Citizenship and Immigration Services

Ombudsman

Annual Report 2010

June 30, 2010

Homeland Security

Citizenship and
Immigration Services
Ombudsman

Annual Report 2010

June 30, 2010

Homeland
Security

This page intentionally left blank.

Homeland Security

Office of the Citizenship and Immigration Services Ombudsman
U.S. Department of Homeland Security
Mail Stop 1225
Washington, DC 20528-1225

June 30, 2010

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

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

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Dear Chairmen and Ranking Members:

The Office of the Citizenship and Immigration Services Ombudsman is pleased to submit, pursuant to section 452(c) of the Homeland Security Act of 2002, its 2010 Annual Report.

I am available to provide additional information upon request.

Most sincerely,

January Contreras
Citizenship and Immigration Services Ombudsman

www.dhs.gov/cisombudsman

This page intentionally left blank.

Message from the Ombudsman

I am pleased to present the 2010 Annual Report for the Office of the Citizenship and Immigration Services Ombudsman, Department of Homeland Security.

It is my privilege to serve as the Ombudsman. On a daily basis, my colleagues and I have the opportunity and the responsibility to help improve the public's experience with our nation's citizenship and immigration delivery system. We accomplish this on a one-on-one basis by assisting individuals and employers with resolving pending cases when they have exhausted other efforts, and we accomplish this systemically by recommending changes to U. S. Citizenship and Immigration Services (USCIS) that can lead to more effective delivery of services.

Over the past year, and particularly since the tenure of Director Alejandro Mayorkas began, USCIS has established an ambitious agenda. In acknowledgement of the significant work that must be done, USCIS established priorities that if achieved would lead it firmly on a path to providing more responsive government. These objectives include increasing engagement with the public, providing greater transparency, operating more efficiently, and creating agencywide uniformity and consistency in administering benefits. Key initiatives have begun in support of these objectives, many of which are addressed in this report.

The immediate actions so far taken by USCIS are important ones. USCIS is now posting advance copies of draft policy guidance on its website for public comment, dedicating staff to engage stakeholders and obtain feedback on issues of concern, and, through an agencywide policy review, trying to identify the many inconsistent ways in which it may be evaluating applications and petitions.

The challenge that USCIS now has is to ensure that these initiatives and others, such as working to address widespread concerns about Requests for Evidence, are carried through to a timely and meaningful result. This will require that USCIS leadership provide critical new directives and guidance, both internally and externally. As importantly, change will require new training, and aligned quality assurance and performance indicators to help individual employees – no matter which office, service center, or program they are a part of – work consistently with leadership priorities as they make decisions that impact lives and businesses every day.

I extend my deep appreciation to my colleagues in the Ombudsman's office for the commitment they bring to our work. It is through their case assistance, and research and analysis that this report is developed and our mission is carried out. Together, we look forward to continuing to provide thoughtful research and proposals that can help USCIS to best meet its objectives, and we make ourselves available to USCIS and the public to provide or obtain insight at anytime.

We could not accomplish our work without input from the many community-based, faith-based, employment-focused, and other national and local organizations focused on helping USCIS applicants and petitioners.

In addition, Director Mayorkas and USCIS staff members, at many levels, have facilitated dialogue to inform our work. I have interacted with many USCIS employees within various service centers, district and field offices, and directorates who are proud of their work and committed to serving customers. Furthermore, the continued support of Secretary Janet Napolitano, Deputy Secretary Jane Holl Lute, and Congress are critical to our ability to serve the public.

Finally, I thank the applicants and petitioners themselves, whether they have reached out to our office or they have waited after a public event to share their story with me personally. Each time that I interact with a person or an employer who has stepped forward to navigate our nation's complex citizenship and immigration system, I am reminded of how far we have to go, and left feeling a greater sense of inspiration and urgency in our collective work to be the responsive government that they are expecting.

Most sincerely,

January Contreras
Citizenship and Immigration Services Ombudsman
Department of Homeland Security

Executive Summary and Annual Report Recommendations

This Citizenship and Immigration Services Ombudsman (Ombudsman) Annual Report, the seventh since the office was established in 2003 pursuant to Section 452 of the Homeland Security Act, examines the road to responsive government in the delivery of immigration services by U.S. Citizenship and Immigration Services (USCIS).

The Ombudsman assists members of the public – ranging from individuals and families to employers to national and international non-governmental organizations – to navigate the immigration benefits system.

In keeping with the attributes of an ombudsman's office, the Ombudsman is committed to working impartially, independently, and confidentially. Each of these characteristics is essential to ensuring that the office can effectively carry out its statutory mission to:

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

In this reporting year, USCIS has made progress toward reducing pending caseloads and increasing public engagement and transparency. Nonetheless, substantial challenges remain. As required by statute, this Annual Report summarizes the most pervasive and serious problems encountered by individuals and employers, which this year include:

Declining Receipts, Declining Revenue

- Due to the constraints of the current fee funded structure, USCIS obtains additional revenue by raising filing fees, redistributing monies, adding surcharges on applications, or by finding savings through reduced costs.
- A drop in receipts and corresponding revenue for an agency with a fixed federal workforce and ongoing contracts results in some programs being put on hold, such as the Secure Mail Initiative, and may put other efforts at risk in the future.
- Low receipts allow USCIS to devote resources to improving processing times, for example, for Forms I-130 (Petition for Alien Relative) and I-601 (Application for Waiver of Grounds of Inadmissibility).

USCIS Modernization

- USCIS has reprioritized systems overhaul and process modernization, referred to as the Transformation Initiative.
- Antiquated technology and case management systems continue to hinder USCIS personnel in their efforts to provide efficient and transparent immigration services and impede their resource allocation decisions.
- Individuals and employers, as well as adjudicators, have yet to see tangible results of this critical initiative.

Employment and Family Green Card Queues

- Employers and families in the United States and throughout the world rely on a variety of immigration services to obtain legal temporary or permanent status for employees or relatives.
- During the reporting period, USCIS took advantage of declining receipts and excess capacity to adjudicate (or pre-adjudicate, where there are visa queues due to annual statutory limits) pending employment-based green card applications.
- USCIS and the U.S. Department of State (DOS), which manages the employment and family green card queues through the Visa Bulletin, now have near full visibility of the pending inventory of employment-based cases.

- Providing transparency to the public, USCIS published employment-based data, for the first time providing detailed information on the employment-based green card queues.
- The Ombudsman has been working alongside USCIS and DOS to address low demand in the family categories. In FY 2010, the family-based cut-off dates advanced rapidly making many families eligible to apply for green cards, yet demand remains low and thousands of family-based visa numbers may go unused this fiscal year.

Requests for Evidence (RFEs)

- USCIS may issue RFEs before granting or denying the immigration benefit sought, but only to obtain additional information where that already provided is insufficient for adjudication.
- Stakeholders continue to express concerns with lack of standardization in adjudications, along with what they term unnecessary, inappropriate, overly-broad, or unduly labor-intensive RFEs.
- The Ombudsman reviews and makes recommendations on RFE issues in the H-1B Specialty Occupation and L-1 Intracompany Transferee categories.

Customer Service and Public Inquiries

- During the reporting period, USCIS has bolstered its outreach, establishing an Office of Public Engagement with senior leadership charged with proactively seeking public feedback on USCIS policy issues and new initiatives such as modernization of USCIS systems. In May 2010, USCIS established a website where it is now posting draft policy memoranda for public comment prior to final issuance.
- The USCIS National Customer Service Center toll-free telephone line, in particular Tier 1 contractors who are required to read from scripts, continues to be a major source of frustration. Many customers are unable to correct a service error or receive meaningful information regarding their cases from the USCIS call centers.
- During the reporting period, USCIS launched a new website designed to be more user-friendly and unveiled a Spanish language website for the first time.

Additional Areas of Focus

The Report also covers other relevant issues including:

- Military Immigration Issues
- Special Immigrant Visas (SIVs)
- International Adoptions
- Separation of Derivatives/Principals
- USCIS Adjudications for Individuals in Immigration Court Proceedings
- Form N-648 (Medical Certification for Disability Exceptions)
- Haitian Temporary Protected Status (TPS)

Reporting Period Recommendations

During the reporting period, the Ombudsman made formal recommendations to improve USCIS services and responsiveness, also discussed herein, which cover humanitarian, family, and employer issues. This section of the report also includes the complete text of the recommendation regarding Form I-824, as that recommendation was ready for issuance shortly before the annual report due date.

Form I-824 (Application for Action on an Approved Application or Petition)

Individuals, families, and employers may file Form I-824 to obtain formal verification of USCIS' approval of a previously submitted application or petition. The verification is often sought to trigger another benefit or process, including DOS processing of eligible family members (spouse and children) for issuance of derivative immigrant visas overseas, referred to as "following-to-join." Processing times vary among USCIS facilities that adjudicate these filings, and the national three month processing goal is too long given the ministerial nature of this adjudication. In this study, the Ombudsman makes recommendations to standardize Form I-824 processing and notification delivery to improve customer service.

Waivers of Inadmissibility

Individuals seek inadmissibility waivers as a form of relief available to certain foreign nationals otherwise ineligible to enter the United States or adjust their status to that of a lawful permanent resident (green card holder). Challenges in the waiver process often discourage those who may otherwise seek a waiver. The Ombudsman identifies several ways to improve the inadmissibility waiver process, including permitting concurrent filing of Form I-601 (Application for Waiver of Grounds of Inadmissibility) and Form I-130 (Petition for Alien Relative).

Emergent or Denied Refugee Applications

Persons displaced from their home country by war or other qualifying reasons, including fleeing persecution, may seek refugee status. The Ombudsman reviewed, and made recommendations regarding three aspects of USCIS refugee adjudications: (1) expedited processing for applicants who find themselves in an exigent circumstance; (2) interviews leading USCIS to deny an application; and (3) denials prompting the filing of a Request for Reconsideration (RFR).

Temporary Acceptance of Filed Labor Condition Applications (LCAs) for Certain H-1B Filings

Petitioners seeking an H-1B petition must first file an LCA with the U.S. Department of Labor (DOL). The Ombudsman made recommendations to mitigate the impact of DOL's LCA processing difficulties. Coupled with USCIS' H-1B petition initial filing requirements, these DOL problems were prejudicing employers and individuals by impairing their ability to timely file original or extension H-1B visa petitions.

The Ombudsman makes 20 recommendations in this Annual Report summarized on the following two pages:

Annual Report Recommendations

Requests for Evidence

Recommendation 1

The Ombudsman recommends that USCIS implement new and expanded training to ensure that adjudicators understand and apply the "preponderance of the evidence" standard in adjudications. (AR2010-01)

Recommendation 2

The Ombudsman recommends that, consistent with applicable regulations, USCIS require adjudicators to specify the facts, circumstances, and/or derogatory information necessitating the issuance of an RFE. (AR2010-02)

Recommendation 3

The Ombudsman recommends that USCIS establish clear adjudicatory L-1B (Intracompany Transferees – Specialized Knowledge) guidelines through the structured notice and comment process of the Administrative Procedures Act. (AR2010-03)

Recommendation 4

The Ombudsman recommends that USCIS implement a pilot program requiring: (1) 100 percent supervisory RFE review of one or more product lines, and (2) an internal uniform checklist for adjudicators to complete prior to issuance of an RFE. (AR2010-04)

USCIS Call Centers

Recommendation 5

The Ombudsman recommends that USCIS provide a selection in the Interactive Voice Response (IVR) to immediately connect to a live representative who can respond or direct a call when none of the IVR options is appropriate. (AR2010-05)

Recommendation 6

The Ombudsman recommends that, first, USCIS utilize commercial technology that would enable more efficient and direct access to live assistance by providing an option in the IVR to immediately connect callers to: (1) Tier 1 Customer Service Representatives for basic, informational questions and (2) a Tier 2 Immigration Services Officer for questions on filed or pending cases. (AR2010-06)

Recommendation 7

The Ombudsman recommends that, second, USCIS eliminate the scripted information over a targeted period of time to enable the agency to train staff to answer basic immigration inquiries. (AR2010-07)

Recommendation 8

The Ombudsman recommends that USCIS designate a point of contact within each field office and service center to be available to Tier 2 supervisors: (1) to answer time sensitive inquiries including, for example, missing or lost Requests for Evidence (RFEs) in an individual's file, and (2) to provide information on individual field office operations and procedures to respond to customers' inquiries. (AR2010-08)

Recommendation 9

The Ombudsman recommends that USCIS routinely obtain information from all Tier 2 Immigration Services Officers as a resource to identify trends and resolve these issues of concern to customers and stakeholders. (AR2010-09)

Military Immigration Issues

Recommendation 10

The Ombudsman recommends that USCIS provide military families the option to have the office with initial jurisdiction complete adjudications for family members of active duty personnel, even when the family relocates outside of the district. (AR2010-10)

USCIS and Removal Proceedings

Recommendation 11

The Ombudsman recommends that USCIS coordinate with U.S. Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR) to provide the public with one document that specifies each agency's responsibilities within the removal process and the basic steps and information that respondents need to know about the jurisdiction of each agency. (AR2010-11)

Form N-648 (Medical Certification for Disability Exceptions) Processing

Recommendation 12

The Ombudsman recommends that USCIS assign one expert or supervisory adjudicator as the point of contact in each field office for the public, in accordance with the USCIS September 2007 N-648 guidance memorandum. (AR2010-12)

Recommendation 13

The Ombudsman recommends that USCIS distribute, and make publicly available on the website, a training module for medical professionals who complete Form N-648. (AR2010-13)

Recommendation 14

The Ombudsman recommends that USCIS revise the current practices for processing Form N-648 to utilize experts to adjudicate the Medical Certification for Disability Exceptions. (AR2010-14)

Recommendation 15

The Ombudsman recommends that USCIS track the number of Forms N-648 filed, approved, and rejected, as well as other key information. (AR2010-15)

Form I-824 (Application for Action on an Approved Application or Petition) Processing

Recommendation 16

The Ombudsman recommends that USCIS establish a goal to process Forms I-824 requesting duplicate approval notices within days of receipting, and to process all other I-824s more expeditiously. (AR2010-16)

Recommendation 17

The Ombudsman recommends that USCIS evaluate the benefit of transferring Form I-824 (and related adjudicatory responsibility) to the USCIS facility that has physical possession of the underlying case file, if access to documents or information in the case file is necessary. (AR2010-17)

Recommendation 18

The Ombudsman recommends that USCIS develop a national standard operating procedure (SOP) for the processing of Form I-824 (inclusive of adjudication and transmission of the final documents or notifications requested), and institute mandatory Form I-824 adjudication and post-adjudication processing training for all USCIS adjudicators. (AR2010-18)

Recommendation 19

The Ombudsman recommends that USCIS ensure the timely and accurate delivery of notifications to the DOS National Visa Center through the use of a tracked mail delivery service. (AR2010-19)

Recommendation 20

The Ombudsman recommends that USCIS explore the development or enhancement of an electronic communication channel between USCIS and DOS capable of securely sending formal notifications on various immigration-related matters, including Form I-824. (AR2010-20)

This page intentionally left blank.

Table of Contents

List of Figures

This page intentionally left blank.

THE CIS OMBUDSMAN – A STATUTORY MANDATE TO FACILITATE RESPONSIVE GOVERNMENT SERVICES

A. The CIS Ombudsman – Impartial, Independent, and Confidential

The Citizenship and Immigration Services Ombudsman (Ombudsman)[1] assists members of the public – ranging from individuals and families to employers to national and international non-governmental organizations – to navigate the citizenship and immigration benefits system.[2]

The Ombudsman is committed to working impartially, independently, and confidentially. Each of these characteristics is essential to ensuring that the Ombudsman can effectively carry out its statutory mission[3] to:

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

The Ombudsman accomplishes this mission in three major ways.

First, the Ombudsman helps individuals and employers with pending applications that have not been resolved due to undue delay or other service issues. For applicants and petitioners, or their representatives, who have tried unsuccessfully to resolve issues with a pending USCIS application or petition, the Ombudsman assists by reviewing the facts and status of the specific case and working alongside USCIS towards resolution.

Second, the Ombudsman helps the public by identifying areas in which USCIS could improve the administration of a particular benefit or process. Specifically, the Ombudsman encourages efficient and transparent customer service by reviewing systemic problems that the public encounters with USCIS delivery of benefits. From such reviews, the Ombudsman issues recommendations that identify best practices and proposes actions that USCIS can implement to mitigate systemic problems.

Third, the Ombudsman interacts frequently with non-governmental stakeholders, such as community and faith-based organizations, legal and employer organizations, and individuals who have first-hand experience in navigating USCIS services. In addition, the Ombudsman meets with USCIS leadership and employees, who have insight into agency operations, and with other government partners, to inform the work of the office. Through these interactions, the Ombudsman maintains real time knowledge of current issues affecting the public, including individuals and employers, as well as USCIS efforts to address those issues.

The Ombudsman issues a narrative account of its efforts in achieving these objectives in the form of an annual report to Congress, pursuant to 6 U.S.C. § 272(c)(1). The current report references information and data from May 1, 2009 through March 31, 2010. Also included are significant developments that occurred through June 2010.

1 The term "Ombudsman" refers to the Ombudsman, the staff, and the Ombudsman's office.

2 "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.

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

The Ombudsman was established by Congress in 2002.[4] The Ombudsman is appointed by the Secretary of the U.S. Department of Homeland Security (DHS) and reports directly to the Deputy Secretary. The office often provides a unique perspective because of its impartiality, independent status,[5] and ability to obtain input directly from customers, stakeholders, and USCIS officials. Equally important, the Ombudsman provides an avenue, outside of USCIS and without resorting to litigation, to resolve problems, while ensuring confidentiality and privacy.

While the term "Ombudsman" is unfamiliar to many in the United States, it often is well-known in other countries. Ombudsman positions are created by many governments precisely to provide the public with leadership that is accessible to all, maintains the confidentiality of those who are seeking help with a problem, and can inform both the public and the government about the state of government services in a fair and impartial manner. The modern "Ombudsman" was established in Sweden in 1809 to examine citizen complaints about the government and advocate for fair process.

B. Systemic Issues – Identifying Obstacles to USCIS Responsiveness

The Ombudsman uses multiple resources to identify and research systemic issues for recommendations to USCIS. For example, case problems or email inquiries submitted by individuals and employers may be the starting point for analysis, or can inform ongoing studies. The Ombudsman also has regular interaction 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 to learn about systemic issues.

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. Other outreach tools such as teleconferences also provide information for this research.

The Ombudsman analyzes USCIS data and reports to identify trends in the agency's workload, processing, and service. In addition, the Ombudsman engages with other DHS components, other government agencies, and Congress, where appropriate, to foster interagency cooperation and to gain an understanding of the unique challenges in the 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 formal recommendation to USCIS on how to improve a process or operation to assist individuals and employers. In addition, the Ombudsman may also informally make recommendations to USCIS or present research, analysis, and recommendations in other published forms, such as in the annual report.

4 Homeland Security Act of 2002, § 452; 6 U.S.C. § 272.

5 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. *See* Appendix 1.

C. Case Assistance – Helping Customers Navigate the Immigration Process

Assisting with individual and employer case problems is a key part of the Ombudsman's mission. The Ombudsman receives cases most often from applicants and their employers, attorneys or other representatives, but also from non-governmental organizations and government partners. If an individual has a case pending before USCIS and presents an issue involving delay, error, or some complicating factor, the Ombudsman will work to help resolve the individual's case. The Ombudsman encourages individuals to first utilize the USCIS resources available for assistance such as the National Customer Service Center or an INFOPASS appointment at a field office.

As part of the case problem review, the Ombudsman seeks to validate the facts and issues presented by checking USCIS data systems and relevant legal authorities, as well as through additional discussions with the applicant or the applicant's representative and USCIS or other governmental agencies, as needed. The Ombudsman then determines whether a case qualifies for expedited response. Currently, if the case does not present an emergent situation, the Ombudsman will send it, together with a recommended resolution, to the USCIS Customer Assistance Office. By comparison, to ensure that emergent cases receive priority handling, the Ombudsman brings them directly to the attention of senior USCIS officials.

The Ombudsman conducts outreach to ensure that individuals, employers, and stakeholders are aware of the office's case problem resolution capabilities, and continuously seeks to improve the case resolution process.

Individuals and employers seek immigration assistance from the Ombudsman via letter (via postal or courier delivery), email (with scanned documents attached), facsimile, and telephone. For privacy reasons, the Ombudsman only accepts case problems with an original or scanned signature.

To facilitate the submission of case problems, the Ombudsman developed and posted DHS Form 7001 (Case Problem Submission Worksheet) on its website at www.dhs.gov/cisombudsman. There is no fee to access or submit the form. The Ombudsman also is developing additional avenues for case submission.

During the May 1, 2009 through March 31, 2010 reporting period, the Ombudsman opened 3,234 case problems. Of the cases received, 1,862 or approximately 58 percent were referred to USCIS on a non-emergent basis for further action or final resolution. Of the approximately 42 percent of cases not referred to USCIS, the Ombudsman issued a direct response to the customer. Some of these cases are resolved by the Ombudsman as expedited cases, or otherwise. In some cases, USCIS has no jurisdiction or the customer has a general complaint or recommendation to the Ombudsman concerning a USCIS policy or process. *See* Figure 1.

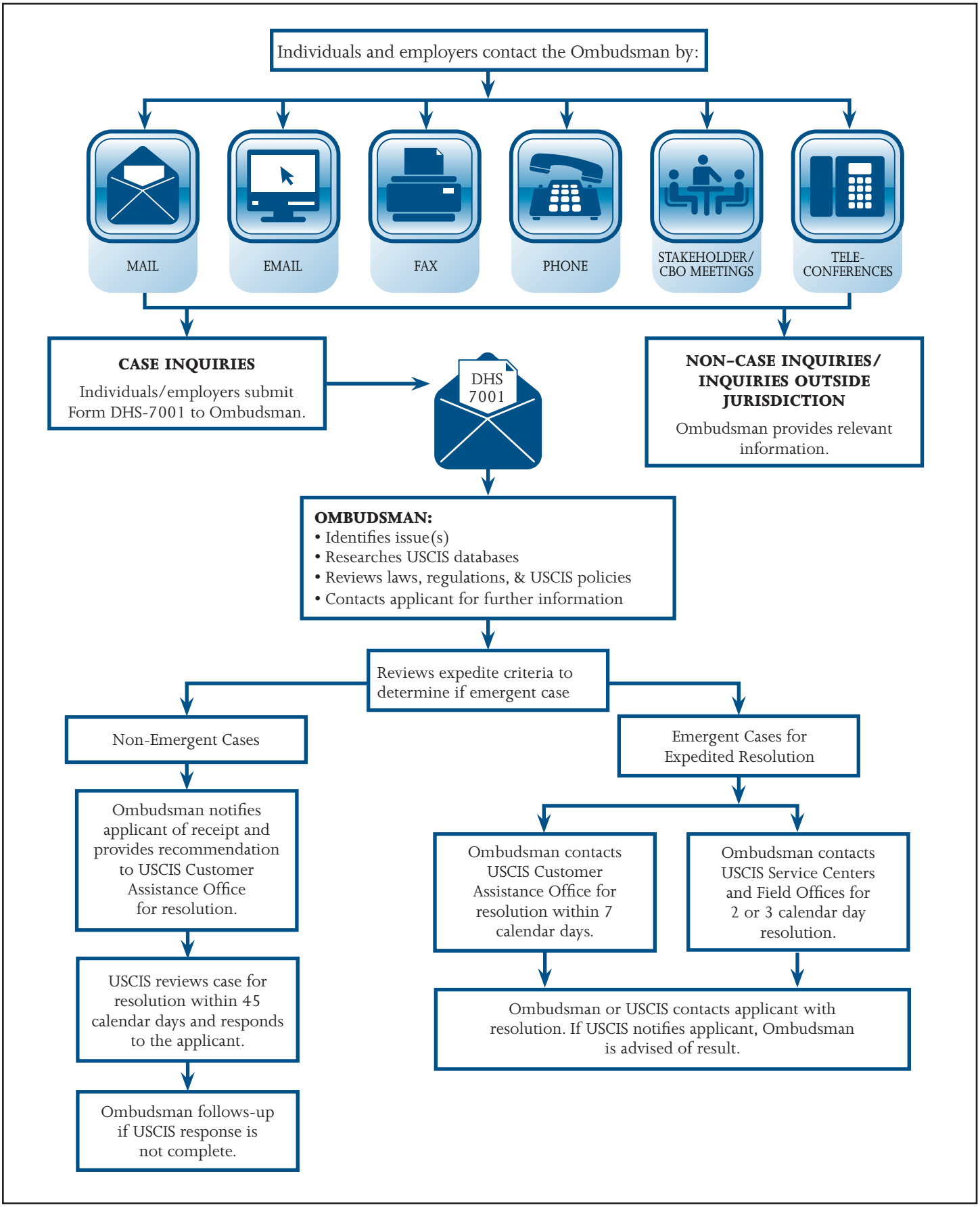
In addition to case submissions, during the reporting period, the Ombudsman received approximately 8,000 requests for assistance or suggestions by email. In response to general information requests and/or for matters beyond USCIS jurisdiction, the Ombudsman provides information and weblinks to online resources. In addition to directing inquirers to information on the USCIS website and those of other DHS components such as U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, the Ombudsman also refers people to other federal agencies, including the U.S. Department of State, the U.S. Social Security Administration, and the U.S. Department of Labor.

1. Factors for Identifying Emergent Cases

In January 2009, the Ombudsman signed a Memorandum of Understanding (MOU) with USCIS. This agreement facilitates the Ombudsman's fulfillment of its statutory mission by establishing a framework for durable and productive relations with USCIS. Among interactions it enumerates, the MOU outlines the processes for case problem resolution, the exchange of information, and the coordination of site visits.

Under the terms of the MOU pertaining to emergent cases, the Ombudsman may inquire directly with the USCIS office having jurisdiction over the application or petition where one of seven criteria is present: "(1) severe financial loss to company or individual; (2) extreme emergent situation;

Figure 1: Flowchart for Inquiries to the Ombudsman



(3) humanitarian situation; (4) nonprofit status of requesting organization in furtherance of the cultural and societal interests on the United States; (5) U.S. Department of Defense or National Interest Situation (the request must come from an official United States Government entity and state that delay will be detrimental to our government); (6) service error; or (7) compelling interest of the service."[6] These criteria are consistent with those established by the agency in 2001. In response to qualifying emergent cases, the Ombudsman is able to resolve many problems with USCIS in a few days, thereby enhancing customer service for individuals and employers. For other cases, the customer may expect a response in up to 45 days. The Ombudsman and USCIS are currently conducting their annual MOU review to revise and strengthen its terms for the benefit of customers.

OMBUDSMAN CASE ASSISTANCE

A 25 year old woman emigrated from an African country and married a U.S. citizen. Before she could gain legal status in the United States, she suffered physical abuse and death threats from her spouse, requiring police and court intervention. She separated from her spouse and moved to another state. Before moving, she applied for legal status under the U visa program, and also sought employment authorization. After seven months, she contacted the Ombudsman to determine the status of her applications. The service center informed the Ombudsman that the application did not contain a police certification of the abuse (without which the application could not be approved). With the applicant's approval, the Ombudsman contacted the police agency to obtain the information for the U visa and facilitated the transfer of the proper documents to the service center. Staff at the Vermont Service Center quickly joined the certification with the file and approved the U visa.

OMBUDSMAN CASE ASSISTANCE

A French national filed his green card application as a derivative beneficiary of his father's employment-based application. USCIS approved the father and other family members' applications in early 2008. The son's case was separated from the others, and it was not adjudicated when other family members' cases were approved. More than a year and a half later, the son contacted the Ombudsman for assistance. The Ombudsman determined that the application was pending at a service center, even though the priority date was current and the case was otherwise adjudication ready. The Ombudsman requested that USCIS expedite processing, and the agency approved the case shortly thereafter.

2. Case Problem Issues: Cases Pending Past Processing Times; Service Error; and Customer Service

The Ombudsman tracks cases submitted to identify trends and, thereby, develop systemic recommendations.

The most common type of problem received during this reporting period involved lengthy processing time. Currently, individuals seeking an immigration benefit can monitor the status of their case and determine the average processing times for various USCIS petitions and applications via the "My Case Status" tool on USCIS' website.[7] With the exception of emergent cases, the Ombudsman encourages customers to use this resource and to wait for normal processing times to occur prior to requesting assistance with a case.

Of the 3,234 case problems received by the Ombudsman between May 1, 2009 and March 31, 2010, 1,646 or almost 51 percent involved processing delays. In comparison, during the 2009 reporting period, 74 percent of the complaints received were due to various processing delays.[8] The decrease in processing delay complaints is likely due to an overall improvement in USCIS processing times during the reporting period.

6 Immigration and Naturalization Service (INS) Interoffice Memorandum, "Service Center Guidance for Expedite Requests on Petitions and Applications" (Nov. 30, 2001).

7 *See* https://egov.uscis.gov/cris/Dashboard.do (accessed May 24, 2010).

8 Ombudsman's Annual Report 2009, p. 83.

Figure 2: Case Problems, 2010 Reporting Period[9]

Total Received	3,234
Sent to USCIS with Recommended Solutions	1,862
Long Processing Delays	1,646
Service Error	617
Lack of Response from USCIS/Customer Did Not Receive Document	342
Incorrect Legal/Factual Decision	100
Other Service Errors	65
Paperwork Lost	57
Inaccurate Information Provided by USCIS	53
Customer Service	754
FBI Name Check	94

As shown in Figure 2, there were 617 inquiries related to service error. The Ombudsman also received 754 complaints from customers regarding USCIS customer service of which 457 related to service centers.

D. Outreach – An Impartial Link to the Public

The Ombudsman is committed to expanding the office's interaction with the public. During this reporting period, the Ombudsman met with stakeholder organizations in a variety of settings and with USCIS officials at facilities nationwide to better understand the challenges to, and learn about best practices in, the delivery of citizenship and immigration services. Additionally, the office participated in stakeholder meetings, attended conferences, and held public teleconferences.

During the reporting period, the Ombudsman increased outreach to diverse organizations. In addition to meeting with existing stakeholders, these efforts involved identifying and visiting new stakeholder organizations to introduce office services and explain how the Ombudsman may assist them and the people they serve. From faith-based organizations to grassroots coalitions to domestic violence service providers, the Ombudsman seeks interactions with stakeholders who have the experience and insight to further inform and enhance the work of the office. The Ombudsman also seeks to learn about obstacles as well as best practices the public experiences with the delivery of citizenship and immigration services.

The Ombudsman continued to offer public teleconferences. 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. Teleconference topics this year included: USCIS Change of Address; Refugee Processing; I-601 Inadmissibility Waivers; USCIS Fee Waivers; Emergency Advance Parole Filings at Local Offices; USCIS Adoption Petition Processing; and USCIS Website Redesign.

The Ombudsman also provides "Ombudsman Updates," which are an outreach tool for sharing or gathering information on current trends and issues experienced by individuals and employers with USCIS. In this reporting period, the Ombudsman issued seven updates: Advance Parole Tips; Reporting Changes of Addresses to USCIS; Rapid Movement of Family-Based Visa Bulletin Cut-Off Dates; Mailing Issues: Have You Not Received a USCIS

9 Most case problems involve more than one issue and the Ombudsman tracks all of the issues raised by each case. Therefore, the total number of issues exceeds the number of cases received or referred.

Document or Card; Getting the Most Out of Your Call to the USCIS National Customer Service Center; Immigration Information and Resources Available in Response to Haiti Earthquake; and Pending Derivative Form I-485s Due to File Separation.[10]

As an example, the Ombudsman published an update to help customers with the USCIS National Customer Service Center, the agency's toll-free telephone line. This update, "Getting the Most Out of Your Call to the USCIS National Customer Service Center," provides information on the type of assistance each tier of the two-tiered call center can and cannot provide, as well as how to prepare to get the most out of the call. As noted in the update, the Ombudsman can request that USCIS review a specific National Customer Service Center call to further understand and assist with a customer inquiry, if the call was within 90 days of contacting the Ombudsman.

10 www.dhs.gov/cisombudsman (accessed June 29, 2010).

This page intentionally left blank.

USCIS – THE CHALLENGES OF PROVIDING RESPONSIVE GOVERNMENT SERVICES

Establishing the Roadmap – Addressing Pervasive and Serious Problems

As required by statute (Section 452(c)(1)(B)), the Ombudsman's Annual Report includes a "summary of the most pervasive and serious problems encountered by individuals and employers." This year's Annual Report details pervasive and serious problems that have impacted immigration benefits processing, such as challenges amidst an environment of declining receipts and declining revenue, the USCIS Transformation Initiative, employment and family green card processing, Requests for Evidence (RFEs), and customer service. This section also highlights key initiatives to address these pervasive and serious problems, including expanded USCIS public engagement, and effective use of excess capacity to reduce processing times and the number of certain long pending petitions.

The Ombudsman also notes that, in April 2010, USCIS announced an initiative to review all agency policies with a goal of creating consistency in processing of benefits across the agency. Since the announcement, USCIS has asked its own staff and the public to help identify the most pressing areas that require alignment sooner rather than later. The implementation of change based on this initiative will likely have implications across policy and program areas. While this will be a multi-year effort for USCIS, the Ombudsman encourages swift action on the policies determined to be priority areas.

A. Declining Receipts, Declining Revenue – Challenges and Opportunities

In the 2010 reporting period, there was a decline in immigration receipts and a corresponding decline in fee-generated revenue for USCIS. An advantage of this downward trend is that USCIS has cut processing times and reduced the number of certain long pending petitions and applications. At the same time, a disadvantage is the delay of planned service initiatives as well as the potential reduction of other initiatives.

> ***"USCIS continues to face a marked decline in fee revenue from levels projected prior to the downturn in the economy."***[11]
>
> **Alejandro Mayorkas**
> **Director, USCIS**

The recent declining receipts, declining revenue environment brings to light the challenges associated with operating a budget that must rely primarily on fee-based revenue. This funding structure leaves the agency in a reactive cycle lacking stability and predictability, concerns described by the Ombudsman in previous years:[12]

- During periods of high receipts, USCIS receives high revenue, but often struggles to maintain target processing times due to the increase in workload and an

11 *See* "FY 2011 Citizenship and Immigration Services Budget," *before the* Subcommittee on Homeland Security *of the* U.S. House of Representatives Committee on Appropriations, 111th Cong. 2nd Sess. 4-5 (2010) (statement of Alejandro Mayorkas, USCIS Director).

12 *See* Ombudsman's Annual Reports 2009, pp. 3-6, 19-21; 2008, pp. 21-24.

Figure 3: USCIS Receipts and Fee Revenue (sorted by FY 2010 YTD) ($1,000,000s)

Form	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010 YTD (Oct. – Mar.)
I-485 (Application to Register Permanent Residence or Adjust Status)	$ 137	$ 184	$ 160	$ 278	$ 448	$ 400	$ 189
N-400 (Application for Naturalization)	$ 181	$ 184	$ 233	$ 391	$ 375	$ 320	$ 191
I-130 (Petition for Alien Relative)	$ 97	$ 122	$ 141	$ 166	$ 226	$ 231	$ 114
Biometrics Fee - Photograph and Fingerprint Fee	$ 77	$ 118	$ 165	$ 209	$ 175	$ 163	$ 78
I-90 (Application to Replace Permanent Resident Card)	$ 87	$ 111	$ 122	$ 120	$ 133	$ 128	$ 78
Premium Processing	$ 202	$ 139	$ 160	$ 212	$ 163	$ 135	$ 59
I-765 (Application for Employment Authorization)	$ 205	$ 284	$ 241	$ 234	$ 276	$ 228	$ 58
I-129 (Petition for Nonimmigrant Worker)	$ 64	$ 69	$ 79	$ 91	$ 131	$ 112	$ 42
I-751 (Petition to Remove the Conditions of Residence)	$ 27	$ 21	$ 27	$ 33	$ 96	$ 83	$ 40
I-131 (Application for Travel Document)	$ 58	$ 62	$ 62	$ 85	$ 90	$ 68	$ 30
I-539 (Application to Extend/Change Nonimmigrant Status)	$ 40	$ 43	$ 46	$ 47	$ 57	$ 51	$ 22
I-140 (Immigration Petition for Alien Worker)	$ 13	$ 14	$ 26	$ 46	$ 56	$ 27	$ 14
Subtotal	$ 1,188	$ 1,351	$ 1,462	$ 1,912	$ 2,226	$ 1,946	$ 915
Total USCIS Revenue	$ 1,317	$ 1,507	$ 1,649	$ 2,079	$ 2,416	$ 2,119	$ 1,000
Total USCIS Receipts	5,937,734	6,240,007	6,257,016	7,628,334	4,884,795	5,122,049	2,272,941

Note: Receipts based on Domestic Operations data.
Sources: Data provided by USCIS to the Ombudsman (Apr. 1, 2010, Apr. 6, 2010, May 6, 2010, May 20, 2010, and May 24, 2010); Ombudsman's Annual Reports 2007, p. 47; 2006, pp. 22-23.

inability to scale up staffing and operations in advance of the increase.

- During periods of low receipts, USCIS receives low revenue but has the excess staffing capacity to improve processing times.
- Unless additional funds are allocated for new initiatives or improvements to existing systems, the costs are paid for by customers filing at that time who do not reap the benefits of processing improvements made later. Moreover, funding new projects may require additional fee increases.
- Increased filing fees are a hardship for many families and may effectively deter individuals from seeking immigration or citizenship benefits.

The Immigration and Nationality Act (INA) of 1952, as amended, provides for the collection of filing fees to support the costs of processing immigration benefit applications and petitions.[13] In 1988, the President signed legislation directing the legacy Immigration and Naturalization Service (INS) to establish the Immigration Examination Fee Account, which acts as the primary depository for USCIS filing fees.[14] As such, USCIS relies primarily on revenue from customers rather than appropriated funds to conduct its day-to-day operations.

13 *See* INA § 286(m).

14 *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989, § 209, Pub. L. No. 100-459.

USCIS receipt numbers and revenue have fluctuated as a result of factors that likely include legislative amendments, economic shifts, immigration trends, and procedural changes, notably, USCIS fee increases.

In recent years, USCIS has received limited appropriated funding to support specific initiatives, including, but not limited to, adjudication of asylum claims and refugee applications (for which USCIS does not charge a fee), E-Verify, the Systematic Alien Verification for Entitlements (SAVE) Program,[15] and modernization efforts.

The immigration system requires interagency cooperation on an array of tasks, often performed by one federal agency on behalf of another. For example, USCIS pays the Federal Bureau of Investigation (FBI) for fingerprint and name checks.[16] Conversely, USCIS receives reimbursement from other federal agencies for work performed on their behalf.

Figure 4: Reimbursement Funds Allocated to USCIS – FY 2004-2010 YTD (Oct. – Mar.) ($1,000s)

FY	Reimbursement Funds
2004	$ 4
2005	$ 16,557
2006	$ 18,702
2007	$ 33,176
2008	$ 25,971
2009	$ 24,597
2010 YTD (Oct. – Mar.)	$ 13,320

Source: Data provided by USCIS to the Ombudsman (May 6, 2010).

1. Revenue Shortages Limit Funding for Many USCIS Initiatives

As a result of the decline in fee receipts, USCIS must make cuts, or generate new funds, estimated at approximately $160 million over the next two fiscal years.[17]

In the last few years, USCIS initiatives have been delayed or postponed indefinitely due to budget constraints. For example, much of the Secure Mail Initiative, a planned $31.6 million effort to facilitate faster, secure delivery of many USCIS documents with tracking capabilities, has been postponed as a result of lack of funding (*See* USCIS Transformation).[18] In addition, establishment of a second, full-service card production facility, estimated to cost $32.4 million, is effectively cancelled, despite USCIS' preparation for its use.[19]

2. Low Receipts Allow USCIS to Devote Resources to Improving Processing Times

Low receipt levels diminish USCIS funding but provide the time and surplus resources needed to process long pending applications and petitions, and improve processing times. In the past two years, USCIS has taken advantage of a reduction in application volume by redistributing work to service centers and field offices.

Since FY 2009, when receipting began to decrease, USCIS has been able to allocate resources to long pending applications and petitions as follows:

15 Legacy INS created SAVE in 1987 to provide status verification information to authorized agencies to help maintain program integrity. *See* USCIS, "Systematic Alien Verification for Entitlements (SAVE) Program;" http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=1721c2ec0c7c8110VgnVCM1000004718190aRCRD&vgnextchannel=1721c2ec0c7c8110VgnVCM1000004718190aRCRD (accessed May 19, 2010).

16 *See* Ombudsman's Annual Report 2009, p. 13.

17 Information provided by USCIS to the Ombudsman (Mar. 17, 2010).

18 *See* "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule," 72 Fed. Reg. 4888, 4899 (Feb. 1, 2007); http://edocket.access.gpo.gov/2007/pdf/E7-1631.pdf (accessed June 14, 2010). *See also* information provided by USCIS to the Ombudsman (Mar. 11, 2010).

19 *See* "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule," 72 Fed. Reg. 4888, 4906 (Feb. 1, 2007); http://edocket.access.gpo.gov/2007/pdf/E7-1631.pdf (accessed June 14, 2010). *See also* information provided by USCIS to the Ombudsman (Mar. 11, 2010).

- Forms I-130 (Petition for Alien Relative) have experienced processing delays for several years, following a policy to hold preference-based petitions and process them based on visa availability.[20] In last year's annual report, the Ombudsman discussed the backlog of approximately 1.1 million pending I-130s. In March 2009, USCIS began sending pending I-130s to field offices with available staff to perform adjudications. By December 31, 2009, USCIS reduced its I-130 inventory to 690,000 of which 575,000 were preference petitions.[21] The agency expects to adjudicate an additional 750,000 new and pending I-130 preference petitions by December 31, 2010.[22]
- Forms I-601 (Application for Waiver of Grounds of Inadmissibility) referred from the Ciudad Juarez Field Office have encountered significant processing delays, at the peak totaling approximately 10,000 pending applications with processing times of nearly two years.[23] A decrease in asylum receipts at the end of 2008 allowed USCIS to direct many Forms I-601 to asylum offices for processing enabling the agency to shorten processing times to approximately 10-12 months.[24]

Additionally, USCIS has been able to improve processing times for other frequently filed applications such as naturalization applications as shown in Figures 5 and 6.

20 USCIS Press Release, "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 May 19, 2010).

21 Information provided by USCIS to the Ombudsman (Feb. 26, 2010).

22 At the end of calendar year 2010, USCIS plans to have 65,000 I-130 preference petitions remaining to be adjudicated. Information provided by USCIS to the Ombudsman (Feb. 26, 2010).

23 Information provided by USCIS to the Ombudsman (Aug. 13, 2009).

24 USCIS Fact Sheet, "USCIS Makes Major Strides During 2008" (Nov. 6, 2008); http://www.uscis.gov/files/article/2008accomFS_3nov08.pdf (accessed Apr. 28, 2010); information provided by USCIS to the Ombudsman (May 24, 2010).

3. USCIS Often Relies on Other Funding Sources

Due to the constraints of the current funding structure, USCIS generally obtains additional revenue by raising filing fees, redistributing certain monies, and appending surcharges on applications, as well as by reducing expenditures by implementing cost-cutting measures.

Regarding fee increases, USCIS fees are to be reviewed every two years, during which time the agency determines if and how filing fees are to be adjusted to cover general operating costs.[25] While the agency was not reviewing its fees consistently until only the last few years, USCIS now appears committed to regular review by conducting a fee study in 2006 and 2009, and is beginning preparations for the next study.

On June 11, 2010, USCIS posted for comment its proposed fee schedule based on the 2009 study, seeking to increase USCIS fees by a weighted average of 10 percent, reduce fees for five individual applications and petitions, and establish three new fees.[26] Notably, USCIS is not seeking to increase the fee for Form N-400 (Application for Naturalization).

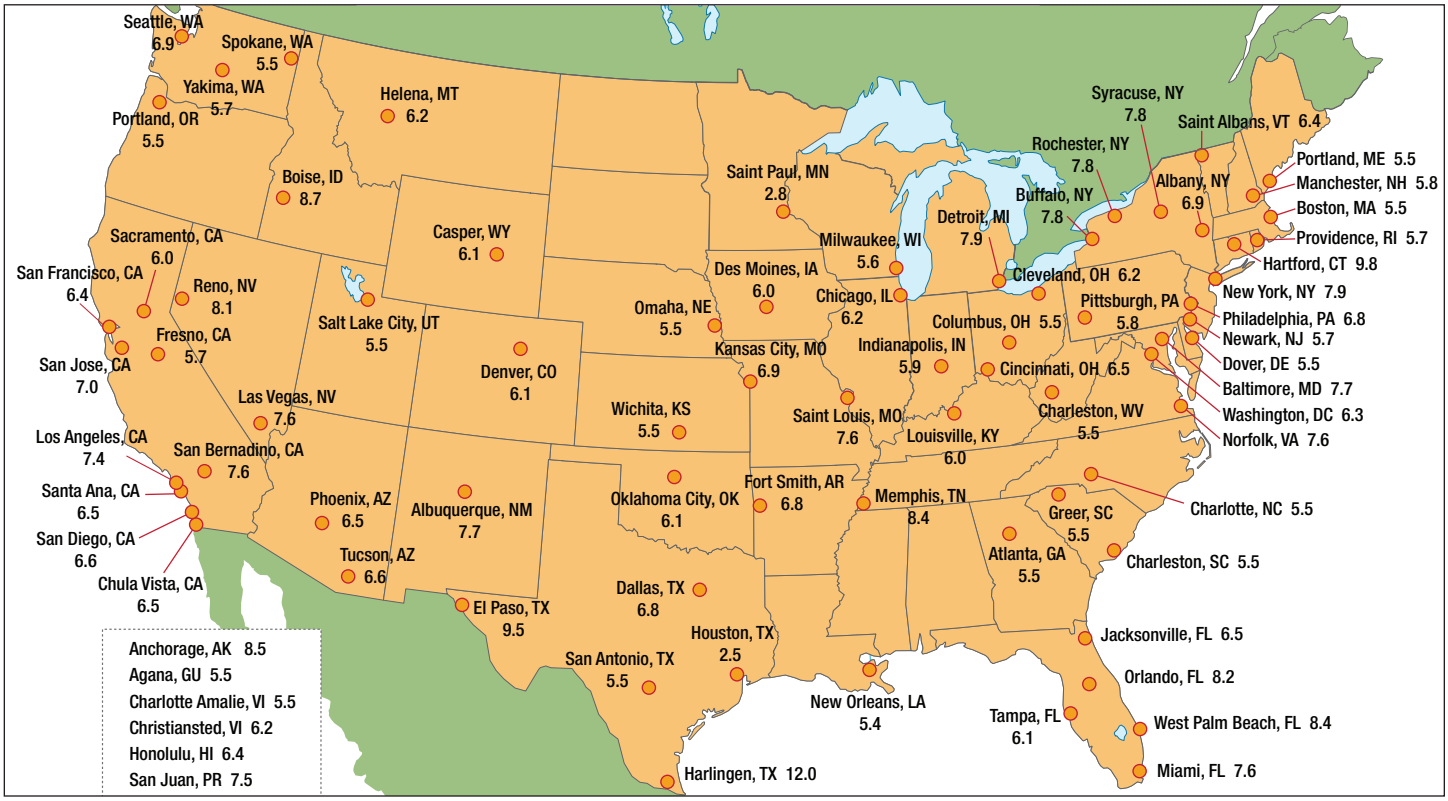
As filing fees are the main source of revenue for USCIS, customers bear the burden of price adjustments made to cover operational costs. Over the past decade, these price adjustments have resulted in a steady and, at times, substantial increase of fees.

For the 2007 fee increase, USCIS conducted a fee study to review operational costs and determine the adjustments necessary to cover those costs. The agency had not conducted such a fee study for almost 10 years.

25 Chief Financial Officers Act of 1990, Pub. L. No. 101-576 (1990).

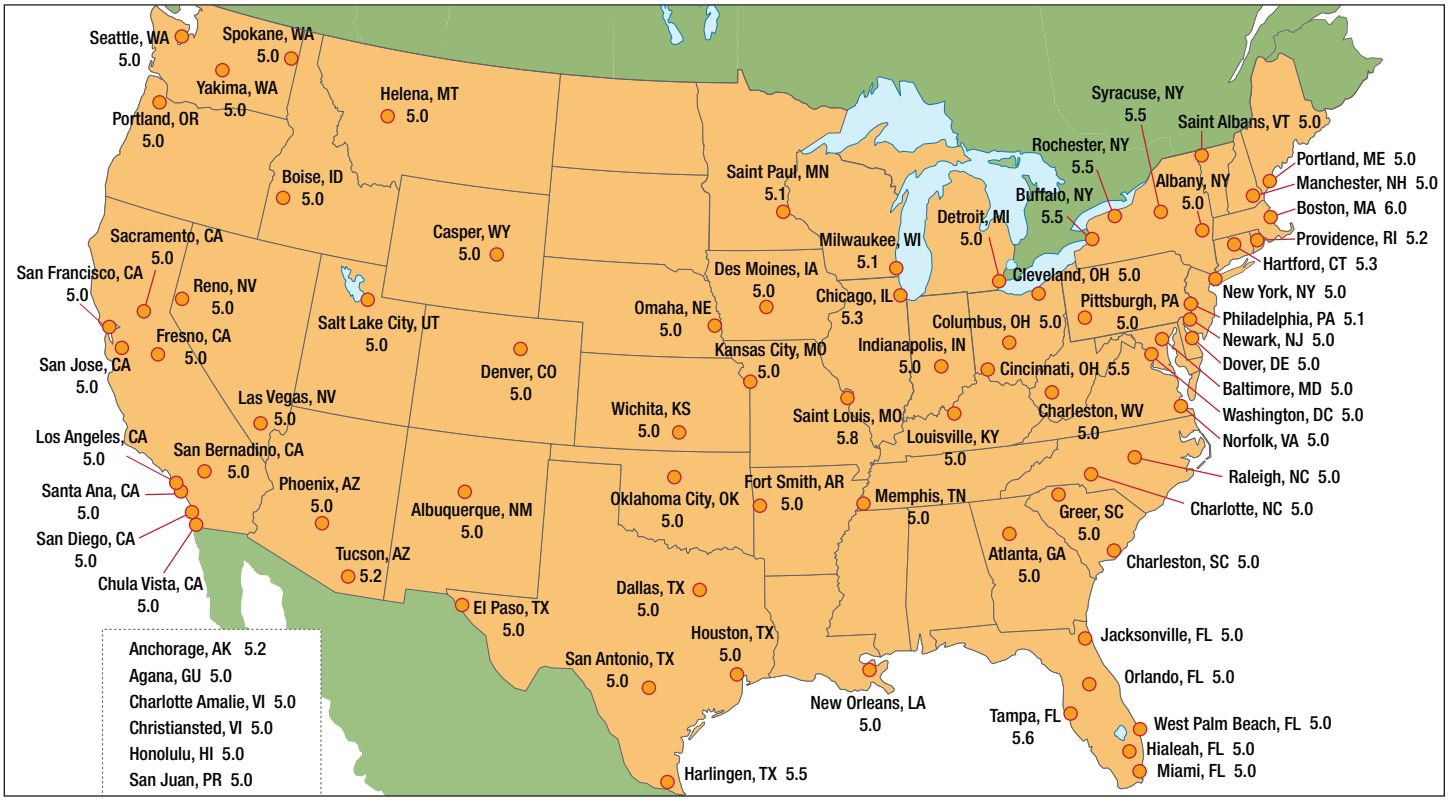
26 *See* "U.S. Citizenship and Immigration Services Fee Schedule; Proposed Rule," 75 Fed. Reg. 33445 (June 11, 2010); http://edocket.access.gpo.gov/2010/2010-13991.htm (accessed June 14, 2010). USCIS proposes to reduce fees for the following form types: Form I-129F (Petition for Alien Fiancé(e)); Form I-539 (Application to Extend/Change Nonimmigrant Status); Form I-698 (Application to Adjust Status from Temporary to Permanent Resident); Form I-817 (Application for Family Unity Benefits); and Form N-565 (Application for Replacement Naturalization/Citizenship Document). USCIS also proposes to establish fees for Regional Center designation under the Immigrant Investor Pilot Program (EB-5), individuals seeking civil surgeon designation, and recovery of the cost of processing immigrant visas granted by the U.S. Department of State.

Figure 5: Naturalization Application Processing Times at USCIS Field Offices (Apr. 15, 2009)



Source: USCIS Processing Time Data

Figure 6: Naturalization Application Processing Times at USCIS Field Offices (Mar. 31, 2010)



Source: USCIS Processing Time Data

Figure 7: USCIS Filing Fee Adjustments – FY 1989- 2007

Form Type	FY 1989	FY 1991	FY 1994	FY 1998	FY 2002	FY 2004	FY 2006	FY 2007/ Current Fees
I-90 (Application to Replace Permanent Resident Card)	$35	$70	$75	$110	$130	$185	$190	$290
I-129 (Petition for Nonimmigrant Worker)	$50	$70	$75	$110	$130	$185	$190	$320
I-130 (Petition for Alien Relative)	$40	$75	$80	$110	$130	$185	$190	$355
I-140 (Immigration Petition for Alien Worker)	$50	$70	$75	$115	$135	$190	$195	$475
I-485 (Application to Register Permanent Residence or Adjust Status)	$60	$120	$130	$220	$255	$315	$325	$930
I-539 (Application to Extend/Change Nonimmigrant Status)	$35	$70	$75	$120	$140	$195	$200	$300
I-765 (Application for Employment Authorization)	$35	$60	$70	$100	$120	$175	$180	$340
N-400 (Application for Naturalization)	$60	$90	$95	$225	$260	$320	$330	$595
Biometrics Fee - Photograph and Fingerprint Fee	–	–	–	$25	$50	$70	$70	$80

Note: FY 1991, FY 1998, and FY 2007 data represent major fee adjustments, while all other data reflect incremental changes to keep up with inflation and to provide new security enhancements.
Sources: "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule," 72 Fed. Reg. 4887, 4991 (Feb. 1, 2007) and www.uscis.gov (accessed June 14, 2010).

Many stakeholders argue that the 2007 fee increases impact the financial ability of individuals and families to seek citizenship and other benefits. At the same time, some promised service improvements have been delayed. In 2007, filing fees increased by a weighted average of 86 percent.[27] *See* Figure 7.

In addition to fee increases, a decline in receipts and revenue increases the likelihood of USCIS having to redirect funding from planned programs. One such program, the USCIS Transformation Initiative, is primarily funded by premium processing receipts, which have been declining steadily in recent years.

Figure 8: Premium Processing – FY 2004-2010 YTD (Oct. – Mar.) ($1,000,000s)

FY	Receipts	Revenue
2004	172,249	$ 202
2005	120,353	$ 139
2006	153,000	$ 160
2007	214,025	$ 212
2008	163,524	$ 163
2009	135,470	$ 135
2010 YTD (Oct. – Mar.)	69,690	$ 59

Sources: Data provided by USCIS to the Ombudsman (Apr. 12 and May 20, 2010); Ombudsman's Annual Reports 2007, p. 47; 2006, pp. 22-23.

According to USCIS, sufficient funding for the Transformation Initiative is allotted until FY 2014; however, if premium processing receipts continue to decline throughout the next few years, USCIS may have to move monies from other areas to cover the cost of its continued development.[28] Redistribution to support initiatives such as Transformation may curtail other endeavors until Transformation is implemented.

27 U.S. Government Accountability Office Report, "Immigration Application Fees – Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees," GAO-09-70, p. 3 (Jan. 2009); http://www.gao.gov/new.items/d0970.pdf (accessed May 20, 2010).

28 Information provided by USCIS to the Ombudsman (Mar. 17, 2010).

Finally, USCIS also is seeking to address its budget constraints through cost reduction.[29] The agency identified several initiatives as contributing more than $160 million to these cuts, including participation in Secretary Napolitano's Efficiency Review,[30] the DHS-wide initiative to reduce expenditures through improved utilization of existing infrastructure and common-sense plans.[31]

The Ombudsman understands that USCIS also has decreased employee training expenditures, which may be related to limited hiring compared to previous years. The agency says that it has not curtailed training of existing personnel essential to maintaining the quality of adjudications and to customer service in general.[32]

4. Improvements in Funding Structure Are Needed to Ensure Stability in Fees and Processing

In view of difficulties with predicting fee revenue several years in advance, as illustrated by economic cycles and fluctuations in immigration benefits receipts and revenues,[33] the Ombudsman previously has suggested ways to mitigate the uncertainty. In a recent hearing, the House Committee on Appropriations Subcommittee on Homeland Security referred to the boom or bust scenario by observing that USCIS had nearly exhausted the surplus revenues generated by the 2007 surge and asking what steps the agency was taking to avoid budget problems. Several committee members asked Director Mayorkas whether USCIS needed more appropriated funds.[34]

The Director explained that the agency would be able to remain true to its self-funding mandate by reducing costs through improved efficiency and modernization, as well as reap advantages through Transformation. Over time, USCIS has requested funding for some programs such as asylee/refugee adjudications, E-Verify, and military naturalizations.

However, as the Ombudsman reported last year, USCIS' FY 2008 fee revenue was "$77 million less than projected in the May 2007 fee increase."[35] Acceleration of this trend resulted in a FY 2009 shortfall of $345 million as compared with the 2007 fee rule's estimates; the FY 2009 shortfall still totals $164 million as compared with 2008 revenue projections.[36] That even the revised projections failed to predict the steepness of the revenue decline underscores the difficulty in predicting and balancing resource needs against workload demands.

29 *See* "The United States Citizenship and Immigration Services," *before the* Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law *of the* U.S. House of Representatives Committee on the Judiciary, 111th Cong. 2nd Sess. 4-5 (2010) (statement of Alejandro Mayorkas, USCIS Director); http://judiciary.house.gov/hearings/pdf/Mayorkas100323.pdf (accessed May 20, 2010).

30 As an operational component of DHS, USCIS has embraced the Secretary's Efficiency Review Initiative introduced in March 2009. *See* DHS Press Release, "Secretary Napolitano Rolls Out DHS Efficiency Review Initiative" (Mar. 27, 2009); http://www.dhs.gov/ynews/releases/pr_1238172270388.shtm (accessed May 20, 2010); DHS, "Budget-in-Brief, FY 2010" pp. 21-22 (May 7, 2009); http://www.iaem.com/committees/GovernmentAffairs/documents/DHSBudgetinBriefFY2010.pdf (accessed May 20, 2010). *See also* "FY 2011 Citizenship and Immigration Services Budget," *before the* Subcommittee on Homeland Security of the U.S. House of Representatives Committee on Appropriations, 111th Cong. 2nd Sess. 4-5 (2010) (statement of Alejandro Mayorkas, USCIS Director).

31 "FY 2011 Citizenship and Immigration Services Budget," *before the* Subcommittee on Homeland Security *of the* U.S. House of Representatives Committee on Appropriations, 111th Cong. 2nd Sess. 4-5 (2010) (statement of Alejandro Mayorkas, USCIS Director).

32 Information provided by USCIS to the Ombudsman (Mar. 17, 2010).

33 *See* Ombudsman's Annual Report 2008 (Summer 2007 Surge; Frontlogs & Backlogs), p. 8.

34 *See* "The United States Citizenship and Immigration Services," *before the* Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law *of the* U.S. House of Representatives Committee on the Judiciary, 111th Cong. 2nd Sess. 4-5 (2010) (statement of Alejandro Mayorkas, USCIS Director); http://judiciary.house.gov/hearings/pdf/Mayorkas100323.pdf (accessed May 20, 2010).

35 Ombudsman's Annual Report 2009, p. 19.

36 *See* "The United States Citizenship and Immigration Services," *before the* Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law *of the* U.S. House of Representatives Committee on the Judiciary, 111th Cong. 2nd Sess. 5 (2010) (statement of Alejandro Mayorkas, USCIS Director); http://judiciary.house.gov/hearings/pdf/Mayorkas100323.pdf (accessed May 20, 2010). The FY 2009 revenue decline represents a 15 percent drop from 2007 forecasts and an 8 percent drop from forecasts revised in 2008, after USCIS recognized a downturn in immigration benefits sought. As of March 23, 2010, USCIS had "not seen a material increase in filing volumes for fiscal year 2010." *Id.*

B. Transformation – The Promise of Modernization

In previous reporting periods,[37] the Ombudsman discussed the importance of modernizing USCIS systems to remedy the many systemic problems that arise from its antiquated environment, including, but not limited to:

- File Tracking / Transfer Issues – reliance on paper files to perform various parts of adjudication often leads to misplaced or lost files and delays in case processing
- Inefficient Customer Service – resource intensive customer service avenues such as INFOPASS and the National Customer Service Center toll-free telephone line expend agency funds and sometimes frustrate customers who unsuccessfully seek real-time case information
- Inaccurate Data – lack of a centralized case management structure requires overseas and domestic offices to create *ad hoc* reporting systems that lead to inconsistent statistical reporting throughout the agency

For this annual report, the Ombudsman continued to monitor USCIS modernization efforts with respect to both long-term solutions and near-term fixes:

- Transformation Initiative: A five-year plan to overhaul USCIS' antiquated, fragmented information technology systems into a modern, streamlined environment.
- Projects and Programs in Development: While the agency contemplates overarching changes to USCIS systems through Transformation, it should continue to develop initiatives that improve immigration benefits processing for customers today.

1. Transformation Initiative

Awarded the approximately half billion Transformation Solution Architect Task Order (Transformation) contract in November 2008,[38] IBM is charged with designing, deploying, and, ultimately, delivering the agency's modernized environment – a historically challenging task to accomplish.[39] The current Administration is placing a high priority on the following set of solutions:

- Security measures enhanced through centralization of fragmented systems, enabling USCIS to provide faster, more thorough security checks, as well as access to and storage of greater volumes of biometric data
- Online USCIS accounts to enable customers to complete, submit, and pay for all applications and petitions, track their cases, and make needed updates to their personal information
- Improved case management system and electronic environment, rather than the current paper-based system, to eliminate the need for physical file movement and provide for more accurate and consistent customer data throughout the agency

The Ombudsman acknowledges USCIS' prioritization of Transformation over the past reporting period, and, at the same time observes the following:

- Despite assurances from USCIS that it has focused attention on and dedicated funding to the continued development of Transformation, until the immigration experience tangibly improves for customers, the success of Transformation remains an objective not yet achieved.

37 Ombudsman's Annual Report 2009, pp. 12, 28-30.

38 USCIS Interoffice Memorandum, "FY 2008 Accomplishments/ FY 2009 Outlook/Transformation Contract Award" (Nov. 6, 2008); information provided by USCIS to the Ombudsman (Apr. 16, 2010).

39 "Since USCIS' inception, every Director has attempted, and failed, to successfully implement a system overhaul." *See* "The United States Citizenship and Immigration Services," *before the* Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law *of the* U.S. House of Representatives Committee on the Judiciary, 111th Cong. 2nd Sess. 4-5 (2010) (statement of Hon. John Conyers Jr., Congressman).

Figure 9: Projected Transformation Timeline

Release	Description	Projected Deployment Dates
1	Initial phase of account establishment for individuals, and electronic case management system for many simpler, nonimmigrant benefit types. Forms I-20, I-90, I-102, I-131, I-134, I-290B, I-508, I-539, I-566, I-601, I-612, I-765, I-821, I-824, AR-11, DS-2019, G-28	August 2010-November 2011
2	Extended phase of account establishment for organizations (firms, community-based organizations), and more robust electronic case management system to support remaining nonimmigrant benefit types. Forms I-129, I-129S, I-192, I-612, I-854, I-905, I-907, I-914, I-918, I-929	July 2011-October 2012
3	Immigrant benefit types. Forms I-130, I-140, I-193, I-360, I-407, I-485, I-526, I-687, I-698, I-751, I-817, I-829	January 2012-March 2013
4	Humanitarian benefit types. Forms I-485 (Asylee/Refugee), I-589, Haitian Refugee Immigration Fairness Act, I-602, I-690, I-730	July 2012-September 2013
5	Naturalization benefit types. Forms N-300, N-336, N-400, N-470, N-565, N-600, N-600K, N-643, N-644, I-600, I-600A, I-800, I-800A	January 2013-March 2014

Source: Information provided by USCIS to the Ombudsman (Apr. 16, 2010).

- The foundational areas outlined in this review (timeline, structure, funding, and stakeholder communication and cooperation) are indicators of Transformation's progress, and continued advancement in these areas is essential to the solution's overall success.

Adherence to transparent timelines with clear benchmarks will enable USCIS to move towards its long-term objective and keep up with information technology advancements and changes to immigration laws, while providing Congress and other stakeholders the means to measure Transformation's progress.

In last year's annual report, the Ombudsman reported on USCIS' goal of deploying Transformation in seven increments, beginning with naturalization and ending, sequentially, with immigrant, humanitarian, and nonimmigrant cases.[40] At the time, USCIS estimated that customers' first tangible Transformation experience would arrive in February 2011, at which point naturalization applicants would be able to complete, file, and track applications online.

During the current reporting period, Transformation underwent a realignment of goals. As a result, USCIS now plans to deploy Transformation in five increments (rather than seven), beginning with nonimmigrant cases and ending, sequentially, with immigrant, humanitarian, and naturalization cases. *See* Figure 9. Developers found that beginning with simpler and higher volume nonimmigrant cases, rather than with naturalization cases as originally planned, would be more efficient by requiring the agency to develop the majority of the infrastructure at the beginning of the Transformation life-cycle, thereby allowing for easier adjustments as deployment progresses. USCIS noted that "... approximately 85 percent of the system will already be incorporated in the first increment, requiring only smaller modifications to the later increments."[41]

USCIS estimates completion of the entire solution by March 2014 (originally November 2013) with several key benchmarks in the interim as shown in Figure 9. The Transformation Program Office (TPO) manages IBM's design and development work. The TPO formerly was under the Office of Transformation Coordination, but

40 Ombudsman's Annual Report 2009, pp. 8-9.

41 Information provided by USCIS to the Ombudsman (Apr. 13, 2010).

became an independent office and began reporting directly to the USCIS Director following USCIS' realignment in January 2010.[42] Since the end of the previous reporting period, the TPO has added approximately 40 employees, bringing its total staff to 82 federal employees, in addition to contractor staff.[43]

Although the Transformation Initiative has received some appropriated money, it is currently funded by premium processing revenue.[44] *See* Figure 8.

In previous reporting periods, the Ombudsman expressed concerns with this funding structure, noting that a decline in premium processing receipts could stall the progress of Transformation. Despite a decline in premium processing receipts within the past few years, according to USCIS officials, sufficient funding for Transformation is allotted until FY 2014,[45] as described above.

Relationships with and input from the many stakeholders involved in the Transformation process are imperative to its success. Such communication enables the TPO to incorporate feedback from future users of the transformed system as it is being constructed and, thereby, converts users into collaborators in developing the process.

During calendar year 2009, the TPO began holding stakeholder meetings to collect information and introduce the transformed environment in its then current framework. TPO plans to increase stakeholder outreach as Transformation continues. These efforts are focused towards four main stakeholder groups:

- Internal (USCIS employees)
- External (Immigration benefits applicants, community-based organizations, non-governmental organizations, immigration practitioners / attorney groups)
- Federal Agencies (Federal Bureau of Investigation, U.S. Department of State, other DHS components)
- Software Industry (Users and developers of software that interfaces with USCIS systems)

TPO also must ensure that it effectively coordinates with the many programmers and managers that assist in developing Transformation. Many systems either in operation or being developed specifically for Transformation are not necessarily managed by the TPO. Instead, they are under the jurisdiction of other USCIS divisions, DHS components, or federal agencies. The Ombudsman has previously reported on specific challenges between the TPO and USCIS' Office of Information Technology in coordinating the construction of some of Transformation's larger infrastructure projects; such past problems have led to inefficiencies and delays in the Transformation Initiative.[46]

2. Transformation Projects and Programs

a. Projects Previously Reported by the Ombudsman

In previous reporting periods, the Ombudsman reported on Transformation-related projects that were in various planning stages.[47] Some of these projects now are expected to be integrated into the larger Transformation Initiative. For example, the Customer Profile Management System (CPMS), formerly the Biometric Storage System, is intended to enhance the collection and management of biometric data through the use of one consolidated system. CPMS will be used by the agency for near-term efforts – storage of

42 USCIS Press Release, "Statement from USCIS Director Mayorkas on the realignment of U.S. Citizenship and Immigration Services organizational structure" (Jan. 11, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid= 687e62cb6ee16210VgnVCM10000082ca60aRCRD&vgnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD (accessed June 18, 2010); *see also* Appendix 3.

43 Information provided by USCIS to the Ombudsman (Apr. 13, 2010).

44 USCIS' premium processing service guarantees faster processing of certain employment-based petitions and applications. For an additional fee of $1,000, customers receive a USCIS response within 15 days: a grant, denial, or request for evidence. This fee may be adjusted according to the Consumer Price Index. *See* INA § 286(u).

45 Information provided by USCIS to the Ombudsman (Mar. 17, 2010).

46 Ombudsman's Annual Report 2009, p. 9.

47 Ombudsman's Annual Reports 2009, pp. 9-11; 2008, p. 44.

card production data and card production status – as well as long-term initiatives.[48] Eventually, CPMS will be integrated into Transformation and act as one of its central infrastructures. This effort has been in development for several years.

In addition, the Identity Management Pilot, a system that enables USCIS to match an individual's biometric data to a unique, identifying number will be used for fingerprint data under the transformed system.

b. Projects and Programs in Development

Improvements to Security, Design, and Structure of Naturalization Certificates

Currently, the Naturalization Certificate Automation & Redesign Initiative, introduced in May 2008,[49] is intended to enhance security, reduce printing costs, and provide more efficient certificate production.

USCIS expects that such production will enable more frequently performed "same day" naturalization oath ceremonies to occur. Security improvements to the Certificates of Naturalization make them more fraud-resistant and more readily accepted as proof of identification. Other cosmetic enhancements are designed to ensure durability, eliminating the need for many customers to obtain replacement certificates in the future. Specifically, new Certificates of Naturalization will include digitized photographs rather than manually glued-on passport photographs, and revised text to ensure compatibility with the Immigration and Nationality Act (INA). The Ombudsman recommended that USCIS implement such plans in a 2008 study entitled "Improving Naturalization Oath Ceremonies."[50]

The Naturalization Certificate Automation & Redesign Initiative is structured to begin its initial phase, originally scheduled for November 2009, in August 2010. USCIS expects this phase to provide for 90 percent of naturalization certificates produced in several USCIS offices to include digitized photographs.[51]

Figure 10: Sample Naturalization Certificate

Source: Information provided by USCIS to the Ombudsman (Apr. 14, 2010).

New USCIS System Electronically Adjudicates Simple Forms

In addition, USCIS intends to introduce the Standard Lightweight Operational Programming Environment Rules System Qualified Adjudication (SLOPE) to provide for electronic adjudication of some of USCIS' less complex benefit applications, notably, the Form I-90 (Application to Replace Permanent Resident Card).

As of this writing, SLOPE is to deploy its pilot phase in September 2010[52] when all I-90s processed at the Nebraska Service Center will be adjudicated electronically. There is no timeline for full implementation of SLOPE; however, USCIS plans to provide similar adjudication capabilities for Temporary Protected Status re-registration and employment authorization applications.[53] USCIS now estimates that SLOPE could reduce adjudication time to a matter of minutes, as compared to current adjudication times.[54]

48 Information provided by USCIS to the Ombudsman (Apr. 7, 2010).
49 Information provided by USCIS to the Ombudsman (Mar. 4, 2010).
50 Recommendation #37 (Dec. 16, 2008), http://www.dhs.gov/xlibrary/assets/cisomb_naturalization_recommendation_2008-12-16.pdf (accessed May 21, 2010).
51 Information provided by USCIS to the Ombudsman (Mar. 4, 2010).
52 Information provided by USCIS to the Ombudsman (May 24, 2010).
53 Information provided by USCIS to the Ombudsman (Mar. 5, 2010).
54 Information provided by USCIS to the Ombudsman (July 20, 2009).

Enhanced Data Reporting Capabilities

In April 2009, USCIS launched the Standard Management Analysis Reporting Tool (SMART), which centralizes various data sources, enhancing USCIS statistical reporting capabilities.

In previous reporting periods, the Ombudsman has highlighted the importance of improving systems to provide USCIS with more accurate statistical reporting for internal tracking purposes such as determining how restructured fees can recover costs of processing immigration cases.[55] These improved data also better serve Congress and other stakeholders, who often request statistical information from USCIS. SMART operates as an internal database for the enterprise Performance Analysis System, which acts as the front-end system users will view.[56]

An updated version is currently in development for use at the National Benefits Center and the National Records Center.[57]

New USCIS System Seeks to Electronically Verify Business Operations

Technology that employer stakeholders are especially monitoring is the Validation Instrument for Business Enterprises (VIBE). Through use of public, third-party source information, USCIS plans for VIBE to streamline adjudication of employment-based petitions and combat fraud by providing adjudicators with the ability to verify the "financial viability and current level of business operations" of petitioning employers.[58]

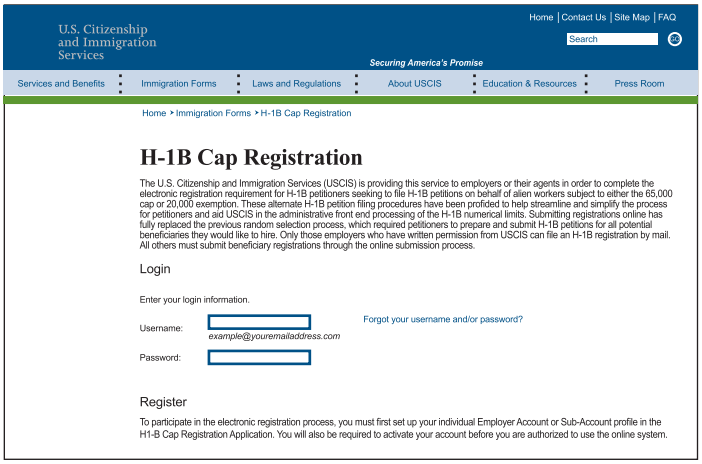
USCIS awarded the contract to develop VIBE to Dun and Bradstreet in September 2009 and, as of this writing, the system is undergoing testing.[59] USCIS scheduled deployment for full use in all service centers to occur this summer.[60]

VIBE should enable USCIS to focus on whether the individual meets the standards for the benefit sought rather than on whether the petitioner is a *bona fide* employer. While USCIS anticipates that the use of VIBE may result in a reduction of Requests for Evidence (RFEs) or more tailored RFEs due to adjudicators' reliance on this information, some stakeholders are awaiting more information on how USCIS will handle glitches such as employers that have more than one listing in the database or how employers can make corrections when USCIS relied on information that is outdated or otherwise inaccurate.

Online H-1B Pre-Registration for Petitioners

The H-1B Pre-Registration and Lottery system will enable petitioners to register online for an H-1B number in advance of the numerical cap that is set each fiscal year. Congress allots 65,000 H-1Bs for individuals with a Bachelor's degree and an additional 20,000 for those with a Master's degree or higher.[61] H-1B petitions may be submitted each fiscal year to USCIS beginning April 1, six months prior to the start of the next fiscal year.

Figure 11: H-1B Pre-Registration and Lottery System Snapshot



Source: Information provided by USCIS to the Ombudsman (Mar. 25, 2010) (USCIS has indicated that this snapshot is subject to change).

The current H-1B filing process has been historically problematic for both USCIS and its customers. Customers mail H-1B petitions to USCIS receipting locations, where personnel assign each petition a receipt notice and determine which petitions may be allotted a number under the

55 Ombudsman's Annual Reports 2009, p. 12; 2008, pp. 33-34.
56 Information provided by USCIS to the Ombudsman (Mar. 5, 2010).
57 Information provided by USCIS to the Ombudsman (May 17, 2010).
58 Information provided by USCIS to the Ombudsman (May 28, 2009).
59 Information provided by USCIS to the Ombudsman (Mar. 10, 2010).
60 *Id.*
61 INA §§ 214(g)(1)(A) and(g)(5)(C).

cap. During years in which H-1B visas are highly sought after, thousands of H-1B petitions may flood a receipting location, making it challenging to determine the order in which they are received.

In FY 2009, for example, USCIS received approximately 163,000 petitions in the first week of filing (April 1 – April 7) and, therefore, had to run a random selection process to allocate H-1B visa numbers.[62] Cases received during the first few days of filing were entered into a lottery, which determined if a petition would be assigned a number under the cap space. For those petitions that were allocated an H-1B number, USCIS sent receipt notices, at the earliest date of June 2, 2008, due to the time needed to receipt and process received cases.[63] All non-selected cases were returned to customers with their payment, and petitions found to be in duplicate (a trend employed by some customers to ensure a better chance of receiving an H-1B number) were returned without a refund.

USCIS awarded the contract to develop the H-1B Pre-Registration and Lottery in September 2009. Although the system has been developed, as of this writing it had not undergone testing.[64] USCIS attributes the delay to the rulemaking processes, and plans to deploy the H-1B Pre-Registration and Lottery system for full use by FY 2012.[65]

USCIS reports that this functionality will allow the agency to allocate resources to file receipting and adjudication, rather than to counting of petitions, and will benefit customers by notifying them immediately as to whether they are allotted an H-1B number.

Secure Mail Delayed; Expect Other Changes to the Look and Delivery of Immigration Documents

The Ombudsman has monitored document mailing trends and USCIS efforts to improve its mailing technologies in response to customer reports of delayed receipts or lost documents.[66] Under the current system, USCIS mails documents via U.S. Postal Service (USPS) first class mail, which does not enable USCIS or customers to track the delivery of documents. Many individuals approved for immigration benefits receive identifying cards, permits, and/or documents from the USCIS Office of Intake and Document Production, which is responsible for both generating documents and mailing them; it produced 3,217,589 such documents in FY 2009.[67]

Figure 12: Top Three Secure Documents Produced by USCIS

Secure Document	Number Produced in FY 2009
Permanent Resident Card (Green Card)	1,880,767
Employment Authorization Document	1,237,068
Travel Documents: Form I-327 (Permit to Reenter the United States) and Form I-571 (Refugee Travel Document)	99,754

Source: Information provided by USCIS to the Ombudsman (May 5, 2010).

Also in FY 2009, USCIS reported that one of the most common service requests placed with the National Customer Service Center toll-free telephone line concerned non-delivery of USCIS documents.

The Secure Mail Initiative (SMI) has been USCIS' most aggressive plan to enhance the delivery of documents since 2007; yet, it has been limited in its implementation.[68]

62 USCIS Website, "USCIS Runs Random Selection Process For H-1B Petitions" (Apr. 7, 2008); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=183f301458e49110V gnVCM1000004718190aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD (accessed June 18, 2010).

63 *Id.*

64 Information provided by USCIS to the Ombudsman (Mar. 18, 2010).

65 *Id.*

66 *See* Ombudsman's Annual Reports 2009, p. 12; 2008, p. 60.

67 Information provided by USCIS to the Ombudsman (May 5, 2010).

68 Information provided by USCIS to the Ombudsman (Mar. 11, 2010).

Figure 13: Delays in USCIS' Secure Mail Initiative

Initiative	Current Status	Timeline
Initial shipment of USCIS documents via USPS priority mail with delivery confirmation.	Limited to Forms I-327 (Permit to Reenter the United States) and Forms I-571 (Refugee Travel Document) issued by the Nebraska Service Center.	In place as of July 2008.
Shipment of USCIS documents returned as a "Post Office Non-deliverable" via USPS priority mail with delivery confirmation.	Available for Forms I-327 (Permit to Reenter the United States) and Forms I-571 (Refugee Travel Document) issued by the Nebraska Service Center.	In place as of July 2008.
	Available for Permanent Resident Cards (green cards) and Employment Authorization Documents issued by all service centers and the National Benefits Center.	In place as of October 2009.
National Customer Service Center (NCSC) Tier 2 Immigration Services Officers (ISOs) may provide customers with delivery confirmation numbers.	In full implementation.	In place as of May 2009.
SMI Phase 1: Assignment of delivery confirmation numbers during document production and use of automated USPS priority mail with delivery confirmation.	This program is developed, but due to financial constraints, is tentatively delayed.	No scheduled deployment date.
SMI Phase 2: Shipment of USCIS documents via USPS with delivery confirmation. Access to delivery information via My Case Status or the NCSC.	This program is not yet developed.	No scheduled deployment date.

Sources: Information provided by USCIS to the Ombudsman (Apr. 9 and 12, 2010).

Last year, the Ombudsman also reported on USCIS plans to change the look and delivery of many immigration documents.[69] In May 2010, USCIS announced a redesigned green card. As of this writing, this announcement represents the only one of these initiatives proceeding on schedule. Most of the redesigns have been delayed due to budgetary concerns as a result of low application receipts. On the document production side, the Office of Intake and Document Production plan to deploy the following initiatives in 2010:[70]

- Combo-cards that will serve as both proof of employment authorization and advance parole (originally scheduled for Fall 2009)
- Card Personalization System Technology Refreshment, which links individuals to their secure documents through a combination of unique identifiers, increasing accuracy, and security in mailing

A new production facility in San Antonio, Texas,[71] and the ability to obtain a USPS tracking number for a USCIS document through the My Case Status tool, both outlined in the 2009 Annual Report, have been delayed indefinitely.[72]

69 Ombudsman's Annual Report 2009, p. 13.

70 Information provided by USCIS to the Ombudsman (Mar. 11, 2010).

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

72 Information provided by USCIS to the Ombudsman (Mar. 11, 2010).

C. Employment and Family Green Card Processing – Newfound Transparency and Concerns

Businesses and families in the United States and throughout the world rely on a variety of immigration services to obtain legal status. In previous annual reports, the Ombudsman discussed the many complexities impacting the employment-based immigrant visa process.[73] This year's discussion continues to track, report, and analyze events and information bearing on employment-based immigrant processing, but is expanded also to include reporting and analysis of the family-based immigrant process.

1. Background

Lawful permanent residence (green card status) may be obtained through both employment and family sponsored petitions. The Immigration and Nationality Act (INA) establishes a structure based on formulas and numerical limits for regulating immigration to the United States.[74] At the heart of this structure is the allocation of visas among defined preference categories. U.S. employers principally file Form I-140 (Immigrant Petition for Alien Worker) to request USCIS to classify a foreign born individual as an immigrant worker. Family-based immigration is available for qualifying relatives of U.S. citizens and lawful permanent residents, and is initiated by sponsors' filing of a Form I-130 (Petition for Alien Relative).

Filing a petition (or submitting an application for an Alien Employment Certification with the U.S. Department of Labor (DOL) in some cases) establishes a "priority date,"[75] which determines a beneficiary's "place in line" for visa allocation relative to other beneficiaries in the same category and of the same nationality. Although USCIS adjudicates these petitions, the U.S. Department of State (DOS) distributes the visas through overseas consular processing, or in conjunction with USCIS' approval of an application for a green card in the United States.

DOS distributes visas by estimating the demand for various immigrant visas and publishing visa availability information in its monthly "Visa Bulletin."[76] If the number of visas available in a given category exceeds demand, the Visa Bulletin will indicate that category as "current." USCIS can process immediately a green card application filed for a current category. When the demand for visas exceeds what is available in a given preference category, the Visa Bulletin indicates a "cut-off date." Visa issuance is restricted to beneficiaries with priority dates earlier than the established cut-off date for the preference category.

The Visa Bulletin provides one cut-off date for most countries, a so-called world-wide cut-off date, and lists separate cut-off dates for nationals of specific countries, including mainland China, India, Mexico, and the Philippines due to an oversubscription in demand.[77] Applicants with priority dates on or after the published date must wait to obtain a visa until DOS advances the cut-off date. As noted previously, only persons located overseas actually receive a visa, which they present to U.S. Customs and Border Protection to gain U.S. admission; adjustment applicants simply receive their green card, but the structure regulating green card issuance remains the same. Cut-off dates occasionally "retrogress" (i.e., move backwards to an earlier date), which occurs when the total number of immigrant visa requests received exceeds DOS estimates.

Retrogression can have serious consequences for applicants and their families who expected to obtain green cards and suddenly cannot. For those beneficiaries awaiting visas overseas, immigration anticipated within a certain timeframe may be delayed for months, or even years. Plans

73 Ombudsman's Annual Reports 2009, pp. 14-16; 2008, pp. 18-20; 2007, pp. 32-37; 2006, pp. 13-16; and 2005, pp. 9-11.

74 *See* INA §§ 201, 203.

75 In family-based cases, the priority date is established by the date of a proper filing of Form I-130 (Petition for Alien Relative). In employment-based cases, a priority date is established by the filing of a Form I-140 (Petition for Immigrant Worker) in EB-1 and EB-2 National Interest Waiver cases, by the filing of DOL Form ETA-750 (Application for Alien Employment Certification) in all other EB-2 and EB-3 cases, by the filing of Form I-360 (Petition for Amerasian Widow(er), or Special Immigrant) in EB-4 cases, and by the filing of a Form I-526 (Immigrant Petition by Alien Entrepreneur) in EB-5 cases.

76 *See* DOS Visa Bulletins at http://travel.state.gov/visa/bulletin/bulletin_1360.html (accessed May 20, 2010).

77 *Id.* The establishment of separate cut-off dates from the "rest of the world" is mandated by INA Section 202(e); http://travel.state.gov/visa/bulletin/bulletin_1360.html (accessed May 19, 2010).

that depend on acquiring green card status, such as to study, advance in a job, and reunite with family members are postponed. Similarly, in the employment arena, retrogression can have significant business consequences for employers that depend on predictability in staffing.

Transparent and predictable movement of cut-off dates is critical to ensuring the orderly issuance of immigrant visas.

2. Overview of Employment-Based (EB) Categories

Each employment-based preference category has a limited number of available visas based on annual statutory formulas.[78] There are five such categories:

- EB-1 "Priority Workers" includes persons of extraordinary ability, or who are either an outstanding professor or researcher, or a multinational executive or manager.[79]
- EB-2 "Members of a Profession Holding Advanced Degrees or Persons of Exceptional Ability"[80] includes persons who have an advanced degree or a Bachelor's degree plus five years of progressive work experience in the field, or can demonstrate exceptional ability in the arts, sciences, or business.
- EB-3 "Skilled Workers, Professionals, and Other Workers"[81] broadly includes persons considered professionals as evidenced by their holding at least a Bachelor's degree or its equivalent, skilled workers who can demonstrate that they possess the minimum entry level requirement of two years or more of experience and training in order to perform the sponsored job, and unskilled workers.
- EB-4 "Certain Special Immigrants"[82] includes religious ministers and workers, and a number of other uniquely situated individuals.
- EB-5 "Alien Entrepreneurs"[83] includes persons who make a minimum investment of either $500,000 or $1,000,000 in a new commercial enterprise in the United States that creates at least ten full-time jobs for U.S. workers.

With limited exceptions, U.S. employers seeking to sponsor foreign workers in the EB-2 and EB-3 categories must first establish that they unsuccessfully attempted to fill the offered position by recruiting qualified U.S. workers. DOL oversees this initial market test to ensure that a *bona fide* job vacancy exists and that the hiring of a foreign worker to fill the vacancy will not negatively impact U.S. workers. This process is referred to as obtaining a foreign labor certification.[84] A foreign labor certification is not a condition precedent to the filing of EB-1, EB-4 or, EB-5 petitions.

78 The INA establishes an annual ceiling of 140,000 employment-based immigrant visas 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. *See* INA §§ 201, 202.

79 EB-1 receives 28.6 percent of the worldwide employment-based preference visas, plus any numbers not required for fourth and fifth employment-based preferences. *See* INA § 203(b)(1).

80 EB-2 receives 28.6 percent of the worldwide employment-based immigrant visas, plus any numbers not required by the first employment-based preference. *See* INA § 203(b)(2).

81 EB-3 receives 28.6 percent of the worldwide employment-based immigrant visas, plus any numbers not required by the first and second employment-based preference categories, and not more than 10,000 for "Other Workers." *See* INA § 203(b)(3).

82 EB-4 receives 7.1 percent of the worldwide employment-based immigrant visas per year, and includes Religious Ministers and Workers, Broadcasters, Iraqi/Afghani Translators, Iraqis Who Have Assisted the United States, International Organization Employees, Physicians, Armed Forces Members, Panama Canal Zone Employees, Retired NATO-6 Employees, and Spouses and Children of Deceased NATO-6 Employees. *See* INA § 203(b)(4).

83 EB-5 receives 7.1 percent of the worldwide employment-based immigrant visas per year. *See* INA § 203(b)(5).

84 *See* DOL website, "Foreign Labor," www.dol.gov/dol/topic/hiring/foreign.htm and "Permanent Labor Certification;" www.foreignlaborcert.doleta.gov/perm.cfm (accessed May 21, 2010).

3. Overview of Family-Based (F) Categories

Family-sponsored immigrant visas are distributed among immediate relatives of U.S. citizens who are not subject to annual numerical caps, and four categories of statutorily defined, family-based "preferences."[85] Immediate relatives of U.S. citizens include the spouse, minor children, and parents of a citizen who is 21 years old and over.

Within the four numerically limited categories,[86] the preferences are as follows:

- F1 is a set aside for unmarried sons and daughters of U.S. citizens.[87]
- F2 is divided into two groups for relatives of lawful permanent residents. F2A includes the spouse and children of lawful permanent residents, and F2B designates visas for unmarried adult sons and daughters of lawful permanent residents.[88]
- F3 provides visas for a U.S. citizen's married sons and daughters.[89]
- F4 consists of an adult (21 years old and older) U.S. citizen's brothers and sisters.[90]

U.S. citizen petitioners filing for immediate relatives who are present in the United States follow a different procedure than petitioners filing for family members who are not immediate relatives. Immediate relatives may file Form I-130 (Petition for Alien Relative) concurrently with their beneficiary's Form I-485 (Application to Register Permanent Residence or Adjust Status), the green card application, in a one-step process. This one-step process is available to immediate relatives because they are not restricted by per year or per country visa limitations, and administrative processing for an immigrant visa may begin immediately upon approval of the I-130 petition.

In contrast, "preference" cases, as listed above, follow a two-step process when there is an applicable cut-off date. Specifically, petitioners first file a stand-alone I-130 petition with USCIS. The second step involves one of two pathways, depending on the location of the beneficiary: if the beneficiary is overseas when the cut-off date is reached, then DOS is the processing agency and will advise the beneficiary that final processing for an immigrant visa can begin; alternatively, if the beneficiary is in the United States when the cut-off date is reached (as indicated in the Visa Bulletin), the beneficiary submits the green card application to USCIS. USCIS does not issue a notification to a beneficiary in the United States when a petition priority date is reached.

4. Employment-Based Green Card Discussion

For the 2010 reporting period, there are several key points related to employment-based green cards:

- Declining immigration receipts in 2009 allowed USCIS to pre-adjudicate[91] thousands of pending green card applications filed during the 2007 surge. USCIS now has visibility over most of its employment-based green card inventory. However, full visibility remains lacking as USCIS does not have specific data for either employment-based green card cases that it sends to field offices for interview, or on recently-filed applications.[92] In addition, it is not clear that USCIS and DOS communicate regularly to remove duplicate files from

85 INA § 203(a).

86 The number of available visas can shift between categories based on predetermined flows if there is underutilization within one or more categories. This concept is generally referred to as spillover, and provisions that call for and regulate spillovers are found in the statute pertaining to both the employment and the family preference categories. For example, if fewer petitions for a family fourth preference are received than expected, those fourth preference available visas can "fall" up to the first preference category if unused in a given month. *See* INA §§ 203(a), 203(b).

87 F1 receives no more than 23,400 visas, plus any unused visas from the F4 category. *See* INA § 203(a)(1).

88 F2A receives not less than 77 percent of the 225,000 allocated visas. F2B receives no more than 114,200, plus any numbers (if any) not required for F1 category. *See* INA § 203(a)(2).

89 F3 receives no more than 23,400, plus any visas not required for categories F1 and F2. *See* INA § 203(a)(3).

90 F4 receives no more than 65,000 visas, plus any visas not required for the F1, F2, and F3 categories. *See* INA § 203(a)(4).

91 USCIS uses the term "pre-adjudication" to describe having worked a green card case to the point just short of approval: completed all required background checks and resolved all eligibility issues, except for visa availability.

92 *See generally* USCIS website, "Questions & Answers: Pending Employment-Based Form I-485 Inventory;" http://www.uscis.gov/portal/ site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5e170e6bcb7e3210VgnVCM100000082ca60aRCRD&vgnextchannel=ae853ad15c673210VgnVCM100000082ca60aRCRD (accessed May 24, 2010).

Figure 14: FY 2009 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	
Percent		Total	Percent	Total	Percent	Total	Percent
28.6	EB-1 Priority Workers	40,924					
	Principals	16,806	41.1	16,264	96.8	542	3.2
	Derivatives	24,118	58.9	23,156	96.0	962	4.0
28.6	EB-2 Advanced Degree Professional/ Exceptional Workers	45,552					
	Principals	22,098	48.5	21,660	98.0	438	2.0
	Derivatives	23,454	51.5	22,676	96.7	778	3.3
28.6	EB-3 Skilled, Professional and Other Workers	40,390*					
	Principals	18,359	45.5	16,797	91.5	1,562	8.5
	Derivatives	22,031	54.5	16,724	75.9	5,307	24.1
7.1	EB-4 Special Immigrants including Religious Workers	13,450*					
	Principals	6,949	51.7	4,896	70.5	2,053	29.5
	Derivatives	6,501	48.3	3,960	60.9	2,541	39.1
7.1	EB-5 Employment Creation Investors	3,663*					
	Principals	1,290	35.2	395	30.6	895	69.4
	Derivatives	2,373	64.8	586	24.7	1,787	75.3

*Source: "2009 Yearbook of Immigration Statistics," DHS Office of Immigration Statistics, at Table 7. *Sums do not include unreported data.*

pending status if individuals obtained a green card in the United States, or acquired green card status through other avenues or categories.

- USCIS has not yet implemented an upgrade to its existing case management system (CLAIMS 3) to capture additional information now collected on Form I-140 (Immigrant Petition for Alien Worker) about the proposed immigrant beneficiary when the petition is receipted – the specific preference category sought and the claimed priority date and country of chargeability.[93]
- Absent a legislative solution providing additional employment-based immigrant visa numbers, USCIS will be unable to complete final adjudication of thousands of green card applications for many years, and for some individuals, decades.

a. 2009 Employment Immigrant Visa Number Usage

As shown in Figure 14, in FY 2009, USCIS used approximately 88 percent of all employment-based immigrant visa numbers, and DOS used the remaining 12 percent via consular processing.

By comparison, in FY 2009, DOS used 53 percent of the worldwide total of family-based immigrant visas, and USCIS used 47 percent.[94]

93 Ombudsman's Annual Reports 2009, pp. 15-16; 2008, pp. 18-20; 2007, pp. 32-37; 2006, pp. 13-16; and 2005, pp. 9-11.

94 DHS Office of Immigration Statistics, "2009 Yearbook of Immigration Statistics," at Table 7; www.dhs.gov/files/statistics/publications/LPR09.shtm (accessed May 20, 2010).

b. Temporary Dip in New Filings Allows USCIS to Eliminate Most Employment-Based Adjudication Delays

As discussed in the Declining Receipts, Declining Revenues section, immigration filings declined agencywide in FY 2008 and FY 2009 after the 2007 filing surge. This decline in filings has given USCIS an opportunity to focus on eliminating processing delays, including I-140s and related employment-based green card applications.

Figure 15 depicts USCIS reduction of its unadjudicated I-140 inventory during the 24 months concluding with the end of calendar year 2009. The agency's I-140 inventory stood at 144,331 cases in January 2008, and was reduced to 12,650 cases as of December 31, 2009.

In addition to working down its I-140 inventory, USCIS also focused attention on pre-adjudicating thousands of employment-based green card applications. In doing so, USCIS was able to determine the individual characteristics of these green card cases – the exact employment preference class sought, the beneficiary's country of chargeability, and priority date.

c. New Window into Employment-Based Green Cards

In August 2009, USCIS published an employment-based "I-485 Inventory Report" on its website that for the first time provided the public specific details about the agency's pending green card inventory. Separate employment-based I-485 Inventory Report breakouts for oversubscribed countries (mainland China, India, Mexico, and the Philippines) were also generated and posted. Thereafter, USCIS issued

Figure 15: Form I-140 Pending Inventory Data (Jan. 2008 – Dec. 2009)

Source: www.uscis.gov.

updated I-485 Inventory Reports in December 2009 and March 2010, and informed the Ombudsman that it intends to issue such reports quarterly.[95]

Figure 16 depicts USCIS' worldwide employment-based I-485 case inventory as of December 11, 2009.[96] These reports show the number of green card applicants in

Figure 16: All Employment-Based I-485 Inventory Pending at Service Centers (as of Dec. 11, 2009)

All Employment-Based I-485 Inventory pending at the Service Centers as of 12/11/2009

1st Preference

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
January	0	0	0	0	1	0	12	0	1	2	21	40	98	**175**
February	0	0	0	0	0	0	4	5	3	8	22	41	113	**196**
March	0	0	0	0	2	0	0	2	12	18	25	21	198	**278**
April	0	0	0	0	8	1	0	1	6	7	46	48	222	**339**
May	0	0	0	0	0	0	11	0	0	17	21	25	200	**274**
June	0	2	2	0	5	0	2	1	6	20	35	67	223	**363**
July	0	0	0	0	0	1	4	1	5	9	122	42	91	**275**
August	0	0	0	0	3	6	4	0	4	24	60	39	66	**206**
September	0	0	0	0	2	30	0	9	16	41	20	59	78	**255**
October	0	0	0	1	3	2	6	0	7	26	40	90	60	**235**
November	0	0	0	0	4	0	5	8	14	29	20	61	23	**164**
December	0	0	0	0	1	0	0	1	3	18	81	104	0	**208**
Total	**0**	**2**	**2**	**1**	**29**	**40**	**48**	**28**	**77**	**219**	**513**	**637**	**1,372**	**2,968**

2nd Preference

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
January	1	0	0	0	0	8	37	30	309	1,693	2,437	39	184	**4,738**
February	0	0	0	0	1	7	10	35	793	1,783	2,163	66	140	**4,998**
March	0	2	0	1	2	5	18	68	3,494	2,383	2,298	68	169	**8,508**
April	0	0	0	0	25	11	38	53	116	1,697	2,096	105	37	**4,178**
May	0	0	0	1	3	5	27	62	240	2,039	1,690	114	38	**4,219**
June	0	0	2	0	9	11	30	51	385	2,529	1,893	203	44	**5,157**
July	0	0	3	0	11	5	14	64	728	2,316	3,631	328	51	**7,151**
August	0	0	1	0	4	9	31	62	1,125	2,556	375	282	41	**4,486**
September	0	0	0	5	3	36	29	70	2,203	2,731	62	404	21	**5,564**
October	0	0	0	2	15	17	28	54	1,339	2,700	120	454	48	**4,777**
November	1	0	0	0	6	9	11	79	1,523	2,604	37	363	32	**4,665**
December	0	0	0	2	6	15	34	134	1,767	2,862	44	420	0	**5,284**
Total	**2**	**2**	**6**	**11**	**85**	**138**	**307**	**762**	**14,022**	**27,893**	**16,846**	**2,846**	**805**	**63,725**

3rd Preference

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
January	3	72	7	8	23	486	1,196	1,556	1,651	2,925	2,656	0	0	**10,583**
February	2	3	1	4	39	368	1,206	1,521	1,521	2,976	2,385	0	0	**10,026**
March	4	2	11	3	153	554	1,517	2,071	6,664	3,881	2,402	0	0	**17,262**
April	4	2	2	18	2,631	778	1,729	1,989	78	2,881	2,291	0	0	**12,403**
May	6	0	0	13	94	736	1,668	1,605	282	3,219	1,987	0	0	**9,610**
June	11	2	3	13	66	794	1,572	1,916	833	3,141	1,788	0	0	**10,139**
July	12	1	6	11	68	852	1,595	1,824	1,529	3,086	3,672	0	0	**12,656**
August	4	0	1	6	98	1,015	1,484	1,902	2,406	3,316	719	0	0	**10,951**
September	2	1	7	3	86	1,039	1,607	1,954	2,616	2,984	0	0	0	**10,299**
October	1	4	4	3	155	1,162	2,052	1,997	2,939	3,565	0	0	0	**11,882**
November	15	2	15	9	364	1,242	1,778	2,180	3,146	2,998	0	0	0	**11,749**
December	10	1	0	11	444	1,405	2,088	3,071	3,665	2,764	0	0	0	**13,459**
Total	**74**	**90**	**57**	**102**	**4,221**	**10,431**	**19,492**	**23,586**	**27,330**	**37,736**	**17,900**	**0**	**0**	**141,019**

4th Preference

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
January	0	5	0	0	0	2	0	2	1	2	3	4	29	**48**
February	0	0	0	0	1	0	0	4	2	1	9	4	133	**154**
March	0	2	3	0	0	0	1	0	4	15	4	22	130	**181**
[illegible]	0	0	0	0	2	4	0	1	0	2	6	16	119	**150**
					1	0	0	1	1	11	13	12	101	**142**
							1			2	8	16	80	**114**
							9			2	7	10	18	**58**
										4				**76**

Source: www.uscis.gov.

95 USCIS posted its third employment-based "I-485 Inventory Report" dated March 8, 2010, www.uscis.gov/USCIS/New%20Structure/3rd%20Level%20(Left%20Nav%20Children)/Green%20Card%20-%203rd%20Level/Pending%20Form%20I485%20Reports.pdf (accessed June 17, 2010).

96 This report excludes employment-based I-485s that are in field offices and also excludes cases which are pending consular processing at overseas posts. *See* USCIS website, "Questions & Answers: Pending Employment-Based Form I-485 Inventory;" http://www.uscis.gov/portal/siteuscis/menuitem. 5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5e170e6bcb 7e3210VgnVCM100000082ca60aRCRD&vgnextchannel=24b0a6c5150 83210VgnVCM100000082ca60aRCRD (accessed May 24, 2010).

the United States who are in queue by preference category and priority date (month and year) back to 1997. Before discussing how these reports may be used, and what they indicate, it is important to further describe the exact nature of the cases captured and excluded.

Specifically, the I-485 Inventory Report includes employment-based green card cases that USCIS deemed statutorily qualified, and therefore could pre-adjudicate at its Nebraska and Texas Service Centers. These cases are described as pre-adjudicated because USCIS cannot issue green cards to this group of cases due to cut-off date retrogression. Individuals in this group must await the advancement of the Visa Bulletin cut-off dates to reach their respective priority dates before immigrant visas are available and green cards may be issued. The report also includes cases at the Nebraska and Texas Service Centers that have been reviewed, but cannot be approved, due to other reasons, including for example, those awaiting finalization of pending background checks.

The report does not capture employment-based green card cases in categories where the Visa Bulletin is current (or where the cut-off dates have been reached) but are within current USCIS processing times (recently filed cases). Nor does the report capture approximately 23,000 cases that have been sent to USCIS field offices for interview.[97] Lastly, the USCIS I-485 Inventory Report does not capture employment-based immigration petition beneficiaries queued up for overseas consular processing with DOS.[98]

Notwithstanding the above caveats, employers and beneficiaries may find the information in these reports useful. By folding in information that DOS otherwise provides on the number of applicants queued-up to obtain employment-based immigrant visas overseas,[99] one can roughly gauge the number of individuals ahead in queue. This information allows individuals to project potential wait times that may occur. However, with this increased transparency, some intending immigrants are now grappling with the realization that their expected timelines for completing the immigration process could be much longer than anticipated.

Many people who face years of waiting complain about limited job mobility[100] and are distressed that they will continue to be treated as temporary residents in many important aspects of their daily lives, including limited-term driving licenses, inability to access in-state tuition treatment for their foreign born children, restrictions on their ability to travel overseas, etc. In short, it could be years before they will enjoy the many benefits and privileges of permanent residence, including the eventual opportunity to become naturalized U.S. citizens.

Finally, considering the data contained in the December 11, 2009 I-485 Inventory Report, the Ombudsman notes that out of 141,019 EB-3 green card cases queued-up worldwide, approximately 43 percent are chargeable to India, and 64 percent of the cases with priority dates before 2004 similarly are chargeable to India. Without attempting to predict future EB-3 wait times, based on the high percentage of applicants from India in queue, the data suggest that many thousands of green card applicants of

97 *See* http://www.uscis.gov/portal/site/uscismenuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5e170e6bcb7e3210VgnVCM100000082ca60aRCRD&vgnextchannel=24b0a6c515083210VgnVCM100000082ca60aRCRD (accessed Mar. 31, 2010). Information provided by USCIS to the Ombudsman (June 1, 2010).

98 *See* http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5e170e6bcb7e3210VgnVCM100000082ca60aRCRD& vgnextchannel=24b0a6c515083210VgnVCM100000082ca60aRCRD (accessed Mar. 31, 2010).

99 DOS Report, "Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2009;" http://www.travel.state.gov/pdf/WaitingListItem.pdf (accessed May 20, 2010).

100 The American Competitiveness in the Twenty-First Century Act of 2000 (AC21), Pub. L. No. 106-313 (2000), and INA § 204(j) allow the beneficiary of an approvable I-140 with a green card application pending more than 180 days to transfer to a different employer (provided the new job is in the same or a similar occupational classification as the job for which the petition was originally filed). *See* USCIS Memorandum, "Continuing Validity of Form I-140 Petition in accordance with Section 106(c) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21)," (Aug. 4, 2003), http://www.uscis.gov/files/pressrelease/I140_AC21_8403.pdf. This option, however, may offer little comfort or assistance to beneficiaries who suffer job losses in today's economy. Individuals unable to prove to USCIS that they found suitable AC21 compliant jobs could have their green card cases terminated. Such applicants would be notified by USCIS that their continued presence in the United States is no longer authorized and that by remaining, they would begin to accrue "unlawful presence." Such a sequence of events could put individuals on the pathway to removal from the United States, and could potentially bar them from returning for three years or longer. INA § 212(a)(9)(C)(i)(I) & (II). Such individuals may have worked lawfully in the United States for years as temporary nonimmigrant workers before filing for green cards. Some may own homes and/or have children in school, and some of their children may be U.S. citizens.

Indian nationality will be waiting years, if not decades, for the approval of their green card cases.

d. Despite Increased USCIS Visibility Over Its Current Inventory, Systemic Case Management Challenges Remain

During the reporting period, USCIS gained much needed visibility over its existing inventory of employment-based green card applications, a recurring concern expressed by the Ombudsman in previous annual reports.[101] However, an exception to this improved visibility is still employment-based green card cases that were sent to field offices for interview. Based on a recent USCIS report, the Ombudsman understands that approximately 23,000 such cases currently are awaiting interview and adjudication in USCIS field offices.[102] The Ombudsman continues to emphasize to USCIS the importance of identifying the requested preference category, priority date, and country of chargeability of these cases in connection with the larger goal of managing the orderly and predictable movement of the cut-off dates published in the Visa Bulletin.

Additionally, despite the gains made by USCIS in achieving improved visibility over its employment-based green card inventory, data capture deficiencies related to the Form I-140 process continue. USCIS recently made revisions to Form I-140 so that it now requests key information, including the claimed priority date, preference category, and the country of chargeability of the proposed beneficiary, theoretically enabling USCIS to electronically sort these filings before they are adjudicated,[103] but the corresponding information technology solution required to capture and manipulate this new information has not been implemented. If and when receipts increase in the future, USCIS could once again accumulate an inventory of unsorted filings that could impair its ability to actively manage the employment-based green card line.

e. The Market Test Paradox

Congress designed the employment-based immigration system so that U.S. employers could, in limited circumstances, supplement but not supplant the U.S. labor pool by reaching overseas to fill specific talent shortfalls. In doing so, Congress required that employers, seeking permission to hire EB-2 and EB-3 preference workers, first satisfy a local labor market test administered by DOL.

Through a series of re-engineering efforts over the past decade, DOL has endeavored to reduce foreign labor certification processing times. As of this writing, DOL processing times for its online foreign labor certification program[104] run approximately nine months in unaudited cases.[105] USCIS also has reduced its processing times, and reports average Form I-140 processing times of approximately four months or less.[106]

Absent legislation to address the visa availability bottleneck for India EB-3s, for example, decades may pass between the dates when petitioning employers tested the U.S. labor market and when visa numbers become available. With an ever-changing economy, the market test performed many years earlier may bear little, if any, relationship to what the U.S. labor pool looks like when USCIS finally confers green card status on these individuals.

101 *See* Ombudsman's Annual Reports 2009, pp. 14-16; 2008, pp. 18-20; 2007, pp. 32-37; 2006, pp. 13-16; and 2005, pp. 9-11.

102 Information provided by USCIS to the Ombudsman (May 12, 2010).

103 The new edition of Form I-140 was effective as of January 6, 2010.

104 PERM (Program Electronic Review Management) is the name of the existing DOL program employers use to seek permanent foreign labor certifications as the first step of the immigration process for most EB-2 and EB-3 workers. DOL moved the application process online through its Permanent Online System website in 2005. *See* DOL website, "Permanent Online System. User Guide Version 1.00," p. 4 (Apr. 26, 2005).

105 In the supplementary information to the final PERM rule, published December 27, 2004 at 69 Fed. Reg. 77326, 77328, DOL said: "If [a PERM] application has not been selected for audit … [we] will have a computer-generated decision within 45 to 60 days of the date the application was initially filed." However, on its website, DOL reports that as of April 30, 2010, it is processing cases not flagged for audit that were filed in July 2009. *See* DOL website, Perm Processing Times, http://icert.doleta.gov/index.cfm (accessed May 22, 2010).

106 According to processing times posted by USCIS on its website, https://egov.uscis.gov/cris/processTimesDisplay.do (accessed May 22, 2010).

5. Family-Based Green Cards

Beginning in spring 2009, USCIS started transferring family-based preference cases (Forms I-130) from service centers to local field offices to take advantage of adjudicatory capacity. USCIS forecasts this shift of work to the field offices will result in a reduction in the current pending family-based petition inventory from approximately 690,000 to 180,000 by the end of calendar year 2010.[107]

The Ombudsman suggests that petitioners take immediate steps to update their current address with USCIS to ensure that they receive timely correspondence – including Requests for Evidence (RFEs), as well as approval and denial notices – related to the accelerated adjudication of their cases.

Although the waiting list for family preference categories indicates a large pool of potential green card applicants, actual demand has been low for approximately the past 15 months. The Visa Bulletin cut-off dates have moved forward quickly in an effort to generate green card filings by the beneficiaries of approved family petitions. The F2 category (for certain eligible relatives of lawful permanent residents) has shown the greatest movement. Unless eligible applicants file for their green cards, a significant number of family-based visas may go unused in FY 2010.

a. Background

The highest demand for visas comes from four countries: mainland China, India, Mexico, and the Philippines; the Visa Bulletin posts individual processing dates for each of these countries. Mexico supplies the highest demand for family-based immigration.[108] *See* Figure 17.

Each preference category is subject to the per-country limit, however the INA grants an additional provision in connection with the F2A category (spouse and minor children of lawful permanent residents).[109] Unlike the strict per-country caps that apply in all other preference cases, this unique statutory provision allows the majority of F2A visas to be distributed without regard to country of origin.

Despite the leeway granted F2As, most petitioners in the family preference categories wait years for a visa to become available for their beneficiary. For example, a U.S. citizen filing a petition in August 1992 for an unmarried son or daughter (F1) in Mexico could not be processed for an immigrant visa until February 2010, nearly 18 years later. Generally it takes another year or more to complete consular processing, including security checks, medical examination, and interviews. In total, the immigration process spanned

Figure 17: U.S. Department of State Family Sponsored Waiting List (as of Nov. 1, 2009)

Preference Category	FY 2010 Estimates of Visas Available	Worldwide Beneficiaries Waiting for A Visa	Beneficiaries Waiting for A Visa (Nationals of Mexico)	Nationals of Mexico (% of Total)	Beneficiaries Waiting for A Visa (Nationals of the Philippines)	Nationals of the Philippines (% of Total)
F1	23,400	245,516	68,628	28%	35,789	15%
F2A	88,000	324,864	173,631	53%	12,117	4%
F2B	26,000	517,898	222,006	43%	55,365	11%
F3	23,400	553,280	90,897	16%	136,111	25%
F4	65,000	1,727,897	618,871	36%	195,892	11%
Totals		**3,369,455**	**1,174,033**		**435,274**	

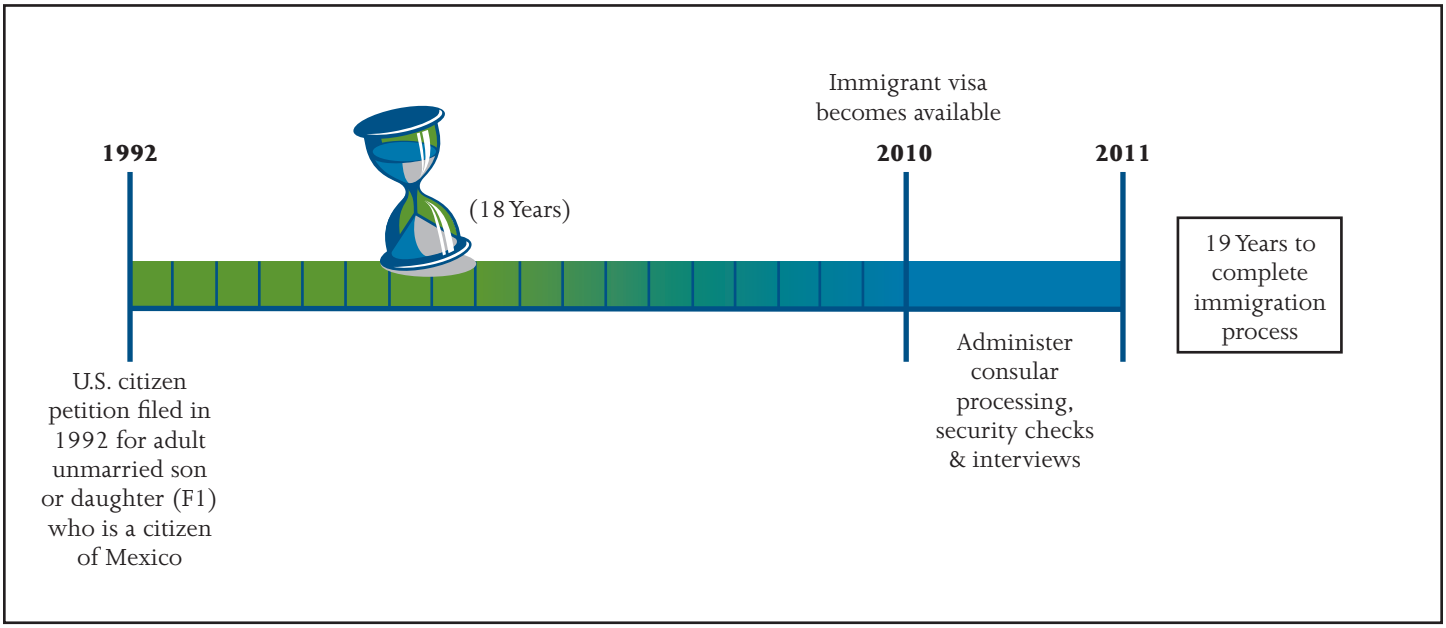
Note: The U.S. Department of State data in the Source material and reflected above do not include applications pending at USCIS offices.
Source: U.S. Department of State Report, "Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2009."

107 Information provided by USCIS to the Ombudsman (Feb. 26, 2010).

108 Information provided by USCIS to the Ombudsman (Nov. 1, 2009).

109 INA § 202(a)(4).

Figure 18: Sample Family Visa Timeline



19 years in this scenario as shown in Figure 18.

Another example represents a common situation: a lawful permanent resident petitioned at the end of June 1998 for an unmarried son or daughter (F2B) who is a citizen of the Philippines. That family must wait 12 years for the priority date to become current. The waiting period is often so long that the lawful permanent resident petitioner may have become a U.S. citizen. In this example, the petitioner's naturalization would convert the beneficiary's status to F1, the same category as in the first example, thereby reducing the waiting period by approximately four years.

The long wait between petition filing and visa availability may influence critical life choices by the beneficiary. Marriage, in particular, can affect a beneficiary's status. Unlike the situation for a U.S. citizen's beneficiary, who converts from the F1 to F3 preference category upon marrying while waiting for an available visa,[110] there is no category available for the married son or daughter of a green card holder. The marriage of the son or daughter of a lawful permanent resident (F2B) voids the pending petition, and the priority date is lost. Consequently, many such beneficiaries find they must choose between marriage and immigrating to the United States.

110 8 C.F.R. § 204.2(i).

b. Low Demand for Family-Based Visas

Although the 2009 waiting list provided by DOS indicates that a total of 3,369,455 applicants are awaiting a visa, actual demand for family-based green cards has fallen. *See* Figure 17. In essence, millions of people have sought these valued visas by gaining a spot on the waitlist, but when their priority date becomes current they are not taking the next required steps in the process. The factors for this inaction are not clear, but likely are varied. Some applicants may have forgone their chance at lawful permanent residence due to changes in health, employment, or family situation. Additional factors may include economic concerns or the inability to obtain a green card from within the United States due to status issues, while departure from the United States to consular process may trigger the unlawful presence bars, under INA § 212.

Demand for family-based visas has been "very low" in the past 15 months, especially in the F2 category.[111] The DOS has been moving the cut-off dates forward rapidly to generate demand for family-based immigrant visas. If, despite these efforts, insufficient demand remains, family-based visas could go unused; pursuant to the statutory scheme, unused visas could spill across to the employment side. Last

111 *See* DOS Visa Bulletin for May 2010, "E Visa Availability in the Coming Months;" http://travel.state.gov/visa/frvi/bulletin/bulletin_4805.html (accessed May 22, 2010).

year, approximately 10,700 family-based visas went unused, and were issued to employment-based immigrants.

c. Change in Processing Practice and Resources

Historically, because preference petition visas would not be available for many years, USCIS deferred immediate adjudication of family preference petitions and, instead, prioritized other product lines. In 2004, USCIS officially informed customers with pending family-based petitions that it would adjudicate such petitions based upon "visa availability."[112] Accordingly, petitioners were on notice not to expect their family preference petitions to be processed within any specific timeframe other than in relation to Visa Bulletin cut-off dates (i.e., just prior to visa availability).

In spring 2009, USCIS estimated that it had approximately 1.1 million pending family-based petitions in inventory.[113] Because it received fewer filings in FY 2008 and 2009, USCIS readjusted resources and personnel so they could adjudicate these pending I-130s. USCIS has transferred hundreds of thousands of I-130 cases to local field offices for processing.[114] Service centers will continue to adjudicate I-130 cases not transferred. As a result, by December 31, 2009, USCIS reduced its I-130 inventory to 690,000, of which 575,000 were preference petitions.[115] USCIS informed the Ombudsman that it expects to adjudicate 750,000 new and pending family-based preference petitions by December 31, 2010.[116]

Based upon this recent change, coupled with DOS' acceleration of cut-off dates, petitioners anticipating a long wait before having their applications processed could miss important correspondence from USCIS if they change addresses without properly notifying USCIS.[117] Adjudication of old I-130s could generate RFEs that must be responded to timely. In the absence of a timely response, USCIS will terminate the I-130 petition. In the worst case scenario, petitioners and applicants who fail to notify USCIS of their address changes may not discover such I-130 RFEs and denials for years, and be required to begin the entire application process again.

d. Factors Affecting Visa Demand

With DOS advancing cut-off dates swiftly, it is difficult to predict whether the forward movement of the cut-off dates will generate the necessary and intended demand to utilize fully the statutory family-based visa allocations, or create a surge and resulting retrogression.

Actual demand for family-based visas could remain low despite USCIS, DOS, and Ombudsman efforts to inform the public of this situation. While their priority date may be current according to the Visa Bulletin, some approved I-130 beneficiaries who are present in the United States may be unable to complete the last step of the immigration process because of defects that exist in their immigration status including, but not limited to, entering the United States without inspection or working without permission. Some of these same beneficiaries cannot leave the United States to consular process without triggering the three or ten year re-entry bars.[118] While pathways of discretionary relief exist for certain beneficiaries to cure some ineligibilities, some chose not to apply for their immigrant visas either in the United States or overseas due to the requirements of the waivers and the risks involved. Such approved family petitions thus remain in a holding pattern.

112 USCIS Press Release, "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 May 22, 2010).

113 Ombudsman's Annual Report 2009, Family-Based Petitions (I-130), p. 47.

114 Information provided by USCIS to the Ombudsman (Feb. 26, 2010).

115 *Id.*

116 *Id.* As a result, USCIS will have a projected inventory of 65,000 I-130 family preference petitions at the end of calendar year 2010. Information provided by USCIS to the Ombudsman (Feb. 26, 2010).

117 Change of address is filed on Form AR-11. Permanent residents are required by law to change their address within 10 days of such change. INA § 265. While the law requires a sponsor who has filed an Affidavit of Support to notify USCIS on Form I-865 (Sponsor's Notice of Change of Address), petitioners often do not update their filing after they move. INA § 213A(d). Correspondence from USCIS is not forwarded.

118 *See* INA § 212(a)(9)(C)(i) & (ii).

Duplicate filings may also contribute to the discrepancy between the waiting list of I-130s and actual green card demand. For example, if both permanent resident parents petitioned for their children, but only one petition is processed, the other petition would remain on the waiting list if not withdrawn. In a related situation, some permanent resident petitioners who naturalize file new I-130s for their beneficiaries, rather than seeking to upgrade the previously filed and pending petition. In both situations, the original unused petitions could remain on the waiting list.

Global economic conditions could also explain part of why actual visa demand appears out of alignment with the DOS waiting list. Some beneficiaries may choose not to immigrate because they see greater opportunity in their home country. In addition, some petitioners may be unable to demonstrate the financial means required to support a sponsored family member.

Whatever the reasons, the actual immigrant visa demand on the family side remains low and family-based visas may go unused. Applicable government agencies and stakeholders continue to collaborate to understand and address this trend, and to encourage the public to monitor closely the rapidly changing dates in the Visa Bulletin.

6. Interagency Liaising

The Ombudsman continues to convene monthly meetings between USCIS and DOS to facilitate information sharing regarding administration of the queues for employment and family green cards. The goal of these monthly meetings is to provide for the orderly, predictable, and transparent movement of immigrant visa cut-off dates and related immigration processing. Discussions can range widely from labor certification processing information and immigrant visa usage to remaining visa availability, workload estimates, and future cut-off date movements.

Personnel from USCIS Headquarters, the four service centers, and the National Benefits Center, as well the DOS Visa Office and the National Visa Center have joined these meetings during the 2010 reporting period to facilitate increased communication and resource allocation planning on family-based cases.

This dialogue is critical considering that when USCIS and DOS fail to accurately estimate cut-off dates, visas go unused or are shifted to other family or employment-based categories. Congress passed legislation permitting the recapture of some unused visa numbers from previous years.[119] Figure 19 presents data on visa numbers "lost" between 1992 and 2009 for both employment and family preference categories.

119 *See* Title V, Section 502 of the REAL ID Act of 2005 (Division B of Pub. L. No. 109-013) (2005). *See also* Section 106(d) of Pub. L. No. 106-313 (2000). A bill to recapture additional unused visas was introduced in the 111th Congress, "Reuniting Families Act," H.R. 2709, 111th Cong. § 101 (2009).

Figure 19: Unused Family and Employment Preference Visas – FY 1992-2009

Fiscal Year	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following FY's Family Preference Limit	Following FY's Employment Preference Limit
1992	5,435	21,207	232,483[1]	161,207[1]
1993	3,213	0	226,000	143,213
1994	6,503	29,430	253,721	146,503
1995	0	58,694	311,819	140,000
1996	0	21,173	226,000	140,000
1997	0	40,710	226,000	140,000
1998	20,906	53,571	226,000	160,906
1999	2,299	98,941	294,601	142,299
2000	52,074	31,098	226,000	192,074
2001	2,632	5,511	226,000	142,632
2002	31,532	0	226,000	171,532
2003	64,422	88,482	226,000	204,422
2004	8,449	47,305	226,000	148,449
2005	3,949	0	226,000	143,949
2006	7,148	10,288	226,000	147,148
2007	22,704	0	226,000	162,704
2008	0	0	226,000	140,000
2009	10,662[2]	0	226,000	150,662[2]
Total	**241,928**	**506,410 (180,039 were recaptured by special legislation)**		

Note: The Unused Employment Preference Numbers total is used in calculating the following fiscal year's Family Preference numerical limit, and vice-versa.
[1]Unused Employment Preference numbers did not fall across to the following fiscal year's Family Preference limit (and vice versa) until FY 1994.
[2]Totals for FY 2009 are preliminary.
Source: Data and notes provided by U.S. Department of State to the Ombudsman (Mar. 5, 2010).

Coordination between the agencies is improving, but remains a challenge. USCIS and DOS each manages and allocates resources to achieve operational efficiency and distributes workloads throughout the year. Communication is vital because their separate choices can lead to decisions affecting the entire immigration system.

D. Requests for Evidence (RFEs) – When Are They Warranted?

1. Introduction

Based on feedback from stakeholders across the country, few processes rival Requests for Evidence (RFEs) as a source of widespread public concern about lack of uniformity and efficiency in USCIS adjudications.

An RFE is the tool that USCIS uses to seek additional information when an adjudicator deems that an application or petition lacks the required evidence to adjudicate the case. Concerns expressed to the Ombudsman indicate that there is a general lack of trust in the RFE process due to what appear to be inconsistent practices and philosophies among service centers, as well as overly broad and duplicative requests for information by USCIS.

2. Background

Beginning with Annual Report 2008, the Ombudsman discussed RFEs as a "Pervasive and Serious Problem," focusing principally on family-based green card applications at the National Benefits Center.[120] In the 2009 report, the Ombudsman initiated discussion of RFEs for nonimmigrant worker categories and provided data for selected categories.[121] In late summer 2009, the Ombudsman began further review of USCIS' RFE policy and practice. The following discussion focuses on RFEs occurring within three particular business visa lines, H-1B Specialty Occupation Workers,[122] L-1A Intracompany Transferee Managers and Executives,[123] and L-1B Intracompany Transferee Specialized Knowledge Workers.[124]

This study is responsive to an increasing number of complaints by institutional immigration stakeholders in various public forums, as well as to individuals and employers who have requested that the Ombudsman review individual RFE cases. The principal RFE concerns reported to the Ombudsman include:

- Redundancy – requesting data/documents provided with the initial submission;
- Boilerplate language – data/document requests are overly broad, immaterial, or irrelevant;
- Burdensome and intrusive requests, some raising privacy concerns;
- Incorrect references to regulations;
- Inappropriate questioning of the petitioner's business determinations;
- Mischaracterization of the nature of an employer's business;
- Unfounded assumptions;
- Lack of explanation regarding why corroboration for evidence submitted is sought; and
- Unnecessary requests of petitioners to prove alternative bases of eligibility.

The RFE issuance process is resource intensive for USCIS and its customers. Adjudicators and contract personnel must prepare an RFE, mail it, physically store the case file while awaiting the customer's response, receive the customer's response and match it with the correct file, and return the file to an adjudicator who reviews the response and adjudicates the petition.

Individuals and employers voice frustration over RFEs for delaying final adjudication of a requested benefit by weeks or months. RFEs also impose time and resource burdens on employers, and can cause hardship to foreign worker beneficiaries and their families in the form of income loss and interference with relocation logistics, such as making housing, travel, and school arrangements.

120 *See* Ombudsman's Annual Reports 2009, pp. 17-19; 2008, pp. 47-49. The most common reasons for family-based RFEs included: Form I-864 (Affidavit of Support) issues; medical examination and vaccination records; and marriage and birth records. These RFEs are ministerial in nature – generally where the applicant failed to provide a specifically required document – rather than more substantive RFEs that directly or indirectly question whether the petitioner or beneficiary qualifies for the requested immigration benefit.

121 Ombudsman's Annual Report 2009, p. 18.

122 *See* INA § 101(a)(15)(H)(i)(b).

123 *See* INA § 101(a)(15)(L).

124 *Id.*

The Ombudsman notes that USCIS Director Mayorkas, soon after his appointment in August 2009, identified stakeholder concerns with RFEs as a top priority. He has personally engaged in and led a number of discussions with stakeholders about their experiences with RFEs, and on April 12, 2010, USCIS launched a formal initiative to review RFEs.[125] As USCIS undertakes its own review of RFEs, the Ombudsman offers the following independent analysis and recommendations on this subject.

3. Methodology

The Ombudsman reviewed articles and commentaries on this subject published over the past several years, listened in on immigration briefings and conference sessions focused on RFEs, and engaged with stakeholders in various forums to learn of their concerns and to solicit suggestions on steps USCIS could take to reduce unnecessary RFEs.

In addition to examining individual case problems submitted to the Ombudsman for case assistance, the office received from stakeholders examples of cases they believed showed unnecessary or inappropriately issued RFEs. Although some submissions exemplified the RFE problems claimed, other cases displayed RFE issuance that appeared justified.

The Ombudsman also met with, and presented the above-noted RFE data to, USCIS officials, including Service Center Operations managers, as well as the California Service Center (CSC) and the Vermont Service Center (VSC) Assistant Center Directors and supervisors. The Ombudsman solicited USCIS observations and comments on the data to assist in contextualizing, explaining, and better understanding what this information does and does not show.

During meetings with the CSC and VSC, the Ombudsman reviewed several RFE case examples with center personnel, and otherwise explored RFE-related lines of inquiry including: recognition and application of the appropriate evidentiary standard – "preponderance of the evidence;" USCIS guidance on RFEs; specific USCIS guidance memoranda and Administrative Appeals Office (AAO) decisions concerning the adjudication of H-1B and L-1B visa petitions; relevant USCIS Adjudicator's Field Manual (AFM) sections addressing these topics; and the impact of anti-fraud concerns and initiatives on adjudications and RFEs.

The following sections identify applicable legal parameters and other factors that may bear on increased usage of RFEs in recent years. While concerns about RFEs arise in humanitarian, family, and employment contexts, this review focused especially on specific employment visas for in-depth review.

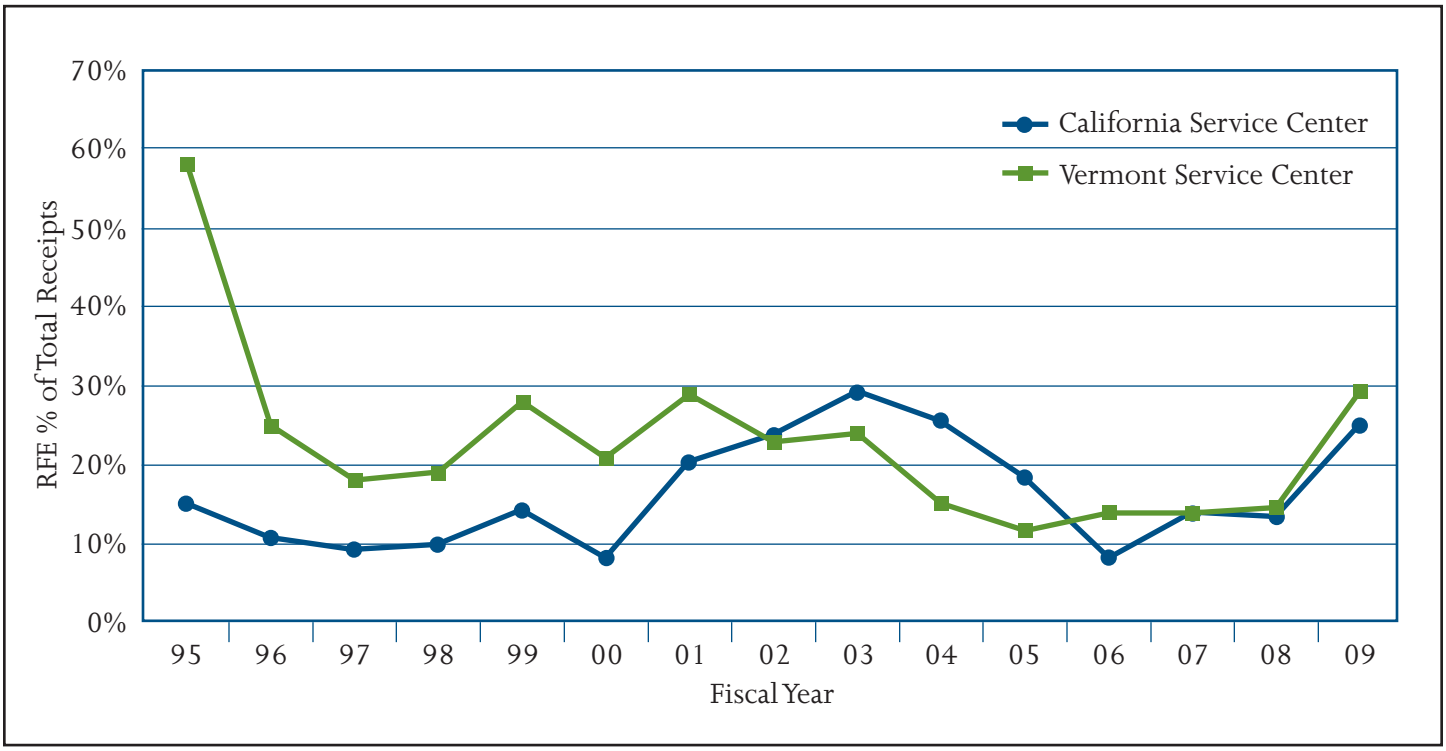
4. Data Reveal Increases in RFE Rates for H-1Bs, L-1As, and L-1Bs Petitions

The following graphs present data separately for the H-1B, L-1A, and L-1B product lines spanning the 15 years from FY 1995 through FY 2009, and compare the VSC and CSC RFE rates.[126]

125 USCIS website, "Listening Session - Request for Evidence (RFE) Review and Revision;" http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Event%20Pages/2010%20Events/April%202010/Executive_Summary_April%2012%20RFE%20Engagement.pdf (accessed June 14, 2010).

126 USCIS formally announced its "bi-specialization initiative" on March 24, 2006. It paired the VSC and CSC, and tasked them with processing certain products, including Form I-129 (Petition for a Nonimmigrant Worker). USCIS Press Release "USCIS Notifies Employers of Filing Changes;" www.uscis.gov/files/pressrelease/BiSpecPh01_24Mar06PR.pdf (accessed Mar. 28, 2010).

Figure 20: H-1B Requests for Evidence – FY 1995-2009

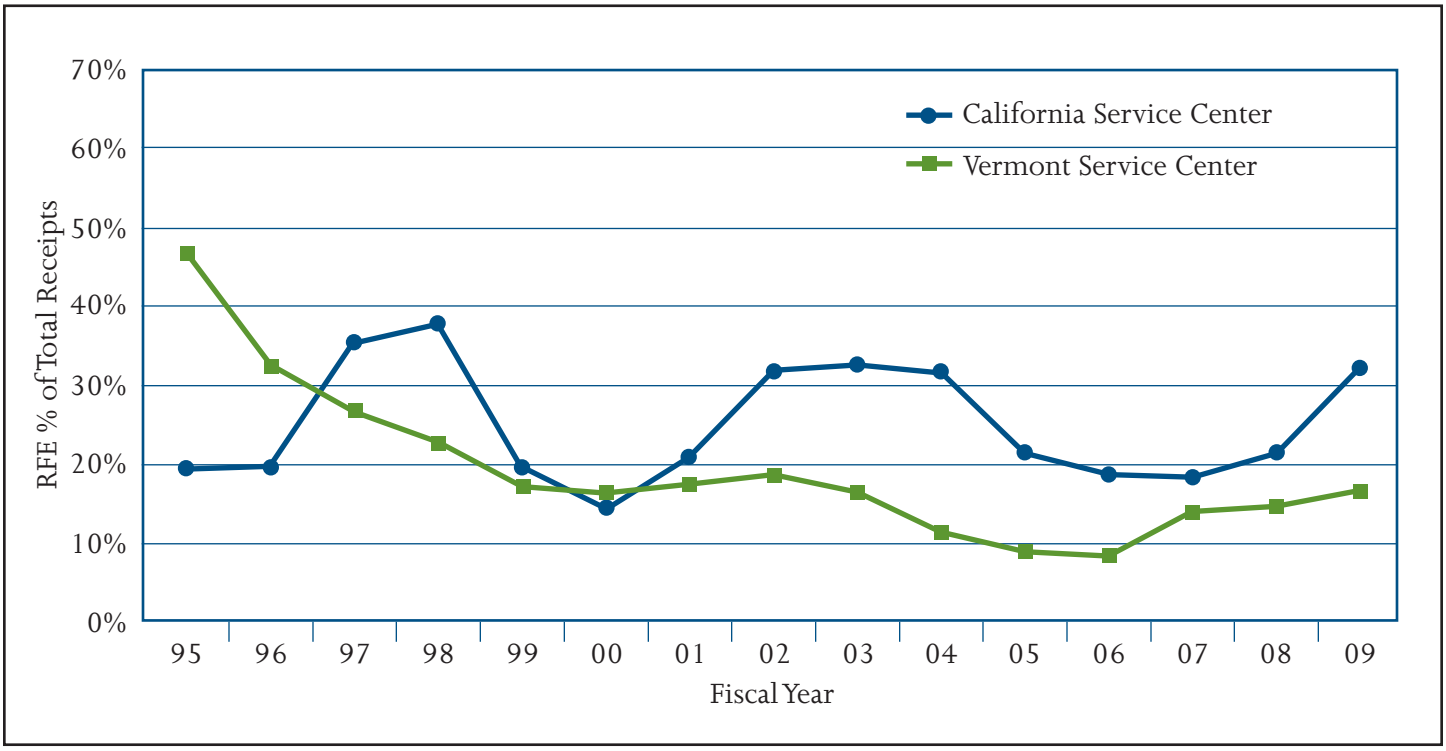


Source: Data provided by USCIS to the Ombudsman (Nov. 23, 2009).

H-1B beneficiaries include nonimmigrant professionals with a Bachelor's degree or its equivalent in a specific field of study as the minimum entry level requirement. Over this 15 year period, the data reveal that the VSC and CSC exchanged positions several times, with the VSC posting higher H-1B RFE rates from FY 1995 through FY 2001, and the CSC moving above the VSC in 2003, 2004, and 2005. More recently, between FYs 2007 and 2009, the VSC and CSC have had virtually the same H-1B RFE rates.

Most importantly, the data show an approximate doubling of H-1B RFE rates at both service centers between FYs 2008 and 2009; with the VSC moving from 14.1 to 29.3 percent and the CSC moving from 13.3 to 25 percent.

Figure 21: L-1A Requests for Evidence – FY 1995-2009

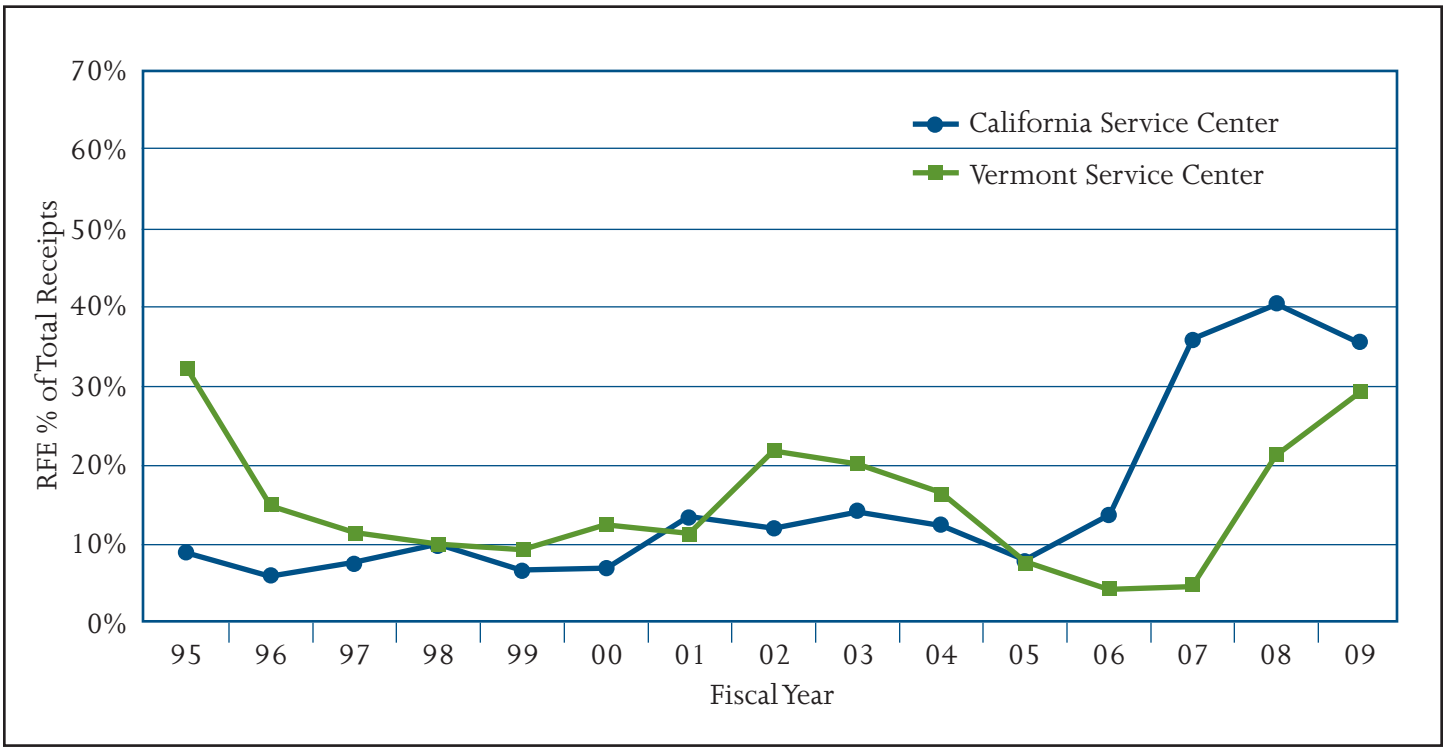


Source: Data provided by USCIS to the Ombudsman (Nov. 23, 2009).

L-1A beneficiaries include nonimmigrant executives and managers transferring from an overseas company to its affiliated U.S. operation who meet certain other requirements. For these applicants, the data show that during most of the time span reported, the CSC RFE rates have been higher than those at the VSC, although the gap narrowed briefly in FY 1999, 2000, and again in 2007.

The VSC L-1A RFE rates nearly doubled between FY 2006 and FY 2009 (from 8.5 percent to 16.5 percent). The CSC rates increased as well from 18.7 percent in FY 2006 to 31.9 percent in FY 2009, with the largest portion of this rise – from 21.5 percent to 31.9 percent – occurring between FY 2008 and 2009.

Figure 22: L-1B Requests for Evidence – FY 1995-2009



Source: Data provided by USCIS to the Ombudsman (Nov. 23, 2009).

L-1B beneficiaries include nonimmigrants with specialized knowledge transferring from an overseas company to its affiliated U.S. operation who meet certain other requirements. For these applicants, RFE rates were historically stable, and comparatively close at the CSC and VSC between FYs 1997 and 2001, with some separation occurring between FYs 2002 and 2003 before they converged near 7.5 percent in FY 2005. From there, however, differentiation between the RFE rates at the two service centers became more pronounced.

In FY 2006, the CSC RFE rate moved up nearly six points to 13.3 percent, and reached 35.4 percent by 2007. During the same two-year period, the VSC rates remained steady at 4.2 and 4.7 percent, respectively. L-1B RFE rates rose at both service centers in FY 2008, with the CSC reaching 40.1 percent, and the VSC up to 21 percent.

By close of FY 2009, the CSC RFE rate dropped slightly to 35.5 percent, while the VSC's rate continued trending upward to 29.1 percent. L-1B RFE rates at both service centers closed FY 2009 with rates at or near 15 year highs.

5. Legal Framework

a. "Preponderance of the Evidence Standard"

Stakeholders suggest that the "preponderance of the evidence" standard is not being used, and that some adjudicators may be issuing RFEs to increase their level of confidence that benefit eligibility is firmly established beyond this standard.

USCIS does have established policy governing the appropriate evidentiary standard. In 2006, USCIS adopted[127] the AAO's decision in Matter of Chawathe,[128] thereby

127 USCIS adopted decisions are Administrative Appeals Office (AAO) decisions that the USCIS Director identifies as binding policy guidance that agency personnel must follow in all cases involving similar issues.

128 Matter of Chawathe, A74 254 994 (AAO, Jan. 11, 2006), USCIS website, USCIS Adopted Decision, "006-0003 – Preservation of Residence, Standard of Proof;" http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid= 57ceb9e54cf0e010VgnVCM1000000ecd190aRCRD&vgnextchannel=02729c7755cb9010VgnVCM10000045f3d6a1RCRD (accessed May 5, 2010).

reaffirming that the general standard[129] to be used in the adjudication of immigration petitions and applications is preponderance of the evidence:

> **The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true,"** where the determination of "truth" is made based on the factual circumstances of each individual case. Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, Matter of E-M- also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, **the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.**
>
> **Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof.** *See* U.S. v. Cardozo-Fonseca, 480 U.S. 421 (1987)(defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.[130] (Emphasis added)

By adopting Chawathe, USCIS made the foregoing statements binding on adjudications of immigration benefits.

b. Code of Federal Regulations

Stakeholders complain that some adjudicators are issuing RFEs despite sufficient information initially having been submitted to support a decision. However, the Ombudsman notes that issuance of an RFE sometimes represents a second chance for petitioners to make their case, allowing them an opportunity to overcome evidentiary deficiencies that could otherwise lead to denials.

USCIS' use of RFEs is largely discretionary and applicable regulations[131] describe when an RFE may be used and what it must contain:

> (ii) … [i]f all required initial evidence is **not** submitted … USCIS in its discretion **may** deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted ….
>
> (iii) … [i]f all required initial evidence **has been** submitted but the evidence submitted does not establish eligibility, USCIS **may** … request more information or evidence from the applicant or petitioner ….
>
> (iv) A request for evidence … will specify the type of evidence required…sufficient to give the applicant or petitioner adequate notice and sufficient information to respond …. (Emphasis added)

129 Depending on the specific benefit or relief sought, a higher evidentiary standard may be applicable. *See* INA § 204(a)(2)(A)(ii) or 245(e) requiring the petitioner to prove that the marriage is *bona fide* by "clear and convincing evidence."

130 Matter of Chawathe, A74 254 994 (AAO, Jan. 11, 2006).

131 *See* 8 C.F.R. §103.2(b)(8)(ii–iv).

c. Adjudicator's Field Manual References to RFEs

Additional written guidance on RFEs is provided to adjudicators in chapter 10.5(a) of the AFM:

> (a)(2) **Considerations Prior to Issuing RFEs. RFEs should, if possible, be avoided. Requesting additional evidence or returning a case for additional information may unnecessarily burden USCIS resources, duplicate other adjudication officers' efforts, and delay case completion.**
>
> * * *
>
> **In particular, requests for "discretionary" evidence should be carefully considered.** For example, a request for tax returns or other financial information as evidence of the viability of the petitioner's job offer for an "H" petition might be reasonable if the petitioner is a small start-up company, but would be unreasonable if the petitioner is a Fortune 500 company….
>
> In short, an adjudicator should strive to request the evidence needed for thorough, correct decision-making. **An adjudicator should not "fish" for evidence.** (Emphasis added)

d. RFE Guidance

In addition to the above-noted regulatory and AFM provisions, USCIS issued three guidance memoranda between 2004 and 2007 addressing RFEs.

On May 4, 2004, former Associate Director of Operations William Yates issued an Interoffice Memorandum[132] to address concerns that agency adjudicators were unnecessarily issuing RFEs when the record was complete and where a denial could be made based on the evidence already submitted. USCIS issued this guidance in the context of agency efforts to reduce its inventory of unadjudicated filings. In response, stakeholders complained that this approach would lead some adjudicators to deny cases where an RFE could give the petitioner an opportunity to overcome a deficiency. They were particularly concerned about cases filed by individuals without an attorney.

USCIS rescinded the 2004 Yates Memorandum and replaced it with more expansive guidance on February 16, 2005.[133] Thereafter, on June 1, 2007, then Acting Associate Director, Domestic Operations, Donald Neufeld, issued a third memorandum[134] addressing both RFEs and Notices of Intent to Deny (NOIDs).[135]

Omitting reference to the now rescinded 2004 memorandum, Figure 23 summarizes the key points made in the 2005 and 2007 RFE memoranda.

---

132 A copy of the now rescinded May 4, 2004 memorandum may be found online at http://onlineplus.uscis.dhs.gov/graphics/lawsregs/handman/pdf/OCC_RFE050404.pdf (accessed May 5, 2010).

133 Interoffice Memorandum, "Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)" (Feb. 16, 2005); www.uscis.gov/files/pressrelease/RFE021605.pdf (accessed Mar. 28, 2010).

134 Interoffice Memorandum, "Removal of the Standardized Request for Evidence Processing Timeframe Final Rule, 8 CFR 103.2(b)" (June 1, 2007).

135 USCIS uses a NOID to provide written notice to an applicant or petitioner that it has made a preliminary decision to deny the application or petition based on evidence of ineligibility and/or on derogatory information of which the applicant or petitioner may not be aware. *See* 69 Fed. Reg. 69549, 69550 (Nov. 30, 2004); http://edocket.access.gpo.gov/2004/04-26371.htm (accessed May 5, 2010).

Figure 23: Key Points from Request for Evidence Memoranda

Topic	Key Points	Source
Petitioner/ Applicant Bears the Burden of Persuasion	• Preponderance of Evidence is the required standard • "More likely than not" to be true is sufficient • Not required to demonstrate eligibility beyond a reasonable doubt	Yates February 2005 Memo[136]
RFEs Are Generally Discretionary	• RFEs are discretionary when initial evidence is not submitted or does not fully establish eligibility; adjudicators may proceed directly to denial if the record is complete • Be specific in making requests • Use only relevant portions of templates • Explain why previously submitted evidence is not sufficient or persuasive	
Key Points and Response Times	• Avoid RFEs, if possible • Carefully consider requesting discretionary evidence • Do not "fish" for evidence • Permit flexible, but limited, times to respond, depending on application type	Neufeld June 2007 Memo[137]

e. USCIS Memoranda Affecting H-1B and L-1 Petition RFE Rates

In conducting this initial review of H and L visa petition RFEs, the Ombudsman identified the following USCIS memoranda and agency actions that may contribute to increased use of RFEs.

i. October 2008 H-1B Fraud Memorandum

Concerns about H-1B fraud[138] led USCIS to issue internal guidance to adjudicators in 2008 authorizing their use of RFEs to resolve possible fraud found in initial benefit submissions or through other derogatory information regarding the petitioner and/or beneficiary. USCIS Director Mayorkas, in response to a congressional inquiry,[139] referenced an H-1B fraud memorandum which instructs adjudicators to issue RFEs when they become aware of potential violations of H-1B program requirements. The Ombudsman confirmed with H-1B product line managers at the CSC and VSC that the implementation of this memorandum may have played a role in the increased use of RFEs.[140]

136 On Feb. 16, 2005, Associate Director of Operations, William Yates issued Interoffice Memorandum, "Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)," addressing particularly those cases where the "Record is Complete and Case is Approvable."

137 On June 1, 2007, Donald Neufeld, then Acting Associate Director, Domestic Operations, issued an Interoffice Memorandum, "Removal of the Standardized Request for Evidence Processing Timeframe Final Rule, 8 CFR 103.2(b)," removing the fixed period of 12 weeks to respond to an RFE, and permitting USCIS to assign flexible times for applicants and petitioners to respond to RFEs and NOIDs. Additionally, the June 2007 memorandum reaffirmed several key points from the 2005 Yates Memorandum, specifically that "RFEs should, if possible, be avoided … [and that] adjudicator[s] should not 'fish' for evidence."

138 USCIS issued an H-1B Benefit & Fraud Compliance Assessment in September 2008. In the assessment, USCIS examined employer compliance with all statutory and regulatory provisions associated with the H-1B nonimmigrant visa program, including the terms and conditions of the Labor Condition Application (LCA). The assessment reported a 21 percent baseline fraud or technical violation(s) rate for H-1B petitions, with 13.4 percent identified as containing fraud ("defined as a willful misrepresentation, falsification, or omission of a material fact"), and 7.3 percent of cases containing "technical violations." USCIS based the assessment on a sampling of 246 cases drawn from a total of 96,827 petitions filed between October 1, 2005 and March 31, 2006. *See* www.uscis.gov/files/nativedocuments/H-1B_BFCA_20sep08.pdf (accessed Mar. 28, 2010).

139 For the September 29, 2009, letter to USCIS Director Alejandro Mayorkas, *see* http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=23410 (accessed June 21, 2010).

140 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

ii. January 2010 Employer-Employee Relationship Memorandum

On January 8, 2010, Service Center Operations Associate Director Donald Neufeld issued a guidance memorandum entitled "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements," describing USCIS' approach to determine whether a legitimate "employer-employee relationship" exists:

> USCIS may issue a Request for Evidence (RFE) when USCIS believes that the petitioner has failed to establish eligibility for the benefit sought, including in cases where the petitioner has failed to establish that a valid employer-employee relationship exists and will continue to exist throughout the duration of the beneficiary's employment term with the employer. Such RFEs, however, must specifically state what is at issue (e.g. the petitioner has failed to establish through evidence that a valid employer-employee relationship exists) and be *tailored* to request specific illustrative types of evidence from the petitioner that goes directly to what USCIS deems as deficient.[141]

Like the 2008 H-1B fraud memorandum, the 2010 employment relationship memorandum directly authorizes use of RFEs in H-1B cases to determine if a *bona fide* employer-employee relationship exists.

Apart from fielding complaints from stakeholders about the substance[142] of the recent memorandum, as well as the lack of advance input from stakeholders, the Ombudsman has also been informed that the principles set forth for H-1Bs are surfacing in RFEs and denials in other immigration product lines, including "L" Intracompany Transferees, "O" Extraordinary Ability temporary worker cases, and immigrant worker cases.[143]

f. Additional Factors That May Contribute to Increased RFE Rates

i. H-1B RFE Rates in FY 2009 Are Attributable to Troubled Asset Relief Program

The Employ American Workers Act, signed into law on February 17, 2009,[144] requires companies receiving emergency federal funds to attest that their hiring of H-1B workers would not displace U.S. workers. Essentially, the law requires USCIS to treat such Troubled Asset Relief Program recipients as H-1B dependent employers.[145]

USCIS issued a revised H-1B Data Collection Form in response to the Employ American Workers Act on March 20, 2009,[146] just days before the April 1 opening of the FY 2009 H-1B cap filing period. In an effort to minimize confusion, USCIS announced that while it preferred petitioners to file using the newly revised H-1B Data Collection Form, it would accept H-1B petitions submitted with the old form. However, USCIS further advised that it would issue RFEs to those petitioners using the old form, and would need such petitioners to respond by identifying whether or not they were subject to the Employ American Workers Act.

---

141 USCIS Memorandum, "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements," p. 10 (Jan. 8, 2010); www.uscis.gov/USCIS/Laws/Memoranda/2010/H1B%20Employer-Employee%20Memo010810.pdf (accessed Mar. 28, 2010).

142 Stakeholders questioned both the logic and legal basis for USCIS to use a "common law" analysis to determine whether a qualifying "employer-employee relationship" exists. The Ombudsman does not provide further comment due to current pending litigation.

143 In addition to exploring the validity of the employment relationship in the context of employees that are assigned to third-party work sites, footnote 5 of the January 8, 2010 memorandum also extended this discussion to what USCIS characterizes as "Self Employed Beneficiaries," and appears to authorize adjudicators to explore and/or seek to validate through RFEs concerns that they may have that a petition is not approvable on this basis. USCIS Interoffice Memorandum, "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements" (Jan. 8, 2010); www.uscis.gov/USCIS/Laws/Memoranda/2010/H1B%20Employer-Employee%20Memo010810.pdf (accessed May 21, 2010).

144 American Recovery and Reinvestment Act § 1611, Pub. L. No. 111-5 (2009); www.gpo.gov/fdsys/pkg/PLAW-111publ5/pdf/PLAW-111publ5.pdf (accessed May 15, 2010).

145 *See* Troubled Asset Relief Program or Section 13 of the Federal Reserve Act, Pub. L. No. 110-343 (2008); http://www.federalreserve.gov/bankinforeg/tarpinfo.htm (accessed Mar. 28, 2010).

146 *See* USCIS Questions and Answers, "Employ American Workers Act and its Effect on H-1B Petitions" (Mar. 20, 2009); www.uscis.gov/files/article/H-1B_TARP_qa_20Mar2009.pdf (accessed Mar. 28, 2010).

Although some FY 2009 H-1B RFEs are specifically attributable to the Troubled Asset Relief Program, the exact number is unknown, as USCIS does not classify and capture RFE information on this basis.

ii. Some L-1B RFEs May Be Attributable to Exhaustion of H-1B Cap

After the close of FY 2003, the temporarily-increased annual allotment of new H-1B visas fell back from 195,000 to 65,000. In FY 2004, the H-1B cap was reached for the first time in several years.[147] Shortly before the cap was reached, the U.S. Department of State (DOS) sent a cable[148] to consular posts suggesting that some companies and beneficiaries might attempt to use L visas when they find they can no longer secure an H-1B. Specifically, the DOS cable cautioned, "the inability of aliens to obtain H-1B visas can lead to increased fraud and abuse of the L [visa] and other categories, and posts need to be sensitive to this possibility." USCIS service center personnel informed the Ombudsman that they, too, consider this concern, and that the exhaustion of the H-1B cap in previous years may have had a bearing on RFE rates.[149]

Despite this specific concern raised by DOS and USCIS, the Ombudsman notes that L-1B RFE rates initially decreased in 2004 and continued downward into 2005, at both service centers, before beginning to rise in 2006 at the CSC. *See* Figure 22. As the H-1B cap was reached in each of these years,[150] the data do not show a direct correlation between the exhaustion of the cap and increased L visa RFEs.

iii. Some L-1B RFEs Likely Attributable to L-1 Visa Reform Act and Blanket Petitions

Legislative changes made by the L-1 Visa Reform Act of 2004 (VRA) likely contributed to increased RFE issuance. Specifically, L-1B specialized worker amendments served to prohibit the assignment of such workers to the worksite of another employer if: (1) the L-1B worker is "principally" controlled and supervised by an unaffiliated employer; or (2) the placement of the L-1B worker at the third party site is part of an "arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary."[151] This and other provisions in the VRA were made applicable to all petitions filed on or after June 6, 2005.[152]

L-1B specialized workers admitted to the United States for periods of up to three years prior to June 6, 2005, were effectively exempted from review under the VRA until expiration of their status. For such workers, adjudications under the VRA would have first occurred when their employers petitioned to extend their stay. During the Ombudsman's meeting with the CSC, managers and supervisors specifically cited to the VRA's mandate that L-1B petition extensions be in compliance with third-party assignment restrictions as a potential ground for RFE issuance and denials.

The Ombudsman observes that an initial rise in L-1B RFE rates in and after FY 2006 is consistent with the implementation date of the more restrictive requirements imposed by the VRA. It appears that the VSC's L-1B RFE rates did not rise until 2007, as VSC endeavored to bring its adjudication approach into harmony with the CSC's. *See* Figure 22.

147 *See* "Information Regarding the H-1B Numerical Limitation for Fiscal Year 2004," 69 Fed. Reg. 8675-8676 (Feb. 25, 2004); http://edocket.access.gpo.gov/2004/04-4089.htm (accessed Mar. 29, 2010).

148 DOS All Diplomatic and Consular Posts Cable, State 033493 (Feb. 4, 2004); http://travel.state.gov/visa/laws/telegrams/telegrams_1380.html (accessed Mar. 28, 2010).

149 Information provided by USCIS to the Ombudsman (Feb. 5, 2010).

150 In FY 2004 (Feb. 17, 2004), FY 2005 (Oct. 1, 2004), FY 2006 (Aug. 10, 2005), FY 2007 (May 26, 2006), FY 2008 (Apr. 2, 2007), FY 2009 (Apr. 5, 2008), and FY 2010 (Dec. 21, 2009). Information provided by USCIS to the Ombudsman (May 20, 2010).

151 Omnibus Appropriations Act for Fiscal Year 2005, Pub. L. No. 108-447, Division J, Title IV, Subtitle A (otherwise referred to as "The L-1 Visa Reform Act of 2004"), signed into law on December 8, 2004. *See* § 412(a).

152 *Id. See also* USCIS Interoffice Memorandum, "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004" (July 28, 2005); www.uscis.gov/files/pressrelease/LVisaReform072805.pdf (accessed Mar. 29, 2010).

Furthermore, some employers have blanket L-1 petition authority[153] to bring an unspecified number of executives, managers, and/or specialized workers to the United States. The blanket L-1 program allows approved petitioners to send their L-1 executives, managers, and specialized workers directly to a U.S. consulate without filing individual petitions with USCIS. Accordingly, even after the effective date of the VRA, L-1B beneficiaries issued visas by a consular officer on a blanket petition, may later have encountered VRA scrutiny when USCIS reviewed petitions to extend their status. The VRA and use of blanket petitions therefore likely contributed to increased L-1B RFE rates.

iv. Some L-1B RFEs May Result From Confusion Caused by a 2008 Non-Precedent Decision

The AAO[154] issued a lengthy decision on July 22, 2008, affirming the CSC's denial of an L-1B specialized worker petition.[155] This opinion (commonly referred to as "GST") discussed the appropriate standard for determining whether a particular beneficiary has the requisite "specialized knowledge" for an L-1B petition.

GST has not been designated a precedent decision,[156] yet it casts doubt upon the validity of longstanding agency guidance on L-1Bs set forth in the AFM and in the 1994 "Interpretation of Special Knowledge" memorandum, authored by James A. Puleo, it cites.[157] In short, GST arguably provides a higher standard for specialized knowledge than that found in the AFM and the Puleo memorandum. Despite the fact that GST is a non-precedent AAO decision, CSC adjudicators are incorporating its logic and rationale into L-1B RFEs, Notices of Intent to Deny, and denials.[158] The Ombudsman notes that even indirect adjudicator reliance on a non-precedent AAO decision, rather than on designated policy memoranda, directly contravenes the AFM statement that such policy memoranda are binding on adjudicators.[159]

Given this conflict, it is unclear whether USCIS expects adjudicators to adhere to the AFM and Puleo standards, or to apply the GST approach. Such confusion undermines the rule of law, presents challenges for petitioners and adjudicators, and can lead to increased use of RFEs and inconsistent adjudications.

g. Initial RFE Study Observations and Recommendations

This review attempts to identify possible causes for RFE increases, but specifying the particular effect of any one or more drivers is a challenge.

The Ombudsman has reviewed portions of training modules for new adjudicators currently in use at the USCIS Academy, and understands that no single training module or period of time is dedicated specifically to developing adjudicator expertise in weighing evidence. This skill is critical to decision-making on when to issue an RFE, what additional information to request, and ultimately to deciding whether or not to approve the application or a petition. Although the Ombudsman found references to the preponderance of the evidence standard in several training modules, they were brief, conclusory, and not particularly instructive.

Missing from both USCIS' training modules and the AFM are focused analyses of factual scenarios representing real world filings, with discussions arranged by petition and application type. Such example cases would, ideally, not only contain an outline of the eligibility requirements for the specific immigration benefit sought, but also discussion and analysis of the probative value of the various materials submitted; how such evidence supports

153 *See* 8 C.F.R § 214.2(l)(4) and (5) for expanded information on blanket petitions.

154 The AAO has appellate jurisdiction over most applications and petitions. *See* 8 C.F.R. § 103.1(f)(iii) (2003).

155 *See* In re: [redacted], WAC 07 277 53214 (AAO, July 22, 2008); www.uscis.gov/err/D7 - Intracompany Transferees (L-1A and L-1B)/Decisions_Issued_in_2008/Jul222008_04D7101.pdf (accessed May 20, 2010).

156 "Precedent decisions" are those decisions specially designated as providing controlling legal principles and interpretations which are "binding on all Service employees in the administration of the Act." 8 C.F.R. § 103.3(c).

157 Legacy INS Memorandum, "Interpretation of Special Knowledge," James A. Puleo, Acting Exec. Assoc. Comm'r for Operations (Mar. 4, 1994).

158 USCIS officials at the CSC and VSC advised the Ombudsman that adjudicators could apply GST principles, but that direct citation to the GST decision would be inappropriate as it is not a precedent decision. Information provided by USCIS to the Ombudsman (Feb. 2, 2010).

159 AFM Chapter 3.4 "Adherence to Policy."

or fails to support eligibility requirements, and why; the factual and legal questions raised by the facts and evidence presented; whether the case can be adjudicated based on the information already provided and, if not, whether an RFE should be issued, and why; and most importantly, USCIS' official position on how the particular case is to be decided when one correctly applies the preponderance of the evidence standard.

Adjudicators with whom the Ombudsman met during this study agreed that preponderance of the evidence is the correct evidentiary standard in H and L visa petition cases. Further, experienced personnel displayed confidence in having developed their own sensibilities regarding application of the standard. While recognizing this high level of competence acquired by seasoned adjudicators on-the-job, the Ombudsman remains concerned that uniform guidance and training is lacking to assist USCIS adjudicators in understanding how to apply this standard in real cases.

The Ombudsman believes that the agency could benefit by adopting a case format for providing guidance and training to new and experienced adjudicators alike. Such training could involve real-life scenarios and include training on the agency-approved approach and rationale for each scenario. In this way, facilitated by skilled instructors, adjudicators would move well beyond the ability to correctly identify and define the evidentiary standard; the case format would provide standardized training on how they are expected to apply the standard.

Given the lack of guidance on how to apply the preponderance standard, the Ombudsman recognizes that the difficulty of the adjudicator's task is compounded in cases involving highly complex business or technical matters. While analyzing cases for evidentiary sufficiency, adjudicators also are expected simultaneously to review them for identifiable fraud – and to do all of this quickly and consistently to achieve increasingly aggressive case productions goals. This tension alone could produce erratic results as adjudicators seek to satisfy both objectives, but the situation is made even more difficult as adjudicators must assimilate new policy announcements. While adjudicators must manage their own challenges, stakeholders naturally expect that they will consistently follow applicable law, regulations, and policy guidance.

The Ombudsman makes the following recommendations, and will continue to study RFE usage and processing during the next reporting period.

RECOMMENDATION 1

The Ombudsman recommends that USCIS implement new and expanded training to ensure that adjudicators understand and apply the "preponderance of the evidence" standard in adjudications. (AR2010-01)

The initial review of H and L visa petition RFEs and related denials shows that adjudicators have difficulty applying the preponderance of the evidence, also called the "more likely than not" test in complex immigration cases, especially when they are simultaneously instructed not to approve cases containing fraud, material misrepresentations, or technical violations.

Expanded training would give adjudicators greater confidence in their ability to weigh the evidence. For example, USCIS should provide adjudicators with case examples illustrating how to apply the preponderance of evidence standard in a given factual scenario, and show how added facts, which might trigger a fraud analysis, would determine whether or not an RFE would be useful.

The training should therefore emphasize that the RFE process is not to be used to satisfy every question or concern that an adjudicator may have about a case. As articulated in the 2005 Yates Memorandum "too often [adjudicators] issue [an] RFE for additional types of evidence that could tend to eliminate all doubt and all possibility for fraud."[160]

The Ombudsman expects that such additional preponderance of the evidence training would serve to reduce the number of unnecessary RFEs, and thereby allow USCIS to sharpen its focus and resources on those cases where an RFE is appropriate.

160 Interoffice Memorandum, "Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)" (Feb.16, 2005); www.uscis.gov/files/pressrelease/RFE021605.pdf (accessed Mar. 28, 2010).

RECOMMENDATION 2

The Ombudsman recommends that, consistent with applicable regulations, USCIS require adjudicators to specify the facts, circumstances, and/or derogatory information necessitating the issuance of an RFE. (AR2010-02)

Although USCIS encourages adjudicators to identify specific deficiencies, the Ombudsman continues to hear from stakeholders about, and receive case problems with, RFEs in which evidentiary deficiencies are not clearly stated. A detailed RFE is instrumental to providing customers a meaningful opportunity to overcome concerns with the evidence presented.

If a customer presents adequate information to prove benefit eligibility, USCIS adjudicators should – absent a legitimate law enforcement reason to do otherwise – identify with particularity material facts or evidence found to be inconsistent or potentially fraudulent. This approach would provide the customer an opportunity to present additional and/or alternative corroborative evidence addressing the adjudicator's specific questions.[161]

RECOMMENDATION 3

The Ombudsman recommends that USCIS establish clear adjudicatory L-1B (Intracompany Transferees – Specialized Knowledge) guidelines through the structured notice and comment process of the Administrative Procedures Act. (AR2010-03)

Among stakeholders and within USCIS, there is confusion about what constitutes "specialized knowledge."

Existing L-1B guidance memoranda and the AFM conflict with the AAO's GST decision. Although GST has not been formally designated as a precedent or adopted decision, adjudicators appear to be using it to guide L-1B adjudications. Such indirect utilization of GST is cause for concern in view of USCIS policy articulated in the AFM regarding the primacy of internal guidance: "Policy material is binding on all USCIS officers and must be adhered to unless and until revised, rescinded or superseded by law, regulation or subsequent policy, either specifically or by application of more recent policy material."[162] Following the notice and comment process would ensure that stakeholder input and concerns are fully considered as the agency formulates a workable, durable policy.

RECOMMENDATION 4

The Ombudsman recommends that USCIS implement a pilot program requiring: (1) 100 percent supervisory RFE review of one or more product lines, and (2) an internal uniform checklist for adjudicators to complete prior to issuance of an RFE. (AR2010-04)

To reduce the incidence of costly, unnecessary, or inappropriate RFEs, USCIS should develop and pilot a mandatory, 100 percent RFE supervisory review policy in one or more immigration product lines at one of its four service centers. The Ombudsman understands that such review may initially create additional work for supervisors. However, requiring such review could result in fewer and more specific RFEs as adjudicators and their supervisors adapt to the workload and in some cases may choose to forego issuance of an RFE in favor of applying the more likely than not test.

In addition, mandatory use of a standardized RFE checklist would ensure that adjudicators at different facilities and with differing levels of training and experience consider the same factors and follow the same protocols, yielding greater consistency in the use of RFEs.

Following completion of the pilot, USCIS should evaluate the impact that such RFE review and the checklist have on decisional quality and speed, the business process, and adjudication costs. Analysis of resulting data should inform agency decisions regarding the possible role of enhanced supervisory review of RFEs.

161 Such a requirement is consistent with: the USCIS adopted decision in Matter of Chawathe, A74 254 994 (AAO, Jan. 11, 2006), which directs USCIS to "articulate a material doubt" in its Requests for Evidence; USCIS Interoffice Memorandum, "Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)," which encourages adjudicators to "articulate how and why information already submitted is not sufficient or persuasive on a particular issue;" and 8 C.F.R. §103.2(b)(8)(iv), which requires adjudicators to "specify the type of evidence required … sufficient to give the applicant or petitioner adequate notice and sufficient information to respond …."

162 AFM Chapter 3.4 "Adherence to Policy."

E. Customer Service – Providing Service and Support to the Customer

Since August 2009, USCIS has demonstrated a renewed focus on customer service. In keeping with that focus, in January 2010 USCIS realigned its organization and, as part of that initiative, created a new Customer Service Directorate that reports directly to the agency Director. *See* Appendix 3. USCIS also created a new Office of Public Engagement to share information on agency developments and hear feedback from the public. As the agency approaches the one-year anniversary of its new leadership, early indicators of USCIS' commitment to more responsive government will be how valuable and how accessible the public finds its customer service.

USCIS provides information in a variety of ways on how to file for an immigration benefit and, after filing, on how to monitor case status, including: the USCIS website; the web-based My Case Status; the National Customer Service Center (NCSC) toll-free telephone line; INFOPASS appointments at field offices;[163] and written correspondence. During the reporting period, USCIS instituted new tools to assist customers in obtaining this information. For example, USCIS redesigned the website, which is more user-friendly, includes a "Where to Start?" feature, and has a Spanish language site.

However, USCIS customer service remains a challenge. Despite substantial resources devoted to customer service and dedicated personnel, individuals and employers frequently report to the Ombudsman that they are unable to obtain the information sought or resolve case matters through regular USCIS customer service avenues. Those contacting the Ombudsman report particular frustration with the initial layer of service provided through the NCSC, which is composed of contractors reading scripts in response to caller questions. In this section, the Ombudsman makes recommendations to add value to the customer experience with the NCSC.

USCIS customers often seek specific information about case status, wish to pose a question prior to responding to a Request for Evidence (RFE), or need to correct a clear service error. However, their inability to communicate directly with USCIS supervisors and adjudicators means that they cannot obtain immediate problem resolution. Customers complain that USCIS frequently responds that it will provide additional information after reviewing the service request. This type of response follows inquiries made on the phone via the NCSC and in person via INFOPASS appointments.

Case problems shared with the Ombudsman show that many of these cases remain pending long after the initial customer service inquiry. Moreover, individuals and employers often resort to repeatedly using these resource intensive USCIS customer service avenues. Alternatively, or in addition, they utilize multiple outside resources, such as their congressional office, the Ombudsman, or any other entity, such as legal or trade associations. The goal of USCIS' renewed focus on customer service should be to more effectively translate feedback received from stakeholders to improve the customer experience with the agency.

BEST PRACTICE

Some USCIS offices do provide customers with direct access by phone or email, for example, at the Chicago and Phoenix District Offices.

1. Office of Public Engagement – Giving the Public A Seat At the Table

On September 14, 2009, USCIS established the Office of Public Engagement (OPE) to "more actively and ably elicit the views of those" who USCIS serves.[164] USCIS Director Alejandro Mayorkas has emphasized that the importance of devoting resources to public engagement is to develop more collaborative working relationships that will inform agency policy and practice. OPE's charge is significant as it is to facilitate "open and transparent communication between the [a]gency, external stakeholders, and the customers they represent by sharing feedback, working with [a]gency

163 The Ombudsman does not address INFOPASS in this year's report, as USCIS has addressed many of the problems discussed in previous reports with scheduling these appointments. The Ombudsman will continue monitoring agency success in keeping appointments available.

164 Letter from USCIS Director Mayorkas to USCIS Employees (Sept. 14, 2009).

leadership, coordinating follow-up, and reporting back to stakeholders."[165]

OPE, which expands the outreach previously conducted by the Office of Community Relations, includes three divisions. The Intergovernmental Affairs Division "advances outreach and communication with state, local, territorial, and tribal partners, including elected officials, associations, and other intergovernmental component offices."[166] The Community Relations and Engagement Division maintains collaborative relationships across a broad spectrum, ranging from community-based organizations and faith-based groups to English as a second language/civics instructors and all stakeholders having daily interaction with USCIS and its customers. OPE also has a national network of community relations officers who facilitate communication and feedback between USCIS and its customers. The Protocol Division oversees high profile events with senior leaders and "identifies opportunities for engagement and collaboration across all lines of work to support USCIS priorities."[167]

Since its creation, OPE has held dozens of stakeholder events, often referred to as collaboration or listening sessions, on a range of topics including Requests for Evidence, Employment Eligibility Verification, Implications of the January 8, 2010, H-1B Employer-Employee Relationship Memorandum, Temporary Protected Status for Haitians, Centralization of Orphan Processing, Transformation, and the Citizenship and Integration Grant Program. On its website, USCIS provides a calendar of upcoming national and local engagements.[168] In addition, it lists contacts for connecting with OPE at agency Headquarters as well as regional community relations officers nationwide.

OPE hosts collaboration sessions, in addition to national stakeholder meetings where discussion touches on controversial issues, as well as on issues where USCIS has highlighted a positive development. As the Ombudsman travels nationwide, stakeholder feedback indicates that the past year has brought an unprecedented level of dialogue with USCIS. If that dialogue can be translated to influencing decision-making within USCIS, the addition of OPE will be a particularly significant evolution for USCIS.

The Ombudsman will continue to monitor agency public engagement, and specifically how stakeholder input is taken into account to determine priorities, review and formulate policy, and assess organizational performance.

2. Call Centers – A Need to Improve the Customer Experience

In 2010, USCIS committed to prioritizing customer service within its organization by elevating the customer service function to a directorate that reports to the Director.[169] For this new directorate, one of the areas most amenable to implementing lessons learned via customer feedback is the USCIS National Customer Service Center (NCSC), the agency's toll-free telephone line.

As discussed in previous annual reports, communication with the NCSC has historically been described as a source of frustration for individuals and employers.[170] Disappointment with the service available through the NCSC is likely magnified by the high expectations USCIS sets for what the NCSC can provide. The agency continues to direct customer inquiries to the NCSC as "another way to get consistent, accurate information and assistance on immigration [s]ervices and [b]enefits."[171] Despite this billing, USCIS

165 USCIS Outreach, "Office of Public Engagement;" http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ea015fc544007210VgnVCM100000082ca60aRCRD&vgnext channel=ea015fc544007210VgnVCM100000082ca60aRCRD (accessed May 21, 2010).

166 *Id.*

167 *Id.*

168 *See* USCIS, "Public Engagement National Events;" http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=e0b081c52aa38210VgnVCM100000082ca60aRCRD&vgnextchannel=e0b081c52aa38210VgnVCM100000082ca60aRCRD (accessed May 14, 2010).

169 *See* USCIS Press Release, "Statement from USCIS Director Alejandro Mayorkas on the realignment of U.S. Citizenship and Immigration Services organizational structure;" http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=687e62cb6ee16210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010V gnVCM10000045f3d6a1RCRD (accessed May 18, 2010).

170 Ombudsman's Annual Reports 2009, pp. 22-27; 2008, pp. 11, 37-42, 51; 2007, pp. 25-30; 2006, pp. 33-35; and 2005, p. 14.

171 *See* NCSC; http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=943696981298d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=aab807b03d92b01 0VgnVCM10000045f3d6a1RCRD (accessed Mar. 30, 2010).

does not always provide NCSC employees with the tools necessary to provide responsive answers to a customer.

The NCSC operates on a two-tier model for live assistance: Tier 1 Customer Service Representatives (CSRs) are contractors, while Tier 2 Immigration Services Officers (ISOs) are USCIS employees. Many callers say the information from Tier 1 is not helpful, or wastes their time, since CSRs repeat information available on the internet. Some callers also complain that CSRs seem unsympathetic to the reason for the inquiry, while others report difficulty upgrading their call to Tier 2. Callers want to reach a person with authority to resolve their problem. Customers need a meaningful way to communicate with USCIS, but they tell the Ombudsman they consider Tier 1 an obstacle, rather than an avenue, to substantive communication.

The Ombudsman acknowledges the improvements with the NCSC over time by reducing long wait times to speak with a person at either tier, monitoring Tier 1 responses, and assigning new management focused on providing responsive service.

For this year's follow-up research, the Ombudsman met with USCIS Headquarters officials, contractor representatives, and quality control managers; listened to Tier 1 calls; and visited the New York Tier 2 facility. The Tier 2 visit included discussions with facility managers and ISO supervisors, as well as listening to calls. As in prior years, the Ombudsman continued to receive comments from dissatisfied customers about the NCSC.

a. Background

The precursor to USCIS, the legacy Immigration and Naturalization Service, established the NCSC nationwide in 1999 to receive customer inquiries about pending immigration cases, obtain forms, and receive general information about the immigration process without needing to visit a field office.[172]

Tier 1 is managed by a single private contractor employing CSRs who are required to read from scripts, drafted and approved by USCIS, when answering calls. Tier 2 consists of ISOs who answer calls transferred from Tier 1 and who have the same training and access to many of the same databases as ISOs who staff INFOPASS appointments at field offices. Both tiers can provide callers with information in English and Spanish.

At the start of an NCSC call, the customer interfaces with the Interactive Voice Response (IVR), which provides basic recorded information through a series of automated menu selections. Over the years, USCIS has worked to simplify automated information and, in 2008, released a more streamlined version of the IVR. In addition to giving the customer information, the IVR provides the CSR with information on the caller's inquiry.

Because Tier 1 is staffed by contractors without substantial immigration training or experience, USCIS uses scripts to ensure that the CSRs uniformly provide accurate information. These scripts, however, are lengthy, often provide information not relevant to the inquiry, and may not address the caller's real concern. Most frustrating to customers is that CSRs' lack of access to USCIS databases prevents them from giving a substantive response to case-specific inquiries.

Issues that cannot be resolved at Tier 1 are handled one of two ways. The CSR can enter the inquiry into the Service Request Management Tool (SRMT) system for response within 30 days by a field office or service center.[173] The SRMT system only permits requests if the case is outside USCIS processing time goals, after which it is the responsibility of the field to provide a response to the customer. The second alternative is for the CSR to transfer the call to Tier 2 for further assistance.

Stakeholders consistently question the value of requiring individuals with case-specific inquiries to interact with a CSR at Tier 1 before having their call upgraded to Tier 2. A particular source of frustration is that the two tier system of live assistance requires customers to explain their issue more than once when the call is transferred to Tier 2, as information is not electronically forwarded along with the

172 U.S. Department of Justice Backgrounder, "INS Customer Service Initiatives" (June 29, 2000); http://www.uscis.gov/files/pressrelease/CustomerServiceInitiatives_062900.pdf (accessed May 21, 2010).

173 The SRMT allows a CSR to submit a request to the USCIS facility where the relevant file is located.

call. Once advanced to Tier 2, however, callers find that ISOs have access to some USCIS data systems, can see more case status information than available on the internet, and may be able to fully resolve customers' inquiries.

b. Current Conditions

i. Interactive Voice Response (IVR)

The IVR continues to be the first step in communication with the NCSC. Customers may choose from a selection of options. This information is the same as is available on the USCIS website.

As noted in previous reporting periods, USCIS considers all calls terminated within the IVR process to be successfully resolved. The validity of this premise is questionable. In FY 2009, although 64.1 percent of the calls ended within the IVR, and were deemed resolved based on USCIS definitions,[174] the Ombudsman believes it likely that some callers were not assisted.

OMBUDSMAN CASE ASSISTANCE

In spring 2010, an individual called the NCSC to find out how to replace a lost I-94 (Arrival-Departure Record). Although the IVR informed the caller that representatives were available at that time, she was "looped into a continuous cycle of options that [she] could select." As none of the selections fit the purpose of her call, she hung up the phone without making a choice. She subsequently contacted the Ombudsman and asked where to obtain information on the issue, which the Ombudsman provided.

Based on feedback to the Ombudsman, stakeholders still perceive the IVR as an impediment to meaningful communication. Due to this perception, customers seek the most direct route to a live operator, disregarding the menu selection process. Because the IVR connects the CSR's computer with the script corresponding to the caller's IVR selection, when a caller selects an unrelated option just to reach a live operator, the CSR has to start over and read the scripts designated for the caller's real question.

As of this writing, the Ombudsman understands that USCIS is working on another revision to the IVR, and that each selection within the IVR will soon provide an option to reach live assistance on Tier 1. The agency is studying private industry and other federal agencies to learn best practices. Stakeholders expect call centers to utilize technology and expedite their inquiry to an appropriate venue for answers.

RECOMMENDATION 5

The Ombudsman recommends that USCIS provide a selection in the Interactive Voice Response (IVR) to immediately connect to a live representative who can respond or direct a call when none of the IVR options is appropriate. (AR2010-05)

ii. Tier 1

Tier 1 CSRs answer basic questions with information available on the USCIS website and issue service requests to the field for case specific problems raised by customers. In FY 2009, Tier 1 completed 85 percent of the live assistance calls.[175] In December 2009, USCIS call center operations transitioned from two Tier 1 contractors into one expanded contractor for all Tier 1 services.[176] The contractor staffs three Tier 1 locations: Williamsburg, Kentucky; Fort Worth, Texas; and the newest site, Chantilly, Virginia. The Ombudsman understands that, if necessary, USCIS has the ability to increase the number of CSRs available to answer incoming calls.

BEST PRACTICE

The NCSC extended business hours to 11:00 p.m. after the earthquake in Haiti. In addition, USCIS worked quickly and collaboratively to ensure that CSRs and ISOs in the call centers had updated, accurate information to respond to people seeking emergency assistance. These longer hours allowed USCIS to provide essential information regarding immigration benefits to the Haitian community and USCIS external stakeholders.

174 Information provided by USCIS to the Ombudsman (Apr. 21, 2010).

175 *Id.*

176 Information provided by USCIS to the Ombudsman (Mar. 1, 2010).

Over the past few years, the Ombudsman has made recommendations to improve the existing framework for the NCSC in which scripted information at Tier 1 is used to provide the public with basic information.[177] In 2008, the Ombudsman recommended that USCIS ensure that CSRs follow the scripts to provide the caller with accurate information. In the reporting period, the Ombudsman did observe CSRs appearing to follow the scripts more consistently. However, better script adherence fails to address the question of whether the scripts themselves are helpful and relevant to the intended audience.

As the Ombudsman reported last year, stakeholders consider scripts to be lengthy and complicated. Since CSRs are required to read an entire script, customers often receive information unrelated to their inquiry. Moreover, delivery of this scripted information during a telephone conversation proves cumbersome. CSRs must ask a series of questions to identify the caller's specific issue even when they have been provided with enough information to know that the question is irrelevant, navigate through the scripts on their computer screen, and deliver the information required by reading from the screen.

Figure 24 shows the script a CSR would follow to answer a caller seeking case status information on a previously filed Form I-90 (Application to Replace Permanent Resident Card). The check marks are the caller's answers. The CSR will ask these questions even if the caller identified the inquiry at the start of the call.

177 Ombudsman's Annual Reports 2009, p. 26; 2008, p. 40.

Figure 24: Sample Customer Service Representative Telephone Script

USCIS Customer Service Guide	03-03-10
WHERE TO START MENU	

CSR: To get you the information or services you need, it is important for us to understand where you are in the immigration process. To serve you better, please answer a few very important questions:

Is your inquiry concerning an application or petition that has already been filed?

- ☑ Yes
- ☐ No

Is your application still pending (USCIS has not yet made a decision on your case)?

- ☑ Yes
- ☐ No

USCIS Customer Service Reference Guide	Last updated 05-11-10
Volume 2	Already Filed (Pending Cases)

CSR prompt – Based on the choices you made in our automated system, it appears you have an issue with a case you filed and is pending with us. Is that correct?

If yes, continue below

If no, click here (to "Where to Start")

Are you an attorney or accredited representative calling on behalf of a client?

- ☐ Yes
- ☑ No

Is your inquiry concerning someone in the U.S. military, including military dependents?

- ☐ Yes
- ☑ No

USCIS Customer Service Reference Guide	
Volume 2	Already Filed (Pending Cases)

Do you have a question about an appointment or how to make an appointment?

- ☐ Yes
- ☑ No

USCIS Customer Service Reference Guide	
Volume 2	Already Filed (Pending Cases)

Do you have a question about a Form I-600 or I-600A that you filed?

- ☐ Yes
- ☑ No

USCIS Customer Service Reference Guide	
Volume 2	Already Filed (Pending Cases)

Do You Have a Question about a Request for Evidence We Sent You or How to get a Medical Examination?

- ☐ Yes
- ☑ No

USCIS Customer Service Reference Guide	
Volume 2	Already Filed (Pending Cases)

Where did you file the application/petition? (Choose one)

A Service Center (California, Nebraska, Texas, or Vermont Service Centers)

The Chicago Lockbox

The Los Angeles Lockbox

The Phoenix Lockbox

The Lewisville Lockbox (Dallas)

E-Filed (Electronically filed)

A Local Office

An Asylum Office

USCIS Customer Service Reference Guide	
Volume 2	Already Filed (Pending Cases)

Is the Form you filed directly with the Service Center or National Benefits Center a Form I-90, Application to Replace or Renew a Permanent Resident Card?

- ☑ Yes
- ☐ No

USCIS Customer Service Reference Guide	
Volume 2	Already filed form I-90 which has been pending

The only Forms I-90 previously filed directly with a Service Center or National Benefits Center were those filed:

- ☑ Under the "b" category (you did not receive the previously created permanent resident card we sent you) or
- ☐ Under the "d" category (you received your card but it had errors on it which you claim were caused by USCIS), you did not receive a receipt notice.

In these processes, we simply use the biometrics taken when we processed your last card and use them to create a new card. Then, we send the new card to you at the address you provided on your most recent Form I-90. We ask that you allow us 180 days (6 months) to process these requests before making an inquiry. If it has been longer than 180 days since you submitted your Form I-90, click here

CSR: Go to SRMT and take an "Outside Normal Processing Time" (ONPT) service request. Ensure the caller is within the "acceptable caller type" before taking a service request.

NOTE: If the customer is also reporting a Change of Address, please remember to create a new SRMT. The ONPT Service Request and the Changes of Address should not be processed together in one SRMT.

As an agency moving towards more responsive customer service and greater efficiency, USCIS has an opportunity to provide meaningful answers at the first possible opportunity when interacting with the public through the NCSC. Currently, Tier 2 ISOs have extensive training at the USCIS Academy as well as at the Tier 2 call centers themselves. At Tier 2, customers are able to talk directly with an ISO, as they would at a field office INFOPASS appointment.

Many customers do not know of the distinction between Tiers 1 and 2 and, therefore, have a legitimate expectation that they will be interacting with knowledgeable USCIS staff from start to finish when they call the NCSC. To meet this expectation, staff at the first level require training reflective of the types of questions asked. Doing so is a critical step to ending the current cycle that requires callers to frequently answer a series of irrelevant questions and spend time listening to extraneous information not related to their inquiry.

To improve customer service, the Ombudsman recommends a two-phased approach:

RECOMMENDATION 6

The Ombudsman recommends that, first, USCIS utilize commercial technology that would enable more efficient and direct access to live assistance by providing an option in the IVR to immediately connect callers to: (1) Tier 1 Customer Service Representatives for basic, informational questions and (2) a Tier 2 Immigration Services Officer for questions on filed or pending cases. (AR2010-06)

The Ombudsman understands that at this time USCIS does not have system capabilities to review and manage the volume of calls that would be directed to Tier 2. However, USCIS should make it a priority to implement the necessary technology to direct case specific calls through the IVR directly to Tier 2. Avoiding Tier 1 for case-related inquiries will eliminate the frustration of talking with a CSR who has neither extensive immigration training nor access to case-specific information.

The Ombudsman understands that USCIS changed the Tier 1 scripts this June for CSRs to transfer attorneys, community-based organizations, and employer representatives directly to Tier 2, if a G-28 (Notice of Entry of Appearance As Attorney or Accredited Representative) is on file with USCIS. This change is significant progress and one that should be carried through so that all customers with a pending case, including those without representation, have access to an informed and resourced ISO. USCIS would benefit by saving Tier 1 costs for calls where CSRs cannot assist and by reducing callers' frustration when they must re-explain their issue to an ISO.

RECOMMENDATION 7

The Ombudsman recommends that, second, USCIS eliminate the scripted information over a targeted period of time to enable the agency to train staff to answer basic immigration inquiries. (AR2010-07)

The Ombudsman previously recommended improving the scripts format to fix the existing system, but customers and other stakeholders continue to state that the scripted information is too often non-responsive. Eventual elimination of the scripts likely would increase public confidence in the USCIS communication system and the agency itself. As stated in the DHS Open Government Plan, "DHS shares the goal to improve the way government and the public [interact], fostering a renewed partnership and public trust."[178] The call centers provide USCIS an opportunity to help DHS build that partnership and trust.

iii. Tier 2

At present, if the customer's problem cannot be resolved at Tier 1, a CSR may transfer the call to a Tier 2 location in New York or California. Tier 2 ISOs answer calls that often are complex and require extensive knowledge of immigration laws, regulations, and policies. They are asked to provide information to the public on all immigration benefits and processes.

All the challenges described for Tier 2 in last year's annual report still remain: (1) specific customer inquiries about time-sensitive Requests for Evidence (RFEs) cannot be answered because ISOs do not have visibility to all USCIS

178 DHS, "Open Government Plan," at p. 3; http://www.dhs.gov/xlibrary/assets/dhs_open_government_plan.pdf (accessed May 18, 2010).

systems; (2) ISOs do not have visibility into files located in field offices, a shortcoming that requires them to refer questions to the field offices through SRMT requests; (3) ISOs are not systematically provided with information about specific field office practices; and (4) Tier 2 allotted positions remain unfilled.[179]

An ISO may address a customer's issue utilizing relevant USCIS databases. For FY 2009, Tier 2 answered 13 percent, or 618,182, of live assistance customer calls.[180] In 2008, USCIS acknowledged that the customer service information technology system needed modernization and provided information on plans for an update. USCIS described a 24-month project to use current technology as follows: "(1) Phase 1 – CSRs and [ISOs] 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."[181] During a March 2010 listening session, the USCIS Customer Service Directorate announced a launch of the "Service Request Management Tool (SRMT) online for Forms I-90 and N-400" piloted for customers outside normal processing times.[182] However, other than that initial pilot, the Ombudsman understands that this "four phase" system has not yet been implemented.

During the reporting period, USCIS undertook certain measures to address customers' concerns with SRMT responses.[183] Specifically, USCIS told customers they could follow up by email to service centers and, ultimately, USCIS Headquarters, if they followed the inquiry process but their question was not addressed.[184] After submitting an inquiry through the SRMT, customers are expected to wait 30 days for a response. If the issue is not addressed, customers are to call the NCSC again and are instructed to submit a second SRMT and wait an additional 30 days. Customers that can document the dates of the two previous SRMT requests are permitted to use the email feature.

In previous years, the Ombudsman described concerns that USCIS had no permanent leadership to oversee the NCSC operation, including the IVR, Tier 1, and Tier 2.[185] During the reporting period, the agency rectified this long-standing problem. Since November 2009, leadership has been dedicated to making the NCSC work better for customers, for example, by providing active follow-up for dissatisfied customers.[186] This responsiveness may begin to improve the NCSC's credibility as an avenue for communication. The NCSC also has invited the Ombudsman to meet quarterly in an open effort to be aware of feedback received by the Ombudsman and to improve customer service.

Tier 2 Staffing

To meet customer service needs resulting from the preceding recommendation, full Tier 2 staffing is needed. In 2008 and 2009,[187] the Ombudsman reported on Tier 2's staffing shortage, and the problem remains. Tier 2 is authorized to employ 133 staff members of which 72 are to be in New York and 61 in California. As of March 31, 2010, there were 52 employees in New York and 49 in California, for a total of 32 unfilled vacancies.[188] USCIS has the opportunity to recognize the importance of the NCSC by working with the call centers to fill these positions.

179 Ombudsman's Annual Reports 2009, pp. 26-27. *See also* Ombudsman's Annual Report 2008, p. 41.

180 Information provided by USCIS to the Ombudsman (Apr. 21, 2010).

181 USCIS 2008 Annual Report Response, p. 15.

182 USCIS Outreach, "Listening Session – Information and Customer Service" (Mar. 18, 2010); http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5d83d0438c947210VgnVCM100000082ca60aRCRD&vgnextchannel=994f81c52aa38210VgnV CM10000 0082ca60aRCRD (accessed May 18, 2010).

183 "USCIS also offers attorneys a new and improved streamlined customer service message through the NCSC for faster SRMT creation." USCIS Outreach, "USCIS National Stakeholder October Meeting" (Nov. 25, 2009); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/ ?vgnextoid=e1ad78bb13c25210VgnVCM100000082ca60aRCRD&vgnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD (accessed May 14, 2010).

184 USCIS Update, "Case Status Inquiries with the Service Centers," (Aug. 10, 2009); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/? vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextoid=c561767d005f2210VgnVCM100000082ca60aRCRD (accessed June 18, 2010).

185 Ombudsman's Annual Reports 2009, p. 27; 2008, p. 41.

186 Information provided by USCIS to the Ombudsman (Mar. 1, 2010).

187 Ombudsman's Annual Reports 2009, p. 27; 2008, p. 41.

188 Information provided by USCIS to the Ombudsman (Apr. 21, 2010).

Information Provided to Tier 2

RECOMMENDATION 8

The Ombudsman recommends that USCIS designate a point of contact within each field office and service center to be available to Tier 2 supervisors: (1) to answer time sensitive inquiries including, for example, missing or lost Requests for Evidence (RFEs) in an individual's file, and (2) to provide information on individual field office operations and procedures to respond to customers' inquiries. (AR2010-08)

Last year's annual report explained Tier 2's lack of access to the content of customers' RFEs.[189] Although this shortcoming may be fulfilled through Transformation, it remains a problem. In the meantime, ISOs should be equipped with the data necessary to answer public inquiries. Currently, ISOs must issue SRMT requests, thereby pushing the inquiry back to field offices and service centers; the inability of ISOs to directly answer customers adds an extra layer of bureaucracy requiring customers to wait up to 30 days for a response to time sensitive questions. In the interest of providing customer service, USCIS must find a way to give ISOs the ability to supply this information during the first interaction with the customer.

In 2009, the Ombudsman noted that specific information about field offices was not available to ISOs as they responded to callers' questions.[190] This issue continued to represent a problem during the current reporting period. For example, during bad winter weather, callers asked the NCSC about local field office closing policies and ISOs could not always provide answers.[191] Customers complained about traveling to attend interviews only to find that an office was closed due to weather conditions.

Communication by Listening

RECOMMENDATION 9

The Ombudsman recommends that USCIS routinely obtain information from all Tier 2 Immigration Services Officers as a resource to identify trends and resolve issues of concern to customers and stakeholders. (AR2010-09)

The NCSC has been identified as a voice for USCIS, but meaningful communication is bi-directional. Individuals and stakeholders call the NCSC not only to seek information, but to explain their concerns, problems, and misunderstandings about the immigration process. ISOs who daily manage a volume of calls should be surveyed regularly to identify prevalent misunderstandings that USCIS could then address.

For example, the Ombudsman understands that a number of Tier 2 calls can be traced to the issuance of a "pre-interview letter" during the naturalization process.[192] Callers consistently express two major concerns about the letter: (1) it says they are scheduled for an interview, but does not give a specific date; and (2) it lists numerous documents to bring to the interview, but the caller may not possess many of the documents on what is a generic list. By identifying the problem and working proactively to resolve the problem, USCIS can reduce customer confusion and, thereby, lower the number of calls generated by misunderstandings.

SRMTs also identify "non-delivery" of USCIS mailings as a major issue for members of the public. In particular, customers point to the non-delivery of I-797 (Notice of Action) and of green cards as causing them major concern: non-receipt of USCIS notices can result in delay or denial of the benefit sought, while failure to receive a green card may cause them to incur additional costs to obtain a replacement or even job loss. USCIS' Secure Mail Initiative is currently

189 Ombudsman's Annual Report 2009, pp. 26-27.
190 *Id.*
191 Information provided by USCIS to the Ombudsman (Mar. 15, 2010).
192 *Id.*

on hold, even as the agency continues to expend resources answering non-delivery inquiries which accounted for 21 percent of all SRMTs for calendar year 2009.[193] *See* Transformation.

By gathering information about prevalent issues, identifying the problems, and perhaps retooling written correspondence or processes, USCIS could eliminate many stakeholder concerns, as well as decrease call center expenses. The public plays an important role in this effort. The DHS Open Government Plan encourages participation by members of the public "to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society."[194] In addition, the USCIS Director has welcomed public participation through creation of the OPE and numerous stakeholder engagements. The NCSC is one of the most visible conduits for improved dialogue between USCIS and the customers it serves.

3. Website – A 2009 Redesign

In previous years,[195] the Ombudsman highlighted the importance of USCIS' website to customers navigating the immigration process. However, the Ombudsman also reported stakeholder concerns about the website's complexity, limited search capability, and complicated language. In March 2010, the website received approximately six million visitors, with the forms webpage receiving the most visits.[196]

During the reporting period, USCIS made strides in improving its website in a collaborative effort with the White House. On June 25, 2009, President Obama announced that White House staff members and USCIS would work together to "make our legal system of immigration much more efficient and effective and customer-friendly than it currently is."[197] In announcing the launch of an improved website, the White House stated that "the new USCIS website will be a 'one-stop shop' for immigration information."[198] On September 22, 2009, the agency unveiled its redesigned website.

To identify which features and portions of the agency's website were of special interest to a wide spectrum of stakeholders, USCIS held focus group discussions, tested usability, and conducted public surveys.[199] Web designers used the data collected to guide efforts to develop a more customer-centric, user-friendly website for USCIS. They took into account stakeholder concerns about the complexity of the website by including in the redesign a reformulated homepage. In addition to being better organized, the new website includes a "Where to Start" tool for customers to determine how to pursue their desired immigration benefit, a centralized location for making a change of address online and locating a USCIS office, and an option for customers to sign-up to receive email and text message alerts.[200]

Responding to stakeholder concerns about complicated and difficult to understand text, USCIS rewrote over 250 pages of website content in plain language.[201] Besides making the site more accessible, this revision addressed a more than decade old Presidential Directive that requires federal agencies to "use common, everyday words, except

193 Between Jan. 1, 2009 and Dec. 31, 2009, USCIS responded to 94,558 SRMT requests for "non-delivery of other notices" and 64,243 SRMT requests for "non-delivery of permanent resident card." Information provided by USCIS to the Ombudsman (Apr. 29, 2010).

194 *See* DHS, "Open Government;" at http://www.dhs.gov/xabout/open-government.shtm (accessed Apr. 7, 2010).

195 *See* Ombudsman's Annual Reports 2009, p. 23; 2008, p. 36.

196 USCIS, "Customer Service Web Portal Monthly Web Metrics Report," pp. 2 and 8 (Mar. 2010).

197 The White House Office of the Press Secretary, Remarks By The President After Meeting With Members of Congress to Discuss Immigration, (June 25, 2009); http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-after-meeting-with-members-of-Congress-to-discuss-immigration/ (accessed May 5, 2010).

198 The White House Blog, "One Stop Shop" (Sept. 22, 2009); http://www.whitehouse.gov/blog/One-Stop-Shop (accessed May 5, 2010).

199 USCIS Fact Sheet, "USCIS.gov Redesign Highlights" (Sept. 22, 2009); http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/FY%2009/September%202009/FactSheet_redesign_highlights.pdf (accessed May 20, 2010).

200 USCIS Fact Sheet, "USCIS.gov Key Features" (Sept. 22, 2009); http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/FY%2009/September%202009/Then%20and%20Now%20Fact%20Sheet_16Sept09.pdf (accessed May 5, 2010).

201 *Id.*

for necessary technical terms."[202] The redesigned website also incorporates an improved search engine capability that employs "a combination of technologies to enable better, faster searches on USCIS.gov."[203]

The Ombudsman held a public teleconference on January 27, 2010, regarding the USCIS website redesign. In addition to noting improvements in the new site, call participants highlighted some features that still were confusing or frustrating, such as the inability to check certain types of cases on My Case Status or determining which form to use based on information on the website.[204] To follow-up on the questions and concerns posed during the teleconference, USCIS and the Ombudsman posted on the internet the agency's responses and the feedback received.

a. Spanish Language Website

When USCIS unveiled its redesign in September 2009, it included for the first time a Spanish language website. The Spanish language site includes many translated items from the English site, as well as material solely found on the Spanish site. As of March 2010, customer usage of this version accounted for about three percent of visits to the USCIS website overall.[205]

b. The Beacon: The Official Blog of USCIS

On January 21, 2010, four months after inaugurating its new website, USCIS introduced its official blog, "The Beacon." Its initial posting was a message from Director Mayorkas to the people of Haiti in the aftermath of the January 12 earthquake: "Today we launch this blog to provide you with one more way that you can learn about our Temporary Protected Status program…. On this blog, please ask us questions, raise issues, and express your concerns. We are here to help you in this time of great need."[206]

USCIS' "Comment Policy" advises that "[t]his is a moderated blog, which means all comments will be reviewed before posting."

Many members of the public have invested time and effort to provide thoughtful feedback through this resource. In response, the agency, from time to time, acknowledges and addresses such feedback. The overall value of the blog will be especially significant if USCIS collects the ideas and feedback posted on it by the public and uses this input to inform agency decisions.

4. My Case Status – A Short-Term Tool Awaiting Enhancements

USCIS' September 22, 2009, launch of its redesigned website, USCIS.gov, replaced Case Status Online with its successor, My Case Status.[207] Case Status Online was a web-based tool allowing customers to obtain basic information about the status of applications and petitions by entering their receipt numbers. The My Case Status tool provides the functionality of Case Status Online, while adding the capability for customers and representatives to register,[208] create an account, and elect to receive emails or text message alerts each time their application or petition progresses in the adjudication process. Representatives and attorneys, who monitor multiple cases, now have the option to "enter their own internal office tracking number with each receipt number,"[209] which facilitates matching email and text message alerts to the corresponding case. The same webpage also includes an enhanced, form-specific, processing times feature for researching average processing times at various USCIS facilities.

202 Memorandum for the Heads of Executive Departments and Agencies, "Plain Language in Government Writing" (June 1, 1998); http://www.plainlanguage.gov/whatisPL/govmandates/memo.cfm (accessed May 5, 2010).

203 USCIS Fact Sheet, "USCIS.gov Redesign Highlights," (Sept. 22, 2009); http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/FY%2009/September%202009/FactSheet_redesign_highlights.pdf (accessed May 5, 2010).

204 Ombudsman Teleconference, "USCIS Website Redesign" (Jan. 27, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=cad3ca1fb7c87210VgnVCM100000082ca60aRCRD& vgnextchannel=2dd6dbbb86c3e110VgnVCM1000004718190aRCRD (accessed May 5, 2010).

205 USCIS, "Customer Service Web Portal (CSWP) Monthly Web Metrics Report," p. 17 (Mar. 2010).

206 USCIS, "The Beacon" (Jan. 21, 2010); http://blog.uscis.gov/2010_01_01_archive.html (accessed May 20, 2010).

207 USCIS Fact Sheet, "USCIS.gov Key Features," (Sept. 22, 2009); http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/FY%2009/September%202009/Then%20and%20Now%20Fact%20Sheet_16Sept09.pdf (accessed May 20, 2010).

208 USCIS My Case Status, "Sign-up for Case Updates;" https://egov.uscis.gov/cris/jsps/selectusertype.jsp (accessed May 20, 2010).

209 *Id.*

Each year since 2005, the Ombudsman has reported on the online tool for customers to monitor case status.[210] Last year, the Ombudsman reported customers' "dissatisfaction with the limited information offered through Case Status Online," as the system "only indicates that the case is 'received and pending;' it does not specify where the case is in the adjudications process."[211] Also reported last year was the "recurring complaint … that the information in Case Status Online is not current."[212] Despite the upgrade, some problems such as outdated or erroneous information persist.

In response to the 2009 Annual Report, USCIS stated that its Office of Information Technology implemented a new initiative so that the systems providing My Case Status updates would have additional information.[213] While the additional information may better describe case status, there are still cases where the status provided is inaccurate. The Ombudsman understands that the Office of Information Technology is working to address technical problems that caused information to stagnate in certain data systems informing My Case Status. However, until the problem is resolved, customers cannot rely on the accuracy of certain case status information online.

OMBUDSMAN CASE ASSISTANCE

An applicant from Russia filed for a green card several years ago, but was informed recently that USCIS issued a Request for Evidence (RFE) she never received. The applicant contacted the Ombudsman stating that she did not receive the RFE and that My Case Status never indicated an RFE had been requested. After the Ombudsman inquired about the case, USCIS agreed to re-issue the RFE. Following receipt of her response, USCIS approved her green card.

At the same time, during the reporting period, USCIS' multi-step efforts to electronically transfer receipt information out of the service centers' systems and into the National Benefits Center's Interim Case Management System (ICMS) provided field offices with the capacity to record each step in the process and the adjudication of several thousand applications and petitions. These efforts made more case status information available for My Case Status. Although USCIS needed to take extra steps to provide field offices with access to electronically record case processing and adjudication of these cases, My Case Status has enabled individuals to continue tracking their cases, even after physical transfer from a service center to a field office.[214]

210 Ombudsman's Annual Reports 2009, p. 24; 2008, p. 36; 2007, p. 30; 2006, p. 35; 2005, p. 14.

211 Ombudsman's Annual Report 2009, p. 24.

212 *Id.*

213 USCIS 2009 Annual Report Response, p. 14.

214 Information provided by USCIS to the Ombudsman (Mar. 4, 2010).

This page intentionally left blank.

Destination Points in the Road to Responsive Government – Additional Areas of Focus

A. Military Immigration Issues – Supporting Those Who Serve

In previous years, the Ombudsman has monitored and commented on the USCIS military naturalization process.[215] During CY 2009, USCIS naturalized 9,335 military service members in the United States and 1,803 at overseas locations.[216]

In 2006, the Ombudsman recommended that USCIS eliminate the fingerprint requirement for active duty service members applying for naturalization. Fingerprints and background checks are required for enlistment in all branches of the U.S. military. While USCIS did not eliminate these requirements, the agency did streamline the naturalization process for active duty military. USCIS now has Immigration Services Officers (ISOs) who coordinate with military liaison officers to provide immigration benefits information, expedite fingerprinting, perform interviews, and conduct naturalization ceremonies for service members and their families at most major military installations.

In 2008, Congress passed and the President signed into law the Kendell Frederick Citizenship Assistance Act, requiring USCIS to review and modify its military naturalization procedures.[217] The Act mandates that USCIS use fingerprints and other biometric information already on file with the U.S. Department of Defense (DOD) when military personnel apply for citizenship. The Act also requires that biometric information collected during the green card application process be used if the applicant meets all other requirements for military naturalization.[218]

In January 2010, DHS' Office of Inspector General (OIG) issued a report on USCIS' implementation of the Act.[219] The report stated that over 45,000 noncitizen soldiers serve in the U.S. military. Many are on active duty in Afghanistan and Iraq. The OIG acknowledged USCIS' initiatives to improve the military naturalization process, but specifically discussed CLAIMS 4, the primary system used by USCIS for the adjudication of naturalization applications. The report stated that CLAIMS 4 has data sharing and reporting limitations. USCIS, in conjunction with other government agencies such as the FBI, performs background and security checks for all naturalization applicants. It must review several different databases to obtain the background information, as no single system contains the information to be reviewed. Having all of the background check and fingerprint information in a single database would streamline the naturalization interview process, especially in overseas or remote locations. In the report, the OIG made recommendations to USCIS to improve services to military applicants.[220] The Ombudsman agrees with these recommendations and will continue to monitor USCIS' efforts to comply with them.

Collaboration between USCIS and one branch of military personnel was formalized in August 2009 through the Naturalization at Basic Training Initiative with the Army. USCIS is making requests to other service branches to duplicate this model.

215 Ombudsman's Annual Reports 2009, pp. 37-39; 2008, p. 58.

216 Information provided by USCIS to the Ombudsman (Mar. 8, 2010).

217 Pub. L. No. 110-251(2008).

218 USCIS Fact Sheet, "Naturalization Through Military Service" (May 16, 2008); http://www.uscis.gov/files/article/mil_natz_051608.pdf (accessed Apr. 27, 2009).

219 DHS OIG, "U.S. Citizenship and Immigration Services' Implementation of the Kendell Frederick Citizenship Assistance Act" (Jan. 25, 2010).

220 *Id.* at p. 1.

1. Serving the Military Family

OMBUDSMAN CASE ASSISTANCE

The immigration court approved a green card application for an applicant married to a U.S. service member who was about to deploy overseas, but issuance of the green card itself was delayed. After not receiving her green card for over six months, the wife contacted the Ombudsman. Two weeks after the Ombudsman intervened, USCIS issued the green card. The agency further agreed to expedite her pending naturalization application. Through these efforts, the spouse became a naturalized U.S. citizen before her husband's deployment and was able to accompany him abroad.

OMBUDSMAN CASE ASSISTANCE

A U.S. citizen soldier scheduled to deploy to Iraq married a foreign national. The foreign wife and her young daughter were both admitted to the United States as conditional residents. Although the wife subsequently became a naturalized U.S. citizen, neither she nor her husband filed to remove the conditions on the child's permanent residence status. The parents believed, correctly, that their daughter had derived citizenship when her mother naturalized. After learning that USCIS terminated the conditional resident status of their daughter, they contacted the Ombudsman. The Ombudsman coordinated with USCIS to restore the child's permanent resident status in August 2009. The U.S. Department of State subsequently issued her a U.S. passport as proof of her citizenship.

Through site visits to USCIS field offices, teleconferences with USCIS field office staff, and the USCIS website, the Ombudsman learned that USCIS continues to enhance and refine outreach efforts not only to service members, but also to their spouses and children. The Ombudsman's 2009 Annual Report referenced a June 2008 USCIS memorandum directing field office directors to make and maintain contact with designated military officials or points of contact at each installation within each branch of the military.[221]

This guidance also requires field office directors to establish methods to bring immigration services to military personnel and their families at military installations on a regular basis.

Representatives from USCIS visit military installations throughout the country on a regular basis to conduct immigration seminars and provide other immigration services. The 2010 OIG study cited a naturalization ceremony for noncitizen soldiers during basic combat training at Fort Jackson, SC, in August 2009, as the first time USCIS conducted such a ceremony during basic training.[222] In a March 2010 teleconference with the San Diego District Office, USCIS informed the Ombudsman of plans to conduct naturalization interviews at the naval facility in San Diego, CA.[223]

In addition, the Ombudsman understands that the USCIS office in Raleigh-Durham, NC, maintains a dedicated point of contact to deliver immigration services to the surrounding military installations, including Ft. Bragg Army Post and Camp Lejune Marine Corp. base. The USCIS military liaison works closely with the Ft. Bragg's Army Community Services offices to identify soldiers and their dependents who may need assistance with immigration issues. The family members of troops deploying to Afghanistan and Iraq are eligible to have their immigration applications, petitions, and interviews expedited, if possible, through the liaison channel. As with other USCIS field offices near large military installations, the Raleigh-Durham Field Office conducts mobile fingerprinting, interviewing, and naturalization ceremonies on the posts nearby.

In another example, the El Paso District Office staff visits the Ft. Bliss Army Community Services office every Wednesday to address military immigration issues.[224] During these visits, USCIS identifies soldiers who are not citizens and arranges for them to file for naturalization and become citizens before they deploy to Afghanistan or Iraq. Many of these troops are National Guardsmen, not residents of

221 USCIS Interoffice Memorandum, "Military Outreach: Bringing Immigration Services to the Troops" (June 10, 2008).

222 DHS OIG, "U.S. Citizenship and Immigration Services' Implementation of the Kendell Frederick Citizenship Assistance Act," p. 13 (Jan. 25, 2010).

223 Information provided by USCIS to the Ombudsman (Mar. 4, 2010).

224 *Id.*

the district where the field office is located, and are only in the El Paso office's jurisdiction for a few days or weeks of military training.

BEST PRACTICE

During the latter part of 2009, a military unit came to Ft. Bragg for training prior to Iraq deployment. Through outreach efforts, the USCIS liaison identified seven noncitizen members of the unit who were eligible for citizenship, but had yet to file naturalization applications. Within 48 hours, a USCIS officer helped these soldiers to complete their applications, electronically send the completed documents to the Nebraska Service Center, and submit necessary biometrics. After the applications were entered into the service center's database, the USCIS officer conducted the interviews and the soldiers were naturalized in front of their unit at the training site.[225]

USCIS district and field offices offer expedited processing and interviews for service members deploying or returning from deployment overseas, and at least one field office goes even further.

BEST PRACTICE

The San Diego District Office has entered into an agreement with several doctors at U.S. Navy medical facilities, allowing eligible active duty military and their dependents to receive free medical examinations at their assigned bases for their green card applications.[226] Many young service members are newly married and have children or parents who are noncitizens, all of whom are eligible for the free examination. As fees for these medical examinations can be hundreds of dollars, the San Diego initiative represents a financial benefit for these families and an incentive for eligible family members to immigrate and naturalize. Service members and their dependents are covered by the military health care system such that there is no additional cost. If USCIS were to adopt this or a similar model nationwide, it would be of great assistance to military families, saving them money and providing them the convenience of having the medical examination near where they live.

2. Assistance to Undocumented Military Spouses and Children

The San Diego and El Paso Offices both serve large military populations, and are located in states that share a border with Mexico. As such, they have military immigration issues not often seen elsewhere. Their directors indicate that resolving military family immigration issues serves the national interest in the following contexts.

Service members' spouses and children who lack legal status in the United States, or whose inadmissibilities may prevent them from obtaining legal status, may still be eligible for military dependent identification cards. For this reason, USCIS has an interest in helping dependents normalize their status.

USCIS also has been able to assist military members about to deploy who have an eligible family member outside of the United States. And, if the eligible family member has health

225 Information provided by USCIS to the Ombudsman (Mar. 8, 2010).

226 All green card applicants must submit Form I-693 (Report of Medical Examination and Vaccination Record) completed by a designated civil surgeon. The I-693 establishes applicants' admissibility to the United States on public health grounds by reporting medical test results to USCIS.

issues or is pregnant, the field office director may expedite issuance of humanitarian parole for these family members allowing them into the United States until the immigration issues are resolved.

The San Diego District Director explained the process for assisting service members about to deploy who have family members unable to obtain a green card. The Ombudsman understands that many spouses and children choose to remain in the country in undocumented status. Those inadmissible under INA Section 212 and unable to become legal permanent residents may request an inadmissibility waiver. Many individuals may file Form I-601 (Application for Waiver of Grounds of Inadmissibility) at the U.S. Consulate in Ciudad Juarez, Mexico. In the regular process, applicants wait until their scheduled appointment to submit a waiver. USCIS approves approximately 50 percent of these I-601s within a few days; however, it refers the other 50 percent for further review, which may take 10-12 months.[227]

Conversely, if DOS denies an immigrant visa for military family members due to inadmissibility, it notifies USCIS officers at Ciudad Juarez. While in Mexico, the military spouse may submit the I-601, which USCIS will adjudicate the same day, if possible. If USCIS grants the waiver, it communicates this result immediately to DOS so that it may issue the immigrant visa without delay. This process can be used by all districts for eligible family members whose service member is deploying to a war zone.

3. Other Military Related Issues

In March 2010, the Ombudsman queried stakeholders and military advocates to determine their perceptions of the effectiveness of USCIS' military programs.

Attorneys who served as liaisons between USCIS and a Military Accessions Vital to the National Interest (MAVNI) naturalization applicant reported to the Ombudsman that they were impressed with the speed of communication and individual attention that USCIS and Army coordination produced. MAVNI is a special program whereby noncitizens can enlist in the military and naturalize based on a special skill or ability, such as foreign language fluency or medical training.

An area of continuing concern relates to jurisdiction, as military personnel are transferred frequently between posts, sometimes on very short notice. Processing delays often arise when an application or petition is filed in one district, but family member beneficiaries move out of the district for a reason related to the military service before final interview.

RECOMMENDATION 10

The Ombudsman recommends that USCIS provide military families the option to have the office with initial jurisdiction complete adjudications for family members of active duty personnel, even when the family relocates outside of the district. (AR2010-10)

Transferring a file to another district can cause weeks, if not months, of delay in processing. Many times, the beneficiary is willing to travel back to the original district to complete processing, rather than face delays associated with case transfer. Although USCIS has shown willingness to expedite applications or petitions for military families whenever possible, there are circumstances where it is not possible. For example, if an application or petition is filed with a service center and the military member is transferred before the interview date at the initial local office, the service member may not have time to reschedule the interview or USCIS may not have received the file. Providing the military family member the option of returning to the first office having jurisdiction would provide benefit to family members and could be accomplished by USCIS with little or no additional expense.

227 Information provided by USCIS to the Ombudsman (May 24, 2010).

B. Special Immigrant Visas (SIVs) – A Wartime Congressional Mandate

In 2006, Congress authorized Special Immigrant Visa (SIV) programs for Afghani and Iraqi nationals employed by or on behalf of the U.S. government who have been rendered vulnerable as a result of their service.[228] These SIV programs allow qualifying persons to self-petition to immigrate to the United States with their dependents and immediately obtain green cards. In 2006, the first such program, the "U.S. translator" program, permitted 50 Afghani and Iraqi nationals who had provided translation services to self-petition and included dependents who would not count against the numerical cap on visa issuances.[229] In 2008, Congress expanded SIV programs through legislation for the "U.S.-affiliate program," which authorized up to 5,000 visas each year for FY 2008-2013 for Iraqi nationals.[230] The legislative intent in establishing the SIV program was to aid people imperiled by their assistance to the United States.[231] The Ombudsman previously reported on underutilization in the U.S. translator and affiliate programs.[232] The Ombudsman also reviewed USCIS processing initiatives[233] tailored to these petitioners' needs and discussed process and policy concerns that, left unaddressed, may continue to hinder issuance of SIVs.

As shown in Figure 25, during the first two quarters of FY 2010, 768 visas were approved – as compared with 1,221 for the same period in FY 2009.

In addition, as of this writing, no visas have been issued under the new Afghani visa program, the Afghan Allies Protection Act enacted in March 2009,[234] as the program is not yet implemented. This Act provides 1,500 visas annually, for FY 2009-2013, for Afghani employees and contractors with the U.S. government who suffer an ongoing, serious threat, as a result of their U.S. affiliation.[235] The website of U.S. Embassy Kabul directs readers to check the embassy website or the USCIS website for information on when customers can begin submitting evidence to Embassy Kabul before filing with USCIS.[236]

The Ombudsman learned from stakeholders that USCIS processing of other SIV applications continues to run smoothly and communication with officers is timely and responsive.

228 *See* National Defense Authorization Act for Fiscal Year 2006, §1059, Pub. L. No. 109-163 (as amended, 2009); National Defense Authorization Act for Fiscal Year 2008, § 1244 Pub. L. No. 110-181 (2008). To initiate an SIV claim, the Afghani or Iraqi petitioner submits Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) with supporting evidence. This must include a Chief of Mission approval letter. Such a letter is obtained by submitting to the U.S. Department of State a variety of identity and threat verification information, including a letter of recommendation from the petitioner's direct U.S. citizen supervisor (or, a "flag officer or general in the chain of command of the United States Armed Forces," for translators) stating 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. *See* Ombudsman's Annual Report 2009, pp. 41-44.

229 National Defense Authorization Act for Fiscal Year 2006, §§ 1059, Pub. L. No. 109-163 (as amended, 2009).

230 Legislation enacted in January 2008, under Section 1244 of the National Defense Authorization Act for FY 2008, § 1244, Pub. L. No 110-181 (2008), as amended by Pub. L. No. 110-242 (2008), established a new special immigrant category under INA § 101(a)(27) for those qualifying Iraqis serving U.S. interests after March 20, 2003. This legislation is for Iraqi nationals who provided "faithful and valuable service" for at least one year (including noncontiguous periods) for or on behalf of the U.S. government and who are endangered or threatened as a consequence of their employment affiliation with the United States. There are no filing fees under this program. Afghanis who also qualify under the translator SIV program may be converted to the U.S.-affiliate program if a translator SIV is not available.

231 "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).

232 Ombudsman's Annual Report 2009, pp. 41-45; USCIS 2009 Annual Report Response, p. 9.

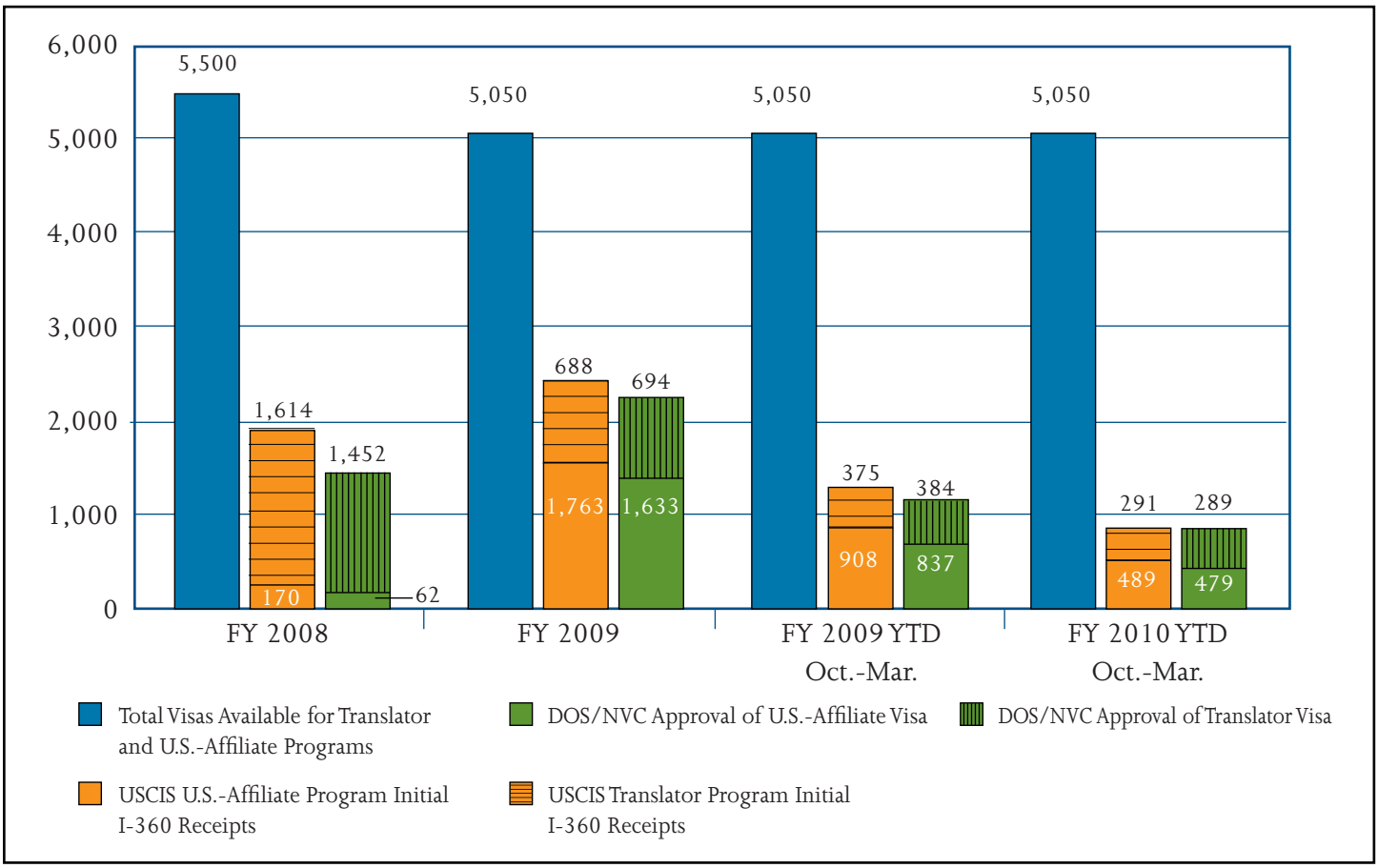
233 In FY 2009, USCIS established a dedicated unit at the Nebraska Service Center to adjudicate these petitions and to correspond with individuals and their representatives. Once USCIS approves the case, the file is forwarded to DOS' National Visa Center, which may initiate final security reviews that can cause delays. Next, the individual is scheduled for an interview at a nearby U.S. consulate and, then, immigrates to the United States.

234 Omnibus Appropriations Act, 2009, § 602(b), Division F, Title IV; Pub. Law No. 111-8 includes a provision authorizing Special Immigrant status for Afghani nationals who have been employed by or on behalf of the U.S. government in Afghanistan on or after October 7, 2001, for a period of not less than one year, and who meet other eligibility requirements.

235 *Id.*

236 "Special Immigrant Visas for Afghans – Who Worked for/on Behalf of the U.S. Government;" http://kabul.usembassy.gov/special_immigrant_visa2.html (accessed May 14, 2010).

Figure 25: Special Immigrant Visa Availability and Issuance in the Translator and U.S.-Affiliate Program



Note: USCIS data include principal applicants. The website www.state.gov provides data on petitioner and dependent SIV usage, and states that it incorporates USCIS data.
Sources: Data provided by USCIS to the Ombudsman (May 7 and 26, 2010).

BEST PRACTICE

USCIS continues to utilize a designated email address (SIVTranslator.NSC@dhs.gov) staffed by subject matter expert adjudicators who can respond to applicants and any individuals assisting them such as lawyers and military personnel about filing SIV applications, Requests for Evidence, and how to appeal denials. USCIS reports that it responds to emails within two to three business days on complex matters, and often the same day for routine inquiries such as eligibility and application processing.

OMBUDSMAN CASE ASSISTANCE

Pro bono counsel contacted the Ombudsman in spring 2010 seeking information on how to comply with the SIV application requirements while her client was in hiding and unable to correspond. The Ombudsman contacted the Nebraska Service Center (NSC) and the NSC staff provided this information. Counsel filed the application the same week.

While USCIS has developed efficient and responsive means to process SIV applications, issues that are outside of USCIS' control continue to diminish the overall effectiveness of the program. For example, stakeholders continue to express concern that individuals are discouraged from applying due to, in some cases, unattainable evidentiary requirements for the Chief of Mission letter, a first step for any applicant to be

designated as a Special Immigrant under these programs.[237] Stakeholders also report that the processing times for applications, averaging a year usually due to security checks by other federal agencies, discourage applicants from applying.

Due to these concerns, stakeholders share that potential SIV applicants who are otherwise eligible and in danger instead often seek refugee status. Refugee status is a lesser benefit than the immigrant status available with an SIV. This decision results in fewer benefits because refugees do not arrive as immigrants and must apply for a green card after one year of arriving in the United States.[238] Further, stakeholders are concerned that unused SIV numbers will be "wasted," even as would-be SIVs apply for refugee status, thus taking numbers from the U.S. refugee admissions cap of 80,000 for FY 2010.[239] No data exist to show how many potentially eligible persons forgo SIV applications due to the perception that applications are destined to be delayed or fail entirely. Stakeholders report to the Ombudsman, anecdotally, that their clients "frequently" seek both benefits or apply for refugee status instead of the SIV classification. Unused SIVs will carry forward year to year until the end of FY 2014 when any unused visa numbers will expire, absent a legislative change. Thus far, the carry-over numbers have not been used.

C. International Adoptions – Developing Agency Efficiencies

On March 15, 2010, USCIS announced a centralized process and location for adjudicating new adoption filings for children from non-signatories to the Hague Convention[240] to take effect two weeks later.[241] USCIS described this change as adding the benefit of more efficient and uniform processing for USCIS, and allowing prospective adoptive parents to benefit from a central pool of knowledgeable experts.

Accordingly, since April 1, 2010, USCIS has been adjudicating new Non-Hague (Orphan) cases at the National Benefits Center (NBC) rather than at field offices where the prospective parents reside, as was previously done; field offices continue to process only previously filed cases. By comparison, Hague cases always have been adjudicated at the NBC, since the United States first began processing them on April 1, 2008. Since Hague implementation, Orphan adoptions have been referred to with increasing frequency as "Non-Hague adoptions."

237 *See* "How To Apply for Chief of Mission (COM) Approval for the Special Immigrant Visa (SIV) Program Embassy of the United States of America Baghdad, Iraq;" http://iraq.usembassy.gov/root/pdfs/sivguidelines-ds157-english_jan10.pdf (accessed May 3, 2010).

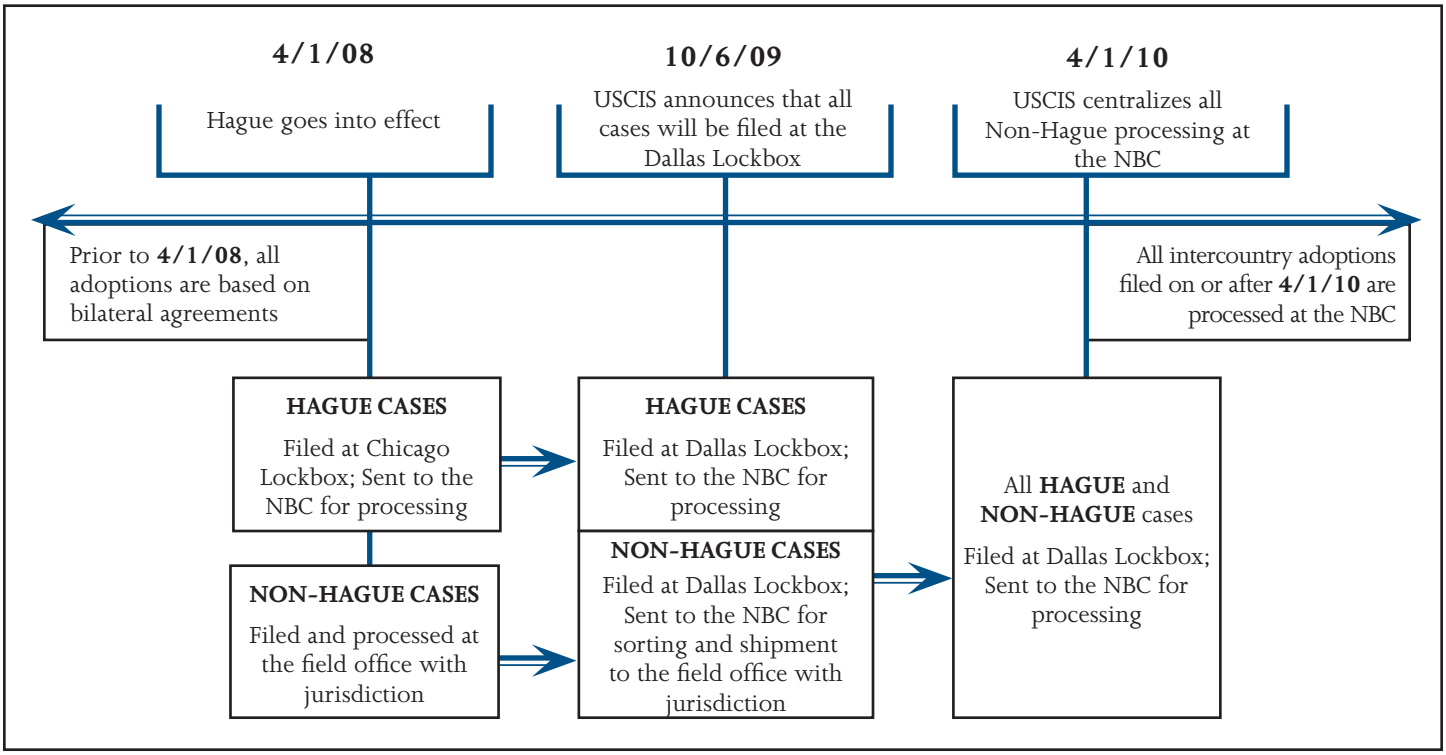
238 While the refugee process is procedurally easier for most applicants, those who receive refugee status and wish to receive a green card must wait a year to apply to adjust status and pay a $930 per applicant filing fee plus a biometrics fee of $80. By comparison, the SIV is an immigrant visa that confers lawful permanent residency immediately upon arrival at a port of entry.

239 "Presidential Determination No. 2008-29: Fiscal Year 2009 Refugee Admission Numbers and Authorization of In-Country Refugee Status," 73 Fed. Reg. 58,865 (Oct. 7, 2008).

240 On May 29, 1993, the United States joined 65 other countries in concluding the Convention On Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Convention on Intercountry Adoption), the first multilateral treaty addressing international adoption, whose stated goal was to provide greater protection for children than previously available under bilateral treaties by better preventing trafficking in children. Although the United States signed the Convention March 31, 1994, and passed the International Adoption Act of 2000 on October 6, 2000, creating the domestic legislative framework to implement the Convention, Congress did not formally ratify the Convention until December 12, 2007, after which it entered into force April 1, 2008. Therefore, the United States did not begin processing Convention adoptions until April 1, 2008, 14 years after signing. *See* www.adoptions.state.gov (accessed May 12, 2010).

241 USCIS Update, "USCIS Centralizes Processing of Orphan Adoptions–Change will Streamline Processing" (Mar. 15, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=662cadd907c67210VgnVCM100000082ca60aRCRD&vgnextchannel=f3beaca797e63110VgnVCM1000004718190aRCRD (accessed May 12, 2010).

Figure 26: International Adoptions



The Ombudsman has been monitoring international adoption[242] processing for over two years. Prior to April 1, 2008, when the Hague Convention went into effect in the United States, Non-Hague (Orphan) adoption was the primary mechanism[243] for bringing a non-biologically related, foreign-born child to this country as a family member. Non-Hague adoptions are largely the product of bilateral treaties establishing a framework for concluding the legal transfer of parental rights under two countries' adoption laws, typically those of the United States and the sending country where the adoptee is born or located at the time of the adoption.

The Hague Convention implements uniform procedures generally recognized to protect and safeguard children more consistently than procedures established under separate treaties with each sending country. However, despite differences in the level of scrutiny and other protective mechanisms, Hague and Non-Hague processing are structurally similar. Both processes are characterized by two main steps each represented by a specific USCIS form: Non-Hague (Orphan) cases use the I-600A (Application for Advance Processing of Orphan Petition) and I-600 (Petition to Classify Orphan as an Immediate Relative), while Hague cases utilize the analogous I-800A (Application for Determination of Suitability to Adopt a Child from a Convention Country) and I-800 (Petition to Classify Convention Adoptee as an Immediate Relative). The first step involves qualification of prospective parents as suitable candidates to assume parental rights and obligations. Once

242 "International adoption" is used herein, along with "intercountry adoption," to encompass broadly the procedures governing adoption of foreign nationals resident outside the United States by U.S. citizens or permanent residents residing in the United States. *See generally* "Intercountry Adoption" website maintained by the U.S. Department of State's Office of Children's Issues, www.adoptions.state.gov (accessed May 12, 2010).

243 It is also possible for parents to immigrate adoptive children through a multi-step process that is not an "intercountry adoption." First, they establish residency abroad; second, they adopt under local laws and exercise full custody and control of the adopted child for at least two years outside the United States; and, third, they petition the child as an immediate relative by filing Form I-130 (Petition for Alien Relative). This approach occurs outside of "intercountry adoption," as defined, because the parents are residing outside the United States. Immigration of such an adoptive child is accomplished the same way as immigration of any person meeting the INA definition of "child." *See* INA §101(b)(1).

their suitability[244] is established, prospective parents proceed to the next step of filing to have a specific child identified for adoption.

As not all countries have joined the multilateral accord, initiation of Hague adoptions did not terminate the processing of Non-Hague adoptions. Therefore, beginning April 1, 2008, international adoptions could proceed along one of two tracks in the United States. On the one track, Hague adoption rules apply where the adoptee's country of origin is a Convention country. On the other track, Non-Hague cases are of two types: (1) adoptions initiated pre-Hague in Convention countries are so-called "grandfathered cases," where transition rules spare adoptive parents the need to re-file according to Hague procedures; and (2) adoptions in non-Convention countries, which have no reason to follow Hague rules.

The agency followed its March 15, 2010, announcement with informational webinars to further explain the reasons for centralized processing of Non-Hague adoptions and explain how it is expected to function. During the webinars, USCIS announced the rollout of revised Forms I-600 and I-600A.[245] These announcements represent the culmination of a process that began in October 2009 with USCIS' announcements of centralized filing for all adoption cases at the Dallas Lockbox facility.[246]

When announcing the central process for new Non-Hague adoptions, USCIS stated that the change would allow the agency to "[p]rocess applications and petitions more efficiently, [s]treamline and standardize work processes, and [o]ffer more consistent service," and provide prospective parents "the specialized skills and experience of the NBC Non-Hague Adoption Unit."[247] The Ombudsman's ongoing review of international adoption suggests that USCIS' centralization of Non-Hague adoption processing alongside Hague processing at the NBC should yield such efficiency and uniformity of benefits.

The Ombudsman encourages the agency to substitute the term "Non-Hague" as soon as possible for "Orphan," where retaining the term Orphan adoption is likely to cause confusion.[248] USCIS itself demonstrates the inconsistent usage; its March 15, 2010 update refers initially to the specialized adoption team that will handle new orphan petitions as the "Orphan Unit" at the NBC, then subsequently as the "NBC Non-Hague Adoption Unit."

244 The key components of "suitability" determinations are the criminal background check and the home study, a report by a state-licensed preparer usually hired by or acting under the direction of an adoption agency and based on research into candidates' personal history and living situation.

245 *See* USCIS Update, "USCIS Announces Revised Forms I-600 and I-600A" (Apr. 1, 2010); http://www.uscis.gov/portal/site/uscisme nuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2680df fc7aab7210VgnVCM100000082ca60aRCRD& vgnextchannel=f3bea ca797e63110VgnVCM1000004718190aRCRD (accessed Apr. 16, 2010).

246 On October 6, 2009, USCIS redirected Hague filings from the Chicago to the Dallas Lockbox, which continued in the same role: depositing fees, issuing receipts, and forwarding cases to the NBC for processing. USCIS also required future Non-Hague filings be sent to the Dallas Lockbox for receipting and fee collection, in lieu of going directly to a local office; however, rather than disseminate cases to the relevant local office for adjudication, Dallas would forward receipted Non-Hague cases to the NBC. The NBC would then sort these cases by local office and ship them accordingly. Therefore, when USCIS centralized Non-Hague adjudications at the NBC, Dallas already was sending these cases to the NBC. Establishing a Non-Hague Unit at the NBC allowed USCIS to cease forwarding these cases to the field. *See* http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid =ea911c2c9be44210VgnVCM100000082ca60aRCRD&vgnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD (accessed May 14, 2010); information provided by USCIS to the Ombudsman (Oct. 6 – 8, 2009).

247 USCIS Update, "USCIS Centralizes Processing of Orphan Adoptions–Change will Streamline Processing" (Mar. 15, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=662cadd907c67210VgnVCM100000082ca60aRCRD&vgnextchannel=f3beaca797e63110VgnVCM1000004718190aRCRD (accessed May 12, 2010). Centralization of Non-Hague adoption processing does not change the rules governing adjudication of these cases.

248 By definition, adoptions filed under bilateral treaties cannot be "Hague cases," so they are "Non-Hague" cases. Yet, they are still known on USCIS forms and announcements as "Orphan" matters.

1. Specialized Adoptions Team at the NBC – A Snapshot

The NBC will now adjudicate all new adoption filings. Only pre-April 1, 2010, non-Hague filings will continue to be processed by the field office in which they are pending, as the Ombudsman understands that USCIS has no plans to transfer these cases to the NBC. Both Hague and non-Hague filings reach the NBC after receipting and fee collection by the Dallas Lockbox. The Hague Unit data enters[249] these cases for tracking purposes and assigns them to one of 15 officers for adjudication, while the non-Hague Unit acts similarly and distributes cases among its 17 officers.[250] For Non-Hague filings, as well as for Hague filings, the assigned Immigration Services Officer (ISO) is responsible for handling the case until completed.

The dedicated toll-free telephone line for Hague Adoptions has now expanded its focus to embrace both Hague and Non-Hague inquiries. Automated answering of the "NBC Adoption Helpline," 1-877-424-8374, instructs callers to "press 1," for Hague cases, or "press 2," for Non-Hague cases to ensure that callers are directed to an officer with the correct expertise.

2. Future Challenges

Unlike Hague adoptions, which are governed by a single "suitability" standard,[251] Non-Hague adoptions may require specialized regional subject matter expertise (e.g., regarding disparate state regulatory schemes governing parental qualifications addressed in home studies and background checks). While the expected benefits of central processing are significant, one of the potential challenges is the near-term diminution in state law expertise. USCIS has displayed a willingness to devote necessary resources to provide the training and communication with the field necessary to address issues that arise. The Ombudsman will continue to monitor international adoptions generally and, in particular, the operation of the new Non-Hague Unit.

249 The Hague Unit still uses the Secure Information Management Service (SIMS) tracking system, though USCIS expects to replace SIMS with the Hague Case Management System (HCMS) by mid-summer 2010. Until then, the Unit is also using a spreadsheet to track cases. The Non-Hague Unit has access to the same case tracking tools. Information provided by USCIS to the Ombudsman (Apr. 12, 21, and 23, 2010).

250 Information provided by USCIS to the Ombudsman (Apr. 21, 2010).

251 Hague home studies are generally considered more rigorous investigations than Non-Hague (Orphan) home studies. The former generally present checklisted requirements to be addressed, thereby fostering consistency in reporting. Conversely, for Non-Hague (Orphan) cases, differing state law approaches to preparer accreditation and the variability in state law home study standards may challenge ISOs' ability to evaluate suitability.

D. Separation of Derivatives/Principals – The Importance of Matching Practice and Policy to Facilitate Family Reunification

Submission and approval of Form I-485 (Application to Register Permanent Residence or Adjust Status) are among the final steps in the green card process for U.S.-based applicants. Applicants' spouses and children are considered derivative applicants (derivatives), and can file Form I-485 along with the principal applicant. Derivatives are entitled to the same status and consideration as the principal applicant, and families filing at the same time reasonably expect concurrent adjudication and approval.[252] However, customers have complained to the Ombudsman about separation of derivatives' applications from those of their principals, leaving the applications of spouses and children pending for months or years after issuance of the principal's green card.

Separation of files may have serious long-term consequences, including: (1) visa number retrogression, where visa numbers become unavailable and the derivative applicants may wait months or years for visa availability; (2) financial burden on certain derivative applicants for renewing employment and travel authorization;[253] (3) no access to in-state tuition, and other benefits available to green card holders; or (4) delays in eligibility for naturalization.

To assist individuals and gain further insight into the customer's experience, on October 9, 2009, the Ombudsman posted on its website an Ombudsman Update titled "Pending Derivative Forms I-485 due to File Separation."[254] This posting sought submission of case problems to the Ombudsman by derivatives whose green card applications remained pending for more than 30 days after the approval date of the principal's application.

In response to this request, the Ombudsman received a few hundred case problems on separated derivatives' files. In many cases, visa numbers had retrogressed after the approval of the principal's case. Such retrogression places unapproved derivative applicants on hold for an indefinite period. When a visa number will again become available is uncertain. Also, when a priority date does become current in a given month, the derivative may not be approved before available visas are used by others. While approved family members enjoy the rights and benefits associated with a green card,[255] unadjudicated derivatives in the same household must wait. Where a visa is currently available, the Ombudsman refers cases to USCIS for prompt adjudication.

OMBUDSMAN CASE ASSISTANCE

An applicant from India filed an employment-based green card application at the same time her husband filed for a green card as her derivative beneficiary. USCIS approved the principal applicant's case in fall 2009, but scheduled the husband's case for interview and sent his file to a USCIS field office. Following the customer's request for assistance in the spring of 2010, the Ombudsman determined that this transfer to the field was service error and requested expedited return of the file to the service center for adjudication. USCIS agreed, the file was returned, and the green card was approved.

OMBUDSMAN CASE ASSISTANCE

In spring 2007, an Indonesian applicant filed for a derivative-based green card concurrent with his wife's employment-based application. USCIS approved the wife's green card case in three months, but the husband's case became separated and was not adjudicated. The Ombudsman determined that the delay in adjudications caused a critical consequence as the husband's case could no longer be approved due to retrogression of the visa cut-off date after the wife's case was approved.

252 *See* INA § 203(d).

253 Generally, applicants who filed Form I-485 prior to July 30, 2007, or in certain employment-based cases August 17, 2007, are required to pay filing fees to renew employment and travel authorization, and those who filed Form I-485 after such dates are not required to pay to renew employment and travel authorization.

254 http://www.dhs.gov/xabout/structure/gc_1221837986181.shtm#3 (accessed May 21, 2010).

255 Green card holders generally have the right to live, work, and be protected under laws of the United States provided that they do not commit crimes that subject them to removal proceedings. Other privileges may include eligibility for financial aid and in-state or resident tuition for education, more job and business opportunities, Social Security benefits, and eligibility to apply for citizenship.

The majority of Form I-485 principal/derivative separation cases received by the Ombudsman originated at the Texas Service Center (TSC). Seeking solutions to this problem, the Ombudsman reviewed the TSC's I-485 processing procedures for possible causes.

The TSC identified the following circumstances as leading to separation of a derivative's I-485 file from the principal's file during processing:[256]

(1) Security Checks: Generally, USCIS requires security checks that include fingerprints, FBI name checks, and Interagency Border Inspection System (IBIS) checks.[257] Derivatives who turn 14 during adjudication become subject to these security checks. In such cases, the 14th birthday triggers transfer of a derivative's file to a 45-day holding area in the TSC's file room. While the file awaits completion of a biometrics appointment[258] and initial security check processing, files of the principal and other derivatives continue to be processed without interruption.

(2) Request for Evidence (RFE): Issuance of an RFE to a derivative applicant causes transfer of the file to another segregated area where the files are ordered chronologically by RFE response due date. Either upon receipt of a timely response, or where there is no response by the due date, the file returns for adjudication.

(3) Rejected Fingerprints: Fingerprints rejected due to poor quality must be retaken. If unable to capture readable prints, USCIS may request police clearance reports from applicants.

(4) National Security or Fraud Concerns: Any situation requiring further investigation may cause file transfer to the USCIS Fraud Detection and National Security Directorate or to U.S. Immigration and Customs Enforcement.

(5) Mismanagement of Files: All family members' cases should be bundled together in an accordion file and linked in the case management database. However, a derivative's file may be removed, for reasons including those noted above, and re-filed incorrectly.

According to the TSC, the area dedicated to employment-based green card applications is closely monitored on a bi-weekly basis to ensure that the cases are timely routed to adjudicators. For efficiency, TSC subdivides this dedicated area into five smaller locations according to the step in the process.[259]

In addition to having its personnel actively manage physical case files, the TSC employs a database application for electronic case review and management functions. One such function is the ability to link a principal and derivatives by their A-numbers to readily identify a family for simultaneous processing. When a derivative applicant completes the biometrics process, the database will indicate that the derivative's file is part of a family unit, and USCIS will re-group the file with the other family members. The system also captures the priority date, immigrant classification, and country of birth information to facilitate the identification of cases that have visas available. Furthermore, the U.S. Department of State tracks pending visa requests from USCIS offices and, upon issuance of the Visa Bulletin each month, sends a list to USCIS of cases eligible for a visa.

In fall 2009, the TSC completed a project to review files to locate derivative cases that have become separated from the principal applicant's.[260]

According to USCIS, the agency makes every effort to adjudicate the principal's and derivatives' files together in the interest of efficiency and consistency.[261] In the Adjudicator's Field Manual (AFM), there is one reference to adjudicating green card applications as a family bundle.[262] Most notable

256 Information provided by USCIS to the Ombudsman (Nov. 24, 2009).

257 The purpose of the security checks is to ensure that an applicant for immigrant benefits does not have a criminal record or pose a security threat to the United States.

258 Information provided by USCIS to the Ombudsman (Mar. 24, 2010). For cases that need a new biometric appointment, USCIS requests a fee for biometric services. Upon receipt of the fee, USCIS schedules an appointment at a designated Application Support Center.

259 Information provided by USCIS to the Ombudsman (Mar. 24, 2010).

260 *Id.*

261 Information provided by USCIS to the Ombudsman (Nov. 24, 2009).

262 AFM, Chapter 10, "An Overview of the Adjudication Process" (Feb. 2010); http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=afm (accessed Mar. 3, 2010).

is that while the AFM has a section that discusses green card applications and has extensive checklists and action items to consider in adjudications, it makes no mention of adjudicating related files together or retrieving previously separated derivative files. The USCIS I-485 Standard Operating Procedures for field offices does contain several references to keeping the family files together.[263]

Despite the TSC's active case management efforts, the Ombudsman continues to receive case problems, not only from the TSC, in response to the posted update on separated derivative files. In many instances there are legitimate reasons for separation.

However, other cases appeared not to have been actively managed to ensure reunification of files, resulting in a missed window of visa availability. As discussed previously, the consequences of visa retrogression to derivative applicants can be dire: those whose cases are left behind may wait many additional years for a green card that could have been issued with the principal's, or shortly thereafter. Therefore, USCIS should improve case management agencywide to ensure that separated files are promptly adjudicated at the earliest possible time following the approval of the principal's, when practicable.

263 USCIS, "Field Operations Standard Operations Procedure Manual for Processing Form I-485 Application to Register Permanent Residence or to Adjust Status," Version 2.1 (May 1, 2006).

E. USCIS Adjudications for Individuals in Immigration Court Proceedings – Focusing on Interagency Responsibilities

Certain DHS employees within USCIS, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP)[264] can institute proceedings against an individual for a violation of immigration law by filing a Notice to Appear (NTA) charging document with the appropriate immigration court.[265] Immigration Judges, under the authority of the U.S. Department of Justice's Executive Office for Immigration Review (EOIR), determine whether the persons charged are removable as alleged, and if so, whether a form of relief under the law can be sustained by the facts in the individuals' cases.[266]

Two components of DHS, USCIS and ICE, work in conjunction with the immigration court to fulfill its mandate. ICE attorneys represent the government during removal proceedings. ICE also maintains jurisdiction over individuals who are detained before or during these proceedings.[267]

USCIS performs three important tasks to support the immigration court: (1) adjudicates many of the underlying petitions that form the basis of an individual's defense against removal; (2) gathers the required biometrics to confirm the identity of the person charged and needed for the background checks before an Immigration Judge can render a determination;[268] and (3) issues receipts and processes the associated fees of the applications for relief that the immigration court will adjudicate.

264 INA §§ 103, 221, and 239.

265 A Notice To Appear (NTA) is the formal charging document filed with the court on Form I-862 (Notice to Appear) and delivered to the individual who is ordered to appear. INA § 239(a).

266 INA § 240(c)(4).

267 ICE's Detention and Removal Operations "is the primary enforcement arm within ICE for the identification, apprehension and removal of illegal aliens from the United States. The resources and expertise of DRO are utilized to identify and apprehend illegal aliens, fugitive aliens, and criminal aliens, to manage them while in custody and to enforce orders of removal from the United States;" http://www.ice.gov/pi/dro/ (accessed June 19, 2010).

268 An Immigration Judge may not grant an application for relief until DHS has completed current identity, law enforcement, or security investigations and reported those results to the court. 8 C.F.R. § 1003.47(g).

Individuals who receive an NTA are named as respondents and are entitled to counsel provided it is at no cost to the government.[269] The majority of respondents facing removal are not represented by counsel or an accredited representative, as shown in Figure 27, and over half of all respondents have been detained by ICE at some point in the process.[270]

Figure 27: Representation in Immigration Courts

Fiscal Year	Number Represented	Percent Represented	Number Unrep-resented	Percent Unrep-resented	Total
2005	110,911	35%	204,043	65%	314,954
2006	114,302	35%	209,745	65%	324,047
2007	116,965	43%	156,505	57%	273,470
2008	112,865	40%	168,340	60%	281,205
2009	114,087	39%	176,146	61%	290,233

Source: U.S. Department of Justice, Executive Office for Immigration Review, "FY 2009 Statistical Year Book," G1 (Mar. 2010).

The court's priority is to provide due process and a fair hearing. This objective is partially dependent upon a complex interagency effort to coordinate responsibilities with limited resources.

Because USCIS retains jurisdiction over many petitions that are the basis for relief in removal,[271] respondents often must request continuances in court so USCIS can complete adjudication. Also, stakeholders have cited problems with biometric processing at USCIS. For example, due to clogged immigration court dockets, USCIS' 15 month fingerprint validity period often expires before the hearing where individuals present their claim for relief in immigration court.[272] Biometrics for removal cases may, therefore, need to be renewed. Depending on the local relationship, ICE counsel may assist respondents in scheduling fingerprint appointments, but this is not uniform across the country. Inconsistent local USCIS policies and practices, competing responsibilities, and lack of interagency coordination adversely affect both USCIS customers and the immigration courts.

Each agency's responsibilities, although defined by law, remain a point of confusion to those who must navigate the process. Applications for relief that are filed with USCIS for fee payment trigger the biometric appointment. Yet, USCIS retains jurisdiction to adjudicate only a few of the filings while the court maintains responsibility to process others.[273] In addition, 50 percent of respondents will be subject to detention[274] at some point during the removal process, causing those respondents to secure USCIS biometrics through facilitation by ICE. While the court requires the biometrics, and ICE counsel delivers the biometric instructions in court, the respondent is presumed to understand that USCIS maintains the responsibility to complete the task.

269 INA § 240(b)(4)(A).

270 U.S. Department of Justice, "FY 2009 Statistical Year Book," A1, A2 (Mar. 2010); http://www.justice.gov/eoir/statspub/fy09syb.pdf (accessed June 19, 2010).

271 Including, but not limited to: Form I-751 (Petition to Remove the Conditions of Residence); I-130 (Petition for Alien Relative); I-360 (Petition for Amerasian, Widow(er), or Special Immigrant); I-140 (Immigrant Petition for Alien Worker), I-821 (Application for Temporary Protected Status); I-914 (Application for T Nonimmigrant Status); I-918 (Petition for U Nonimmigrant Status); and I-929 (Petition for Qualifying Family Member of a U-1 Nonimmigrant); Immigration Judges have no jurisdiction over visa petitions, employment authorization, certain waivers, naturalization applications, revocation of naturalization, parole into the United States under INA §212(d)(5), applications for advance parole, or employer sanctions. *See* Immigration Court Practice Manual, ch. 1, p. 8.

272 USCIS National Stakeholder Meeting: Answers to National Stakeholder Questions (Mar. 25, 2008, revised Apr. 3, 2008) (USCIS considers fingerprints to expire after 15 months, and often requires customers to be re-fingerprinted at an Application Support Center, if the case is not adjudicated during the validity period.)

273 Including, but not limited to: Forms I-485 (Application to Register Permanent Residence or Adjust Status), I-191 (Application for Advance Permission to Return to Unrelinquished Domicile), I-601 (Application for Waiver of Grounds of Inadmissibility), I-602 (Application by Refugee for Waiver of Grounds of Excludability), I-881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal), EOIR-40 (Application for Suspension of Deportation), EOIR-42A (Application for Cancellation of Removal for Certain Permanent Residents), and EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents), Form I-589 (Application for Asylum and for Withholding of Removal). *See* EOIR Pre-Order Instructions; http://www.uscis.gov/files/article/PreOrderInstr.pdf (accessed May 18, 2010).

274 U.S. Department of Justice, "FY 2009 Statistical Year Book," A1, A2 (Mar. 2010); http://www.justice.gov/eoir/statspub/fy09syb.pdf (accessed June 19, 2010).

On its website, USCIS provides four documents regarding the removal process, including: (1) Pre-Order Instructions; (2) Post-Order Instructions; (3) "Fact Sheet on Immigration Benefits in EOIR Proceedings;" and (4) "Questions and Answers on Implementation of EOIR Background Check Regulation for Aliens Seeking Relief or Protection from Removal."[275]

Individuals in removal proceedings must cross between the distinct jurisdictional boundaries of USCIS, ICE, and EOIR. For those individuals who must proceed *pro se*, a resource that clearly delineates specific agency responsibility for elements of the removal process would direct their steps at critical junctures between agencies' jurisdictions.

RECOMMENDATION 11

The Ombudsman recommends that USCIS coordinate with U.S. Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR) to provide the public with one document that specifies each agency's responsibilities within the removal process and the basic steps and information that respondents need to know about the jurisdiction of each agency. (AR2010-11)

The Ombudsman understands that USCIS and ICE are together drafting guidance to the field regarding the expedited handling of applications or petitions filed by individuals in removal proceedings. USCIS guidance should increase docket efficiency, maximize interagency coordination, and encourage discretion where possible to terminate removal proceedings where applicants appear clearly eligible for relief in the form of adjustment of status or in other forms. The Ombudsman encourages all of these goals so that treatment of such filings would be standardized across districts.

While there are many possible areas of review related to the interaction between USCIS, ICE, and EOIR, the statutory mandate for the Ombudsman requires focus on USCIS administration and responsibilities. The Ombudsman is in the process of a more comprehensive review of the USCIS administration of services for the respondents referred to in this section.

275 Immigration Benefits in EOIR Removal Proceedings (Dec. 4, 2009); http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem. 5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3ebc829cbf3ae010 VgnVCM1000000ecd190aRCRD&vgnextchannel=02729c7755cb9010VgnVCM10000045f3d6a1RCRD (accessed May 7, 2010).

F. Form N-648 (Medical Certification for Disability Exceptions) Processing – Applicants and Adjudicators in Need of New Approaches

Among other requirements, every applicant for naturalization as a U.S. citizen must demonstrate English language proficiency and knowledge of United States history and government.[276] To accommodate medical obstacles to meeting this requirement, applicants with a physical or developmental disability, or a mental impairment, may seek a waiver of the English and/or U.S. history and civics portion of the naturalization interview by filing Form N-648 (Medical Certification for Disability Exceptions). A licensed medical professional completes the N-648.[277]

The Ombudsman has received complaints and noted problems regarding the processing of Form N-648 via multiple avenues: while conducting the office's public teleconference series,[278] through review of individual case problems, in meetings with community-based organizations around the country, and during visits to USCIS field offices.

Beginning last fall, USCIS has sought public feedback about N-648 processing, and has used the input to inform internal reviews. Director Mayorkas opened his FY 2009 telephonic outreach on this topic by noting the importance of stakeholder engagement to a constructive revision of N-648 processing. USCIS provided opportunity for comment on a revised Form N-648 in the Federal Register in February 2010.[279]

While progress continues, stakeholders continue to share that processing of the N-648 is frustrating for applicants, their representatives, and the health professionals asked to complete the application. Their consensus is that, although form revisions are necessary and welcome, change is also needed for USCIS employees who are required to adjudicate these forms.

1. The Adjudication Process

USCIS instructions state that applicants should submit Form N-648 with the Form N-400 (Application for Naturalization) filing. In exceptional circumstances, the instructions note that it may be possible also to submit the Form N-648 during the interview process. Depending on where applicants live, they submit the naturalization applications either to the USCIS lockbox facility at Dallas or Phoenix. If an applicant submits the two forms together, USCIS records receipt of the N-648 in its database without issuing a separate receipt notice for the N-648; USCIS issues only an N-400 receipt notice. If the applicant files the N-648 after filing the naturalization application, USCIS neither issues a receipt notice nor records in the database the N-648 filing; the only record of its existence is the form's presence in the case file. Despite the attention given to the waiver request, USCIS does not track the form nationwide.

Information Service Officers (ISOs) shared with the Ombudsman that they review the Form N-648 to determine if the form is complete and the physician's certification is properly recorded. If unable to make a determination on the claimed medical disability, they request additional information or a second medical opinion concerning the disability.

2. Guidance

On September 18, 2007, USCIS issued internal processing guidance updating Chapter 72.2(d)(5) of the Adjudicator's Field Manual (AFM). This memorandum directs adjudicators to review the sufficiency of information to establish that the applicant is eligible for a disability exception, and to focus on whether the medical professional has established and documented the nature and extent of the diagnosed medical condition. It requires adjudicators to ensure the N-648 contains:

276 INA § 312.

277 Id.; 8 C.F.R. § 312.2 (b)(2).

278 Ombudsman Teleconference, "N-648 Medical Waivers – How Are They Working For You?" (Nov. 2, 2007); http://www.dhs.gov/xabout/structure/gc_1200587812180.shtm (accessed Oct. 30, 2009).

279 "Agency Information Collection Activities: Form N-648, Revision of an Existing Information Collection Request; Comment Request," 75 Fed. Reg. 5099 (Feb. 1, 2010).

- An explanation of the origin, nature, and extent of the medical condition which is established and documented by medically acceptable clinical or laboratory diagnostic techniques, including a list of the medically acceptable clinical or laboratory diagnostic tests employed in reaching the diagnosis;
- An explanation of how the applicant's diagnosed medical condition or impairment so severely affects the applicant that it renders him/her unable to learn or demonstrate English proficiency and/or knowledge of [U.S.] history and government;
- An attestation that the disability has lasted, or is expected to last, 12 months or longer; and
- An attestation that the disability is not the direct effect of the illegal use of drugs.[280]

Later, the memorandum emphasizes that:

> The adjudicator is not a physician and should not be placed in the position of making a medical determination. Hence, the adjudicator should not engage in medical determination practices reserved for and performed by a licensed medical professional.[281]

Furthermore, the memorandum emphasizes the critical role of medical professionals in certifying the N-648, a point underscored by N-648 instructions requiring that the "licensed medical professional certifying this form must have training and experience in the field of the applicant's claimed disability or impairment."[282]

BEST PRACTICE

Some district offices, such as in Chicago, provide trainings throughout the year to medical professionals who complete the Form N-648. Such trainings can ultimately allow USCIS personnel and the medical professionals who must certify N-648s to ask and answer questions of each other to improve the process for customers and adjudicators.

Stakeholders have expressed to the Ombudsman their concerns that USCIS is not following the guidance regarding N-648 adjudication. For example, the memorandum states that:

> [T]o facilitate communication with USCIS external customers and stakeholders, each district or field office should maintain a [point of contact] (POC) for the N-648 program. Such POC should be an adjudicator with expert knowledge of N-648 adjudications or a supervisory adjudications officer who is responsible for administration of the N-648 program within the district or field office.[283]

RECOMMENDATION 12

The Ombudsman recommends that USCIS assign one expert or supervisory adjudicator as the point of contact in each field office for the public, in accordance with the USCIS September 2007 N-648 guidance memorandum. (AR2010-12)

Stakeholders report to the Ombudsman that some USCIS field offices have not designated a single person as the point of contact, but rather select different people at different times. As a result, neither applicants nor their representatives know who to contact on N-648 issues.

280 USCIS Interoffice Memorandum, "Guidance Clarifying the Adjudication of Form N-648, Medical Certification for Disability Exceptions. Revisions to Adjudicator's Field Manual (AFM) Chapters 72.2(d) (AFM Updated AD07-01)" (Neufeld Memorandum) (Sept. 18, 2007); http://www.uscis.gov/files/pressrelease/N648Waiver091807.pdf (accessed May 7, 2010).

281 Id.

282 http://www.uscis.gov/files/form/N-648instr.pdf (accessed Oct. 8, 2009).

283 USCIS Interoffice Memorandum, "Guidance Clarifying the Adjudication of Form N-648, Medical Certification for Disability Exceptions. Revisions to Adjudicator's Field Manual (AFM) Chapters 72.2(d) (AFM Updated AD07-01)" (Neufeld Memorandum), p. 4 (Sept. 18, 2007); http://www.uscis.gov/files/pressrelease/N648Waiver091807.pdf (accessed May 7, 2010).

The Ombudsman understands the challenges that USCIS staff encounter in adjudicating Form N-648 and recognizes that USCIS is now considering changes to the form and to the adjudication process itself. Stakeholders have expressed a sense of urgency in the need for improvements to be implemented.

3. Form N-648 Fraud

Fraud issues regarding N-648 waivers continue to cause USCIS concern.[284] At the Detroit District Office alone, between 1999 and 2001, the agency identified over 2,000 naturalization cases involving suspected N-648 fraud.[285] As of March 2009, between 400 and 600 of these cases still were pending[286] and as of March 2010, there were still 100 such cases pending.[287] Since USCIS does not track N-648 processing nationally, it is difficult to detect patterns of fraud and to identify medical professionals suspected of fraud.

4. Developments with Form N-648

In November 2008, USCIS released a new edition of Form N-648.[288] During FY 2008, USCIS conducted a series of trainings on the new edition in Atlanta, Boston, Chicago, Dallas, Miami, New York, Philadelphia, and Seattle.[289] Training sessions targeted external stakeholders – community-based organizations, attorneys, medical practitioners – as well as USCIS personnel including Supervisory ISOs, Senior ISOs, and other selected employees. However, some ISOs indicated to the Ombudsman that they were not aware of the new version of the N-648 until it was in use.

The 2008 release also generated several complaints from stakeholders. They told the Ombudsman that it was too long and not clearly written; consequently, it took physicians so much time to complete that they sometimes charged additional fees to do so.

RECOMMENDATION 13

The Ombudsman recommends that USCIS distribute, and make publicly available on the website, a training module for medical professionals who complete Form N-648. (AR2010-13)

Besides pointing out these specific shortcomings, some community-based organizations critiqued the form review process itself by saying that USCIS did not provide an opportunity to comment on the draft form prior to it being finalized. These critiques noted that USCIS invited stakeholders to meet and discuss the revised N-648 only after it was adopted.

Under new leadership, on October 8, 2009, USCIS held a "Collaboration Session" for participants nationwide to join the N-648 discussion.[290] USCIS hosted a second session on October 23 specifically to hear input from medical professionals and a general stakeholder session on November 13.[291] Moreover, from October 1, 2009 through November 14, 2009, USCIS Quality Assurance (QA) staff completed a Decision Quality Review (DQR) Survey at the field offices.[292] The QA staff reviewed naturalization cases with approved N-648s. The Ombudsman understands that the USCIS Offices of Field Operations and Public Engagement reviewed information from the stakeholder meetings as well as the survey results from the field offices to improve Form N-648. In February 2010, USCIS released a proposed Form N-648 through the Federal Register, which made the draft form available for public comment for 60 days.[293]

284 Doctors have been convicted for completing fraudulent N-648s. U.S. Immigration and Customs Enforcement News Releases, "3 Convicted in Naturalization Scheme: ICE and USCIS Work Together to Stop Fraud" (July 21, 2009); http://www.ice.gov/pi/nr/0907/090721philadelphia.htm (accessed Oct. 30, 2009); Margaret Lucas Agius, "West Bloomfield Psychiatrist Sentenced to Prison In Citizenship Fraud Conspiracy" Examiner.com (Aug. 18, 2009); http://www.examiner.com/x-14309-Detroit-Legal-News-Examiner~y2009m8d18-West-Bloomfield-psychiatrist-sentenced-to-prison-in-citizenship-fraud-conspiracy (accessed Oct. 30, 2009).

285 Information provided by USCIS to the Ombudsman (Mar. 18, 2009).

286 *Id.*

287 Information provided by USCIS to the Ombudsman (Mar. 30, 2010).

288 In July 2009, USCIS issued another edition of Form N-648 to incorporate "minor language changes." *See* USCIS Form Updates (July 15, 2009).

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

290 *See* USCIS Outreach, "Notes from Previous Engagements;" http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/ ?vgnextoid=994f81c52aa38210VgnVCM100000082ca60aRCRD&vgnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD (accessed May 7, 2010).

291 *Id.*

292 Information provided by USCIS to the Ombudsman (Sept. 17, 2009).

293 "Agency Information Collection Activities: Form N-648, Revision of an Existing Information Collection Request; Comment Request," 75 Fed. Reg. 5099 (Feb. 1, 2010).

5. Review of N-648 by Personnel Trained in Disability Determinations

ISOs continue to report challenges in adjudicating N-648s. During Ombudsman site visits, ISOs indicated: (1) they are not provided with training on complex disability and medical issues;[294] (2) they have difficulty understanding doctors' medical terminology on the form; and (3) the 2008 revised form takes longer to adjudicate because of its length. ISOs suggested that pre-adjudication of the form by medical personnel would shorten the N-400 interview time, reduce fraud, and reduce the number of continued cases and re-examinations.

To address some of these challenges, and to ensure that only experts are required to determine the validity of a completed Form N-648, medical and disability specialists, such as a specialized contractor or an internal team of health professionals, could certify the claimed disability, thereby removing primary adjudicative authority for N-648s from ISOs.

For example, Disability Determination Services (DDS) exists within state agencies around the country. DDS is staffed by disability examiners, physicians, and psychologists who currently adjudicate the Social Security Administration disability forms in every state. The Ombudsman met with DDS Washington, D.C., staff to discuss its disability evaluation process as it relates to Social Security benefits. The DDS professionals and examiners collect information regarding the applicant's condition and make determinations based on all of the facts of a case, using medical evidence from the applicant's doctor, as well as from the hospital, clinic, or other institution that rendered treatment.[295]

RECOMMENDATION 14

The Ombudsman recommends that USCIS revise the current practices for processing Form N-648 to utilize experts to adjudicate the Medical Certification for Disability Exceptions. (AR2010-14)

The financial costs of such a model would need to be evaluated and balanced with its advantages. However, the concept of having expert teams available to truly remove USCIS adjudicators from being put in the position of second-guessing medical professionals should be further explored. As an alternative to contracting an outside entity, USCIS could develop an internal team of trained medical personnel or health professionals who understand disability determinations to review these applications. An additional option is to develop a specially trained team of adjudicators who are, or will become, experts in adjudicating N-648s.

Utilization of specially trained personnel would lessen the burden on non-expert ISOs, N-648 applicants, and even their physicians. The Ombudsman recognizes this may require a regulatory change.

6. Tracking Form N-648

For Form N-648, USCIS has expressed interest in strengthening both the customer service delivered, as well as the fraud prevention efforts. Systematically tracking the processing of Forms N-648 across the agency would assist the agency in meeting these goals. Currently, USCIS has no mechanism to track N-648 processing nationally, although some field offices track this form locally.

During a USCIS outreach meeting on July 28, 2009, stakeholders asked the agency to provide statistical data regarding the number of N-648 waivers filed immediately before the 2008 form became effective, the number filed immediately after the form became effective, and the number of fraud investigations pending. USCIS responded that it does not collect this information.[296] The Ombudsman

294 Although ISOs typically have no prior knowledge of medical and disability issues and do not receive such training, they must decide complex medical issues, often under time constraints during N-400 interviews.

295 Social Security Administration's Electronic Booklets, "Disability Benefits," SSA Pub. No. 05-10029 (Nov. 2008); http://www.ssa.gov/pubs/10029.html (accessed Oct. 30, 2009).

296 USCIS National Stakeholder Meeting (July 28, 2009) http://www.uscis.gov/USCIS/Public%20Engagement/National%20Event%20Pages/2009%20Events/July%202009/July%202009%20Agenda.pdf (accessed May 7, 2010).

notes that, by tracking Form N-648, USCIS could develop a real-time statistical database that would enable it to help individuals whose processing is delayed, as well as improve its own capacity to address fraud and processing issues on a systemic level.

RECOMMENDATION 15

The Ombudsman recommends that USCIS track the number of Forms N-648 filed, approved, and rejected, as well as other key information. (AR2010-15)

G. Haitian Temporary Protected Status – Mobilizing to Serve the Public in a Crisis

During the reporting year, several strong earthquakes touched the lives of millions of people. The Haiti quake had particularly severe consequences. The Ombudsman focuses in this section on the USCIS response to the devastation in Haiti.

Following the January 12, 2010 earthquake affecting three million people – killing 230,000 and displacing more than 200,000[297] – DHS responded with wide-ranging relief efforts. On January 15, Secretary Napolitano issued a statement designating Temporary Protected Status (TPS) for Haitians in the United States as of January 12, 2010.[298] Haitian TPS registration is granted until July 22, 2011, and people may apply with USCIS until July 20, 2010.[299]

Figure 28: Map of Haiti

297 U.S. Agency for International Development Fact Sheet #50: "Fiscal Year 2010 Haiti Earthquake" (Apr. 16, 2010).

298 DHS Press Release, "Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals" (Jan. 15, 2010); http://www.dhs.gov/ynews/releases/pr_1263595952516.shtm (accessed May 17, 2010); *see also*, "DHS Notice on Haitian TPS," (Volume 75) 13 Fed. Reg. 3476-3479 (Jan. 21, 2010).

299 *Id.*

1. Temporary Protected Status

The DHS Secretary may exercise discretion to grant TPS to residents of a foreign country – or those without residency status there but who last resided in the affected country before arriving in the United States – when conditions prevent safe return to the designated country for a temporary period.[300] Such conditions can include armed conflict, natural disaster, or other extraordinary problems recognized by the Secretary.

TPS does not lead to lawful permanent residency. However, a TPS recipient, if otherwise qualified, may obtain a green card under another provision of law. Direct benefits of TPS include protection from removal and detention, as well as the opportunity to obtain employment authorization. In addition, TPS recipients may apply for travel authorization (re-entry into the United States).

Individuals seeking TPS file Forms I-821 (Application for Temporary Protected Status) and I-765 (Application for Employment Authorization) with USCIS. Both forms are always filed concurrently; however, if applicants do not wish to obtain an EAD or are under 14 or over 65 years old, they need not submit a fee with the I-765.[301] Applicants must register during a specified time and demonstrate:

- They are a national of the designated foreign state;
- Evidence of continuous presence and residency in the United States from a specified date or last resided there; and,
- They are not otherwise subject to certain bars to admissibility.[302]

Individuals meeting certain criteria may request and be granted fee waivers for the application process.[303]

300 INA § 244; 8 C.F.R. Part 244. Five other countries, in addition to Haiti, have been recognized for TPS since 1999: El Salvador (Mar. 9, 2001), Honduras (Jan. 5, 1999), Nicaragua (Jan. 5, 1999), Somalia (Sept. 4, 2001), and Sudan (Oct. 7, 2004).

301 USCIS, "Tips for Filing Form I-821, Application for Temporary Protected Status," p. 2; http://www.uscis.gov/files/form/i-821_filing_tips.pdf (accessed May 17, 2010).

302 8 C.F.R. §§ 244.2 and 244.4.

303 8 C.F.R. § 244.20.

2. Adoption of Haitian Orphans

USCIS announced that it would expedite qualified adoption petitions for Haitian children initiated before the earthquake. The USCIS website provides information specifically regarding adoption of Haitian children. Posted topics include details on seeking humanitarian parole for adoptive children, obtaining biometrics and medical screenings for them, traveling with them, and arrival considerations.[304]

USCIS also implemented the Special Humanitarian Parole Program for Haitian Orphans who required entry into the United States for medical care, reunification with extended family, or for other services when they did not otherwise qualify for an immigration benefit. USCIS has authorized parole for more than 1,000 such orphans and 340 requests remained pending as of April 5, 2010.[305] At the request of the Haitian government, USCIS closed this program to new requests on April 14, 2010, and resumed normal intercountry adoption processing.[306]

3. USCIS Community Outreach

Within a few days following the Secretary's designation of TPS for Haitians, USCIS launched a series of community outreach clinics. Nearly 800,000 Haitian nationals live in the United States and many send remittances[307] to relatives in Haiti. USCIS focused outreach efforts on areas with large Haitian communities, including Miami/South Florida, New York, Boston, and to a lesser extent Philadelphia.

304 *See* USCIS Questions & Answers, "Information for U.S. Citizens in the Process of Adopting a Child from Haiti" (Feb. 26, 2010); " http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=8f712d86a8756210VgnVCM100000082ca60aRCRD&vgnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD (accessed May 11, 2010).

305 *See* USCIS, "Special Humanitarian Parole Program for Haitian Orphans Draws to a Close at Request of Haitian Government" (Apr. 7, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=dc4535f9b29d7210VgnVCM100000082ca60aRCRD&vgnextchannel=c94e6d26d17df110VgnVCM1000004718190aRCRD (accessed Apr. 21, 2010).

306 *Id.*

307 Remittances are monetary transfers sent back to assist kin or pay debts in one's home country. Some Haitians intending to apply for TPS told the Ombudsman they would be sending money to family remaining in Haiti.

USCIS initially prepared to adjudicate up to 200,000 Haitian TPS applications.[308] Community-based organizations began holding clinics independent of or in tandem with USCIS sessions to provide filing assistance free of charge or for a nominal suggested donation. At the same time, stakeholders reported to the Ombudsman that "notarios" were charging up to $1,000 for assisting persons with the TPS application.

USCIS officers met with stakeholders in schools, churches, and community centers to explain TPS and respond to questions.

Haitians were able to access information not only through outreach, but also via established USCIS service channels at field offices and at the USCIS National Customer Service Center (NCSC) toll-free telephone line. The agency authorized its Immigration Services Officers in affected areas to work overtime serving customers, and permitted individuals to make inquiries at field offices without an INFOPASS appointment. Officers distributed packets with instructions in English, Creole, and French, including both forms and customer service information about governmental assistance and U.S. Department of State contacts, if persons wished to inquire about family members. Officers also accepted completed forms from individuals.

USCIS also posted multimedia information on its website in English, Creole, and French. USCIS extended hours from 6 p.m. to 11 p.m. at the NCSC. At a South Florida field office, officers arranged for shuttles from nearby church parking lots due to the high number of walk-in applicants.[309]

Initial TPS application rates were lower than expected and rejection rates exceeded 10 percent.[310] Of the 44,500 TPS applications USCIS received, the agency has rejected applications for four major reasons: failure to file the appropriate fees or fee waiver request; missing information; lack of signature; or use of the incorrect form. Unsuccessful applications may be re-filed, without prejudice, by the close of the registration period on July 20, 2010.[311]

USCIS also announced that it would expedite the adjudication of certain pending family-based petitions.[312]

4. Stakeholder Concerns

Some state agencies and community-based organizations serving arriving Haitians told the Ombudsman that there appeared to be little DHS coordination or communication between USCIS and Customs and Border Protection (CBP) at the time of the disaster thereby resulting in inconsistency in the type of visas issued at the ports of entry. Amid the rapid response to this crisis, stakeholders shared that in some cases individuals were issued visas that ultimately made them ineligible for benefits for which they may have otherwise been eligible. Moreover, state budget cuts left several related service agencies without adequate staff to handle the TPS filing assistance requested added to their usual caseloads. Stakeholders also stated that there was no responsive point of contact at the federal level to answer questions about individuals' particular problems, such as those encountered at the airport where CBP issued varying entry authorizations, imposed requirements individuals were not prepared to meet, or that otherwise would prejudice arriving Haitians unfavorably in the future. In a number of instances, the Ombudsman worked to liaise with community-based organizations and DHS to convey information and experiences as they occurred.

308 Information provided by USCIS to the Ombudsman (Jan. 22, 2010).

309 *Id.*

310 USCIS, "USCIS Reminds Haitians to Register for Temporary Protected Status" (Apr. 14, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=7d30bf4a26df7210VgnVCM10000 0082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD (accessed May 17, 2010).

311 *Id.*

312 USCIS, "Haitian Relief Measures: Questions and Answers (Jan. 18, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=855260f64f336210VgnVCM100000082ca60aRCRD&vgnextchannel=9cf75869c9326210VgnVCM100000082ca60aRCRD (accessed June 14, 2010).

Ombudsman 2010 Reporting Period Recommendations – Identifying Opportunities for More Responsive Government

This section includes summaries of the Ombudsman's recommendations for the 2010 reporting period, as well as the complete text of the recommendation regarding Form I-824, as that recommendation was ready for issuance shortly before the annual report due date.

A. Recommendations to Improve the Timely Adjudication and Processing of Form I-824

REASONS FOR RECOMMENDATIONS

- Form I-824 is principally used to notify DOS to initiate overseas following-to-join processing of the eligible derivative family members
- Processing times vary among USCIS facilities that adjudicate these filings
- The national three month processing goal is too long given the ministerial nature of this adjudication
- Misrouted or lost following-to-join notifications occur too often and can cause serious consequences

RECOMMENDATIONS

1. Process Forms I-824 requesting duplicate approval notices within days of receipting, and process remaining I-824s more expeditiously
2. When access to the underlying case file is needed, evaluate whether transfer of Form I-824 to the facility in possession of the file will hasten its adjudication
3. Develop a national standard operating procedure (SOP) for processing Form I-824 and institute training for all adjudicators
4. Use a tracked mail delivery method to timely and accurately deliver notifications to DOS
5. Explore how an electronic communication channel between USCIS and DOS may be utilized to eliminate the current paper notification process

Summary

The Ombudsman reviewed USCIS policies and practices concerning the adjudication and post-adjudication processing of Form I-824 (Application for Action on an Approved Application or Petition). This study concludes that the lack of uniform guidance concerning the I-824, coupled with the decentralized processing of this product at more than 80 USCIS facilities, results in systemic irregularities in processing times and outcomes.

Form I-824 is utilized by a variety of individuals, families, and employers for multiple purposes. In general, customers file Form I-824 when they need formal verification of USCIS approval of a previously submitted application or petition. Such confirmation is often sought to allow the initiation of a subsequent or new application with USCIS or another government entity, or to request that an approval notice be sent to a U.S. consulate regarding immigrant visas for derivative family members.

Form I-824, while technical in nature, has important substantive consequences for individuals, families, and employers. It notifies other components of government that an immigration application or petition has been approved, and that the door is open to further visa processing for the named beneficiary, or a derivative family member. Delays and errors in processing Form I-824 can prolong family separation or delay employer efforts to secure entry visas for foreign workers. Depending on the customer's place of residence or work, some I-824s are processed in a matter of weeks, others within a few months, and some take well over three months. While customers file Form I-824 for various reasons, given the ministerial nature of the adjudication, some find processing times nearing three months difficult to accept; many customers may have already waited lengthy periods of time for the underlying benefit approval.

To standardize the Form I-824 process and provide better customer service, the Ombudsman makes five recommendations.

Background

Customers file Form I-824 to initiate a formal notification by USCIS verifying its approval of a previously submitted application or petition. They may submit it concurrently with the underlying benefit application or petition filing, or after approval of the underlying filing.[313] The I-824 filing fee is $340.[314]

Individuals and employers use the I-824 for multiple reasons:

(a) to request USCIS to issue a duplicate approval notice;

(b) to request that USCIS notify DOS of the approval of a nonimmigrant visa petition or to notify another port of entry of the approval of a petition or a waiver application;

(c) to request USCIS to notify DOS that the applicant was granted lawful permanent residence in the United States;

(d) to request USCIS to send an approved immigrant visa petition to DOS to consular process overseas for an immigrant visa; and

(e) to notify DOS that the applicant has become a U.S. citizen through naturalization.

The vast majority of I-824s are adjudicated at a USCIS service center,[315] with nearly 80 percent filed by employment-based immigrants.[316] As noted previously, the Form I-824 has several purposes. Monthly FY 2009 data reveal that requests for a duplicate approval notice represent the most frequent reason USCIS customers file Form I-824. The second most common usage is requests by principal beneficiaries of an immigrant petition seeking to process overseas for their immigrant visa. Requests by green card holders of USCIS to notify the DOS that they have adjusted status (with the likely goal of bringing their nuclear family members to join them in the United States – a process referred to as following-to-join) is the third most common reason. Fourth on the list are employer petitioner redirects requesting USCIS to send approval notifications and other information to a consular post overseas in nonimmigrant visa matters. Relatively few applicants use Form I-824 to request USCIS to send a notification to DOS that they have become naturalized U.S. citizens.[317]

Form I-824 Filing, Receipting, and Adjudication

Currently I-824s are adjudicated by the USCIS service center or field office that approved the underlying application or petition. Therefore, such adjudications are performed at all four USCIS service centers (California, Nebraska, Texas, and Vermont), at the National Benefits Center (NBC) in Missouri, and at over 80 field offices nationwide.

Prior to February 2010, USCIS instructed customers to file Form I-824 directly with the office that approved the underlying benefit application or petition. Service centers have routinely issued receipt notices upon intake of I-824s. However, according to stakeholders, disparities existed in I-824 intake processing at field offices that may have culminated in subsequent tracking problems and ultimately adjudication delay in some cases. USCIS recently consolidated the I-824 filing process. With the exception of concurrently filed I-824s,[318] customers are now directed to file I-824s with one of three USCIS lockbox facilities (depending on

313 Pursuant to 8 C.F.R. § 103.5b(a), Form I-824 may be filed concurrently with the original application or petition. USCIS informed the Ombudsman that its present file management system does not distinguish between concurrently filed cases and those filed after the approval of the underlying benefit submission. Information provided by USCIS to the Ombudsman. (June 10, 2010)

314 *See* 8 C.F.R. § 103.7. In FY 2009, USCIS received approximately $6.23 million from I-824 filings. Data provided by USCIS to the Ombudsman (Apr. 1, 2010).

315 Based on FY 2009 data USCIS provided to the Ombudsman, approximately 95 percent of I-824s were filed with USCIS service centers.

316 Approximately 80 percent of I-824s received at the DOS in FYs 2008 and 2009 were connected to employment-based cases. Data provided by USCIS and DOS to the Ombudsman (Aug. 13, 2009 and Apr. 1, 2010).

317 Information provided by USCIS to the Ombudsman. (June 17, 2010).

318 The form's instructions specify that a concurrently filed I-824 should be submitted to the mailing address corresponding to the underlying application or petition.

which USCIS office approved the original application or petition).[319] Following intake at a lockbox, under the new process, I-824s are forwarded for adjudication to the USCIS office that approved the underlying filing. This new routine is expected to reduce tracking difficulties and delays previously associated with local field office receipting.

In reviewing USCIS' I-824 processing, the Ombudsman learned that adjudicators can review and approve some I-824s based solely on data and information available through one of its electronic databases; however, this approach is not possible in all cases, with filings requesting following-to-join notification being a key example. In following-to-join cases, certain records and documents can only be found in the underlying case file, and these must be copied and sent to DOS along with the requested notification.

In addition, there are some cases in which the underlying case file[320] is no longer physically located at the USCIS facility that approved the application or petition. In such circumstances, the adjudicator must identify where the underlying case file is located,[321] request the file, and await its transfer. When the adjudication is completed, the adjudicated I-824 is placed into the case file, and the file is typically returned to the sending facility. The Ombudsman recognizes that the transfer of these physical case files between the sending facility and the adjudication facility imposes mailing and other handling costs on the agency. Additionally, the current file transfer routine can prolong processing times.

Processing Times

Prior to the 2007 fee increase,[322] the established national processing time goal for Form I-824 was six months.[323] With the 2007 fee increase, USCIS announced a goal to generally reduce processing times for a variety of forms by twenty percent, including Form I-824.[324] In the spring of 2009, USCIS published a revised national goal to reduce I-824 processing times to three months.[325] USCIS public website processing time information bearing an effective date of April 30, 2010, reports the California Service Center, the Vermont Service Center, and the National Benefits Center as meeting the national goal of three months, but reports processing time at the Texas and Nebraska Service Centers at nearly four months.

Field offices adjudicate approximately five percent of the total number of I-824s filed annually, and some field offices may go months without receiving an I-824. Because the number of field office related I-824s is low compared to other case types, they are not a highly visible product in terms of volume processed. Moreover, USCIS does not post field office processing time information for I-824s on its website. Based upon review of USCIS data, the Ombudsman notes that disparity in I-824 processing time between local field offices does exist. While most field offices are within the stated national goal of three months, a number of them exceed the three month target.[326]

The Ombudsman identifies two important constraints on the above-noted I-824 processing data: (1) in general, USCIS does not report actual processing time when it is processing cases faster than the stated national goal, and (2) I-824 processing times could skew somewhat high due to USCIS' acceptance and inclusion of concurrently filed

319 USCIS News, "Change of Filing Location for Form I-824, Application for Action on an Approved Application or Petition" (Feb. 19, 2010); www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid= 648d05460a7e6210VnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD (accessed June 18, 2010).

320 USCIS refers to such case files as the Alien-file ("A-file"). The A-file contains all forms and documents relevant to exchanges between a foreign national and USCIS, as well as related communications with other DHS components and government entities.

321 In some cases, the A-file related to the approved application or petition will have been moved into storage at the National Records Center (NRC). The Center stores millions of USCIS and legacy INS paper records in a central repository, located in Missouri near the National Benefits Center.

322 *See* "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," 72 Fed. Reg. 29851- 29874 (May 30, 2007).

323 *See* "USCIS Operating Performance – March 2009," p. 9; http://www.uscis.gov/files/nativedocuments/operating_performance_mar2009.pdf (accessed Mar. 30, 2010).

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

325 *See* "USCIS Operating Performance – March 2009," p. 9; http://www.uscis.gov/files/nativedocuments/operating_performance_mar2009.pdf (accessed Mar. 30, 2010).

326 Data provided by USCIS to the Ombudsman (Apr. 1, 2010).

applications that can accumulate pending time as they await approval of the related benefit submission filing. On this second point, since USCIS does not distinguish concurrent filed applications within its Form I-824 inventory, whether such skewing occurs cannot be clarified.

Notwithstanding the above-noted caveats, given that I-824 adjudications are largely ministerial in nature, processing times that approach or exceed three months are too long for both families and employers alike.

I-824 Notification Misrouting

During the course of this review, the Ombudsman learned that USCIS does not provide formal training on how to effectively process I-824s from intake to final delivery. Based on the observations of both stakeholders and government officials, the most common error that arises is the improper routing of Form I-824 following-to-join notifications to a USCIS facility (e.g., National Records Center,)[327] rather than to the DOS National Visa Center (NVC).[328]

The above-noted routing error problem is further complicated by the mailing routine used by USCIS in following-to-join cases. Rather than using a tracked mail service, USCIS sends a hard copy of following-to-join notifications and related data to DOS using regular (untracked) U.S. Postal Service (USPS) mail service.[329] With this routine, the agency cannot definitively establish if and when it placed such notification mailings into the USPS delivery stream.

Stakeholders and customers report experiencing, at times, USCIS maintaining that it approved an I-824 and sent out the requested notification, while NVC denies receiving the notification. In such situations, customers who may have waited months or years for the underlying benefit, and longer for adjudication of the I-824, find that they still cannot move forward due to mail delivery problems cited by both USCIS and DOS. DOS reports receiving approximately 15-20 calls weekly from customers complaining specifically about this problem.[330] In previous years, some customers have resorted to federal litigation to compel action on long pending, misrouted, or lost I-824 cases/notifications.[331]

The Ombudsman discussed I-824 issues with DOS officials involved with the consular notification process. From these talks, the Ombudsman learned that in 2007-2008 USCIS attempted unsuccessfully to establish a protocol to transmit I-824 following-to-join notifications to DOS via an electronic format.[332]

USCIS advises the Ombudsman that it recently held several meetings with DOS again to discuss the notification problem,[333] and expects to take further steps to address various Form I-824 issues: specifically, the issuance of a uniform standard operating procedure (SOP) for use at its service centers and the issuance of a separate SOP for use at its field offices.

327 Information provided by DOS to the Ombudsman (Apr. 1, 2010).

328 "The NVC processes all approved immigrant visa petitions after they are received from Citizenship and Immigration Services … and retains them until the cases are ready for adjudication by a consular officer abroad." *See* DOS website, "National Visa Center;" http://travel.state.gov/visa/immigrants/types/types_1309.html (accessed Mar. 30, 2010).

329 USCIS informed the Ombudsman that after it approves Form I-824 requesting a notification of the underlying approval action (the adjustment of status or the approval of a new nonimmigrant status), that it cannot send notification to DOS electronically due to concerns with transmission of personally identifiable information over unsecure lines. Information provided by USCIS to the Ombudsman (Jan. 9, 2009). USCIS' use of regular mail delivery raises other problems: USCIS cannot confirm that it mailed the document; that it was mailed to the correct address or delivered to the addressee; or when it was delivered.

330 The 15-20 weekly calls represent a very small percentage of the 5,500 to 6,000 calls the NVC receives each week. Information provided by the DOS to the Ombudsman on multiple dates in 2008, 2009 and 2010. Nevertheless, the Ombudsman considers the systemic nature of this problem sufficient to warrant addressing.

331 Information provided by USCIS to the Ombudsman (Mar. 8, 2010).

332 According to USCIS, this effort ended due to unresolved logistical and password management problems identified by DOS with proposed use of encrypted email to transmit personally identifiable information consistent with the "safeguards" mandated by the Privacy Act of 1974, 5 U.S.C. § 552a.

333 Information provided by USCIS to the Ombudsman (Apr. 21, 2010).

RECOMMENDATION 16

The Ombudsman recommends that USCIS establish a goal to process Forms I-824 requesting duplicate approval notices within days of receipting, and to process all other I-824s more expeditiously. (AR2010-16)

The adjudication of a Form I-824 requesting the issuance of a duplicate approval notice should be recognized as a ministerial act that can be accomplished within a matter of days. I-824s requesting DOS notifications are, likewise, not complex. Given the family unification objective behind many of these filings, USCIS should revise its practices to facilitate adjudications and further reduce processing times.

RECOMMENDATION 17

The Ombudsman recommends that USCIS evaluate the benefit of transferring Form I-824 (and related adjudicatory responsibility) to the USCIS facility that has physical possession of the underlying case file, if access to documents or information in the case file is necessary. (AR2010-17)

If access to the underlying case file is necessary to an I-824 adjudication, but the file is no longer physically located at the USCIS facility that handled the original case, rather than transfer the case file to the adjudicator who has the I-824, USCIS should transfer the I-824 to the facility that has the case file. Transfer of the form could be accomplished through a secure USCIS electronic channel. Such a routine could not only yield quicker adjudications, but might also reduce file transfer costs (i.e., sending a single scanned form electronically should entail far lower handling costs than moving around an entire physical file). In making this recommendation, the Ombudsman acknowledges that in some cases the physical case file will be in storage at USCIS' National Records Center, which does not currently adjudicate immigration benefit cases. In such circumstances, USCIS may determine that it is operationally more appropriate to continue its current process of sending the physical files to the adjudicating facility, but should also consider the option of transferring both the form and file to the nearby National Benefits Center for adjudication.

RECOMMENDATION 18

The Ombudsman recommends that USCIS develop a national standard operating procedure (SOP) for the processing of Form I-824 (inclusive of adjudication and transmission of the final documents or notifications requested), and institute mandatory Form I-824 adjudication and post-adjudication processing training for all USCIS adjudicators. (AR2010-18)

A national I-824 SOP would improve adjudication efficiency and reduce processing errors, resulting in improved customer service. The recommended I-824 SOP should specifically address when an I-824 may be approved without access to the underlying case file, and how and where requested notifications should be sent.

Given that I-824 adjudications are now performed at over 80 USCIS facilities, the recommendation to provide adjudicator training harmonizes with USCIS' current practice to cross-train adjudicators in multiple product lines. Cross-training on I-824 processing would ensure that USCIS has the capability to easily reassign adjudicators on a temporary basis to process these forms quickly and correctly. An I-824 training module could be offered to adjudicators through an existing online delivery system.

RECOMMENDATION 19

The Ombudsman recommends that USCIS ensure the timely and accurate delivery of notifications to the DOS National Visa Center through the use of a tracked mail delivery service. (AR2010-19)

Misrouted and lost notifications sent by USPS regular mail lead to extended processing delays and, in worst case scenarios, litigation. Such outcomes would be minimized or eliminated if USCIS were to modify its mailing procedure to send such documents and notifications to DOS using a tracked mail delivery service. The Ombudsman recognizes that this recommendation would result in increased costs in the form of additional handling time and mailing charges. However, until USCIS can deliver such notifications electronically to DOS, efficiency and customer service justify a measure that ensures their timely and reliable delivery.

RECOMMENDATION 20

The Ombudsman recommends that USCIS explore the development or enhancement of an electronic communication channel between USCIS and DOS capable of securely sending formal notifications on various immigration-related matters, including Form I-824. (AR2010-20)

Given the state of technology available to promote efficiency in the delivery of government services, on a long term basis, the Ombudsman urges USCIS to develop an electronic notification process to facilitate information sharing with DOS. As USCIS is now engaged in the planning of significant technological advancements, this is an opportune time to collaborate with DOS on technological solutions to automate and secure the sharing of critical communications and records between the two agencies. The Ombudsman notes that such a technological resource could be used in connection with other official interagency communications (for example, derivative refugee petitions, adoption petitions, special immigrant visas, and consular recommendations to revoke petitions).

B. Waivers of Inadmissibility: Additional Improvements Needed to Enhance the Current Filing Process and Minimize Reluctance to File

REASONS FOR RECOMMENDATIONS

- Ciudad Juarez Field (CDJ) processes the majority of I-601s filed worldwide
- In 2007, USCIS initiated a program to reduce significant backlog of I-601s at CDJ
- Processing times are shorter for some applicants, but remain long for others
- "Extreme hardship" standard remains difficult to understand and apply
- Adjudication consistency remains a challenge, and
- The I-601 process requires applicants to depart the United States, and bear the risk that a denial could bar them from returning for many years, if not permanently

RECOMMENDATIONS

1. Centralize processing of all Forms I-601
2. Provide for concurrent filing of Forms I-601 and I-130
3. Implement a case management system that supports the automated posting of I-601 processing times online and allows applicants to track their cases on USCIS' website
4. Publish clear instructions on how to request an expedite of Form I-601
5. Increase coordination between DOS consular officers and USCIS adjudicators who work with Form I-601
6. Allow USCIS employees at CDJ to request digitized A-files

More Information?

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

Summary

This study examines the processing of inadmissibility waivers, a form of relief available to certain foreign nationals ineligible to enter the United States or to become lawful permanent residents (green card holders) while in the United States if deemed to have violated Section 212 of the INA. The INA lists inadmissibility grounds that include, but are not limited to, unlawful presence, criminal, health, immigration, and security violations. Individuals seeking to overcome inadmissibilities may do so by filing Form I-601 (Application for Waiver of Grounds of Inadmissibility) with USCIS.

The processing hub of today's waiver of inadmissibility system is the USCIS Ciudad Juarez Field Office (CDJ), which receives the majority of I-601s. USCIS initiated the I-601 Waiver Adjudication Program at CDJ in March 2007 to eliminate a backlog of approximately 8,000 cases that had wait-times of up to two years.[334] This restructured program entails a triage approach to all I-601 filings, leading to the approval of many clearly-approvable applications within a matter of days, and referral for further review of those applications needing more research or investigation. Additionally, USCIS implemented agencywide procedural innovations and quality assurance measures to improve adjudication rates, standardization, customer service, and overall efficiency.[335]

While the agency made significant improvements in case-load management through the I-601 Waiver Adjudication Program, it has not been able to fully overcome challenges in several operational and procedural areas.

- **Disparity of Processing Times between On-Site Adjudicated and Referred Cases –** Under the current structure, CDJ approves approximately 50 percent of waivers filed within a matter of days, while the other 50 percent are referred for additional review, which currently takes 10-12 months.[336] Any given applicant under this system could, therefore, experience one of the fastest or slowest processing times of any USCIS application.
- **Limited Access to, and Standardization of, Information for Customers –** Customers cannot access processing times or the "My Case Status" online feature for their pending waiver applications. There is no standard practice for requesting expedited processing.
- **Discrepancies in Interpretation of the "Extreme Hardship" Standard –** Many applicants must demonstrate that removal or exclusion from the United States would result in "extreme hardship" to qualifying family members.[337] Both USCIS and stakeholders agree that these determinations often lack uniformity due to the combination of the discretionary nature of the cases and lack of guidance criteria to standardize rulings on this issue.

In sum, the process often discourages those who choose to pursue it and, thereby, deters others from seeking a waiver at all. Individuals who file a waiver application often encounter information gaps and long wait times at various stages of the process, while those already aware of the steps involved in the waiver application process perceive it as a high risk undertaking and become reluctant to file.

The risk is particularly high for individuals within the United States who choose to file for a waiver to regularize their status. These foreign nationals, per regulations, are required to leave the United States to seek a waiver, a step that involves choosing between two difficult alternatives: to either embark upon a complex and often time-consuming legalization process outside of the United States that could lead to a denial, or remain in the shadows to stay near family and within the United States.[338]

334 Information provided by USCIS to the Ombudsman (Jan 28, 2010).

335 *See* "USCIS Immigrant Waivers – Procedures for Adjudication of Form I-601 For Overseas Adjudication Officers," (Apr. 28, 2009); http://www.uscis.gov/files/article/i601_immigrant_waivers_8jun09.pdf (accessed May 27, 2010).

336 Information provided by USCIS to the Ombudsman (May 24, 2010).

337 Qualifying relatives may include U.S. citizen fiancé(e)s, or U. S. citizen or lawfully resident spouses, parents, or children. *See* INA §§ 212(a)(9)(B)(v), 212(h), 212(i), 8 C.F.R. 212.7(a)(1)(i), and 9 FAM 41.81 N9.3(a). Therefore, in a key change to prior law, any hardship applicants sustain from their own ineligibility is not a factor in the "extreme hardship" determination.

338 *See generally* INA § 245(a).

Taking into consideration the many structural constraints in place, the Ombudsman issued several recommendations to improve the inadmissibility waiver process for those who do file, as well as to minimize the reluctance of those who wish to seek a waiver.

C. Emergent or Denied Refugee Applications: Expediting Cases, Articulating Reasons for Denial, and Issuing Guidance for Requests for Reconsideration

REASONS FOR RECOMMENDATIONS

- The existing refugee application expedite process lacks transparency
- Applicants are not consistently afforded an opportunity to respond to adverse assessments during their interviews
- *Ad hoc* communication exists, but applicants do not have access to a public process
- Receipt notices are not currently issued in Request for Reconsideration (RFR) filings seeking review of a Notice of Ineligibility
- Notices of Ineligibility do not consistently contain sufficient detail to enable applicants to file a meaningful RFR

RECOMMENDATIONS

1. Publicly state the criteria to expedite emergent refugee cases
2. During interviews, clearly inform the applicant of potential denial bases to allow an opportunity to respond and articulate case-specific reasons in Notices of Ineligibility
3. Issue guidance on how to file RFRs, provide a tip sheet, and issue clear mailing information
4. Issue proof of receipt in RFR filings

More Information?

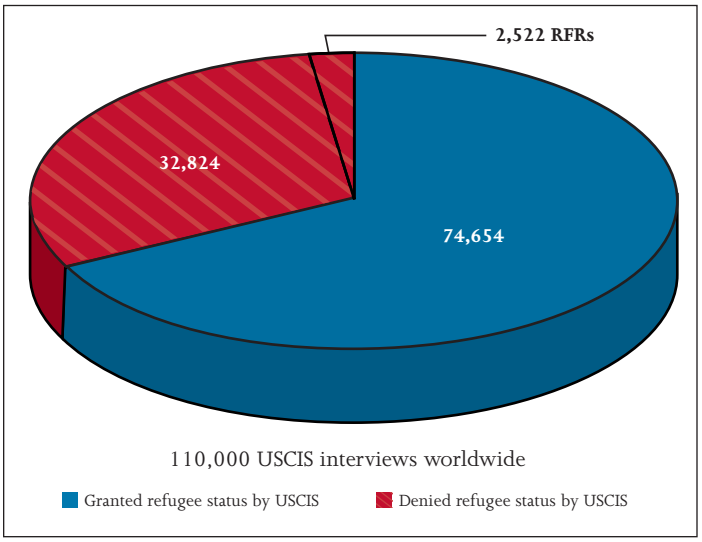
Review the full text of the Ombudsman's April 14, 2010 recommendations at:
http://www.dhs.gov/xlibrary/assets/cisomb_recommendation_43_adjudication_refugee_status.pdf

Summary

Persons displaced from their home country by war or other qualifying reasons, including fleeing persecution, may seek refugee status from United Nations High Commissioner for Refugees (UNHCR) posts worldwide.[339] Individuals UNHCR identifies as refugees, who are referred to the United States for resettlement, file Form I-590 (Registration for Classification as Refugee) with USCIS. USCIS reviews the submission and interviews applicants to determine whether they: (1) are of special humanitarian concern; (2) are unable or unwilling to return to their country due either to past persecution or to a "well-founded fear" of future persecution on a protected ground;[340] (3) have not firmly resettled in a third country; and (4) are not otherwise inadmissible pursuant to INA Section 212.

During FY 2009, USCIS Refugee Adjudications Division (RAD) interviewed 110,000 persons worldwide for classification as refugees as shown in Figure 29.

Figure 29: Worldwide USCIS Refugee Status Approvals, Denials, and Requests for Reconsideration – FY 2009



Source: Information provided by USCIS to the Ombudsman (Nov. 5, 2009 and Mar. 24, 2010).

During this timeframe, USCIS initiated service innovations including a quality assurance pilot program, a confidentiality release to enhance information sharing with resettlement partners, and a near doubling of the refugee corps from 46 officers to 84. These changes facilitated a 25 percent increase in worldwide admissions over FY 2008.

Since March 2009, the Ombudsman has assisted with individual case problems for refugee applicants, including emergent cases. For this review, the Ombudsman reviewed refugee processing generally, with a special focus on Afghanis and Iraqis, two nationalities which are the majority of all refugees currently assisted by UNHCR worldwide.[341] Individuals and stakeholders expressed concerns with both the beginning and end of the process: how to request an expedited review in emergent cases and, after denial of an application, how to file a Request for Reconsideration (RFR). They cited conflicting guidance on preparing and submitting a meaningful RFR, as well as a lack of transparency on how to request to expedite an exigent refugee case.

The Ombudsman undertook a study on these issues leading to the recommendations issued on April 14. The underlying problem addressed by each recommendation is lack of transparency. Some representatives and applicants know how to contact USCIS leadership by phone or email to seek help. While this avenue is helpful on an *ad hoc* basis, such unequal access to these resources raises fairness issues. To remedy this general inequity, the Ombudsman provided USCIS recommendations to fill the information void currently experienced by refugee applicants and their representatives.

Publication of Figure 30, the list of RFR filing addresses, on USCIS' website, as well, will deter the filing strategy of sending the same information to multiple addresses across agencies to ensure at least one submission will be considered.

339 There are 75 such posts. Persons may seek refugee status to avoid "*refoulement*" (forcible return) by the government of the third country to which they have fled. Signatories to various international agreements have pledged *non-refoulement* of UNHCR-designated refugees who await firm resettlement or repatriation.

340 Pursuant to INA § 101(a)(42), "protected grounds" include race, religion, nationality, membership in a particular social group, or political opinion.

341 UNHCR, "2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons," p. 3 (June 19, 2009). The United Nations General Assembly established UNHCR in 1950 to coordinate global aid and assistance for refugees. *See* http://www.unhcr.org/pages/49c3646c2.html (accessed Mar. 24, 2010).

Confidence that documents are routed properly will reduce the incidence of duplicate filings, thereby saving both applicants and USCIS the duplicative resources expended in producing and processing them.

The response to these recommendations by the stakeholder community has been consistently positive. Refugees are by definition in vulnerable and often precarious situations. Implementation of these measures by USCIS will benefit the agency, as well, by raising the standard both of initial adjudications and of RFRs by providing a roadmap for more transparent, uniform, and efficient practices.

Figure 30: Request for Reconsideration Filing Locations by Country of Interview

SUBMIT AN RFR for a refugee case interviewed in →	Algeria, Bahrain, Egypt, Iraq, Jordan, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, & Tunisia*	Kuwait, Lebanon, Pakistan, Turkey, United Arab Emirates, & Yemen
VIA Email	USCIS.Amman@dhs.gov	USCIS.Athens@dhs.gov
VIA Mail from the United States	Field Office Director, USCIS/DHS American Embassy, DOS 6050 Amman Place Washington, D.C. 20521-6050	Field Office Director, USCIS/DHS PSC 12008 Box 25 DPO, AE 2009842
VIA Mail from Outside the United States	Field Office Director, USCIS/DHS c/o American Embassy, DOS P.O. Box 354 Amman, 11118 Jordan	Field Office Director, USCIS/DHS c/o American Embassy, DOS Vasilissis Sofias 91, 10160 Athens, Greece
VIA Express Mail	Field Office Director, USCIS/DHS c/o American Embassy, DOS Al Umawyeen Street, Abdoun Amman, Jordan	(Same As Above)

** Currently, RFRs for these countries can also be sent directly to the Overseas Processing Entity, which will note receipt, scan them into the system, and forward to the the USCIS Field Office Director for review.*

D. Temporary Acceptance of Filed Labor Condition Applications (LCAs) for Certain H-1B Filings

REASONS FOR RECOMMENDATIONS

- INA requires H-1B petitions be supported by an LCA before approval
- U.S. Department of Labor's (DOL's) new online Labor Condition Application (LCA) certification process caused difficulties for some employers whose applications were erroneously rejected due to Federal Employer Identification Number (FEIN) mismatches
- Stakeholders complained that DOL LCA delays prevented some from timely filing H-1B petitions and extensions, negatively impacting workers legal status and causing employment disruptions

RECOMMENDATIONS

1. Temporarily accept H-1B petitions by proof of a timely filed LCA application, and issue a Request for Evidence for a certified LCA
2. Excuse late H-1B filings temporarily where petitioner documents the improper rejection by DOL of a LCA submission

More Information?

Review the full text of the Ombudsman's recommendations at: http://www.dhs.gov/xlibrary/assets/cisomb_recommendation_43_LCAs_October_2009.pdf

Review the full text of USCIS' Policy Memorandum at: http://www.uscis.gov/USCIS/Laws/Memoranda/2009/h-ib-petitions-temporary-acceptance.pdf

Review the full text of USCIS' initial public announcement at: http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/2009%20Press%20Releases/Nov%202009/Attachment%20to%20Temporary%20Acceptance%20of%20H-1B%20Petitions.pdf

Review the full text of USCIS' response to the Ombudsman's recommendations at: http://www.uscis.gov/USCIS/Native%20Docs/cisomb-43-response-lca.pdf

Summary

The Ombudsman received complaints from customers and stakeholders, in August and September 2009, about incorrectly denied Labor Condition Applications (LCAs). In addition, problems with the U.S. Department of Labor's (DOL's) iCERT web-based tool used to certify LCAs, launched April 15, 2009, were delaying processing beyond the seven days permitted by DOL regulations. Specifically, DOL was denying LCAs based on erroneous Federal Employer Identification Number (FEIN) mismatches.

DOL's erroneous denials and associated delays caused USCIS to reject employers' attempts to obtain or extend legal status for some H-1B workers. Consequences of untimely petition filing include potential loss of employees' legal status, as well as economic loss to both employers and employees due to business disruption: employees having to leave the country, thereby incurring travel costs while suffering wage loss, and employers suffering indefinite loss of key personnel, thereby harming operations by interrupting continuity and planning.

In addition to pointing out to the Ombudsman these DOL errors and improper delays, stakeholders emphasized that USCIS actions were compounding the problem. Whereas INA Section 212(n)(1) requires a certified LCA only prior to petition *approval* and USCIS regulation expressly permits petition *filing* based on evidence of LCA filing,[342] the agency was rejecting filings not accompanied by a certified LCA. On October 23, 2009, the Ombudsman recommended that, to mitigate the effect of glitches with DOL's iCERT system, USCIS revert to a past practice of temporarily accepting H-1B filings based on proof that an LCA had been filed, even if the certification had not yet issued. Also, the Ombudsman suggested that USCIS excuse late H-1B filings where petitioners could demonstrate erroneous DOL rejection of LCA submissions based on false FEIN mismatches.

342 *See* 8 C.F.R. § 214.2(h)(4)(i)(B).

On November 5, 2009, USCIS announced a 120-day period for accepting H-1B petitions filed with uncertified LCAs. Although the public announcement did not address the erroneous mismatch problem raised in the second recommendation, the Ombudsman understood that USCIS agreed with the recommendation to accept proof of a timely LCA filing and the wrongful rejection, and to issue a Request for Evidence for an approved LCA. This solution would enable the petitioner to file the H-1B petition timely, and give the petitioner additional time to work through corrective action with DOL to recognize the original FEIN as valid. Although field guidance issued the same day raises questions about the commitment to excuse such untimely filings,[343] USCIS' subsequent formal response to the Ombudsman dated January 28, 2010, states a willingness to do so.

The temporary 120-day period expired on March 9, 2010[344] without being extended.[345]

---

343 The Memorandum directs adjudicators to deny petitions if the original LCA was denied and the petitioner submits a second identical, but later-filed, approved LCA in response to an RFE. The Memorandum's temporary fix limited its effect. The recommendation specifically intended to allow petitioners to avoid prejudice to their H-1Bs that would result from erroneous LCA denials; they would do so by filing with USCIS a copy of the uncertified LCA, working with DOL to correct its database in order to accept a new LCA identical to the first, and then providing the second, certified LCA in response to USCIS' RFE. By requiring that the approved LCA submitted in response to the RFE be the same LCA originally filed in support of the H-1B petition, USCIS limited the scope of customers who could benefit from this fix. *See* USCIS Policy Memorandum, "Temporary Acceptance of H-1B Petitions Without Department of Labor (DOL)-Certified Labor Condition Applications (LCAs)" (Nov. 5, 2009), from Donald Neufeld, Acting Associate Director, Domestic Operations, to Service Center Directors.

344 Although the Neufeld Memorandum states an end date of March 4, 2010, USCIS published Q&A on its website revising the effective period to run through March 9, 2010. *See* USCIS Update, "Questions and Answers: Temporary Acceptance of H-1B Petition Filed without DOL's Certified Labor Condition Applications (LCAs)" (Dec. 8, 2009); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=bf296bc8a6f65210VgnVCM100000082ca60aRCRD&vgnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD (accessed Mar. 10, 2010), *see also* USCIS Update, "USCIS Reminds Petitioners to Provide Approved Labor Condition Applications" (Mar. 10, 2010); http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f73a042a31a47210VgnVCM100000082ca60aRCRD&vgnextchannel=c94e6d26d17df110VgnVCM1000004718190aRCRD (accessed June 22, 2010).

345 DOL reports resolution of the iCERT "glitch" that led to the USCIS temporary workaround; it claims an accuracy rate of more than 99 percent. Information provided by DOL to the Ombudsman (Mar. 3, 2010).

Selected Ombudsman 2009 Reporting Period Recommendations – Following-up on Responsive Government Pathways

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

1. Summary

Congress established the fifth employment-based (EB-5) preference category in 1990 to encourage immigrant entrepreneurs to make large investments in the United States that create new commercial enterprises benefitting the U.S. economy and, directly or indirectly, create jobs for U.S. workers.[346] The minimum qualifying EB-5 investment is $500,000 for businesses located within a rural area (or targeted employment area),[347] and $1,000,000 elsewhere.[348] The EB-5 investment must create at least ten new full-time jobs.[349]

On March 18, 2009, the Ombudsman issued a study entitled "Employment Creation Immigrant Visa (EB-5) Program Recommendations" with a series of proposals intended to stabilize and improve this program.[350] In brief, the Ombudsman recommended that USCIS:

(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 Administrative Appeals Office 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, similar to premium processing, for investors to accelerate adjudications;

(7) "Prioritize" processing of Regional Center filings; and

(8) Partner with the U.S. Departments of State and Commerce to promote the EB-5 program overseas.

USCIS formally responded on June 12, 2009, concurring with most of the recommendations, but did not completely agree with the recommendation that it form an intergovernmental working group to promote the program overseas. USCIS also deferred until 2010 full consideration of the recommendation to provide EB-5 investors an option of paying an additional fee to accelerate adjudications.[351]

The Ombudsman notes that, since issuance of the recommendation and the response, USCIS has issued important EB-5 policy guidance and engaged EB-5 stakeholders.

346 INA § 203(b)(5).

347 "Rural area" is defined as "any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States)." INA § 203(b)(5)(B)(iii); *see also* 8 C.F.R. § 204.6(e). "Targeted employment area" means, "at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate)." INA § 203(b)(5)(B)(ii); *see also* 8 C.F.R. § 204.6(j)(6).

348 INA § 203(b)(5)(C)(i).

349 A qualifying investment in a new commercial enterprise must create full-time employment for at least ten U.S. citizens, lawful permanent residents, or other immigrants lawfully authorized to be employed in the United States. INA § 203(b)(5)(a)(ii); 8 U.S.C. § 1153(b)(5)(A)(ii); *see also* 8 C.F.R. § 204.6(j)(4)(i). The investor and his/her immediate family, as well as lawful nonimmigrant employees, are excluded from the ten-person employment calculation. 8 C.F.R. § 204.6(e). Special rules also allow for making a qualifying investment that serves to maintain jobs that might otherwise be lost in a troubled business (i.e., an existing business over two years old that has incurred a net loss exceeding 20 percent of its net worth during the 12 or 24 month period preceding a Form I-526 petition filing). 8 C.F.R. §§ 204.6(e), 204.6(j)(4)(i)(B)(ii).

350 Recommendation #40, (Mar. 18, 2009); http://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf (accessed May 14, 2010).

351 USCIS Response to Recommendation #40 (June 12, 2009); http://www.dhs.gov/xlibrary/assets/uscis_response_cisomb_rec_40.pdf (accessed May 14, 2010).

2. EB-5 Guidance Memoranda

On June 17, 2009, USCIS issued an EB-5 guidance memorandum clarifying the process for determining if the required ten full-time jobs had been created.[352] With this memorandum, the agency modified its prior position that construction jobs could not be counted toward meeting the job creation requirement. The new guidance announced that construction jobs created by EB-5 invested funds and lasting two years, may under appropriate circumstances be counted as permanent jobs. This policy change set the stage for potentially expanding the use of EB-5 funding to source or supplement investment capital for large, multi-phased real estate and other development projects.

Later in 2009, USCIS engaged the EB-5 stakeholder community in at least three public forums[353] to hear their concerns and address various questions. In another effort at transparency, USCIS posted on the internet written responses to questions posed at these events.[354] The Ombudsman understands that the agency is committed to ongoing dialogue with EB-5 investors in 2010.[355]

On December 11, 2009, USCIS issued another EB-5 memorandum[356] providing additional guidance to the California Service Center EB-5 program managers and adjudicators on a variety of issues including: when it is appropriate to adjudicate specific EB-5 eligibility issues, what constitutes and how to respond to a "material change in circumstances," and how Targeted Employment Area[357] determinations are established and their effect.

In addition, USCIS commented several times during the reporting period that it intended to establish a new mechanism for EB-5 developers to provide an exemplar Form I-526 (Immigrant Petition by Alien Entrepreneur) petition along with a Regional Center Designation submission. In the December 2009 memorandum, USCIS described the contours of this mechanism and announced modifications to the Adjudicator's Field Manual (AFM):

> The Regional Center Proposal may also include an "exemplar" Form I-526 petition that contains copies of the commercial enterprise's organizational documents, capital investment offering memoranda, and transfer of capital mechanisms for the transfer of the alien investor's capital into the job creating enterprise. USCIS will review the documentation to determine if [it is] in compliance with established EB-5 eligibility requirements. Providing these documents may facilitate the adjudication of the related I-526 petitions by identifying any issues that could pose problems when USCIS is adjudicating the actual petitions.[358]

The Ombudsman expects this new review process to be welcomed by EB-5 Regional Center investment developers. They have long called on USCIS to provide a pre-review process rather than requiring an actual investor to apply and run the risk of a denial.

3. Regional Center Pilot Program Extension

Also during the reporting period, the U.S. Senate Committee on the Judiciary conducted an oversight hearing on the EB-5 Regional Center Pilot program wherein several witnesses, including the USCIS Deputy Chief of Service Center Operations, provided testimony in support of extending

352 USCIS Interoffice Memorandum, "EB-5 Alien Entrepreneurs - Job Creation and Full-Time Positions" (June 17, 2009); www.uscis.gov/files/nativedocuments/eb5_17jun09.pdf (accessed May 17, 2010).

353 The events were held on June 24, 2009, September 14, 2009, and December 14, 2009, in conjunction with events sponsored by the trade association, "Invest in the USA," and the American Immigration Lawyers Association (AILA) in Washington, D.C., as well as an October 19, 2009, AILA- sponsored EB-5 conference in San Francisco.

354 *See* USCIS, "American Immigration Lawyers Association EB-5 Committee and Invest In the USA (IIUSA)" (Dec. 18, 2009); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=86470541743a5210VgnVCM100000082ca60aRCRD&vgnextchannel=7dab1c7dcb507210VgnVCM100000082ca60aRCRD (accessed May 17, 2010).

355 On March 16, 2010, the California Service Center sponsored an EB-5 forum, and has indicated a commitment to holding regular EB-5 stakeholder meetings.

356 USCIS Interoffice Memorandum, "Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions" (Dec. 11, 2009); http://www.uscis.gov/USCIS/Laws/Memoranda/Static%20Files%20Memoranda/Adjudicating%20of%20EB-5_121109.pdf (accessed May 17, 2010).

357 INA § 203(b)(5)(B)(ii); *see also* 8 C.F.R. § 204.6(j)(6).

358 AFM, Chapter 22.4(a)(2)(C).

the pilot program on a multi-year or permanent basis.[359] On October 29, 2009, President Obama signed into law a three-year extension until September 30, 2012.[360]

This three-year extension was critical for two reasons. First, previously passed interim extensions[361] led to a prolonged period of uncertainty over the future of the pilot program; both developers and investors lacked the confidence needed to undertake the large capital risks the Regional Center Pilot was intended to foster. Second, statistics over the past three years establish that 77 percent of EB-5 investors chose to invest through Regional Centers.[362]

4. Next Steps

Notwithstanding USCIS' attention to the EB-5 program during the reporting period, the agency has yet to implement the comprehensive changes necessary to invigorate this program. The Ombudsman takes this opportunity to reiterate the March 18, 2009, recommendation that USCIS replace the existing patchwork of EB-5 regulations, precedent decisions, and guidance memoranda with new EB-5 rules generated through the formal notice and comment process.[363]

359 "Promoting Job Creation and Foreign Investment in the United States: An Assessment of the EB-5 Regional Center Program," *before the* U.S. Senate Committee on the Judiciary, 111th Cong. 1st Sess. 5-6 (2009) (statement of Robert Kruszka, USCIS Deputy Chief for Service Center Operations); http://www.judiciary.senate.gov/hearings/testimony.cfm?id=3998&wit_id=8137 (accessed May 17, 2010).

360 *See* Department of Homeland Security Appropriations Act, § 547, Pub. L. No. 111-83 (2010).

361 *See* Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, extending the Regional Center Pilot program and several other immigration-related programs (including E-Verify, the Conrad 40 Waiver program, and Special Immigrant Non-minister Religious Worker Program) through March 6, 2009; Omnibus Appropriations Act, Pub. L. No. 111-8 (2009), again extending the Regional Center Pilot program and other immigration-related programs through September 30, 2009. Citations to interim continuing resolutions covering the remaining gap periods are omitted.

362 Calculated from source data found in Table 5, Part 3, of the U. S. Department of State's FYs 2007-09 Visa Office Reports; http://travel.state.gov/visa/frvi/statistics/statistics_1476.html (accessed Mar. 30, 2010).

363 *See* Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

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

1. Summary

"The victims of modern slavery have many faces. . . . Whether they are trapped in forced sexual or labor exploitation, human trafficking victims cannot walk away, but are held in service through force, threats, and fear. All too often suffering from horrible physical and sexual abuse, it is hard for them to imagine that there might be a place of refuge."[364] President Obama and other members of the Cabinet, including Secretary Janet Napolitano, have taken a strong stand to address remedies for this vulnerable population.[365]

The President dedicated the month of January as National Slavery and Human Trafficking Prevention Month to promote awareness of the problem.[366] In addition, the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons assists in coordinating international and domestic anti-trafficking efforts.[367] The U.S. Departments of Homeland Security (DHS), Justice, Labor, and State together created a pamphlet for distribution during consular interviews to inform visitors, domestic and temporary workers, and others of their legal rights, as well as of resources available in the United States for trafficking

364 White House website, "Presidential Proclamation - National Slavery and Human Trafficking Prevention Month" (Jan. 4, 2010); http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-slavery-and-human-trafficking-prevention-month (accessed June 14, 2010).

365 The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386 (2000), authorized the President to establish "a cabinet-level task force to coordinate federal efforts to combat human trafficking. The [task force] is chaired by the Secretary of State and meets at least once a year." *See* http://www.state.gov/g/tip/rls/fs/2009/120224.htm (accessed May 25, 2010).

366 The White House Office of the Press Secretary, "Presidential Proclamation – National Slavery and Human Trafficking Prevention Month" (Jan. 4, 2010); http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-slavery-and-human-trafficking-prevention-month (accessed May 25, 2010).

367 DOS website, http://www.state.gov/g/tip/c16465.htm (accessed May 25, 2010).

victims.[368] DHS is developing additional tools to educate law enforcement officials about their role and the resources available to inform victims about possible remedies, as well as and how these tools can support prosecution of serious crimes.

The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)[369] provides qualified victims who assist in the investigation and prosecution of human trafficking and certain criminal activity[370] the opportunity to apply for nonimmigrant status, T and U visa respectively. The VTVPA was reauthorized by 2008 legislation enhancing protections available to trafficking victims.[371]

On January 29, 2009, the Ombudsman issued Recommendation #39, "Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa," as well as a follow-up summary in last year's annual report.[372] These analyses addressed systemic issues inhibiting the effectiveness and issuance of the T and U visas. Problems identified ranged from inconsistent cooperation of law enforcement officials and varying policies regarding the law enforcement certification process to insufficient training on the T and U visa process for law enforcement and prevalent fear of deportation among victims unwilling to come forward. The Ombudsman's recommendations to USCIS included: requests for published guidance; providing an alternative for employment authorization so both T and U visa applicants could work; making available sufficient staff to promptly adjudicate the applications; and posting processing times.

2. USCIS' Recommendation Response

USCIS responded to the Ombudsman's recommendation[373] by stating that the agency continues to educate the public – through its website, publications, and community outreach – about the remedies available to victims of trafficking and other crimes. Therefore, it not only encourages law enforcement agencies to develop policies and procedures for certification, but has been educating them about the availability of T and U nonimmigrant visas for those who qualify. USCIS rejected the need for an employment authorization alternative for T visa applicants by saying that regulations provided two venues for this benefit: USCIS may either grant "continued presence" status or make a *bona fide* determination, and use administrative mechanisms to grant either parole or deferred action, both of which provide for employment authorization. USCIS developed a production plan to reduce the backlog of U applications and agreed to post the Form I-914 (Application for T Nonimmigrant Status) processing times once the backlog was eliminated and processing was standardized.

The Ombudsman continues to examine USCIS adjudication of T and U visa petitions, as well as the agency's informational outreach to stakeholders and law enforcement. During this reporting period, the Ombudsman monitored the T and U visa programs through several means: a visit to the Vermont Service Center's (VSC's) Special Unit, meetings with stakeholders, and review of training materials.

368 "Notice of Publication of Pamphlet Required by Section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008," 74 Fed. Reg. 34386 (July 15, 2009).

369 Pub. L. No. 106-386 (2000).

370 "The criminal activity … involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes." INA § 101(a)(15)(U)(iii).

371 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457 (2008).

372 The full text of the Ombudsman's recommendation is available at: http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf (accessed May 19, 2010); Ombudsman's Annual Report 2009, pp. 57-60.

373 The full text of the USCIS Response to Recommendation #39 is available at http://www.dhs.gov/xlibrary/assets/uscis_response_cisomb_rec_39.pdf (accessed May 19, 2010).

BEST PRACTICE

The VSC Special Unit communicates daily with applicants through telephone hotlines and has established a specific email address (hotlinefollowupI918I914.vsc@dhs.gov) for both T and U visa applicants. VSC responds to email inquiries within 72 hours. Management has distributed email contact information to facilitate direct communication with the public and with law enforcement agencies.[374]

3. Current Conditions - T Visa

The Ombudsman notes that many systemic problems with the T visa[375] described in prior reports still remain. By statute, 5,000 nonimmigrant visas are available annually for trafficking victims in the United States.[376] Family members, as sponsored derivatives, are not counted against the numerical cap, but even so, few of these visas have been utilized. Since 2005, the small number of T visas awarded has incrementally grown. As shown in Figure 31, in 2009, the actual distribution of T visas reached 313, approximately six percent of the total visas available for such victims.

Figure 31: T Visas – FY 2005-2009

Fiscal Year	I-914 T-Visa			I-914 T-Visa (Immediate Family Members)		
	Visas Available	Approvals	Denials	Visas Available	Approvals	Denials
2005	5,000	113	321	Unlimited	73	21
2006	5,000	212	127	Unlimited	95	45
2007	5,000	287	106	Unlimited	257	64
2008	5,000	243	78	Unlimited	228	40
2009	5,000	313	77	Unlimited	273	54

Sources: USCIS National Stakeholder Meeting (Jan. 26, 2010); INA § 214(o).

Although it is difficult to estimate the extent of the problem, the estimated number of these victims is substantial.[377]

Form I-914 (Application for T Nonimmigrant Status) does not require certification by a law enforcement agency. However, unless the victim is under 18 years old, the petitioner must prove "[compliance] with any reasonable request for assistance . . . in the investigation or prosecution" of the crime.[378] Although many victims file a petition based upon a violation of federal law, many states have also passed anti-trafficking legislation.[379] Local law enforcement agencies may, therefore, support victims' petitions if such a statute has been incorporated into their state law.[380] In 2009, the U.S. Attorney General issued a report recommending, among other approaches, that the federal government "[c]ontinue to promote state anti-trafficking legislation and training for state and local law enforcement on human trafficking and a victim centered approach."[381]

One of the Ombudsman's concerns has been the T visa processing times. The impact of this delay is heightened by the victims' inability to file for work authorization while awaiting a decision. As of this writing, the average processing time to adjudicate a T petition is six months.[382] These filings incur a high Request for Evidence (RFE)

374 VSC Spring Stakeholder Conference (Apr. 6, 2010).

375 To be eligible for a T Visa, applicants must prove that: (1) they are victims by "force, fraud, or coercion for sex trafficking and/or involuntary servitude, peonage, debt bondage, or slavery;" (2) they are physically in the United States and have "complied with a reasonable request by Federal, State or Local law enforcement authorities to assist in the investigation or prosecution of such trafficking" (unless they are under 18 years); and (3) they "would suffer extreme hardship involving unusual and severe harm upon removal." INA § 101(a)(15)(T)(i).

376 *See* INA § 214(o)(3); *see also* 8 C.F.R. § 214.11(m).

377 "It is very difficult to assess the real size of human trafficking because the crime takes place underground, and is often not identified or misidentified. However, a conservative estimate of the crime puts the number of victims at any one time at 2.5 million. We also know that it affects every region of the world and generates tens of billions of dollars in profits for criminals each year." United Nations Office on Drugs and Crime, "Human Trafficking FAQs" (undated); http://www.unodc.org/unodc/en/human-trafficking/faqs.html#How_widespread_is_human_trafficking (accessed May 25, 2010).

378 INA § 101(a)(15)(T)(i)(III).

379 States that have passed some form of anti-trafficking in persons/sex trafficking/forced labor law to date include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Tennessee, Utah, Vermont, Virginia, Washington, and Wisconsin.

380 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

381 DOS website, "Assessment of U.S. Government Activities to Combat Trafficking in Persons" (June 2009); http://www.state.gov/g/tip/rls/fs/ 2009/126573.htm (accessed May 25, 2010).

382 Information provided by USCIS to the Ombudsman (May 20, 2010).

rate of 80-90 percent.[383] Although adjudication times have dropped since the previous reporting period, the Ombudsman observes that even six months represents a hardship: inability to work legally while waiting for USCIS adjudication may keep an individual in severe or dangerous conditions. USCIS does not yet post processing times for T visa applications.

4. Current Conditions - U Visa

USCIS granted interim relief to many petitions submitted before the agency first issued regulatory guidance in 2007. The self-petitioner could file for employment authorization after interim relief was granted. As explained in last year's annual report, these petitions remained pending with the VSC, waiting for completion under the new regulations.[384] In FY 2009, USCIS adjudicated 6,513 U visa[385] petitions, as well as 2,996 petitions for the victims' immediate family members.[386] Many cases adjudicated through January 2010 were filed between 2007 and 2008. As of March 2010, the average processing time to adjudicate the U visa petition was six months.[387]

As of March 2010, USCIS had received 8,793 U visa petitions for FY 2010[388] and expects the 10,000 visas available to be exhausted before the end of the fiscal year.[389] Thereafter, the VSC will begin to pre-adjudicate pending cases, in advance of the October 1, 2010, allocation of FY 2011 visas.[390] As a result, such conditional approval and deferred action[391] authorizes employment,[392] a benefit for those victims awaiting a visa.

Figure 32: U Visas – FY 2005-2009

Fiscal Year	I-918 U-Visa			I-918 U-Visa (Immediate Family Members)		
	Visas Available	Approvals	Denials	Visas Available	Approvals	Denials
2005	10,000	-	-	Unlimited	-	-
2006	10,000	-	-	Unlimited	-	-
2007	10,000	-	-	Unlimited	-	-
2008	10,000	-	-	Unlimited	-	-
2009	10,000	5,825	688	Unlimited	2,838	158

Sources: USCIS National Stakeholder Meeting (Jan. 26, 2010); INA § 214(p).

By statute, a law enforcement agency must certify the petition for a U visa to be approved. This certification documents that the victim possesses information concerning criminal activity, and that the victim "was helpful, is helpful or will be helpful" to the investigation or prosecution of criminal activity.[393] This certification authority is expanding. In some jurisdictions, a state Department of Social Services has authority to certify petitions involving domestic violence. In addition, on March 15, 2010, U.S. Department of Labor Secretary Solis announced that by late summer 2010, after protocols are established, the U.S. Department of Labor will begin exercising its certification authority for petitions based upon an employment-related crime.[394]

For certain enumerated crimes, the involved law enforcement agency has discretion whether or not to certify a U

383 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

384 *See* Ombudsman's Annual Report 2009, pp. 57-60.

385 To qualify for a U visa an applicants must prove that: (1) they have suffered substantial physical or mental abuse as a result of having been a victim of a "qualifying criminal activity;" (2) they possess credible and reliable information establishing that they have knowledge of the details concerning the qualifying criminal activity upon which their petition is based; (3) they have been helpful, are being helpful, or are likely to be helpful to a certifying agency in the investigation or prosecution; and (4) the qualifying criminal activity occurred in the United States (including territories) or violated a U.S. federal law that provides for extraterritorial jurisdiction. INA § 101(a)(15)(U). U visas are numerically limited to 10,000 annually. 8 C.F.R. § 214.14(d).

386 USCIS National Stakeholder Meeting (Jan. 26, 2010); http://www.uscis.gov/USCIS/Resources/Public%20Engagement/National%20Event%20Pages/2010%20Events/January%202010/Jan%202010%20Agenda%20FINAL.pdf (accessed May 21, 2010).

387 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

388 Information provided by USCIS to the Ombudsman (May 25, 2010).

389 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

390 *Id.*

391 A discretionary grant of lawful nonimmigrant status, 8 C.F.R. § 103.12(a)(4)(vi).

392 INA § 237(d).

393 "[T]he alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal State, or local authorities investigating or prosecuting criminal activity described in clause (iii)…." INA § 101(a)(15)(U).

394 DOL website, "US Labor Department to exercise authority to certify applications for U visas" (Mar. 15, 2010); http://www.dol.gov/opa/media/press/opa/OPA20100312.htm# (accessed May 25, 2010).

visa application.[395] Victims must secure cooperation from the law enforcement agency.[396] In last year's annual report, the Ombudsman noted widely differing policies among law enforcement agencies for the certification process. Law enforcement agencies may decide whether to certify the petition, or not, either during the investigation or after the prosecution is completed.[397] This reporting period, USCIS has published a brochure providing information to potential applicants and those who assist them.[398] This brochure informs law enforcement agencies that, "[t]o obtain U status, the victim must obtain a certification from law enforcement, however, law enforcement officials should note that providing a certification does not grant a benefit–only USCIS has the authority to grant or deny this benefit."[399]

As noted in prior reports and by stakeholders, victims are often unwilling to come forward due to mistrust of authorities and fear of deportation. Stakeholders believe that testifying in court is not always in the best interest of victims due to potentially high personal safety risks, as well as threats to family stability and economic security. Stakeholders also told the Ombudsman that, victims fear receiving a Notice to Appear[400] to begin removal proceedings. Stakeholders state that this risk has had a chilling effect on victims' willingness to come forward.

During the reporting period, the VSC Special Unit continued dialogue with stakeholders that assist victims of violence. The VSC also provided trainings to law enforcement agencies in California, Illinois, and New York and is implementing a web conferencing training program for law enforcement agencies on the issues addressed by the VSC Special Unit.

In addition, the VSC responds to daily telephone and email inquiries.[401] On April 6, 2010, the VSC hosted a stakeholder engagement session that discussed U petitions, among other cases.[402]

5. Issues Affecting Both T and U Visas

Figure 31 demonstrates that T visas for trafficking victims have not been fully utilized. USCIS projects 11,000 U visa petition receipts for FY 2010, distributing all of the allocated visas. Although USCIS continues to engage in educational efforts, many federal, state, and local law enforcement agencies have not fully developed policies to identify and support victims of crime and trafficking. Law enforcement agencies would be best served by establishing a detailed policy to guide an effective, consistent response. Without proper training on issues such as the definition of "helpfulness," law enforcement agencies are employing inconsistent standards. U.S. Customs and Border Protection (CBP) provides related training to law enforcement officials through its training website, the Virtual Learning Center.[403] This training provides information on identifying potential T and U victims. While this first step is an important one, the Ombudsman understands that the training does not provide information on how to proceed or how to utilize information or remedies in this context to support a prosecution. Instead, some CBP officers may issue a Notice to Appear, the charging document that begins immigration removal (deportation) court proceedings.

In contrast, ICE offices have in place a practical working agreement with the VSC.[404] Although not yet memorialized in a formal MOU with USCIS, the ICE policy[405] provides a discretionary "stay of removal"[406] for a U visa applicant

395 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

396 Ordonez Orosco v. Napolitano, 2010 WL 702635 (C.A.5 Tex.) (a U visa certification cannot be mandated) (Mar. 2, 2010).

397 Supplement B Certification should accompany the petition, and must be an original signature by an authorized officer for the certifying agency within six months immediately preceding submission of the petition. *See* Instructions at: http://www.uscis.gov/files/form/i-918instr.pdf. However, the petition may be filed before, during or after an investigation or prosecution. INA § 101(a)(15)(U)(III).

398 "Immigration Options for Victims of Crimes, Information for Law Enforcement, Healthcare Providers, and Others," M-779, Feb. 2010.

399 *Id.*

400 A Notice to Appear (NTA) is the formal charging document filed with the immigration court on Form I-862 (Notice to Appear) and delivered to the individual who is ordered to appear. INA § 239(a).

401 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

402 USCIS Outreach, "Vermont Service Center Stakeholder Engagement" (Apr. 19, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=0c38959f01ab7210VgnVCM100000082ca60aRCR D&vgnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD (accessed May 25, 2010).

403 Information provided by CBP to the Ombudsman (June 2, 2010).

404 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

405 ICE Memorandum, "Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal" (Sept. 25, 2009); ICE Memorandum, "Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants" (Sept. 24, 2009).

406 INA § 237(d).

when the VSC Special Unit determines that an applicant established *prima facie* eligibility. The VSC will expedite a *prima facie* determination for the requesting ICE office based on three criteria: (1) emergent circumstances; (2) a victim is detained at government expense; or (3) the individual is subject to a final order of removal. The Ombudsman encourages USCIS to continue educational outreach as well as interagency agreements that will allow victims to obtain time critical immigration relief.

6. Data Collection

The Ombudsman understands that the VSC does not accumulate non-sensitive information from the material included in the filings of either the T or U visa applications.[407] By evaluating information about the law enforcement agencies predominately certifying U visa applications, USCIS could target its outreach and training more effectively. Likewise, tracking data on the law enforcement agencies, community-based organizations, and social services groups that have aided applicants could help identify best practices, as well as processes needing improvement. The Attorney General's 2009 Report also recommended that the federal government "[c]ontinue to expand trafficking research and data collection, with research projects designed to assist service providers, law enforcement, and policymakers."[408]

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

1. Summary

E-Verify is "an Internet-based system that compares information from an employee's Form I-9 [(Employment Eligibility Verification)] to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility."[409] Authorizing legislation for this program dates to 1996,[410] and its most recent reauthorization extends the E-Verify program through September 30, 2012.[411] Enrollment and use of E-Verify is voluntary for most U.S. employers, but federal contractors are, with some exceptions, required to use E-Verify, and a number of states require or authorize its use.[412]

The Ombudsman first reviewed E-Verify in 2008, and issued a report to USCIS containing five recommendations to improve the customer service experience for E-Verify users:[413]

- Simplify E-Verify instructions and documentation;
- Make all registration and operational documents available online;

407 Information provided by USCIS to the Ombudsman (Mar. 26, 2010).

408 DOS website, "Assessment of U.S. Government Activities to Combat Trafficking in Persons" (June 2009); http://www.state.gov/g/tip/rls/fs/ 2009/126573.htm (accessed May 25, 2010).

409 USCIS website, "What is E-Verify?" (May 14, 2010); http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=e94888e60a405110VgnVCM1000004718190aRCRD&vgnextchannel=e94888e60a405110VgnVCM1000004718190aRCRD (accessed June 18, 2010).

410 Authority for the E-Verify program is found in Title IV, Subtitle A of the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996" (IIRIRA), Pub. L. No. 104-208 (1996).

411 *See* Section 547 of the "Department of Homeland Security Appropriations Act, 2010," Pub. L. No. 111-83; http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ083.111.pdf (accessed June 18, 2010).

412 The following thirteen states now impose the use of E-Verify or the Basic Pilot Program (its former name) or SAVE (Systematic Alien Verification for Entitlements) on various groupings of public and/or private employers as either the exclusive or one method of preventing the hiring of unauthorized workers: Arizona, Colorado, Georgia, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Rhode Island, South Carolina, and Utah.

413 Recommendation #38, "Observations On The E-Verify Experience In Arizona & Recommended Customer Service Enhancements" (Dec. 22, 2008); www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf (accessed May 19, 2010).

- Ensure education and outreach to small businesses;
- Develop a reminder system to prompt employers to act; and
- Announce intention to replace current Form I-9 process for E-Verify users.

On March 27, 2009, USCIS responded to the recommendations, agreeing directly or indirectly with them.[414]

In March 2010, USCIS completed testing its first major redesign of the E-Verify user interface since 2004, and subsequently previewed the new user interface for the Ombudsman in anticipation of a June 2010 rollout.

Figure 33: New E-Verify Web Interface

Source: www.uscis.gov

Having previously adopted two of the Ombudsman's recommendations by posting nearly all E-Verify documentation on its website and extending E-Verify education and outreach,[415] the USCIS rollout of a new user interface (*see* Figure 33) implements two additional recommendations: simplification of terminology and instructions to reduce confusion, and provision of a reminder system to alert users on the status of open queries. The Ombudsman notes that the new E-Verify user interface contains additional enhancements designed to improve the customer experience. Regarding the I-9 recommendation, USCIS has stated that it is exploring the development of an "electronic I-9 [that would] populate the E-Verify data fields and allow employers to save an electronic version of the I-9 on their desktops and information systems and/or print a paper version of the I-9."[416]

In addition to monitoring these developments, in the 2010 reporting year, the Ombudsman continued to track and assess E-Verify. The particular focus has been on USCIS' progress toward improving the program's accuracy, speed, and user-friendliness, as well as ensuring that employer-users follow applicable privacy, anti-discrimination, and enforcement constraints.

2. Federal Contractors and the Federal Acquisition Regulation (FAR)

Perhaps the most significant program development during the reporting period was the final implementation of the 2008 Executive Order[417] requiring all federal contractors (with limited exceptions) to use E-Verify to confirm the employment authorization status of new hires.[418] Earlier implementation dates were delayed for multiple reasons, with some critics expressing skepticism about whether E-Verify had sufficient capacity to withstand the mandatory

414 USCIS Response to Recommendation #38 (Mar. 27, 2009); www.dhs.gov/xlibrary/assets/uscis_response_cis_ombudsman_recommendation_38.pdf (accessed May 19, 2010).

415 The Ombudsman recognizes that USCIS must target education and outreach to all communities, but continues to underscore the importance of focusing specific efforts toward small businesses.

416 USCIS Response to Recommendation #38 (Mar. 27, 2009); www.dhs.gov/xlibrary/assets/uscis_response_cis_ombudsman_recommendation_38.pdf (accessed May 19, 2010). Based on information provided to the Ombudsman this spring, USCIS is in discussions with U.S. Immigration and Customs Enforcement (ICE) concerning the details of such integration, since ICE has operational jurisdiction over the I-9 compliance process.

417 *See* Executive Order 13465, "Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Nationality Act Provisions and the Use of an Electronic Employment Eligibility Verification System," 73 Fed. Reg. 33285 (June 11, 2008).

418 *See* "FAR Case 2007-013: Employment Eligibility Verification," 73 Fed. Reg. 67651, 67675 (Nov. 14, 2008). With few exceptions, this new rule, which became effective September 9, 2009, mandates that all new and existing federal contracts 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.

addition of this new population of employer-users.[419] The Ombudsman understands E-Verify enrolled 23,272 new employer-users during the last quarter of calendar year 2009.[420] USCIS reported that, as of December 31, 2009, it had 179,931 registered E-Verify users.[421]

3. USCIS Verification Operations Center

On November 20, 2009, USCIS opened a Verification Operations Center (the Center) in Buffalo, New York. The Center has two principal functions: (1) performing secondary immigration status verifications in support of USCIS' E-Verify and SAVE[422] programs, and (2) conducting activities designed to detect and deter improper use of these programs.[423]

The Ombudsman expects to engage regularly with USCIS in connection with Center activities to detect incidents and discern patterns of employer and individual noncompliance, abuse, discrimination, and/or identity fraud.

4. December 2009 Westat Report

The Ombudsman notes that Westat, an independent social science research group, issued a December 2009 report entitled "Findings of the E-Verify Program Evaluation."[424] The report focuses on E-Verify data and information gathered from April through June 2008.[425]

Westat validates many of the key observations and recommendations made by the Ombudsman in 2008, and catalogs E-Verify's legislative history, operation, various upgrades and improvements, and remaining challenges.

5. Establishment of E-Verify Employee Helpline[426]

USCIS opened an E-Verify employee helpline in April 2010. This bilingual toll-free number, 1-888-897-7781, allows employees to discuss E-Verify related questions, concerns, and complaints in English or Spanish with a USCIS representative. The addition of this new helpline is consistent with ongoing agency efforts to enhance and extend outreach and improve customer service.

6. Development of Civil Rights/Civil Liberties Videos[427]

USCIS, in cooperation with the DHS Office for Civil Rights and Civil Liberties, has developed two E-Verify related videos. It posted them online, in both English and Spanish, for public viewing beginning March 17, 2010. Each video runs approximately 20 minutes, with one aimed toward

419 New federal contractors are provided 30 to 120 days following the contract award to register and begin using E-Verify for their covered employees. *See* "FAR Case 2007-013: Employment Eligibility Verification," 73 Fed. Reg. 67651, 67705 (Nov. 14, 2008).

420 Information provided by USCIS to the Ombudsman (May 13, 14, and 19, 2010). The E-Verify program successfully navigated a 78 percent year-over-year increase in the number of registered users as of December 31, 2009 as compared to 2008. Information provided by USCIS to the Ombudsman (May 13 and 14, 2010).

421 Information provided by USCIS to the Ombudsman (May 13, 14, and 19, 2010).

422 The "Systematic Alien Verification for Entitlements" Program is used by more than 300 federal, state, and local government registered users to confirm the immigration status of individuals seeking specific government-issued benefits or other privileges. *See* USCIS website, "USCIS Launches Informational Video on the Systematic Alien Verification for Entitlements (SAVE) Program;" http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=cf55c8b8cbac4210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD (accessed May, 19, 2010).

423 USCIS Press Release, "USCIS Opens New Verification Operations Center in Buffalo, NY" (Nov. 20, 2009); http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=0c9290cc7e115210VgnVCM1000000 82ca60aRCRD&vgnextchannel= a2dd6d26d17df110VgnVCM 1000004718190aRCRD (accessed May 19, 2010).

424 The full report may be found on USCIS' website at www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf (accessed May 19, 2010).

425 Although it references some of the significant E-Verify milestones since July 1, 2008, the report does not capture all such developments. It is important to note the E-Verify program remains a work-in-progress, with USCIS continuously rolling out enhancements and upgrades. *See* USCIS Press Release, "DHS Unveils Initiatives to Enhance E-Verify Fact Sheet" (Mar. 18, 2010); www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=70beadd907c67210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD (accessed May 19, 2010).

426 *See* USCIS Press Release, "DHS Unveils Initiatives to Enhance E-Verify Fact Sheet" (Mar. 18, 2010); www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=70beadd907c67210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c775 5cb9010VgnVCM100000 45f3d6a1RCRD (accessed May 19, 2010).

427 *Id.*

employers and the second directed at employees. These videos represent a collaborative effort by DHS and USCIS to provide the public with better understanding of what E-Verify is and how it works. They accomplish this goal through vignettes depicting real-world scenarios involving E-Verify and the hiring process, emphasizing employer responsibilities as well as employee rights.

USCIS continues to expand its E-Verify outreach and customer service efforts. During the next reporting period, the Ombudsman plans to seek input from stakeholders on the usefulness and effectiveness of the new E-Verify employee helpline, the E-Verify videos, and other E-Verify developments.

D. USCIS Processing Delays for Employment Authorization Documents

1. Summary

Under existing regulations, USCIS must adjudicate applications for Employment Authorization Documents (EADs), or work permits, within 90 days of the receipt date or issue an interim EAD valid for 240 days.[428] Yet, customers continue to report delays in the adjudication of their EAD applications and failure of USCIS to issue required interim documents. As a result, delays sometimes result in job loss or missed job opportunities.

In October 2008, the Ombudsman addressed these issues in a recommendation to USCIS, which outlined the importance of adhering to the 90-day adjudication timeframe; in cases where timely issuance does not occur, the Ombudsman recommended procedural adjustments to ensure that customers would not lose their jobs.[429] These recommendations were made in response to processing delays following a surge in applications filed with USCIS in the summer of 2007.[430]

2. Follow-up

In the 2009 reporting period, the Ombudsman posted an Ombudsman Update on its website to assist individuals who had EAD applications pending for over 90 days.[431] The Ombudsman continues to receive a small number of case problems monthly from customers experiencing delays in EAD processing, and works directly with USCIS to resolve these cases.

While average EAD processing times were at 90 days or less[432] as of this writing, and despite procedural changes such as system reviews of EAD applications pending, more changes are needed to safeguard against foreseeable future prejudice to applicants. Recommendations that the

428 8 C.F.R. § 274a.13(d).

429 Recommendation #35 (Oct. 2, 2008); http://www.dhs.gov/xlibrary/assets/cisomb_ead_recommendation_35.pdf (accessed May 18, 2010).

430 *See* Ombudsman's Annual Report 2009, pp. 3-7.

431 *See* http://www.dhs.gov/xabout/structure/gc_1221837986181.shtm (accessed May 18, 2010).

432 www.uscis.gov (accessed May 15, 2010).

Ombudsman made but which USCIS has not implemented include: expanded issuance of multi-year EADs;[433] improvements in public guidance regarding the reasons for EAD delays and the ways these causes will be addressed; and implementation of temporary measures for applicants to show employment authorization.

433 USCIS currently issues multi-year EADs in limited circumstances.

Ombudsman Recommendations in Previous Years – Challenges Met and Those Remaining

This section includes summaries of the Ombudsman's recommendations for the 2009 and 2008 reporting periods. For the full text of the recommendations and USCIS' responses, please visit the Ombudsman's website at www.dhs.gov/cisombudsman.

Figure 34: 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	Recommendation	Status of USCIS Implementation
AR2009-08 DNA Liaison Position (6/30/09)	**Recommendation:** 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.	🕓 Although stating it has designated an internal POC for these issues, USCIS resists creating a position with external customer service access.
AR2009-07 DNA Testing – MOU with DOS on Cost Sharing and Chain-of-Custody (6/30/09)	**Recommendation:** Continue to coordinate with the U.S. Department of State regarding DNA testing procedures and execute a Memorandum of Understanding with DOS for resource allocation for DNA evidence gathering and chain-of-custody observance abroad.	🕓 While USCIS continues to coordinate with DOS, including regarding DNA testing and chain-of- custody, it sees execution of an MOU as premature.
AR2009-06 DNA Testing – Obsolete Procedures (6/30/09)	**Recommendation:** Remove references to obsolete blood testing methods from the Adjudicator's Field Manual (AFM) and other published guidance.	🕓 USCIS has yet to remove such references from published guidance.
AR2009-05 EB-1 Tip Sheet (6/30/09)	**Recommendation:** Post a practical tip sheet on its website to assist stakeholders in providing the necessary and relevant information for complex EB-1 cases.	✓
AR2009-04 I-140 Petition Processing – AC21 Portability Concerns (6/30/09)	**Recommendation:** 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.	🕓 USCIS states that Nebraska and Texas Service Centers now share the same adjudication procedures for employment-based petitions. USCIS also agrees that AC21 portability should be equally available to all customers, but customers still report problems with Texas Service Center.

Title	Recommendation	Status of USCIS Implementation
AR2009-03 Improved Training for Government Personnel Handling A-files (6/30/09)	**Recommendation:** Institute, through the Tri-Bureau Working Group (USCIS, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP)), mandatory training of all personnel who work with A-files, specifically special agents, investigators, and officers.	✓ USCIS developed various records training programs, which include A-file management, available to ICE and CBP personnel. While USCIS cannot mandate training for ICE and CBP, USCIS will work with the Tri-Bureau working group to ensure that ICE and CBP users receive the necessary training.
AR2009-02 A-file Tracking (6/30/09)	**Recommendation:** Establish new protocols to ensure that relevant contract staff consistently record all A-file movement as outlined in the Records Operations Handbook.	 While USCIS believes existing protocols are sufficient, USCIS established a quality assurance team to conduct A-file audits, offer records training, and provide help desk support.
AR2009-01 File Digitization (6/30/09)	**Recommendation:** Immediately begin scanning immigration files that are likely to be needed for future adjudications.	 The Transformation Initiative has for three years contained an evolving strategy for scanning files; USCIS plans to continue expansion of digitization of select A-files.
FR2009-42 Motions to Reopen and Motions to Reconsider (5/15/09)	**Recommendation 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 agencywide completion goals for motions.	 USCIS is working on a memo addressing no-fee motions based on service error. All I-290Bs will be transitioned to Chicago Lockbox by summer of 2010. No updates available on agencywide completion goals for motions.
	Recommendation 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.	 USCIS is working on standardization across offices, has corrected the scripts error, and "Questions and Answers: Appeals and Motions" is available on its website.
FR2009-41 Expanded USCIS Payment Methods (4/1/09)	**Recommendation 1:** Allow batch online payment system for high volume filers.	 USCIS agrees, but currently lacks technological capability.
	Recommendation 2: Use an online shopping cart mechanism to simplify form, fee, and payment choices.	 USCIS agrees, but anticipates these options will first be available in 2011 as part of Transformation.
	Recommendation 3: Expand e-filing option to allow fee payments on other forms.	 USCIS agrees, but its current system will not support e-payment, which must await Transformation.
	Recommendation 4: Add visual written aids to instructions to increase correct payment submissions.	✓

Title	Recommendation	Status of USCIS Implementation
FR2009-40 EB-5 Processing (3/18/09)	**Recommendation 1:** Finalize special regulations for a limited class of EB-5 investors.	As of this writing, USCIS is finalizing the regulations.
	Recommendation 2: Direct EB-5 adjudicators not to re-adjudicate indirect job creation methodology, absent error or fraud.	USCIS agrees, but asserts petition review may involve reconsideration of underlying variables to ensure compliance with initial investment proposal.
	Recommendation 3: Designate more EB-5 AAO precedent/adopted decisions.	✗ USCIS believes formal rulemaking or policy guidance would be more beneficial in clarifying regulations. USCIS will certify unique or novel decisions to AAO.
	Recommendation 4: Use rulemaking to update EB-5 regulations.	USCIS agrees that EB-5 regulations need to be updated, but does not have resources since USCIS is currently in the process of addressing other existing priority regulations.
	Recommendation 5: Form an inter-governmental advisory group to consult on complex business, economic, and labor issues.	USCIS is exploring this approach and will advise the Ombudsman if it forms a group.
	Recommendation 6: Offer a fee-for-service option to investors to accelerate adjudications.	USCIS is examining the feasibility of offering this option, but is concerned that this may not be operationally possible under current regulations.
	Recommendation 7: "Prioritize" processing of Regional Center filings.	✓
	Recommendation 8: Partner with Departments of State and Commerce to promote the EB-5 program overseas.	✗ USCIS sees other agencies such as Department of Commerce, as better suited for such promotion.
FR2009-39 T & U Status – Rules and Challenges (1/29/09)	**Recommendation 1:** Issue public guidance on new filing procedures contained in December 2008 regulations & trafficking reauthorization legislation.	✓
	Recommendation 2: Find alternatives for T nonimmigrant visa applicants to obtain employment authorization while visa applications are pending.	✗ Processing times have reduced to six months; therefore, USCIS does not believe issuance of EAD is necessary while applications are pending.
	Recommendation 3: Implement procedures/ issue guidance for U nonimmigrant applicants seeking employment authorization.	✗ U visa backlog has been eliminated and average processing times are currently at six months. USCIS does not see the need to adjudicate EADs since the backlog has been reduced.
	Recommendation 4: Provide adequate staff at the VSC T and U visa unit to ensure prompt adjudications.	✓

Title	Recommendation	Status of USCIS Implementation
FR2009-39 T & U Status – Rules and Challenges (1/29/09) (cont.)	**Recommendation 5:** Post processing times for form I-914 and I-918.	As of this writing, USCIS does not post processing times for either form.
FR2009-38 E-Verify (12/22/08)	**Recommendation 1:** Simplify E-Verify instructions and documentation.	✓
	Recommendation 2: Make all registration & operational documents available online.	✓
	Recommendation 3: Ensure education & outreach to small business communities.	✓
	Recommendation 4: Develop a reminder system to prompt employers to act.	"Case Status Alerts" are only triggered when employers log on: these are not the automatic notifications suggested.
	Recommendation 5: Announce an intention to replace the current Form I-9 process for E-Verify users.	USCIS is currently reviewing options for an electronic Form I-9.
FR2009-37 Naturalization Processing (12/5/08)	**Recommendation 1:** Issue guidance to district offices on prerogatives and obligations in working with courts.	USCIS agreed but has not yet implemented.
	Recommendation 2: Notify new citizens to update their status with the Social Security Administration.	✓
	Recommendation 3: Digitally produce photographs on Certificates of Naturalization.	USCIS designated three USCIS offices to begin producing 90% of certificates with digitized photographs during initial phase of implementation in August 2010.
	Recommendation 4: Post pending naturalization case statistics monthly.	✗ USCIS believes processing times provided on its website is sufficient.
FR2009-36 Nurse Green Cards (12/5/08)	**Recommendation 1:** Separate and prioritize Schedule A green card nurse applications.	✗ USCIS cites visa availability concerns, rather than address means within its control for automatically expediting these applications.
	Recommendation 2: Centralize Schedule A nurse applications at one service center.	✗ USCIS believes that current bi-specialization structure provides consistent and efficient adjudication.
	Recommendation 3: Develop a point of contact at DOL to regularly communicate on issues regarding nurse immigration applications	✓

Title	Recommendation	Status of USCIS Implementation
FR2009-35 EAD Processing (10/1/08)	**Recommendation 1:** Adjudicate applications within 90 days or issue interim EADs.	USCIS states that it conducts routine system sweeps to uncover cases pending for at least 60 days, accepts service request for cases pending beyond 75 days, and adjudicates or issues interim EAD in 10 days for cases pending post 90 days. However, customers report that USCIS does not issue interim EADs.
	Recommendation 2: Inform the public why EADs are delayed and how delays will be addressed.	There are no systematic EAD processing delays at this time, but the Ombudsman works to resolve isolated delays. The Ombudsman acknowledges this recommendation is not needed until such time as system delays again exist.
	Recommendation 3: Ensure NCSC and local offices provide consistent guidance on EADs.	✓
	Recommendation 4: Reconsider the wider use of multi-year EADs.	USCIS invites suggestions of other categories for multi-year EAD eligibility.
FR2008-34 USCIS Fee Refunds (4/8/08)	**Recommendation 1:** Clarify fee refund procedures for the public and revise the Adjudicator's Field Manual, Section 10.10 "Refund of Fees," accordingly.	USCIS has revised the AFM, but has not clarified refund procedures to the public.
	Recommendation 2: Provide customers with a way to track the status of their refund requests.	USCIS issues no receipt notices for refund requests, therefore, currently cannot track status. Customers can submit a request through the National Customer Service Center. Refund tracking will become available as part of the Transformation Initiative.
FR2008-33 Returned Petition Tracking (8/24/07)	**Recommendation 1:** Issue receipt notices to customers when the petition is returned and received by USCIS Service Centers.	While USCIS staff were directed to adopt this practice, customers report inconsistent issuance of receipt notices.
	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.	✗ USCIS believes national standards are impractical and says the AFM already describes revocation procedures.
	Recommendation 3: Provide additional information about revocation or revalidation processes on the USCIS website.	✓

Title	Recommendation	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 completed an after-action report, but does not intend to make it public.
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.	✓
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 OIT addressed the interface problems between CRIS and the CLAIMS system in September 2009. The agency is scheduled to implement a complete rewrite of the interfaces in FY 2011, which should lead to more consistent and accurate information.
AR2008-07 Tier 1 Scripted Information (6/30/08)	**Recommendation:** Ensure its Tier I Customer Service Representatives (CSRs) of the NCSC follow the scripted information and are properly notified of changes to 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 continues to make efforts to ensure greater uniformity of information, but customers still report inconsistencies.
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.	✓
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).	✓
AR2008-01 Comprehensive Case Management System (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 agencywide.	USCIS piloted the Secure Information Management Service (SIMS), but determined that it did not have the capabilities to be implemented as an agencywide case management system. USCIS plans to implement a new case management system as part of the Transformation Initiative.

OMBUDSMAN PRIORITIES AND OBJECTIVES FOR THE COMING YEAR – MAPPING A COURSE

In the 2011 reporting year, the Ombudsman will focus on transparency and responsiveness in the delivery of citizenship and immigration services.[434] The Ombudsman will continue to perform the statutory mission of assisting individuals and employers with USCIS administrative and service problems through: (1) individual case problem resolution; (2) systemic research and policy work on humanitarian, family, and employment issues; and (3) enhanced outreach to obtain input from diverse stakeholders representing varied customers and areas of interest.

Specifically, the Ombudsman will work in conjunction with USCIS to provide for more timely and effective resolution of individual case problems. The Ombudsman also will be implementing new procedures for collaborative follow-up on case problems. Additionally, the Ombudsman will conduct a formal review of actions or inactions USCIS took in response to select recommendations the Ombudsman previously made to USCIS.

The Ombudsman will continue to devote attention to USCIS customer service. Individuals and employers report ongoing problems obtaining information on cases pending past processing times and correcting service errors, whether it be through the National Customer Service Center toll-free telephone line, the My Case Status feature, or appointments with local offices through INFOPASS.

In addition, the Ombudsman will stay committed to serving as a convener on immigration and citizenship service issues that impact multiple organizations within the federal government. The Ombudsman will continue to facilitate interagency communications and cooperation between USCIS and other DHS components including U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), as well as the U.S. Department of State (DOS), and other federal, state, and local government partners.

Issues for consideration in the next reporting period may include:

Humanitarian

- Challenges for unaccompanied children and processing concerns in the Special Immigrant Juvenile program
- Violence Against Women Act self-petitions and T and U visas for victims of human trafficking or other specified criminal activity

Family

- Fee waiver processing
- Family-based immigrant visa usage and movement of the DOS Visa Bulletin cut-off dates

Employment

- Religious worker visa processing
- Administrative review of substantive determinations and conflicting agency interpretation or guidance; standardization in decision-making

Processing Integrity

- Continued review of Requests for Evidence
- Process for individuals and employers to register complaints with USCIS
- Modernization of USCIS systems and processes, referred to as Transformation
- Impact of USCIS fee structure on service
- USCIS and removal proceedings

434 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."

Stakeholder Outreach

- Best practices in field and district office local outreach to ensure that critical information is both relayed and received agencywide
- Evaluating USCIS outreach to emerging immigrant communities

During this reporting period, the Ombudsman had a new focus on its public outreach and will continue to identify ways to connect with diverse communities and organizations nationwide who may not previously have known about the Ombudsman's services, and how the Ombudsman may be able to help with problems the public experiences with USCIS.

The Ombudsman will expand outreach through interaction with the public, including community-based organizations, employer associations, faith-based organizations, and the immigration legal community. The Ombudsman also will be adding additional expertise to the office to lead the development of short-term and long-term research projects and reviews in the humanitarian, family, and employment areas.

The Ombudsman values the input it receives from stakeholders and the public, and continues to encourage feedback and input that ultimately helps to guide and inform the Ombudsman's areas of focus.

Appendix 1:
Homeland Security Act Excerpts

116 STAT. 2200 PUBLIC LAW 107-296-NOVEMBER 25, 2002
(6 U.S.C. §§ 271 and 272)

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;

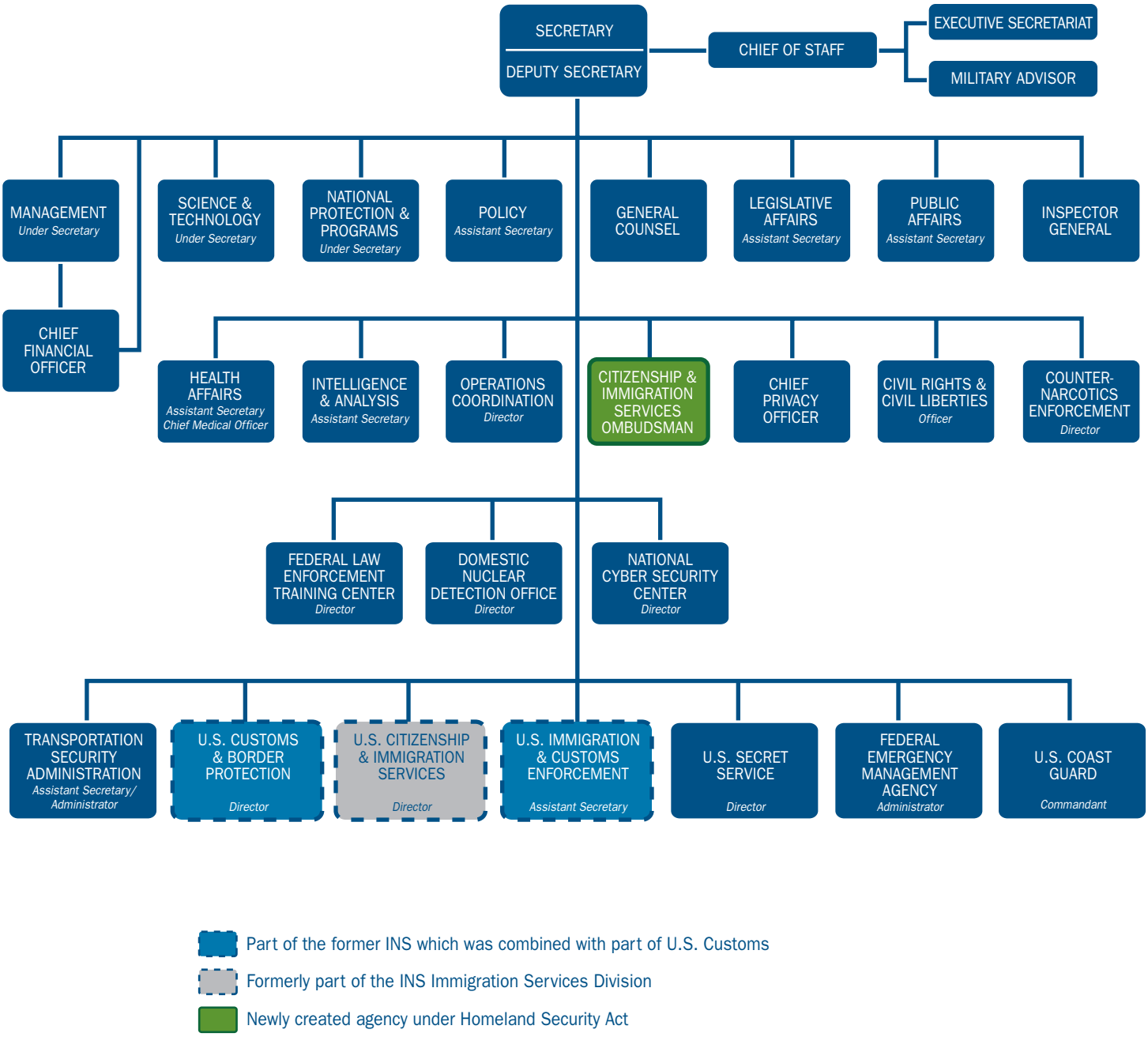
(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(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

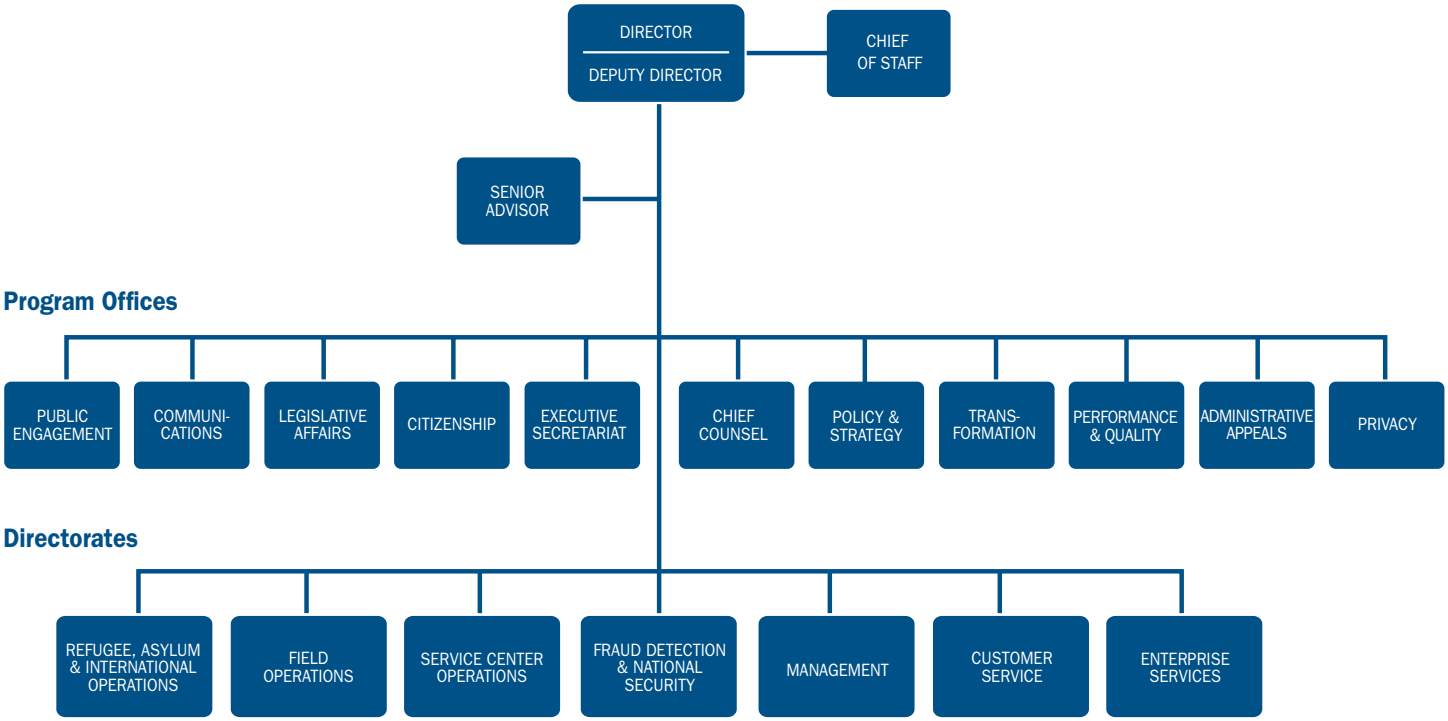
(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(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 2:
DHS Organizational Chart



Appendix 3:
USCIS Realignment Organizational Chart



Appendix 4: Glossary of Terms

The following definitions apply to terms used in the 2010 Annual Report:

A-File: Common term for the "Alien-file," which consists of all data and documentation relevant to a foreign national's immigration history.

A-Number: Common term for the "alien number," a unique identification number assigned by USCIS to many foreign nationals seeking immigration benefits.

Adjudications Officer: 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. *See* "Immigration Services Officer."

Adjustment of Status: The process whereby an individual acquires lawful permanent residency in the United States (as evidenced by a "green card"), rather than by obtaining an immigrant visa abroad. *See generally* INA § 245.

Alien: Defined in Section 101(a)(3) of the Immigration and Nationality Act (INA) as any person not a citizen or national of the United States; also referred to as a foreign national.

Application Support Center (ASC): ASCs gather biometrics, including fingerprints, after an application or petition is filed and are often co-located with USCIS field offices.

Asylee: A foreign national granted the right to stay permanently in the United States after a determination that the person was persecuted in his or her home country or has a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. This status may be granted in the United States by an Immigration Services Officer or Immigration Judge. Asylees can apply for a green card one year after receiving asylee status. *See* INA § 208.

Board of Immigration Appeals (BIA): The highest administrative court in the United States with jurisdiction limited to immigration matters.

Case Problem: Inquiry submitted to the Ombudsman, normally by completion of a Form DHS-7001. This form is accessible at www.dhs.gov/cisombudsman.

Computer-Linked Application Information Management System (CLAIMS): The USCIS umbrella information technology system that serves as a casework processing and tracking database for immigration benefits.

Cut-off Date: Where demand for visas exceeds availability in a category, the U.S. Department of State Visa Bulletin will indicate a "cut-off date." The issuance of visas is restricted to applicants whose priority dates are earlier than the cut-off date.

Employment Authorization Document (EAD): Documentary evidence that an individual is allowed to work in the United States. The EAD is of limited validity, usually one year. *See* 8 C.F.R. § 274a.

E-Verify: A USCIS Internet-based program that permits registered employers to confirm a new hire's eligibility to work legally in the United States.

Executive Office for Immigration Review (EOIR): The U.S. Department of Justice entity responsible for administering the immigration courts.

Field Office: USCIS facility where adjudications officers conduct interviews, perform research, and make determinations to grant or deny benefits.

Green Card: Common term for USCIS Form I-551 (Alien Registration Card), documentary evidence of lawful permanent residency. Due to a recent USCIS redesign, portions of this card are green for the first time in many years. The term is also used to indicate a person's status as a lawful permanent resident (e.g., green card status).

Immigrant: Commonly refers to an individual who intends to reside permanently in the United States. *See generally* INA § 101(a)(15).

Immigration and Nationality Act (INA): 8 U.S.C. § 101, *et seq.*; the statutory basis for immigration and naturalization in the United States.

Immigration Services Officers (ISOs): USCIS officers at various levels of seniority who perform core duties, including adjudications and customer service. *See* "Adjudications Officer."

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 U.S. Department of Labor to employers seeking to sponsor foreign nationals for certain permanent or temporary positions. The traditional process for issuance of a labor certification tests the U.S. labor market to ensure there are no U.S. workers able, willing, qualified, and available to fill the position. *See generally* INA §§ 203(b)(3)(C), 212(a)(5)(A).

Labor Condition Application (LCA): A document, certified by the U.S. Department of Labor, in which employers who wish to hire foreign nationals in certain nonimmigrant positions make attestations regarding wages, working conditions, and other employment matters.

Lawful Permanent Resident (LPR): A person with the legal status to permanently reside and work in the United States. *See* INA § 101(a)(20); *see also* "Immigrant" and "Green Card."

Lockbox: Receipting facilities that process various 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 Missouri (previously called the Missouri Service Center). Established as the hub and conduit for USCIS field offices, the NBC 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): Nationwide network of five call center facilities accessible by a toll-free telephone number, 1-800-375-5283. The NCSC provides assistance in English and Spanish to customers calling about immigration services and benefits.

National Records Center (NRC): USCIS archival records facility, located in Missouri, which stores millions of USCIS and legacy INS paper records. Additionally, the NRC processes Freedom of Information Act requests.

National Visa Center (NVC): A U.S. Department of State facility in New Hampshire that manages the flow of permanent residency cases between USCIS and DOS. Among other functions, it receives approved immigrant petitions from USCIS and distributes them to foreign consular offices where petition beneficiaries are interviewed for immigrant visas.

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 and/or a specific visa type. 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: 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 actions. *See* 8 C.F.R. §§ 299, *et seq*.

Notice to Appear (NTA): In the immigration context, an NTA is the formal charging document using Form I-862 (Notice to Appear) to begin removal proceedings. *See* INA § 239(a).

Preference Categories: Classification of foreign nationals seeking to immigrate to the United States, divided among family-based and employment-based categories. *See generally* INA § 203.

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 is filed or the date the petition is filed.

Refugee: An individual outside of, or fleeing from, his/her country of nationality, or if not having a country of nationality, place of former residence, due to persecution or a well-founded fear of persecution based on reasons of race, religion, nationality, membership of a particular social group or political opinion. *See* INA § 101(a)(42).

Region: USCIS divides the country into four administrative regions – Central, Eastern, Southeastern, and Western. The district and field offices report to their respective regional offices.

Request for Evidence (RFE): Correspondence from USCIS informing the customer of additional information needed to complete the adjudication of an application or petition. *See* 8 C.F.R. § 103.2(b)(8).

Retrogression: The backwards movement of a cut-off date published in the U.S. Department of State's Visa Bulletin. *See* "Cut-Off Date," "Priority Date," and "Visa Bulletin."

Revocation/Consular Return: The U.S. Department of State's (DOS) provisional denial of a petition, followed by return of the petition from DOS to USCIS via the NVC 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 re-sends the case to DOS for processing. *See* INA § 205; *see also* "National Visa Center."

Service Center: One of four USCIS processing facilities, located in California, Nebraska, Texas, and Vermont, where certain petitions and applications are adjudicated, particularly those that do not require an interview.

Transformation: A multi-year solution for 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.

Visa Bulletin: U.S. Department of State Visa Office document that publishes cut-off dates on a monthly basis. Listed by immigrant category and country of chargeability, the Visa Bulletin cut-off dates determine eligibility for immigrant visa numbers (green card numbers). *See* "Cut-Off Date."

Appendix 5: List of Abbreviations

AAO	Administrative Appeals Office
AC21	American Competitiveness in the 21st Century Act
AFM	Adjudicator's Field Manual
CLAIMS	Computer Linked Application Information Management System
CPMS	Customer Profile Management System
CRO	Community Relations Officers
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
DOJ	U.S. Department of Justice
DOS	U.S. Department of State
EAD	Employment Authorization Document
EOIR	Executive Office for Immigration Review
FAR	Federal Acquisition Regulation
FBI	Federal Bureau of Investigation
GAO	U.S. Government Accountability Office
ICE	U.S. Immigration and Customs Enforcement
ICMS	Interim Case Management System
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IVR	Interactive Voice Response
LCA	Labor Condition Application
MAVNI	Military Accessions Vital to the National Interest
MOU	Memorandum of Understanding
NBC	National Benefits Center
NCSC	National Customer Service Center
NOID	Notice of Intent to Deny
NRC	National Records Center
NSC	Nebraska Service Center
NTA	Notice to Appear
NVC	National Visa Center
OIG	Office of Inspector General
ONPT	Outside Normal Processing Time
OPE	Office of Public Engagement
PERM	Program Electronic Review Management
RFE	Request for Evidence
RFR	Request for Reconsideration
SAVE	Systematic Alien Verification for Entitlements
SIV	Special Immigrant Visa
SLOPE	Standard Lightweight Operational Programming Environment Rules System Qualified Adjudication
SMART	Standard Management Analysis Report Tool
SMI	Secure Mail Initiative
SRMT	Service Request Management Tool

SSA	U.S. Social Security Administration
TPS	Temporary Protected Status
TARP	Troubled Asset Relief Program
TPO	Transformation Program Office
TSC	Texas Service Center
TVPRA	Trafficking Victims Protection Reauthorization Act
USCIS	U.S. Citizenship and Immigration Services
USPS	U.S. Postal Service
VIBE	Validation Instrument for Business Enterprises
VRA	Visa Reform Act
VSC	Vermont Service Center
VTVPA	Victims of Trafficking and Violence Protection Act of 2000

DHS CIS Ombudsman

Mail Stop 1225
Washington, DC 20528-1225
Tel. 202-357-8100

http://www.dhs.gov/cisombudsman

Send your comments to: **cisombudsman@dhs.gov**