



Citizenship and Immigration Services
Ombudsman

Annual Report 2009

June 30, 2009



Homeland
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Letter from the Ombudsman



June 30, 2009

On behalf of the Ombudsman staff, we hereby submit our 2009 Annual Report to Congress, pursuant to section 452 of the Homeland Security Act.

Richard E. Flowers
Acting Ombudsman

Wendy E. Kamenshine
Acting Deputy Ombudsman

A Note of Appreciation

I would like to thank Homeland Security Secretary Janet Napolitano and former Secretary Michael Chertoff and their staffs for assisting this office in carrying out its statutory mission. Thank you also to Acting USCIS Deputy Director Michael Aytes and former Acting USCIS Director Jonathan “Jock” Scharfen for their dedication to providing ever-improving immigration benefits services and for assisting this office in furthering its mission. In addition, I would like to thank the entire USCIS Ombudsman Liaison Unit for assistance in the work of this office. Thank you also to former CIS Ombudsman Michael Dougherty and former Deputy Ombudsman Luke Bellocchi, for their dedicated service to the Ombudsman’s office.

Finally, I thank the Ombudsman’s entire staff and particularly the management team, Wendy Kamenshine, Acting Deputy Ombudsman and Annual Report Project Manager, James Reaves, Chief of Intake, Evaluations, and Problem Resolution, and Gary Merson, Chief of Legislative and Regulatory Affairs, for their leadership, dedication, and diligence in this Report’s publication.

Richard E. Flowers
Acting Ombudsman

Executive Summary and Annual Report Recommendations

This is the sixth Annual Report prepared by the Citizenship and Immigration Services Ombudsman (Ombudsman) since the office was established in 2003 pursuant to Section 452 of the Homeland Security Act.

During this reporting period, May 1, 2008 through April 30, 2009, there was a marked decrease in applications and petitions filed with U.S. Citizenship and Immigration Services (USCIS). This reduction in receipt levels has provided USCIS with the opportunity to work long-pending cases. However, with less fee revenue, the agency may now face new challenges. This Annual Report also discusses:

- USCIS processing times and backlogs, as well as a follow-up review of the 2007 summer surge in immigration filings;
- USCIS Transformation, a five-year \$491 million initiative to modernize USCIS systems;
- Ombudsman facilitation of interagency meetings, including between USCIS and the U.S. Department of State – the entities charged with processing permanent immigration applications and administering the annual numerical limits on family and employment-based visas;
- Ombudsman outreach, including the public teleconference series “How Is It Working for You?”

For the Ombudsman, it has been a time of transition with a new Department of Homeland Security (DHS) Secretary and a change in office leadership. During the reporting period, the Ombudsman has continued to expand outreach to stakeholders and review fundamental ways to assist individuals and employers in their interactions with USCIS.

Of particular note, during the reporting period, the Ombudsman and USCIS entered into a Memorandum of Understanding (MOU), the framework for a constructive durable relationship between the two Department of Homeland Security components. Among other provisions, the MOU

provides for more robust capabilities to resolve case problems. The Ombudsman is now better able to perform the statutory mission of assisting individuals and employers.

As required by statute, this Annual Report also summarizes the most pervasive and serious problems encountered by individuals and employers, including Requests for Evidence, USCIS customer service, and FBI name checks.

During the reporting period, the Ombudsman made eight formal recommendations, also discussed in this Report, which cover humanitarian, family, and business issues, including: (1) improving the motions to reopen/reconsider process; (2) expansion of payment methods for USCIS customers; (3) streamlining EB-5 investor visa processing; (4) challenges in humanitarian categories for victims of trafficking and specified criminal activity; (5) the E-Verify program that checks an individual’s employment eligibility; (6) naturalization; (7) immigration processing for foreign nurses; and (8) timely issuance of Employment Authorization Documents (EADs) for eligible applicants.

The following is a list of new 2009 Annual Report recommendations in summary form:

Recommendation 1

The Ombudsman recommends that USCIS immediately begin scanning immigration files that are likely to be needed for future adjudications. (AR2009-01)

Justification: Millions of historic paper files are necessary for future adjudications. Digitizing current cases for future use would lessen USCIS’ burden of storing, tracking, and retrieving physical case files and, thereby, increase agency processing efficiency and responsiveness to customers. Digitization of completed Forms I-485 (Application to Register Permanent Residence or Adjust Status), for example, would streamline the processing of future naturalization applications filed by these individuals.

Recommendation 2

The Ombudsman recommends that USCIS establish new protocols to ensure that relevant contract staff consistently record all A-file movement as outlined in the Records Operations Handbook. (AR2009-02)

Justification: Inconsistent use of USCIS file tracking systems is the primary reason for lost or misplaced A-files. Contract staff members are primarily responsible for A-file movement within USCIS, as well as to and from other DHS components, and for using USCIS systems to track and transfer A-files.

Recommendation 3

The Ombudsman recommends that through the Tri-Bureau Working Group (USCIS, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP)), USCIS expeditiously institute mandatory training of all personnel who work with A-files, specifically special agents, investigators, and officers. (AR2009-03)

Justification: Proper use of USCIS file tracking systems by all who request or handle A-files is crucial to providing timely customer service. While USCIS stores A-files, ICE and CBP also use them; files travel between USCIS and these components daily. The Tri-Bureau Working Group has opened communication lines among these DHS components, but mandatory training is needed to ensure consistent use and compliance.

Recommendation 4

The Ombudsman recommends that USCIS review processing methods for employment-based petitions between the Nebraska and Texas Service Centers to make American Competitiveness in the Twenty-First Century Act (AC21) portability provisions equally available to all customers. (AR2009-04)

Justification: The Nebraska and Texas Service Centers process concurrently filed employment-based petitions and green card applications differently, potentially depriving certain individuals of the option to take advantage of legislative portability provisions to change employers.

Recommendation 5

The Ombudsman recommends that USCIS post a practical tip sheet on its website to assist stakeholders in providing the necessary and relevant information for complex EB-1 cases. (AR2009-05)

Justification: USCIS provides limited information on the adjudicative standards for EB-1 cases; additional guidance would assist customers to better prepare EB-1 cases for filing.

Recommendation 6

The Ombudsman recommends that USCIS remove references to obsolete blood testing methods from the Adjudicator's Field Manual (AFM) and other published guidance. (AR2009-06)

Justification: Lack of a definitive preference for non-invasive DNA testing – over obsolete forms of blood testing that are neither widely available nor considered as reliable as DNA tests – may confuse USCIS officers and customers alike.

Recommendation 7

The Ombudsman recommends that USCIS continue to coordinate with the U.S. Department of State regarding DNA testing procedures and execute a Memorandum of Understanding (MOU) with DOS for resource allocation for DNA evidence gathering and chain-of-custody observance abroad. (AR2009-07)

Justification: When consular monitoring of DNA testing is unavailable, chain-of-custody requirements cannot be fulfilled. In the absence of such an agreement, the evidence collection necessary to respond to Requests for Evidence or Notices of Intent to Deny cannot be submitted.

Recommendation 8

The Ombudsman recommends that USCIS designate a USCIS DNA liaison to facilitate discussions between USCIS and the U.S. Department of State, as well as to periodically provide clarifications for DNA laboratories. (AR2009-08)

Justification: The liaison would coordinate DNA issues and maintain consistent testing policies among interested parties. Focusing specifically on USCIS' benefits processing role, the liaison would monitor and address, as needed, procedural, technical, and policy matters.

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I. Introduction and Mission

A. What Is the CIS Ombudsman?

Section 452 of the Homeland Security Act of 2002 established the position of Citizenship and Immigration Services Ombudsman (Ombudsman) to be appointed by the Secretary of the Department of Homeland Security (DHS) and report directly to the Deputy Secretary.

The office of the Ombudsman submits this Annual Report to Congress pursuant to 6 U.S.C. § 272(c)(1) regarding the activities of the Ombudsman¹ from May 1, 2008 through April 30, 2009.²

The modern “Ombudsman” was established in Sweden in 1809 to examine citizens’ complaints about the government and advocate for fair process. The Ombudsman provides unique perspectives because of its independent status,³ impartiality, and ability to obtain input directly from customers, stakeholders, and USCIS officials. The Ombudsman also provides an informal way to resolve a problem and seeks to ensure confidentiality and privacy.

The statutory mission of the Ombudsman is to:⁴

- Assist individuals and employers in resolving problems with USCIS;
- Identify areas in which individuals and employers have problems dealing with USCIS; and
- Propose changes to mitigate identified problems.

During the reporting period, the Ombudsman articulated a vision for the office:

- Promote and expand the office’s ability to assist individuals and employers now and in the future;
- Diligently study issues of humanitarian, family, and economic importance across the spectrum of immigration benefits and services;
- Propose credible solutions, that are impartial and operationally sound, to customer-service barriers;
- Identify best practices and forward-looking business models to meet future challenges for DHS; and
- Work cooperatively with government partners to benefit the public.

The Ombudsman encourages efficiency and better customer service at USCIS by recommending solutions to systemic problems in the delivery of immigration benefits⁵ and by identifying best practices. Working alongside USCIS, the Ombudsman also assists in resolving individual cases.

The Ombudsman meets widely and frequently with nongovernmental stakeholders, such as community-based organizations, legal and employer organizations, as well as with USCIS leadership and employees who have insight into agency operations.

The Ombudsman’s website is www.dhs.gov/cisombudsman, and the office has three e-mail boxes to receive different categories of public correspondence.⁶

1 The term “Ombudsman” refers to the Ombudsman, the staff, and the Ombudsman’s office.

2 In limited circumstances, this report includes relevant information from May and June 2009.

3 Section 452 of the Homeland Security Act (6 U.S.C. § 272) mandates that the Ombudsman report directly to the Deputy Secretary of DHS (as does the USCIS Director under section 451) and submit an annual report to the House and Senate Judiciary Committees without comment or amendment from DHS officers or employees or from the Office of Management and Budget.

4 Homeland Security Act of 2002, § 452; 6 U.S.C. § 272. See Appendix 1 for excerpts of relevant sections of the Act.

5 “Immigration benefits” is the term used to describe the service side of the immigration benefits system (contrasted with enforcement). Primary immigration benefits include lawful nonimmigrant status, permanent residence (evidenced by a “green card” and received either after arrival at a port of entry on an immigrant visa or, for those already present in the United States, upon “adjustment of status”), naturalization, asylum, etc. Secondary immigration benefits or interim benefits include work permits (i.e., Employment Authorization Documents, or EADs) and travel documents (e.g., advance parole) obtained while awaiting a primary benefit.

6 See section V., “Ombudsman Outreach.”

B. Ombudsman's Accomplishments

During the reporting period, the Ombudsman made eight formal recommendations and numerous informal recommendations to USCIS. The eight recommendations covered the following humanitarian, family, and business issues: (1) improving the motions to reopen/reconsider process; (2) expansion of payment methods for USCIS customers; (3) streamlining EB-5 investor visa processing; (4) challenges in humanitarian categories for victims of trafficking and specified criminal activity; (5) the E-Verify program that checks an individual's employment eligibility; (6) naturalization; (7) immigration processing for foreign nurses; and (8) timely issuance of Employment Authorization Documents (EADs) for eligible applicants.

The Ombudsman continued to focus on assisting individuals and employers with case problems. As discussed further in section IV., "Case Problems," the Ombudsman received approximately 4,100 case problems by U.S. mail or courier service. The Ombudsman worked to resolve 3,056 case problems with USCIS and replied directly to the inquirer in the remaining 1,038 case problems. In addition, the Ombudsman received over 7,200 e-mails during the reporting period.⁷ Working alongside USCIS, the Ombudsman initiated a special program to assist individuals with the processing of delayed EADs, an issue that arose following the 2007 surge in immigration filings and remained a challenge in 2008 and 2009.

The Ombudsman also continued its public teleconference outreach series on issues such as nurse visas, investor visas, DNA testing, and motions to reopen. As in previous reporting periods, the Ombudsman visited USCIS facilities, including service centers, field offices, and other locations. The purpose of these visits was to further understand the issues that individuals and employers encountered, identify systemic problems, and consult with USCIS field offices on proposed solutions. The Ombudsman also held numerous meetings with representatives from community-based organizations, employer associations, and the immigration legal community. As in prior years, the Ombudsman met with federal

government agency partners, including representatives from the Departments of State, Justice, Commerce, and Labor to facilitate interagency coordination and communication.

To assist Congress in framing comprehensive immigration reform, the Ombudsman commissioned a report by the DHS Homeland Security Institute (HSI)⁸ focused on the resources USCIS would require to effectively register, and issue evidence of status to, undocumented foreign nationals in the United States. This objective, non-partisan study builds on other DHS work to prepare for possible enactment of immigration reform.

The HSI study analyzed two implementation approaches: paper-based registration and processing, and a hybrid approach to include elements of digitized and paper-based processing. The study determined that the hybrid approach would be faster, less expensive, more effective, and involve fewer implementation risks. The Ombudsman will continue to review USCIS' policies, operations, and workforce issues as Congress debates immigration reform.

⁷ Received at cisombudsman@dhs.gov. The Ombudsman also receives e-mails at cisombudsman.publicaffairs@dhs.gov, primarily in connection with the office's public teleconferences, and at cisombudsman.trends@dhs.gov, to learn about systemic problems and suggestions for fixing them.

⁸ HSI now is called the Homeland Security Studies and Analysis Institute.

II. Pervasive and Serious Problems

The Homeland Security Act, section 452(c)(1)(B), states that the Ombudsman’s annual report shall include a “summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems.” To identify pervasive and serious problems, the Ombudsman meets with nongovernmental stakeholders, including community-based organizations, employer associations, and the immigration legal community, as well as USCIS personnel at Headquarters, service centers, and field offices. The Ombudsman also reviews USCIS statistical reports and relevant statutes, regulations, policy memoranda, and operating procedures. Perhaps most importantly, the case problems that individuals and employers submit to the Ombudsman often reveal systemic problems.

This year’s Annual Report details pervasive and serious problems that have impacted immigration benefits processing and initiatives designed to address them, such as challenges in managing the green card lines, the USCIS Transformation Initiative, customer service, and Requests for Evidence (RFEs) that slow adjudications and frustrate customers. Certain pervasive and serious problems discussed in previous annual reports remain as problems, but are not repeated in this Report. These include the need for better USCIS statistics, complexity and a lack of standardization of the immigration process, and written correspondence as a means for customers to contact the agency.⁹

In previous years, the Ombudsman also has reported on problems with USCIS’ internal communications, including those between USCIS Headquarters and the field, as well as communications with external stakeholders.¹⁰ The agency has addressed some of these issues, but many still remain, which the Ombudsman does not discuss in detail in this Report. However, to assist with interagency communications, during the reporting period the Ombudsman facilitated meetings

between USCIS and federal partner agencies including the U.S. Department of State (DOS) on managing the green card line and regarding DNA immigration testing issues, as well as with Customs and Border Protection (CBP) to ensure that customers receive the right information when they contact USCIS’ or CBP’s call center. The Ombudsman anticipates facilitating other interagency meetings in the coming year.

A. Moving Past the Surge: Processing Times and Backlogs

In summer 2007, USCIS experienced an unprecedented surge in immigration benefits filings that affected various aspects of agency operations.¹¹ As the Ombudsman reported last year, USCIS encountered a number of challenges in responding to the surge.¹² The large influx of filings at the service centers caused a “frontlog” in intake processing leading to lags in data entry, significant delays in issuing receipts, and problems securely storing and timely depositing filing fees. In addition, the agency announced that processing times in many offices had increased, even as USCIS sought to realign existing staff and hire new adjudicators.¹³

To better understand the surge, the Ombudsman met with officials from USCIS Headquarters, the four service centers, the

⁹ See Ombudsman’s Annual Report 2008, pp. 33-34, 53-56.

¹⁰ See *id.*, pp. 45-47, and Ombudsman’s Annual Report 2007, pp. 61-65.

¹¹ From June to August 2007, USCIS received nearly three million applications compared to 1.8 million filings during the same period the previous year. Naturalization applications reached 1.4 million in FY 2007, of which 460,000 were received in July. Ombudsman’s Annual Report 2008, p. 8. The surge in applications may be attributed to a confluence of factors, including a broad-based increase in USCIS fees that took effect in July 2007, grassroots campaigns to increase naturalizations prior to the 2008 election season, and changes to the July 2007 Department of State Visa Bulletin. *Id.*

¹² See *id.*, pp. 8-17.

¹³ For example, estimated processing times for naturalization applications in January 2008 were 16–18 months and 10–12 months for green card applications. USCIS, “When Can I Expect USCIS To Process My Case,” www.uscis.gov (accessed June 7, 2009).

National Benefits Center (NBC), and numerous field offices.¹⁴ The agenda for these sessions included the agency’s major challenges during and after the surge, strategies it developed in response, and operational changes it has since implemented. The Ombudsman concluded that:

- With the expansion of lockbox operations and the centralization of initial processing activities at the NBC, USCIS should respond differently to fee intake, receipting, and other front-end challenges that may arise in a future surge.
- Due to its reliance on fees to fund needed human resources and the difficulties accommodating training for new hires, USCIS experienced productivity delays during the surge.
- The increase in adjudicatory staff coupled with the current reduction in receipts affords USCIS an opportunity to improve processing times and address long-pending workloads.

1. Front-End Operations

a. Depositing Fees, Issuing Receipts, and Performing Initial Data Entry

Prior to the surge, USCIS was aware of the limits on its ability to deposit fees timely, issue receipts, and perform initial data entry. After 13 years of audits showing the service centers unable to timely deposit filing fees,¹⁵ USCIS initiated plans to shift fee depositing, receipting, and preliminary data entry to the Lockbox¹⁶ Operations Division, which oversees the expansion and operations of lockbox facilities nationwide. During the surge, however, the service centers were still primarily responsible for performing intake activities.

The surge exposed the service centers’ limited intake capabilities. At least two service centers did not have the physical capacity or staff to securely store and promptly process applica-

tions. Although the Chicago Lockbox, one of two lockboxes at that time, was fully operational during the surge, it could not contribute significantly to diminishing the frontlog because of its limited capacity.¹⁷

Besides maintaining the Chicago Lockbox, USCIS opened new lockbox facilities in Dallas and Phoenix in fall 2008. This network of lockboxes not only provides a greater measure of security and more efficient depositing of filing fees than the service centers, but is also better equipped to respond to both anticipated and unanticipated surges. According to USCIS, the lockboxes are able to adjust processing capacity to handle disruptions such as a surge in applications or the sudden closure of another lockbox facility. The Ombudsman understands that the lockbox operator will ramp up contract personnel in the event of an unanticipated surge within 90 days with the expectation that it process 90,000 filings per day. The lockbox network can process up to 36,000 filings daily during regular operations and 68,000 in an anticipated surge, such as Temporary Protected Status (TPS) re-registration periods.¹⁸

b. Conducting Security Checks and Resolving Initial Evidence Issues

Since the surge, USCIS has also endeavored to streamline initial case processing previously handled by service centers or field offices. Prior to the surge, the NBC performed initial processing activities, in addition to other duties, for family-based green card applications adjudicated by field offices. These activities originally included gathering corresponding A-files, as well as underlying approved visa petitions. Over time, the NBC’s responsibilities expanded to include conducting background security checks, performing initial evidence review, adjudicating ancillary Forms I-864 (Affidavit of Support), I-765 (Application for Employment Authorization) and I-131 (Application for Travel Document), issuing green card application denials to statutorily ineligible applicants, and forwarding cases scheduled for an interview to the field.¹⁹

14 The Ombudsman met with USCIS Domestic Operations and Lockbox Operations Division at USCIS Headquarters as well as the following field offices: Charleston, Charlotte, Dallas, Hartford, Los Angeles, Miami, New Orleans, Newark, Philadelphia, San Bernardino, San Francisco, St. Paul, and Washington, D.C.

15 Information provided by USCIS to the Ombudsman (Apr. 7, 2009).

16 A lockbox is “a bank under contract with the Department of Treasury that performs fee receipting, fee deposit, and initial data entry for specified forms according to business rules established by USCIS.” USCIS, “What Role Does the NBC Play?” www.uscis.gov (accessed June 7, 2009).

17 However, the Chicago Lockbox was able to deposit fees and perform initial data entry for certain application types, as well as assist service centers with standalone Forms I-130 (Petition for Alien Relative). Information provided by USCIS to the Ombudsman (Apr. 7, 2009).

18 *Id.*

19 Information provided by USCIS to the Ombudsman (Apr. 17, 2009); USCIS, “What Role Does the NBC Play?” www.uscis.gov (accessed June 7, 2009).

While the NBC's initial processing activities did not change markedly during the height of the surge, its responsibilities have since expanded. In June 2008, the NBC began processing naturalization applications, in addition to green card applications destined for the field for interviews.²⁰

Continued expansion of the NBC's involvement in initial processing aims to promote greater consistency in case preparation, minimize the number of continued cases in the field due to evidentiary issues, streamline the adjudications process, and ultimately reduce processing times. Some of the offices with which the Ombudsman met noted that initial processing at the NBC has improved the efficiency of adjudications and relieved adjudicators of performing routine, often time-consuming tasks. Others, however, stated a preference for completing initial processing activities in the field to avoid delays as the NBC attempts to resolve inefficiencies associated with its new responsibilities.

2. Surge Workforce and Training

a. Detailing Existing Personnel, Enlisting Former Staff, and Hiring New Adjudicators

In addition to adding weekend and overtime shifts and increasing processing facilities' hours of operation, USCIS' surge response involved detailing existing staff to offices with heavy workloads and enlisting retired staff to immediately increase productivity by avoiding the long training period and learning curve of new hires. The success of these efforts varied by office. For example, while the Miami Field Office received 52 detailees in FY 2008 to assist with the surge, other offices that were also struggling with the increased workload received no detailee help.²¹ Additionally, because USCIS only rehired 72 retired adjudicators (or annuitants), the retired annuitant program was not entirely successful.²² Although a few offices reported that retired personnel were useful in enhancing local productivity, several others attributed little benefit to the program.

20 USCIS Update, "Direct Mail Program Adds Form N-400, Application for Naturalization" (Sept. 15, 2008), <http://www.uscis.gov/files/article/n-400-sept-15-08-update.pdf> (accessed June 7, 2009).

21 Information provided by USCIS to the Ombudsman (Apr. 28, 2009).

22 Information provided by USCIS to the Ombudsman (Apr. 2, 2009).

USCIS also hired new employees via: (1) the 2007 fee schedule;²³ and (2) a re-programming request to Congress for surge hires. However, due in part to USCIS' reliance on increased fees to pay new hire salaries, the first job announcement for the new positions was not posted until October 2007, several months after the influx in applications. Because many new hires did not begin their jobs until well after several field offices began processing surge applications, the extent to which new hires assisted with the surge workload is unclear.

In addition, prioritization of hiring adjudications officers over support staff appeared to create a staffing imbalance at many field offices. For example, ten field offices received approximately 112 adjudicators funded by the 2007 fee increase, but no support staff; likewise, those same offices received 75 adjudicators under the Federal Career Intern Program, but only 16 support staff.²⁴ As a result, many field offices reported lacking the clerical help to address the increased workload.

b. Training New Hires²⁵

Training challenges also delayed new hire productivity. When the surge occurred, USCIS was in the process of transferring its training program and facility to an Academy dedicated solely to training USCIS officers. While the new Academy allowed USCIS to increase the number of students trained per class from 24 to 48 and hold six concurrent classes, the sheer volume of new adjudicator hiring during a concentrated time-frame delayed some new hire training, as shown in Figure 1.

Due to delays in hiring and the time it takes to train new officers, newly hired adjudicators, unable to complete the tasks they were hired to perform, assisted with clerical duties and shadowed experienced adjudications officers. Moreover, once new hires returned from training to their posts in the field, they required additional hands-on training, usually involving mentoring from a more senior adjudicator. Regarding the length of time required to acquire proficiency, one service center indicated that its new hires are only now, almost two years since the surge, becoming fully productive employees.

23 "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," 72 Fed. Reg. 29851, 29859 (May 30, 2007).

24 Information provided by USCIS to the Ombudsman (Apr. 29, 2009).

25 See section II.H, "USCIS Workforce and Training."

Figure 1: BASIC Training for New Adjudicators

Class Start Date	Cumulative Total of Students
October 1, 2007	24
October 15, 2007	47
January 28, 2008	94
February 4, 2008	136
February 11, 2008	175
February 19, 2008	212
March 11, 2008	257
March 18, 2008	298
March 25, 2008	342
April 1, 2008	386
April 15, 2008	434
April 21, 2008	480
May 5, 2008	528
May 12, 2008	574
May 19, 2008	622
May 27, 2008	668
June 3, 2008	716
June 10, 2008	763
June 24, 2008	811
July 9, 2008	858
July 23, 2008	906
July 29, 2008	954
August 5, 2008	1002
August 12, 2008	1049
August 19, 2008	1097
August 26, 2008	1144
September 3, 2008	1167
September 3, 2008*	1191
September 9, 2008	1239
September 16, 2008	1265
September 23, 2008	1311
September 30, 2008	1355
October 6, 2008	1402
October 14, 2008	1449
October 20, 2008	1497
October 27, 2008	1544
November 3, 2008	1592

* USCIS had two classes starting September 3, 2008.
Source: USCIS Academy

3. Processing Times and Backlogs

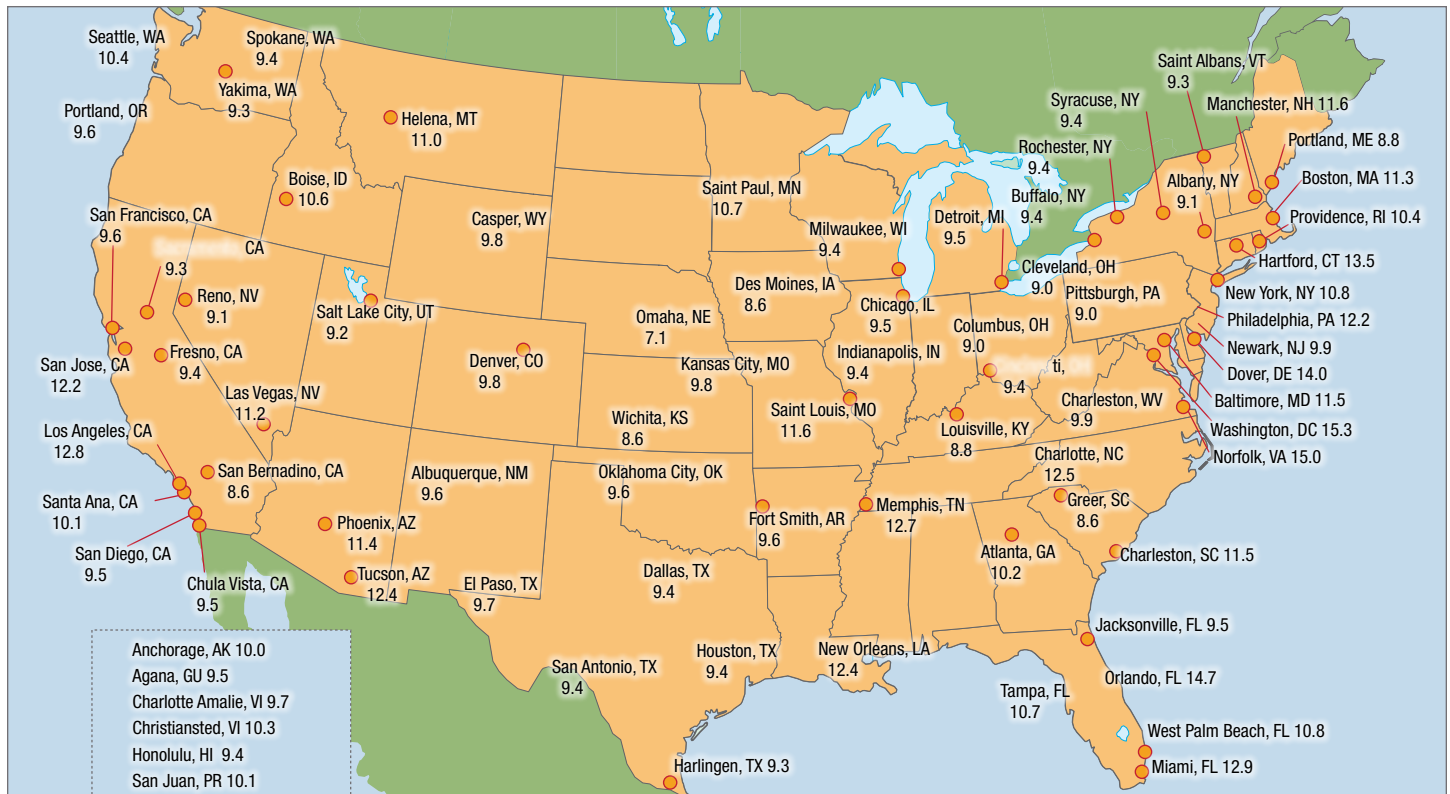
USCIS set a goal with the May 2007 fee rule “to substantially reduce, if not eliminate” its backlog through shorter processing times.²⁶ As part of the fee rule, USCIS announced plans to reduce processing times from six to four months for many applications, such as green cards, and from seven to five months (including the oath) for naturalization applications.²⁷ The 2007 summer surge brought unprecedented numbers of naturalization applications and other filings that interrupted these plans. During the surge period, USCIS projections for naturalization processing reached 16 to 18 months.²⁸ By April 2008, these estimated processing times declined to 13 to 15 months²⁹ and eight months later had declined to 9 to 10 months.³⁰

As of this writing, due to a decline in receipt levels and an increase in trained adjudicatory staff, USCIS may achieve the processing goals established in the fee rule. Most of the field offices with which the Ombudsman met believed they could reach agency processing goals for green card and naturalization applications by the end of FY 2009. Figures 2 and 3 compare processing times during the review of surge cases in April 15, 2008 with April 15, 2009.

USCIS also is positioned to reduce its backlog of pending cases. The agency is re-tasking staff at field offices to complete long-pending cases from the service centers. Over the last few quarters, case completion has exceeded receipts, allowing USCIS to gradually diminish its net backlog³¹ of cases.

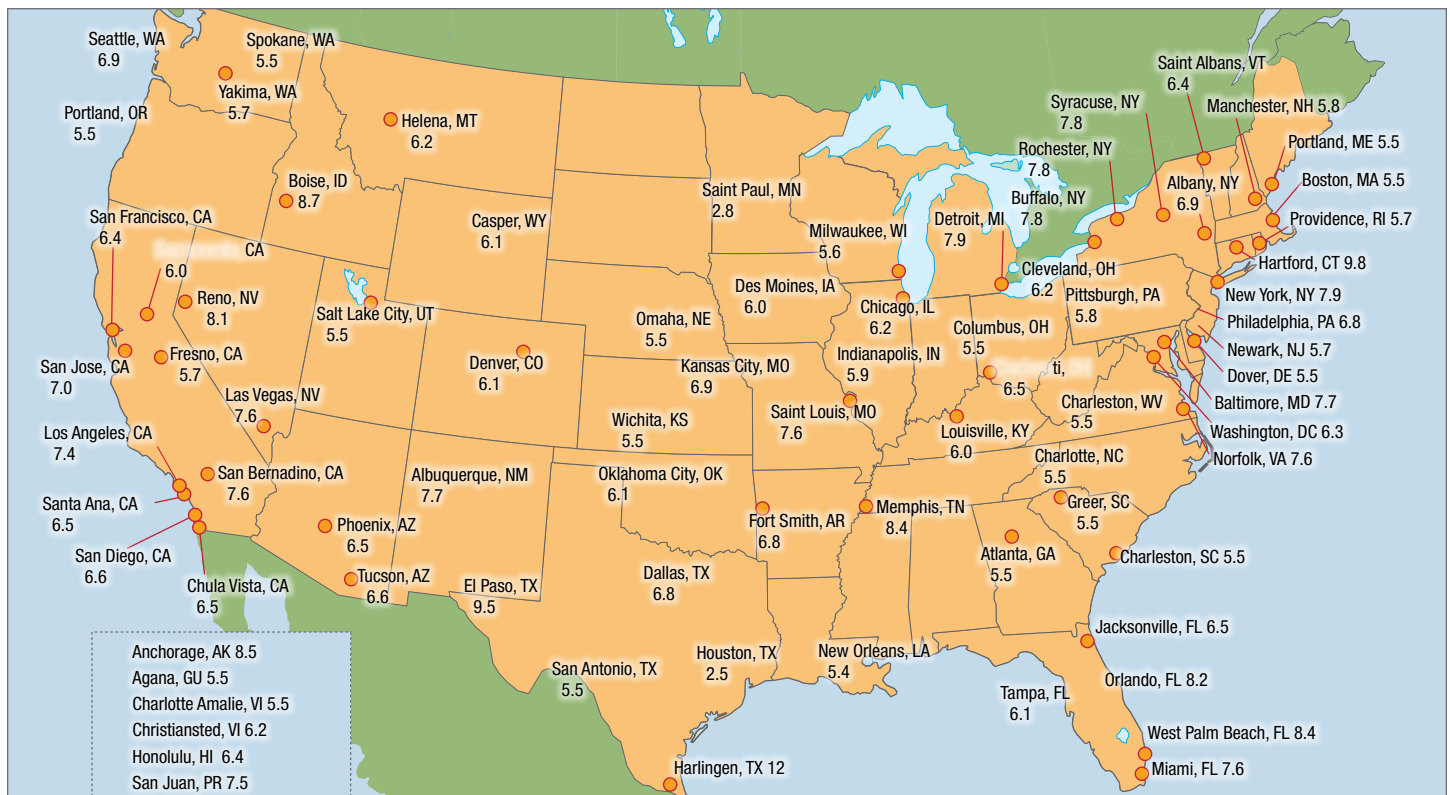
-
- 26 USCIS Production Update, FY 2009, First Quarter, p. 6; Ombudsman’s Annual Report 2008, p. 16 (detailing the agency’s backlog definition); section II.E., “Challenges with the USCIS Fee Funding Structure.”
- 27 “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” 72 Fed. Reg. 29851, 29859 (May 30, 2007).
- 28 USCIS, “When Can I Expect USCIS to Process My Case?” (Jan. 16, 2008), www.uscis.gov (accessed June 7, 2009).
- 29 USCIS News Release, “USCIS Updates Projected Naturalization Case Processing Time” (Apr. 2, 2008), www.uscis.gov (accessed June 7, 2009).
- 30 USCIS Fact Sheet, “USCIS Makes Major Strides in 2008” (Nov. 6, 2008), www.uscis.gov (accessed June 7, 2009).
- 31 “Net backlog” refers to the gross backlog minus “the number of cases pending once cases cannot be adjudicated due to reasons outside USCIS’ control (e.g. FBI name check; visa retrogression). . . .” USCIS Production Update, FY 2008, Fourth Quarter; see also Ombudsman’s Annual Report 2008, p. 16.

Figure 2: Naturalization Application Processing Times at USCIS Field Offices (Apr. 15, 2008)



Source: USCIS Processing Time Data

Figure 3: Naturalization Application Processing Times at USCIS Field Offices (Apr. 15, 2009)



Source: USCIS Processing Time Data

B. USCIS Modernization³²

In previous reporting periods, the Ombudsman emphasized the importance of USCIS modernization to address a number of agency-wide challenges. Improved case management systems, for example, would enhance file tracking capabilities to limit the number of lost files.³³ Additional data storage would enable faster and more thorough security checks.³⁴ User-friendly, electronic application options would enhance customer service.³⁵ However, USCIS solutions were constructed in response to individualized processes throughout different branches, rather than to meet operational objectives throughout the agency as a whole. USCIS developed the Transformation Initiative (Transformation) to integrate the mostly decentralized improvements.

During the reporting period, the Ombudsman monitored the following USCIS modernization efforts:

- **Deployment of the Transformation Initiative** – A multi-year solution for modernization through new, proprietary systems that would transition USCIS from a fragmented, paper-based process to a centralized, electronic environment.
- **Development of Pilot Projects** – These projects – including the Biometrics Storage System, the Secure Information Management Service, the Identity Management Pilot, and the Digitization Pilot – seek to modernize a range of USCIS systems.
- **Current USCIS Processes** – Various USCIS functions – including data collection mechanisms, document and mailing technologies, and fingerprint refresh systems – can be improved immediately, while USCIS develops more permanent solutions within Transformation.

32 This Annual Report section incorporates the Better Case Management Through Paperless Applications, Information Technology, The Need for Better Statistics, Streamlining the Fingerprint Process, and Card Production sections from the Ombudsman's 2008 Annual Report.

33 See Ombudsman's Annual Report 2008, pp. 31-33.

34 See *id.*, pp. 44-45.

35 See section III.C.2., "Improving the Process for Payment of USCIS Filing Fees and Other Costs."

1. Looking Ahead to USCIS Transformation

In November 2008, USCIS awarded a \$491 million Transformation Solution Architect Task Order contract to IBM.³⁶ Transformation addresses three functional areas:³⁷

- **Security** – Centralization of fragmented systems into one robust system will allow USCIS to: (1) store, retrieve, and assess greater volumes of biometric data; (2) perform faster, more direct security checks; and (3) improve communication among partner agencies.³⁸
- **Customer Service** – Customers will be able to establish online accounts; update personal profiles; and electronically complete, file, and track their applications. The Ombudsman understands that USCIS plans to be able to adjudicate cases within specified timeframes, and provide greater transparency with regard to case status and immigration benefits available to customers.
- **Operational Efficiency** – Central storage of digitized cases will facilitate better case management and tracking, as well as faster processing, data sharing, and adjudications.

a. Timeline

USCIS has structured Transformation for a five-year deployment composed of seven releases. The first four releases will be applied to naturalization cases,³⁹ and the final three will focus sequentially on immigrant, humanitarian, and nonimmigrant cases. In March 2009, an IBM stop-work order delayed Transformation to allow reassessment of certain processes specified by DHS, USCIS, and IBM subject matter experts. At the time of this writing, due to the stop-work order, USCIS could not provide concrete deployment or release dates.

36 USCIS Interoffice Memorandum, "FY 2008 Accomplishments/FY 2009 Outlook/Transformation Contract Award" (Nov. 6, 2008).

37 USCIS Transformation Program: Concept of Operations, Version 1.5 (Mar. 28, 2007), p. 4, http://www.uscis.gov/files/nativedocuments/TransformationConOps_Mar07.pdf (accessed June 7, 2009).

38 Partner agencies include the Departments of State, Justice, Labor, and other Department of Homeland Security components, as well as intelligence and law enforcement agencies.

39 Releases 1-4 provide the foundation for Transformation by establishing early value projects, account management, case management, and partner agency interface systems that are later expanded upon in releases 5-7. Information provided by USCIS to the Ombudsman (Jan. 29, 2009).

Assuming that USCIS is able to get back on schedule, the agency informed the Ombudsman that customers' first tangible Transformation experience will come in February 2011 with the scheduled rollout of a release allowing naturalization applicants to complete, file, and track their applications online.

Deployment of Transformation requires an effective balance of planning and implementation – a challenge USCIS has faced in prior modernization efforts. The Ombudsman observes, and previous USCIS experience has shown, that the agency should work with stakeholder groups to ensure sufficient planning for the long-term solution, while setting timelines and benchmarks to keep up with business and systemic advancements.

b. Structure

The Transformation Program Office (TPO), under the Office of Transformation Coordination (OTC), manages the program for which both are named. Reporting directly to the USCIS Deputy Director, the TPO interacts with USCIS components involved in agency-wide modernization efforts. Recently, the TPO has also begun to interact with other federal agencies that will partner with USCIS in later phases of Transformation. The OTC and the TPO collectively have approximately 40 employees, not including individuals who work with Transformation from other components or agencies.⁴⁰

c. Funding

Transformation funds originally were provided through appropriations; however, since 2008, funding has been, and plans to be, derived exclusively from premium processing fees. These fees totaled approximately \$212 million in FY 2007, \$163 million in FY 2008, and \$81 million for FY 2009 YTD (Oct.-Apr.).⁴¹ In March 2009, USCIS informed the Ombudsman that a decrease in fee receipts should not affect Transformation efforts.

Although the current IBM contract is valued at \$491 million, the overall costs of Transformation are unclear. Should USCIS uncover the need for additional IT upgrades, the agency advised the Ombudsman that the agency could incur substantial additional costs.⁴²

d. Need for Increased Coordination and Communication

Synchronization among the various components tasked with designing and implementing Transformation is essential to the program's success. The TPO has established working groups with officials from USCIS Headquarters components, service centers, and field offices to ensure representation from a cross-section of functions and to assist in planning Transformation objectives.

However, issues with coordination have led to redrafting of strategic plans, resulting in delays. For example, in meetings with Transformation and the USCIS Office of Information Technology (OIT), officials acknowledged a lack of communication between the two components. OIT officials indicated to the Ombudsman that the Transformation contract contemplated IT capabilities, including adequate bandwidth, robust testing environments, and critical systems (such as the Biometric Storage System) that were and, in some cases, still are not in place (see next section).

Transformation leadership also acknowledges a communication gap between program officials that plan Transformation objectives and IT groups that construct the solutions. Lack of understanding between these components on both the requirements and obstacles they each face may result in redundant work, inefficiencies, and delays.

2. Development of Existing Pilots

By testing new ideas, pilot projects comprise an intermediary step between theoretical models for permanent solutions and final adoption of these approaches to systemic problems.

a. Biometric Storage System Pilot

The Biometric Storage System (BSS) is intended to enhance the collection and management of biometric data by consolidation into one centralized system.⁴³ When the BSS is fully developed, customers will electronically submit biometric data, after which USCIS will use a central conduit – the Enterprise

40 Information provided by USCIS to the Ombudsman (Jan. 29, 2009).

41 USCIS Fee Collections.

42 Information provided by USCIS to the Ombudsman (Mar. 10, 2009).

43 "Privacy Act; Biometric Storage System of Records," 72 Fed. Reg. 17172, 17173 (Apr. 6, 2007).

Service Bus (ESB)⁴⁴ – to directly forward data for review by several government agencies.⁴⁵

Development and completion of the BSS is essential to USCIS' goal of becoming a more efficient, electronically-based agency. It requires completion before being integrated as a foundational component of Transformation as it:

- Enables USCIS to more efficiently assess biometric data, allowing the agency to better identify fraud and meet national security directives.⁴⁶
- Replaces several antiquated USCIS legacy systems, eliminating duplicative work and simplifying data flow.
- Increases storage capabilities, thereby eliminating the need for customers to submit fingerprints every 15 months.⁴⁷
- Improves card and document technologies by storing biometric data and linking with legacy systems to share card production data, including identifying card numbers and card production status.⁴⁸
- Allows for better communication among government databases and personnel through its streamlined functionalities.⁴⁹

USCIS continues to face challenges in developing the BSS for initial deployment,⁵⁰ scheduled for August 2009,⁵¹ and for its full integration into Transformation which is not yet scheduled. The OIT now is responsible for the completion

of the BSS, while the TPO is responsible for its integration into Transformation;⁵² therefore, coordination between these offices is essential. However, in discussions with the Ombudsman, both groups acknowledged a lack of clarity regarding project goals. The TPO is considering the development of a biometrics working group to provide for better communication and coordination on how and when the BSS will integrate into Transformation.⁵³

The Ombudsman also understands that the BSS lacks concrete timelines for important development goals. Notably, completion of the BSS relies on the absorption of the legacy system, the Biometric Benefit Support System,⁵⁴ into the BSS; yet, USCIS informs the Ombudsman that this integration has not yet been scheduled.

b. Secure Information Management Service (SIMS) Pilot

In July 2007, USCIS introduced the SIMS Pilot, an electronic case-management system for all international adoption cases.

In the 2008 Annual Report, the Ombudsman recommended that USCIS implement a comprehensive case management system and, in particular, evaluate the SIMS pilot as a potential model.⁵⁵ In response, USCIS indicated that it was still determining whether the SIMS pilot could be used for case types beyond adoption. USCIS also stated that more information would become available following the Transformation contract award.⁵⁶

USCIS recently indicated that Transformation plans do not include development of further versions of the SIMS Pilot, and

44 The ESB allows for connectivity among various government agencies, including USCIS, ICE, DOS, and US-VISIT. The ESB supports these agencies through returns of “consolidated and correlated view[s] of an alien’s past interactions with the Government as he or she passed through the U.S. immigration system.” USCIS 2008 Annual Report Response, p. 7.

45 The BSS will interface with numerous internal and external government agencies, including US-VISIT/IDENT, the FBI, and DOS. U.S. Department of Homeland Security, “Privacy Impact Assessment for the Biometric Storage System,” p. 11 (Mar. 28, 2007).

46 See “Privacy Act; Biometric Storage System of Records,” 72 Fed. Reg. 17172, 17173 (Apr. 6, 2007).

47 See section II.B.3.c., “Streamlining the Fingerprint Process.”

48 See “Privacy Act; Biometric Storage System of Records,” 72 Fed. Reg. 17172, 17173 (Apr. 6, 2007); see also section II.B.3.b., “Document and Mailing Technologies.”

49 See “Privacy Act; Biometric Storage System of Records,” 72 Fed. Reg. 17172, 17173 (Apr. 6, 2007).

50 Ombudsman’s Annual Report 2008, p. 44. As noted in that report, BSS has been in development for several years.

51 Information provided by USCIS to the Ombudsman (Mar. 26, 2009).

52 The Transformation Program Office was originally tasked with developing the BSS, but in October 2008, the pilot was transferred to the OIT for completion. Information provided by USCIS to the Ombudsman (Nov. 14, 2008).

53 This working group will include various components, including USCIS, the FBI, and US-VISIT. Information provided by USCIS to the Ombudsman (Mar. 10, 2009).

54 “[The] BBSS is a legacy system that serves as the conduit from USCIS to the Federal Bureau of Investigation (FBI) for conducting fingerprint biometric background checks and storing the results.” U.S. Department of Homeland Security, “Privacy Impact Assessment for the Biometric Storage System,” p. 2 (Mar. 28, 2007).

55 Ombudsman’s Annual Report 2008, pp. 24-25.

56 USCIS 2008 Annual Report Response, pp. 6-7.

that it is unclear whether SIMS will continue to be used for future management of adoption cases.⁵⁷

c. Identity Management Pilot

The Identity Management Pilot (also referred to as “Enumeration”) uses a randomly generated number to link an individual to his or her biometric data, providing a person-centric view of an individual’s information throughout multiple government agencies.

Last year, the Ombudsman reported that the Identity Management Pilot was fully developed, but that there was no timeline for deployment within USCIS.⁵⁸ USCIS began assigning enumerators to individuals in the SIMS Pilot. However, as noted in the previous section, the SIMS Pilot will not be further developed.

Currently, there are no plans to expand the use of enumerators via other USCIS initiatives.⁵⁹ Instead, USCIS informs the Ombudsman that, beginning in July 2009, enumerator technology will be used by the DOS for individuals who apply for benefits under the Adam Walsh Child Protection and Safety Act of 2006.⁶⁰

d. Digitization Pilot

RECOMMENDATION 1

The Ombudsman recommends that USCIS immediately begin scanning immigration files that are likely to be needed for future adjudications.⁶¹ (AR2009-01)

USCIS operates in a largely paper-based environment, as customers file applications and petitions on paper forms with hard copies of supporting documentation. The nearly six million paper immigration files that USCIS receives yearly and moves among agency offices raise file tracking issues often

leading to delayed adjudications, lost files, and the need for customers to make case status inquiries with USCIS.⁶²

Millions of historic paper files are necessary for future adjudications. Digitization of these cases now would provide USCIS the means to use scanned case files later in the immigration process. Digitization of completed Forms I-485 (Application to Register Permanent Residence or Adjust Status), for example, would streamline the processing of future naturalization applications filed by these individuals. Digitizing current cases for future use would lessen USCIS’ burden of storing, tracking, and retrieving physical case files and, thereby, increase agency processing efficiency and responsiveness to customers.⁶³

In fall 2006, the agency initiated the Paperless Data-Sharing Pilot, which provides USCIS the capability to “scan, digitize, and make electronic files available to all authorized users.”⁶⁴ At the Records Digitization Facility (RDF) in Kentucky, USCIS digitizes approximately 50,000 immigration case files per month.⁶⁵ Scanned images are stored in the Enterprise Document Management System (EDMS), which provides licensed users (e.g., USCIS adjudicators and DHS law enforcement officials) with online access to these digitized immigration case files.

The RDF initiated digitization services by scanning TPS case files and oversized files from the USCIS National Records Center. However, most re-registered TPS applications do not benefit from digitization, as they are adjudicated using a case management program that does not use the scanned files. The RDF is currently scanning approximately 350,000 Temporary (T-) and A-files from the Law Enforcement Support Center

57 Information provided by USCIS to the Ombudsman (May 18 and 27, 2009).

58 Ombudsman’s Annual Report 2008, p. 26.

59 Information provided by USCIS to the Ombudsman (May 18, 2009).

60 Pub. L. No. 109-248 (July 27, 2006).

61 See generally USCIS, “USCIS Electronic Filing for Immigration Benefits,” www.uscis.gov (accessed June 7, 2009). USCIS currently adjudicates e-filed applications and petitions using existing paper-based processes; USCIS does not use digital images of e-filed applications and petitions to complete processing.

62 See USCIS Annual Report 2008, p. 30; see also section II. G., “File Transfers and Tracking.”

63 See U.S. Department of Justice News Release, “INS Dedicates National Records Center in Lee’s Summit, Missouri” (Feb. 25, 2000), www.uscis.gov (accessed June 7, 2009).

64 USCIS 2007 Annual Report Response, p. 1.

65 The RDF, which opened in September 2006, originally received \$20 million in appropriated funds, and its FY 2008 and FY 2009 budgets were \$28 million and \$29 million, respectively. Under contractual production goals, the RDF is to digitize 50,000 file equivalents per month (a file equivalent is 125 pages, but many files are much larger or smaller). As of June 2009, the RDF had digitized a total of approximately 725,500 files. Information provided by USCIS to the Ombudsman (June 15, 2009).

(LESC).⁶⁶ These immigration files have a law enforcement nexus and, according to USCIS officials, are ideal files to scan because the LESC does not release files during an investigation that may be needed by USCIS for adjudications. The RDF also has scanned limited numbers of naturalization, petition-based, and asylum case files.

Last year, the Ombudsman issued AR2008-02, a recommendation that USCIS publicize near-term goals for the digitization efforts. USCIS responded that it had, “begun to educate other DHS and non-DHS components about the initiatives.”⁶⁷ From this beginning, USCIS’ recent upgrade of its EDMS storage capacity has allowed for the addition of thousands of users.⁶⁸ Finally, on March 16, 2009, USCIS initiated “On-Demand-Scanning,” which involves phasing in case digitization at the National Records Center based on specific requests.⁶⁹

The Ombudsman will continue to monitor the progress of USCIS’ digitization efforts.

3. Improving Everyday Processes

Innovative use of available resources may enhance certain existing systems until Transformation improves future processes.

a. Obtaining and Maintaining Better Statistics

In the 2008 Annual Report, the Ombudsman highlighted the importance of collecting and maintaining accurate statistics and reports.⁷⁰ For example, statistical data were integral in

66 The Law Enforcement Support Center is an ICE program that provides “immigration status and identity information to local, state, and federal law enforcement agencies on [individuals] suspected, arrested, or convicted of criminal activity.” See generally U.S. Immigration and Customs Enforcement, “Law Enforcement Support Center” <http://www.ice.gov/partners/lesc/index.htm> (accessed May 27, 2009).

67 USCIS 2008 Annual Report Response, p. 9.

68 Information provided by USCIS to the Ombudsman (Sept. 2008) (The upgrade increased system capacity from 2,500 users to 15,000 users. According to USCIS Records Division officials, there are no issues with EDMS storage space.)

69 Information provided by USCIS to the Ombudsman (Mar. 16, 2009). In the first phase, scheduled to run for six months, the National Records Center will scan approximately 1,365 files per month based on requests e-mailed to its Information Liaison Division. The second phase will include phoned-in expedite requests for scanning and will add approximately 7,000 files per month. The third phase will add system-generated expedite requests and FOIA requests with approximately 16,500 additional requests per month for a total of approximately 24,900 per month.

70 Ombudsman’s Annual Report 2008, pp. 33-34.

structuring USCIS’ Backlog Elimination Plan and, later, in determining how fees in the USCIS fee review could recover the costs of processing and adjudicating immigration cases. These data are not only useful for USCIS’ tracking purposes, but also to provide Congress and other stakeholders a quantitative basis for making comparisons.

Since 1991, the agency (or its predecessor, legacy INS) has used the Performance Analysis System (PAS) to track and maintain statistics and reports. However, PAS relies on manual data entry, which has led to inaccurate and inconsistent reporting by field offices and service centers. USCIS has contemplated replacing PAS with the enterprise Performance Analysis System (ePAS), which by accumulating data electronically, rather than manually, should streamline data collection and improve usability.⁷¹ USCIS has not yet designed ePAS, and has no timeline for deployment.

b. Document and Mailing Technologies

One of the final steps for individuals engaged in the immigration benefits process is the receipt of certain identifying cards, permits, and documents from the USCIS Integrated Document Production (IDP) Branch. Part of the Domestic Operations Directorate of USCIS, the IDP Branch is responsible for overseeing and managing the facilities that develop, personalize, issue, and deliver secure USCIS documents. It currently produces, for example, green cards, EADs, Reentry Permits, and Refugee Travel Documents.

USCIS document production and mailing processes have raised concerns, as there is no mechanism by which to track delivery of USCIS documents to ensure receipt by the proper recipient.⁷² Last year, the Ombudsman highlighted some of the issues that may arise from delivery problems, including lost or stolen documents and unnecessary delays.⁷³

i. Document Production

In summer 2009, USCIS plans to embed Radio-Frequency Identification chips in green cards.⁷⁴ These chips will allow

71 USCIS 2008 Annual Report Response, p. 8.

72 See “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule,” 72 Fed. Reg. 4888, 4899 (Feb. 1, 2007). USCIS currently delivers secure documents via USPS first class mail.

73 Ombudsman’s Annual Report 2008, p. 60.

74 Information provided by USCIS to the Ombudsman (Apr. 30, 2009).

DHS to verify an individual's identity and other data through real-time queries against lookout databases, and will aid CBP in determining admissibility at a port-of-entry.⁷⁵

In fall 2009, USCIS plans to issue a machine-readable Form I-766 that will act as both an EAD and an advance parole document.⁷⁶ This "combo-card" will be available to eligible permanent resident applicants who request both interim benefits.

ii. Mailing Technologies

The IDP Branch has worked to improve its mailing capabilities and enhance delivery of secure USCIS documents through the Secure Mail Initiative (SMI).⁷⁷ Since SMI's inception in July 2008, USCIS has shipped 75,000 travel documents to customers via USPS priority mail with delivery confirmation.⁷⁸ Currently, the pilot is limited to Reentry Permits and Refugee Travel Documents issued by the Nebraska Service Center (NSC), but will expand in two phases to include all USCIS secure documents.

Phase 1, scheduled for deployment in summer 2009, will allow for two to three day delivery of all secure documents via the USPS Priority Mail service with delivery confirmation.⁷⁹ During the same timeframe, USCIS will also launch the Card Personalization System Technology Refreshment, which links individuals to their secure documents through a combination of unique identifiers, allowing for increased accuracy and security in mailing.⁸⁰

Phase 2 will include the addition of a new card production facility, as well as provide several avenues through which customers may inquire with USCIS as to the status of card

delivery.⁸¹ Customers will be able to call the National Customer Service Center or access USCIS Case Status Online to receive the USPS delivery tracking number, which they can then use on the USPS website to track the delivery. Phase 2 is tentatively scheduled for deployment in March 2010.⁸²

c. Streamlining the Fingerprint Process

Many applications, petitions, and other benefits require that customers submit fingerprints for USCIS to conduct fingerprint-based background checks. USCIS considers fingerprints valid for 15 months, and requires customers to submit new fingerprints if the adjudication of their case is not completed during the validity period.⁸³

In the 2008 Annual Report, the Ombudsman discussed the issues associated with the process of resubmitting fingerprints, including inconvenient fingerprint appointments for customers and case delays.⁸⁴ Additionally, FBI fees for individual fingerprint refreshes have resulted in the following costs to USCIS: \$866,933 in FY 2008, \$247,360 in FY 2007; and \$392,224 in FY 2006.⁸⁵

The BSS should improve fingerprint processing. Besides replacing the legacy fingerprint storage systems with a centralized system that will eliminate the need for resubmission of fingerprints, its functionalities include updated security features.⁸⁶ Meanwhile, until the BSS is fully developed, USCIS should develop temporary mechanisms to improve fingerprint refresh capabilities.

BEST PRACTICE

The NSC and Texas Service Center (TSC) can now refresh batches of up to 7,000 fingerprints each day, eliminating the need for many employment-based customers to return to Application Support Centers (ASCs) for new fingerprints.⁸⁷

75 See U.S. House Appropriations Committee, Subcommittee on Homeland Security hearing on "Biometric Identification" (Mar. 19, 2009) (written testimony of Kathleen Kraninger, DHS Deputy Assistant Secretary for Policy, Screening Coordination, and Robert A. Mocny, Director of US-VISIT, DHS National Protection and Programs Directorate), http://appropriations.house.gov/Witness_testimony/HS/Kathleen_Kraninger_3_19_09.pdf (accessed June 7, 2009).

76 Information provided by USCIS to the Ombudsman (Apr. 30, 2009 and May 20, 2009).

77 See "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule," 72 Fed. Reg. 4888, 4899 (Feb. 1, 2007).

78 Information provided by USCIS to the Ombudsman (Apr. 30, 2009).

79 Information provided by USCIS to the Ombudsman (Feb. 9, 2009 and Apr. 30, 2009).

80 *Id.*

81 *Id.*

82 *Id.*

83 USCIS National Stakeholder Meeting – Answers to National Stakeholder Questions (Mar. 25, 2008, revised Apr. 3, 2008), <http://www.uscis.gov/files/nativedocuments/MARCBOQA.pdf> (accessed June 7, 2009).

84 Ombudsman's Annual Report 2008, p. 44.

85 Information provided by USCIS to the Ombudsman (June 2, 2009).

86 See section II.B.2.a., "Biometric Storage System."

87 Information provided by USCIS to the Ombudsman (May 8, 2009).

C. Managing the Employment-Based Green Card Line

In previous annual reports, the Ombudsman discussed the many complexities impacting the immigrant visa process, i.e., the green card line.⁸⁸ This year's discussion focuses principally on three issues: USCIS case management limitations; the difficult task of coordinating different departments' activities in administering the immigrant visa process; and, the future impact of the 2007 surge on the employment-based preference categories.

1. Key Points

- USCIS continues to lack full visibility of its employment-based green card case inventory due to its antiquated case-management IT systems. This well-known problem remained a significant operational and planning constraint on USCIS in 2008, and may remain so for years to come.
- USCIS' inability to fully identify its case inventory contributed to fluctuations in the DOS Visa Bulletin⁸⁹ that, in part, led to the 2007 surge in immigration filings.⁹⁰
- Based on current estimates of employment-based green card queues, visa wait-times within some preference categories for certain nationals may exceed 10 years.

2. Employment-Based Immigrant Visa Allocations

The INA establishes an annual ceiling of 140,000 employment-based immigrant visas⁹¹ and limits the number of such visas available within each of the five employment preference categories. In addition, the INA limits the number of visas that nationals of any single country may use annually to approximately 25,620; of this single country total, approximately 9,800 are allocated to employment-based cases, and the remaining visas are distributed among the family-based

categories.⁹² DOS administers the statutory visa allocation process by publishing in the Visa Bulletin cutoff dates for each family and employment-based immigration preference category.⁹³

As shown in Figure 4, in FY 2008, USCIS used approximately 90 percent of all employment-based immigrant visas. In FY 2008, DOS processed 75 percent of the worldwide total of family-based immigrant visas overseas.⁹⁴

3. USCIS' Case Management Challenges Continue

During the reporting period, USCIS continued to be negatively impacted by antiquated case management IT systems that impair visibility of its existing case inventories. Data capture deficiencies in several product lines – including Form I-140 (Immigrant Petition for Alien Worker) – deprive USCIS of information needed to assess and reconcile mission priorities, engage in short and mid-term planning, and efficiently allocate resources.

The Computer Linked Application Information Management System (CLAIMS 3) is one of the primary databases used by USCIS adjudicators. Developed for legacy INS in 1990, CLAIMS 3 became operational in 1993 and today holds over 78 million files, including both active and inactive cases.⁹⁵ CLAIMS 3's main strengths have been its reliability and scalability. The system's weakness lies with its inflexibility to system upgrading necessary to capture and report new data as form types and business needs change.

88 Ombudsman's Annual Report 2008, pp. 18-20; 2007, pp. 32-37; 2006, pp. 13-16; and 2005, pp. 9-11.

89 The Visa Bulletin is a publicly available document used by both DOS and USCIS to determine which of the thousands of pending immigrant visa cases may be processed to completion during a given month; i.e., those cases where an immigrant visa (either family-based or employment-based) may be issued as their place in line is reached.

90 Ombudsman's Annual Report 2008, pp. 8-9.

91 INA, § 201(d).

92 "Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620." DOS Visa Bulletin (June 2009), http://travel.state.gov/visa/frvi/bulletin/bulletin_1770.html (accessed June 8, 2009).

93 U.S. employers and family members file petitions with USCIS to bring individuals to the United States permanently. Upon the initial filing, USCIS, or the Department of Labor for most employment-based cases, provides the foreign beneficiary named in the petition a "priority date" – a date establishing that individual's place in line relative to other beneficiaries of the same category and nationality. For most preference categories, DOS must establish a cutoff date because demand exceeds supply. The term "cutoff date" refers to the date published in the Visa Bulletin on or before which an immigrant petition must be submitted to be eligible for green card issuance during that month.

94 "2008 Yearbook of Immigration Statistics," DHS Office of Immigration Statistics, at Table 7.

95 Information provided by USCIS to the Ombudsman (Dec. 19, 2008).

Figure 4: FY 2008 Worldwide Usage of Employment-Based Visas

Statutory Allocations	Immigrant Employment Category	Worldwide Usage		USCIS Consumption of Worldwide Visas Used		DOS Consumption of Worldwide Visas Used	
		Total	Percent	Total	Percent	Total	Percent
28.6	EB-1 Priority Workers	36,678					
	• Principals	15,184	41.4	14,638	96.4	546	3.6
	• Derivatives	21,494	58.6	20,444	95.1	1,050	4.9
28.6	EB-2 Advanced Degree Professional/ Exceptional Workers	70,046					
	• Principals	34,535	49.3	34,054	98.6	481	1.4
	• Derivatives	35,511	50.7	34,778	97.9	733	2.1
28.6	EB-3 Skilled, Professional and Other Workers	48,899*					
	• Principals	20,596	42.1	18,983	92.2	1,613	7.8
	• Derivatives	28,303	57.9	19,994	70.6	8,309	29.4
7.1	EB-4 Special Immigrants including Religious Workers	9,510*					
	• Principals	5,164	54.3	3,791	73.4	1,373	26.6
	• Derivatives	4,346	45.7	2,516	57.9	1,830	42.1
7.1	EB-5 Employment Creation Investors	1,349					
	• Principals	427	31.7	123	28.8	304	71.2
	• Derivatives	922	68.3	208	22.6	714	77.4

Source: "2008 Yearbook of Immigration Statistics," DHS Office of Immigration Statistics, at Table 7. * Sums corrected by Ombudsman.

Going forward, USCIS plans to address the difficulties with CLAIMS 3 through Transformation (See section II.B. on "USCIS Modernization"). Under this program, the agency envisions moving to a centralized and consolidated electronic environment. If USCIS achieves its Transformation objectives, the paradigm may shift as the agency gains the real-time awareness of case inventory essential to better manage its resources.

For now, USCIS relies on CLAIMS 3, as well as a patchwork of other local case management systems, to provide it with metrics on its existing inventory. For the employment-based green card line, USCIS knows the gross count of employment-based green card application cases, but until USCIS adjudicates the underlying I-140s, the agency does not know the exact number of cases in queue within each preference category by country of chargeability. Lacking such data, USCIS has difficulty finding and adjudicating cases in response to the visa availability changes reflected in the Visa Bulletin.

4. The Surge and Its Immediate Impact on the Employment-Based Green Card Line

As noted in the Ombudsman's 2008 Annual Report, there was a surge of nearly three million immigration filings between June and August 2007, representing a 72 percent increase over

the same period in 2006.⁹⁶ This section addresses one factor causing the 2007 surge: an interagency coordination breakdown between USCIS and DOS.⁹⁷

Both USCIS and DOS draw from the same statutorily limited pool of immigrant visas allocated annually among the five employment-based preference categories, as shown in Figure 4. USCIS reviews applications and issues green cards to beneficiaries in the United States, while DOS reviews and grants immigrant visas to those beneficiaries seeking consular processing overseas.⁹⁸ The separate agencies must coordinate their parallel immigrant processing activities to facilitate maximum lawful visa number usage within the statutory limits, so unused numbers are not lost at the end of the fiscal year.

This kind of coordination is especially challenging in light of the case management issues discussed above. USCIS and DOS each independently manage and allocate resources to achieve operational efficiency and distribute workloads evenly

96 Ombudsman's Annual Report 2008, pp. 8-9.

97 See also section II.A., "Moving Past the Surge."

98 Cf. INA, §§ 221-22 and 245.

throughout the year. However, these choices lead each entity to make decisions affecting the entire immigration system.

DOS shifted the employment second and third preference categories to “current” in the July 2007 Visa Bulletin by removing cut-off dates in these two preference categories. This development resulted from lower than anticipated demand for employment-based immigrant visas through May 2007.

Tens of thousands of foreign workers present in the United States, many of whom were the beneficiaries of approved I-140 petitions with priority dates stretching back as far as June 2003, immediately filed green card applications. In addition, the removal of Visa Bulletin cutoff dates led to an increase of new, concurrently filed cases (i.e., I-140 and Form I-485 (Application to Register Permanent Residence or Adjust Status) applications filed together).

5. The Employment-Based Third Preference Snapshot

Since the summer 2007 surge, the Visa Bulletin has moved ahead in some employment-based preference categories, but retrogressed⁹⁹ in others. A review of the third preference employment category reveals an April 2009 cutoff date of March 1, 2003 for applicants of Mexican nationality, representing an advance of approximately 22 months from its May 2007 pre-surge cut-off, whereas applicants of Indian and Chinese nationality have seen slower advancement.¹⁰⁰ However, for third preference applicants from most other countries, the cutoff date retrogressed five months.

Foreign nationals present in the United States who filed employment-based green card applications during the 2007 surge are eligible to seek “interim benefits” – employment authorization and travel permission – while awaiting approval of their green card applications. Conversely, employment-based beneficiaries who were, at the time of the surge, expecting to consular process (i.e., be interviewed overseas by DOS for their immigrant visas) do not have access to interim

benefits. More importantly, individuals abroad may have seen their prospects of completing the immigration process delayed by months or years. For the petitioning employers waiting for these prospective workers, such delays impact their planning. In addition, if an employer withdraws a petition due to such delays, the green card process ends for those workers.

6. Implications for Certain Employment-Based Second and Third Categories

Absent legislation providing for additional visa numbers, the Ombudsman estimates that some individuals under the “India” category in the Visa Bulletin now may wait at least 10 years to complete immigration processing and obtain a green card. This estimate assumes maximum annual preference category and per country usage. If these projections are correct, affected individuals will spend many years of their working lives as applicants for green cards, i.e., as neither temporary workers nor lawful permanent residents.

7. Interagency Liaison Meetings

The Ombudsman continues to chair and facilitate monthly meetings between USCIS and DOS, begun in August 2005, to discuss developments affecting the green card line. These developments include labor certification processing, immigrant visa usage, remaining visa availability, workload estimates, and priority dates. Personnel from the DOS National Visa Center and Directors of the California Service Center (CSC) and Vermont Service Center (VSC) have joined these meetings to facilitate increased communications and resource allocation planning on family-based cases.

As a result of these liaison meetings and through the efforts of its leadership, USCIS is working to gain greater visibility over its employment-based green card inventory to provide a more orderly and transparent process. USCIS Acting Deputy Director Michael Aytes, in direct response to a customer’s remark, stated that the agency is “working to make this information available on [its website].”¹⁰¹ The Ombudsman will continue to monitor such developments.

⁹⁹ Retrogression refers to the backward movement of cutoff dates; i.e., the date on which a petition must have been submitted to be currently eligible for a green card moves to an earlier date in the calendar than was previously published in the Visa Bulletin, thereby delaying eligibility.

¹⁰⁰ Cf. May 2007 and April 2009 Visa Bulletins; http://travel.state.gov/visa/frvi/bulletin/bulletin_1770.html (accessed June 8, 2009).

¹⁰¹ DHS Leadership Journal, “Addressing Employment-Based Visa Wait Times” (Apr. 24, 2009), <http://www.dhs.gov/journal/leadership/2009/04/addressing-employment-based-visa-wait.html> (accessed June 7, 2009).

D. Requests for Evidence (RFEs)

The Ombudsman focused last year on the high issuance rate of RFEs for family-based green card applications at the NBC.¹⁰² As reported, the NBC accepted the Ombudsman's recommendation (AR2008-09) to provide guidance to this group of customers via a "tip sheet" highlighting common reasons for RFEs and offering hints for avoiding them.

USCIS may issue an RFE to obtain additional information essential to adjudicate a case before making a final decision regarding immigration benefits sought. For example, an RFE may request vaccination records, court records, or proof of a *bona fide* relationship. The most common reasons for family-based RFEs at the NBC are unchanged since last year: questions about the Form I-864 (Affidavit of Support); medical examinations and vaccination records; and marriage and birth records.

Issuance of RFEs is time-consuming and costly for USCIS. Adjudicators and contract personnel must prepare the RFE, mail it, and physically store the case file while awaiting a response. Customers are similarly burdened by having their cases delayed, while also being inconvenienced when RFEs are poorly drafted, outdated, or unnecessary. The Ombudsman heard concerns about RFEs for several different immigration benefits during the reporting period.

CASE PROBLEM

The customer filed Forms I-130 (Petition for Alien Relative) and I-129F (Petition for Alien Fiancé(e)) for her spouse in March 2008. The couple married in another country and submitted copies of the marriage certificate with the corresponding relative petitions. The USCIS service center issued an RFE a few months later, stating the marriage certificate was not certified. The customer again sent a copy of the marriage certificate the next month. The I-130 and I-129F petitions were both denied in July. The customer contacted the Ombudsman. The applicant stated that she should not have to pay for an appeal since the denial was Service error. The I-130 and the I-129F petitions were reopened and approved in August.

102 Ombudsman's Annual Report 2008, p. 47.

USCIS endorsed the use of tip sheets to reduce the RFE burden:¹⁰³

USCIS agrees the expanded use of "tip sheets" may reduce RFE issuance rates. USCIS has begun developing additional "tip sheets" in the form of processing worksheets for each type of application and petition. These worksheets will make clear the initial evidence required and be made available to the public via the agency's website.^[104]

During the reporting period, USCIS made progress toward posting tip sheet guidance online and appears committed to providing this information to customers, as discussed below.

In April 2008, the NBC posted on the USCIS website guidance for filings it receives. These include not only the family-based green cards, but such applications as the I-130, Form I-131 (Application for Travel Document), and Form I-765 (Application for Employment Authorization).¹⁰⁵ USCIS currently publishes on its website other guidance for customers.¹⁰⁶

Figure 5 shows the number of monthly visits to the USCIS website for the NBC tip sheet. There were substantially more visits immediately following the issuance of the tip sheet, perhaps because it was featured on the USCIS home page at that time.

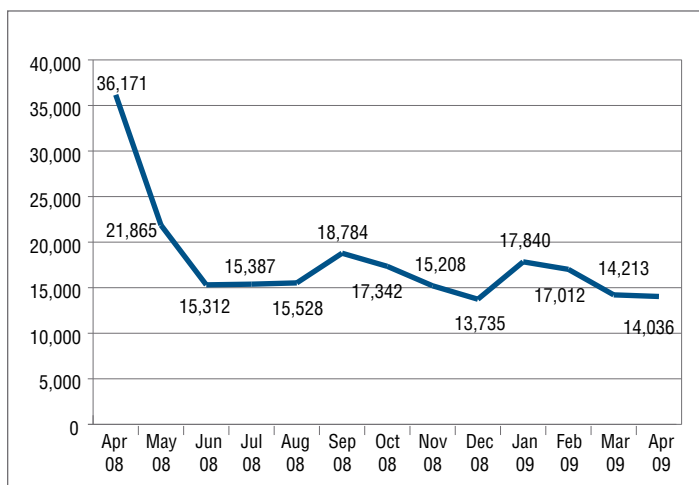
103 USCIS 2008 Annual Report Response, p. 16.

104 For example, the "Processing Worksheet for FY09 H-1B Filings" was available on the USCIS website with the I-129 petition (Petition for Nonimmigrant Worker), until replaced by the FY 2010 form. Information provided by USCIS to the Ombudsman (May 1, 2009). Other posted guidance includes Form M-735 (Optional Processing Worksheet for FY10 H-1B Filings) and Form M-736 (Optional Checklist for Nonimmigrant Religious Workers Filing Form I-129). In April 2009, USCIS created a special webpage for H-1B filers. In addition, the NBC informed the Ombudsman that a detailed Hague Adoption Processing document, "Tips for How to Avoid a Processing Delay," is presently undergoing final clearance.

105 USCIS, "Tips for Filing Petitions and Applications to the National Benefits Center—April 2008," <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=72a927c382f39110VgnVCM1000004718190aRCRD&vgnnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed May 11, 2009). Customers send certain filings to the Chicago Lockbox for receipting and initial data entry, which the NBC then receives.

106 See generally www.uscis.gov (accessed June 7, 2009): "General Tips on Assembling Applications for Mailing;" "Nebraska Service Center FILING TIPS;" "Helpful Hints for Filing a FY 2009 H-1B Cap Case: Short Version."

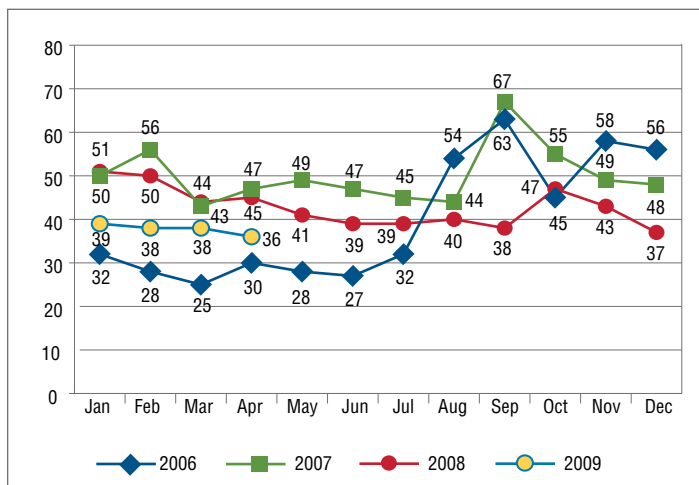
Figure 5: Number of Web Visits for the NBC Tip Sheet



Source: USCIS National Benefits Center

Despite hopes for a significant reduction in RFE rates based on the April 2008 tip sheet, the NBC has experienced little decline in this rate as shown below.

Figure 6: RFE Rates for the National Benefits Center (percent)



Source: USCIS National Benefits Center

Figure 7: RFE Rates for Selected Nonimmigrant Worker Categories (percent)

Year	H-1B		L-1A		L-1B		O		R	
	VSC	CSC	VSC	CSC	VSC	CSC	VSC	CSC	VSC	CSC
2006	12.7	7.1	10.0	13.6	4.4	12.6	9.3	15.4	18.1	36.3
2007	11.4	11.0	11.5	16.9	4.4	32.5	7.2	13.3	0.0	39.2
2008	11.8	11.6	12.2	20.0	21.9	24.8	8.2	13.2	10.0	22.9

Source: Data provided by USCIS to the Ombudsman (May 28, 2009)

NBC officials noted to the Ombudsman reasons why drafting and publishing the tip sheet was a valuable exercise:

- (1) the exchange of ideas at the NBC, and between the NBC and service centers using tip sheets, clarified which areas of immigration processing typically cause problems for customers;
- (2) the information exchange enabled the NBC to further refine its RFE issuance; and
- (3) the lack of rate decline may illustrate the limited effectiveness of web-based guidance in reaching the target audience. The NBC observed that family-based filers may have limited English ability, or lack the Internet access or technological experience to obtain web-based information.

The NBC indicated to the Ombudsman that outreach which better targets family-based filers may yield lower RFE rates. USCIS does not yet have a clear strategy to reach these individuals with the tip sheet information. The challenge involves the inherent difficulties in identifying persons needing guidance. In meetings with the Ombudsman, the NBC noted that community-based organizations serving the immigrant community may be able to assist.

Due to the frequency of customer and stakeholder complaints about RFEs, the Ombudsman has begun reviewing RFE rates for petitions adjudicated at the service centers: those for the petition-based nonimmigrant worker categories H-1B, L-1A, L-1B, O, and R.¹⁰⁷ These visas are issued after approval of an underlying Form I-129 (Petition for a Nonimmigrant Worker).

Figure 7 indicates some noticeable differences in the RFE rates for the same category as between the VSC and CSC. In addition, certain categories appear to have higher RFE rates than others. USCIS has stated its willingness to implement measures to reduce RFE rates and improve processing.¹⁰⁸

107 The nonimmigrant worker categories are defined as follows: H-1B (Specialty Workers); L-1A (Intracompany Transferee, Executive/Managerial); L-1B (Intracompany Transferee, Specialized Knowledge); O (Extraordinary Ability); and R (Religious Worker).

108 USCIS 2008 Annual Report Response, p. 16.

In the next reporting period, the Ombudsman intends to review RFEs service-wide. Anecdotally, for field offices, the Ombudsman observed the following best practices.

BEST PRACTICE

The New York Field Office schedules an “RFE day” every other week. Applicants are given new appointments to bring RFE responses for final adjudication to the same adjudications officer who conducted the initial interview.

BEST PRACTICE

The Raleigh-Durham Field Office issues a specific date and time for customers to return to the office with the documents responsive to an RFE. The documents are matched with the file that day and, in many cases, the adjudicator is able to finalize the adjudication.

E. Challenges with USCIS Fee Funding Structure

USCIS, which is dependent on fees to finance its operations,¹⁰⁹ is impacted by decreases in application/petition receipts, as during the reporting period. In discussing revenue stability, the GAO notes that “a decrease in application volume could significantly affect operations when an agency receives nearly all of its funding from application fees.”¹¹⁰

1. Application Filing Fees and Revenue

As shown in Figure 8, USCIS collected approximately \$2.25 billion for FY 2008 (plus \$163 million in premium processing revenue), which was \$77 million less than projected in the May 2007 fee increase.¹¹¹ Further, in the last several months, the agency has received fewer receipts than projected due to various factors, including the current economic climate.

2. Fee Reviews

USCIS conducted a comprehensive fee study for the first time in almost 10 years prior to implementing new fees in

¹⁰⁹ INA § 286(m) states, “Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled ‘Immigration Examinations Fee Account’ in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts” Provided further, “That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.” See also U.S. Office of Management and Budget, “Circular A-25, Revised: Memorandum for Heads of Executive Departments and Establishments: User Charges,” <http://www.whitehouse.gov/omb/circulars/a025/a025.html> (accessed June 9, 2009).

¹¹⁰ U.S. Government Accountability Office Report, “Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations,” GAO-09-180, p. 21 (Jan. 2009), <http://www.gao.gov/new.items/d09180.pdf> (accessed June 9, 2009).

¹¹¹ “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” 72 Fed. Reg. 29851, 29874 (May 30, 2007); see also U.S. GAO Report, “Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations,” GAO-09-180, p. 22 (Jan. 2009), <http://www.gao.gov/new.items/d09180.pdf> (accessed June 9, 2009).

Figure 8: USCIS Fee Revenue (sorted by FY 2009 YTD) (1,000s)

Form	FY 2007	FY 2008	FY 2008 YTD (Oct. - Mar.)	FY 2009 YTD (Oct. - Mar.)
I-485 (Application To Register Permanent Residence or Adjust Status)	\$ 277,924	\$448,429	\$ 226,810	\$193,754
I-765 (Application for Employment Authorization)	\$ 234,081	\$276,137	\$ 157,511	\$170,412
N-400 (Application for Naturalization)	\$ 390,512	\$375,081	\$ 205,292	\$139,986
I-130 (Petition for Alien Relative)	\$ 165,887	\$225,683	\$ 108,249	\$111,497
Biometrics Fee – Photograph and Fingerprint Fee	\$ 208,863	\$175,056	\$ 104,694	\$88,398
I-90 (Application to Replace Permanent Resident Card)	\$ 120,324	\$132,616	\$ 82,816	\$59,293
Premium Processing	\$ 212,117	\$162,878	\$ 66,226	\$54,265
I-129 (Petition for a Nonimmigrant Worker)	\$ 90,588	\$131,138	\$ 47,105	\$41,552
I-751 (Petition to Remove the Conditions of Residence)	\$ 32,993	\$96,283	\$ 48,337	\$39,830
I-131 (Application for Travel Document)	\$ 84,699	\$89,983	\$ 43,631	\$30,266
I-539 (Application to Extend/Change Nonimmigrant Status)	\$ 47,249	\$57,356	\$ 28,450	\$24,596
I-140 (Immigrant Petition for Alien Worker)	\$ 46,247	\$56,078	\$ 36,314	\$11,896
N-600 (Application for Certification of Citizenship)	\$ 22,032	\$20,453	\$ 8,834	\$10,980
I-290B (Notice of Appeal or Motion)	\$ 14,912	\$22,965	\$ 12,013	\$10,302
I-129F (Petition for Alien Financé(e))	\$ 11,449	\$18,356	\$ 9,165	\$8,793
N-565 (Application for Replacement of Naturalization Citizenship Document)	\$ 8,298	\$9,734	\$ 4,954	\$4,162
I-824 (Application for Action on an Approved Application or Petition)	\$ 7,389	\$8,266	\$ 4,248	\$3,130
I-192 (Application for Advance Permission to Enter as a Nonimmigrant)	\$ 1,314	\$4,960	\$ 2,125	\$3,052
Subtotal	\$ 1,976,877	\$2,311,451	\$ 1,196,778	\$1,006,164
All Other Forms	\$ 102,473	\$105,008	\$ 54,045	\$43,556
Grand Total	\$ 2,079,350	\$2,416,459	\$ 1,250,823	\$1,049,720

Source: USCIS Fee Collections (Data as of April 2009)

May 2007.¹¹² The Chief Financial Officers (CFO) Act of 1990 requires an agency’s CFO to review fees every two years.¹¹³ In 2007, USCIS indicated that it was “committed to update its fees through a similar analysis [as in 2007] at least once every two years.”¹¹⁴ This year, consistent with the CFO Act, the agency informs the Ombudsman that it has completed another comprehensive fee review and will determine whether any increase in fees is required.

3. May 2007 Fee Rule Objectives

In the May 2007 fee rule, USCIS outlined a number of goals and enhancements to improve application processing and

customer service.¹¹⁵ Among these goals, USCIS committed to a 20 percent reduction in overall processing times by the end of FY 2009, and to four month processing on four key benefits¹¹⁶ by the end of FY 2008:

- Form I-90 (Application to Replace Permanent Resident Card)
- Form I-485 (Application to Register Permanent Residence or Adjust Status)
- Form I-140 (Immigrant Petition for Alien Worker)
- Form N-400 (Application for Naturalization)

112 “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule,” 72 Fed. Reg. 4888 (Feb. 1, 2007).

113 Pub. L. No. 101-576 (Nov. 15, 1990).

114 “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule,” 72 Fed. Reg. 4888, 4895 (Feb. 1, 2007).

115 “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” 72 Fed. Reg. 29851, 29853 (May 30, 2007).

116 USCIS Press Release, “USCIS Sets Final Fee Schedule to Build an Immigration Service for the 21st Century” (May 30, 2007) (“These four applications types represent one-third of all applications filed.”) <http://www.uscis.gov/files/pressrelease/FinalFeeRulePressRelease052907.pdf> (accessed June 9, 2009).

In last year's Annual Report, the Ombudsman expressed concern that the agency might be unable to meet all of these goals due to the increase in workload during the 2007 surge, and identified the reduction in processing times as particularly problematic.¹¹⁷

USCIS recently commented on this subject:

In our 2007 fee rule we committed to improving service Although we knew we could not reach [the goals] in FY 2008 because of the large surge, we believed it was important to remain true to the commitments we made¹¹⁸

As of March 31, 2009, USCIS reported the following processing times¹¹⁹ regarding the forms targeted for processing time reduction to four months or less:

- I-90 (4.3 months)
- I-140 (8 months)
- I-485 (7.1 months – family-based)
- N-400 (6.1 months)

With six months remaining to meet its goal, USCIS is close to reaching the target only for green card renewals. However, USCIS reports that it has met its FY 2009 goal of reducing processing times by 20 percent for certain other frequently used forms.¹²⁰

4. Unfunded Programs

In 2006, the Ombudsman described certain programs for which USCIS collects no fees and receives no additional appropriations.¹²¹ For example, USCIS funds the asylum and refugee program, military naturalizations, and fee waivers with a surcharge that applicants for other benefits must pay. The Ombudsman has described that paying for unfunded programs with fees from other petitions and applications exacerbates USCIS funding problems, and notes that USCIS

requested appropriations for its unfunded programs in DHS' 2010 budget request.¹²²

5. Premium Processing

During the reporting period, USCIS continued to offer its premium processing service for an additional \$1,000 fee on certain applications.¹²³ The agency must respond within 15 days with a grant, denial, or request for evidence, or return the \$1,000 fee. USCIS provides premium processing for Forms I-129 (Petition for A Nonimmigrant Worker) and certain I-140 beneficiaries. The Ombudsman reported last year that with the influx of applications in summer 2007, USCIS suspended premium processing for I-140s.¹²⁴ As of this writing, premium processing for I-140s is available in limited circumstances.¹²⁵

As shown in Figure 8, in FY 2009 YTD (Oct. - Mar.) USCIS received almost 20 percent less premium processing revenue than for the same period in FY 2008. For the month of April, USCIS received nearly 10 percent less premium processing revenue in 2009 than 2008.¹²⁶ In the 2008 Annual Report, the Ombudsman suggested that a decline in premium processing revenue may have a negative impact on the agency's Transformation efforts and that USCIS should consider other sources of funding. In its 2008 Annual Report Response, USCIS stated that it could use "revenue from other Immigration Examinations Fee Accounts (IEFA) for transformation purposes ... as long as appropriate notification is provided to Congress."¹²⁷

Finally, in the 2007 Annual Report, the Ombudsman recommended that USCIS conduct a thorough, transparent, and independent analysis of premium processing costs as compared with regular processing.¹²⁸ Specifically, the analysis should

117 Ombudsman's Annual Report 2008, p. 22.

118 "USCIS Processing Time Goals," last updated April 2, 2009, www.uscis.gov (accessed June 5, 2009).

119 "USCIS Operating Performance – March 2009," http://www.uscis.gov/files/nativedocuments/operating_performance_mar2009.pdf (accessed June 5, 2009).

120 *Id.*; see also section II.A., "Moving Past the Surge."

121 Ombudsman's Annual Report 2006, p. 28.

122 See DHS, "Budget-in-Brief, FY 2010," pp. 129-30, www.dhs.gov (accessed June 9, 2009).

123 See 8 U.S.C. § 1356(u). Note that USCIS "may adjust this fee according to the Consumer Price Index." *Id.*

124 Ombudsman's Annual Report 2008, p. 23.

125 USCIS Fact Sheet, "USCIS Offers Premium Processing Service for Certain Form I-140 Petitions Starting June 16, 2008" (June 11, 2008), www.uscis.gov (accessed June 9, 2009).

126 In April 2009, USCIS received approximately \$26 million and in April 2008, approximately \$29 million. USCIS Fee Collections.

127 USCIS 2008 Annual Report Response, p. 6; see also section II.B., "USCIS Modernization."

128 Ombudsman's Annual Report 2007, p. 50 (Recommendation #7).

include a comparison for each stage, including: contractor costs, federal employee costs, and all other associated costs. USCIS began implementation of this recommendation during the last reporting period. In March 2009, at USCIS' request, the Ombudsman provided comments on USCIS' draft study of this issue. The Ombudsman understands that the agency is continuing work on this study.

F. Customer Service and Public Inquiries

USCIS provides information to the public in several ways, including: the USCIS website; the web-based Case Status Online; the National Customer Service Center (NCSC) toll-free telephone line; INFOPASS appointments at field offices; and written correspondence. USCIS' customer service personnel are a devoted team of professionals and the agency dedicates considerable resources to customer service. However, the inability to communicate directly with USCIS supervisors and adjudicators means that those seeking immigration benefits can seldom obtain immediate resolution to problems. As a result, individuals and employers use the resource intensive customer service avenues, such as the NCSC toll-free line and INFOPASS appointments, on multiple occasions for the same question. Overall, USCIS customer service remains a pervasive and serious problem.

The following case problems illustrate difficulties customers encounter when they contact multiple customer service avenues:

CASE PROBLEM

A customer filed Form I-485 (Application to Register Permanent Residence or Adjust Status) in March 2002. During an INFOPASS appointment in winter 2008, USCIS informed him that two family member's cases had been transferred from one service center to another and that his application was administratively closed the previous summer. He never received any information regarding the movement of the case or detailing why the case was closed. Moreover, Case Status Online indicated that the closed case was pending. The applicant contacted the Ombudsman in January 2009. USCIS approved the case after it had been pending for seven years, and he received his green card a few months later.

CASE PROBLEM

A naturalized citizen lost his naturalization certificate in 2008. The citizen filed Form N-565 (Application for a Replacement Naturalization/Citizenship Document) in July 2008. USCIS approved the application and, in fall 2008, mailed the replacement. The customer never received the document and learned that his new certificate was returned to a service center. The NCSC informed him that USCIS would re-send the document. For five months, he called the NCSC on multiple occasions, as he still did not have the document. When the NCSC instructed him to file another N-565 and again pay the \$380 fee, the customer contacted the Ombudsman. The Ombudsman recommended that the replacement naturalization certificate be sent to the applicant without a new fee and the agency sent the replacement certificate in spring 2009.

In the 2008 Annual Report, the Ombudsman recommended that USCIS standardize proactive dissemination of information to all customer service avenues to ensure USCIS personnel can provide consistent and accurate information to customers.¹²⁹ During the reporting period, the Ombudsman understands that the NCSC did receive more advance information, which better enabled its customer service personnel to address callers' concerns. The Ombudsman encourages the agency to continue such efforts.

In its Annual Report Response, USCIS acknowledged that providing accurate and comprehensive information is critical. The agency stated that senior managers conduct weekly meetings to provide updates and inform field managers about upcoming guidance and/or issues that may impact operations. Specifically, USCIS stated:

Employees are notified daily regarding specific administrative, procedural and/or operational changes. The Office of Communications (OCOMM) assists employees who have questions or concerns regarding internal broadcast announcements.

New guidance and policies are disseminated electronically through internal mechanisms such as the agency's intranet. USCIS believes that the Office of Field Operations and Information and Customer

Service Division (ICSD) could strengthen their communication to ensure ICSD knows as soon as possible of new information to facilitate its incorporation into Call Center Scripts.¹³⁰

1. Improving the USCIS Website

The USCIS website is a critical tool for customers to obtain general immigration information, make INFOPASS appointments, review case status, and access the latest USCIS policies and procedures. Continued improvement to the site may reduce customers' visits to field offices and calls to the NCSC, as well as diminish the agency's issuance of RFEs and rejections of applications/petitions.

In the 2008 Annual Report, noting the website's importance to customers, the Ombudsman recommended that USCIS examine whether it has devoted adequate resources to the website.¹³¹ In response, USCIS indicated that it: (1) filled two staff positions, one assigned to develop the website's Spanish language version; (2) hired two contractors to work on content management and development; (3) continues improving navigation and search engine capabilities; and (4) "will soon introduce a new survey to the agency's website that applies the American Customer Satisfaction Index (ACSI) standards."¹³²

During the reporting period, stakeholders continued to complain to the Ombudsman about the site's complexity, limited search capability, and complicated language. For example, the USCIS webpage, "How Do I Use the Premium Processing Service?"¹³³ is lengthy and quite complicated. Moreover, premium processing information provided contradicts another webpage: one indicates premium processing is available for certain Form I-140 (Immigrant Petition for Alien Worker) petitions, while the other page states that premium processing is not available for I-140s.¹³⁴ The Ombudsman shares such inconsistencies with USCIS, and the agency welcomes this input.

130 USCIS 2008 Annual Report Response, p. 10.

131 Ombudsman's Annual Report 2008, p. 36.

132 USCIS 2008 Annual Report Response, p. 12.

133 See www.uscis.gov (accessed June 9, 2008).

134 See USCIS, "Request for Premium Processing Service," www.uscis.gov (accessed June 9, 2009).

129 Ombudsman's Annual Report 2008, p. 34.

Despite noting such shortcomings, the Ombudsman recognizes several website improvements, either implemented or in development, during the reporting period:

- **Spanish Language Website** – USCIS developed a Spanish language version of its website, which it expects to launch in summer 2009.¹³⁵
- **Home Page Redesign** – As of this writing, USCIS was in the process of redesigning its home page. Changes planned include streamlining the way that customers find information on the website. USCIS expects to launch the redesign by the end of FY 2009.¹³⁶ The Ombudsman understands that USCIS will begin using the ACSI survey at the same time as it launches the new home page.
- **Immigration Forms Page** – This section, now referred to as the online information center, breaks down forms by general categories: employment-based, family-based, green card applications, humanitarian benefits, and citizenship and naturalization forms.¹³⁷

Going forward, the Ombudsman encourages USCIS to continue evaluating whether it has provided sufficient resources to the website, given the importance of this tool.

2. Case Status Online

The Internet-based Case Status Online remains a key venue to obtain information on pending applications and petitions. USCIS customers who have a receipt number for their application/petition can use this tool to check the status of their cases.¹³⁸

However, customers continue to voice dissatisfaction with the limited information offered through Case Status Online. For example, for many applications/petitions, it only indicates that the case is “received and pending;” it does not specify where the case is in the adjudications process. Moreover, the system only provides the most recent event, which makes it difficult for customers to follow the progress of their cases.

135 Information provided by USCIS to the Ombudsman (Apr. 16, 2009).

136 *Id.*

137 USCIS, “Immigration Forms,” www.uscis.gov (accessed June 9, 2009).

138 USCIS Case Status Service Online, <https://egov.uscis.gov/cris/jsp/index.jsp> (accessed June 9, 2009).

Another recurring complaint the Ombudsman hears from customers is that the information in Case Status Online is not current. USCIS informed the Ombudsman that case status generally updates when USCIS systems interface with Case Status Online. CLAIMS 3, the USCIS mainframe case management system which contains all immigration benefits applications except N-400s (Application for Naturalization), interfaces every 15 minutes.¹³⁹ CLAIMS 4, which does contain N-400 applications, interfaces once a day.¹⁴⁰ However, USCIS indicated to the Ombudsman that these updates do not always occur. USCIS informed the Ombudsman that improvements to Case Status Online should correct the interface problem and are scheduled for fall 2009.

In addition to correcting the interface problem, Case Status Online will offer another feature with the implementation of Phase 2 of the Secure Mail Initiative.¹⁴¹ Customers will be able to check the delivery status of their documents through Case Status Online where they will receive a USPS Delivery Confirmation Tracking Number.

3. National Customer Service Center (NCSC)

Communicating with USCIS via the NCSC remains a source of frustration for individuals and employers. Although some customers report positive experiences, the Ombudsman continues to hear from many others that the NCSC is not helpful, or provides incorrect or inconsistent information, as compared with other USCIS customer service avenues.

The NCSC operates on a two-tier model for live assistance from six call center locations nationwide.¹⁴² Tier 1 is managed by two contractors employing Customer Service Representatives (CSRs) in Indiana, Kentucky, New Mexico, and Texas. Tier 2, located in New York and California, consists of USCIS Immigration Information Officers (IIOs) who answer calls transferred from Tier 1.

Last year’s Annual Report included a detailed review of call center issues; in this reporting period the Ombudsman conducted a follow-up study. Field research included visiting

139 Information provided by USCIS to the Ombudsman (Mar. 9, 2009).

140 *Id.*

141 See section II.B., “USCIS Modernization.”

142 The National Customer Service Center can be reached at 1-800-375-5283.

Tier 1 in Ft. Worth, TX; meeting with both Tier 1 contractors; listening to randomly selected Tier 1 calls to both contractors; visiting Tier 2 in New York to meet with Tier 2 IIO supervisors and leadership, and listen to calls; and meeting with USCIS Headquarters officials who address issues at both call centers.

a. Previous Call Center Recommendations

In the 2008 Annual Report, the Ombudsman made three call center-specific recommendations.

First, the Ombudsman recommended that USCIS develop an exchange program for USCIS staff – including personnel at Tiers 1 and 2 of the NCSC and IIOs who handle INFOPASS appointments – who routinely work directly with USCIS customers.¹⁴³ USCIS agreed in part and disagreed in part with the recommendation by drawing a distinction between Tier 1 and Tier 2. The agency said such an exchange would not benefit Tier 1 representatives, because they are contractually prohibited from deviating from USCIS’ scripted information. However, “USCIS finds merit to an exchange program for Tier 2 personnel and IIOs who handle [INFOPASS] appointments and has already conducted several such exchanges.”¹⁴⁴

The Ombudsman understands that during the reporting period Tier 2 supervisors and quality assurance staff visited a Tier 1 location to better understand the work of the CSRs. In addition, three CSRs and three Tier 1 supervisors visited a field office to learn what information USCIS provides during INFOPASS appointments. Finally, the INFOPASS staff visited a Tier 1 location to understand the type of information CSRs provide. The Ombudsman encourages USCIS to continue these exchanges to enhance the ability of customer service personnel to provide helpful information to customers.

Second, the Ombudsman recommended that USCIS ensure its Tier 1 contractors follow the scripted information and are properly notified of changes to scripts.¹⁴⁵ USCIS agreed with this recommendation and stated that:

[S]everal information quality controls are already in place

...Tier 1 representatives are contractually obligated to adhere to the scripts. Tier 1 CSRs are continually reminded that the information in the scripts may change. As such, they are instructed not to memorize the scripts and not to deviate from them.¹⁴⁶

However, in this reporting period, the Ombudsman continued to find that Tier 1 CSRs do not consistently follow the scripts. Failure to do so sometimes results in negative consequences for customers, as well as added agency costs when customers make multiple calls to the NCSC or visits to field offices seeking clarification.

During the reporting period, USCIS replaced the independent third party contractor responsible for monitoring Tier 1 via “mystery shopper” calls: “the contractor calls the NCSC and grades all aspects of the conversation – from showing proper respect to the caller to providing accurate and comprehensive responses.”¹⁴⁷ However, few of the 22 competencies evaluated relate to the content of information provided to the customer.¹⁴⁸

The Ombudsman encourages USCIS to ensure that this recommendation, AR2008-07, is followed as well as: (1) review separately each contractor’s performance to determine adherence to scripted information, and (2) reconsider the value-added by Tier 1 to the customer service program when CSRs often do not provide the information in the scripts.

Finally, the Ombudsman recommended that USCIS ensure all of its systems used by customer service personnel to provide information to the public are consistent and accurate.¹⁴⁹

143 Ombudsman’s Annual Report 2008, p. 39.

144 USCIS 2008 Annual Report Response, p. 12.

145 Ombudsman’s Annual Report 2008, p. 40.

146 USCIS 2008 Annual Report Response, p. 13.

147 *Id.*, p. 14.

148 The 22 competencies include: “Greeted Customer,” “Verified Customer,” “Established Rapport,” “Used Customer’s Name,” “Expressed Empathy,” “Maintained Composure,” “Expressed Commitment to Assist,” “Offered Additional Assistance,” “Terminated Call Appropriately,” “Obtained Information,” “Listened Actively,” “Took Responsibility,” “Summarized Actions,” “Projected Enthusiastic Tone,” “Conveyed Confidence,” “Spoke with Clarity,” “Used Appropriate Language,” “Controlled Call,” “Used Time Efficiently,” “Minimized ‘Dead Air,’” “Extended Hold Courtesies,” and “Transferred Call Appropriately.” See Tier 1 Monthly Mystery Shopper Report.

149 Ombudsman’s Annual Report 2008, p. 42.

USCIS agreed with this recommendation. The agency stated it was working to correct recently discovered data interface problems between the CLAIMS systems and the customer service systems. USCIS acknowledged that the customer service IT system “needs modernization” and provided information on plans to update the system.¹⁵⁰ In addition, USCIS described a planned 24-month project to use current technology as follows: (1) Phase 1 – CSRs and IIOs will have “an integrated view of the customer’s inquiry;” (2) Phase 2 – introduction of real-time status reporting of service requests; (3) Phase 3 – offices able to update data online in real time; and (4) Phase 4 – more customer service options, including customers’ ability to submit service requests online.¹⁵¹

b. Tier 1

During the reporting period, the Ombudsman noted certain positive developments regarding Tier 1 such as USCIS: (1) provided information prior to certain events so Tier 1 could better prepare to assist customers, and worked closely with Tier 1 to expeditiously update scripted answers as questions arose; (2) continued work toward posting on its website the scripts used by CSRs; and (3) introduced new E-Verify scripts that are more user-friendly for CSRs than other scripts. USCIS is reviewing whether the E-Verify approach to scripts can be used in other contexts.

Concerns regarding Tier 1 include:

- **Lengthy, Complicated Scripted Information** – The Ombudsman understands that scripts are often unrelated to the person’s inquiry, redundant, and not user-friendly. As a result, callers conclude that CSRs are not listening to their inquiries when they provide such information, although the CSRs may be reading the information designated as responsive to a certain issue.
- **Interactive Voice Response** – In 2008, USCIS implemented a new version of the automated information – referred to as the Interactive Voice Response (IVR) – at the start of an NCSC call. Callers push a series of telephone buttons to try to reach live assistance and, as a result, make recorded menu selections that may not reflect their inquiry. Because the corresponding pop-up computer screen that gives the CSR information selected by the caller does not correspond

with the caller’s question, the CSR must re-start the series of scripted questions often further delaying the inquiry. According to USCIS, the new IVR is still under review.

- **Scripts in English Only** – As reported last year, all scripts are still only in English. Some CSRs are fluent in English and Spanish and, upon receiving inquiries from Spanish-speaking callers, must perform a simultaneous translation of the relevant scripts. USCIS is currently developing Spanish scripts.

c. Tier 2

Customers generally report better experiences if/when they are able to reach Tier 2. While call centers often have substantial turnover, Tier 2 is staffed not by contractors, but by experienced IIOs with immigration knowledge. During the reporting period, other USCIS components were more proactive in sharing with Tier 2 new agency developments that affect the public, thereby enabling the IIOs to provide more timely information to customers. In addition, within the last year, Tier 2 obtained greater access to USCIS systems allowing them to provide additional information to callers.

Tier 2 facilities now collect statistics on the types of calls received and share this information with the USCIS Information and Customer Service Division.

Most criticism of Tier 2 reflects the need for additional support from the agency itself, rather than concern about the information provided. In many instances, the problems are reported by the IIOs themselves:

- **Lack of Information Once File is Transferred** – Once a file is transferred from a service center to a local office, IIOs can no longer see in the USCIS database systems what is happening with the case and can only refer individuals to the local office. IIOs explained that there are times when customers visit the local office at the NCSC’s suggestion only to have the local office refer them back to the NCSC.
- **Lack of Visibility of RFEs** – IIOs cannot electronically view the actual RFEs sent to customers; they only can view that an RFE was mailed. Lacking the ability to review the RFE language itself, IIOs must send a request to field offices for them to respond to customers’ RFE inquiries. Due to the timeframe for this process – field offices generally have 30 days to respond to such service

150 USCIS 2008 Annual Report Response, p. 15.

151 *Id.*, p. 15.

requests – the time to respond to an RFE often lapses before customers receive a response.

- **Lack of Information about Field Office Practices** – IIOs lack access to much of the specific information about field offices. As a result, they sometimes cannot provide requested clarification about variations in local practice, which partly results from a lack of standardization. IIOs often learn about local office distinctions from the customers themselves.
- **Staffing** – Tier 2 still has multiple unfilled positions, as described in the 2008 Annual Report.¹⁵² Moreover, Tier 2 still does not have a permanent supervisor over both Tier 2 locations, as USCIS continues to rotate this position. Despite challenges posed by this continual change, Tier 2 continues to make progress.

USCIS indicated in its 2008 Annual Report Response:

[The agency] believes that it is meeting a majority of its customer service goals at the NCSC. To provide perspective, the NCSC answered 1,313,740 phone calls from April 1 through June 30 of this year. During that time, USCIS received fewer than 10 formal complaints about the service provided by the NCSC.

In the next reporting period, the Ombudsman intends to continue review of the NCSC’s effectiveness and, additionally, the USCIS complaint process.

4. INFOPASS

INFOPASS is a free online service for customers or their representatives to schedule in-person appointments at USCIS field offices.

BEST PRACTICE

The New York District Office provides a survey to the public to gather feedback on INFOPASS. Managers monitor and review the survey weekly to address concerns raised.

a. Availability of Appointments

During the reporting period, the Ombudsman tested the availability of INFOPASS appointments by trying to schedule

152 Ombudsman’s Annual Report 2008, p. 41.

appointments at various field offices. Generally, INFOPASS appointments are available. However, there are a few offices where customers periodically experience delays in making appointments.

BEST PRACTICE

The San Diego District Office allows customers to schedule an INFOPASS appointment at any of the three full-service field offices within the district regardless of the customers’ residential zip code.

b. Delays at INFOPASS Appointments

INFOPASS eliminated the long lines outside USCIS field offices, but delays continue inside some field offices where applicants wait to be seen for appointments. Delays may be due, in part, to IIOs’ lack of immediate access to case files when providing information at the field office counters. Prior to recent changes in USCIS position classifications, officers who provided information at the counter did not have authority to adjudicate cases. As described in section II.H. on “USCIS Workforce and Training,” USCIS’ new position classifications provide for Immigration Service Officers with adjudicatory authority to staff these appointments.

Some offices schedule designated times for customers to return to the office with additional information requested by the Immigration Service Officer adjudicating the case. Those customers do not need to schedule INFOPASS appointments.

c. Kiosks

In 2005, USCIS agreed with an Ombudsman recommendation for USCIS to provide each field office with kiosks or computers for customers to make INFOPASS appointments.¹⁵³ As of this writing, USCIS informed the Ombudsman that 76 kiosks are currently working nationwide, as compared with 33 at this time last year.¹⁵⁴ USCIS has 19 more offices in which to install kiosks and expects to complete all installations by the end of FY 2009.¹⁵⁵

153 See USCIS second response to Recommendation #12, p. 6 (May 25, 2005).

154 Information provided by USCIS to the Ombudsman (Mar. 24, 2009); see also Ombudsman’s Annual Report 2008, p. 43.

155 Information provided by USCIS to the Ombudsman (May 20, 2009).

G. File Transfers and Tracking

RECOMMENDATION 2

The Ombudsman recommends that USCIS establish new protocols to ensure that relevant contract staff consistently record all A-file movement as outlined in the Records Operations Handbook. (AR2009-02)

RECOMMENDATION 3

The Ombudsman recommends that through the Tri-Bureau Working Group (USCIS, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP)) USCIS expeditiously institute mandatory training of all personnel who work with A-files, specifically special agents, investigators, and officers. (AR2009-03)

As discussed in the 2008 Annual Report, challenges remain with the transfer and tracking of A-files.¹⁵⁶ The Ombudsman described the various instances in which A-files are transferred from one location to another and provided information on the National File Tracking System (NFTS),¹⁵⁷ the primary means by which USCIS locates A-files. The Government Accountability Office also has described the issues with file tracking, stating that “missing A-files can hinder USCIS’ ability to uncover immigration benefit fraud and limit DHS’ ability to take enforcement actions.”¹⁵⁸

The availability of A-files is crucial to ensure that the “right applicant receives the right benefit in the right amount of time, while preventing the wrong applicant from obtaining [immigration] benefits.”¹⁵⁹ When an A-file is lost or misplaced, customer service suffers. Without the A-file, USCIS generally cannot make decisions on pending immigration benefits applications for green cards or naturalization.

Not only are customers’ lives disrupted while USCIS locates missing A-files, but individuals and employers also spend significant time contacting USCIS, making recurring inquiries

through the USCIS Case Status Online system, calling the National Customer Service Center, and arranging to be away from their jobs to attend INFOPASS appointments at local USCIS offices.

CASE PROBLEM

In March 2004, a principal applicant and her spouse filed Forms I-485 (Application to Register Permanent Residence or Adjust Status). After an interview in fall 2005, USCIS informed the couple that they would receive their green cards within a few weeks. As of 2007, the couple still had no green cards. For two years, they made several inquiries with USCIS. In June 2008, the spouse received his approval notice, but the other application remained pending. At an INFOPASS appointment, her A-file was listed as lost since 2007. Even with a lost file, she and her spouse received a field office letter indicating that their green cards were approved. After some time, USCIS informed her that her case was still pending and her spouse should not have been approved first. She contacted the Ombudsman in January 2009. A few months later, USCIS found her file and approved her green card.

BEST PRACTICE

Related to file management, the VSC now will accept duplicate copies of final court dispositions in TPS cases where previously a certified original was required. This practice should result in time and cost savings for affected applicants.

BEST PRACTICE

The VSC issues separate “Routing Sheets” for customers to use as cover sheets for general correspondence, not RFEs, to be added to the file. These Routing Sheets: (1) should facilitate the timely and efficient insertion into the file of case-related customer updates mailed to VSC’s general correspondence mailbox, and (2) are used to notify USCIS of changes in the attorney of record information. Timely receipting and routing of such information to the file should reduce errors and improve the overall delivery of customer service.

156 Ombudsman’s Annual Report 2008, pp. 28-32.

157 *Id.*, p. 31.

158 U.S. GAO Report, “Immigration Benefits: Additional Efforts Needed to Ensure Alien Files Are Located when Needed,” GAO-07-85 (Oct. 2006), <http://www.gao.gov/products/GAO-07-85> (accessed June 7, 2009).

159 “USCIS Strategic Plan – Securing America’s Promise,” p. 7 (July 2005), www.uscis.gov (accessed June 7, 2009).

1. Previous File Transfers and Tracking Recommendations

In the 2008 Annual Report, the Ombudsman recommended that USCIS convene a working group to define and implement near-term, national file tracking goals.¹⁶⁰ In its response to the Ombudsman's recommendation, USCIS agreed and stated that it convened a Tri-Bureau working group composed of representatives from USCIS, ICE, and CBP.¹⁶¹ The Ombudsman understands from USCIS that, since its formation, the working-group has developed six initiatives.¹⁶² Of the six initiatives, two have been implemented, one is the long-term digitization project which is part of Transformation, and the remaining three initiatives have not yet been implemented.¹⁶³

The first initiative to be implemented was the issuance of policy guidance outlining safeguards for storing empty file jackets or "unassigned" A-files. It establishes that any office receiving unassigned A-files must designate an empty file jacket coordinator to account for all such unassigned A-files.¹⁶⁴

The second initiative was the formation of a "National File Tracking System (NFTS) Working Group to define requirements for system improvements/enhancements."¹⁶⁵ According to USCIS, the NFTS working group is now reconciling information from NFTS and the Central Index System, another system that provides information on the location of A-files. As of April 2009, USCIS had identified as lost 156,092 of the approximately 60 million A-files it manages.¹⁶⁶

The NFTS Working Group is purging computer systems of all file numbers that do not correspond to existing A-files. For example, the computer system sometimes assigns temporary numbers to EADs. The Central Index System recognizes those temporary numbers as A-file numbers when no A-file exists.

160 See Ombudsman's Annual Report 2008, p. 28.

161 See USCIS 2008 Annual Report Response, pp. 9-10.

162 Information provided by USCIS to the Ombudsman (Apr. 14, 2009).

163 The three that remain to be implemented include: (1) training for Record Managers on NFTS reports, which also will be offered to ICE and CBP; (2) procedures for yearly audits; and (3) a team to address file issues in case of a natural disaster.

164 USCIS Interoffice Memorandum, "Revised Guidance for Requesting and Managing Empty A-file Jackets" (Oct. 16, 2008).

165 Information provided by USCIS to the Ombudsman (Apr. 14, 2009).

166 *Id.*

USCIS indicated to the Ombudsman that the agency expects the number of lost files to drop once it reconciles the two computer systems. Computer system glitches are the cause for some lost file reports. For example, the Central Index System often shows a seemingly lost A-file as located at a particular office, while NFTS shows that the same A-file is located elsewhere.

2. Inconsistent Use of NFTS

The Ombudsman has noted the inconsistent use of NFTS as the primary reason for lost or misplaced A-files, despite the system's many features and capacity to store information.¹⁶⁷ As a result, thousands of A-files are not available at the location shown in NFTS.¹⁶⁸ The GAO identified this persistent problem in an October 2006 report reviewing the availability of A-files during USCIS processing of applications for U.S. citizenship.¹⁶⁹ According to the GAO report, USCIS officials stated that the unavailability of A-files is because "staff are not using the automated file-tracking system."¹⁷⁰ In the same report, agency officials suggested that this may be due to "lack of sufficient training on how to use the system, while local management may not be adequately emphasizing the importance of complying with A-file tracking policies and procedures."¹⁷¹

Proper use of NFTS by all who request or handle A-files is crucial to providing timely customer service. While USCIS stores A-files, ICE and CBP also use them; files travel between USCIS and these components daily. The Tri-Bureau Working Group has opened the communication lines among these DHS components, but more work is needed to ensure consistent use of NFTS.

Contract staff members working with A-files are responsible for using NFTS to track and transfer A-files. They are primarily responsible for A-file movement within USCIS, as well as to and from other DHS components, including ICE and CBP.

167 See generally USCIS Interoffice Memorandum, "Case Management Timelines" (Oct. 27, 2006) (In addition to tracking and transferring A-files, NFTS is a tool to work towards meeting case processing time goals), www.uscis.gov (accessed June 7, 2009).

168 U.S. GAO Report, "Immigration Benefits: Additional Efforts Needed . . .," GAO-07-85, p. 4 (Oct. 2006), <http://www.gao.gov/products/GAO-07-85> (accessed June 7, 2009).

169 *Id.*, p. 2.

170 *Id.*, "Highlights" page.

171 *Id.*

Contractors pull A-files from shelves, coordinate almost all A-file transfers, and prepare A-files to make them available for customer interviews.

The Records Operation Handbook, which governs file movement and audits, identifies a primary cause of losing an A-file: “someone moves it and does not record the move in NFTS.”¹⁷² The Handbook highlights the importance of tracking files and provides step-by-step procedures to follow when A-files are moved.¹⁷³

The 2006 GAO Report¹⁷⁴ stated that numerous lost files were found at ICE and CBP offices. USCIS Headquarters informed the Ombudsman that USCIS still faces challenges with ICE and CBP not consistently using NFTS. Moreover, the Ombudsman has learned that ICE does not always agree to additional training offered by USCIS on the use of NFTS. Until all three components have an equal appreciation for the importance of tracking file movement, the problem of lost or misplaced A-files will remain.

H. USCIS Workforce and Training

1. Workforce

In the last few years, USCIS managed the largest agency-wide hiring campaign in its history and began to implement a Workforce Restructuring Initiative. USCIS was authorized to hire 2,731 federal employees and restructured all of its employees into new generalist position ladders.¹⁷⁵ The agency informed the Ombudsman that most of the new hires were entry-level adjudicators, while fraud and security positions received the next highest number of new personnel during the first stage of expanded USCIS hiring.

The USCIS hiring processes included new measures for identifying qualified personnel. However, according to USCIS offices and officials, challenges involved in funding and implementing new screening measures, as well as training and integrating new staff, delayed by months or years some new hires’ full productivity. These issues are elaborated further in the “Moving Past the Surge” section of this Annual Report.

USCIS also unveiled restructuring initiatives, in development since 2006, such as one for establishing a career path that includes cross-training and advancement opportunities designed to retain employees who perform the agency mission well.¹⁷⁶ These measures are consistent with the Ombudsman’s previous recommendations that the agency develop a proactive staffing plan that serves customers by enhancing the number, type, and capabilities of individuals employed at the agency.¹⁷⁷

a. Unprecedented Workforce Expansion

Beginning in April 2007, USCIS started preparing for large-scale hiring to assist with an expected 2007 surge in filings.¹⁷⁸ USCIS established a Growth Management Oversight Unit to review the implementation of new programs detailed in the May 2007 fee rule, including the hiring of new staff. The agency also streamlined the hiring process itself by adding 60 staff to its personnel security division to assist with

172 USCIS Records Operations Handbook Part II-22 § A.

173 *Id.*, Part II-10 § B.

174 U.S. GAO Report, “Immigration Benefits: Additional Efforts Needed . . .,” GAO-07-85, p. 11 (Oct. 2006), <http://www.gao.gov/products/GAO-07-85> (accessed June 7, 2009).

175 Information provided by USCIS to the Ombudsman (Mar. 17, 2009).

176 USCIS Interoffice Memorandum, “IIO Information Regarding Workforce Restructuring Model” (July 30, 2008).

177 Ombudsman’s Annual Report 2008, p. 50; 2007, pp. 71-72.

178 Information provided by USCIS to the Ombudsman (Mar. 17, 2009).

background screening of persons selected for employment; however, hiring did not begin until late fall 2007.¹⁷⁹

As discussed in the “Moving Past the Surge” section, USCIS hired new employees using two initiatives. First, the 2007 fee schedule¹⁸⁰ provided resources for 1,500 new permanent positions.¹⁸¹ Second, USCIS requested Congress to authorize a reprogramming of the agency budget to add 1,231 temporary two-year positions under the Federal Career Intern Program (FCIP), about half of which were adjudication positions.¹⁸² Congress authorized this request in February 2008 and FCIP personnel were hired by mid-FY 2008 and into FY 2009.

Several delays in the hiring process lengthened the agency’s advertising for, screening of, and placement of new hires. For example, the 1,500 permanent positions under the fee rule announcements were approved for posting by June 4, 2007 to start early recruitment,¹⁸³ but were not actually posted until late October 2007. These delays were due to the agency’s reliance on forthcoming fee receipts to fund hiring processes, including the administration of thousands of new tests designed to screen for qualified applicants.¹⁸⁴

The Ombudsman understands that recent USCIS hiring has not kept pace with personnel losses due to retirement and other reasons. With agency receipts currently on an overall decline, it is unclear what, if any, impact such increased retirements will have on workforce planning.

b. USCIS’ After-Action Report and Workforce Restructuring Initiative

In the 2008 Annual Report, the Ombudsman recommended that USCIS review the workforce elements of its 2007 surge plan and make public an after-action report of its findings, including best practices. USCIS concurred with the recommendation and stated the report would highlight “the significant administrative and operational achievements realized through the development of a comprehensive production and staffing plan.”¹⁸⁵ The USCIS “Growth Management Report” chronicles best practices, steps taken, and lessons learned. However, USCIS indicated to the Ombudsman that this report will not be made public.

In the 2007 Annual Report, the Ombudsman made a series of workforce related recommendations, among them, that USCIS reduce dependency on temporary employees and assignments by establishing a table of standard staffing levels and office organization, and that USCIS comprehensively merge core job career paths. USCIS indicated to the Ombudsman that the Office of the Chief Financial Officer uses the Table of Organization Position System (TOPS), an electronic system that informed the surge-era hiring allocations. For example, the agency sent immediate hires to offices showing the greatest need and assigned those hires delayed due to security checks to offices showing less need.

During the reporting period, USCIS implemented the second recommendation from 2007 by developing a new series of three generalist positions that encompass all USCIS field positions within them, each with a corresponding career ladder. Those positions handling core duties, including adjudications and customer service, are now called Immigration Service Officers (ISOs) and perform at various levels of seniority in that career ladder.¹⁸⁶

Daily duties for ISOs now combine functions previously separated between Adjudications Officers and Immigration Information Officers (IIOs). The use of generalist positions may lead the USCIS workforce toward cross-trained and flexible officers able to perform a range of duties. For example, certain ISOs who have authority to make final decisions are

179 *Id.* (Once jobs were posted, 48,000 people applied for the entry-level adjudicator positions; 27,000 tests were administered and USCIS selected 2,000 applicants.)

180 See “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” 72 Fed. Reg. 29851 (May 30, 2007).

181 See U.S. House Judiciary Committee Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law hearing on “Naturalization Delays: Causes, Consequences, and Solutions” (Jan. 17, 2008) (written testimony of Emilio T. Gonzalez, former USCIS Director), http://www.uscis.gov/files/testimony/testimony_ETG_17Jan08.pdf (accessed June 8, 2009).

182 Information provided by USCIS to the Ombudsman, (Mar. 17, 2009) (FCIP employees can become eligible to convert to permanent status without further competition, if there is on-going need for their services. USCIS posted recruiting advertisements on 3,800 electronic bulletin boards and college-recruitment networks).

183 Information provided by USCIS to the Ombudsman (Mar 17, 2009).

184 *Id.*

185 USCIS 2008 Annual Report Response, p. 17.

186 See USCIS Internal Memorandum, “What is the New Workforce Model?” (Apr. 2008).

now scheduled on a rotating basis to meet with customers at the INFOPASS counter, which was previously staffed exclusively by IIOs.

According to USCIS, the Workforce Restructuring Initiative will assist in balancing personnel resources and shifting agency workloads, while retaining qualified employees seeking advancement within the agency.

2. Training: Job-Readiness for New Hires & Training for New Information

USCIS trains adjudicators to review applications, perform interviews, conduct security checks, and determine eligibility for various benefits. Adjudicators have the dual responsibility of providing timely and courteous service to the public, and being alert to national security issues and the possibility of fraud. In addition to deciding cases in accordance with regulation and law, adjudicators must apply new laws, regulations, policies, and guidance. BASIC training is mandatory for all new USCIS adjudicators.

In previous annual reports,¹⁸⁷ the Ombudsman discussed the need for USCIS to establish comprehensive training for its workforce, to improve the skills and knowledge of non-adjudicators, and to evaluate training for non-adjudicators. This year's Annual Report examines: (1) whether new hires are job-ready upon completion of BASIC training, and (2) how USCIS determines the training adjudicators receive for new/changed laws, regulations, and policies.

For this review, the Ombudsman met with: (1) the USCIS Chief Learning Officer and Chief Human Capital Officer; (2) field office management; (3) leadership, instructors, and students at the training facilities in Dallas, TX; and (4) graduates of the Dallas training facilities at selected field offices nationwide. The Ombudsman also visited the National Conference Center in Lansdowne, VA, to observe new supervisor training.

a. New USCIS Academy

Former USCIS Director Emilio Gonzalez announced the new USCIS Academy in July 2007.¹⁸⁸ According to Gonzalez:

[T]he Academy would start with an enhanced basic training that provides a solid foundation for entry-level employees and future immigration officers, while other components of the Academy would provide advanced skills training, offer continuous learning opportunities for professional and workforce development, promote leadership and career development, and encourage staff to further their education during their careers at USCIS through reimbursement of expenses for college-level courses and studies.¹⁸⁹

In the last few years, USCIS has devoted substantial resources to its training programs. In FY 2007, USCIS budgeted \$13 million for training. After the May 2007 fee rule,¹⁹⁰ USCIS' training budget increased to \$55 million each for FY 2008 and 2009.¹⁹¹

As part of the new emphasis on training, USCIS created the USCIS Academy. It consists of five main components:¹⁹²

- **New Employee Orientation Program** – New adjudicators receive a mentor, learn local policy/procedures, and complete mandatory online training.
- **Continuous Learning (Professional and Workforce Development)** – Eligible employees take short courses or pursue non-degree certificates to enhance job performance.
- **The Leadership Education and Development (LEAD) Program** – This program focuses on current and future executives, managers, and leaders for grades GS-5 through GS-15.¹⁹³

189 USCIS, "Monthly Newsletter" (Sept. 2007).

190 "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," 72 Fed. Reg. 29851 (May 30, 2007); see also "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule," 72 Fed. Reg. 4888, 4901 (Feb. 1, 2007).

191 Information provided by USCIS to the Ombudsman (Apr. 30, 2009).

192 USCIS 2007 Annual Report Response, p. 4; USCIS Academy, "USCIS Academy-Breakdown of Programs by Component with Brief Description," USCIS Academy, "Guide to USCIS Academy Programs and Learning Opportunities."

193 The GS, or General Schedule, is a federal government system used to identify a range of difficulty and responsibility levels, ranging from GS-1 to GS-15, for many positions.

187 See Ombudsman's Annual Report 2008, pp. 50-52; 2007, pp. 70-75.

188 USCIS Academy, "Message from Director Emilio Gonzalez: USCIS Academy Announcement" (July 12, 2007).

- **Back-To-School Tuition Assistance Program (TAP)** – Employees complete their undergraduate degree or graduate study in fields that support DHS and USCIS missions.
- **BASIC Training** – This training program includes mandatory classroom and practical training for new adjudicator hires and immigration training for non-adjudicators.

Recent developments in USCIS’ training program also include streaming video and downloadable podcasts. USCIS now has approximately 21,000 learning opportunities for its employees.¹⁹⁴

b. BASIC Training

BASIC training,¹⁹⁵ provided to new adjudicator hires, consists of four elements: (1) introduction and new employee orientation completed at the local office prior to BASIC training; (2) fundamental principles; (3) law, policies, and best practices; and (4) hands-on practical training. The classroom portion of the training curriculum is currently 28 training days.¹⁹⁶

In January 2008, USCIS moved its training for new adjudicators from the Federal Law Enforcement Training Center (FLETC), a former military base in Glynco, GA, to two commercial residential training facilities in Dallas, TX.¹⁹⁷ The agency changed its location for BASIC training because: (1) it had to compete for classroom space with approximately 95 other agencies having access to the facility; (2) it is not a law enforcement agency and, therefore, does not require the special features of a converted army base; (3) of a lack of flexibility to accommodate training for the large numbers of new personnel hired as a result of the 2007 surge; (4) of logistical difficulties at FLETC; and (5) former Director Gonzalez preferred an academic setting for training.¹⁹⁸

The seven weeks of classroom instruction with 24 students per class at FLETC was replaced with a doubled class size of 48 students attending BASIC training in Dallas starting January 28, 2008. At the outset, USCIS conducted six concurrent 48-person classes to maximize the number of trained new hires available to assist in adjudicating the high volume of petitions and applications received in the 2007 surge.¹⁹⁹

USCIS designed the curriculum to train “a first-class officer corps that is job-ready and cross-trained in a wide-range of disciplines and competencies.”²⁰⁰ The revised curriculum, rolled out in September 2007,²⁰¹ was to consist of six weeks in the classroom, one-week practicum at the NBC, one-week practicum at a district office, and one-week practicum at a service center. However, because USCIS was training such high numbers of new hires, the agency only implemented the NBC practicum and, then, sometimes for just three days.

For calendar year 2008, the agency graduated over 1,500 new hires from BASIC, as shown in Figure 1.²⁰² Currently, the Academy Training Center is pursuing “validation” of its BASIC training curriculum. Validation is the process of confirming that courses offered provide skills training matching required job duties. As of this writing, the Academy expects to complete the validation process within four to five months.²⁰³ Because the program is not yet validated, students who do not meet the minimum grade average for BASIC training can repeat courses until they achieve passing scores.

During the reporting period, the Ombudsman met with BASIC training management, instructors, graduates, and

194 Information provided by USCIS to the Ombudsman (Dec. 17, 2008).

195 IIOs who completed the six-week BASIC Immigration Information Officer Basic Training Course (IIOBTC) “will also be required to complete a three-week bridge basic training that will focus on adjudication laws, policies, and procedures.” See USCIS Interoffice Memorandum, “IIO Information Regarding Workforce Restructuring Model” (July 30, 2008).

196 Visitor’s Booklet, “The USCIS ACADEMY: Building the Workforce of Tomorrow” (Mar. 2009).

197 USCIS Update, “USCIS Awards Contracts for Training Services” (Nov. 20, 2008), www.uscis.gov (accessed June 9, 2009).

198 Information provided by USCIS to the Ombudsman (Apr. 30, 2009).

199 U.S. House Judiciary Committee Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law hearing on “Naturalization Delays: Causes, Consequences, and Solutions” (Jan. 17, 2008) (written testimony of Emilio T. Gonzalez, former USCIS Director), http://www.uscis.gov/files/testimony/testimony_ETG_17jan08.pdf (accessed June 8, 2009) (“The new capacity will support bringing well-trained new hires on board as quickly as possible. Classroom training will occur at select USCIS Academy Training Center locations throughout 2008 and into 2009.”) http://www.uscis.gov/files/testimony/testimony_ETG_17jan08.pdf (accessed June 9, 2009).

200 Visitor’s Booklet, “The USCIS ACADEMY: Building the Workforce of Tomorrow” (Mar. 2009).

201 USCIS 2007 Annual Report Response, p. 4.

202 Visitor’s Booklet, “The USCIS ACADEMY: Building the Workforce of Tomorrow” (Mar. 2009).

203 Information provided by USCIS to the Ombudsman (Apr. 30, 2009).

current students to better understand the program and its success in producing “job-ready” graduates. These individuals discussed: (1) how training material errors are corrected and whether they are corrected timely; (2) the differing environments between FLETC and the new facilities; (3) effectiveness of the restructured BASIC training program; and (4) what, if any, additional training is needed upon completion of BASIC.

Instructors’ opinions varied as to whether the first design of BASIC training would provide job-ready new hires. Graduates’ comments also varied about job readiness. For example, some graduates thought that the practicum in the first BASIC design had little applicability to everyday responsibilities at their home office, keeping in mind that most, if not all, only completed one phase of the originally planned practicum. Most graduates also responded that additional practical training would be helpful, particularly more hands-on computer training.

In July 2009, the USCIS Academy is scheduled to introduce a re-design of BASIC. New hires will begin attending BASIC for seven weeks (rather than six weeks under BASIC’s original design). Practicums will take place in Dallas for most new hires.²⁰⁴ The Ombudsman understands that the revised training will further job-readiness by including more practical components, such as expanded interviewing training. USCIS also will be providing additional coaching for instructors, with the assistance of supervisors and contractors, to enhance instruction.

c. Training on New Information

The Ombudsman also reviewed how adjudicators learn about changes in laws, regulations, and policies, and understands that USCIS determines on a case-by-case basis the kind of training necessary. The agency states in its 2008 Annual Report Response that “[e]mployees are notified daily regarding specific administrative, procedural, and/or operational changes.” However, adjudicators in different offices described to the Ombudsman how they learn of such changes in a variety of ways: on their own initiative by reviewing USCIS e-mail broadcasts; during local office training; by asking a supervisor; from e-mails sent by the local office; and, through

training organized from USCIS Headquarters.²⁰⁵ USCIS does not have guidelines in place for determining whether a developing issue warrants formal training or if adjudicators are expected to educate themselves on their own time. The Ombudsman will monitor this issue further in the next reporting period.

204 Refugee, asylum, and Fraud Detection and National Security new hires may continue to travel to the NBC for practicum training on certain computer programs.

205 The Ombudsman gathered this information during a series of visits to the following field offices: Raleigh-Durham (Feb. 5, 2009), Houston (Mar. 4, 2009), and St. Paul (Mar. 10, 2009).

I. FBI Name Checks

In previous annual reports, the Ombudsman detailed pervasive and serious problems related to long-pending FBI name checks,²⁰⁶ one of several security screening tools used by USCIS. This year, the Ombudsman reports that USCIS has worked with the FBI to address its backlog of long pending name checks. FBI name checks used to comprise the single largest category of case problem inquiries received by the Ombudsman, but were not a substantial source of case problems during the reporting period. The Ombudsman no longer considers FBI name checks to be a pervasive and serious problem.

The FBI provides information to USCIS regarding anyone who is the principal subject of an investigation or is a person referenced in an FBI file. USCIS adjudicators and the agency's Fraud Detection and National Security unit use this information to determine if applicants are ineligible for benefits. Completion of the name check process takes considerable time where a manual review of FBI hardcopy files is necessary.

As of May 5, 2009, USCIS reported 4,485 FBI name check cases pending with only 60 cases more than 30 days old. In contrast, on May 6, 2008, there were 269,943 name checks pending; on May 4, 2007, there were 329,160 name checks pending; and on May 17, 2006, there were 235,802 name checks pending.

Figure 9: Pending FBI Name Checks 2006-2009

Age of Pending Response	Total Count (May 5, 2009)	Total Count (May 6, 2008)	Total Count (May 4, 2007)	Total Count (May 17, 2006)
< 3 months	4,485	50,328	117,819	82,636
3 - 6 months	0	34,453	55,749	33,450
6 - 9 months	0	85,955	28,029	20,047
9 - 12 months	0	24,947	20,825	16,845
12 - 15 months	0	17,860	14,133	15,064
15 - 18 months	0	13,489	13,931	10,636
18 - 21 months	0	11,759	11,035	8,144
21 - 24 months	0	13,102	12,398	8,325
24 - 27 months	0	5,836	11,765	9,754
27 - 30 months	0	4,461	6,600	4,435
30 - 33 months	0	2,924	5,732	4,896
>33 months	0	4,829	31,144	21,570
Total Pending	4,485	269,943	329,160	235,802

Source: USCIS Aging Reports for FBI Name Checks

²⁰⁶ Ombudsman's Annual Report 2008, pp. 5-7; 2007, pp. 37-45.

In a March 4, 2009 USCIS Update, "USCIS Meets Another Milestone in Eliminating FBI Name Check Backlogs," the agency announced that the backlog of name checks pending more than six months was eliminated.²⁰⁷ USCIS further stated that, working with the FBI, it is "on schedule to meet the next two goals: all name checks requests pending longer than 90 days are to be completed by May 30, 2009 and, by the end of June 2009, the FBI will complete 98 percent of USCIS name check requests within 30 days and process the remaining two percent within three months."²⁰⁸

As discussed in last year's Annual Report, most of the improvements in name check processing times and backlog reductions have resulted from increases in resources and personnel.²⁰⁹ In FY 2007 and FY 2008, USCIS transferred to the FBI nearly \$30 million in additional funds the FBI used mainly to hire more contract staff.²¹⁰ This funding allowed the FBI to increase contract staff from 38 to over 250 personnel. At the peak of its efforts to address long-pending name checks, the FBI had over 290 contractors processing name check requests.²¹¹ This number has declined due to attrition of contract staff, reduction of the name check backlog, and decline in USCIS receipts and corresponding name check work.²¹²

In February 2008, USCIS announced a policy initiative permitting adjudication of green card and other applications in which the FBI name check had been pending over 180 days and where the application was otherwise approvable.²¹³ One year later, after addressing the name check backlog, USCIS

²⁰⁷ USCIS Update, "USCIS Meets Another Milestone in Eliminating FBI Name Check Backlog" (Mar. 4, 2009), http://www.uscis.gov/files/article/Namecheck_4Mar09.pdf (accessed June 7, 2009); see also DHS Leadership Journal, "USCIS and FBI Achieve Interim Backlog Elimination Goals" (Mar. 20, 2009), <http://www.dhs.gov/journal/leadership/2009/03/uscis-and-fbi-achieve-interim-backlog.html> (accessed June 7, 2009).

²⁰⁸ USCIS Update, "USCIS Meets Another Milestone in Eliminating FBI Name Check Backlogs" (Mar. 4, 2009), http://www.uscis.gov/files/article/Namecheck_4Mar09.pdf (accessed June 7, 2009).

²⁰⁹ Ombudsman's Annual Report 2008, p. 7.

²¹⁰ Information provided by the FBI to the Ombudsman (Mar. 18, 2009).

²¹¹ Id.

²¹² Id.

²¹³ USCIS Interoffice Memorandum, "Revised National Security Adjudication and Reporting Requirements" (Feb. 4, 2008), www.uscis.gov (accessed June 7, 2009).

rescinded this guidance.²¹⁴ USCIS stated in a January 2009 memorandum, “National Security Adjudication and Reporting Requirements-Update,” that a “definitive FBI name check, FBI fingerprint check, and IBIS [Interagency Border Inspection System security] check [must] be resolved before approving” green card and other applications. The Ombudsman will continue to monitor FBI name check aging reports to determine whether substantial future backlogs arise.

214 USCIS Memorandum, “National Security Adjudication and Reporting Requirements-Update” (Feb. 9, 2009), www.uscis.gov (accessed June 7, 2009).

III. Recommendations and Studies

A. Methodology

In keeping with standard ombudsman practices, this office reviews issues impartially. Specifically, the Ombudsman seeks and regularly receives representative viewpoints from a wide spectrum of individuals, organizations, and government entities.

The Ombudsman also uses multiple resources to identify and research systemic issues for recommendations to USCIS. For example, case problems or e-mail inquiries submitted by individuals and employers may be the starting point for analysis, or can inform ongoing recommendations and studies. In addition, the Ombudsman has regular in-person meetings with community-based organizations, employer associations, and the immigration legal community nationwide, as well as with USCIS personnel at Headquarters, service centers, and field offices. Other outreach tools, such as the office's monthly teleconference series "How Is USCIS Working for You?" provide information for this research.

The Ombudsman analyzes USCIS data and reports for trends in the agency's workloads and production. In addition, the Ombudsman engages with other DHS components, other government agencies, and Congress, where appropriate, to foster interagency cooperation and to gain a better understanding of the unique challenges to better delivery of immigration benefits to qualified applicants.

Finally, at the end of the process of problem identification and research, data gathering and analysis, and internal review, the Ombudsman may issue a recommendation to USCIS on how to improve a process or operation to better assist individuals and employers.

B. Additional Areas of Focus

1. Military Naturalizations

In March 2006, the Ombudsman recommended that USCIS improve the naturalization process for active duty U.S. military personnel and, specifically, that USCIS eliminate the fingerprint requirement.²¹⁵ While USCIS did not eliminate the requirement, it has made significant improvements to the military naturalization process in the last two years. Last year's Annual Report noted the establishment of a toll-free telephone number to address concerns raised by service members and their families, as well as a webpage dedicated to these issues.²¹⁶ USCIS also created an e-mail address exclusively for their use.

Currently, USCIS processes nearly 60 percent of all military naturalization cases to completion within 120 days.²¹⁷ USCIS has naturalized "[45,048] service men and women since September 2001," of whom "38,852 service members naturalized in the United States and 6,196 service members naturalized in ceremonies overseas and onboard Navy flagships at sea."²¹⁸ In calendar year 2008, there were 8,342 military naturalization applications and USCIS completed 9,953; as of this writing, approximately 1,100 military naturalization cases are at the NSC awaiting fingerprints or receipt of other military file information.²¹⁹

215 Recommendation #23 (Mar. 20, 2006), www.dhs.gov/cisombudsman (accessed June 9, 2009).

216 Ombudsman's Annual Report 2008, pp. 38, 45.

217 Information provided by USCIS to the Ombudsman (Apr. 6, 2009).

218 DHS Today, "After Serving in Iraq, Marine Begins New Journey as A U.S. Citizen" (Mar. 9, 2009).

219 Information provided by USCIS to the Ombudsman (Apr. 6, 2009).

CASE PROBLEM

In August 2008, the Ombudsman received an inquiry from a representative of two military naturalization applicants. Two USCIS offices, apparently adopting a new interpretation of INA section 329, were delaying decisions or denying military naturalization cases for individuals who had not yet been “in combat.” INA section 329 does not require that the applicant serve in combat or in a combat zone. One case involved a National Guard soldier who had completed active duty training, but had not yet been deployed. The other case involved an officer-in-training who could not be sent into combat as an officer until he naturalized. After the applicants contacted the Ombudsman, Department of Defense (DOD) representatives met with USCIS in October 2008 to determine the correct application of section 329. USCIS naturalized the two military servicemen.

a. Recent Legislation

In 2008, Congress passed and the President signed into law legislation requiring USCIS to further review and modify its military naturalization procedures. The Kendell Frederick Citizenship Assistance Act²²⁰ mandates that USCIS use fingerprints and other biometric information already on file with the DOD when military personnel apply for citizenship. The Act also requires that USCIS use biometric information collected during the green card application process if the applicant meets all other requirements for military naturalization.²²¹

Military personnel are fingerprinted as part of the enlistment process. However, USCIS considers fingerprints valid for 15 months,²²² after which individuals must be re-printed. Although DOD does not consider its fingerprint information to expire, USCIS requires new fingerprints if they are older than 15 months.

The NSC receives and processes all military Form N-400 (Application for Naturalization) applications. The NSC indicated that it uses DOD fingerprints and biometrics from green card applications whenever possible, thereby meeting

220 Pub. L. No. 110-251 (June 26, 2008).

221 USCIS Fact Sheet, “Naturalization Through Military Service” (May 16, 2008), http://www.uscis.gov/files/article/mil_natz_051608.pdf (accessed June 9, 2009).

222 USCIS National Stakeholder Meeting – Answers to National Stakeholder Questions (Mar. 25, 2008), <http://www.uscis.gov/files/nativedocuments/MARCOQA.pdf> (accessed June 9, 2009).

the requirements of Kendell Frederick.²²³ If DOD fingerprints or biometrics captured in the green card process are no longer valid for USCIS: (1) the NSC will schedule applicants for biometric collection at an ASC near where they are stationed; or (2) the nearest U.S. embassy will collect new fingerprints for applicants abroad who are unable to travel to an ASC.

The Military Personnel Citizenship Processing Act²²⁴ establishes a six-month deadline for processing and adjudicating naturalization applications filed by current or former members of the Armed Forces and their spouses and children. If USCIS cannot meet this deadline, it must provide a written explanation to the applicant and an estimated date by which the application will be completed.²²⁵ During the last reporting period, the FBI name check continued to significantly delay adjudication of immigration benefits for many customers.²²⁶ However, name checks are no longer an issue for military personnel. The FBI automatically expedites those applicants’ name checks and now completes them within 60 days.²²⁷

Military naturalization cases that take longer than three months usually are waiting for military records for past and present military service periods.²²⁸ The two forms that DOD personnel must complete are: (1) the G-325B (Biographic Information), which supplies military background check information, and (2) the Form N-426 (Request for Certification of Military or Naval Service), which certifies military service periods. The Ombudsman understands that the N-426 may take up to three months to arrive from DOD. The N-400 application remains on hold with USCIS until receipt of this information.

b. USCIS Recent Memoranda

On April 29, 2009, USCIS issued a memorandum to Field Office Directors to address the N-426 processing delay.²²⁹

223 Information provided by USCIS to the Ombudsman (Apr. 21, 2009).

224 Pub. L. No. 110-382 (Oct. 9, 2008).

225 *Id.*

226 Ombudsman’s Annual Report 2008, p. 5; see also section II.I., “FBI Name Checks.”

227 Information provided by USCIS to the Ombudsman (Apr. 21, 2009).

228 Information provided by USCIS to the Ombudsman (Apr. 6, 2009).

229 USCIS Interoffice Memorandum, “Acceptance of DD 214 as Certification of Military or Naval Service for Veterans of the U.S. Armed Forces” (Apr. 29, 2009), www.uscis.gov (accessed June 9, 2009).

To assist naturalization applicants who are veterans, USCIS will begin accepting N-400 packets that include uncertified N-426s, if accompanied by DD Form 214 (Certificate of Release or Discharge from Active Duty). Upon receipt of such N-400 packets, the NSC will ensure that Form N-426 covers all periods of service.²³⁰

In the past year, USCIS has taken other steps to more effectively process immigration benefits for service members and their families. A June 2008 memorandum directs field offices to: (1) make and maintain contact with designated military officials or points of contact at each installation within each military branch, and (2) regularly bring immigration services to service members and their families at their military installations.²³¹ The memorandum also calls for qualified service members to naturalize domestically as soon after enlistment as possible and before deployment overseas.

The Ombudsman learned of several instances of USCIS compliance with the June 2008 directive. For example, the Los Angeles District Office has had outreach efforts to military personnel stationed at 29 Palms Marine Corps Base and Port Hueneme. District office supervisors and adjudication officers visited these military bases to conduct interviews in the morning and hold naturalization ceremonies in the afternoon.

2. Employment-Based Petitions (I-140s)

RECOMMENDATION 4

The Ombudsman recommends that USCIS review processing methods for employment-based petitions between the Nebraska and Texas Service Centers to make American Competitiveness in the Twenty-First Century Act (AC21) portability provisions²³² equally available to all customers. (AR2009-04)

Between June 2008 and February 2009, the Ombudsman received numerous inquiries and case problems regarding delays in processing Form I-140 (Immigrant Petition for Alien Worker). Most of these inquiries were from individuals with petitions pending at the TSC.

²³⁰ *Id.*

²³¹ USCIS Interoffice Memorandum, “Military Outreach: Bringing Immigration Services to the Troops” (June 10, 2008).

²³² The American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313 (Oct. 17, 2000); INA § 204(j).

Generally, there are three steps in the employment-based immigration process: (1) the employer files a Labor Certification Application with the U.S. Department of Labor;²³³ (2) the employer files the I-140 with USCIS to verify that the foreign worker meets the minimum requirements for the open position;²³⁴ and (3) the individual files the Form I-485 (Application to Register Permanent Residence or Adjust Status) green card application.²³⁵ USCIS may adjudicate the I-140 immediately; however, it cannot adjudicate the I-485 until the visa is available. The priority date is often assigned at the time of the Labor Certification filing.²³⁶ Employers and individuals may file the I-140 and the I-485 concurrently, thus allowing the worker to apply for interim benefits such as employment authorization or advance travel authorization while the green card application is pending with USCIS.²³⁷

On October 17, 2000, the President signed the American Competitiveness in the Twenty-First Century Act (AC21) into law. AC21 provides job portability, thereby giving flexibility to foreign workers experiencing labor certification and immigration processing delays. By operation of AC21, an employee with an approved I-140 petition may change employers as long as the new job is the “same or similar” to the job for which the I-140 was approved and the I-485 has been pending over 180 days.²³⁸

²³³ See generally INA § 212(a)(5)(A); 20 C.F.R. pt. 656 (2008).

²³⁴ See generally INA § 203(b).

²³⁵ See generally INA § 245.

²³⁶ See 8 C.F.R. § 245.2(a)(5)(ii) (2008).

²³⁷ See 8 C.F.R. §§ 212.5(f), 274a.12(c)(9) (2008).

²³⁸ The American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313 (Oct. 17, 2000); INA § 204(j).

CASE PROBLEM

E-mail received by the Ombudsman in January 2009. In August 2007, during the 2007 surge, a customer concurrently filed an employment-based I-140 and I-485 with a USCIS service center. In January 2009, the customer contacted the Ombudsman because both the petition and application had been pending for over 17 months. The customer's petition was one year outside of the processing times for that service center. The customer complained that he was unable to capitalize on other job opportunities in accordance with AC21 portability provisions, because USCIS did not adjudicate the petition timely. USCIS eventually approved the I-140 petition in February.

In July 2006, USCIS instituted "bi-specialization," an initiative to centralize filings and align similar workloads between "sister" service centers. USCIS stated that, "[p]airing work between service centers will allow [the agency] to better manage cases and improve customer service."²³⁹ USCIS paired the NSC and TSC to process I-140 petitions and green card applications.

The NSC and TSC process concurrent filings differently. The NSC adjudicates I-140 petitions even if the concurrently filed I-485 green card applications are not yet ripe for processing due to a lack of visa numbers. However, TSC processes such concurrently filed petitions and applications together by waiting until visa numbers are available. As a result, petitions filed with the TSC may not be adjudicated as quickly as those filed with the NSC. Such variation may deprive certain individuals of portability benefits to which they are entitled under AC21.

3. First Preference Priority Worker (EB-1) Immigrant Petitions

RECOMMENDATION 5

The Ombudsman recommends that USCIS post a practical tip sheet on its website to assist stakeholders in providing the necessary and relevant information for complex EB-1 cases. (AR2009-05)

²³⁹ USCIS Fact Sheet, "Updated Bi-Specialization Filing Instructions" (June 30, 2006), www.uscis.gov (accessed June 9, 2009).

There are approximately 40,000 visas²⁴⁰ available annually for individuals with extraordinary ability,²⁴¹ outstanding professors and researchers,²⁴² and certain multinational executives and managers.²⁴³ In FY 2008, 36,678 visas were used: 15,184 by principal applicants and 21,494 by their derivative family members.²⁴⁴ These visas require high thresholds of achievement, distinction, and fame. Individuals in these immigrant visa categories submit petitions to USCIS under the employment-based first preference classification for priority workers (EB-1).²⁴⁵ In creating this classification, Congress stated that pairing these workers with an employer in the United States would "... substantially benefit prospectively the national economy, culture, educational interests and welfare of the United States."²⁴⁶

During the reporting period, the Ombudsman received complaints from individuals, employers, and stakeholders concerning EB-1 adjudications.

Specifically, the concerns included:

- **Lack of Information to Customers** – As USCIS provides limited information on the adjudicative standards for EB-1 cases, there is little guidance to help customers better prepare EB-1 cases for filing.
- **Lack of Uniformity in Adjudications** – The Ombudsman has found operational differences between the two service centers adjudicating EB-1 cases. USCIS pairs service centers under bi-specialization and tasks them with processing similar work. However, the manner in which EB-1 cases are processed is not uniform due to each service center's different operational structure.²⁴⁷ For example, the NSC has one division separated into different teams that process either Form I-140 (Immigrant Petition for Alien Worker) or Form I-485 (Application to Register Per-

²⁴⁰ INA § 203(b) (2008).

²⁴¹ INA § 203(b)(1)(A); 8 C.F.R. § 204.5(h) (2008).

²⁴² INA § 203(b)(1)(B); 8 C.F.R. § 204.5(i) (2008).

²⁴³ INA § 203(b)(1)(C); 8 C.F.R. § 204.5(j) (2008).

²⁴⁴ See Figure 4. In FY 2007 and FY 2006, 26,697 and 36,960 EB-1 visas were issued, respectively. See 2007 and 2006 Yearbook of Immigration Statistics, DHS Office of Immigration Statistics, at Table 7.

²⁴⁵ See generally USCIS, "Immigration through Employment," www.uscis.gov (accessed June 9, 2009).

²⁴⁶ The Immigration Act of 1990, Pub. L. No. 101-649 (Nov. 29, 1990).

²⁴⁷ See USCIS Fact Sheet, "Updated Bi-Specialization Filing Instructions" (June 30, 2006), www.uscis.gov (accessed June 9, 2009).

manent Residence or Adjust Status), whereas the TSC has at least three divisions that process both I-140s and I-485s.

- **Requests for Evidence**²⁴⁸ – RFEs issued by USCIS in EB-1 cases appear to be arbitrary and generic.²⁴⁹ According to stakeholders, who view EB-1 cases as particularly complex, adjudications officers need a high degree of knowledge and experience to process them. Therefore, stakeholders perceive the frequency of RFE issuance to increase when less experienced officers process EB-1 cases.

At a USCIS National Stakeholder Meeting on March 31, 2009, participants voiced their concern about the increase in the number of RFEs. USCIS informed stakeholders that “[w]hile there was no appreciable difference year to year, we have experienced an increase of approximately 9 [percent] during the last 5 months as we have added officers. New officers have a traditionally higher RFE rate as they work their way through their training cycle.”²⁵⁰

The Ombudsman notes that USCIS has trained large numbers of newly hired staff at the Academy. However, USCIS should provide all staff processing EB-1 cases with the same post-Academy training to ensure consistent case processing. Additionally, stakeholders noted that some RFEs seek evidence already provided with the initial filing, or do not specifically indicate where the case is deficient in meeting the required criteria. As a result, the customer does not know what additional evidence to provide.

In November 2008, the Ombudsman facilitated a teleconference²⁵¹ with stakeholders and the NSC to address concerns raised by customers and stakeholders concerning the EB-1 product line. The NSC maintains an e-mail address for stakeholders to alert the service center of any EB-1 irregularities

or RFEs that appear to be “boilerplate” or “broad brush.”²⁵² The Ombudsman also traveled to the NSC and TSC to review the operations for EB-1 processing. In addition, stakeholders provided sample cases for the Ombudsman to review.

The Ombudsman will continue to monitor EB-1 adjudications issues in the coming reporting period.

4. Special Immigrant Visas (SIVs)

This reporting year, the Ombudsman reviewed the underutilization of SIV petitions and visa issuances in the U.S.-affiliate program for Afghani and Iraqi nationals employed by or on behalf of the U.S. Government. The legislative intent of this SIV program was to serve persons made vulnerable by their service to the United States.²⁵³

In studying this program, the Ombudsman spoke with SIV self-petitioners in Amman, Jordan and the United States, tracked case problems, reviewed processes of the NSC where these petitions are adjudicated, visited the DOS National Visa Center where subsequent administrative proceedings are conducted, and spoke with private attorneys, law school clinic members, and other non-governmental stakeholders. In addition, the Ombudsman learned about U.S. military personnel who, on their own time, personally help petitioners apply for resettlement.

The Ombudsman observed USCIS processing initiatives tailored to these particular petitioners’ needs, and reviewed process and policy concerns that, left unaddressed, may continue to hinder issuance of SIVs.

248 See section II.D., “Requests for Evidence (RFEs).”

249 See Questions and Answers, “USCIS American Immigration Lawyers Association (AILA) Meeting,” p. 10 (Mar. 19, 2009), www.uscis.gov (accessed June 9, 2009); see also “USCIS-AILA Liaison Committee Agenda,” p. 3 (Oct. 28, 2008), www.uscis.gov (accessed June 9, 2009).

250 See Questions and Answers, “USCIS National Stakeholder Meeting,” p. 1 (Mar. 31, 2009), www.uscis.gov (accessed June 9, 2009).

251 This teleconference was not part of the monthly CIS Ombudsman’s Community Call-In Teleconference Series.

252 Response time is usually 48 hours, but in some cases, may take longer if research requires obtaining files found off-site. On April 13, 2009, the NSC clarified that the e-mail box was established several years ago as a “means for ... [community] based organizations (CBOs) to submit inquiries on any form type directly to [NSC].” Information provided by USCIS to the Ombudsman (Apr. 13, 2009).

253 “To Increase the Number of Iraqi and Afghani Translators and Interpreters Who May be Admitted to the United States as Special Immigrants,” House Committee on the Judiciary, HR Rep. No. 110-158, (May 21, 2007) (“Iraqi and Afghani translators and interpreters provide vital assistance in their home countries to the mission of the United States Armed Forces and Department of State. Their work for the United States government often makes them targets of death squads, militias, and al-Qaeda. Many translators and interpreters are forced into hiding and are unable to escape this threat.”); see also Press Release, “Kennedy, Smith, Levin, Brownback on the Iraqi Refugee Provisions in the Defense Authorization Conference Report” (Dec. 7, 2007).

a. “Translator” Program

The SIV program, established under section 1059 of the National Defense Authorization Act in FY 2006, is commonly referred to as the “translator” program. It authorized 50 Iraqi and Afghani translators to self-petition to immigrate to the United States with their dependants and immediately obtain green cards.²⁵⁴ Subsequent legislation also made visa recipients eligible for the same relocation assistance and resettlement benefits available to admitted refugees.²⁵⁵ Petitioners pay a \$375 filing fee, but can request a waiver.

Subsequent legislation increased the annual visa allotment from 50 to 500 for principal petitioners during FY 2007 and FY 2008.²⁵⁶ The full visa allocation was used in FY 2007 and the Ombudsman understands that all available visas were issued for FY 2008. The annual allotment returned to 50 visas in FY 2009.²⁵⁷

b. “U.S.-Affiliate” Program

New legislation enacted in January 2008, under section 1244 of the National Defense Authorization Act for FY 2008, created what is commonly referred to as the “U.S.-affiliate” program. This legislation authorized up to 5,000 immigrant visas per year for FY 2008-2012 for Iraqi nationals who provided “faithful and valuable service” for at least one year (including non-contiguous periods) for or on behalf of the U.S. Government and who are endangered or threatened as a consequence.²⁵⁸ There are no filing fees under this program.²⁵⁹ Unused visas carry forward year to year until, at the end of FY 2014, any

visas still unused will expire. Afghanis who also qualify under the translator SIV program may be converted to the U.S.-affiliate program if a translator SIV visa is not available.²⁶⁰ This section focuses on the state of the U.S.-affiliate program, now in its second year.

c. USCIS’ Role in SIV Programs for Iraqis and Afghanis

Figure 10 depicts the application process for SIVs. To initiate an SIV claim, the Iraqi or Afghani petitioner submits Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) with supporting evidence. Such evidence must include a letter from a supervisor attesting to the petitioner’s good character, as well as a letter from the DOS Chief of Mission. The letter must state the period(s) of employment, that the employment was faithful and valuable to the United States, and that the employee is experiencing or has experienced an ongoing or serious threat as a result of such employment.²⁶¹ USCIS has established at the NSC a dedicated unit of subject matter experts to adjudicate these petitions and to correspond with individuals and their representatives. Once USCIS approves the case, the file is forwarded to DOS’ National Visa Center, which may initiate final security reviews that can cause delays. Next, the petitioner is scheduled for an interview at a nearby consulate. Finally, the petitioner arrives in the United States.

254 National Defense Authorization Act for Fiscal Year 2006, § 1059, Pub. L. No. 109-163 (Mar. 11, 2009). Visas issued to SIV dependants are not counted against annual numerical limits.

255 “Refugees” under INA § 207; Consolidated Appropriations Act, Pub. L. No. 110-161 (Dec. 26, 2007).

256 Pub. L. No. 110-36 (June 15, 2007) amended Pub. L. No. 109-163 (Jan. 6, 2006).

257 *Id.*

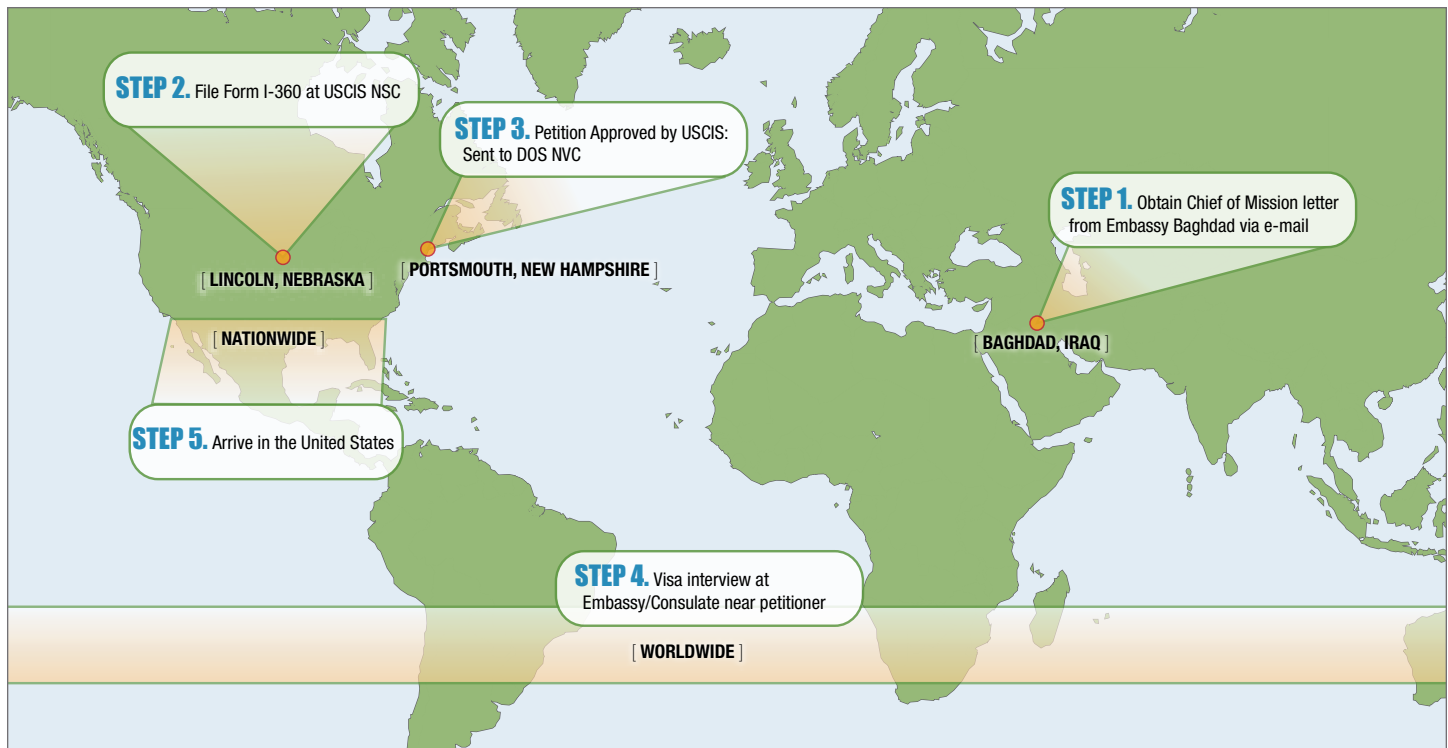
258 National Defense Authorization Act for Fiscal Year 2008, § 1244, Pub. L. No. 110-181 (Jan. 28, 2008), as amended by Pub. L. No. 110-242 (June 3, 2008), established a new special immigrant category under INA § 101(a)(27) for those qualifying Iraqis serving U.S. interests after March 20, 2003. In addition, the Afghan Allies Protection Act of 2009, § 602(b), established a new SIV program authorizing 1,500 visas per fiscal year until 2013 for certain nationals of Afghanistan who have been employed by, or on behalf of, the U.S. Government.

259 National Defense Authorization Act for Fiscal Year 2008, § 1244(d), Pub. L. No. 110-181 (Jan. 28, 2008).

260 Pub. L. No. 110-242 § (2)(a) (June 3, 2008).

261 See National Defense Authorization Act for Fiscal Year 2008, § 1244(b)(4), Pub. L. No. 110-181 (Jan. 28, 2008).

Figure 10: Application Process for SIVs



There are no official estimates on the number of individuals eligible for status under these SIV programs. The Congressional Budget Office stated:

[A]s of early 2008 at least 190,000 contractor personnel, including subcontractors, were working on U.S.-funded contracts in the Iraq theatre. Just under 40 percent of them are citizens of the country where the work is being performed (primarily Iraq); about 20 percent are U.S. citizens.²⁶²

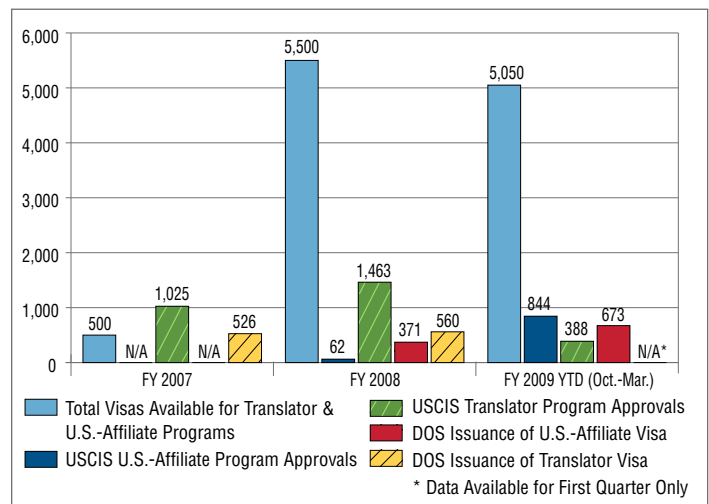
During the first two quarters of FY 2009, USCIS approved 214 U.S.-affiliate program petitions for Afghani petitioners, who had applied under the translator program and whose applications were approved after the cap had been reached.²⁶³

262 “Contractors’ Support of U.S. Operations in Iraq,” (Aug. 2008), <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf> (accessed June 9, 2009). The Act also requires three Executive Branch reports to Congress on, among other issues, Iraqi nationals employed by the U.S. Government, expediting the processing of Iraqis for resettlement, and enhancing existing systems for conducting background and security checks. The Ombudsman understands that these reports, due 120 days after the January 28, 2008 date of enactment, have not yet been submitted as of this writing.

263 Information provided by USCIS to the Ombudsman (May 13, 2009). For further information on the rollover criteria, see “Questions and Answers: USCIS National Stakeholder Meeting” (Aug. 26, 2008), www.uscis.gov (accessed June 9, 2009).

During this same period, USCIS approved 1,018 Iraqis under both programs. In FY 2008, USCIS approved a total of 1,525 SIV applications for both the translator and U.S.-affiliate programs,²⁶⁴ and DOS issued 931 total principal visas for both programs.²⁶⁵

Figure 11: U.S.-Affiliate and Translator Program Visas



Source: Data provided by USCIS to the Ombudsman; U.S. Department of State, www.state.gov (accessed June 18, 2009)

264 Information provided by USCIS to the Ombudsman (Apr. 6, 2009 and May 13, 2009).

265 See <http://www.travel.state.gov/pdf/SQNumbers0409.pdf> and <http://www.travel.state.gov/pdf/SINumbers0109.pdf> (accessed May 21, 2009).

USCIS does not publish processing times for these SIV cases. The Ombudsman understands from USCIS that average processing times would be skewed by how long USCIS holds apparently abandoned petitions before denying them for lack of needed evidence. USCIS indicated to the Ombudsman that the agency processes these cases as expeditiously as possible. Attorneys representing Iraqi and Afghani SIV self-petitioners observed average case cycle times of 8-12 months.²⁶⁶

d. SIV Petitioner Experience

Many potential petitioners have told the Ombudsman that they may be dissuaded from filing for an SIV due to qualification requirements, security review delays, and slow official responses to requests for information. Additionally, certain evidentiary requirements may necessitate a visit to Baghdad or another U.S. embassy or consulate. Undertaking such travel may be logistically challenging or even life-threatening. Many would-be SIV petitioners, who lead clandestine lives in remote areas with their U.S. military units, fear that exposure of their U.S. service is inevitable, if they travel to the embassy to pursue the immigration benefit to which that service entitles them.

Individuals may abandon their petitions for several reasons. Representatives of petitioners, and petitioners themselves, have told the Ombudsman that they cannot or prefer not to endure the psychological stress of waiting for SIV adjudications or security reviews. Alternatively, individuals may relocate from country to country seeking safe haven, or apply for relief under the U.S. refugee program.²⁶⁷

266 Information provided to the Ombudsman (May 12, 2009). Some attorneys reported advising their clients to seek other forms of relief, such as the P-2 refugee classification, where they can be processed outside of the country without having to return to obtain supporting evidence. The trade-off is that, whereas an SIV-holder may obtain a green card on arrival at a port-of-entry, refugees must wait one year to apply.

267 Pursuant to the Refugee Assistance Act of 2008, Pub. L. No. 110-181 (Jan. 28, 2008), DOS expanded the P-2 direct access refugee program for persons of “special humanitarian concern” to include certain Iraqi nationals. These individuals do not apply first to the UN High Commissioner for Refugees (UNHCR) for designation as a refugee, but may seek status directly from the DOS Refugee Processing Center, saving substantial time. All such applicants are subject to relevant numerical refugee caps. Notably, in-country refugee processing is newly permitted at Embassy Baghdad for these P-2 applicants, although refugees are typically processed outside the country from which they have fled.

Those who do persist in filing petitions encounter lack of a standardized or transparent review process both for denied petitions and for delayed SIV petitions and refugee applications. USCIS told one law school clinic assisting a denied petitioner to submit a “Request for Reconsideration.” The Ombudsman understands that the agency treats such a request as correspondence that is neither provided a receipt nor subject to a standardized adjudication process. In the next reporting period, the Ombudsman intends to further analyze requests for review and reconsideration in this context.

USCIS has continually added innovations to its customer service processes for these petitions. For example, the agency created a dedicated e-mail account²⁶⁸ for replying to petitioner inquiries about filing these petitions, RFEs, and how to appeal denials. USCIS has regularly fine-tuned its processes to meet the many challenges faced by this group of petitioners.

5. DNA

Since late summer 2008, the Ombudsman has been revisiting the subject of DNA relationship testing²⁶⁹ in the immigration context.

a. Previous DNA Recommendations

The Ombudsman previously addressed the need for modernizing DNA testing rules and policies in an April 2006 recommendation that USCIS: (1) accept DNA testing as secondary evidence of biological relationship; (2) provide authority to officers to require DNA testing; and (3) study the impact of

268 Information provided by USCIS to the Ombudsman (Apr. 21, 2009) (USCIS initiated this e-mail account when postal mail to Iraqi and Afghani petitioners was continually returned as undeliverable. Petitioners previously had to await military dispatch pouches, which can be delayed or prohibited in covert operations or remote locations, or travel into Baghdad to send responses via private courier from the airport. USCIS also allows for scanned documents from SIV petitioners, rather than requiring originals or an original signature on Form I-360).

269 “Relationship testing” is the terminology preferred by the biological testing industry; it is broader in scope than previously used terms such as “parentage testing” or “paternity testing,” as well as more explanatory than the term “genetic testing.” In the immigration context, *relationship testing* refers to any test yielding evidence of a legally recognizable family relationship under which immigration to the United States or, for those already here, on which acquisition of a green card may be based. Cf. Department of Justice Notice of Final Rule, OAG Docket No. 108, 109, 119; AG Order No. 3023-2008RIN 1105-AB09, -AB10, -AB24, “DNA-Sample Collection and Biological Evidence Preservation in the Federal Jurisdiction.” “DNA testing” refers to the most accurate form of such testing.

requiring DNA testing as evidence of relationship in a pilot program.²⁷⁰ The Ombudsman was concerned that USCIS viewed obsolete venipuncture-based Blood Group Antigen or Human Leukocyte Antigen (HLA) testing (drawing blood with a needle) as the types of relationship testing field office directors could require.

USCIS responded in July 2006 that such actions were unnecessary.²⁷¹ Specifically, USCIS: (1) pointed to a legacy INS Policy Memo from 2000 issued by Michael Cronin²⁷² (Cronin Memo) as allowing field office directors to “suggest” DNA testing as secondary evidence; (2) stated that it was “already in the process of drafting regulations to update the regulations at 8 C.F.R. § 204.2(d)(vi) to require DNA testing” in specific instances (e.g., suspected fraud, lack of primary or secondary evidence) to be completed in December 2006; and (3) noted it was considering an overseas pilot. USCIS left open the possibility of requiring “DNA testing for all family petitions” when such testing is more available and affordable worldwide.²⁷³

In addition to the Cronin Memo, USCIS issued a memorandum in 2008 entitled “Genetic Relationship Testing: Suggesting DNA Tests – Revisions to the AFM Chapter 21” (Aytes Memo).²⁷⁴ The Aytes Memo revisits the Cronin Memo without advancing USCIS policy regarding “suggested” testing.²⁷⁵

b. Comparison with Department of State

Other agencies, most notably DOS, have moved to formalize DNA as state-of-the-art evidence and established noninvasive

270 Recommendation #26 (Apr. 12, 2006), www.dhs.gov/cisombudsman (accessed June 10, 2009).

271 USCIS Response to Recommendation #26 (July 5, 2006), www.dhs.gov/cisombudsman (accessed June 10, 2009).

272 INS Interoffice Memorandum from then Acting Executive Associate Commissioner of the INS, Michael D. Cronin, “Guidance on Parentage Testing for Family-Based IV Petitions,” (July 14, 2000) (Cronin Memo), <http://www.immigrationlinks.com/news/news413.htm> (accessed May 4, 2009).

273 Economies of scale have not dramatically decreased the cost of DNA testing. Rather, despite laboratory processing cost reductions due to streamlined, automated processing of samples, overall customer savings have leveled off due to more inelastic, fixed costs involved in transporting and safeguarding DNA test kits to and from collection sites. These fixed costs can be drastically higher for less developed countries than for the domestic U.S. testing market.

274 http://www.uscis.gov/files/pressrelease/genetic_testing.pdf (accessed June 9, 2009).

275 In addition to the Cronin and Aytes memoranda, 8 C.F.R. § 204.2 pertains to this issue.

buccal swab collection (i.e., gently scraping cells from the inside of the mouth with a cotton bud) as the preferred specimen gathering technique. By updating its rules on DNA testing, USCIS would be harmonizing its procedures with those of DOS in a way that facilitates evidence gathering abroad.

Nearly three years after stating an intention to update its regulations, USCIS has not modified 8 C.F.R. § 204.2(d)(vi). In addition, only two pilot programs to date have been conducted, both in Africa.

Since April 2006, DOS has adopted significant revisions to its policy and practice regarding DNA testing. These updates to the Foreign Affairs Manual collectively recognize DNA testing as the state-of-the-art in biological relationship testing, articulate the need to maintain strict procedural safeguards to protect the integrity of this powerful tool, and establish noninvasive buccal swab collection as the preferred collection technique.

c. Asylees and Refugees

The Ombudsman discussed DNA testing with community-based and international relief organizations. All expressed dissatisfaction with the Nairobi pilot DNA program. They voiced a shared concern that greater availability of DNA testing would lead to it becoming mandatory, even if proposed as an alternative to assist refugee families in meeting their evidentiary burden. These organizations fear that mandatory testing will prejudice P-3 applicants by: (a) leading consular adjudicators to rely on DNA testing in lieu of exercising their judgment based on interview and document review; (b) infringing privacy rights where confidentiality is difficult to ensure and chain-of-custody or data retention policies ill-defined; and (c) imposing unrealistic costs on those least able to afford them.

d. 2009 Annual Report Recommendations on DNA

RECOMMENDATION 6

The Ombudsman recommends that USCIS remove references to obsolete blood testing methods from the Adjudicator’s Field Manual (AFM) and other published guidance. (AR2009-06)

USCIS should state a definitive preference for non-invasive DNA testing over the obsolete forms of invasive relationship

blood testing that are neither widely available any longer, nor considered as reliable as DNA tests.²⁷⁶

RECOMMENDATION 7

The Ombudsman recommends that USCIS continue to coordinate with the U.S. Department of State regarding DNA testing procedures and execute a Memorandum of Understanding (MOU) with DOS for resource allocation for DNA evidence gathering and chain-of-custody observance abroad. (AR2009-07)

USCIS and DOS²⁷⁷ should enter into a written agreement regarding allocation of monitoring and other administrative costs of DNA evidence gathering abroad, whether conducted at the request of USCIS or DOS. When consular monitoring is unavailable, chain-of-custody requirements cannot be fulfilled; without such oversight, the evidence collection essential to answer RFEs or Notices of Intent to Deny cannot be completed.

RECOMMENDATION 8

The Ombudsman recommends that USCIS designate a USCIS DNA liaison to facilitate discussions between USCIS and the U.S. Department of State, as well as to periodically provide clarifications for DNA laboratories. (AR2009-08)

The liaison would coordinate DNA issues and focus on maintaining consistent testing policy among a number of interested parties: (1) various USCIS offices; (2) USCIS and consulates abroad, as well as more generally between USCIS and DOS officials engaged in immigration processing; and (3) USCIS,

applicants/petitioners and their counsel, and DNA testing laboratories. DOS currently divides this function between two officers within the Bureau of Consular Affairs.

The USCIS component currently taking the lead on DNA testing issues is the Office of Policy and Regulation Management within the Domestic Operations Directorate. Focusing specifically on USCIS' benefits processing role, the liaison would monitor and address procedural, technical, and policy matters.²⁷⁸

e. Going Forward

The Ombudsman continues to monitor USCIS DNA testing policy and practice. Although current USCIS rules establish DNA testing as a choice by customers, its current practice suggests otherwise. The Ombudsman notified USCIS of at least one service center that issued RFEs containing language stating that "only DNA evidence will be sufficient to support the approval of this petition." USCIS stopped issuing these RFEs shortly thereafter.

For three years, since responding to the Ombudsman's 2006 recommendations, the agency has recognized the need to revise regulations about DNA testing.²⁷⁹ By eliminating outdated processes and organizing its piecemeal approaches to testing, USCIS would provide guidance for individuals and harmonize USCIS-DOS immigration processing rules on DNA.

6. K-3 Family Reunification Process

In previous annual reports, the Ombudsman discussed issues with the K-3 visa family reunification process.²⁸⁰ The Legal

276 The Cronin Memo recognized in 2000 that, "[a]s a result of technological advances, field offices should be aware that Blood Group Antigen and HLA tests are no longer widely available for testing by laboratories, and are not considered to be as reliable as DNA tests."

277 USCIS and DOS are the major governmental entities interested in biological relationship testing for immigration benefits purposes. By terms of the "Memorandum Of Understanding Between The Secretaries Of State And Homeland Security Concerning Implementation Of Section 428 Of The Homeland Security Act Of 2002," signed September 29, 2003, by Colin Powell and Tom Ridge, DOS has authority for visa processing abroad, including for immigrant visas based on family relationship. See DHS Press Release, "Departments of State, Homeland Security Reach Agreement on Visa Oversight Rule to Better Secure America's Borders" (Sept. 29, 2003), http://www.dhs.gov/xnews/releases/press_release_0270.shtm (accessed June 10, 2009); see also DHS OIG Report, "An Evaluation of DHS Activities to Implement Section 428 of the Security Act of 2002," OIG-04-33 (Aug. 2004).

278 For example, procedural matters could include where to send DNA kits abroad; who to contact at a USCIS office to clarify DNA RFEs; how to resolve problems obtaining samples overseas where a DOS official must be present for a test initiated at USCIS' request; and suggesting when policy revisions warrant process updates. Technical matters could include giving guidance to adjudicators regarding probability thresholds for different kinships and appropriate individuals to be tested. Policy matters could include interpreting existing policy; monitoring adherence of officers to policy; and revising policy as warranted by changed circumstances (e.g., by technological advances).

279 The agency reports that it is "considering various options that may speed up the adjudication process." Ombudsman Teleconference, "Biological Relationship Testing: Opportunities and Challenges" (Oct. 30, 2008) and USCIS Response (Mar. 20, 2009), www.dhs.gov/cisombudsman (accessed June 10, 2009).

280 Ombudsman's Annual Report 2008, p. 60; 2007, pp. 56-7; and 2006, pp. 46-7 (Recommendation #10).

Immigration Family Equity (LIFE) Act of 2000, enacted in response to immigration benefits processing delays, established the K-3 visa category for foreign spouses of U.S. citizens to obtain a nonimmigrant visa and more quickly join their spouses in the country.²⁸¹ During the reporting period, the Ombudsman continued to hear concerns from community-based organizations, the immigration legal community, and directly from customers that the spirit of the LIFE Act is not fulfilled because processing times for K-3 nonimmigrant visas equal those for immigrant visas for spouses of U.S. citizens.²⁸² As of this writing, the two USCIS service centers that adjudicate the relevant forms, Form I-129F (Petition for Alien Fiance(é)) and I-130 (Petition for Alien Relative), show a processing time for I-129Fs equal to or greater than those for I-130s.²⁸³ As the LIFE Act sought to make the K-3 a faster means of reuniting American citizen families, the legislative intent is not being fulfilled.²⁸⁴

The Ombudsman notes that USCIS has improved the processing times and addressed the receipting delays for I-130s discussed in the 2008 Annual Report.²⁸⁵ Yet, even the posted processing time for issuing K-3 visas continues to frustrate the USCIS customer community, which seeks a swift process for foreign spouses.

7. Family-Based Petitions (I-130s)

U.S. citizens and lawful permanent residents file Form I-130 (Petition for Alien Relative) as a first step for eligible family member beneficiaries to immigrate to the United States.²⁸⁶ USCIS classifies the beneficiary either as an immediate relative, or in one of the four family-based preference categories, based on the petition. Immediate relative petitions filed by U.S. citizens on behalf of a parent, spouse, or unmarried child under the age of 21 are not subject to annual quotas.²⁸⁷ Preference-based petitions are subject to annual numerical limitations;

upon receipt, they are issued a “priority date” denoting the place in line for a visa.²⁸⁸

Since July 15, 2004, USCIS policy has been to hold preference-based petitions and process them just prior to visa availability.²⁸⁹ Due to this policy, many petitions remained pending unadjudicated for years while awaiting a visa number. Currently, there are approximately 1.1 million I-130 petitions pending with USCIS.²⁹⁰

With receipts significantly lower in FY 2009, USCIS informed the Ombudsman that it decided to use available staff to adjudicate many long-pending I-130 petitions. In March 2009, the CSC began shipping pending I-130 petitions to field offices in the southeast, northeast, and western regions to take advantage of capacity in field offices. As of this writing, 223,288 petitions have been relocated to field offices for processing.²⁹¹ USCIS will continue to ship these petitions until the end of FY 2009. The agency anticipates processing approximately 600,000 of the 1.1 million I-130 petitions currently pending.²⁹² In addition, USCIS has told the Ombudsman it will process the additional I-130 petitions received in FY 2009; projected receipts for FY 2009 are 650,000.²⁹³

C. 2009 Reporting Period Recommendations

During the reporting period, the Ombudsman issued eight recommendations to USCIS, as described on the following pages in reverse chronological order. By statute, USCIS has three months to respond to these recommendations.²⁹⁴

281 Pub. L. No. 106-553 (Dec. 21, 2000).

282 K-3 visas are issued upon approval of Form I-129F (Petition for Alien Fiance(e)), while IR-1 visas are issued after approval of Form I-130 (Petition for Alien Relative).

283 “Processing Times and Case Status,” www.uscis.gov (accessed June 17, 2009).

284 See generally LIFE Act, Pub. L. No. 106-553 (Dec. 21, 2000).

285 Ombudsman’s Annual Report 2008, p. 60.

286 INA §§ 201(b), 203(a).

287 INA § 201(b).

288 INA § 203(a).

289 USCIS Public Notice, “Notice to All Customers with A Pending I-130 Petition” (July 15, 2004), http://www.uscis.gov/files/pressrelease/I_130_07_01_04.pdf (accessed June 8, 2009).

290 Information provided by USCIS to the Ombudsman (Apr. 2, 2009).

291 *Id.*

292 *Id.*

293 *Id.*

294 Homeland Security Act of 2002, § 452(f).

1. Motions Matter: Improving the Filing and Review Process for Motions to Reopen and Reconsider

RECOMMENDATIONS

1. Establish uniform filing and review procedures that:
 - a. Articulate a standard procedure to make no-fee motions based on Service error
 - b. Include a uniform tracking mechanism for motions
 - c. Announce agency-wide completion goals for motions
2. Communicate motion filing and review information more effectively by:
 - a. Consistent use of standardized language in non-appealable denials
 - b. Revising information provided by Tier 1 of the NCSC
 - c. Posting more specific information on motions

REASONS FOR RECOMMENDATIONS

- Simplified and more publicly disseminated explanatory information is needed
 - Processing inconsistencies exist at different USCIS venues
 - Processing times for motions vary dramatically and are not published
 - No uniform tracking mechanism to determine status of motions
- Lack of uniform procedures results in varying levels of customer service
- Lack of easily understood information inhibits customer access to motions practice

HIGHLIGHTS

- MTRs are a procedural mechanism to review adverse decisions based upon new evidence or error of law/policy
- Provide additional measure of quality assurance to USCIS decisions

More Information?

Review the full text of the Ombudsman's recommendations at: http://www.dhs.gov/xlibrary/assets/cisomb_recommendation_42_5-15-09.pdf

Summary

The Ombudsman observed through case problems, customer correspondence, and a public teleconference that the filing and review procedures for motions to reopen and reconsider are not well understood by USCIS' customer base. Much of the confusion appears to stem from unarticulated procedural variations across USCIS offices and informational deficiencies regarding the filing, intake, and review process.

By regulation, motions to reopen or reconsider (MTRs) permit customers to obtain review or reexamination of an adverse USCIS decision. A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits and other documentary evidence.²⁹⁵ A motion to reconsider, on the other hand, must state the reasons for reconsideration of a decision and be supported by pertinent precedent decisions to show that the decision was based on an incorrect application of law or USCIS policy.²⁹⁶

Customers must file a motion on a Form I-290B (Notice of Appeal or Motion) within 30 days of issuance of the disputed USCIS decision, and must either pay a \$585 filing fee or request a fee waiver based on inability to pay. USCIS officers are also vested with the authority to reopen or reconsider a decision at any time on their own motion.²⁹⁷ Service motions initiated by USCIS are generally used to correct agency errors, approve a case, notify a customer of the intent to deny a case, or clarify the language of a previous decision.²⁹⁸

²⁹⁵ 8 C.F.R. § 103.5(a)(2) (2008). Applicants and petitioners may file a motion to reopen any application or petition, with certain exceptions. See 8 C.F.R. § 103.5(a)(2)(i)-(iii) (2008) (detailing additional requirements for filing a motion to reopen when USCIS denies a case due to abandonment); see also 8 C.F.R. § 103.5(b)-(c) (2008) (relating to special agricultural worker and legalization applications, and replenishment agricultural worker petitions).

²⁹⁶ 8 C.F.R. § 103.5(a)(3) (2008).

²⁹⁷ 8 C.F.R. § 103.5(a)(5) (2008).

²⁹⁸ Adjudicator's Field Manual (AFM), Chapter 10.17(b), "Motions to Reopen or Reconsider: Motion Filed by Applicant or Petitioner" (Mar. 2009).

Motions differ from appeals in that the review request goes to the original decision-maker rather than a higher administrative authority. Additionally, motions do not forestall the consequences of a USCIS decision and have no effect on the disposition of a case unless the motion is granted.²⁹⁹ An appeal, on the other hand, places the disposition of a case on hold until the appeal is resolved.

Notwithstanding these differences, motions do play a role in certain appeals processes. For example, the original adjudicating USCIS office treats most appeals to the USCIS Administrative Appeals Office (AAO)³⁰⁰ first as an MTR. When the USCIS office receives an appeal, it must review the complete case to determine whether the arguments presented clearly overcome the reasons for denial.³⁰¹ If within 45 days of the appeal's filing the office finds the appeal meritorious, it may treat the appeal as an MTR and approve the case.³⁰² If after 45 days the office finds the appeal meritorious, it may reopen or reconsider the case on a Service motion.³⁰³ If, however, the arguments fail to clearly overcome the basis of the denial, the office must "promptly"³⁰⁴ forward the appeal to the AAO for review.

Analysis

On May 15, 2009, the Ombudsman issued recommendations to improve the filing and review process for motions to reopen and reconsider USCIS decisions. The Ombudsman's recommendations focused on four major issues affecting the quality and efficiency of the motions process: (1) correct-

ing clear Service error;³⁰⁵ (2) tracking the status of motions; (3) timely resolving motions; and (4) providing consistent, more detailed information about motions. By statute, USCIS' response is due on August 13, 2009.

Recommendation 1: Establish more uniform filing and review procedures for motions to reopen and reconsider among field offices and service centers by: (a) standardizing and clearly articulating to the public the procedures by which an applicant or petitioner may bring a clear Service error to the attention of the agency without incurring the \$585 MTR filing fee; (b) developing and implementing a uniform tracking mechanism for MTRs; and (c) instituting, publishing, and monitoring agency-wide completion goals for the adjudication of MTRs. Disparities exist in the quality of customer service for motions processing across USCIS offices. For example, several offices have adopted the practice of reviewing decisions without charging the filing fee in cases where customers allege clear error. Other offices require customers to file fees with MTRs and only issue refunds upon verification of clear error. Many offices issue receipts with tracking numbers or acknowledge the filing of an MTR, while other offices do not. Regarding speed of processing, some offices have implemented local 30- to 90-day completion goals to resolve motions. In at least one case, an office took more than a year to adjudicate a motion.³⁰⁶

299 8 C.F.R. § 103.5(a)(1)(iv) (2008).

300 Generally, these appeals are procedurally similar to motions in that they must be filed on a Form I-290B with a \$585 filing fee within 30 days of the disputed decision date. 8 C.F.R. §§ 103.3(a)(2)(i); 103.7(b) (2008).

301 AFM, Chapter 10.8(a)(1), "Preparing the Appellate Case Record: Administrative Appeals Office (AAO) Cases" (Mar. 2009).

302 8 C.F.R. § 103.3(a)(2)(iii) (2008). An appeal can only be treated as a motion to issue a favorable decision.

303 *Id.*

304 8 C.F.R. § 103.3(a)(2)(iv) (2008); AFM, Chapter 10.8(a)(1), "Preparing the Appellate Case Record: Administrative Appeals (AAO) Cases" (Mar. 2009). The regulations and USCIS field guidance do not define "promptly" for purposes of forwarding an appeal to the AAO. However, prompt forwarding may depend on the manner in which a USCIS office processes motions and appeals. Some offices forward decisions to the AAO within two to three weeks, while others do not monitor the length of time it takes to forward appeals to the AAO.

305 While formally defining "clear Service error" presents a significant challenge given the breadth of possible interpretations, USCIS has previously provided examples of what it has described as "obvious error" by the agency. See "Adjustment of the Appeal and Motion Fees to Recover Full Costs," 70 Fed. Reg. 50954 (Aug. 29, 2005). Obvious errors include an erroneous determination that an appeal or motion was not timely filed, or an improper finding relating to statutory eligibility such as age or marital status. *Id.* USCIS officials have also provided the Ombudsman with two specific examples of clear Service error that directly result in the denial of an application or petition: (1) validity data errors, which usually result from the inadvertent transposition of numbers relating to biographical or other information; or (2) scheduling mistakes. Scheduling mistakes may occur when an individual fails to appear for an interview or biometrics appointment after USCIS schedules the appointment without timely notifying the individual.

306 USCIS recently instituted a policy allowing customers to call the National Customer Service Center to place a service request for any motion pending more than 90 days. See "Questions and Answers from January 28, 2009 Teleconference on Motions to Reopen: How Are They Working for You?" (May 7, 2009), http://www.dhs.gov/about/structure/gc_1236024971749.shtm (accessed June 8, 2009).

Recommendation 2: Communicate the MTR filing and review process more effectively to customers and stakeholders by: (a) consistently incorporating standard language on how to file an MTR into written denials that cannot be appealed; (b) revising the information on MTRs provided by Tier 1 of the USCIS National Customer Service Center (NCSC); and (c) posting on the USCIS website more specific information about the filing and review procedures for MTRs. The Ombudsman found that USCIS customers have disparate access to reliable information and often do not understand the motions process. For example, USCIS does not always notify the customer of the option to file an MTR for denials that cannot be appealed.³⁰⁷ In addition, Tier 1 of the NCSC has advised inquiring customers of their ability to file a motion to dispute a denial, but misinformed them that no USCIS form exists to file a motion.³⁰⁸ Meanwhile, other offices regularly include in written denials information about how to file an MTR, as well as a copy of Form I-290B.

³⁰⁷ Only certain applications and petitions may be appealed to a higher administrative authority. The AAO has jurisdiction over most applications and petitions. See 8 C.F.R. § 103.1(f)(iii) (2003). The Board of Immigration Appeals has appellate authority over most family-based immigrant petitions filed under section 204 of the INA, including Form I-130 (Petition for Alien Relative). See 8 C.F.R. § 1003.1(b)(5) (2008). Other applications and petitions, such as Forms I-751 (Petition to Remove the Conditions of Residence), I-485 (Application to Register Permanent Residence or Adjust Status) filed pursuant to section 245 of the INA, and I-765 (Application for Employment Authorization) cannot be appealed. 8 C.F.R. §§ 216.4(d)(2), 245.2(a)(5)(ii), and 274a.13(c) (2008).

³⁰⁸ Specifically, National Customer Service Center Tier 1 scripts instructed customer service representatives to tell customers that, “[t]here is no form for a motion, but it must be in writing.”

2. Improving the Process for Payment of USCIS Filing Fees and Other Costs

RECOMMENDATIONS

1. Allow batch online payment system for high volume filers
2. Use an online shopping cart mechanism to simplify form, fee, and payment choices
3. Expand e-Filing option to allow fee payments on other forms
4. Add visual and written aids to instructions to increase correct payment submissions

REASONS FOR RECOMMENDATIONS

- Paper-based payments often contain common errors – no amount written, incorrect amount, missing signature, incorrect payee, etc.
- Such mistakes can cause rejections, delays, added costs, and worse – loss of benefits
- An electronic payment option would reduce errors & enhance customer service

HIGHLIGHTS

- Most payments received through check or money order
- Thousands of filings rejected annually due to fee mistakes
- USCIS customers regularly use 40+ forms requiring fee payment
- Electronic filing and payment options only available for eight forms
- USCIS has not expanded its offering of electronic filing and payment since 2004

More Information?

Review the full text of the Ombudsman's recommendations at: http://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_Recommendation_41_4-1-09.pdf

Summary

This study examines current payment methods and recommends options to improve customer service and enhance efficiency in the processing and disbursement of funds to USCIS.

USCIS operates as a fee-for-service agency, receiving filing and other supplemental fees from customers to fund the administration of immigration benefits and services. Customers pay most USCIS fees³⁰⁹ by check or money order.³¹⁰ For eight forms,³¹¹ customers may access the USCIS e-Filing system³¹² to pay filing fees by credit card or by entering bank account information. Research conducted by the Ombudsman indicates

309 For the purpose of this study, "USCIS fees" encompasses filing, supplemental, biometric, and derivative costs, unless otherwise specified. Filing fees are costs associated with specific forms. Supplemental fees are additional fees, aside from filing fees, that may be required for certain forms, such as charges for specified employers filing H1-B or L-1 petitions. See INA § 214(c)(9), (c)(12). Biometric fees are required to cover the costs of fingerprinting, photographing, and required security checks. Derivative costs include any additional fees required to process certain family members included on an application or petition.

310 The Chicago Lockbox only accepts payment of fees via money order, cashier's check, or personal check. USCIS, "Tips for Filing Petitions and Applications to the National Benefits Center" (Apr. 2008), www.uscis.gov (accessed June 8, 2009).

311 The eight forms currently accessible through the e-Filing system include: Form I-90 (Application to Replace Permanent Resident Card), Form I-129 (Petition for a Nonimmigrant Worker), Form I-131 (Application for Travel Document), Form I-140 (Immigrant Petition for Alien Worker), Form I-539 (Application to Extend / Change Nonimmigrant Status), Form I-765 (Application for Employment Authorization), Form I-821 (Application for Temporary Protected Status), and Form I-907 (Request for Premium Processing Service). USCIS, "Forms Currently Available for e-Filing and Form-Specific e-Filing Instructions" (Apr. 8, 2008), www.uscis.gov (accessed June 8, 2009).

312 The USCIS e-Filing system is operated by Pay.gov, a program developed by the U.S. Department of Treasury to allow individuals to complete and submit forms online, as well as make electronic payments to government agencies. The USCIS e-Filing system is an Open Collections Interface (Interactive), a Pay.gov proprietary interface that provides connectivity from agency websites to the Pay.gov collection service. See generally www.pay.gov (accessed June 8, 2009). USCIS accepts credit card, debit card, checking account, and savings account payments for these eight forms. USCIS, "Paying Fees for E-filed Applications," www.uscis.gov (accessed June 8, 2009). USCIS offers electronic payment options (i.e., credit/debit card) at certain field offices.

that deficiencies in the current payment system cause systemic problems for both customers and USCIS. These shortcomings include the lack of a user-friendly payment structure, failure to expand the e-Filing system, and use of confusing payment instructions.

Most USCIS customers pay filing fees and other costs through paper-based payment methods (i.e., check or money order), while others pay filing fees electronically through the e-Filing system.³¹³ If the payment is submitted improperly, a USCIS receipting location will not accept it; this non-acceptance may, and often does, result in rejection of an application or petition. In time-sensitive cases, the need for a customer to resubmit rejected applications or petitions can result in the denial or loss of the immigration benefit that was originally timely sought. Rejections can cause a customer to miss important filing deadlines without recourse or remedy. For example, a customer could either miss the annual numerical cap for certain nonimmigrant categories, or even lose a favorable priority date.³¹⁴ Moreover, USCIS is negatively affected by fee-rejected cases, as the agency incurs extra administrative costs associated with mailing tens of thousands of rejection notices annually, thus, shifting resources away from eligible applications and petitions.³¹⁵

While USCIS must accept traditional forms of payment,³¹⁶ it is also important to offer customers payment options that are modern and convenient. Electronic payment options offer customers several important benefits not available through paper-based payment methods, including immediate confirmation of payment, convenience, and accuracy in calculating total costs. Additionally, studies indicate that electronic

payment systems are generally more cost-effective than paper-based payments.³¹⁷

USCIS has previously explored improved payment methods, but difficulties arose in implementing and finalizing these initiatives. Recently, USCIS issued two directives that included improvements to payment methods. The USCIS Lockbox Operations Division³¹⁸ began an expansion initiative, which includes a plan to replace the current e-Filing system with a more streamlined solution.³¹⁹ USCIS officials acknowledge, however, that high costs of the e-Filing system, failure to improve the agency case management system, and delays in making cost estimates and assigning system ownership have prolonged the implementation process.³²⁰ In November 2008, USCIS announced its award of the Transformation Solution Architect Task Order contract,³²¹ which proposes improvements to electronic filing and payment processes.³²²

Analysis

On April 1, 2009, the Ombudsman recommended that USCIS provide modernized, user-friendly payment options and clearer instructions on submitting filing fees. USCIS responded to this recommendation on June 3, 2009, after the close of the Ombudsman's reporting period.

313 See "USCIS Transformation Program: Concept of Operations, Version 1.5," p.15 (Mar. 28, 2007), http://www.uscis.gov/files/nativedocuments/TransformationConOps_Mar07.pdf (accessed June 8, 2009).

314 The filing of certain petitions (or of a labor certification application for employment-based petitioners) establishes a "priority date." Priority dates determine a beneficiary's "place in line" for a visa, relative to other beneficiaries of the same category and nationality. See generally 22 C.F.R. § 42.53 (2008).

315 See Ombudsman's Annual Report 2006, p. 45.

316 Approximately 60 percent of paper-based payments are money orders, and USCIS reasons that this percentage is understandable because many applicants may not have U.S. checking accounts. Information provided by Chicago Lockbox facility to the Ombudsman (Oct. 24, 2008).

317 See, e.g., David B. Humphrey, Moshe Kim, & Bent Vale, "Realizing Gains from Electronic Payments: Costs, Pricing, and Payment Choice," 33 *Journal of Money, Credit and Banking* 216, 220 (2001) (Paper checks incur associated expenditures such as the cost of accepting a check, required postage, and check distribution. Experts estimate that the "average payment cost for a payor, payee, and bank sums to \$2.93 for a check but only \$1.31 for a [Automated Clearing House] transfer," or electronic payment, based on weighted comparisons of costs associated with consumer, business, and government payments.)

318 The Lockbox Operations Division manages the USCIS lockbox facilities, which provide general intake services including: receiving, opening, and sorting mail; accepting or rejecting applications and related fees; and processing receipt notices for accepted applications and returning rejected applications.

319 Information provided by the U.S. Department of Treasury to the Ombudsman (Nov. 25, 2008).

320 Information provided by USCIS to the Ombudsman (Sept. 25, 2008).

321 See section II.B., "USCIS Modernization."

322 USCIS Memorandum, "FY 2008 Accomplishments/FY 2009 Outlook/Transformation Contract Award," www.uscis.gov (accessed Apr. 22, 2009); see "USCIS Transformation Program: Concept of Operations, Version 1.5," p. 26 (Mar. 28, 2007), http://www.uscis.gov/files/nativedocuments/TransformationConOps_Mar07.pdf (accessed June 8, 2009).

Recommendation 1: Implement a batch filing system that would enable high volume filers to pay USCIS fees online. A

batch filing system would allow high volume filers (i.e., major corporations, large employers, and law firms) to enroll in a master account from which all filing fees could be disbursed directly to USCIS through a secure, online system. A high volume filer would be able to pay USCIS fees on behalf of clients, sort payment history, check payment status, and make enrollment changes online.³²³

USCIS would benefit as batch filing would facilitate agency compliance with federal mandates to modernize systems and improve customer service.³²⁴ Customers would benefit as batch filing would limit the rate of rejection due to mistakes on checks and money orders. The Internal Revenue Service's batch filing system has been a success, streamlining the process of filing taxes to the degree that customers have increased their use of the system by approximately 38 percent since inception.³²⁵ Batch filing complies with rules of professional conduct that govern attorney accounts³²⁶ and electronic payments,³²⁷ making it an effective, operationally sound payment option.

Recommendation 2: Implement an online shopping cart mechanism that would simplify the process of identifying

323 Information provided by the Internal Revenue Service (IRS) to the Ombudsman (Nov. 6, 2008); see also "Electronic Federal Tax Payment System (EFTPS)," <https://www.eftps.gov/eftps/> (accessed June 8, 2009).

324 See generally "E-Government Strategy, Implementing the President's Management Agenda for E-Government," (Apr. 2003), http://contacts.gsa.gov/graphics/fts/President_E-Gov_Strategy.pdf (accessed June 8, 2009).

325 Information provided by the IRS to the Ombudsman (Dec. 17, 2008).

326 Information provided by the American Immigration Lawyers Association to the Ombudsman (Mar. 13, 2009) (Implementation of a batch filing system within USCIS would comply with rules of professional conduct that govern attorney accounts, provided the new system allows for individual payments to be made on behalf of individual clients from a lawyer's trust account, rather than an aggregation of fees for multiple clients.)

327 See NACHA – The Electronic Payments Association, <http://www.nacha.org/about/default.htm> (accessed June 8, 2009) (EFTPS complies with banking standards established by the National Agency Clearing House Association (NACHA), regarding the transferring of funds. "NACHA is a not-for-profit association that oversees the Automated Clearing House (ACH) Network, an electronic payment network. NACHA is responsible for the administration, development, and enforcement of the NACHA Operating Rules and management practices for the ACH Network.")

appropriate USCIS forms, calculating related fees, and submitting payments. Customers also have expressed interest in a more user-friendly payment system to allow for payment of immigration benefits through an online shopping cart structure.³²⁸ Rather than requiring customers to navigate the USCIS website for different immigration forms, USCIS could pose questions that would guide them to complete the appropriate forms and pay the corresponding filing fees through various electronic media, including credit cards and bank account withdrawals.

Recommendation 3: Expand the payment options within the e-Filing system to include all USCIS fees. Currently, eight filing fees may be paid through the e-Filing system. They correspond to the highest-volume and most basic forms received. However, as there are over 50 existing USCIS fees, an expansion to include all USCIS fees would enable customers to make more payments in a fast and convenient manner.

The option to pay USCIS fees online would not require e-Filing of the immigration benefit application itself. Rather, customers could submit an electronic payment, print out the payment confirmation sheet, and attach it to the corresponding application or petition.

Recommendation 4: Include additional visual and written aids within current instructions to ensure that payments are submitted correctly. To limit the number of application and petition rejections based on fee mistakes that occur upon completing a check or money order, USCIS should provide aids to customers making payments.

For example, the Ombudsman recommends providing translations of form instructions and including visual aids, such as pictures of correctly completed checks and money orders, to improve the clarity of instructions. In addition, just as USCIS instructions for several forms include checklists to ensure customers provide certain filing information (e.g., supporting evidence and photographs), a separate checklist for payments detailing common fee mistakes would be helpful in preventing unnecessary rejections. For the eight forms currently available for e-Filing, USCIS should provide a link to the e-Filing system within each form's corresponding payment instructions to increase customer awareness of this option.

328 Ombudsman Teleconference, "USCIS E-Filing and Filing Fee Payment Options: How Are They Working for You?" (Nov. 25, 2008).

3. Employment Creation Immigrant Visa (EB-5) Program

RECOMMENDATIONS

1. Finalize special regulations for a limited class of EB-5 investors
2. Direct EB-5 adjudicators not to re-adjudicate indirect job creation methodology, absent error or fraud
3. Designate more EB-5 AAO precedent/adopted decisions
4. Use rulemaking to update EB-5 regulations
5. Form an inter-governmental advisory group to consult on complex business, economic, and labor issues
6. Offer a fee-for-service option to investors to accelerate adjudications
7. “Prioritize” processing of Regional Center filings
8. Partner with Departments of State & Commerce to promote program overseas

REASONS FOR RECOMMENDATIONS

- Complex regulatory scheme
- Key terms and principles incongruent with commonly accepted business practices
- Agency reversal of previous policy guidance undermines program predictability
- Perception of overly restrictive adjudications
- Concern with USCIS demands for extensive documentation
- Lack of visible agency support for EB-5 program

HIGHLIGHTS

- Program created in 1990
- Approximately 10,000 green cards available annually, approximately 1,000 used
- 46 pilot Regional Centers – pilot authority expires Sept. 30, 2009, absent extension
- Denial rates have fluctuated significantly
- Recent centralization of all EB-5 adjudications at the CSC

More Information?

Review the full text of the Ombudsman’s recommendations at: http://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf

Summary

In 1990, Congress passed and the President signed into law legislation to attract entrepreneurial-minded immigrants who would invest capital to create jobs for U.S. workers and, thereby, stimulate the economy.³²⁹ To qualify for a green card under the fifth employment-based category (EB-5), an applicant must invest a minimum of \$500,000 or in some cases \$1,000,000 in a new commercial enterprise that directly creates at least ten new full-time jobs.³³⁰ Congress also authorized an EB-5 pilot program³³¹ whereby foreign investors can pool their monies in Regional Centers³³² which make large-scale investments. EB-5 Regional Center investors can demonstrate that their investment indirectly³³³ meets the job creation requirement. In FY 2008, 68 percent of the EB-5 visas issued were used by foreign entrepreneurs who invested through a Regional Center.³³⁴

Congress allocated approximately 10,000 immigrant visas per year to this category to make the program an important job creating engine for the United States.³³⁵ However, EB-5 usage

329 Immigration Act of 1990, Pub. L. No. 101-649 (Nov. 29, 1990).

330 INA § 203(b)(5).

331 See Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriation Act of 1993, Pub. L. No. 102-395, § 610 (Oct. 6, 1992).

332 A “Regional Center” is defined as “any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved productivity, job creation and increased domestic capital investment.” 8 C.F.R. § 204.6(e) (2008).

333 See Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriation Act of 1993, Pub. L. No. 102-395, § 610(c) (Oct. 6, 1992).

334 DHS Office of Immigration Statistics, “2008 Yearbook of Immigration Statistics,” Table 7, <http://www.dhs.gov/ximqtn/statistics/publications/LPR08.shtm> (accessed June 8, 2009).

335 The fifth employment-based category is 7.1 percent of the annual worldwide allocation of employment-based visas, which is approximately 10,000 visas annually. INA § 203(b)(5)(a).

rarely has exceeded 1,000 per year.³³⁶ EB-5 underutilization is caused by a confluence of factors, including program instability, changing economic conditions, and more inviting immigrant investor programs offered by other countries.

Especially due to the current state of the U.S. economy, USCIS should seek to facilitate and optimize a smooth-running employment-creation immigrant visa program.

Analysis

On March 18, 2009, the Ombudsman made the following recommendations regarding the EB-5 program. USCIS responded to this recommendation on June 12, 2009, after the close of the Ombudsman's reporting period.

Recommendation 1: Finalize regulations to implement the special 2002 EB-5 legislation offering certain EB-5 investors³³⁷ a pathway to cure deficiencies in their previously submitted petitions. The Ombudsman understands that proposed regulations have been drafted, but have been stalled in USCIS' internal rulemaking review process. As these regulations have been in the drafting and review process for over six years, they are long overdue.

Recommendation 2: Direct EB-5 adjudicators not to reconsider or re-adjudicate the indirect job creation methodology in Regional Center cases, absent clear error or evidence of fraud. Repeat questioning, debate, and re-adjudication of economic models and analyses used to prove the ten full-time job creation requirement deplete USCIS resources, cause delays, and erode investor confidence.

Recommendation 3: Designate more EB-5 Administrative Appeals Office (AAO) decisions as precedent/adopted decisions to provide stakeholders, investors, and adjudicators a better understanding of the application of existing USCIS regulations to given factual circumstances. Many key

336 See DHS Office of Immigration Statistics, "2008 Yearbook of Immigration Statistics," Table 6, <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/table06d.xls> (accessed June 8, 2009) and DHS Office of Immigration Statistics, "2004 Yearbook of Immigration Statistics," Table 4, <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/table4.xls> (accessed June 8, 2009).

337 This subgroup includes only those EB-5 investors whose Forms I-526 (Immigrant Petition by Alien Entrepreneur) were filed and approved between January 1, 1995, and August 31, 1998. See 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, §§ 11031-36 (Nov. 2, 2002).

EB-5 terms and concepts have never been clearly defined by USCIS, contributing to entrepreneur anxiety and uncertainty. Additional precedent/adopted decisions would assist the business community, investors, and adjudicators as such terms and concepts are considered under varying fact patterns.

Recommendation 4: Engage in formal rulemaking to develop regulations that will promote stakeholder and investor confidence by improving predictability and consistency of adjudications. USCIS could reinvigorate the EB-5 program by modernizing its regulations to better align with acceptable business practices and principles of due diligence.

Recommendation 5: Form an inter-governmental advisory group to consult on domestic business, economic, and labor considerations relevant to EB-5 adjudications. An advisory group composed of representatives from the Departments of Commerce, Treasury, State, and Labor, and possibly the Small Business Administration, would be available to consult on business, economic, and labor issues impacting the EB-5 program.

Recommendation 6: Offer a "special handling package" option to EB-5 investors for faster adjudication of Forms I-526, I-829, and related applications for a higher fee. High net-worth individuals who are willing to risk in excess of \$500,000 require program predictability and efficiency. Stakeholders and investors regularly criticize as excessive the time USCIS takes to adjudicate these filings. While it may be impractical for USCIS to institute the standard 15-day \$1,000 premium processing option³³⁸ for these complex EB-5 filings, the agency should be able to formulate an appropriately priced, operationally sound, special handling option to expedite processing.

Recommendation 7: "Prioritize" the review and processing of all Regional Center EB-5 related petitions and applications. By statute, USCIS has discretionary authority to prioritize EB-5 petitioners seeking admission under the Regional Center pilot program.³³⁹ The agency should exercise this discretion and prioritize Regional Center filings to the maximum extent possible. In the current economic climate,

338 INA § 286(u); 8 C.F.R. § 103.2(f)(1) (2008).

339 The Secretary of DHS is authorized to give priority processing to petitions filed by foreign entrepreneurs seeking admission under the Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156 (Dec. 3, 2003).

many communities nationwide could benefit from Regional Center investments.

Recommendation 8: Promote the EB-5 program overseas in coordination with the U.S. Departments of State and Commerce.

Visible support of the EB-5 program by USCIS would send a signal to entrepreneurs, financiers, and stakeholders worldwide that the United States is open for business and intends to welcome immigrant investors. Just as other countries actively promote their immigrant investor programs globally, USCIS should partner with other components of the federal government to actively support and promote the EB-5 program overseas.

Ombudsman's Follow-Up

Since issuance of the EB-5 recommendations, the Ombudsman has heard repeatedly from stakeholders that USCIS has no formal communication channel to facilitate consultation and review of EB-5 proposals before they are filed. The opening of such a channel may lead to fewer adjudication delays and/or denials, and may make the program more attractive to larger project developers and financiers.

USCIS indicated to the Ombudsman that, on April 1, 2009, it completed EB-5 processing centralization. As of that date, it transferred to the CSC all remaining unadjudicated EB-5 cases at the TSC, including pending green card applications.³⁴⁰ USCIS also advised the Ombudsman that approval rates for both Form I-526 (Immigrant Petition by Alien Entrepreneur) and Form I-829 (Petition by Entrepreneur to Remove Conditions) were 80 to 90 percent for the first and second quarters of FY 2009. At the time of this writing, I-526 processing times in FY 2009 have been cut to less than six months.

Additionally, USCIS informed the Ombudsman that the CSC received 13 applications for Regional Center Designation transferred from Headquarters in January 2009, and an additional 27 applications were filed at the CSC between January 1 and March 30, 2009.³⁴¹ However, the Ombudsman also learned that CSC has issued RFEs on each of the new Regional Center Designation applications.

³⁴⁰ Information provided by USCIS to the Ombudsman (Apr. 29, 2009).

³⁴¹ *Id.*

4. Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa

RECOMMENDATIONS

1. Issue public guidance on new filing procedures in December 2008 regulations & trafficking reauthorization legislation
2. Find alternatives for work authorization for T nonimmigrant applicants
3. Implement procedures/issue guidance for U nonimmigrant applicants seeking work authorization
4. Provide adequate staff at VSC unit to ensure prompt adjudications
5. Post processing times for Forms I-914 and I-918

REASONS FOR RECOMMENDATIONS

- Difficulty obtaining work authorization while nonimmigrant applications pending
- Continued confusion/uncertainty regarding new T/U procedures
- Inconsistent law enforcement understanding and cooperation
- Inadequate staffing of VSC given backlog
- Unknown processing times

HIGHLIGHTS

- Congress established T/U visa for victims of trafficking and enumerated crimes who assist with investigation and prosecution of crimes
- VTPA enacted in 2000, but full implementation delayed
- Final regulations issued December 2008 defining process to convert T/U status to green cards
- Congress reauthorized the VTPA in December 2008 adding new T/U provisions
- Backlog of T/U nonimmigrant filings

More Information?

Review the full text of the Ombudsman's recommendations at: http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf

Review the full text of USCIS' response at: http://www.dhs.gov/xlibrary/assets/uscis_response_cisomb_rec_39.pdf

Summary

The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) created the T and U nonimmigrant visa classification to provide temporary lawful status for victims of trafficking and enumerated crimes and for those who assist with the investigation and prosecution of trafficking and certain criminal activity.³⁴² On December 23, 2008, President Bush signed VTVPA reauthorization legislation enhancing some measures to protect victims.³⁴³

Recognizing the special nature of T and U applicants, USCIS adjudicates the T and U nonimmigrant applications, as well as T and U green card applications, through a dedicated unit at the VSC. The unit's staff is specially trained to process these cases and respond to applicants' inquiries. USCIS also has conducted a national outreach campaign to train law enforcement officials on the U visa certification process.³⁴⁴

After passage of the original 2000 legislation, USCIS did not issue regulatory guidance for those seeking status as T and U nonimmigrants until 2002 and 2007, respectively. After further delay, on December 12, 2008, USCIS published regulations regarding adjustment of status by T and U nonimmigrants.

342 See generally VTVPA, Pub. L. No. 106-386 (Oct. 28, 2000).

343 Trafficking Victims Protection Reauthorization Act (TVPRA), Pub. L. No. 110-457 (Dec. 23, 2008).

344 See Questions and Answers from CIS Ombudsman's Teleconference, "U Visa: One Year after the Interim Final Rule" (Aug. 26, 2008) ("[USCIS] has been conducting nationwide outreach for local law enforcement about the certification process for the U-visa. There has been outreach to and liaison with individual police officers, victim-witness coordinators at police departments, and management authorities at police departments and other law enforcement agencies in order to educate and help police plan coordinated strategy for victims, and to facilitate the certification process. These efforts so far have spanned the greater California area, the state of Texas, the Pacific Northwest, the south, the Metropolitan New York City area, and the metropolitan Washington, D.C. area.") www.dhs.gov/cisombudsman (accessed June 9, 2009).

grants.³⁴⁵ These and other delays in the implementation of the TVTPA of 2000 caused a multi-year delay in case processing.³⁴⁶

Analysis

On January 29, 2009, the Ombudsman issued recommendations to USCIS to improve the processes for victims of trafficking (T visa) and victims of certain criminal activity (U visa). USCIS responded on May 22, 2009.

Recommendation 1: Expeditiously provide more detailed public guidance on new filing procedures outlined in the December 2008 adjustment regulations as well as the trafficking reauthorization legislation for T and U visa applicants. Issuance of clearer guidance could decrease inquiries to the VSC, reduce USCIS' need to issue RFEs, and improve customer service.

USCIS Response: USCIS agrees with this recommendation and indicates that, “[b]ecause the provisions of TVPRA 2008 and the T and U adjustment regulations have only recently been published, USCIS is still in the process of identifying areas where additional guidance is necessary. Future guidance will be issued as appropriate.”

Recommendation 2: Find alternatives for T visa nonimmigrant applicants to obtain work authorization while their applications are pending. The current avenues for T nonimmigrant visa applicants to obtain work authorization, the granting of “continued presence” or a determination that an applicant has a *bona fide* case, are not readily accessible.

USCIS Response: USCIS indicates that there is no need to find alternatives for T nonimmigrant visa applicants because there are established ways for them to obtain work authorization. Going forward, the agency specifically notes that, should

processing times exceed 90 days, USCIS “will conduct [*bona fide*] determinations for the purpose of issuing employment authorization.”

Recommendation 3: Expeditiously implement procedures and provide public guidance for U visa nonimmigrant applicants to apply for work authorization as outlined in the December 2008 reauthorization legislation. Congress recognized the importance for U visa applicants to be able to work while their applications are pending.³⁴⁷

USCIS Response: USCIS created a production plan to devote resources to the actual adjudication of U visa cases, obviating the need to separately adjudicate a request for employment authorization. However, the agency indicates that, after working the backlog of cases, USCIS will “assess the possibility of issuing interim employment authorization to those cases that are held in abeyance while awaiting visa availability.”

Recommendation 4: Provide adequate staff at the T and U visa unit to ensure prompt adjudication of the existing backlog and anticipated T and U visa applications.³⁴⁸ As of October 2008, USCIS had assigned only a few adjudicators to work on T and U visa cases.³⁴⁹

USCIS Response: USCIS has implemented this recommendation. The agency plans to increase the size of the T and U visa adjudication unit by immediately reassigning 31 trained officers to this workload.

Recommendation 5: Post processing times for Form I-914 (Application for T Nonimmigrant Status) and Form I-918 (Petition for U Nonimmigrant Status). Posting processing times would inform the public and applicants of USCIS progress in adjudicating these cases.

345 See USCIS Interim Final Rule, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” 73 Fed. Reg. 75540 (Dec. 12, 2008).

346 Information provided by USCIS to the Ombudsman (Oct. 28, 2008). T-1 and U-1 indicate principal petitioners, who are the individuals seeking the immigration benefit, as compared to derivatives, who are immediate family members of the principal applicant. As of October 22, 2008, there were 212 T-1 cases, 202 T derivatives cases, 12,092 U-1 visa cases, and 8,156 U visa derivative cases pending with USCIS. As of April 2009, USCIS had approximately 80 T-1 visa cases pending, approximately 185 T derivative cases, over 13,000 U-1 visa cases pending, and over 9,000 U visa derivative cases pending. Information provided by USCIS to the Ombudsman (Apr. 28, 2009).

347 TVPRA, § 201 (“The Secretary may grant work authorization to any alien who has a pending, [*bona fide*] application for nonimmigrant status under section 101(a)(15)(U).”)

348 See TVPRA, § 238 (Recognizing the importance of adequate staffing at the Vermont Service Center (VSC) by requiring in a report to Congress the following elements: “detailed information about the funds expended to support the unit at VSC;” a description of training for adjudicators, victim liaison officers, managers, and others working in the VSC unit; and measures to ensure the retention of specially-trained staff within the VSC units.)

349 Information provided by USCIS to the Ombudsman (Oct. 28, 2008).

USCIS Response: USCIS agrees with this recommendation. The agency now publishes the processing times for I-914 on its website, but is not currently posting the times for I-918 because “many of these cases will not be adjudicated in the order in which they were filed.” Instead, USCIS will adjudicate cases “in chronological order as they become ‘adjudication ready...’” USCIS plans to post I-918 processing times once they are standardized.

Ombudsman’s Follow-up

The Ombudsman has continued to review the T and U visa programs, specifically the law enforcement certification process.

Eligibility for T and U classification requires the applicant to assist with a criminal investigation or prosecution. A U visa certificate is required for U visa eligibility, and applicants must include Form I-918, Supplement B (U Visa Nonimmigrant Status Certification), a certification of helpfulness from a law enforcement agency, as part of the application. Additionally, regulations state that U visa holders applying for a green card must submit evidence of whether the law enforcement agency has requested assistance after the individual’s admission as a U nonimmigrant and include the response to any such request. To facilitate the adjudication of the application, the individual may provide an additional law enforcement certificate as part of the application.³⁵⁰ Success in obtaining the certificate has varied.

To gain a better understanding of the certification process and how it affects applicants, the Ombudsman: (1) discussed T and U visa issues with local police nationwide and also spoke with community-based organizations about their experiences with local police; (2) met and discussed relevant issues with several members of the Department of Justice’s federally funded Trafficking Task Force; (3) conducted field visits to several states and visited local police and stakeholders; (4) met with ICE agents handling human trafficking issues; (5) met with CBP to gain a better understanding of its human

350 See USCIS Interim Final Rule, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” 73 Fed. Reg. 75540 (Dec. 12, 2008) (An applicant may also submit “an affidavit describing the applicant’s efforts, if any, to obtain a newly executed Form I-918, Supplement B, or other evidence describing whether the [applicant] received any request” to assist in the investigation or prosecution.)

trafficking policies and training efforts; and (6) met with USCIS policymakers charged with drafting implementing regulations.

The Ombudsman’s follow-up review revealed several issues, including:

- **Inconsistent cooperation from law enforcement officials.** Some law enforcement agencies are helpful and have an understanding of human trafficking laws and immigration options for victims. Other agencies are unfamiliar with the laws and regulations and are reluctant to assist possible victims.
- **Varying policies regarding the law enforcement certification process.** The Ombudsman learned that law enforcement agencies follow widely differing policies regarding the law enforcement certification process.³⁵¹ For example, some law enforcement officials try to identify a victim and provide the certificate early in the process so that the individual may receive benefits. Other agencies do not sign the certificate early in the process due to the likelihood that victims may not yet be ready to reveal facts and may change their story several times due to distrust of authority, fear of revenge, or lack of understanding;
- **Insufficient training on the T and U visa process nationally.** Few law enforcement officials or agencies with which the Ombudsman met had undergone T and U visa training. Some received training sponsored by community-based organizations, but they told the Ombudsman that government training would be more beneficial; these officials were concerned that training by community-based organizations is presented solely from a victim advocate’s perspective. Without proper training on issues such as the definition of “helpfulness,” law enforcement agencies are employing inconsistent standards.
- **Willingness to assist.** Victims, distrusting authority and fearing deportation, may initially be unwilling to share their story with officers, and stories told under duress may evolve over time. As a result, applicants may be less likely to come forward, and law enforcement officials may be less willing to support their case. In addition, some law enforcement agencies worry that signing U

351 One stakeholder noted that some agencies have created policies for signing the I-918 Supp. B certificate that go above and beyond what the regulations require.

certificates will lead to rampant abuse because the visa is perceived as providing a path for undocumented individuals to obtain legal status.

- **Status of the criminal case and the decision to sign the law enforcement certificate.** According to several stakeholders, law enforcement agencies are more likely to sign the U visa certificate if they initiate the related investigation or prosecution; delays or reluctance to sign a certificate are often attributed to the fact that a case has been referred by a community-based organization, has been closed, or because the crime occurred several years earlier.

The Ombudsman plans to continue discussing ways to improve the T and U visa process with USCIS and other DHS components, as well as with federal, state, and local partners.

5. Observations on the E-Verify Experience in Arizona and Recommended Customer Service Enhancements

RECOMMENDATIONS

1. Simplify E-Verify instructions and documentation
2. Make all registration & operational documents available online
3. Ensure education & outreach to small business communities
4. Develop a reminder system to prompt employers to act
5. Announce intention to replace current Form I-9 process for E-Verify users

REASONS FOR RECOMMENDATIONS

- System concerns: accuracy, reliability, robustness and user-friendliness
- Legal concerns: privacy, anti-discrimination, identity theft
- Education and outreach
- Monitoring and compliance

HIGHLIGHTS

- E-Verify currently voluntary at federal level
- Mandatory usage by federal contractors delayed
- Various states mandate use of E-Verify
- \$100 million FY 2009 appropriations for federal program
- 3.6 million queries run, FY 2009 YTD (Oct.-Mar.)
- Tentative nonconfirmations on naturalized citizens & new lawful permanent residents now reduced
- U.S. passport data now another source for employment verification
- E-Verify contact information: Telephone 1-888-464-4218; E-Mail: e-verify@dhs.gov
- Office of Special Counsel for Immigration-Related Violations 1-800-255-7688

More Information?

Review the full text of the Ombudsman's recommendations at:
http://www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf

Review the full text of USCIS' response at:
http://www.dhs.gov/xlibrary/assets/uscis_response_cis_ombudsman_recommendation_38.pdf

Summary

E-Verify is an Internet-based program that permits registered employers to confirm a new hire's eligibility to work legally in the United States. USCIS developed E-Verify in partnership with the Social Security Administration (SSA), and USCIS manages the system.³⁵² While use of E-Verify remains optional at the federal level, some states have passed laws requiring that their employers use E-Verify.³⁵³ Beginning January 1, 2008, Arizona became the first state in the nation to require all private and public sector employers to use E-Verify regardless of the number of workers employed.³⁵⁴

The Ombudsman met with employers and stakeholders in Arizona and elsewhere to gain insights into how E-Verify is working from employer user and affected employee perspectives. On December 22, 2008, the Ombudsman completed this initial review of E-Verify and issued recommendations to USCIS.

At the time of the recommendations, E-Verify was operating with a 99.6 percent accuracy rate for confirming work-eligible individuals; the overwhelming majority were verified in five seconds or less.³⁵⁵ The Ombudsman also observed that most large- and mid-sized employers appeared satisfied with E-Verify, but that more education and outreach was necessary with small employers. Employers expressed varying concerns, including: E-Verify action deadlines, perceived redundancy and confusion relative to their Form I-9 (Employment Eligibility Verification) obligations, and more broadly, issues of user-friendliness.

352 USCIS Fact Sheet, "E-Verify Strengthening the Employer Eligibility Document Review Process for the Nation's Employers" (Jan. 8, 2009), www.uscis.gov (accessed June 9, 2009).

353 Certain states require the use of E-Verify for one or more public and/or private employer groups, including: Arizona, Colorado, Georgia, Idaho, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, and Utah.

354 Legal Arizona Workers Act HB 2779 (July 2, 2007), www.azleg.gov (accessed June 9, 2009).

355 See "E-Verify Statistics" (Apr. 23, 2009), www.uscis.gov (accessed June 9, 2009); see also E-Verify User Manual for Employer, p. 14 (Mar. 2009), http://www.uscis.gov/files/natedocuments/E-Verify_Manual.pdf (accessed June 4, 2009).

Analysis

The Ombudsman made five recommendations on December 22, 2008, which USCIS responded to on March 3, 2009. The Ombudsman expects to continue monitoring and reporting on E-Verify as the program expands.

Recommendation 1: Simplify the language used in E-Verify instructions and supporting documentation. The Ombudsman found that some of the language and legal terminology in E-Verify documents may be confusing. Consistent with other efforts to eliminate complexity when possible, the Ombudsman encourages USCIS to simplify the language in these publicly disseminated documents.

USCIS Response: USCIS agreed with this recommendation and indicated that it has already begun a “Plain Language” initiative to simplify the E-Verify terminology, language, and documents.

Recommendation 2: Make all registration and operational documents publicly available online for review by prospective E-Verify end-users and employees. USCIS has posted several important E-Verify documents on its website for public viewing. Others, however, including the E-Verify tutorial, remain unavailable until after formal E-Verify registration. Full and free access to such documentation prior to registration may increase understanding of E-Verify.

USCIS Response: USCIS agreed with this recommendation and committed to making more E-Verify documents and information available onto its website.

Recommendation 3: Ensure its education and outreach efforts reach small business communities. The Ombudsman concluded that USCIS is not yet effectively reaching small employers with its existing education and outreach campaign.

USCIS Response: USCIS agreed with this recommendation, and pointed out initiatives that are intended to address this need.

Ombudsman’s Comments: USCIS leadership has demonstrated a commitment to improving all aspects of E-Verify. Perhaps the greatest potential for misunderstanding, confusion, and/or possible misuse of E-Verify is with smaller employers that by their nature operate with fewer internal control mechanisms. Therefore, the Ombudsman suggests that USCIS devote

proportionately more resources to its outreach and education for this audience.

Recommendation 4: Develop and add a tickler/calendar system into E-Verify capable of issuing timely system prompts to employers to advise them of their next appropriate course of action for each specific open and unresolved Tentative Nonconfirmation (TNC). Currently, users must log on to the system to see whether further action is required. Implementing an automatic notification system would enhance customer service and improve employer compliance.

USCIS Response: USCIS agreed that such a feature is desirable and has begun exploring how it might use e-mail notifications for this purpose.

Recommendation 5: Announce an intention to replace the current Form I-9 process for employers that voluntarily use E-Verify. The I-9 process is mandated by statute. Many employers believe that, if they run E-Verify, they no longer need to complete an I-9. E-Verify users who understand that they still are required to complete an I-9, question this redundancy. Several private technology vendors address this issue by offering employers a fee-for-service online system that delivers one-step data collection: it both meets the I-9 legal requirements and seamlessly runs an E-Verify query in the background. USCIS, in coordination with ICE, should devise a method to eliminate the redundant collection and retention of employment verification data.

USCIS Response: USCIS pointed out that “eliminating the I-9 for employers who use E-Verify would require a statutory change.” Statutory language establishing the E-Verify program specifically requires employees to record information “on the I-9 or similar form,” and requires employers to comply with I-9 retention requirements.³⁵⁶ However, USCIS further advised that it is exploring “the development of its own electronic I-9 to help streamline the I-9 and E-Verify processes.” Upon implementation (currently scheduled for FY 2010), the electronic I-9 would be capable of automatically populating the E-Verify data field, and would provide employers the capability to save and/or print the I-9.

³⁵⁶ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 403(a), at Title IV, Subtitle A (Sept. 30, 1996).

Ombudsman's Follow-Up

Following the December 22, 2008 issuance of these recommendations, the Ombudsman returned to Arizona on March 9, 2009, to hear additional feedback provided during a USCIS E-Verify stakeholder meeting.³⁵⁷

Also in March, the Ombudsman met with representatives of USCIS' E-Verify Monitoring and Compliance team, whose mission is to conduct internal audit programs and routines designed to strengthen and ensure system integrity. This group will act to identify suspicious user activity, as well as employer and employee anomalies, and will take appropriate steps to deter misuse through a mix of education and escalating monitoring activities, including potential site visits. USCIS is establishing a Monitoring and Compliance Regional Office in Buffalo, New York,³⁵⁸ and expects it to be fully staffed by the end of 2009.³⁵⁹

In April, the Ombudsman met with government, private sector, and non-profit stakeholders in South Carolina and Mississippi, states that also have passed legislation to require employers of certain sizes to use E-Verify.³⁶⁰ The Ombudsman learned from these meetings that some aspects of each state's laws conflict with E-Verify's compliance provisions. For example, Mississippi law requires covered employers to use E-Verify to determine the work eligibility of persons who will receive compensation as independent contractors, i.e., those individuals who will be issued an IRS Form 1099 (Miscellaneous

Income). Under the federal format, employers are not permitted to run E-Verify for true independent contractors. For its part, South Carolina law provides employers five days to conduct employment verification of their new hires, which is inconsistent with the federal three-day requirement.

The effect of such inconsistencies is magnified for employers who operate in multiple states. State-by-state, incremental E-Verify rollout may present compliance challenges to these employers.

Regarding the possible extension of an E-Verify requirement for federal contractors and subcontractors, implementation of the 2008 Executive Order 13465 imposing this requirement remains delayed; the most recent postponement moved the implementation date to September 8, 2009.³⁶¹

357 "Announcement of a Stakeholder Meeting on the E-Verify Program in Arizona," 74 Fed. Reg. 7698, 7699 (Feb. 19, 2009), <http://edocket.access.gpo.gov/2009/pdf/E9-3543.pdf> (accessed June 9, 2009).

358 USCIS Press Release, "E-Verify Program Surpasses 52,000 Employers" (Feb. 12, 2008), <http://www.uscis.gov/files/pressrelease/everify12022008.pdf> (accessed June 9, 2009).

359 Information provided by USCIS to the Ombudsman (Mar. 25, 2009).

360 See <http://www.mms.state.ms.us/imported/docs/lib/DFA/MMRS%20FAQs/E-Verify%20FAQs.pdf> (accessed June 9, 2009) (Mississippi Senate Bill 2988 of the 2008 Legislative Session, known as the Mississippi Employment Protection Act (MEPA), phases in the mandatory use of E-Verify for Mississippi employers based on the employer's public/private status and the number of workers employed.) See http://www.scstatehouse.gov/sess117_2007-2008/bills/4400.htm (accessed June 9, 2009) (South Carolina's legislation, HB 4400, passed in 2008 as the South Carolina Illegal Immigration Reform Act, phases in E-Verify for certain public/private employers beginning January 1, 2009 or, alternatively, requires new hires to provide a South Carolina driver's license or identification card as evidence of work eligibility status.)

361 See "FAR Case 2007-013: Employment Eligibility Verification," 73 Fed. Reg. 67651, 67651-705 (Nov. 14, 2008). With few exceptions, when implemented, this new rule will mandate that all new and existing federal contracts must contain a provision requiring government contractors (and subcontractors) to use E-Verify to ensure that new hires, and all existing employees who are directly performing federal contract work, are legally authorized to work in the United States. However, the effective date of this final rule has been rescheduled for September 8, 2009; see USCIS Update, "Rule Requiring Federal Contractors to Use E-Verify System Delayed" (June 3, 2009), www.uscis.gov (accessed June 9, 2009).

6. Naturalization Oath Ceremonies

RECOMMENDATIONS

1. Issue guidance to district offices on prerogatives and obligations in working with courts
2. Notify new citizens to update their status with SSA
3. Digitally produce photographs on Certificates of Naturalization
4. Post pending naturalization case statistics monthly

REASONS FOR RECOMMENDATIONS

- Courts inconsistently adhere to terms in the IAA
- Inappropriate conduct of judges at certain judicial naturalization ceremonies
- Naturalization certificate production is labor-intensive
- Applicants unaware of their “place in line”
- New citizens need consistent guidance on how to update status for E-Verify, passports, and voting
- Special applicants not subject to court’s exclusive jurisdiction, but courts often required they wait for court ceremony

HIGHLIGHTS

- USCIS naturalized more than 1 million people in FY 2008
- 41 of 74 court districts retain exclusive jurisdiction to administer oath
- Naturalization processing times averaging 6 months as of March 2009; projected to be 5 months by end of FY 2009
- USCIS allocated \$30 million to reimburse courts, FY 2006 through FY 2010

More Information?

Review the full text of the Ombudsman’s recommendations at: http://www.dhs.gov/xlibrary/assets/cisomb_naturalization_recommendation_2008-12-16.pdf

Review the full text of USCIS’ response at: http://www.dhs.gov/xlibrary/assets/uscis_response_cis_ombudsman_recommendation_37.pdf

Summary

This study examined the naturalization oath ceremony when presided over by a court.

Naturalization, the formal mechanism whereby a foreign national acquires citizenship of the United States, represents the culmination of the immigration process for an individual. U.S. citizenship conveys the rights to vote, obtain a passport, hold certain federal positions, be exempt from deportation, and petition for certain family members to reside in the United States. Former USCIS Acting Director Jonathan “Jock” Scharfen reflected on the significance of naturalization and stated, “USCIS has no mission of greater importance than that of naturalizing citizens.”³⁶²

USCIS informed the Ombudsman that the agency naturalized more than one million applicants in FY 2008. In June 2008, the Ombudsman initiated a study of naturalization ceremonies. The Ombudsman observed 19 large- and small-scale administrative and judicial ceremonies nationwide and interviewed customers, agencies, and USCIS staff who were present.

USCIS is responsible for naturalization processing, from receiving a green card holder’s Form N-400 (Application for Naturalization) and conducting background checks, through interviews involving testing of English language proficiency and knowledge of U.S. civics and history. In many cases, USCIS officers also conduct the last step, the oath ceremony, wherein a person recites an oath, or affirmation, of allegiance to the United States. These are called administrative oath ceremonies.³⁶³ In 41 of 74 federal court jurisdictions

362 DHS Leadership Journal, “Citizenship Day: An Opportunity to Reflect” (Sept. 17, 2008), www.dhs.gov (accessed June 9, 2009).

363 Federal courts have authorized 33 USCIS district offices to conduct both large- and small-scale ceremonies, as well as individualized administrative oath ceremonies for elderly, infirm, or special needs applicants. These offices follow the protocol contained in the USCIS Adjudicator’s Field Manual requiring USCIS officials to observe the “dignity of the occasion.” Chapter 75.2 (Redacted Public Version).

nationwide,³⁶⁴ however, courts retain the sole authority³⁶⁵ to oath all approved naturalization applicants in judicial naturalization oath ceremonies.³⁶⁶ Moreover, all applicants wishing to change their names are oathed judicially. All new citizens, whether oathed judicially by the court or administratively by USCIS, receive the N-550 (Certificate of Naturalization).

Analysis

The high number of USCIS FY 2008 naturalizations resulted both from large-scale measures, such as increased personnel and work hours, and from local and organizational innovations that improved efficiency to reach an “unprecedented” outcome for the agency.³⁶⁷

Despite this achievement, there were bottlenecks and customer service problems. These included delayed processing times, collaboration issues affecting scheduling of judicial ceremonies, and certificate production burdens that consumed USCIS adjudicator time as N-400 processing times reached 18 months in some offices.³⁶⁸ Nearly half of all approved applicants waited more than 30 days for an oath ceremony.³⁶⁹ During the extended processing times,³⁷⁰ lack of customer awareness about their place in line fostered criticism that USCIS was not doing enough to naturalize the record number

364 Information provided by USCIS to the Ombudsman (Nov. 18, 2008).

365 See generally INA § 310(b).

366 USCIS reimburses courts for their costs in administering the oath at a *per capita* rate of \$14.09 which is deducted from the N-400 filing fee. See “Inter/Intra Agency Reimbursable Agreement Analysis of Alternatives (IAA), USCIS Interagency Agreement No: HSSCCCG-06-X-00071” (June 28, 2005); see also “U.S. Department of Homeland Security Reimbursement Agreement Between Agencies, AOUSC/USCIS, effective September 1, 2007 – September 30, 2008.”

367 See USCIS Fact Sheet, “USCIS Makes Major Strides During 2008” (Nov. 6, 2008), www.uscis.gov (accessed June 9, 2009).

368 *Id.*

369 Data provided by USCIS to the Ombudsman (July 30, 2008) (A USCIS study of oath ceremonies nationwide found that same-day administrative ceremonies serve an estimated 11.5 percent of all oath-takers. Of those who do not oath the same day as approved, eight percent wait 8-14 days after decision, 25 percent wait 15-30 days, and 49 percent wait more than 30 days. The study did not address the remaining 6.5 percent.)

370 USCIS Working Group, Naturalization Certificate IPT (Aug. 24, 2008) (USCIS reported that as of late FY 2008, approximately 475,000 naturalization applications were pending for more than nine months, 192,000 for more than 18 months, and 118,000 for more than 24 months.)

of applicants who sought U.S. voting rights for the 2008 elections.

On December 16, 2008, the Ombudsman made four recommendations to address challenges in conducting the naturalization oath ceremony. USCIS responded on March 27, 2009.

Recommendation 1: Issue formal guidance to district officials clarifying their prerogatives and obligations under controlling law, regulations, and the Interagency Reimbursable Agreement (IAA) between USCIS and the Administrative Office of the United States Courts (AOUSC).

While USCIS officials generally report that the federal courts are responsive to USCIS requests to schedule and make judges available for naturalization ceremonies, USCIS conveyed to the Ombudsman concerns regarding the impact of several courts’ restrictions on scheduling ceremonies and non-compliance with the IAA. In these instances, the Ombudsman observed that the courts sometimes engaged in conduct inconsistent with the letter or spirit of the IAA, as well as applicable law and regulations.³⁷¹

USCIS Response: USCIS concurred in part with the recommendation, noting its Office of Field Operations is working on issuing formal guidance to district officials and that this study “brought attention to key service issues.” USCIS stated, in response to the Ombudsman’s description of instances where the court violated the IAA, that these were “isolated” incidents.

Ombudsman’s Comments: The agency noted that it is exploring the possibility of a Memorandum of Understanding with the AOUSC, which oversees the nation’s federal court system.

Recommendation 2: Consistently include information at naturalization ceremonies for new citizens to update their status with the Social Security Administration (SSA). Given

371 For example, district directors were paying for venues by order of the court. Second, based on reports by USCIS officials on court delays for military oathing, the Ombudsman is concerned whether certain special applicants who file for naturalization pursuant to INA §§ 319(b), 328(a), or 329 are receiving timely oathing. These special applicants include foreign born spouses of certain U.S. citizens, all members currently serving in the U.S. Armed Forces and certain individuals who have been honorably discharged from service, and those U.S. Armed Forces Reserves members who currently serve or have served in active-duty reserve status during authorized periods of conflict as outlined in the INA.

the increased utilization of E-Verify for employment eligibility verification, new citizens should promptly update their status with the SSA, which provides status data to the USCIS systems.

USCIS Response: USCIS concurred with this recommendation. The agency stated that applicants can find this information on Form M-476 (A Guide to Naturalization), a resource noted on the first page of the N-400. USCIS also stated it is developing a standardized information packet for all newly naturalized citizens to take home from the oath ceremony. Finally, “when a naturalized citizen has not updated his or her SSA records after naturalizing, E-Verify has begun confirming citizenship status by verifying the passport information against Department of State... data.”

Recommendation 3: Implement plans to digitally produce the photograph on the Certificate of Naturalization (Form N-550). Digitization of the naturalization certificate would improve USCIS efficiency by eliminating the current time-intensive production method of hand-gluing a passport-style photo onto each certificate; it would also enhance a certificate’s tamper-resistance and durability.

USCIS Response: USCIS concurred with this recommendation; the agency stated that the efforts to digitize the certificate remain underway and “will be implemented fully as soon as printing and security standards are established and the required technology is ascertained.”

Recommendation 4: Post statistics monthly on the number of individuals naturalized and pending naturalization applications. Posting naturalization processing data on the USCIS website would help address concerns about the pace of adjudications, make clear to customers and stakeholders the number of pending applications and individuals USCIS is naturalizing on a monthly and yearly basis, and illustrate whether or not the agency is meeting stated goals.

USCIS Response: USCIS declined to implement this recommendation. “We recognize that there is an interest in knowing how many individuals USCIS has naturalized and this information is published annually; but we believe that the information we are providing monthly, processing times of N-400 for each office, is the most useful information for the applicant and provides the most direct benefit to the applicant.”

However, as of this writing, USCIS has begun publishing the requested data on its website.³⁷²

Ombudsman’s Follow-Up

The Ombudsman continued to monitor judicial naturalizations during the winter and spring of 2009 by visiting eight additional ceremonies nationwide. In many districts, USCIS personnel described positive working relationships with court officials; however, in other districts challenges remain. The Ombudsman understands that the AOUSC and USCIS are now meeting to discuss these challenges and enhance their working relationship.

372 See “Monthly Statistical Reports on Applications for Benefits and N-400 Naturalization Benefits,” www.uscis.gov (accessed June 9, 2009).

7. Improving the Processing of Schedule A Nurse Visas

RECOMMENDATIONS

1. Separate and prioritize Schedule A green card nurse applications
2. Centralize Schedule A nurse applications at one service center

REASONS FOR RECOMMENDATIONS

- Few nonimmigrant options available
- Immigrant visa numbers limited
- Lengthy processing times result in nurses going to other countries
- Inconsistent processing times and adjudications
- Nursing shortage threatens quality of patient care

HIGHLIGHTS

- Demand for nurses continues to grow
- Nonimmigrant Visa Options
 - H-1C limited to 500 annually, restrictive qualifiers, widely underutilized
 - NAFTA not widely used for nursing positions
 - H-1B only available for “specialty occupations” – very few nurses qualify
- Immigrant Visa Options
 - Obtaining a green card is the most common route for foreign nurses
 - RNs listed by DOL as a Schedule A shortage occupation
 - Ability to immigrate dependent on visa availability

More Information?

Review the full text of the Ombudsman’s recommendations at: http://www.dhs.gov/xlibrary/assets/cisomb_recommendation_36.pdf

Review the full text of USCIS’ response at: http://www.dhs.gov/xlibrary/assets/USCIS_Response_to_CIS_Ombudsman_Recommendation_36.pdf

Summary

The nursing shortage in the United States may begin to adversely affect patient care and the health care industry. According to a U.S. Department of Health and Human Services 2007 study, the United States will require 1.2 million new Registered Nurses (RNs) by 2014 to meet demand: approximately 500,000 RNs to replace nurses leaving the field, and “an additional 700,000 to meet growing demand for nursing services.”³⁷³

Figure 12: Nurse Immigrant Statistics

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009 YTD (Oct.–Apr.)
I-140 Petition Approvals	343	6,834	5,276	3,791	9,383
RN Lawful Permanent Resident Admissions	983	2,763	364	13*	0*

* The Ombudsman understands that USCIS is reviewing whether these data were properly captured in the agency databases.

Source: Data provided by USCIS to the Ombudsman

Visa availability continues to be the principal obstacle for nurses seeking employment in the United States, and the number of visas available can only be addressed through legislation. Apart from visa limitation issues, the Ombudsman noted procedural concerns with USCIS, including inconsistencies in processing times and adjudications at USCIS service centers.

Analysis

On December 5, 2008, the Ombudsman issued two recommendations and a suggestion to improve immigration process-

373 U.S. Department of Health and Human Services, “Toward a Method for Identifying Facilities and Communities with Shortages of Nurses, Summary Report” (Feb. 2007), <http://bhpr.hrsa.gov/> (accessed June 9, 2009) (Factors contributing to the increase in demand include an increase in population, a larger proportion of elderly population, medical advances, and the number of RNs retiring.)

ing for Schedule A nurse petitions.³⁷⁴ USCIS responded to the recommendation on March 13, 2009.

Recommendation 1: Prioritize Schedule A green card nurse applications, without the requirement of a written request, upon immigrant visa availability. The rationale for automatically expediting Schedule A applications upon visa availability is found in a 2001 INS memorandum regarding expedite requests.³⁷⁵ Three of the listed criteria – “extreme emergent situation,” “humanitarian situation,” and “compelling interest of the Service”³⁷⁶ – apply to Schedule A nurse applications.

USCIS Response: USCIS stated that its ability to rectify the situation is “more limited than the CIS Ombudsman’s recommendation suggests.” USCIS explained that “Schedule A designation creates a process to streamline the labor certification process, it does not create a process to bypass the petition review, adjudication process, or the statutory rules for visa allocation.” USCIS noted that “[a] Schedule A nurse must still wait in the same line with other ‘skilled workers’ (EB-3 category) for his or her priority date to become current before applying for an immigrant visa or adjustment of status.” USCIS determined that the “automatic expediting of Schedule A petitions for nurses could circumvent the visa allocation process.”

Ombudsman’s Comments: The Ombudsman met with USCIS’ subject matter experts while drafting this recommendation to address any concerns and clarify data. However, the Ombudsman is concerned that USCIS’ response does not reflect a full understanding of the recommendation.

374 “Schedule A” precertification is a determination that there are insufficient U.S. nurses who are able, willing, qualified, and available, and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of foreign nationals. There are two groups within Schedule A. Group 1 consists of physical therapists and professional nurses. Group II consists of foreign nationals of exceptional ability. 20 C.F.R. § 656.15 (2008).

375 Department of Justice INS Memorandum, “Service Center Guidance for Expedite Requests on Applications and Applications” (Nov. 30, 2001).

376 The nursing shortage is an “extreme situation” and a “humanitarian situation” directly linked to the decrease in quality care for American patients, which decline makes the United States vulnerable in emergency preparedness. It also is a “compelling interest of the Service” to be aligned with DOL’s determination that the United States has a critical nursing shortage and to implement measures in keeping with DHS’ mission.

USCIS’ response focuses on limitations regarding visa availability and states that expediting Schedule A cases may circumvent the visa allocation process. In the recommendation, the Ombudsman specifically acknowledged the visa availability issues and focused on expanding procedures within USCIS’ control.

Recommendation 2: Centralize Schedule A nurse applications at one designated USCIS service center to facilitate more efficient and consistent processing of applications. Centralization would result in more efficient processing and improved consistency in adjudications.

USCIS Response: USCIS disagreed with the Ombudsman’s recommendation and stated that Schedule A petitions are processed at two service centers to ensure consistent and efficient processing. It noted that having trained teams at two service centers instead of one provides “continuity of operations should an emergency, such as a hurricane, close one of the facilities for an extended period.” However, USCIS noted that it will take this recommendation under consideration.

Ombudsman’s Comments: USCIS’ reluctance to centralize the Schedule A adjudication process conflicts with USCIS’ recent decisions to centralize other application types, such as the EB-5 product line at the CSC and the T and U visa applications at the VSC. As discussed in the recommendation, USCIS has noted the benefits of centralizing other application types.

Suggestion. Regularly communicate with Department of Labor (DOL) and develop points of contacts at DOL to discuss concerns and direct inquiries regarding the processing of nurse immigration applications. Enhanced interagency communication would improve coordination and customer service.

USCIS Response: USCIS agrees with this suggestion, noting that such a forum would assist in identifying concerns and issues.

Ombudsman’s Follow-up

Until there is legislation to address the nursing shortage, USCIS should develop strategies, within its control, to facilitate the processing of Schedule A nurse applications. The Ombudsman will continue to monitor these issues.

8. USCIS Processing Delays for Employment Authorization Documents

RECOMMENDATIONS

1. Adjudicate applications within 90 days or issue interim EADs
2. Inform the public why EADs are delayed and how delays will be addressed
3. Ensure NCSC and local offices provide consistent guidance on EADs
4. Reconsider the wider use of multi-year EADs

REASONS FOR RECOMMENDATIONS

- Many applicants cannot legally work without an EAD
- Processing delays cause loss of jobs and job opportunities
- Work interruptions hurt both families and businesses
- EAD delays increase demands on INFOPASS, NCSC, etc.

HIGHLIGHTS

- Form I-765 (Application for Employment Authorization)
- \$340 Filing Fee
- USCIS EAD regulation requires
 - Adjudication within 90 days
 - Issuance of interim EAD if processing time exceeds 90 days

More Information?

Review the full text of the Ombudsman's recommendations at: http://www.dhs.gov/xlibrary/assets/cisomb_ead_recommendation_35.pdf

Review the full text of USCIS' response at: http://www.dhs.gov/xlibrary/assets/uscis_response_to_cisomb_recommendation35_01_02_09.pdf

Summary

This study examines USCIS' delay in adjudication and issuance of EADs and includes recommendations and suggestions for USCIS to correct these problems.

To obtain authorization to work legally in the United States, certain individuals must file Form I-765 (Application for Employment Authorization). Individuals often file the I-765 with other applications, such as the Form I-485 (Application to Register Permanent Residence or Adjust Status). Upon receipt of an employment authorization application, USCIS sends an I-797 Receipt Notice; upon approval, USCIS sends an EAD. Generally, EADs are valid for renewable periods of one year. Due to an unusually large influx of employment-based visa applications in summer 2007,³⁷⁷ many applicants had to reapply for EADs in summer 2008 while their green card applications remained pending.

Many foreign nationals complained to the Ombudsman that they lost, or were in danger of losing, their jobs in the United States because USCIS did not issue EADs timely (within 90 days of receipt).³⁷⁸ Furthermore, most, if not all, applicants could not immediately obtain an interim EAD on the 91st day, as required by regulation.³⁷⁹ Numerous complaints also indicated that USCIS customer service avenues offered applicants inconsistent and unclear guidance regarding how to address delays.

In June 2008, the Ombudsman noted a significant increase in the number of inquiries regarding EADs pending over 90 days. By September 2008, the number of EAD inquiries

377 According to USCIS, the agency received nearly three million applications from June to August 2007, compared to 1.8 million filings during the same period of the previous year. See "USCIS Monthly," p. 3 (Apr. 2008), www.uscis.gov (accessed June 9, 2009).

378 8 C.F.R. § 274a.13(d) (2008) ("The district director shall adjudicate the application within 90 days from the date of receipt")

379 *Id.* ("Failure to complete the adjudication within 90 days will result in the grant of an employment authorization document for a period not to exceed 240 days.") Field offices no longer issue interim EADs.

peaked at approximately four times the numbers received prior to June.

For an EAD pending more than 90 days, USCIS directed individuals to call the National Customer Service Center (NCSC), or schedule an INFOPASS appointment with a field office. The NCSC would issue service requests through the Service Request Management Tool (SRMT) system to expedite processing, or ask callers if they wanted to request an interim EAD. The field offices could request that a service center issue an interim EAD. However, the Ombudsman learned through meetings with USCIS and in field visits that service centers rarely issued interim EADs, but rather focused on processing the actual EAD application. As a result, numerous applicants waited well beyond the 90-day processing time and some applicants, no longer authorized to work, reported to the Ombudsman that they lost their jobs.

CASE PROBLEM

In January 2008, a customer filed the I-765 with USCIS. In May 2008, the customer called the NCSC to check the status of her application. The customer then scheduled two INFOPASS appointments in May and July 2008, but USCIS did not issue her an EAD. The customer expressed concern that without an EAD authorizing her to work, she would suffer significant hardship. In August 2008, over 180 days after she applied, USCIS approved her application and issued the customer an EAD.

Analysis

In a recommendation dated October 2, 2008, the Ombudsman addressed the issues raised by EAD processing delays. The recommendations and suggestions aimed to ensure adherence to USCIS' own regulations, provide an alternative and secure interim relief process, and prevent financial harm to applicants during any future application surges.

USCIS responded on January 2, 2009, stating that for FY 2008, the agency received 1,144,374 EAD applications and 15,551 service requests through the NCSC for those applications pending beyond normal processing time. USCIS concluded that these requests constituted only 1.3 percent of the total applications received. The agency indicated that these requests represented at least a 98.7 percent compliance rate, and, there-

fore, there was no "systemic problem."³⁸⁰ The Ombudsman requested the precise number of EAD applications pending over 90 days, but USCIS did not have the data.³⁸¹

Recommendation 1: Adhere to regulations that state USCIS shall issue Employment Authorization Documents (EADs) within 90 days, or issue interim EADs, to prevent loss of employment. USCIS' failure to process EADs within the regulatory 90 day timeframe negatively impacts individuals and employers by causing both fear of job loss and actual job loss.

USCIS Response: USCIS indicated that there are new processes in place to ensure adherence to regulations to issue EADs within 90 days, including: (1) routine system sweeps or reviews of those applications which have been pending for at least 60 days and have not been assigned for adjudication; (2) updated NCSC scripts stating that service requests can be accepted after an application is pending 75 days; and (3) guidance to the field clarifying that applicants with no decision after 90 days can call the NCSC for expedited processing, or schedule an INFOPASS appointment at a local office. Within 10 days of receiving a request, service centers and the NBC must adjudicate the I-765 or issue an interim card.

Ombudsman's Comments: The additional 10-day timeframe for an applicant to obtain an EAD or interim card is not contemplated by the USCIS regulation.

Recommendation 2: Expediently provide information to the public stating the cause of EAD processing delays and how the delays will be addressed. Providing this information to the public would likely reduce inquiries and add transparency to the adjudication process.

USCIS Response: USCIS indicated in its response that it will provide public guidance on how RFEs affect the 90-day process.

Ombudsman's Comments: The USCIS response does not address the EAD processing delays aside from RFE issuance.

Recommendation 3: Ensure USCIS provides consistent guidance to the public regarding EADs pending more than 90 days via the National Customer Service Center (NCSC) toll-free number and local offices. Providing consistent in-

³⁸⁰ USCIS Response to Recommendation #35, p. 2 (Jan. 2, 2009).

³⁸¹ *Id.*, p. 2.

formation about pending EADs would ensure good customer service and may reduce the number of inquiries to USCIS' customer service avenues.

USCIS Response: USCIS agreed and, “[o]n August 28, 2008, [the agency] issued and posted on its website at www.uscis.gov an EAD fact sheet which explains the steps an applicant may take if his or her Form I-765 application has been pending for more than 90 days.”

Recommendation 4: Reconsider Ombudsman recommendation FR2006-25 to issue multi-year EADs. Multi-year EADs would enhance customer service and reduce USCIS' workload.

USCIS Response: USCIS noted that it currently issues multi-year EADs in some circumstances. “The [two-] year EAD is available to pending [green card] applicants who have filed for an EAD under [8 C.F.R. § 274.a.12(c)(9) (2009)] and who are currently unable to adjust status because an immigrant visa number is not currently available USCIS will continue to grant EADs that are valid for [one] year for adjustment applicants who have an available immigrant visa number and are filing for employment authorization under 8 C.F.R. § 274a.12(c)(9). In order to be eligible for an EAD with a [two-]year validity period, an applicant's Form I-140, Immigrant Petition for Alien Worker, must be approved.”

“USCIS also currently issues EADs valid for 18 months to applicants with valid Temporary Protected Status (TPS) Many employment authorization categories are linked to specific periods of eligibility which can vary greatly from case to case and are very often for periods of less than a year in duration.”

Ombudsman Comments: As discussed in section III.B.2., “Employment-Based Petitions (I-140s),” the TSC does not separately adjudicate I-140 petitions from I-485 applications at this time. Consequently, it appears that those petitioners would not be eligible for two-year EADs based on USCIS' response.

Suggestion 1. Modify USCIS I-797 Receipt Notices for Form I-765 (Application for Employment Authorization) to provide for continued employment authorization. Modifying the receipt notices would prevent loss of employment for the customer while the application is pending.

USCIS Response: USCIS did not agree with this suggestion. The agency stated that since 2006, USCIS has streamlined its approach and enhanced its ability to process I-765 applications within the 90 day timeframe, which minimizes the need for an interim EAD. USCIS stated that it is “unable to modify an I-797 Receipt Notice to serve as an interim extension of an [EAD] for several reasons, including fraud which would pose a threat to national security and confusion that this action would likely cause employers.”

Suggestion 2. Affix fraud-proof stickers to expired EADs upon determination of an applicant's eligibility for an extension. Applying an extension sticker of limited duration would eliminate the need for an interim card and allow the customer to continue employment while the application is pending.

USCIS Response: USCIS did not agree, stating that it would be “more efficient, secure, and customer-friendly to issue a new EAD rather than to place a sticker on an expired one.”

Ombudsman's Follow-Up

Shortly before issuance of the EAD recommendation, the Ombudsman issued an “Ombudsman Update” on the website to address concerns of applicants with delayed EAD applications.³⁸² The Ombudsman coordinated with USCIS to expedite the processing of all inquiries where the EADs were pending over 90 days. As of March 2009, hundreds of pending EAD applications were expedited using this method. The Ombudsman still received nearly daily e-mails in April 2009 regarding pending EAD applications, but at a reduced rate.

The Ombudsman continues to follow the issue of delayed EAD processing, including: (1) review of Temporary Protected Status EAD applicants who are issued EAD extension letters that some employers do not recognize, and (2) issuance of an RFE that re-starts the EAD 90-day processing clock when USCIS determines that initial application evidence is missing.

382 See section V., “Ombudsman Outreach.”

D. 2008 Reporting Period Recommendations

1. USCIS Refund of Fees for Immigration Benefits

RECOMMENDATIONS

1. Clarify fee refund procedure and revise Adjudicator's Field Manual
2. Provide customers a way to track refund requests

REASONS FOR RECOMMENDATIONS

- Lack of publicly available information on USCIS refund policy/process
- Customers do not know how or where to begin
- Customers have no means to track refund requests
- Confusing description of refund process in Adjudicator's Field Manual

HIGHLIGHTS

- USCIS issued almost 5,500 refunds service-wide in FY 2008
- USCIS will consider a refund for Service error

More Information?

Review the full text of the Ombudsman's recommendations at: http://www.dhs.gov/xlibrary/assets/cisombudsman_uscis_recommendation_refund_of_fees_4-8-08.pdf

Review the full text of USCIS' response at: <http://www.dhs.gov/xlibrary/assets/cisomb-uscis-response-rec-34.pdf>

Summary

In April 2008, the Ombudsman recommended that USCIS address the process for refunding immigration benefits filing fees. There were no clear, concise USCIS guidelines publicly available to request a refund, and there was no mechanism for a customer to track or follow-up on a refund request.

The Ombudsman heard concerns about the lack of clarity in the refund process from customers who submitted case problems. In a January 31, 2008 Ombudsman public teleconference, callers expressed concern that USCIS has no clear procedures for requesting a refund.³⁸³ There is no way to follow up on a refund request filled out by USCIS, or to determine the component within the USCIS office that is processing it. Teleconference participants also pointed out that, in some cases, USCIS employees were themselves unsure of the agency's refund procedures.

CASE PROBLEM

A customer filed Form N-400 (Application for Naturalization) in August 2008. USCIS deposited the \$675 filing and biometrics fees. According to special statutory provisions for military personnel, no fees are required for the Form N-400 as of September 2004. The applicant wanted to request a refund of the \$675 filing fee, but could not find the correct procedures to do so. The applicant contacted the Ombudsman in January 2009 and, with the assistance of USCIS, the refund process began a few months later.

USCIS refunds filing fees only in the case of Service error.³⁸⁴ For example, USCIS returns filing fees to customers where a Service official incorrectly instructed an individual to file for a certain benefit.

³⁸³ Ombudsman Teleconference, "USCIS Refunds: How Is the Process Working for You?" (Jan. 31, 2008), http://www.dhs.gov/xabout/structure/gc_1171038701035.shtm (accessed June 9, 2009).

³⁸⁴ USCIS Adjudicator's Field Manual §10.10, "Refund of Fees" (June 18, 2007).

Prior to April 2008, applicants or petitioners could request a refund by making a written request to their local USCIS district or field office. They had to describe the error, provide their A-number, and list the form type. Section 10.10 of the Adjudicator’s Field Manual (AFM) indicated that the customer must complete Form G-266 (Refund of Immigration and Naturalization Fees) to obtain a refund. However, Form G-266 was available only on the USCIS Intranet; it was not publicly available. Rather, adjudicators reviewed the written refund requests. If USCIS confirmed a Service error, an authorized adjudicator prepared Form G-266 for submission to the Debt Management Center in Vermont. Even though the policy was in effect for many years, it was not widely known to the public and not clearly stated in any USCIS publications or on the website.

Analysis

On April 8, 2008, the Ombudsman issued two recommendations regarding refund request processing. USCIS responded on May 23, 2008.

Recommendation 1: Clarify its refund of fees procedures and revise the Adjudicator’s Field Manual, Section 10.10

“Refund of Fees” accordingly. Clarifying the AFM language would aid USCIS employees and customers in understanding refund policies and procedures.

USCIS Response: USCIS stated that it had revised section 10.10 “Refund of Fees” of the AFM. The applicant or petitioner now is instructed to request a refund by contacting the National Customer Service Center (NCSC) or submitting a written request to the office having jurisdiction over the application or petition. “USCIS will make a determination to approve or deny the request based on the available information. If the request is approved, USCIS – and not the applicant or petitioner – will complete Form G-266” and forward it for processing.

Recommendation 2: Provide customers with a way to track the status of their requests for refunds. At the time of the recommendation, there was no mechanism to determine the status of a refund request after filing. Establishing a system to receipt and track refund requests would improve transparency and customer service.

USCIS Response: As of this writing, USCIS does not issue receipts for refund requests. Consequently, USCIS stated that it is not capable of tracking the status of a refund request in the same manner as it tracks the status of an application or petition. As an interim solution, customers may contact the NCSC to initiate an update on their refund requests. The NCSC will submit a “service request” to the local office or service center asking for a status update. The appropriate office will respond to the customer within 30 days. USCIS will continue to keep the Ombudsman’s Office apprised of the agency’s progress with these efforts.

Ombudsman’s Follow-Up

Recently, USCIS indicated to the Ombudsman that the agency is in the process of updating its refund policy service-wide. The agency plans to provide information on this new policy on its website.

2. Petitions Returned by the U.S. Department of State for Revocation/Revalidation

RECOMMENDATIONS

1. Issue service center receipt notices for returned petitions
2. Establish a nationwide processing goal for re-adjudication of returned petitions; add “REVOCATION” as a field on public processing time reports
3. Provide additional information on website

REASONS FOR RECOMMENDATIONS

- Receipts not always sent to petitioners
- Inconsistent and long processing times
- Lack of transparency over file location and case status

HIGHLIGHTS

- U.S. Department of State
 - Issues visas abroad
 - Returns certain petitions to USCIS for revocation or revalidation
- USCIS
 - Reviews petition & determines whether to revalidate/ revoke it
 - Multiple petitions filed with DOS due to lack of USCIS information & lengthy processing times

More Information?

Review the full text of the Ombudsman’s recommendations at: http://www.dhs.gov/xlibrary/assets/cisomb_Recommendation33_aug_24_07.pdf

Review the full text of USCIS’ response at: http://www.dhs.gov/xlibrary/assets/cisomb_uscisresponse_recommendation33_2008-05-23.pdf

Summary

The Ombudsman received complaints from customers and stakeholders about the manner in which USCIS processes petitions returned by DOS for revocation or revalidation.

Information about this process, in general, was not available to customers and stakeholders. When a petition was returned to USCIS, the agency did not always issue notices to petitioners informing them the petition was within USCIS jurisdiction. Many times, the petitioner first learned that a returned petition had reached USCIS only upon receipt of a Notice of Intent to Revoke (NOIR) the previously approved petition. The Ombudsman understands that sometimes petitioners, who have provided information in response to a NOIR, do not receive additional communications from USCIS for long periods of time. As a result of this lack of communication, these petitioners often file a second or third petition to start the process anew.

CASE PROBLEM

E-mail received by the Ombudsman. A U.S. citizen petitioner filed Form I-130 (Petition for Alien Relative) on behalf of his wife and son in March 2006. USCIS approved the petitions in June 2006. However, DOS returned the petitions for review by a USCIS service center in the fall of 2007. The long processing delays caused the petitioner and his family hardship. The petitioner contacted the Ombudsman in March 2009. USCIS sent a notice of intent to revoke the petition in April 2009.

Even after USCIS approves a petition, the agency can revoke it for “good and sufficient cause.”³⁸⁵ Types of revocations include: (1) automatic revocation,³⁸⁶ (2) revocation due to failure to apply for an immigrant visa within one year fol-

³⁸⁵ INA § 205.

³⁸⁶ 8 C.F.R. § 205.1(a) (2008).

lowing notification of the availability of such visa;³⁸⁷ and (3) revocation on notice.³⁸⁸

Generally, a petition approved by USCIS is a prerequisite for DOS to issue an immigrant or nonimmigrant visa to a beneficiary residing abroad. USCIS does not approve a petition until the petitioner establishes, through the submission of documentary evidence, that the required relationship or qualifications exists. After approving a petition, USCIS forwards it to DOS for visa processing.

DOS conducts preliminary processing of the approved petition at its National Visa Center in the United States. After preliminary processing is completed, an interview is scheduled at a consular office, generally in the country of nationality of the beneficiary. After the interview, a consular officer: (1) issues the visa; (2) denies the visa for cause pursuant to INA section 212; or (3) provisionally denies the visa under INA section 221(g) and returns the visa petition to USCIS for further action (either revocation of the underlying approved petition or revalidation).

In general, DOS returns a petition to USCIS for revocation where fraud, misrepresentation, or ineligibility is likely to lead to revocation, not where it is merely suspected.³⁸⁹ Usually, consular officers must support petition returns with factual and concrete reasons previously not considered by USCIS, because the revocation process should not be a DOS re-adjudication.³⁹⁰ When consular officers return petitions, they are required to give beneficiaries a written explanation of the legal basis for non-issuance of the visa and return of the petition to USCIS.

Upon the petition's return to the USCIS facility, the status of the petition is logged into USCIS' system. The "re-locating" of the petition into the system updates the national USCIS database, as well as the Case Status Online system available to customers via the agency's website. Some, but not all, service centers send receipt notices to individual petitioners informing them where the petition is located. A USCIS adjudications officer then evaluates the reasons provided by the consular

officer for the return. If the adjudicator concurs with the consular officer's reasoning, USCIS issues a NOIR to give the petitioner the opportunity to respond. USCIS then will either reaffirm the petition and send it back to DOS for processing, or deny the petition thereby revoking it.

Analysis

On August 24, 2007, the Ombudsman issued three recommendations to increase transparency and improve information regarding the status of returned petitions. USCIS responded to the Ombudsman's recommendations on May 23, 2008.

Recommendation 1: Issue receipt notices to customers when the petition file is returned and received by USCIS Service Centers.

Often the first time a petitioner receives written information about the case is when the petitioner receives the NOIR.

USCIS Response: In its response, the agency indicated that when a petition is returned by DOS and received by USCIS, USCIS updates its CLAIMS 3 database to reflect the arrival of the petition. Thereafter, the database sends a Form I-797C (Notice of Action) to the petitioner indicating that DOS has returned the petition for review.

Recommendation 2: Establish a nationwide standard for the re-adjudication of petitions returned by consular officers for revocation or revalidation and amend the Operating Instructions/Adjudicator's Field Manual accordingly; include a "REVOCATION" entry in the processing time reports.

Standardizing the revocation/revalidation process would result in a more efficient and transparent process. Without publicly available processing time reports specific to petitions returned by DOS for revocation or revalidation, USCIS customers have no indication as to when cases may be completed and no way to gauge whether their cases are on track.

USCIS Response: USCIS did not agree with this recommendation. Specifically, the agency determined: (1) national standards are not practical because processing depends on DOS information; (2) the AFM already includes general procedures for revocations and what to do with derogatory information; (3) a "REVOCATION" entry is not needed because petitions returned by DOS for revocation or revalidation are treated as RFEs or Notices of Intent to Deny.

387 See INA § 203(g).

388 8 C.F.R. § 205.2 (2008).

389 See DOS ALDAC Cable, State 130268 (July 6, 2002); see also U.S. Department of State Foreign Affairs Manual – 9 FAM 42.43 Notes.

390 See 9 FAM 42.43 Notes.

Recommendation 3: Provide additional information about revocation or revalidation processes on USCIS’ website.

At the time of the recommendation, the USCIS website did not provide information about the revocation/revalidation process. Customers had only the information from DOS.

USCIS Response: USCIS agreed with this recommendation.

Ombudsman’s Follow-Up

The Ombudsman traveled to the eastern and western regions of the United States and met with USCIS officials, community-based organizations and stakeholders on these issues. The Ombudsman learned that processing times for returned petitions range from 12 to over 48 months and that processing of returned petitions is inconsistent between service centers.³⁹¹

Although USCIS indicated that issuance of receipt notices regarding returned petitions was in place since 2006, during the reporting period this practice remained inconsistent. Returned petitions are not all immediately re-entered into the USCIS CLAIMS 3 database, which would generate such a receipt notice.

Stakeholders have informed the Ombudsman that they sometimes receive NOIRs two to three years after petitions arrive back at USCIS from DOS.

Although USCIS processes the majority of these petitions at the CSC and VSC, some petitions are processed at field offices when forwarded by service centers. If USCIS approves a petition at a field office and DOS subsequently returns it for revocation or revalidation, that petition will be sent to the field office that originally processed it. With USCIS relocating increasing numbers of petitions from service centers to field offices to optimize resource utilization, assuming that consular return rates remain merely constant, future returns may be finding their way to field offices for reconsideration in ever higher numbers.

Petitions returned by DOS to USCIS field offices pose even more challenges for customers because: (1) standalone petitions returned by DOS are not part of the usual field office workload, so USCIS makes special arrangements for adjudicators to work on these petitions rather than their regular workload; (2) field offices do not provide petitioners with receipt

³⁹¹ See Figure 13.

notices to alert them that a previously approved petition has been returned by DOS, and cannot update CLAIMS 3; and (3) Case Status Online will not reflect that the returned petition is at the field office.

On April 9, 2009, USCIS published a Fact Sheet on its website.³⁹² The Fact Sheet provides general information about the common reasons a previously approved petition would be returned to USCIS for revocation/revalidation. It also provides information about what a petitioner should expect.

Figure 13 below depicts data from the CSC and VSC where USCIS processes most of these cases. In spring 2009, the VSC had over 20,000 more returned petitions pending to be processed than the CSC. Moreover, the VSC’s processing time was at least four times as long as the CSC. The VSC plans to allocate 20 percent of available officers to consular return cases. By comparison, the CSC projected that its processing time for these cases would be reduced to six months by the end of FY 2009.³⁹³

Figure 13: Consular Returns*

Year	Petition Status	California Service Center	Vermont Service Center
Returned Petitions Awaiting Processing			
2009		24,412 <i>(as of Mar. 2009)</i>	47,625 <i>(as of Apr. 2009)</i>
Petitions Returned from DOS			
2008		25,873	15,946
2007		26,259	11,113
USCIS Action Taken on Returned Petitions			
2008	Revoked	537	3,860
	Reaffirmed	395	531
2007	Revoked	10,267	1,746
	Reaffirmed	832	514
Processing Times			
		12 months <i>(as of Mar. 2009)</i>	48 months <i>(as of May 2009)</i>

* Excludes petitions returned to field offices.
Source: Information provided by USCIS to the Ombudsman

³⁹² See USCIS Fact Sheet, “Immigrant Visa Petitions Returned by the State Department Consular Offices” (Apr. 9, 2009), www.uscis.gov (accessed June 9, 2009).

³⁹³ Information provided by USCIS to the Ombudsman (Mar. 19, 2009).

E. Recommendations in Previous Years












This section includes summaries of the Ombudsman’s recommendations for the 2008 and 2007 reporting periods.³⁹⁴ For the full text of the recommendations and USCIS’ responses, please visit the Ombudsman’s website at www.dhs.gov/cisombudsman.

Figure 14: CIS Ombudsman Recommendations Chart














Key	
AR	Annual Report recommendation.
FR	Formal recommendation during the reporting year.
✓	USCIS implemented the recommendation.
🕒	USCIS has not yet fully implemented the recommendation.
✗	USCIS disagrees and does not plan to implement the recommendation.








Title	Recommendations	Status of USCIS Implementation
AR2008-10 Workforce After-Action Report (6/30/08)	Recommendation: Review the workforce elements of its 2007 surge plan, and make public an after-action report on its findings, including best practices, for possible future application surges.	🕒 USCIS has not made public an after-action report.
AR2008-09 Issuance Rates for Requests for Evidence are High (6/30/08)	Recommendation: Expand the use of filing guidance “tip sheets” to reduce the current “Request for Evidence” (RFE) issuance rates.	🕒 USCIS has continued developing additional “tip sheets” in the form of processing worksheets for each type of application and petition.
AR2008-08 Consistent Information in USCIS Systems (6/30/08)	Recommendation: Ensure that all its systems used by customer service personnel to provide information to the public are consistent and accurate.	🕒 USCIS IT personnel have already started working to correct the interface problems. The agency is scheduled to implement a complete rewrite of those interfaces by the end of this calendar year.
AR2008-07 Tier 1 Scripted Information (6/30/08)	Recommendation: Ensure its Tier 1 Customer Service Representatives (CSRs) of the NCSC follow the scripted information and are properly notified of changes to scripts.	✗ CSRs frequently fail to follow scripts.
AR2008-06 Exchange Program (6/30/08)	Recommendation: Develop an exchange program for USCIS staff who routinely work directly with USCIS customers, including staff at Tiers 1 and 2 of the NCSC, and IIOs who handle INFOPASS appointments.	✓
AR2008-05 Website (6/30/08)	Recommendation: Examine whether USCIS has devoted adequate resources to the agency’s website given the importance of the website to customers.	✓
AR2008-04 Proactive Customer Service (6/30/08)	Recommendation: Standardize proactive dissemination of information to all customer service avenues to ensure USCIS personnel can provide consistent and accurate information to customers.	🕒 USCIS has made efforts to ensure greater uniformity of information.
AR2008-03 Working Group to Improve File Tracking (6/30/08)	Recommendation: Convene a working group to define and implement near-term, national file tracking goals.	🕒 USCIS has convened a working group, which will provide periodic updates.

³⁹⁴ Section III.D., “2008 Reporting Period Recommendations,” describes the formal recommendations for the 2008 reporting period and subsequent follow-up.

Title	Recommendations	Status of USCIS Implementation
AR2008-02 Digitized Entry, File, and Adjudication (6/30/08)	Recommendation: Publicize near-term goals for the “digitization initiative” (electronic form filing and case processing).	 USCIS agrees to publicize near-term goals for digitization and has begun to educate other DHS and non-DHS components about the initiatives.
AR2008-01 Comprehensive Case Management System is Overdue (6/30/08)	Recommendation: Expeditiously implement a comprehensive and effective case management system. USCIS should determine whether the Transformation Program Office (TPO) pilot has the necessary capabilities and, if so, implement agency-wide.	 USCIS has piloted the Secure Information Management Service (SIMS), a web-based case management system to enable end-to-end electronic processing of intercountry adoption applications. USCIS will not expand usage of SIMS for agency-wide case management.
AR2007-25 Asylum Application Redraft (6/11/07)	Recommendation: Redraft Form I-589, the asylum application, so that it is less complicated and more understandable by the intended audience – persons who have been persecuted based on race, religion, nationality, membership in a particular social group, or political opinion.	
AR2007-24 End the Dallas Office Rapid Adjustment (DORA) Pilot, Evaluate and Implement National Program (6/11/07)	Recommendation: End the now three-year old DORA pilot. USCIS should evaluate the different up-front processing programs to determine the comparative value of each program and whether they should be expanded. The USCIS findings and empirical data should be made available to the public. The agency should either implement a version of DORA nationwide or another program which will achieve the same objectives with equal or better results.	
AR2007-23 Training in Field Offices (6/11/07)	Recommendation 1: Consider amending job requirements to include basic knowledge of certain commercially available computer programs used in the offices.	 USCIS provides training on an as needed basis.
	Recommendation 2: Provide all interviewing officers with Interviewing Techniques Training. Adjudicators who received this training indicated it helped them conduct better interviews.	
AR2007-22 Personnel Recruitment and Development (6/11/07)	Recommendation: Establish actionable multi-year milestones that lead to fulfilling the objectives of the Strategic Workforce Plan and ensure a systemic and sustained effort to recruit and develop its personnel. Responsibility to implement the plan should be included as a specific job requirement for the Chief Human Capital Officer and in the job requirements statements of the senior officers in the Office of Human Capital and Training.	
AR2007-21 Training for Office Supervisors (6/11/07)	Recommendation: The Human Capital and Training Office, in collaboration with field offices and service centers, should determine the skills and knowledge sets required for supervisors to be effective in their daily managing of people and resources. Specific resources or training programs should be identified on diversity requirements, discipline issues, handling problem employees, evaluating workflows, and budget management. Headquarters funds should be provided to field offices for employees to attend these sessions.	
AR2007-20 Office Communication (6/11/07)	Recommendation: Expand the opportunities for vertical and horizontal communication among offices by supporting conferences focused on specific work issues and providing funds for travel of working level staff to share best practices.	 USCIS is committed to sharing best practices among various offices through the use of conferences and promoting fiscal responsibility through greater use of web-based video conferencing.
AR2007-19 Standardize Staffing Levels (6/11/07)	Recommendation: To reduce USCIS' dependency on temporary employees and assignments, the agency should establish a table of standard staffing levels and office organization to provide the requisite staff at any particular office.	
AR2007-18 Training (6/11/07)	Recommendation 1: Expand USCIS' blended approach to training. USCIS should establish, regulate, and evaluate core training needs through its operations in the same manner as its review of the Basic Officer Training Course for adjudicators.	

Title	Recommendations	Status of USCIS Implementation
	Recommendation 2: USCIS should establish a certification process for both federal and contract instructors.	✓
AR2007-17 Career Paths (6/11/07)	Recommendation: Ensure there is a comprehensive merger of core job career paths with necessary training requirements – mandatory, technical, and leadership – oriented to future needs and groups, as well as transparency from entry to executive levels.	✓
AR2007-16 Chief Human Capital Officer (6/11/07)	Recommendation: The Chief Human Capital Office should have a rank position equal to the Chief Human Information Officer and Chief Financial Officer. USCIS should establish the role as a career reserved SES position.	✓
AR2007-15 Information Technology Network Solutions (6/11/07)	Recommendation 1: Ensure that a computer refresh does not adversely impact local systems.	🕒 USCIS is balancing between improving IT systems through Transformation and ensuring local business practices are not adversely impacted.
	Recommendation 2: Make available to each local office software that is authorized to enable offices to continue to use previously created documents in those systems.	🕒 USCIS tries to ensure that previously created documents remain accessible with new technology initiatives.
	Recommendation 3: Consider a long-term solution to the onsite support issue such as a central system.	🕒 USCIS planned to use fee increase funding to create a viable central IT system and controls.
AR2007-14 Records Management (6/11/07)	Recommendation: Define a program to ensure proper handling and monitoring of its records. The program should be assigned to a USCIS Headquarters office element.	🕒 USCIS has convened a working group to implement this recommendation.
AR2007-13 Fund Headquarters Staff Visits to the Field (6/11/07)	Recommendation: The budget for each Headquarters element should include sufficient funds for detailed visits with field office and service center line and supervisory staff to enable Headquarters to better understand the needs of these offices.	✓
AR2007-12 Request for Evidence (RFE) Issuance (6/11/07)	Recommendation 1: Create clearer application instructions so that applicants provide the required documentation at the outset.	🕒 USCIS Information and Customer Service Division (ICSD) has focused its Content Team to include reviews of all instructions.
	Recommendation 2: Publish transparent and easily understandable rejection criteria.	🕒 USCIS has not yet implemented this recommendation.
	Recommendation 3: RFEs written in simple, more direct language with less legalese and personalized to the recipient for the limited instances in which RFEs would be issued.	🕒 USCIS is attempting to provide more tailored RFEs to customers.
AR2007-11 Chicago Lockbox (6/11/07)	Recommendation 1: Implement a procedure so the Lockbox will not accept a new filing if a case already has been denied and a Notice to Appear (NTA) issued.	🕒 USCIS will work with the Executive Office for Immigration Review to establish appropriate procedures for filings where an NTA has been issued.
	Recommendation 2: Institute a process to notify a field office when an application is rejected.	✓
	Recommendation 3: Implement quality review measures to ensure that errors do not occur in mailings to applicants.	✓
AR2007-10 Quality Assurance (QA) Training (6/11/07)	Recommendation: The Ombudsman strongly endorses a plan whereby employees responsible for quality assurance at the local level receive uniform and comprehensive training in QA procedures.	✓
AR2007-09 Fraud Investigation Time Limits (6/11/07)	Recommendation 1: Produce an Aging Report on pending fraud investigations by officer and district.	✓

Title	Recommendations	Status of USCIS Implementation
	Recommendation 2: Establish a reasonable limit to the time allotted for investigation by the fraud unit.	 USCIS does not support placing limits on the time allotted for investigations.
AR2007-08 Fraud Interviews (6/11/07)	Recommendation: Institute same-day fraud interviews in all field offices.	 Same-day fraud interviews are taking place at many USCIS field offices. USCIS has found that rescheduling an interview where fraud is suspected to allow USCIS to conduct a site visit can also detect and prevent fraud.
AR2007-07 Premium Processing Costs Compared with Regular Processing Costs (6/11/07)	Recommendation: Conduct a thorough, transparent, and independent analysis of premium processing costs as compared with regular processing.	
AR2007-06 FBI Name Check (6/11/07)	Recommendation 1: Evaluate the value of the name check in its current format and establish a risk-based approach to screening for national security concerns.	 USCIS and the FBI undertook a pilot project to test a variety of approaches to improve the quality of information developed through the name check process.
	Recommendation 2: Work with the FBI to provide the necessary resources to perform name checks in a timely manner.	
	Recommendation 3: Provide greater transparency by publishing monthly the number of long-pending FBI name check cases.	 USCIS does not publish this information.
AR2007-05 Application Redress (6/11/07)	Recommendation: Adopt a national process similar to that in the San Diego Field Office wherein an applicant who has not received a decision after an interview can contact the District Adjudications Officer (DAO) via e-mail.	 The National Customer Service Center provides a phone inquiry system and forwards inquiries via the Service Request Management Tool (SRMT).
AR2007-04 FAQ List (6/11/07)	Recommendation 1: Adopt the frequently asked questions format used by CBP, incorporating a dynamic search feature on the website, rather than a static FAQ list.	 USCIS' website currently offers a search capability.
	Recommendation 2: Provide a service on the website whereby customers can e-mail a question and receive an answer within a short period of time.	 The National Customer Service Center offers a 1-800 phone inquiry system to accept questions.
AR2007-03 Processing Times (6/11/07)	Recommendation: Return to providing the public with actual processing times for each field office.	 USCIS states that unless shorter processing times remain constant for a period of time, it would be inappropriate to report those times.
AR2007-02 Pending Cases (6/11/07)	Recommendation: Provide a clearer picture of the current backlog by providing information on the number of pending cases by form type with receipts that are: (1) less than 90 days; (2) less than 180 days; (3) less than one year; (4) less than two years; (5) less than three years; (6) less than four years; and (7) greater than four years.	 USCIS agrees it would be useful to track cases based on their processing age, and that continues to be a goal of the new case processing system being developed.
AR2007-01 Transformation (6/11/07)	Recommendation 1: Publish transformation timelines, goals, and regular updates on the public USCIS website.	 USCIS has provided some information on its website regarding Transformation.
	Recommendation 2: Establish transparency as a goal for USCIS processing and services.	 USCIS Transformation Program Office has published on uscis.gov the Transformation Concept of Operations (CONOPS) describing the end-state of a transformed USCIS.

Title	Recommendations	Status of USCIS Implementation
FR2007-32 Deferred Action (4/6/07)	Recommendation 1: Post general information on deferred action on its website.	 USCIS does not believe this information would be a meaningful addition to the website.
	Recommendation 2: Maintain statistics on the issuance and denial of deferred action requests.	
	Recommendation 3: Designate a Headquarters official to review grants and denials of deferred action requests on a quarterly basis to ensure that like cases are decided in like manner.	 USCIS does not believe that a review by Headquarters is necessary.
FR2007-31 30-day Advance Notice for Changes in Policy and Operations Instructions (2/8/07)	Recommendation: Adopt an SOP under which there would be at least 30-day advance notice to the public and posting on the USCIS website of changes to policy and operations instructions, absent exigent circumstances.	 USCIS has expanded efforts to give public notice as standard practice, but rejects adopting a 30-day notice requirement for all policy or procedural changes.
FR2006-30 Improvement of FOIA Operations (7/12/06)	Recommendation: USCIS to improve Freedom of Information Act (FOIA) operations while ensuring that information is provided timely by implementing seventeen actions and requirements which will result in a substantially reduced backlog.	 USCIS has accomplished many of these recommendations, and is working on those others it has not rejected.
FR2006-29 Extraordinary Ability “O” Petition Extension (6/30/06)	Recommendation: Amend O petition rules to facilitate “extraordinary ability” aliens’ employment in the United States by extending the maximum initial validity of O petitions from three to five years, and increasing the maximum extension length from one to five years.	 USCIS stated that five years is too long between extensions of the “O” nonimmigrant visa, but is willing to consider some period of time.
FR2006-28 Online Address Change (AR-11) (6/9/06)	Recommendation: Supplement current change-of-address procedures with an online process.	

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IV. Case Problems

The Ombudsman receives letters, e-mails, and telephone calls from individuals and employers regarding their problems with USCIS. For privacy reasons, the Ombudsman currently only accepts case problems with an original signature, which includes scanned signatures under certain circumstances. Case problems are based on facts provided to the Ombudsman by individuals or employers seeking assistance. By reviewing USCIS data systems, Immigration Law Analysts in the Ombudsman's office validate the facts provided. For matters within USCIS' jurisdiction, the Ombudsman coordinates action and resolution with the USCIS Customer Assistance Office (CAO), and often recommends a specific course of action.

Most customers complete Form DHS-7001 (Case Problem Submission Worksheet), available at www.dhs.gov/cisombudsman, to initiate a case problem inquiry (see also Appendix 3). It is a fillable form that customers can complete online, print, and mail to the Ombudsman.

During the reporting period, the Ombudsman opened 4,094 case problems and referred 3,056 of them to the CAO for further action or resolution. The Ombudsman may accept by telephone or e-mail (with hard copy to follow) emergent cases, where time constraints or humanitarian concerns are an issue, and relay them directly to USCIS. Alternatively, the Ombudsman may address the issues in emergent cases directly with the USCIS office where the problem exists. Many case problems involve multiple issues ranging from long processing times to lack of response from the agency to USCIS Service errors, as reflected in Figure 15.

Since the establishment of the office in July 2003, the Ombudsman has received over 20,500 e-mail inquiries at its cisombudsman@dhs.gov e-mail box of which approximately 7,200 arrived during the reporting period. If an e-mail inquiry is within the office's jurisdiction and indicates that the individual has exhausted all avenues with USCIS, the Ombudsman usually requests submission of a case problem via U.S. mail or courier service. In addition, the office often provides individuals with links to resources available on USCIS' website,

as well as to other federal agencies, such as the DOS and the SSA. The Ombudsman also receives hundreds of Public Affairs e-mails addressing teleconferences and other issues and maintains a Trends e-mail box for comments and concerns regarding systemic issues.

Figure 15: Case Problems, 2009 Reporting Period

Total Received	4,094
Number Referred to CAO	3,056
Long Processing Delays	3,034
Unidentified Processing Delays	1,086
Service Error	774
Lack of Response from USCIS/Customer Did Not Receive Document	406
Incorrect Legal/Factual Decision	130
Other Service Errors	111
Paperwork Lost	66
Inaccurate Information Provided by USCIS	61
Customer Service	627
FBI Name Check	309

As illustrated by Figure 15, the most common type of complaint received during this reporting period involved processing times, with 3,034 or 74 percent identifying long processing delays as a concern. By comparison, during the previous reporting period, 87 percent of complaints were due to processing delays. The other significant decline in this year's numbers concerns FBI name checks. Last year 1,670, or 36 percent of all case problems involved FBI name check or security check processing issues.³⁹⁵ For the 2009 reporting period, there were 309 name check processing delay inquiries, representing 7.5 percent of all case problems.

Approximately 19 percent of case problems involved instances of reported Service error as one of the problems, as compared with approximately 16 percent in 2008. General customer service complaints were an issue in approximately 15 percent of the case problems of which more than half pertained to the service centers.

³⁹⁵ Ombudsman's Annual Report 2008, p. 75.

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V. Ombudsman Outreach

During this reporting period, the Ombudsman continued to find ways to be open and accessible to customers and the general public. To better assist individuals and employers resolve problems with USCIS, the Ombudsman traveled to USCIS facilities nationwide, met with stakeholder organizations, held numerous in-person and telephonic meetings with interested parties, addressed thousands of e-mail inquiries, and held monthly public teleconferences.

A. Website

The Ombudsman’s website is www.dhs.gov/cisombudsman. The Ombudsman encourages use of the website to learn about how this office can assist with resolving immigration benefits concerns with USCIS, new recommendations, USCIS responses to those recommendations, teleconferences, and other activities of the office.

Website visitors can sign-up to receive e-mail notification whenever the site is updated.

B. E-mail

The office maintains three public e-mail accounts:

- cisombudsman@dhs.gov – Ask the Ombudsman general questions such as how the office can provide assistance.
- cisombudsman.publicaffairs@dhs.gov – Sign-up for public teleconferences, provide the office with feedback after a teleconference, or send the Ombudsman comments or questions about Ombudsman Updates posted on the website.
- cisombudsman.trends@dhs.gov – Write the Ombudsman to suggest solutions to systemic USCIS problems. Customers’ and stakeholders’ main concerns submitted via the trends e-mail box during the reporting period pertained to: (1) perceived lack of “first in first out” case processing³⁹⁶ for concurrent Form I-140 (Immigrant Petition for Alien Worker)/I-485 (Application to Register Permanent

Residence or Adjust Status) filings at certain service centers, and (2) significant processing time inconsistencies between service centers adjudicating Form I-129F (Petition for Alien Fiancé(e)).

The Ombudsman invites individuals and employers needing assistance in resolving a particular immigration benefits problem to complete Form DHS-7001 (Appendix 3).

C. Teleconferences

During the reporting period, the Ombudsman continued the series of public teleconferences entitled “How Is It Working for You?” These teleconferences are an opportunity for USCIS customers and stakeholders to ask questions, express concerns, and identify best practices on specific topics or regarding particular USCIS offices.

Figure 16: “How Is USCIS Working for You?” 2009 Reporting Period

Discussion Topics	Date
Visas for Nurses: How Does This Impact Your Medical Facility?	May 30, 2008
USCIS Summer 2007 Application Surge: How is it Affecting You Now?	May 30, 2008
CIS Ombudsman's 2008 Annual Report to Congress: Your Questions and Comments	July 29, 2008
U Visa: One Year After the Interim Final Rule	August 26, 2008
EB-5 Investor Visas: Opportunities and Challenges	September 26, 2008
Biological Relationship Testing: Opportunities and Challenges	October 30, 2008
USCIS E-Filing and Filing Fee Payment Options: How Are They Working For You?	November 25, 2008
Motions to Reopen: How Are They Working For You?	January 28, 2009
Refugee Processing: Your Questions and Comments	February 25, 2009
Practical Immigration Consequences for Foreign Workers in a Slowing Economy	March 31, 2009
Recommendation Follow-ups: Revocations, Refunds, and Employment Authorization Documents	April 27, 2009
USCIS Change of Address: How Is It Working For You?	May 26, 2009

³⁹⁶ USCIS, “Employment-Based Immigration Process,” www.uscis.gov (accessed June 9, 2009).

Topics, dates, and times are posted on the Ombudsman’s website, along with instructions on how to participate. The Ombudsman encourages submission of ideas for future teleconferences to cisombudsman.publicaffairs@dhs.gov.

USCIS officials listened-in to all teleconferences during the reporting period. For some teleconferences, USCIS provided the Ombudsman in advance with information to share with callers. The Ombudsman continued to reserve 10 telephone lines for USCIS representatives from Headquarters and relevant offices to listen-in and gain additional understanding of customer and stakeholder issues. Although the Ombudsman provided USCIS the opportunity to actively participate in all calls, the agency elected to do so only once during the reporting period: a USCIS official shared helpful information with callers on the September 26, 2008, teleconference, “EB-5 Investor Visas: Opportunities and Challenges.”

The Ombudsman posts on the website selected questions raised and comments made during the teleconference for the benefit of participants and individuals who did not join the calls. As noted in the 2008 Annual Report, the usefulness of these postings is limited by the delay in obtaining answers once the Ombudsman forwards the questions to USCIS.

D. Ombudsman Updates

This reporting year, the Ombudsman provided a new outreach tool on the website entitled “Ombudsman Updates.” These periodic updates share information on current trends and issues to help individuals and employers resolve problems with USCIS. This year there were three updates:

“AC21 Issues: Did USCIS Immediately Deny Your Adjustment of Status Application Following a Change of Employment?”³⁹⁷

As described in section III.B.2., “Employment-Based Petitions (I-140s),” AC21 gives the ability to change jobs (“portability”) to any foreign national who is the beneficiary of an approved I-140, where an I-485 has been pending 180 days or more and provided that the new offer of employment is in the same or similar occupation as the original offer of employment.³⁹⁸ When a foreign national does not notify USCIS of a job change, adjudications officers

397 http://www.dhs.gov/xabout/structure/gc_1221837986181.shtm#1.

398 American Competitiveness in the Twenty-first Century Act of 2000, Pub. L. No. 106-313 (Oct. 17, 2000).

must issue a Notice of Intent to Deny (NOID) or RFE to the customer before denying a pending I-485. Inquiries to the Ombudsman stated that USCIS did not consistently issue these documents following a change of employment, but instead was immediately denying green card applications.

CASE PROBLEM

E-mail received by the Ombudsman in January 2009. A customer sent an inquiry regarding the denial of an I-485 following a change in employment. The customer never received a Request for Further Evidence or Notice of Intent to Deny the I-485 application and, therefore, filed a motion to reopen his case costing additional legal and filing fees. While USCIS reviewed the motion, the customer was unable to travel, and his wife, a derivative of the I-485 application, had to resign from her job due to the invalidation of her EAD. The Ombudsman addressed this case with USCIS and the agency ultimately resolved the issue to the benefit of the applicants.

This Ombudsman Update addresses customer concerns, provides guidance and links to clarify USCIS processing of AC21 portability cases, and encourages individuals to submit case problems to the Ombudsman if cases seem to be erroneously denied.

“Child Status Protection Act:³⁹⁹ Was your child previously denied CSPA benefits? Does your child qualify?”⁴⁰⁰ This update provides information on the availability of CSPA relief and how to obtain more information on this Act. Signed into law on August 6, 2002, CSPA permits certain applicants for specified immigration benefits to keep their classification as a “child” even after reaching age 21. In 2007, the Board of Immigration Appeals held that, contrary to prior USCIS interpretation, children need not have I-485s or immigrant visa applications pending on August 6, 2002 to benefit from

399 Child Status Protection Act (CSPA), Pub. L. No. 107-208 (Aug. 6, 2002); see also USCIS Update, “USCIS Issues Revised Guidance on the Applicability of the Child Status Protection Act (CSPA)” (May 6, 2008), http://www.uscis.gov/files/article/CSPA_update_050608.pdf (accessed June 9, 2009).

400 http://www.dhs.gov/xabout/structure/gc_1221837986181.shtm#2 (accessed June 9, 2009).

CSPA.⁴⁰¹ In May 2008, USCIS revised its guidance and now applies CSPA benefits retroactively.⁴⁰²

“2007 Summer Surge A Year Later: Employment Authorization Document (EAD) Processing Delays”⁴⁰³

USCIS must adjudicate EAD applications within 90 days from the date of USCIS receipt of the application.⁴⁰⁴ However, the Ombudsman received numerous inquiries from customers about EAD applications pending more than 90 days.⁴⁰⁵ To address these concerns, the Ombudsman Update offered three suggestions: (1) contact the USCIS National Customer Service Center and ask the representative to issue a service request or request an interim card; (2) if you prefer to visit a local office, make an INFOPASS appointment and request an interim EAD; as local offices no longer issue interim EADs, they will forward these requests to a service center; and (3) if you tried steps one and two and still have not received an EAD, e-mail the Ombudsman at cisombudsman.publicaffairs@dhs.gov for assistance. In response, the Ombudsman received hundreds of these e-mails and worked to resolve these cases with the assistance of USCIS staff.

E. Virtual Ombudsman System

The Ombudsman is developing a web-based system, the Virtual Ombudsman System, to help support the statutory mandate to assist individuals and employers encountering problems with USCIS. The web-based portal for case problem submission and receipt will ensure the efficient and secure processing of information and simplify internal processes, while providing high quality customer service at a reduced cost for the Ombudsman, individuals, employers, and stakeholders.

Specifically, the Virtual Ombudsman System will: (1) streamline and standardize the process for individuals and employers to contact the Ombudsman; (2) enable individuals and employers to provide consent for information release through

an electronic signature, instead of with an original manual signature requiring the submission and retention of written correspondence; (3) centralize tracking of correspondence in all forms (paper, facsimile, e-mail, etc.) within a single electronic management tool; and (4) provide for functionality and control of data analysis, as well as the development of various reports to fulfill mission requirements.

The system is currently in the final phase of information security and engineering validation to ensure confidentiality, integrity, and its availability to the public.

401 In re Rodolfo Avila-Perez, 24 I&N Dec. 78 (BIA 2007).

402 USCIS Update, “USCIS issues Revised Guidance on Child Status Protection Act (CSPA)” (May 6, 2008), http://www.uscis.gov/files/article/CSPA_update_050608.pdf (accessed June 9, 2009).

403 http://www.dhs.gov/xabout/structure/gc_1221837986181.shtm#4 (accessed June 9, 2009).

404 8 C.F.R. § 274a.13(d) (2008).

405 See section III.C.8. for a discussion of the EAD Recommendation.

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VI. Ombudsman Priorities and Objectives

Section 452(c)(1) of the Homeland Security Act requires the Ombudsman to submit in the annual report “the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year.”

In addition to fulfilling the statutory functions, the Ombudsman will continue to:

- Expand outreach initiatives to USCIS customers and stakeholders by meeting regularly with community, employer, and immigration law organizations and by holding monthly public teleconferences;
- Improve its website and virtual access for individuals and employers; and
- Engage in productive, open exchanges with USCIS leadership, management, and personnel both at Headquarters and in site visits to USCIS facilities nationwide on issues affecting customer service.

Issues for consideration in the next reporting period may include:

- **Requests for Evidence.** Stakeholders report substantial problems with RFEs that are arbitrary, seek evidence already provided with the initial filing, are broad-brush and not specific to the case submitted, or do not specifically indicate where the case is deficient in meeting the required criteria.
- **Transformation.** The Ombudsman anticipates monitoring ongoing USCIS initiatives critical to agency modernization and efficiency goals.
- **Customer Service.** The Ombudsman continues to be concerned with how USCIS interacts with individuals and employers. These customer service concerns range from the adequacy of filing instructions and case status information to problem resolution, informal decision review, and formal appeals to mitigate delays and correct Service error.
- **Interagency Coordination.** Efficient benefits processing requires multi-agency collaboration, which the Ombuds-

man has sought to facilitate since its inception. The office expects to continue fostering communication and coordination between USCIS and partner agencies, such as CBP, ICE, DOS, the Department of Labor, and the SSA.

Additional priorities will be set after the new Ombudsman is appointed.

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Appendices

Appendix 1: Homeland Security Act Excerpts

116 STAT. 2200 PUBLIC LAW 107–296–NOVEMBER 25, 2002
(6 U.S.C. §§271, 272, and 273)

SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

- (1) IN GENERAL.—There shall be in the Department a bureau to be known as the “Bureau of Citizenship and Immigration Services”.
- (2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services . . .
- (3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services . . .
 - (E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and
 - (F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman’s annual report to Congress within 3 months after its submission to Congress.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

- (a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the “Ombudsman”). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.
- (b) FUNCTIONS.—It shall be the function of the Ombudsman—
 - (1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
 - (2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
 - (3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).
- (c) ANNUAL REPORTS.—
 - (1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—
 - (A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;
 - (B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;
 - (C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

- (D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;
 - (E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;
 - (F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and
 - (G) shall include such other information as the Ombudsman may deem advisable.
- (2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.
- (d) OTHER RESPONSIBILITIES.—The Ombudsman—
- (1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;
 - (2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;
 - (3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and
 - (4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.
- (e) PERSONNEL ACTIONS.—
- (1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—
 - (A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and
 - (B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.
 - (2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman’s responsibilities under this subsection.
- (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.
- (g) OPERATION OF LOCAL OFFICES.—
- (1) IN GENERAL.—Each local ombudsman—
 - (A) shall report to the Ombudsman or the delegate thereof;
 - (B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;
 - (C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and
 - (D) at the local ombudsman’s discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.
 - (2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.— Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

Appendix 3: Form DHS-7001

OMB No. 1601-0004; Exp. 01/01/10

Department of Homeland Security
CIS Ombudsman

Case Problem Submission Worksheet (CIS Ombudsman Form DHS-7001)

Instructions

General Information.

1. Who May Use This Form?

If you are experiencing problems during the adjudication of an immigration benefit with U.S. Citizenship and Immigration Services (USCIS), you can submit this worksheet form. You may also use this form to submit a case problem on behalf of somebody else who experiences a case problem with USCIS. If you submit a case problem on behalf of somebody other than yourself, you should ensure that the person the case problem is about (the applicant for a USCIS immigration benefit, or the petitioner who seeks to obtain an immigration benefit for a third party) consents to your inquiry (see section 15).

2. Do I Have to Use This Form to Submit a Case Problem to CIS Ombudsman?

You do not have to use this form to submit your case problem to CIS Ombudsman. However, by submitting a properly completed form, the CIS Ombudsman will receive the necessary information to process your case problem. If you do not use the form and do not provide us with the necessary information, you may experience a delay in the processing of your case problem.

3. When Should I Submit a Case Problem to CIS Ombudsman?

You should contact the CIS Ombudsman if you have an ongoing or immediate issue with USCIS, such as:

- You are facing, or are about to face, an immediate adverse action or impact, an emergency or any other type of significant hardship caused by an action/inaction/delay in processing by USCIS, or a problem, which could not be resolved through the normal processes provided for by USCIS;
- Your case experienced processing delays beyond anticipated processing times;
- You will incur, or are about to incur, significant and unusual costs (including fees for professional representation that are not normally incurred);
- Have not received a response or resolution within the anticipated time frames as published by USCIS.

4. Do I Have to Do Anything Before I Can Submit a Case Problem to CIS Ombudsman?

It is best if you contact our office for assistance after utilizing other resources for case problems with USCIS, such as:

- USCIS Case Status Service Online at <http://www.uscis.gov>;
- Made an **InfoPass** appointment at the local office;
- Contacted the National Customer Service Center (NCSC) for assistance at (800) 375-5283.

While we do not require that you take these steps before you contact our office, the above listed resources can resolve many frequently asked questions such as (1) what forms to file; (2) where to file a particular form; (3) how to notify USCIS of a change of address; (4) how to inquire about processing times at the various service centers or field offices or (5) how to receive case status updates. Additionally, certain information can be obtained from USCIS directly, such as information about individual immigration benefits.

NOTICE: Please be aware that CIS Ombudsman cannot provide legal advice. Our office does not have the statutory authority to tell you what type of immigration benefit you may be eligible for or how to remedy your particular immigration situation.

5. What Are the General Filing Instructions for This Form?

- Type or print legibly in black ink.
- If extra space is needed to complete any item, please attach a continuation sheet and indicate the item number.
- If you feel that a particular item does not apply, please indicate by writing "N/A."
- Please attach **copies** of any documentation you received from or sent to USCIS or any other government entity in relation to your case problem. Any additional documentation that is helpful to your case should be submitted. Do not send us original applications or original documentation.

6. Do I Need to Submit a Fee Along With This Form?

No fee is required. Please **do not** send us any fees.

Form DHS-7001 (01/01/10)

7. Where Should I Send the Completed Form?

Please mail your completed, signed and dated form, including supporting documentation, to the following address:

Via Regular Mail:

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

Via Courier Service:

Citizenship and Immigration Services Ombudsman
Department of Homeland Security
Attention: Case Problems
245 Murray Lane
Mail Stop 1225
Washington, D.C. 20528-1225

Due to security concerns, mail is screened prior to being forwarded to our office. Please allow up to 14 days from the mailing date until our office receives your case problem. We confirm in writing the receipt of each case problem received within two to four business days.

8. What Assistance Does the Ombudsman Provide to Resolving Case Problems?

Once we receive your case problem, we will review your case, determine if we are able to assist you, and if appropriate, forward your case to USCIS for resolution. If for some reason we are not able to help you obtain a resolution to your case problem, we will inform you of the reasons in writing. If another government office or agency is better able to assist you with your case problem, we will make every effort to provide you with the contact information of that office or agency.

If you believe that our office should have accepted your case for assistance, you may resubmit your case problem with additional explanations as to why your case problem should have been accepted.

9. Can the Ombudsman Provide Legal Advice?

CIS Ombudsman **cannot**:

- Adjudicate immigration applications or petitions;
- Reverse an adverse decision issued by USCIS;
- Serve as a substitute for legal options available to you to correct a problem; or
- Provide legal advice.

NOTE: CIS Ombudsman only has jurisdiction to provide assistance resolving case problems that arise under the jurisdiction of USCIS. The Ombudsman is not able to provide assistance with case problems that arise under the jurisdiction of other agencies dealing with immigration-related issues, such as:

- The Immigration Courts and the Board of Immigration Appeals (BIA), which are part of the Executive Office of Immigration Review (EOIR);

- The Department of Justice (DOJ);
- Customs and Border Protection (CBP);
- Immigration and Customs Enforcement (ICE);
- Department of State (DOS), including the National Visa Center (NVC) and U.S. Embassies and Consulates; or
- Department of Labor (DOL).

10. Privacy Act Requirements.

When you submit your information and case problem to the office of CIS Ombudsman, you are consenting to our review of your information and contacting USCIS on your behalf. You also consent to the release of your information to authorities within USCIS or any person acting on behalf of USCIS.

In addition, it's the CIS Ombudsman's statutory mandate under the Homeland Security Act, Section 452, to capture and address systemic problems. As such, individual case problems serve as one of the basis to establish current systemic trends and problems individuals and employers experience during the immigration benefits seeking process. For this purpose, we will remove your personal information and use the remaining information collected for statistical purposes.

The scope of your consent to release your information is limited to the furtherance of resolving the case problem associated with your case, and the capturing of declassified data to establish systemic immigration problems occurring at USCIS.

(For additional information, please see Page 3 on these instructions, "**Legal Notification Requirements: What Is Our Authority for Collecting This Information?**")

Specific Instructions.

The following instructions will assist you in completing the form correctly. The items numbered below correspond to the section number of the form requesting the particular information:

- 1. Name of subject:** The "subject" is the person the case is about. Please enter the person's full legal name (first, middle, last name). If the person possesses an alias, provide your alias by indicating "aka" and then listing the alias and all other legal names.
- 2. Contact information:** Please provide the contact information of the person the case is about. If you are submitting the case problem on behalf of somebody else, please also complete **Section 14**.
- 3. Subject's date of birth:** Self-explanatory.
- 4. Subject's country of birth and citizenship:** Self-explanatory.
- 5. Alien ("A") Number:** Provide your alien ("A") number, if applicable. Note that not every person has an alien number assigned by USCIS. For example, if you are seeking non-immigrant status in the United States, you may or may not have an "A" number. The "A" number can be found on many frequently issued USCIS documents, such as work permits or Notices of Actions.

6. Type of case problem: Indicate whether the case problem concerns an individual or an employer.

7. Person preparing this form: Indicate whether the preparer of this form is the person the case problem is about ("the subject"), an organization, attorney/representative or whether you are completing this form in any other capacity (such as a friend of the family, friend, uncle, etc.).

Important: If you are the beneficiary of an immigration application and the one submitting the case problem, you will need the consent of the individual who submitted the petition on your behalf ("the Petitioner"). In this case, you are (although the beneficiary) simply a representative of the Petitioner, and will need the consent of the Petitioner to submit this case problem (please see also Section 15).

8. Applications and petitions filed: List all applications/petitions that are currently pending with USCIS and that pertain to the case problem you are experiencing. List the applications/petitions by identifying the date when the application/petition was received by USCIS (Receive date); the form number of the application/petition, which may be located on the lower right corner of USCIS form (e.g., Form I-485); and the name of USCIS form (e.g., Application to Register Permanent Residence or to Adjust Status).

9. Receipt number: Provide the receipt number(s) for the application(s)/petition(s) currently pending with USCIS. The receipt number is located on the top left hand corner of your Notice of Action (Form I-797) you received from USCIS in response to the application/petition you filed. Please provide each receipt number associated with this case.

10. Immigration status or interim benefit Applied or Petitioned for: Provide information about the immigration status or the immigration benefit the person of the case problem is seeking (non-immigrant, immigrant, citizenship, naturalization, refugee or asylum status, work authorization, travel document, etc.)

Provide also the legal category of the immigration status you are seeking. If you are unsure about the category, submit as much information as you can in **Number 12** of the form, **Description of case problem**. If possible, provide us with a copy of the application you filed with USCIS so that we will be able to determine what immigration category you are seeking.

11. Source of case problem: Please choose the options provided that best describe the source of the case problem.

12. Description of your case problem: Please provide a detailed description of your case problem. If additional pages are needed, please attach them on separate sheets of paper.

13. Prior actions taken to remedy the problem: Check all the boxes that apply to the subject's or the representative's action(s) already taken to remedy the problem.

14. Designated Attorney/Representative: Please complete this section if you are an attorney, organization or designated representative who is submitting this case problem. You are also a representative if you are, for example, a friend of the person the case problem is about, and if you would like to assist the individual in resolving the case problem.

15. Consent: For privacy reasons, if you wish USCIS to disclose all the information in the file, we require the consent of the petitioner (the person who filed the petition with USCIS). As a general rule, the person who filed the application/petition with USCIS has to consent to the submission of a case problem to our office. This general rule, however, does not apply if the beneficiary is a lawful permanent resident or U. S. citizen.

16. Verification: If the person who submitted the inquiry is also the subject of the inquiry, this section should be signed and dated by the subject of the inquiry. If a person is the representative and acts on behalf of the subject the case problem is about, the representative should not sign and date the verification statement.

17. Declaration: If you are an attorney or representative submitting the case problem you should sign and date the statement. If you are submitting the case problem for yourself, and you are the subject of the case problem, you should sign this statement.

18. Submission of the worksheet form: Self-explanatory.

Legal Notification Requirements.

1. What Are the Penalties for Submitting Incorrect Information?

Section 1001 of Title 18, United States Code states that whoever willfully and knowingly falsifies a material fact, makes a false statement or makes use of false documents will be fined up to \$10,000, imprisoned for up to five (5) years, or both.

2. What Is Our Authority for Collecting This Information?

We request the information on this form to carry out our mandate as provided by Section 452 of the Homeland Security Act of 2002. We need the information to assist individuals and employers in resolving problems with USCIS; to identify areas in which individuals and employers have problems in dealing with USCIS; and to the extent possible, to propose changes in the administrative practices of USCIS to mitigate problems identified.

When you submit your information and case problem to this office, you are consenting to our review of your information to our office and contacting USCIS on your behalf. With the submission of your case problem, you also consent to the release of your information to authorities within USCIS or any person acting on behalf of USCIS. In addition, it's CIS Ombudsman's statutory mandate under the Homeland Security Act, Section 452, to capture and address systemic problems. As such, individual case problems serve as one of the bases to establish current systemic trends and problems. For this purpose, we will remove your personal information and use only the remaining information for statistical purposes.

The scope of your consent to release your information is limited to the furtherance of resolving the case problem associated with your case and capturing statistical data to identify systemic immigration problems.

You do not have to provide us with the particular information requested. However, if you omit certain information, our office may not be able to assist you, or the resolution of your case problem may be delayed.

3. Paperwork Reduction Act Notice.

A person is not required to respond to a collection of information unless it displays a current valid OMB control number.

The public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden to cisombudsman@dhs.gov. **Do not mail your case problem to this email address.**

Department of Homeland Security
CIS Ombudsman

**Case Problem Submission Worksheet
(CIS Ombudsman Form DHS-7001)**

NOTE: Please read the attached instructions before submitting this worksheet. In completing this worksheet, the "**subject**" refers to the person whom the inquiry is about. In submitting your inquiry, please provide as much information as possible. Places requiring your signature are indicated with the symbol.

1. Name of subject. The person this case problem is about who is seeking the immigration benefit.	First Name:	Middle Name:	Last Name:		
	Street Address:		Apartment/Suite:	City:	State/Province:
2. Contact information. The contact information of the person the case problem is about. If you are submitting this form for someone else, complete number 14.	County:	Zip Code:	E-Mail Address:	Phone Number: <i>(with Area Code)</i>	Fax Number: <i>(with Area Code)</i>
	3. Subject's date of birth. Please indicate in the following format: (mm/dd/yyyy).				
Date of Birth: (mm/dd/yyyy)					
4. Subject's country of birth and citizenship.	Country of Birth:		Country of Citizenship:		
	5. Alien or "A" number. The "A" number appears in the following format: A123-456-789. NOTE: Not every person is assigned an "A" number by USCIS. If you do not have an "A" number, leave this section blank.				
A Number:					
A					
Tip: Your "A" number can be found on many USCIS documents including your work permit.					
6. Type of case problem. Check all that apply.	I am an:				
	a. <input type="checkbox"/> Individual; b. <input type="checkbox"/> Employer;				
7. Person preparing this form: Please indicate who is filing this case problem.	I am:				
	a. <input type="checkbox"/> The person this case problem is about who is seeking the immigration benefit; b. <input type="checkbox"/> An organization on behalf of an individual; c. <input type="checkbox"/> An attorney/representative; d. <input type="checkbox"/> Other (Explain fully);				
8. Applications/Petitions filed: List all applications or petitions pending with USCIS that pertain to your case problem.	Date Application/Petition was received by USCIS:	USCIS Form Number:	USCIS Name of Form:		
	Date Application/Petition was received by USCIS:	USCIS Form Number:	USCIS Name of Form:		
	Date Application/Petition was received by USCIS:	USCIS Form Number:	USCIS Name of Form:		
	Tip: List all forms that are the subject of this case problem. E.g.: If you are filing for a Green Card and are experiencing a problem with your work permit application that was submitted with your Green Card application, list both Forms I-485 (Application Adjustment of Status) and I-765 (Application for Employment Authorization Document) above.				
9. Receipt Number. Please do not include dashes between the characters.	Receipt Number:				
	Tip: Your receipt number is located in the top left hand corner of your Notice of Action (USCIS Form I-797).				

<p>10. Immigration status or interim benefit applied or petitioned for: The subject of the case problem is applying for immigration status:</p>	<p>a. <input type="checkbox"/> As a Nonimmigrant (e.g. extension of a stay for a visitor for pleasure-business, change of status to student, fiance/e, temporary worker, Temporary Protected Status (TPS) etc.) Category: (e.g.: H-1B1, J2, F1, L1A) <input type="text"/></p> <hr/> <p>b. <input type="checkbox"/> As an Immigrant (often called "Green Card" application) based on:</p> <p>i. <input type="checkbox"/> A marital relationship of less than two years;</p> <p>ii. <input type="checkbox"/> A marital relationship of more than two years;</p> <p>iii. <input type="checkbox"/> A family relationship and is the parent, child, brother/sister, etc. of the sponsor;</p> <p>iv. <input type="checkbox"/> An employment relationship and is the (future) employee or the spouse of child of the principle (future) employee;</p> <p>v. <input type="checkbox"/> Refugee/Asylum;</p> <p>vi. <input type="checkbox"/> Other;</p> <hr/> <p>c. <input type="checkbox"/> For Citizenship or Naturalization;</p> <hr/> <p>d. <input type="checkbox"/> For Refugee/Asylum;</p> <hr/> <p>e. <input type="checkbox"/> For Interim Benefits (Work Permit/Travel Document, etc.) Type: i. <input type="checkbox"/> Employment Authorization Document (e.g.: Work Permit) Work Permit Category: <input type="text"/> ii. <input type="checkbox"/> Advance Parole Document (Travel Document);</p> <hr/> <p>f. <input type="checkbox"/> Other (Application for Waiver, Replacement Document, etc.) Type: <input type="checkbox"/> Waiver (I-601/I-212): _____ <input type="checkbox"/> Replacement of a Document <input type="checkbox"/> Citizenship Certificate <input type="checkbox"/> Naturalization Certificate <input type="checkbox"/> Permanent Resident Card <input type="checkbox"/> Other: <input type="checkbox"/> Other:</p>
<p>11. Source of case problem: Check all that apply. Provide a description in Number 12 below, Description of Your case problem.</p>	<p>a. <input type="checkbox"/> I am facing or am about to face an immediate adverse action or impact, an emergency or any other type of significant hardship, caused by an action/inaction/delay in processing by USCIS, or a problem that could not be resolved through the normal processes provided for by the USCIS;</p> <p>b. <input type="checkbox"/> I am experiencing processing delays with a case that are beyond anticipated processing times;</p> <p>c. <input type="checkbox"/> I am incurring or am about to incur significant and unusual costs (including fees for professional representation that are not normally incurred);</p> <p>d. <input type="checkbox"/> I have brought this case problem to the attention of USCIS and have not received a response or resolution within the anticipated time frames;</p> <p>e. <input type="checkbox"/> Other (specify):</p>
<p>12. Description of your case problem: Describe the case problem you are experiencing with USCIS. Attach additional pages if needed.</p>	

<p>13. Prior actions taken to remedy the problem: Check all that apply:</p>	<p>a. <input type="checkbox"/> Contacted my attorney/representative who is representing me regarding this issue for assistance (if represented);</p> <p>b. <input type="checkbox"/> Visited USCIS Case Status Service Online at http://www.uscis.gov.</p> <p>c. <input type="checkbox"/> Contacted the National Customer Service Center (NCSC) for information and/or assistance regarding this case at their toll-free telephone number 1-800-375-5283.</p> <p>d. <input type="checkbox"/> Contacted the following government department/agency for assistance: _____</p> <p>e. <input type="checkbox"/> Contacted the following congressional representative for assistance: _____</p>																				
<p>14. Designated Attorney/ Representative: Please complete this section if you are an attorney, organization or designated representative who is submitting this case problem. If you are the beneficiary of a pending petition and have obtained consent from the petitioner (see Number 15), check box 3, sign and date.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">First Name:</td> <td colspan="2">Middle Name:</td> <td colspan="2">Last Name:</td> </tr> <tr> <td colspan="3">Street Address:</td> <td>Apartment/Suite:</td> <td>City:</td> <td>State/Province:</td> </tr> <tr> <td>County:</td> <td>Zip Code:</td> <td>E-Mail Address:</td> <td>Phone Number: <i>(with Area Code)</i></td> <td colspan="2">Fax Number: <i>(with Area Code)</i></td> </tr> </table> <p>1. <input type="checkbox"/> I am an attorney and a member in good standing of the bar of the Supreme Court of the United States of the highest court of the following State, territory, insular possession, or District of Columbia and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law. State of Admission: _____ Name of Court: _____</p> <p>2. <input type="checkbox"/> I am an accredited representative of the following named religious, charitable, social service or similar organization established in the United States and recognized by the Board of Immigration Appeals pursuant to 8 CFR 292.1.</p> <p>3. <input type="checkbox"/> I am the beneficiary of a pending petition and the petitioner is consenting to the release of information about a pending case to me.</p> <p>4. <input type="checkbox"/> Other (Explain fully): _____</p> <p>5. <input type="checkbox"/> I have submitted a USCIS Form G-28 as the attorney/representative for the application/petition for which case problem is being submitted.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Signature of Attorney/Representative: _____</td> <td>Date (mm/dd/yyyy): _____</td> </tr> </table>	First Name:		Middle Name:		Last Name:		Street Address:			Apartment/Suite:	City:	State/Province:	County:	Zip Code:	E-Mail Address:	Phone Number: <i>(with Area Code)</i>	Fax Number: <i>(with Area Code)</i>		Signature of Attorney/Representative: _____	Date (mm/dd/yyyy): _____
First Name:		Middle Name:		Last Name:																	
Street Address:			Apartment/Suite:	City:	State/Province:																
County:	Zip Code:	E-Mail Address:	Phone Number: <i>(with Area Code)</i>	Fax Number: <i>(with Area Code)</i>																	
Signature of Attorney/Representative: _____	Date (mm/dd/yyyy): _____																				
<p>15. Consent: If you are the beneficiary of a pending petition, and you are not a lawful permanent resident or U.S. citizen, the petitioner must sign here to give consent to the release of his or her information.</p>	<p>Pursuant to 5 U.S.C. Section 552a(b), I authorize U.S. Citizenship and Immigration Services and CIS Ombudsman to release any and all information relating to me to: [Print or Type Name]. I declare under the penalty of perjury that the foregoing is true and correct.</p> <p>Signature of Subject: _____</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Print Subject's Name: _____</td> <td>Date (mm/dd/yyyy): _____</td> </tr> </table>	Print Subject's Name: _____	Date (mm/dd/yyyy): _____																		
Print Subject's Name: _____	Date (mm/dd/yyyy): _____																				
<p>16. Verification: This item should be signed and completed by the subject of the inquiry.</p>	<p>I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct, and that I am the subject of the inquiry and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under the false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000. Further, pursuant to 5 U.S.C. Section 522a(b), I authorize U.S. Citizenship and Immigration Services and CIS Ombudsman to release any and all information relating to me to : [Print or Type Name].</p> <p>Signature of Subject: _____</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Print Subject's Name: _____</td> <td>Date (mm/dd/yyyy): _____</td> </tr> </table>	Print Subject's Name: _____	Date (mm/dd/yyyy): _____																		
Print Subject's Name: _____	Date (mm/dd/yyyy): _____																				

17. Declaration: If you are an attorney or representative, you should sign your name. Otherwise, the subject should sign his or her name.	I declare that I have prepared this document at the request of the person named in Number 14 and that the responses are based on all information of which I have knowledge.	
	Signature of Representative:	Print Subject's or Attorney/Representative's Name:
	Title (if applicable):	Date (mm/dd/yyyy):
18. Submission: Case problems may be sent via regular mail or courier service to the following addresses:	Send your completed information to:	
	Via Regular Mail: Citizenship and Immigration Services Ombudsman Department of Homeland Security Attention: Case Problems Mail Stop 1225 Washington, D.C. 20528-1225 Via Courier Mail: U.S. Citizenship and Immigration Services Ombudsman Department of Homeland Security Attention: Case Problems 245 Murray Lane Washington, D.C. 20528-1225	

Appendix 4: Glossary of Terms

The following definitions apply to terms used in the 2009 Annual Report:

A-File: Common shorthand for the USCIS-held “Alien-file,” consisting of all documents relevant to exchanges between a foreign national and USCIS, as well as other related communications with other components of DHS.

A-Number: Common shorthand for “alien number,” which is a unique identification number assigned by USCIS to foreign nationals who seek immigration benefits with USCIS.

Adjudications Officer: “Adjudications” refers to the scope of activities involved in the granting or denying of applications and petitions for immigration benefits, such as citizenship, nonimmigrant, and immigrant status. An Adjudications Officer is a USCIS employee trained to do the primary review of immigration benefits applications and petitions, conduct interviews, perform research, and determine whether to grant or deny the benefit sought.

Adjustment of Status: Term for the process whereby a foreign national already in the United States acquires status as a Lawful Permanent Resident (LPR) (i.e., obtains a “green card”), regardless of previous status. Adjustment of Status should not be confused with “Change of Status,” which refers to the reclassification from one nonimmigrant (temporary) category to another (e.g. F-1 to H-1B). See 8 C.F.R. §§ 245, 248.

Alien: Defined in the Immigration and Nationality Act (INA) section 101(a)(3) as any person not a citizen or national of the United States; also referred to as a foreign national.

Asylee: A person granted the right to stay permanently in the United States, but who is not a citizen. See INA § 208. A foreign national who was persecuted or who has a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion may be granted asylum in the United States by an Immigration Officer or Immigration Judge and be considered an asylee. Asylees can apply for a green card one year after arrival and for citizenship after five years.

Backlog: The term commonly refers to long pending cases. USCIS calculates its *gross backlog* as “the total number of

cases pending that exceeds the total acceptable pending.” According to USCIS, *acceptable pending* “is derived by totaling the monthly receipts for the number of months USCIS has determined for a cycle time goal.” For example, if a form type has a processing goal of six months or less, the gross backlog for that form type would be the total number of cases pending minus the last six months’ receipts. The *net backlog* is the gross backlog minus the number of cases that cannot be adjudicated due to reasons outside of USCIS’ control (e.g., FBI name check, visa retrogression).

Case Problem: Matter submitted by a USCIS customer to the Ombudsman and deemed, upon review, to merit discussion with USCIS. Customers include individuals with pending USCIS benefits applications, as well as their employers or other representatives, who send in a completed Form DHS-7001, available at www.dhs.gov/cisombudsman. When matters are deemed not referable to USCIS – due to lack of jurisdiction, already having been answered, etc. – the Ombudsman informs senders in writing and, where possible, refers them to useful information sources.

Employment Authorization Document (EAD): Documentary evidence that an alien has an approved Form I-765, (Application for Employment Authorization) and is allowed to work in the United States. See 8 C.F.R. § 274a. The EAD is of limited validity, usually one year, and printed on USCIS Form I-688, I-688A, I-688B, or I-766.

E-Verify: An Internet-based program that permits registered employers to confirm a new hire’s eligibility to work legally in the United States.

FBI Name Check: One of many security screening tools used by USCIS in which the FBI provides information to the agency regarding anyone who is the principal subject of an investigation or is a person referenced in an FBI file. USCIS uses this information to determine if applicants are ineligible for certain immigration benefits.

Field Office: A publicly accessible USCIS office where adjudications officers conduct interviews, perform research, and make determinations to grant or deny benefits. Applicants and their representatives can visit the field office by making an INFOPASS appointment.

Form I-131: The form used to apply for the *Advanced Parole Travel Document*, a permit obtained by foreign nationals prior to traveling abroad that allows them to present themselves for re-entry (technically, for “parole”) to the United States; this re-entry is not guaranteed and, if granted, is not the same as being legally “admitted.” The document itself, Form I-512 (Authorization for Parole of an Alien), is typically valid for a year, provides for multiple returns to the United States, and preserves the status of pending benefits applications. See 8 C.F.R. §§ 299, et seq.

Frontlog: Filings received physically at USCIS offices but for which the agency is delayed in issuing receipt notices, depositing fees, and completing initial intake.

Green Card: The common term for USCIS Form I-551 (Alien Registration Card), documentary evidence of Lawful Permanent Residency.

Immigrant: Under INA definitions, a foreign national except for nonimmigrants or temporary visa holders listed at INA § 101(a)(15). In lay terms it refers to an individual who intends to permanently reside in the United States.

Immigration Information Officer (IIO): A USCIS employee specially trained to provide information to the public, either at a field office or telephonically via Tier 2 of the toll-free National Customer Service Center.

Immigration and Nationality Act (INA): 8 U.S.C. § 101, et seq.; the statutory basis for immigration and naturalization in the United States.

Immigration Service Officers (ISOs): USCIS officers at various levels of seniority who perform core duties, including adjudications and customer service.

INFOPASS: A free online service for customers or their representatives to schedule in-person appointments at USCIS field offices.

Labor Certification: A document issued by the Department of Labor (DOL) to employers that wish to hire foreign nationals in certain permanent or temporary positions. The traditional process for issuance of a labor certification reviews the U.S. labor market to ensure there are no U.S. workers able, willing, qualified, and available to fill the position. See INA § 212(a)(14).

Lawful Permanent Resident (LPR): A person with the legal status to reside and work permanently in the United States. See INA § 101(a)(20). See definitions for “Immigrant” and “Green Card.”

Lockbox: USCIS contractor facilities that receive certain types of benefits application. The lockbox performs initial review of documents and deposits fees. It then forwards filings to the appropriate USCIS facility for further processing and adjudication.

National Benefits Center (NBC): USCIS facility located in Lee’s Summit, Missouri (previously called the Missouri Service Center). The NBC was established as the hub and conduit for USCIS field offices; it completes all pre-interview processing of immigration benefit forms generally requiring an interview. NBC pre-processing includes conducting background security checks, performing initial evidence reviews, adjudicating associated forms, denying adjustment of status cases for statutorily ineligible applicants, and forwarding scheduled cases to the appropriate USCIS local office for adjudication.

National Customer Service Center (NCSC): Term for the network of six “call center” facilities accessible by a toll-free telephone number, 1-(800) 375-5283. The NCSC provides nationwide assistance in English and Spanish to customers calling about immigration services and benefits.

National Records Center (NRC): USCIS archival records facility located in Lee’s Summit, Missouri. The NRC stores millions of USCIS and legacy INS paper records in a centralized repository. Additionally, the NRC processes Freedom of Information Act requests.

National Visa Center (NVC): The NVC is a Department of State (DOS) facility that manages the flow of permanent residency cases between USCIS and DOS. It receives approved immigrant petitions from USCIS and distributes them to foreign consular offices where intending immigrants are interviewed for immigrant visas. The NVC also receives from abroad “consular returns,” cases in which DOS adjudicators send back petitions of candidates considered unqualified, and forwards these to USCIS for review. DOS officers cannot revoke approved petitions. Only where USCIS reaffirms a returned petition is it again forwarded to the NVC and the process of sending on for consular processing starts anew. See “Revocation.”

Naturalization: The process by which a foreign national becomes a citizen of the United States.

Nonimmigrant: A foreign national admitted to the United States for a specified temporary purpose and time period. Common examples include a tourist, principal of a foreign government, representative of foreign press, a crewman, a student, a foreign professional, or executive. See INA § 101(a)(26) and 8 C.F.R. § 214.

Notice of Action: Also commonly known as a “receipt notice,” this term refers to correspondence from USCIS on Form I-797 generated in several situations. These situations include, most commonly, confirming the filing has been received and when it was received, as well as memorializing address changes, status changes, and other USCIS acts *See* 8 C.F.R. §§ 299, *et seq.*

Preference Categories: Classification under INA § 203 of foreign nationals seeking to immigrate to the United States. The preference system is divided between family-based (*e.g.*, “first preference” is unmarried sons and daughters of U.S. citizens) and employment-based categories (*e.g.*, “first preference” is persons of extraordinary ability, outstanding professors and researchers, and multinational executives and managers).

Priority Date: Reserves the place in line for immigrant visas. Generally, for family-based petitions, the priority date is the filing date of the petition. For employment-based petitions, the priority date is either the date the labor certification petition is filed.

Region: USCIS divides the country into four administrative regions – western, central, eastern, and southeastern. The districts and field offices report to their respective regional offices.

Request for Evidence (RFE): A formal response from USCIS to a filing, the RFE informs customers of additional information needed to complete adjudications. *See* 8 C.F.R. § 103.2(b)(8).

Retrogression: Retrogression refers to the movement backwards of priority date cutoffs – the date for which a petition had to have been submitted to be currently eligible for a green card moves to an earlier date in the calendar than previously published.

Revocation/Consular Return: The Department of State’s (DOS) provisional denial of a petition, followed by return of the petition from the DOS to USCIS with a recommendation to revoke the petition. After reconsideration, USCIS either accepts the recommendation and revokes the petition, or rejects the DOS recommendation and reaffirms approval, and then resends the case to DOS for processing. *See* INA § 205; *see also* “NVC” definition.

Service Center: One of four USCIS processing facilities that each adjudicate certain petitions and applications, particularly employment-based filings and those that do not require an interview (*e.g.*, Form I-130 (Petition for Alien Relative) or Temporary Protective Status (TPS) applica-

tions). The four service centers are located in California, Nebraska, Texas, and Vermont.

Surge: A large influx of filings with USCIS. In summer 2007, USCIS experienced an unprecedented surge in immigration benefits filings that affected various aspects of agency operations.

Transformation: A multi-year solution for long-term modernization of USCIS through new, proprietary systems and agency reorganization that plans to transition USCIS from a fragmented, paper-based process to a centralized, electronic environment.

Transformation Program Office (TPO): Office within USCIS charged with leading a multi-year initiative to modernize USCIS information technology infrastructure and immigration processing capabilities.

Visa Bulletin: Monthly Department of State Visa Office document establishing priority date cut-offs for use in conjunction with applicant priority dates to determine current eligibility for immigrant visa numbers (green card numbers). The Visa Bulletin publishes estimates of the green card line by immigrant category and country of chargeability.

Appendix 5: List of Abbreviations

AAO	Administrative Appeals Office
AC21	The American Competitiveness in the 21st Century Act
AFM	Adjudicator's Field Manual
ASC	Application Support Center
BSS	Biometric Storage System
CBP	U. S. Customs and Border Protection
CLAIMS	Computer Linked Application Information Management System
CSC	California Service Center
CSR	Customer Service Representative
DHS	U.S. Department of Homeland Security
DOD	U.S. Department of Defense
DOL	U.S. Department of Labor
DOS	U.S. Department of State
EAD	Employment Authorization Document
EDMS	Electronic Data Management System
FCIP	Federal Career Intern Program
FLETC	Federal Law Enforcement Training Center
GAO	Government Accountability Office
ICE	U.S. Immigration and Customs Enforcement
IIO	Immigration Information Officer
ISO	Immigration Services Officer
LIFE Act	Legal Immigration Family Equity Act
MTR	Motion to Reopen/Reconsider
NBC	National Benefits Center
NCSC	National Customer Service Center
NFTS	National File Tracking System
NOIR	Notice of Intent to Revoke
NSC	Nebraska Service Center
NVC	National Visa Center
OIT	USCIS Office of Information Technology
RDF	Records Digitization Facility
RFE	Request for Evidence
SIMS	Secure Information Management System
SMI	USCIS Secure Mail Initiative
SIV	Special Immigrant Visa
SSA	U.S. Social Security Administration
TPS	Temporary Protected Status
TSC	Texas Service Center
TVPRA	Trafficking Victims Protection Reauthorization Act
USCIS	U.S. Citizenship and Immigration Services
VSC	Vermont Service Center
VTVPA	Victims of Trafficking and Violence Protection Act of 2000

