are unable to resolve a customer’s inquiry, USCIS uses an electronic inquiry system called the Service Request Management Tool (SRMT) to transfer an inquiry to the USCIS office best able to assist with the issue and respond to the customer.¹³¹ After a CSR or ISO generates a service request, the electronic inquiry is sent to the appropriate USCIS facility and assigned to an ISO. USCIS received 975,292 service requests during the reporting period.¹³² See *Figure 6: NCSC Service Requests by Category*.

On August 2, 2010, USCIS introduced a self-service feature to the SRMT, which allows customers to initiate an inquiry without assistance from the NCSC.¹³³ The USCIS Customer Service Directorate launched the online “e-request” for Forms I-90, Application to Replace Permanent Resident Card, and N-400, Application for Naturalization, piloted for customers whose cases were outside normal processing times and customers whose I-90 filings did not generate a biometric appointment notice. From July 2010 through February 2011, USCIS received a total of 3,680 “e-requests,” the majority for cases outside normal processing times.¹³⁴ In FY 2012, USCIS plans to expand the customer online request feature to the following areas: cases outside normal processing times for all form types; non-delivery of certain notices for Forms I-130, I-485, and I-765; and typographical errors for all form types.¹³⁵

Improved Timeliness. Since the SRMT was introduced in 2005, stakeholders’ two main concerns have been with the timeliness and quality of responses. USCIS has made strides in providing timely responses to customer inquiries. The agency has reduced the average response time from 30 to 15 business days.¹³⁶ USCIS continues to maintain a five day response time for expedited handling or a change of address, and a seven day response time to make reasonable accommodations to schedule interviews or biometrics.¹³⁷

Nonresponsive Answers to Service Requests. Despite USCIS’ improvements in the timeliness of responses, stakeholders regularly express to the Ombudsman’s Office their frustration with responses that are incomplete or unhelpful. Stakeholders report that service request responses do not answer their

questions and simply state that their case is “pending” or “under review.”¹³⁸ In these situations, customers who have already invested time trying to resolve an issue through the NCSC increasingly turn to other sources to find a solution.

This problem appears to stem, at least partly, from the USCIS method for handling customer inquiries that ISOs are unable to resolve within the target 15 day timeframe. If they cannot fully resolve the customer inquiry within the allotted time, ISOs typically close the service request with an interim response to the customer. Processing times for service requests are often maintained at the expense of the usefulness of the response. Closing the service request with such a *pro forma* response often does not address customer concerns.

USCIS is aware of complaints about response quality, but has not yet instituted a consistent approach to address the problem. Some regional offices and service centers have established local quality assurance (QA) programs for SRMT responses. However, a national quality assurance program would improve the service request responses. The Ombudsman’s Office encourages USCIS to focus on metrics that capture the quality of responses to service requests.

Secure Mail Initiative

In 2007, USCIS launched the Secure Mail Initiative, one of the programs funded by the 2007 fee increase. This program replaced U.S. Postal Service (USPS) first-class mail delivery with

USPS Priority Mail and Delivery Confirmation, as described in the Ombudsman’s 2010 Annual Report. In December 2010, USCIS expanded this initiative to deliver Permanent Resident Cards, Employment Authorization Documents (EADs), and travel documents by USPS priority mail.

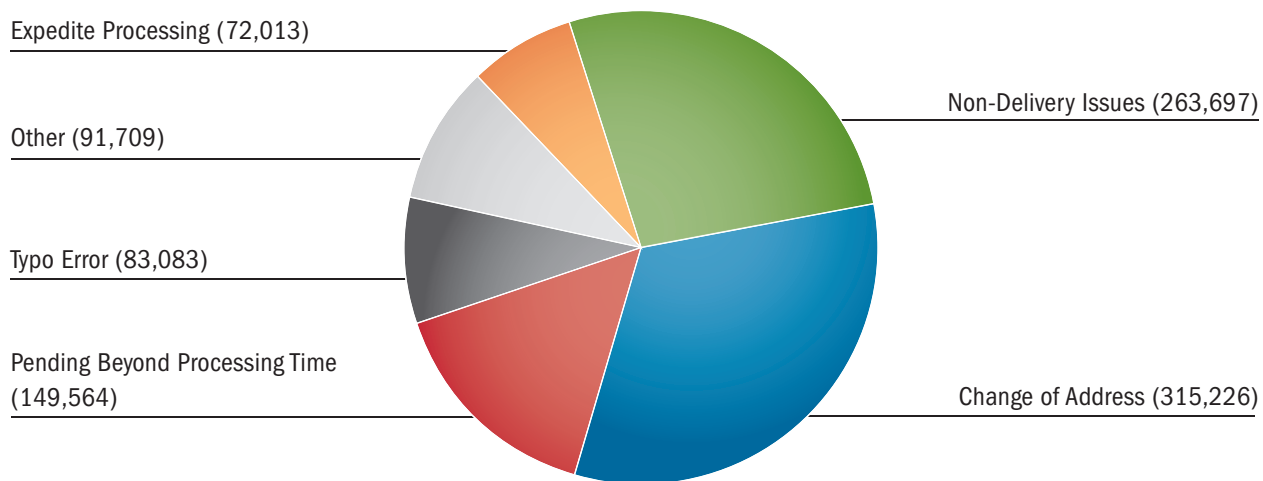
Secure Mail ensures that most documents are delivered in two or three days to mailboxes and post office boxes. This service does not require a signature to complete delivery, but does allow for USCIS and USPS to track and record the delivery of documents by date and address.

Those aware that a Permanent Resident Card, EAD, or travel document has been produced may call the NCSC to receive a USPS tracking number in order to check with USPS whether it is en route or has been delivered.¹³⁹ Sixty days after the applicant is notified of card production, an ISO can submit a service request to check the status of the document.¹⁴⁰ Ultimately, if the document was not returned to USCIS as undeliverable, the applicant must file and pay for a replacement. The Ombudsman’s Office will continue to monitor this initiative.

Conclusion

USCIS has made significant improvements in customer service, yet stakeholders continue to report frustration with the call centers and the service request process.

Figure 6: NCSC Service Requests by Category (April 2010 – March 2011)



Source: Information provided by USCIS to the Ombudsman’s Office (May 27, 2011).

Interagency Coordination and Cooperation: USCIS, ICE, CBP, and EOIR

A critical responsibility facing USCIS is improved interaction with its government partners: U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and the Executive Office for Immigration Review (EOIR). In order for USCIS to make timely and legally appropriate decisions on certain immigration benefits applications and petitions, it must communicate accurately and quickly with ICE, CBP, and EOIR. The need for increased systematic communication continues to impede coordination among these agencies.

Background

Under the U.S. Department of Justice (DOJ), removal matters were the responsibility of the legacy Immigration and Naturalization Service and the EOIR. When the U.S. Department of Homeland Security (DHS) was created in 2002, EOIR, which conducts removal hearings, remained within the DOJ and responsibility for the operational aspects of the immigration process was divided among three DHS components. USCIS has jurisdiction over the adjudication of applications and petitions for immigration benefits.¹⁴¹ ICE bears responsibility for the prosecution of removal proceedings.¹⁴² CBP is responsible for controlling passage through the borders of the United States.¹⁴³ All three agencies may issue Notices to Appear (NTA), placing individuals in removal proceedings.¹⁴⁴

The net effect of this structure is that USCIS, ICE, CBP, and EOIR all impact—directly or indirectly—the immigration benefits process. Yet, each agency exercises similar authorities, creating overlapping spheres of responsibility. USCIS and ICE have attempted to manage their overlapping responsibilities via the publication of policy memoranda. CBP has been engaged in some aspects of the interagency coordination process with regard to immigration benefits, but additional coordination is necessary.

ICE and USCIS Memoranda: Removal Proceedings and Immigration Benefits Filings before USCIS

On August 20, 2010, ICE published, “Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions.”¹⁴⁵ This document mandated that local ICE Offices of the Chief Counsel (OCC), in coordination with USCIS, develop standard operating procedures (SOPs) to identify removal cases involving an application or petition pending before USCIS. The memorandum also indicated that USCIS would issue complementary guidance.

Approximately six months later, USCIS issued its corresponding policy memorandum, “Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings.”¹⁴⁶ This document directed all USCIS district directors to immediately contact their local counterparts in ICE Enforcement and Removal Operations and the ICE OCC to begin drafting local SOPs for coordinating the adjudication of applications and petitions necessary to facilitate the completion of removal hearings.

According to USCIS, all districts have produced a draft or interim SOPs. Stakeholders await final implementation of the SOPs and report concerns that local procedures, as opposed to a uniform national procedure, may result in widely varying adjudication practices for pending applications and petitions filed by similarly situated individuals.

Other Coordination Efforts

While USCIS, ICE, CBP, and EOIR have not produced comprehensive guidelines for effective interoperability, several efforts by local USCIS personnel to engage their ICE and EOIR partners serve as models for effective nationwide engagement:

- Many USCIS field offices coordinate regular meetings of local U.S. government agencies involved in immigration issues.¹⁴⁷
- USCIS is participating in a joint Docket Efficiency Working Group with both ICE and EOIR. This working group, chaired by the Assistant Chief Immigration Judge, meets monthly to identify and close gaps in collaboration between the agencies, with the goal of reducing backlogs where both EOIR and USCIS are involved in a particular case. The Ombudsman’s Office also participates in this working group.
- On June 9, 2011, USCIS unveiled a multi-agency, nationwide initiative to combat immigration services scams.¹⁴⁸ DHS, DOJ, and the Federal Trade Commission are leading this effort. DOJ, through United States Attorneys’ Offices and the Civil Division’s Office of Consumer Protection Litigation, is investigating and prosecuting dozens of cases against so-called “notarios.” In the last year, USCIS has worked with DOJ and ICE on these unauthorized practice of law cases.

Continued partnerships among USCIS, ICE, CBP, and EOIR at the local level are crucial to serving the needs of USCIS’ customers.

Continued Need for Comprehensive Guidance on Agency Interoperability

The Ombudsman’s 2010 Annual Report included a recommendation that USCIS coordinate with ICE and EOIR to provide the public with one document specifying each agency’s responsibilities within the removal process and the basic information that respondents need to know about the jurisdiction of each agency.¹⁴⁹ USCIS agreed with this recommendation, but to date, has not issued such a public document.

Conclusion

Interagency partnerships offer an effective means to provide stakeholders with accurate information about the role that each agency will play in both the benefits adjudication and removal processes. The Ombudsman’s Office reiterates its 2010 recommendation and encourages USCIS to draft a joint document with ICE, CBP, and EOIR defining the manner in which these agencies will coordinate the adjudication of applications and petitions involving individuals in removal proceedings. The Ombudsman’s Office will continue to monitor implementation of related SOPs and policies.

Recommendation: “Customer Complaints: A Tool for Quality Customer Service and Accountability”

On March 23, 2011, the Ombudsman’s Office published a recommendation regarding standardized USCIS processing of customer service complaints, entitled “Customer Complaints: A Tool for Quality Customer Service and Accountability.”

Background

While USCIS has devoted significant resources to customer service, the agency does not yet have a uniform procedure for managing non-case specific feedback.¹⁵⁰ Feedback can include comments about:

- USCIS facilities or an interaction with USCIS staff;
- Quality and responsiveness of customer service resources;
- Inaccuracy or lack of clarity in USCIS resources; and
- Appropriateness of questions posed in interviews.

When seeking to register a complaint or comment, instead of finding ready guidance, USCIS customers encounter a confusing process. Available avenues include notifying a supervisor immediately; making an INFOPASS appointment; contacting the Department of Homeland Security Office of Inspector General; telephoning the USCIS National Customer Service Center; writing the relevant USCIS facility, congressional representative, or the White House; or contacting the Ombudsman’s Office. USCIS does not provide agency-wide direction on tracking, responding, or measuring the effectiveness of actions taken. Without a centralized reporting system, USCIS leadership does not have visibility over issues or trends that may be developing.

In November 2010, the USCIS Office of Security and Integrity (OSI) rolled out an internal tracking initiative for non-case specific complaints. However, this mechanism does not yet fully address stakeholder needs; for example, OSI does not provide an email for the public to submit such complaints.

Ideally, USCIS will implement an agency-wide complaint monitoring system. The agency could expand the OSI initiative or introduce an alternative means of monitoring complaints at the district, regional or customer service level.

This recommendation advances the goals of President Obama’s April 27, 2011 Executive Order entitled, “Streamlining Service Delivery and Improving Customer Service.” This Executive Order reinforces the Federal government’s commitment to “reducing the overall need for customer inquiries and complaints.” While improving the customer experience is the order’s ultimate goal, its theme is leveraging the power of technology to streamline processing and establish better feedback mechanisms and improve service.¹⁵¹

Formal Recommendations

The Ombudsman’s Office recommended that USCIS:

- (1) Establish a better means of informing the public how to submit general complaints; and
- (2) Publish the collected complaint data for public scrutiny.

Conclusion

On June 6, 2011, USCIS responded, generally concurring with the recommendations. Better use of customer feedback would allow the agency to improve customer service. The Ombudsman's Office identified several ways to build upon existing USCIS processes for implementing these recommendations: issue formal complaint guidance, establish protocols for handling complaint inquiries, and make statistical data available on its website. Implementation of these recommendations would enable USCIS to analyze relevant data and increase transparency, thereby improving accountability.



USCIS Transformation: The Promise of Modernization for USCIS Systems and Immigration Benefits Processing

Transformation is an agency-wide effort to move immigration services from a paper-based model to an electronic environment. Last year, the Ombudsman's Office provided a preview of Transformation, reporting on its projected timeline, goals, funding sources, outreach efforts, and challenges.¹⁵² Until Transformation meaningfully improves the experience of customers interacting with USCIS, its potential remains unrealized.



Background

Transformation is USCIS' comprehensive modernization initiative to convert business processes to an integrated, digitized environment. It is designed to address systemic challenges arising from USCIS' paper-based process including file tracking issues, inefficient customer service, and inaccurate data. See *Figure 7: Transformation Website Screen Shot*.

Through Transformation, USCIS is seeking to change the way it conducts business operations and reports the following:¹⁵³

- **Customer Accounts.** Individuals and representatives will be able to create online immigration accounts with USCIS and submit filings, fees, and supporting evidence electronically.
- **Adjudicator Resources.** Adjudicators will have a consolidated user platform with up-to-date customer information and the latest USCIS policies and procedures.
- **Automated Background Checks.** The new system will interface with multiple existing databases and relieve adjudicators from having to check multiple legacy systems.
- **Electronic Adjudications.** Select cases, such as Temporary Protected Status re-registration applications, will be decided without referral to an adjudicator through an automated System Qualified Adjudication process.¹⁵⁴
- **Management and Accountability.** Managers will monitor performance with real-time data to provide operational transparency and accountability.
- **Electronic Case Files.** USCIS will review and transfer cases electronically to prevent loss and delay resulting from paper file transfers.

Figure 7: Transformation Website Screen Shot



Source: Information provided by USCIS to the Ombudsman's Office (May 11, 2011).

Transformation Timeline

Transformation is scheduled to be implemented in five releases with a completion goal of FY 2014. As of April 2011, the goal is to launch the first phase, Release A, in December 2011. Release A will introduce immigration accounts and core functions to manage cases and information electronically. See *Figure 8: Transformation, Forms Included for Release A*.¹⁵⁵

Release B, set for launch in FY 2012, will establish immigration accounts for organizations, law firms, and other immigration service providers, and provide case management capabilities for the remaining nonimmigrant benefit types, such as Form I-129, Petition for a Nonimmigrant Worker.

Release C, set for launch in FY 2012-13, will add benefit forms related to permanent resident status, including Form I-485, Application to Register Permanent Residence or Adjust Status.

Release D, scheduled to launch in FY 2013, will support humanitarian cases.

Release E, set for FY 2014, will complete Transformation by adding naturalization and other citizenship related applications.

Concerns Regarding Transformation

The Ombudsman's Office has become aware of a number of concerns connected with the Transformation program.

Budget and Costs. The total cost of Transformation, including the Solution Architect contract and other IT costs, remains to be seen. According to USCIS, the Solution Architect contract value is \$475 million. As of May 2011, USCIS has obligated \$201.3 million on this contract. Additionally, from 2006 to present, USCIS obligated a total of \$357.5

Figure 8: Transformation, Forms Included for Release A

Form Number and Title	I-539	Application to Extend/Change Nonimmigrant Status
Permissible Electronic Filings		All categories, including those dependent on I-129, Petition for a Nonimmigrant Worker for Spouse and Children of a Lawful Permanent Resident
Form Number and Title	I-539A	Supplement A for Extension of V Status
Permissible Electronic Filings		
Form Number and Title	I-821	Application for Temporary Protected Status (TPS)
Permissible Electronic Filings		Initial and re-registration filings
Form Number and Title	I-821A	TPS for applicants from Honduras and Nicaragua
Permissible Electronic Filings		
Form Number and Title	I-765	Application for Employment Authorization
Permissible Electronic Filings		All categories, initial, and extensions
Form Number and Title	I-131	Application for Travel Document
Permissible Electronic Filings		All filings: advance parole, reentry permits, refugee travel documents, humanitarian parole
Form Number and Title	I-134	Affidavit of Support
Permissible Electronic Filings		In support of Humanitarian Parole I-131s
Form Number and Title	I-824	Application for Action on an Approved Application or Petition
Permissible Electronic Filings		Only those related to benefit requests in the new system
Form Number and Title	I-601	Application for Waiver of Grounds of Inadmissibility
Permissible Electronic Filings		Only those related to benefit requests in the new system
Form Number and Title	I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document
Permissible Electronic Filings		All applications
Form Number and Title	I-290B	Notice of Appeal or Motion
Permissible Electronic Filings		Only those related to benefit requests in the new system
Form Number and Title	I-612	Application for Waiver of the Foreign Residence Requirement
Permissible Electronic Filings		Electronic DS-3035 recommendations from U.S. Department of State only
Form Number and Title	G-28	Notice of Entry of Appearance as Attorney or Accredited Representative
Permissible Electronic Filings		For those accounts and benefits initiated in the new system
Form Number and Title	I-20	Certificate of Eligibility for Nonimmigrant Student
Permissible Electronic Filings		Evidence
Form Number and Title	I-508	Waiver of Rights, Privileges, Exemptions and Immunities
Permissible Electronic Filings		Evidence: Only those related to benefit requests in the integrated operating environment
Form Number and Title	DS-2019	Certificate of Eligibility for Exchange Visitor (J-1) Status
Permissible Electronic Filings		Evidence
Form Number and Title	I-566	Interagency Record of Request
Permissible Electronic Filings		Evidence

Source: Information provided by USCIS to the Ombudsman's Office (Feb. 7, 2011).

million on related activities including IT infrastructure, digitization and pilots, and Transformation-related program management support contracts.¹⁵⁶

Accessibility and Usability. USCIS conducted an internal demonstration of the new operating system, showing how customers will file applications for Temporary Protected Status and how these applications will be adjudicated. However, concerns remain about the accessibility and usability of the new system. For example, beginning with Release A, USCIS will require applicants to submit certain benefits filings electronically. USCIS states that immigration benefits seekers who may not have access to a computer or the internet may request exemption from the mandatory e-filing requirement.¹⁵⁷

Attorneys have commented that Release A appears not to be user friendly because it does not interface with private immigration case management software.¹⁵⁸ Release A will have a data entry and storage function only for individual applicants. USCIS states that Release B will provide interface capability and organizational accounts for attorneys and organizations.

Similar concerns exist about how Transformation will affect USCIS' daily business operations and, about possible negative impact on customers. For example, while in the new system, adjudicators can verify the authenticity of documents by reviewing scanned copies, they also have the option of requesting the original, hardcopy document from another USCIS office or directly from the customer.¹⁵⁹ Since USCIS employees are accustomed to paper-based adjudications, stakeholders worry that adjudicators may unnecessarily request hardcopy documents, which will delay adjudications.

Conclusion

USCIS continues to gather comments and recommendations from its employees, stakeholders, and Federal partners. USCIS intends for Transformation to tangibly improve the delivery of immigration services, and stakeholders continue to await changes that demonstrate how it will achieve this goal.

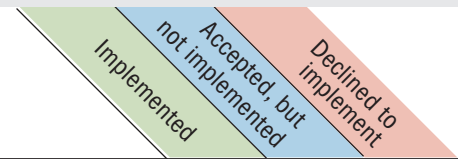
Previously Made Recommendations

Figure 9 summarizes the Ombudsman's Office recommendations issued during the 2009 and 2010 reporting periods. Of the 38 recommendations the Ombudsman's Office issued during this time, USCIS implemented nine, accepted but did not implement 18, and declined to implement 11.

For a more detailed discussion of previously made recommendations, see Appendix 3. Please visit the Ombudsman Office's website at www.dhs.gov/cisombudsman for the full text of the recommendations and the USCIS responses. See *Figure 9: Ombudsman Recommendations Chart*.

Figure 9: Ombudsman Recommendations Chart

Recommendation



Recommendation	Implemented	Accepted but not implemented	Declined to implement
Request for Evidence (RFE) Recommendations (June 30, 2010)			
Preponderance of the Evidence Training (AR2010-01)			
Improve Detail and Facts in RFEs (AR2010-02)			
Specify Adjudicatory Standards for L-1B Petitions (AR2010-03)			
Supervisory RFE Reviews (AR2010-04)			
National Customer Service Center (Call Center) Recommendations (June 30, 2010)			
Live Representative Option for Interactive Voice Response (IVR) (AR2010-05)			
Develop an Immediate Connection Option for Call Center Inquiries (AR2010-06)			
Eliminate IVR Scripts (AR2010-07)			
Designate Field Office Points of Contact for Call Center Supervisors (AR2010-08)			
Identify and Resolve Customer and Stakeholder Call Center Issues (AR2010-09)			
Immigration Services for Military Families (June 30, 2010)			
Allow Military Families the Option of Keeping their Pending Files with the Office Having Original Jurisdiction (AR2010-10)			
Agency Coordination within the Removal Process (June 30, 2010)			
Provide Public Guidance for Agency Responsibility within the Removal Process (AR2010-11)			
Form N-648, Medical Waivers (June 30, 2010)			
Establish a Point of Contact for Field Offices Adjudicating N-648, Medical Waivers (AR2010-12)			
Provide Public Guidance for Completing Form N-648 (AR2010-13)			
Medical Experts Review of Form N-648 (AR2010-14)			
Create a Data Collection and Tracking System for Forms N-648 (AR2010-15)			
Form I-824, Duplicate Approval Notices (June 30, 2010)			
Modify Processing Guidelines for Form I-824 (AR2010-16)			
Transfer Form I-824 to the Underlying Pending Case File (AR2010-17)			
Issue Standard Operating Procedures and Training for Adjudicating Form I-824 (AR2010-18)			
Secure Delivery of Approval Notifications to the U.S. Department of State (DOS) (AR2010-19)			
Develop Electronic Communications Options Between USCIS and DOS (AR2010-20)			
Revising Form I-601 Processing (June 10, 2010)			
Centralize Processing of Form I-601 (FR2010-45:1)			
Permit Concurrent Filing of Forms I-601 and I-130 (FR2010-45:2)			
Develop a Case Management System for Forms I-601 Filed Overseas (FR2010-45:3)			
Publish Guidance on Expedite Requests for Forms I-601 (FR2010-45:4)			
Increase Coordination between DOS and USCIS in Ciudad Juarez (FR2010-45:5)			
Digitize A-Files for Cases Pending at Ciudad Juarez (FR2010-45:6)			
Guidance and Processing Emergent Refugee Cases (April 14, 2010)			
Publicize Criteria for Expediting Emergent Refugee Cases (FR2010-44:1)			
State the Reason for Denying a Refugee Application (FR2010-44:2)			
Issue Guidance on Filing a Request for Review (FR2010-44:3)			
Implement a Receipt Procedure for Request for Review Filings (FR2010-44:4)			
Management of A-Files (June 30, 2009)			
Digitization of Immigration Files (AR2009-01)			
A-File Tracking Protocol (AR2009-02)			
Tri-Bureau Working Group Training (AR2009-03)			
Processing Methods for AC21 Portability Provisions (AR2009-04)			
EB-1 Tip-sheet (June 30, 2009)			
EB-1 Tip-sheet (AR2009-05)			
DNA Testing Updates (June 30, 2009)			
Update the Adjudicator's Field Manual to Reflect a Preference for DNA Testing (AR2009-06)			
Continue to Coordinate with the U.S. Department of State (DOS) Regarding DNA Testing Procedures (AR2009-07)			
Designate a USCIS DNA Liaison to Facilitate Coordination between USCIS and DOS (AR2009-08)			

Source: Prior Ombudsman's Office Recommendations and USCIS Responses for Reporting Years 2009-2010.

Looking Ahead: Ombudsman's Office Objectives and Priorities for the Coming Year

In the 2012 reporting year, the Ombudsman's Office will continue to help individuals and employers through case assistance, policy work, and outreach. The Ombudsman's Office will meet regularly with national and community-based organizations, including faith-based, legal, and employer associations. The Ombudsman's Office will also promote and facilitate interagency coordination in the immigration process, between USCIS and the U.S. Departments of Commerce, Justice, Labor, State, and other Homeland Security components.

Case Resolution: Improving the Process for Those Seeking Assistance. The Ombudsman's Office is redesigning its current case assistance process to improve outcomes and shorten response times for individual case inquiries.

The Ombudsman's Office is simplifying Form DHS-7001, Case Problem Submission Worksheet, and providing instructions in Spanish to make it easier for those seeking assistance to access the office's services. Additionally, the Ombudsman's Office is continuing to develop its online capabilities to allow for electronic submission of Form DHS-7001.

Policy Work: Comprehensive Review of Past Recommendations and Regulatory Review. The Ombudsman's Office will conduct a comprehensive review of previously issued recommendations with the goal of ensuring that problem-solving and operationally sound proposals that have not been implemented are given renewed consideration.

Consistent with Presidential Executive Order No. 13563 entitled "Improving Regulation and Regulatory Review," the

Ombudsman's Office will review USCIS regulations and make recommendations to promote predictability and reduce uncertainty for individuals and employers seeking immigration benefits.¹⁶⁰

The Ombudsman's Office will remain focused on the following areas: humanitarian; family; employment; customer service; and, process integrity. The Ombudsman's Office plans to review USCIS verification programs; USCIS policy review; progress of the Transformation program; and training for USCIS personnel.

Outreach: The 2011 Annual Conference. In addition to other outreach initiatives, the Ombudsman's Office will host its first annual conference on October 20, 2011. This conference will provide an opportunity for government and private sector leaders to come together to discuss immigration issues that impact individuals and employers.

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Appendix 1: Homeland Security Act Excerpts

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.

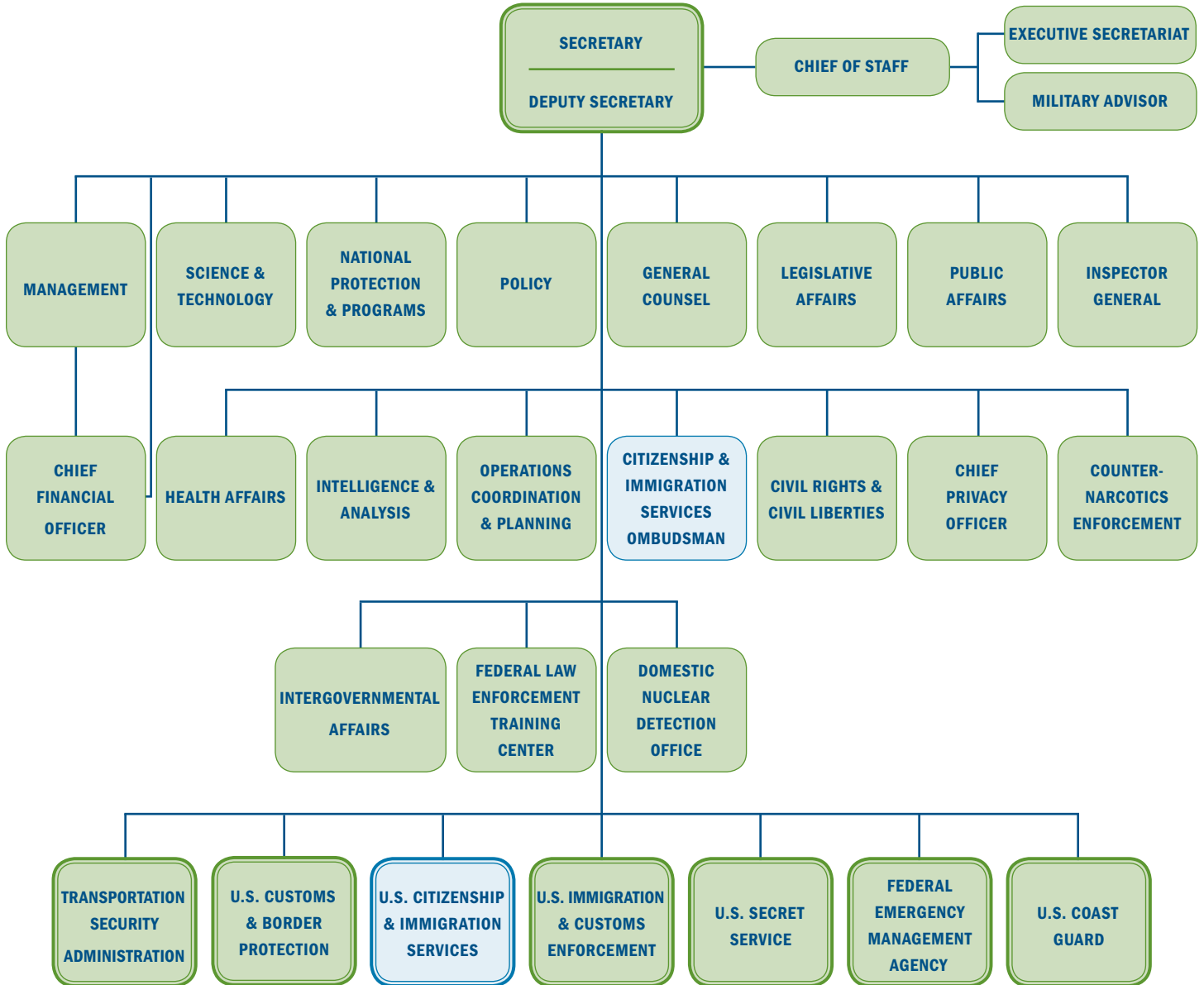
(g) OPERATION OF LOCAL OFFICES—

- 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: DHS Organizational Chart



Appendix 3: Recommendations in Previous Years

Request for Evidence (RFE) Recommendations (June 30, 2010)

Preponderance of the Evidence Training: Implement new and expanded training to ensure that adjudicators understand and apply the “preponderance of the evidence” standard in adjudications.

USCIS Response (November 9, 2010): USCIS recognized the benefit of additional training on this standard of review and agreed to implement the recommendation. USCIS identified its RFE project as an example of developing uniform standards. It also cited its efforts to update the Adjudicator’s Field Manual (AFM) as guidance to accompany training.

Current Status: The Ombudsman’s Office continues to receive complaints about adjudicators improperly applying the legal and evidentiary standard of review. USCIS has not conducted additional training on the preponderance of the evidence standard, but is planning on doing so.

Improve Detail and Facts in RFEs: Consistent with applicable regulations, require adjudicators to specify the facts, circumstances, and/or derogatory information necessitating the issuance of an RFE.

USCIS Response (November 9, 2010): According to USCIS, the RFE template project addressed this recommendation. USCIS plans to review and rewrite, as needed, all current RFE templates. USCIS predicted that the project will improve standardization, particularly in the H and L nonimmigrant classifications.

Current Status: USCIS has posted for public comment RFE templates for selected applications, but has not done so for the higher volume H and L classifications. The Ombudsman’s Office continues to receive complaints regarding RFEs. Additional efforts beyond the RFE template review project are necessary.

Specify Adjudicatory Standards for L-1B Petitions: Establish clear adjudicatory L-1B (Intracompany Transferees with Specialized Knowledge) guidelines through the structured notice and comment process of the Administrative Procedure Act.

USCIS Response (November 9, 2010): USCIS responded that “the term ‘specialized knowledge’ was deliberately left open-ended by Congress to recognize the fact-specific nature of the term.” USCIS is working on new guidance, rather than rulemaking that would provide further explanation of what might satisfy the statutory definition of “specialized knowledge.” USCIS also stated that it is updating the AFM and publishing Administrative Appeals Office precedent decisions.

Current Status: USCIS has not issued new guidance, updated the AFM, or issued new precedent decisions on “specialized knowledge.”

Supervisory RFE Reviews: Implement a pilot program requiring: (1) 100 percent supervisory RFE review of one or more product lines; and (2) an internal uniform checklist for adjudicators to complete prior to issuance of an RFE.

USCIS Response (November 9, 2010): USCIS responded that its current quality control practices are sufficient and the cost of implementation would be too burdensome. USCIS noted that, in some circumstances, when issuing new guidance, it may implement 100 percent supervisory review for a limited time to ensure adjudicators are properly applying the new guidance or training.

Current Status: While USCIS claimed that implementing this type of pilot program would be too costly, it did not provide the Ombudsman’s Office information in support of this assertion, such as a cost-benefit analysis. The Ombudsman’s Office continues to receive requests for assistance with RFEs and affirms its original recommendation.

National Customer Service Center (Call Center) Recommendations (June 30, 2010)

Live Representative Option for Interactive Voice Response: Provide a selection in the Interactive Voice Response (IVR) to connect immediately to a live representative who can respond to or direct a call when none of the IVR options is appropriate.

USCIS Response (November 9, 2010): USCIS recognized the importance of providing individuals with a representative who is able to assist with inquiries. However, USCIS stated that the current system is cost-effective and rejected the recommendation.

Current Status: When a caller requiring live assistance cannot connect directly with a Customer Service Representative, the call must be rerouted or individuals schedule INFOPASS appointments at field offices, delaying resolution and adding costs. The Ombudsman's Office continues to support this recommendation.

Develop an Immediate Connection Option for Call Center Inquiries: Utilize commercial technology that would enable more efficient and direct access to live assistance by providing an option in the IVR to immediately connect callers to: (1) Tier 1 Customer Service Representatives (CSRs) for basic, informational questions; and (2) a Tier 2 Immigration Services Officer (ISO) for questions on pending cases.

USCIS Response (November 9, 2010): USCIS stated that it would implement a new IVR system to route callers directly to a CSR or an ISO, based on the type of inquiry. However, USCIS declined to provide a direct connection option.

Current Status: USCIS implemented the new IVR system without a direct connection option. The Ombudsman's Office continues to support its recommendation to allow callers to go directly to a live representative.

Eliminate IVR Scripts: Eliminate the scripted information over a targeted period of time to enable the agency to train staff to answer basic immigration inquiries.

USCIS Response (November 9, 2010): USCIS committed to creating a task force to review and revise the scripted information used by Tier 1 contract staff, but declined to eliminate scripts for all calls.

Current Status: The Ombudsman's Office continues to hear stakeholder frustration with Tier 1 scripts.

Designate Field Office Points of Contact for Call Center Supervisors: Designate a point of contact within each field office and service center to be available to Tier 2 supervisors: (1) to answer time-sensitive inquiries including, for example, missing or lost RFEs; and (2) to provide information on individual field office operations and procedures to respond to customer inquiries.

USCIS Response (November 9, 2010): USCIS verified that it has provided Tier 2 Supervisory Immigration Services Officers with points of contact for each field office and service center. According to USCIS, most questions pertaining to RFEs require technical advice that cannot be provided over the telephone.

Current Status: USCIS has implemented this recommendation.

Identify and Resolve Customer and Stakeholder Call Center Issues: Obtain information from Tier 2 Immigration Services Officers to identify trends and resolve issues of concern to customers and stakeholders.

USCIS Response (November 9, 2010): USCIS agreed with this recommendation. USCIS implemented a pilot program at the call centers to track customer inquiry trends. Using this information, USCIS has issued guidance and revised policies to improve customer service.

Current Status: USCIS has implemented this recommendation.

Immigration Services for Military Families (June 30, 2010)

Allow Military Families the Option of Keeping their Pending Files with the Office Having Original Jurisdiction:

Provide military families the option to have the office with initial jurisdiction complete adjudications for family members of active duty personnel, even when the family relocates outside the district.

USCIS Response (November 9, 2010): USCIS agreed to review on a case-by-case basis the request to have the application or petition remain with the originating office. USCIS stated that it is always looking for new ways to encourage military applicants to notify the agency when they find out about an upcoming deployment or transfer. USCIS stated that in some instances jurisdictional limitations might require relocation to another district.

Current Status: On a case-by-case basis, USCIS has implemented this recommendation.

Agency Coordination within the Removal Process (June 30, 2010)

Provide Public Guidance for Agency Responsibility within the Removal Process: Coordinate with U.S. Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR) to provide the public with one document that specifies each agency's responsibilities within the removal process and the basic steps and information that respondents need to know about the jurisdiction of each agency.

USCIS Response (November 9, 2010): USCIS agreed with this recommendation and highlighted its partnership with ICE's Secure Communities initiative. USCIS indicated that it was issuing internal guidance and promised to engage the public in order to make the document as useful and accessible to the intended users.

Current Status: While USCIS and ICE issued memoranda for handling cases for individuals in removal proceedings, USCIS has yet to issue a document outlining agency responsibilities.

Form N-648, Medical Certification for Disability Waivers Processing (June 30, 2010)

Establish a Point of Contact for Field Offices Adjudicating N-648, Medical Waivers: Assign an expert or supervisory adjudicator as the public point of contact in each field office, in accordance with the USCIS September 2007 N-648 guidance memorandum.

USCIS Response (November 9, 2010): USCIS stated its 2007 guidance established a point of contact to assist Immigration Services Officers and provide public outreach and training, rather than providing a contact for the public. USCIS recommended that customers with inquiries contact the National Customer Service Center or schedule an INFOPASS appointment with a local field office. USCIS stated that it was reviewing and amending Form N-648 and would engage with stakeholders to be responsive to public concerns.

Current Status: This recommendation has not been implemented.

Provide Public Guidance for Completing Form N-648: Distribute, and make publicly available on the USCIS website, a training module for medical professionals who complete Form N-648.

USCIS Response (November 9, 2010): USCIS agreed to provide general training for interested stakeholders, but declined to specifically target medical professionals.

Current Status: The Ombudsman's Office supports the continued efforts USCIS has made to educate and inform stakeholders regarding Form N-648 by holding public training sessions. The Ombudsman's Office continues to encourage USCIS to provide

specific guidance and directions for medical professionals. Such guidance would ensure that medical professionals correctly complete the form.

Medical Experts Review of Form N-648: Revise current practices for processing Form N-648 to utilize experts to adjudicate the Medical Certification for Disability Exceptions.

USCIS Response (November 9, 2010): USCIS found this recommendation cost-prohibitive and declined to implement it.

Current Status: The Ombudsman's Office continues to support this recommendation; submitting waivers to medical experts would ensure consistent and accurate results.

Create a Data Collection and Tracking System for Forms N-648: Track the number of Forms N-648 filed, approved, and rejected, as well as other key information.

USCIS Response (November 9, 2010): USCIS agreed to include in Transformation a tracking mechanism for medical waivers. However, USCIS cited difficulties in tracking paper medical waivers.

Current Status: The Ombudsman's Office continues to recommend use of a tracking system to monitor Form N-648 processing. Without a tracking system, USCIS cannot track Form N-648 trends and is unable to adapt the program to respond to stakeholder concerns.

Form I-824, Application for Action on an Approved Application or Petition Processing (June 30, 2010)

Modify Processing Guidelines for Form I-824: Establish a goal to process Forms I-824 requesting duplicate approval notices within days of receipting, and to process all other I-824s more expeditiously.

USCIS Response (November 9, 2010): USCIS agreed that it is a priority to adjudicate Form I-824 requests expeditiously, but found unavoidable delays due to officers not having the information necessary to render a decision.

Current Status: This recommendation has not been implemented.

Transfer Form I-824 to the Underlying Pending Case File: Evaluate the benefit of transferring Form I-824 to the USCIS facility with physical possession of the underlying case file for adjudication.

USCIS Response (November 9, 2010): USCIS stated that it complies with this recommendation whenever possible but that delays occur when the underlying A-file is located at the National Records Center.

Current Status: This recommendation appears to have been implemented but the Ombudsman's Office continues to receive complaints regarding Form I-824 processing delays that may be resolved by transferring the Form I-824 to the office in possession of the underlying case file.

Issue Standard Operating Procedures and Training for Adjudicating Form I-824: Develop a national standard operating procedure (SOP) for processing Forms I-824 and institute mandatory training for all USCIS adjudicators.

USCIS Response (November 9, 2010): USCIS agreed with this recommendation and stated that an SOP providing guidance for Form I-824 processing would be forthcoming.

Current Status: USCIS has not yet issued an SOP or instituted training on the processing of Form I-824.

Secure Delivery of Approval Notifications to the U.S. Department of State (DOS): Ensure the timely and accurate delivery of notifications to the DOS National Visa Center through the use of a tracked mail delivery service.

USCIS Response (November 9, 2010): USCIS stated that this recommendation is infeasible due to its delivery agreement with DOS.

Current Status: USCIS has not implemented this recommendation. Discussions with DOS indicate that they are amenable to working with USCIS on the use of a courier service.

Develop Electronic Communications Options Between USCIS and DOS: Develop an electronic communication channel between USCIS and DOS capable of securely sending formal notifications on various immigration-related matters, including Form I-824.

USCIS Response (November 9, 2010): USCIS agreed with this recommendation and indicated that it referred the recommendation to its Office of Information Technology.

Current Status of Recommendation: USCIS has not yet implemented this recommendation.

Revising Form I-601, Application for Waiver of Grounds of Inadmissibility Processing in the USCIS Ciudad Juarez Office (June 10, 2010)

Centralize Processing of Form I-601: Centralize Form I-601 adjudications.

USCIS Response (October 12, 2010): USCIS stated that it is evaluating enhancements to its processing of Forms I-601 filed overseas. USCIS declined to eliminate the current triage system that takes place at the filing location. USCIS agrees with the importance of addressing inconsistency in adjudications and expects to complete its analysis in FY 2011.

Current Status: USCIS has not implemented this recommendation, but the agency indicates that it plans to centralize filing in early FY 2012.

Permit Concurrent Filing of Forms I-601 and I-130: Allow applicants to concurrently file Forms I-601 and I-130, Petition for Alien Relative.

USCIS Response (October 12, 2010): USCIS presented this recommendation to its Office of Policy and Strategy to explore available options.

Current Status: USCIS has not implemented this recommendation.

Develop a Case Management System for Forms I-601 Filed Overseas: Complete development of the USCIS overseas case management system in order to collect statistical data on Forms I-601, post processing times online, and track applications via the “My Case Status” online feature on the USCIS website.

USCIS Response (October 12, 2010): USCIS agreed with this recommendation. On August 16, 2010, USCIS released its overseas case management system, Case and Activity Management for International Operations (CAMINO). USCIS promised a second release of CAMINO that would expand the capabilities of the system to allow applicants to check case status for overseas filings. USCIS also noted that many of its overseas offices manually post case-specific processing information on the local DOS website.

Current Status: The Ombudsman’s Office continues to support this recommendation and understands that USCIS is working to post processing times.

Publish Guidance on Expedite Requests for Form I-601 Waivers: Publish filing instructions to guide customers in need of expedited Form I-601 processing.

USCIS Response (October 12, 2010): USCIS stated that it was in the process of updating the International Operations Division’s guidance and would provide customers with specific updates. USCIS committed to sharing with stakeholders draft guidance on the criteria used to expedite Form I-601 adjudications prior to publishing it in FY 2011.

Current Status: On May 9, 2011, USCIS published a final memorandum governing the processing of expedited requests for Form I-601 waivers overseas.

Increase Coordination between DOS and USCIS in Ciudad Juarez: Increase coordination between DOS consular officers and USCIS adjudicators who review and adjudicate Forms I-601.

USCIS Response (October 12, 2010): USCIS agreed with this recommendation, but stated that there currently is sufficient coordination. USCIS agreed to discuss coordinating communications with DOS for cases presenting certain criminal convictions.

Current Status: While USCIS and DOS supervisors in Ciudad Juarez meet on a regular basis, this recommendation has not been formally implemented at the adjudicator level.

Digitize A-Files for Cases Pending at Ciudad Juarez: Allow USCIS employees to request digitized A-files upon receipt of interview schedules.

USCIS Response (October 12, 2010): USCIS agreed with the recommendation, but stated that its current systems do not have this capability. USCIS stated that it could create disks containing a copy of the file and ship them to the post. However, this process could take approximately nine to ten work days. USCIS agreed to explore the costs and benefits of digitizing waiver cases that are scheduled with the Ciudad Juarez Consulate.

Current Status: USCIS has not implemented this recommendation, but does try to make A-files available to assist with waiver processing.

Guidance and Processing Emergent Refugee Cases (April 14, 2010)

Publicize Criteria for Expediting Emergent Refugee Cases: Publicly state, on the USCIS website and to stakeholder groups, the criteria by which USCIS expedites certain emergent refugee cases and how to access that expedited process.

USCIS Response (July 10, 2010): USCIS committed to providing to the public information on how to request expedite processing for certain emergent refugee cases. It further indicated that it is identifying program partners and collecting information to provide its stakeholders.

Current Status: USCIS currently is working with the U.S. Department of State to develop expedite criteria and procedures.

State the Reason for Denying a Refugee Application: (a) Identify issues of concern during refugee interviews to enable the applicant to address, at that time, any potential grounds for denial; and (b) Articulate in the Notice of Ineligibility for Resettlement clear and case-specific information regarding the grounds for denial.

USCIS Response (July 10, 2010): USCIS indicated that due to certain security issues or additional case review needs, it may be impossible to notify each applicant of all possible ineligibilities during the interview. USCIS also committed to ensuring that its officers receive comprehensive, ongoing training on how to carefully gather testimony and facts to support their analysis.

Current Status: USCIS does not intend to take any additional action on this recommendation, aside from ongoing training assessing the efficacy of the new notice.

Issue Guidance on Filing a Request for Review: (a) Provide a tip-sheet on relevant supporting documents, outlining the information applicants should include; and (b) Publish mailing address(es) for Request for Review submissions.

USCIS Response (July 10, 2010): USCIS committed to issuing guidance, by the second quarter of 2011, on how to file a Request for Review of a denied refugee application.

Current Status: On March 8, 2011, USCIS posted a refugee tip-sheet identifying how to file a Request for Review.

Implement a Receipt Procedure for Request for Review Filings: Acknowledge receipt of each Request for Review (RFR).

USCIS Response (July 10, 2010): USCIS indicated that it was developing a case management system to track overseas adjudications, including RFRs, which also would provide the capability to generate receipt notices. USCIS also stated that it was considering alternative ways of delivering the receipt notice, including in person, standard mail, or via electronic mail.

Current Status: USCIS implemented an overseas adjudications case management system and has been working to refine it. USCIS now has the capability to track RFR processing activities and expects to have the capability to issue RFR receipt notices in FY 2011.

Management of A-Files (June 30, 2009)

Digitization of Immigration Files: Immediately begin scanning immigration files that likely are to be needed for future adjudications.

USCIS Response (October 16, 2009): USCIS indicated that it met this recommendation in 2006 through its program Scan on Demand Application (SODA) at the National Records Center (NRC). USCIS also indicated that it plans to respond to A-file transfer requests by scanning and electronically transmitting within a designated timeframe.

Current Status: USCIS has not yet fully implemented this recommendation.

A-File Tracking Protocol: Establish new protocols to ensure that relevant contract staff consistently record all A-file movement as outlined in the Records Operations Handbook.

USCIS Response (October 16, 2009): USCIS stated that its existing protocols were sufficient to comply with its A-file tracking requirements and that its Records Operation Handbook provided clear guidance on the management of A-files and other immigration records.

Current Status: The Ombudsman's Office continues to receive complaints regarding delays in case adjudications due to missing A-files.

Tri-Bureau Working Group Training: Institute, through the Tri-Bureau Working Group (USCIS, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection), mandatory training of all personnel who work with A-files, specifically special agents, investigators, and officers.

USCIS Response (October 16, 2009): USCIS stated that it currently provides the necessary training for the Tri-Bureau Working Group to meet its current A-file management policies and procedures.

Current Status: The Ombudsman's Office recommends that USCIS continue its training programs and improve the consistency of procedures through the Tri-Bureau Working Group.

Processing Methods for AC21 Portability Provisions: Review processing methods for employment-based petitions used by the Nebraska and Texas Service Centers in order to make American Competitiveness in the Twenty-First Century Act (AC21) portability provisions equally available to all customers.

USCIS Response (October 16, 2009): USCIS did not acknowledge the existence of any problem stemming from disparate procedures in use at the Nebraska and Texas Service Centers. USCIS also indicated that both service centers take steps to ensure prompt final adjudication of Form I-485 once a visa number becomes available.

Current Status: The Ombudsman's Office will continue to monitor AC21 portability issues.

EB-1 Tip-sheet (June 30, 2009)

Recommendation: Post a practical tip-sheet on the USCIS website to assist stakeholders in providing relevant evidence in support of complex EB-1 cases.

USCIS Response (October 16, 2009): USCIS posted guidance on its website indicating the types of evidence that should be submitted in support of complex EB-1 cases.

Current Status: USCIS has implemented this recommendation.

DNA Testing Updates (June 30, 2009)

Update the Adjudicator's Field Manual to Reflect a Preference for DNA Testing: Remove references to obsolete testing methods from the Adjudicator's Field Manual (AFM) and other published guidance.

USCIS Response (October 16, 2009): USCIS stated that it was working to remove obsolete references to blood testing from the AFM and was drafting updates to 8 C.F.R. § 204.2(d)(2)(vi).

Current Status: USCIS has not yet implemented this recommendation.

Continue to Coordinate with the U.S. Department of State (DOS) Regarding DNA Testing Procedures: Continue to coordinate with the U.S. Department of State (DOS) regarding DNA testing procedures. Execute a Memorandum of Understanding (MOU) with DOS regarding overseas resource allocation for DNA evidence gathering and chain-of-custody observance.

USCIS Response (October 16, 2009): USCIS recognized the various concerns connected with the collection of DNA samples, including chain-of-custody control and updates to the Foreign Affairs Manual. However, USCIS stated that an MOU was not necessary.

Current Status: USCIS continues to negotiate with DOS regarding DNA testing methods and procedures.

Designate a USCIS DNA Liaison to Facilitate Coordination between USCIS and DOS: Designate a USCIS DNA liaison to: (a) Facilitate discussions between USCIS and DOS; and, (b) Provide clarifications for DNA laboratories.

USCIS Response (October 16, 2009): USCIS stated that it had designated a subject matter expert within the agency to field questions and liaise with the U.S. Departments of Justice (DOJ) and State.

Current Status: Although USCIS has DNA subject matter experts, the agency has not designated a DNA liaison.

Endnotes

- 1 Homeland Security Act of 2002, § 452. *See* Appendix 1.
- 2 USCIS Webpage, “Office of Public Engagement;” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=0d0cbd85ef149210VgnVCM10000082ca60aRCD&vgnnextchannel=0d0cbd85ef149210VgnVCM10000082ca60aRCD> (accessed May 27, 2011).
- 3 USCIS News Release, “USCIS Announces First Ten Areas of Focus for Agency-wide Policy Review Public Survey Informs Selections” (July 26, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3205d06dceb9210VgnVCM10000082ca60aRCD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 27, 2011).
- 4 USCIS News Release, “USCIS to Host Open Houses Nationwide” (Oct. 5, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=95a921e7bcc7b210VgnVCM10000082ca60aRCD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 27, 2011).
- 5 USCIS Outreach, “‘Enlace’ Public Engagement;” <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=49731bf8d43ee210VgnVCM10000082ca60aRCD&vgnnextchannel=994f81c52aa38210VgnVCM10000082ca60aRCD> (accessed May 27, 2011).
- 6 USCIS activities included holding meetings at local offices, hosting public teleconferences, and establishing service center contacts for assisting customers. *See also* USCIS Outreach, “USCIS Teleconference to Discuss the Help Haiti Act of 2010” (Feb. 9, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2fc9f8a40b8bd210VgnVCM10000082ca60aRCD&vgnnextchannel=994f81c52aa38210VgnVCM10000082ca60aRCD> (accessed May 27, 2011).
- 7 *See* USCIS Outreach, “Notes from Previous Public Engagements, Verification;” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=27bb5fae4be5e210VgnVCM10000082ca60aRCD&vgnnextchannel=27bb5fae4be5e210VgnVCM10000082ca60aRCD> (accessed May 27, 2011).
- 8 *See* USCIS Outreach, “Notes from Previous Public Engagements, Transformation;” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=06e12376a3e5e210VgnVCM10000082ca60aRCD&vgnnextchannel=06e12376a3e5e210VgnVCM10000082ca60aRCD> (accessed May 27, 2011).
- 9 “U.S. Citizenship and Immigration Services Fee Schedule,” 75 Fed. Reg. 58961, 58964 (Sept. 24, 2010). USCIS did not raise the fees for naturalization applications.
- 10 USCIS News Release, “USCIS Announces First Ten Areas of Focus for Agency-wide Policy Review—Public Survey Informs Selections” (July 26, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3205d06dceb9210VgnVCM10000082ca60aRCD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 27, 2011).
- 11 *Id.*
- 12 Information provided by USCIS (May 10, 2011). *See also* USCIS Webpage, “Feedback Updates;” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=60a67e8cba5d8210VgnVCM10000082ca60aRCD&vgnnextchannel=60a67e8cba5d8210VgnVCM10000082ca60aRCD> (accessed June 1, 2011); USCIS Webpage, “Immigration Policy and Procedural Memoranda;” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=7dc68f236e16e010VgnVCM1000000ecd190aRCD&vgnnextchannel=7dc68f236e16e010VgnVCM1000000ecd190aRCD> (accessed June 1, 2011).
- 13 5 U.S.C. 500 (1946).
- 14 USCIS News Release, “USCIS Introduces First-Ever Fee Waiver Form” (Nov. 22, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2a1c003cf147c210VgnVCM10000082ca60aRCD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 27, 2011).
- 15 USCIS Fact Sheet, “USCIS Publishes First-Ever Proposed Fee Waiver Form—Agency Actively Seeks Public Comment” (July 16, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2e15ac6b49cd9210VgnVCM10000082ca60aRCD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed June 1, 2011).
- 16 USCIS News Release, “USCIS Introduces First-Ever Fee Waiver Form” (Nov. 22, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2a1c003cf147c210VgnVCM10000082ca60aRCD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed June 1, 2011).
- 17 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994); *see also* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 106-386, 117 Stat. 2875 (2003).
- 18 USCIS Report to Congress, “Report on the Operations of the Violence Against Women Act Unit at the USCIS Vermont Service Center,” p. 3 (Oct. 22, 2010); <http://www.uscis.gov/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf> (accessed May 27, 2011).
- 19 *Id.*, p. 30.
- 20 USCIS Interoffice Memorandum, “Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status Eligible Aliens in Removal Proceedings” (May 6, 2004); http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_

Memoranda/Archives%201998-2008/2004/uprcd050604.pdf (accessed May 27, 2011).

- 21 The policy memoranda USCIS has released in the past year include: “Extension of U Nonimmigrant Status for Derivative Family Members Using the Application to Extend/Change Nonimmigrant Status (Form I-539)” on June 22, 2010; “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions” on July 21, 2011; “Revocation of VAWA-Based Self-Petitions (Forms I-360)” on December 15, 2010; the draft policy memo “Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen” on January 7, 2011; and the Interim Policy Memorandum “Extension of Status for T and U Nonimmigrants” on March 8, 2011.
- 22 This interpretation is consistent with the statutory language for most nonimmigrant visas, which states that a derivative ages out at 21 years of age. INA §§ 203(h)(2)(B) and 203(h)(4); USCIS Fact Sheet, “Child Status Protection Act” (Mar. 30, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=1f0c0a5659083210VgnVCM100000082ca60aRCD&vgnnextchannel=1f0c0a5659083210VgnVCM100000082ca60aRCD>, (accessed May 27, 2011). The current “age out” interpretation for U visa derivatives seems to conflict with the congressional intent of the U visa, suggesting that U visas should similarly be eligible for CSPA coverage. Section 107 of the Victims of Trafficking and Violence Prevention Act of 2000 provides clear congressional intent that protections and assistance be available for victims of trafficking as well as their family members, so that they could live free “from intimidation, threats of reprisals, and reprisals from traffickers and their associates.” Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.
- 23 Congressional Record, 106th Cong., 1st Session S7781 (2000).
- 24 These are types of nonimmigrant visas: the A is for diplomats and foreign government officials; the E-3 allows Australian nationals to work in specialty occupations in the United States; the G permits employees of international organizations to visit the United States on official business; and the various forms of H are issued to people coming to the United States to work temporarily. *See* INA § 101 (a) (15)(A), (E)(iii) and (G) (2011).
- 25 Homeland Security Act of 2002, § 442(c), Pub. L. No. 107-296 (2002); Delegation to the Bureau of Citizenship and Immigration Services (BCIS), former DHS Secretary Tom Ridge (Mar. 1, 2003) (delegating authority to grant voluntary departure under section 240B of the INA, 8 U.S.C. § 1229c, and deferred action); *See* INS Memorandum from Commissioner Doris Meissner to Regional Directors, et al. (“Meissner Memorandum”), “Exercising Prosecutorial Discretion,” HQ OPP 50/4 (Nov. 17, 2000); *See also* U.S. Department of Justice, Immigration Naturalization Service Fact Sheet, “Prosecutorial Discretion Guidelines” (Nov. 28, 2000).
- 26 8 C.F.R. § 274a.12(c)(14) (2011).
- 27 The Meissner Memorandum provides a more comprehensive list. USCIS reports that the memo is used as informal guidance for local offices reviewing a deferred action request. Information provided by USCIS (Apr. 15, 2011).
- 28 Information provided by stakeholders (Mar. 29, 2011). Recently, DHS Secretary Napolitano announced the extension and re-designation of Haiti for Temporary Protected Status. 76 Fed. Reg. 29000 (May 19, 2011).
- 29 The Ombudsman’s Office received basic submission statistics. USCIS has not provided the Ombudsman’s Office the exact number of cases submitted over the past five years or the number of cases denied before 2011. Information provided by USCIS (Apr. 15, 2011).
- 30 8 C.F.R. § 274a.12(c)(14).
- 31 Information provided by USCIS (Mar. 30, 2011).
- 32 Information provided by USCIS (Mar. 29, 2011; Apr. 15, 19 and 20, 2011).
- 33 Recommendation #32 (Apr. 9, 2007), http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf (accessed June 16, 2011).
- 34 USCIS Response to Recommendation #32 (Aug. 7, 2007), http://www.dhs.gov/xlibrary/assets/cisombudsman_rr_32_o_deferred_action_uscis_response_08-07-07.pdf (accessed June 16, 2011).
- 35 *See generally* INA § 208.
- 36 INA § 208(d)(5)(A)(iii).
- 37 8 C.F.R. § 208.7(a)(1), § 1208.7(a)(1), § 274a.12(c)(8), § 274a.13(a) (2011).
- 38 INA § 208(d)(2) (2009).
- 39 *See* DHS Office of Immigration Statistics, “Annual Flow Report—U.S. Legal Permanent Residents: 2010” (Mar. 2011); http://www.dhs.gov/files/statistics/publications/gc_1301497627185.shtm (accessed May 27, 2011).
- 40 Department of State, Visa Bulletin Webpage, linking to “Comprehensive Lists of Cut-Off Dates;” http://travel.state.gov/visa/bulletin/bulletin_1360.html (accessed May 27, 2011).
- 41 Information provided to the Ombudsman’s Office (Jan. 6, 2011) and Ombudsman’s Office Teleconference, “Family-based Visa Retrogression—What Is It and How Does It Impact Applicants?” (Mar. 15, 2011); <http://www.dhs.gov/files/programs/cisomb-telecon-family-visa-retrogression.shtm> (accessed May 27, 2011).
- 42 USCIS Interim Policy Memorandum, “Instructions for Handling Regressed Visa Number (Employment-Based and Family- Based) Adjustment of Status Cases Interviewed at USCIS Field Offices (Dec. 15, 2010); <http://www.uscis.gov/USCIS/Outreach/Interim%20Guidance%20for%20Comment/regressed-visa-12-15-10.pdf> (accessed May 27, 2011).
- 43 Information provided to the Ombudsman’s Office (Jan.– Feb. 2011).
- 44 *See* CIS Ombudsman Updates, http://www.dhs.gov/xabout/structure/gc_1221837986181.shtm#3 (accessed April 19, 2011).
- 45 INA § 204(l), as amended by § 568(d) and (e) of the DHS Appropriations Act of 2010, Pub. L. No. 111-83, 123 Stat. 2142 (2009).
- 46 *See Matter of Sano*, 19 I&N Dec. 299 (BIA 1985); *Matter of Varela*, 13 I&N Dec. 453 (BIA 1970).

- 47 8 C.F.R. § 205.1(a)(i)(C) (2011).
- 48 Humanitarian reinstatement was in the discretion of USCIS where the relative petition had already been approved, and where humanitarian circumstances compelled discretionary reinstatement. In addition, the person seeking reinstatement had to have a substitute sponsor for the Form I-864, Affidavit of Support. 8 C.F.R. § 205.1(a)(3)(i)(C) (2011). The substitute sponsor had to be one of the following relatives: spouse, parent, mother-in-law, father-in-law, sibling, child at least 18 years of age, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, grandchild, or legal guardian of the immigrant who is a U.S. citizen or lawful permanent resident and can otherwise qualify as a sponsoring relative with sufficient income to pledge financial support according to the Affidavit of Support requirements.
- 49 USCIS Policy Memorandum, “Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act” (Dec. 16, 2010), p. 2.
- 50 USCIS Policy Memorandum, “Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act” (Dec. 16, 2010), p. 3.
- 51 INA § 204(l)(1); See Adjudicator’s Field Manual, Chapter 10.21(b) and (c).
- 52 Information provided by USCIS (Nov. 30, 2010).
- 53 USCIS Policy Memorandum, “Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act” (Dec. 16, 2010); <http://www.uscis.gov/USCIS/Laws/Memoranda/2011/January/Death-of-Qualifying-Relative.pdf> (accessed June 14, 2011).
- 54 USCIS Policy Memorandum, “Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act” (Dec. 16, 2010); <http://www.uscis.gov/USCIS/Laws/Memoranda/2011/January/Death-of-Qualifying-Relative.pdf> (accessed May 27, 2011, p. 15). USCIS has indicated that this process may be initiated via the submission of a written request.
- 55 INA § 204(l)(1).
- 56 Information provided by USCIS (Jan. 7, 2011).
- 57 See Ombudsman’s Annual Reports 2010, pp. 63-66; 2009, pp. 37-39; 2008, p. 58.
- 58 Information provided by USCIS to the Ombudsman (Mar. 30, 2011).
- 59 *Id.*
- 60 *Id.*
- 61 Information provided by USCIS (Mar. 30, 2011 and Apr. 13, 2011).
- 62 See The USCIS Beacon Blog, “An Exceptional Day with Newly Naturalized Navy Recruits” (Mar. 4, 2011), <http://blog.uscis.gov/2011/03/exceptional-day-with-newly-naturalized.html> (accessed May 27, 2011).
- 63 8 C.F.R. § 103.7 (2011).
- 64 Information provided by USCIS (Mar. 30, 2011 and Apr. 13, 2011).
- 65 Information provided by USCIS (Mar. 30, 2011).
- 66 Ombudsman’s Annual Report 2010, p. 65.
- 67 Letter from Lofgren, Thornberry, Conyers, Pence, et al., Members of the House of Representatives, to Janet Napolitano, Secretary of Homeland Security (July 9, 2010).
- 68 Letter from Janet Napolitano, Secretary of Homeland Security, to Zoe Lofgren, Member of the House of Representatives (Aug. 20, 2010).
- 69 *Id.*
- 70 *Id.*
- 71 Information provided by USCIS (Mar. 30, 2011).
- 72 On December 23, 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457 (2008) was enacted. Most TVPRA 2008 SIJ provisions took effect March 23, 2009, although some took effect on the date of enactment. Section 235(d) amends eligibility for SIJ status at INA § 101(a)(27)(J); adjustment of status eligibility requirements are amended at INA § 245(h).
- 73 USCIS Questions and Answers, “New Validation Tool Aids Adjudication of Certain Employment-Based Petitions” (Mar. 3, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3cb744db86ebd210VgnVCM100000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM100000082ca60aRCRD> (accessed May 31, 2011).
- 74 *Id.*
- 75 *Id.*
- 76 USCIS Webpage, “Validation Instrument for Business Enterprise (VIBE) Program” (Mar. 2, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=521d735652f9d210VgnVCM100000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM100000082ca60aRCRD> (accessed June 14, 2011).
- 77 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), p. 3; http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/DB%20External%20Stakeholder%20Briefing_FINAL.PDF (accessed May 31, 2011).
- 78 See Dun & Bradstreet (D&B), “D&B Briefing for USCIS Information Sharing Session” (May 27, 2010), p. 7; http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/DB%20External%20Stakeholder%20Briefing_FINAL.PDF (accessed May 31, 2011).
- 79 USCIS Questions and Answers, “New Validation Tool Aids Adjudication of Certain Employment-Based Petitions” (Mar. 3, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3cb744db86ebd210VgnVCM100000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM100000082ca60aRCRD> (accessed May 31, 2011).

- 80 USCIS Fact Sheet, “Validation Instrument for Business Enterprises (VIBE) Program” (Mar. 3, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=521d735652f9d210VgnVCM100000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM100000082ca60aRCRD> (accessed May 31, 2011). *See also* USCIS Questions and Answers, “New Validation Tool Aids Adjudication of Certain Employment-Based Petitions” (Mar. 3, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3cb744db86ebd210VgnVCM100000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM100000082ca60aRCRD> (accessed May 31, 2011).
- 81 USCIS Executive Summary, “Information Sharing Session—Validation Instrument for Business Enterprises” (June 4, 2010); <http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/OPE%20Executive%20Summary%20VIBE%20061510.pdf> (accessed June 1, 2011).
- 82 Information provided by USCIS (June 15, 2011).
- 83 USCIS Alert, “H-2A Optional Checklist and Questions & Answers in Light of USCIS’s Implementation of VIBE” (June 1, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ff44be4e1c740310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD> (accessed June 13, 2011).
- 84 *Id.*
- 85 USCIS Outreach, “H-2A Petitions: Best Filing Practices Teleconference” (June 10, 2011).
- 86 USCIS Executive Summary, “Information Sharing Session—Validation Instrument for Business Enterprises” (June 4, 2010); <http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/OPE%20Executive%20Summary%20VIBE%20061510.pdf> (accessed June 1, 2011).
- 87 Information provided by USCIS (June 6, 2011).
- 88 INA § 203 (b)(5).
- 89 Data extracted from DHS Office of Immigration Statistics; *see* “2009 Yearbook of Immigration Statistics” (August 2010) (Table 6); http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf (accessed June 28, 2011).
- 90 USCIS Proposed Changes to USCIS Processing of EB-5 Cases (May 19, 2011), <http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Operational%20Proposals%20for%20Comment/EB-5-Proposal-18May11.pdf> (accessed May 31, 2011).
- 91 Recommendation #40, http://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf (accessed May 31, 2011).
- 92 USCIS Response to Recommendation #40 (June 12, 2009), pp. 2-4; http://www.dhs.gov/xlibrary/assets/uscis_response_cisomb_rec_40.pdf (accessed May 31, 2011).
- 93 USCIS Interoffice Memorandum, “Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions” (Dec. 11, 2009); <http://www.uscis.gov/USCIS/Laws/Memoranda/2009/adjudication-eb-5-regional-center-proposals-i-526-i-829.pdf> (accessed May 31, 2010).
- 94 8 C.F.R. §§ 204.6 (i) and (j)(6)(ii)(B) (2011).
- 95 USCIS Outreach, “EB-5 Immigrant Investor Program Stakeholder Meeting Presentation,” p.15 (Mar. 17, 2011) <http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/March%202011/EB-5-presentation-March-2011.pdf> (accessed June 13, 2011).
- 96 Letter from USCIS Director Alejandro N. Mayorkas to Senator Patrick J. Leahy, Chairman, Committee on the Judiciary (Dec. 3, 2010).
- 97 *See* USCIS Interoffice Memorandum, “Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions” (Dec. 11, 2009); <http://www.uscis.gov/USCIS/Laws/Memoranda/2009/adjudication-eb-5-regional-center-proposals-i-526-i-829.pdf> (accessed May 31, 2010).
- 98 Ombudsman’s Annual Report 2010, pp. 38-42; 2009 pp. 17-19.
- 99 Ombudsman’s Annual Report 2010, pp. 38-42.
- 100 *Id.*, p. 47.
- 101 *Id.*, p. 48.
- 102 USCIS 2010 Annual Report Response, pp. 9-10 (Nov. 9, 2010).
- 103 USCIS Executive Summary, “Listening Session—Request for Evidence Review and Revision” (Apr. 19, 2010); http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Event%20Pages/2010%20Events/April%202010/Executive_Summary_April%2012%20RFE%20Engagement.pdf (accessed May 31, 2011).
- 104 Information provided by USCIS (May 9, 2011); *see also* USCIS 2010 Annual Report Response, p. 6 (Nov. 9, 2010).
- 105 USCIS Webpage, “Request for Evidence (RFE) Templates for Comment” (May 23, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=95e92d40ee989210VgnVCM100000082ca60aRCRD&vgnnextchannel=95e92d40ee989210VgnVCM100000082ca60aRCRD> (accessed May 31, 2011).
- 106 USCIS Webpage, “Feedback Updates” (May 19, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=60a67e8cba5d8210VgnVCM100000082ca60aRCRD&vgnnextchannel=60a67e8cba5d8210VgnVCM100000082ca60aRCRD> (accessed May 31, 2011).
- 107 Ombudsman’s Annual Report 2010, pp. 47-48.
- 108 *Id.*
- 109 USCIS 2010 Annual Report Response, p. 9 (Nov. 9, 2010).
- 110 USCIS Webpage, “Teleconference: L-1B Specialized Knowledge” (May 16, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=d36c7faca91af210VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD> (accessed May 31, 2011).

- 111 Recommendation #38 (Dec. 22, 2008), http://www.dhs.gov/xlibrary/assets/uscis_response_cis_ombudsman_recommendation_38.pdf (accessed June 16, 2011); Ombudsman's Annual Reports 2010, pp. 104-107, 2009, pp. 61-63, 2008, pp. 57-58.
- 112 U.S. Government Accountability Office Report, "Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain," GAO-11-146, p. 25 (Dec. 2010); <http://www.gao.gov/new.items/d11146.pdf> (accessed May 31, 2011).
- 113 *Id.*, p. 26.
- 114 USCIS Press Release, "Secretary Napolitano Announces Launch of E-Verify Self Check" (Mar. 21, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=546b59984b9de210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 31, 2011); USCIS Fact Sheet, "DHS Launches E-Verify Self Check" (Mar. 21, 2011); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9feb59984b9de210VgnVCM100000082ca60aRCRD&vgnnextchannel=8a2791daff2df110VgnVCM1000004718190aRCRD> (accessed May 31, 2011); USCIS Transcript, "Press Conference on E-Verify Self Check" (Mar. 21, 2011); http://www.uscis.gov/USCIS/News/Transcript_SelfCheckSecrtry.pdf (accessed June 1, 2011).
- 115 *See, e.g.*, Colo. Rev. Stat. Ann. §8-17.5-102 (2008); Miss. Code Ann. §71-11-3(7)(e) (Supp. 2010); Mo. Rev. Stat. §§285-525, 285-535 (2009 Cum. Supp.); Pa. Stat. Ann., Tit. 73, §820.311 (Purdon Supp. 2010); S. C. Code Ann. §41-8-50(D)(2) (Supp. 2010); Tenn. Code Ann. §50-1-103(d) (2008); Va. Code Ann. §2.2-4311.1 (Lexis 2008); W. Va. Code Ann. §21-1B-7 (Lexis Supp. 2010). Additionally, on June 14, 2011, legislation was introduced in the U.S. Senate and House of Representatives to make E-Verify mandatory. Senator Chuck Grassley introduced S. 1196, the Accountability Through Electronic Verification Act; and Representative Lamar Smith introduced H.R. 2164, the Legal Workforce Act.
- 116 Chamber of Commerce of the United States of America et.al. v. Whiting et.al., 563 U.S. ____ (May 26, 2011), <http://www.supremecourt.gov/opinions/10pdf/09-115.pdf> (accessed June 1, 2011).
- 117 8 C.F.R. § 274a.13(d) (2011).
- 118 *Id.*
- 119 USCIS Response to Recommendation #35 (Jan. 2, 2009), http://www.dhs.gov/xlibrary/assets/uscis_response_to_cisomb_recommendation35_01_02_09.pdf (accessed June 16, 2011).
- 120 USCIS Response to Recommendation #35 (Jan. 2, 2009).
- 121 *See* CIS Ombudsman Update, "Mailing Issues: Have You Not Received a USCIS Document or Card?," http://www.dhs.gov/files/publications/gc_1305653428655.shtm (accessed June 14, 2011).
- 122 USCIS Press Release, "Secretary Napolitano and USCIS Director Mayorkas Launch Redesigned Website" (Sept. 22, 2009); http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/FY%2009/September%202009/website_redesign.pdf (accessed May 31, 2011).
- 123 *See* DOS Webpage, Ciudad Juarez Consulate, "USCIS Form I-601 – Application for a Waiver of Ground of Inadmissibility;" <http://ciudadjuarez.usconsulate.gov/hcis601.html> (accessed June 1, 2011); USCIS Webpage, "AAO Processing Times;" <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=8ff31eeaf28e6210VgnVCM10000082ca60aRCRD&vgnnextchannel=dfe316685e1e6210VgnVCM10000082ca60aRCRD> (accessed June 1, 2011).
- 124 *See* Ombudsman's Annual Reports 2010, pp. x, 50-59; 2009, pp. 24-27; 2008, pp. 37-42; 2007, pp. 25-31; 2006, pp. 33-36.
- 125 In FY 2010, 59% of calls were completed in the IVR. Between October and March FY 2011, 58.4% of calls were completed in the IVR. Information provided by USCIS (May 4, 2011).
- 126 *See* USCIS Questions and Answers, "USCIS Quarterly National Stakeholder Engagement" (Feb. 24, 2011); <http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pages/2011%20Events/February%202011/QA%20-%20Quarterly%20National%20Stakeholder%20Meeting.pdf> (accessed May 31, 2011).
- 127 USCIS 2010 Annual Report Response, p. 10 (Nov. 9, 2010).
- 128 Information provided by USCIS (Apr. 27, 2011).
- 129 USCIS Service Center National Customer Service Stakeholder Engagement (May 31, 2011).
- 130 USCIS 2010 Annual Report Response, p. 13 (Nov. 9, 2010).
- 131 *See* USCIS Questions and Answers, "USCIS Quarterly National Stakeholder Engagement" (Feb. 24, 2011); <http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pages/2011%20Events/February%202011/QA%20-%20Quarterly%20National%20Stakeholder%20Meeting.pdf> (accessed May 31, 2011).
- 132 Information provided by USCIS (May 27, 2011).
- 133 *See* USCIS Press Release, "New USCIS.gov Features Improve Customer Service" (Aug. 2, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1bb8d3e85433a210VgnVCM100000082ca60aRCRD&vgnnextchannel=8750aca797e63110VgnVCM1000004718190aRCRD> (accessed May 31, 2011).
- 134 Information provided by USCIS (May 18, 2011).
- 135 *Id.* *See* USCIS Meeting Notes, "USCIS National Stakeholder Listening Session, Information and Customer Service (ICS)" (Mar. 18, 2010) ("[USCIS] plans to offer this online service for all form types currently handled by the call centers"); [http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Event%20Pages/2010%20Events/March%202010/ICS%20Meeting%20Notes%2003_18_10%20\(FINAL\).pdf](http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Event%20Pages/2010%20Events/March%202010/ICS%20Meeting%20Notes%2003_18_10%20(FINAL).pdf) (accessed May 31, 2011).

- 136 Information provided by USCIS (Apr. 27, 2011).
- 137 Information provided by USCIS (May 25, 2011).
- 138 See USCIS Questions and Answers, “USCIS Quarterly National Stakeholder Engagement” (Feb. 24, 2011); <http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pages/2011%20Events/February%202011/QA%20-%20Quarterly%20National%20Stakeholder%20Meeting.pdf> (accessed May 31, 2011).
- 139 See generally USCIS Webpage, “National Customer Service Center” (Oct. 13, 2010); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=943696981298d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=aaab807b03d92b010VgnVCM10000045f3d6a1RCRD> (accessed June 1, 2011); USPS Webpage, “Track & Confirm,” <http://www.usps.com/shipping/trackandconfirm.htm> (accessed June 1, 2011).
- 140 Information provided by USCIS (May 5, 2011).
- 141 INA § 103; 8 C.F.R. §§ 100, 103 (2011).
- 142 INA §§ 101, 103; 8 C.F.R. § 103.
- 143 INA §§ 235(d), 287(a), et seq.; 8 C.F.R. § 287.5 (2011).
- 144 INA § 239.
- 145 ICE Policy Number 16021.1, “Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions” (August 20, 2010).
- 146 USCIS Interim Policy Memorandum 602-0029, “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 11-6” (Feb. 4, 2011).
- 147 Information provided by USCIS (Mar. 11, 2011).
- 148 USCIS News “National Initiative to Combat Immigration Services Scams” <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=01083ffa91570310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed June 14, 2011).
- 149 Ombudsman’s Annual Report 2010, p. 75.
- 150 In contrast, USCIS provides instructions for filing case specific inquiries, maintains centralized tracking systems such as the Service Request Management Tool (SRMT) for telephonic inquiries received by the USCIS National Customer Service Center and the Internet Quorum system for written inquiries received by USCIS or referred to USCIS by outside agencies, and dedicates resources to analyzing reports generated. For example, USCIS Headquarters is able to review SRMT response time metrics and take appropriate action. No such system exists for non-case specific complaints.
- 151 Exec. Order No. 13571, 76 Fed. Reg. 24339 (Apr. 27, 2011).
- 152 Ombudsman’s Annual Report 2010, pp. 16-22.
- 153 See USCIS Webpage, “USCIS Transformation Prototype Video,” <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=160205bc4cefe210VgnVCM100000082ca60aRCRD&vgnnextchannel=b1161bf8d43ee210VgnVCM100000082ca60aRCRD> (accessed June 14, 2011).
- 154 Information provided by USCIS (Nov. 18, 2010).
- 155 Information provided by USCIS (Feb. 7, 2011).
- 156 Information provided by USCIS (June 14, 2011)
- 157 USCIS Executive Summary, “USCIS Transformation: Proposed Rule for Mandatory E-Filing” (May 23, 2011); <http://www.uscis.gov/USCIS/Outreach/Upcoming%20National%20Engagements/National%20Engagement%20Pages/2011%20Events/April%202011/Executive%20Summary.pdf> (accessed June 1, 2011). USCIS is discussing mandatory e-filing in engagement sessions with stakeholders, but as of publication of this report, has not yet published a rule for review and comment.
- 158 Information provided by USCIS (Mar. 4, 2011); See generally USCIS Outreach, “USCIS Transformation: Customer And Advocate Listening Sessions & Webinars” (May 18, 2011), http://www.uscis.gov/USCIS/Outreach/Upcoming%20National%20Engagements/National%20Engagement%20Pages/2011%20Events/March%202011/March%20Listening%20Sessions_Public%20Report.pdf (accessed June 14, 2011).
- 159 Information provided by USCIS (Mar. 4, 2011).
- 160 Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011).

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