Figure 1: Visits to the Ombudsman's Website

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

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

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

II. PERVASIVE AND SERIOUS PROBLEMS

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

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

[11] *See* 6 U.S.C. § 272 (b)(1).

[12] *See* 6 U.S.C. § 272 (c)(1).

A. Backlogs and Prolonged Processing Times

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

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

CASE PROBLEM

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

CASE PROBLEM

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

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

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

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

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

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

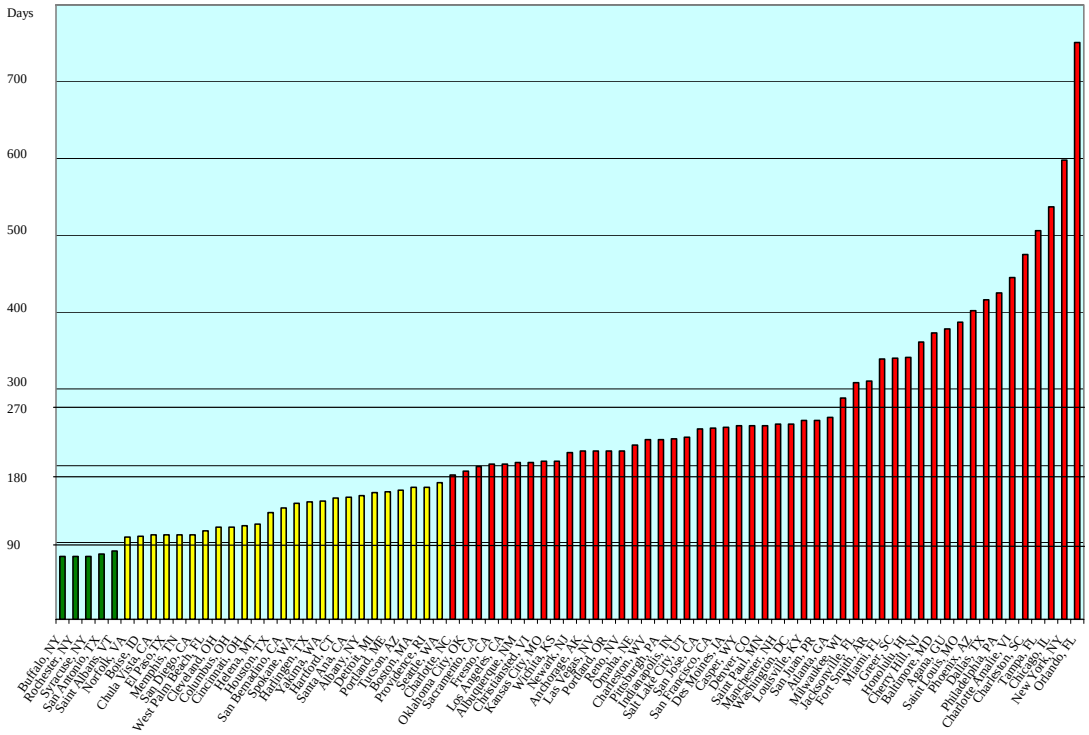
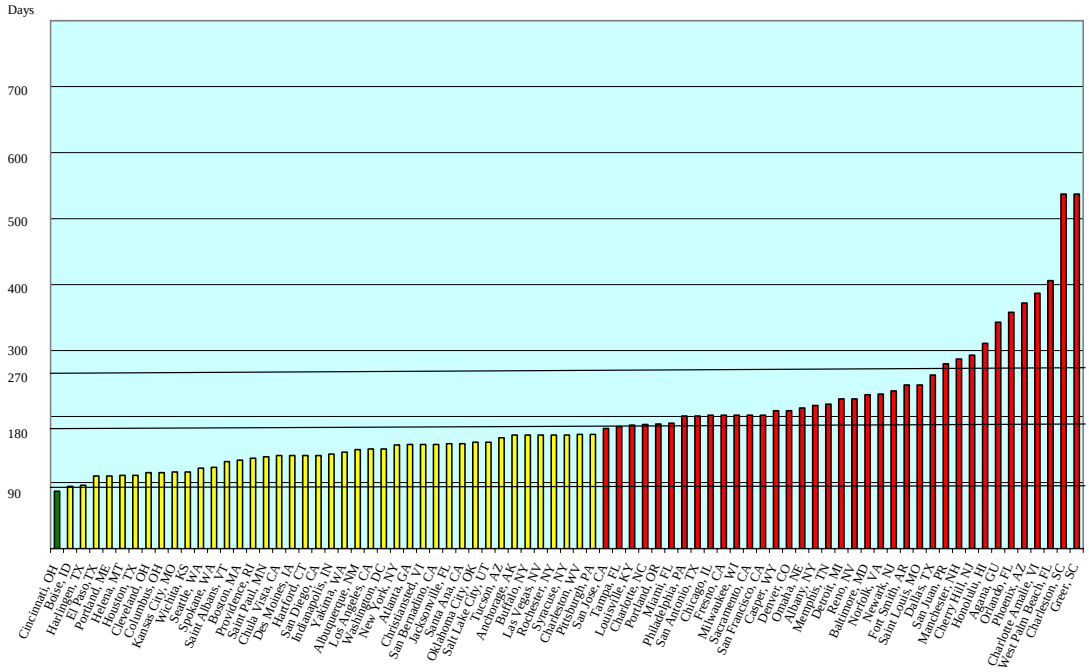


Figure 3: District Office Naturalization (Form N-400) Processing Times



Source for Figures 2 and 3: USCIS Website, as of May 22, 2006.[15]

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

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

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

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

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

The DHS Inspector General (IG) noted that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION AR 2006 -- 01

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

Global Impact. Backlog elimination is essential to the Rice Chertoff initiative's[25] goal of "encouraging citizens from all over the world to visit, study, and do business." By promoting a "welcoming spirit," the United States fosters both its economic and national security. Failure to meet goals central to the initiative will have serious consequences for national security and the economy, and will be reflected in low levels of customer satisfaction, as articulated in last year's report (at p. 3).

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

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

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

[23] *Id*.

[24] *Id*. at 15.

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

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

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

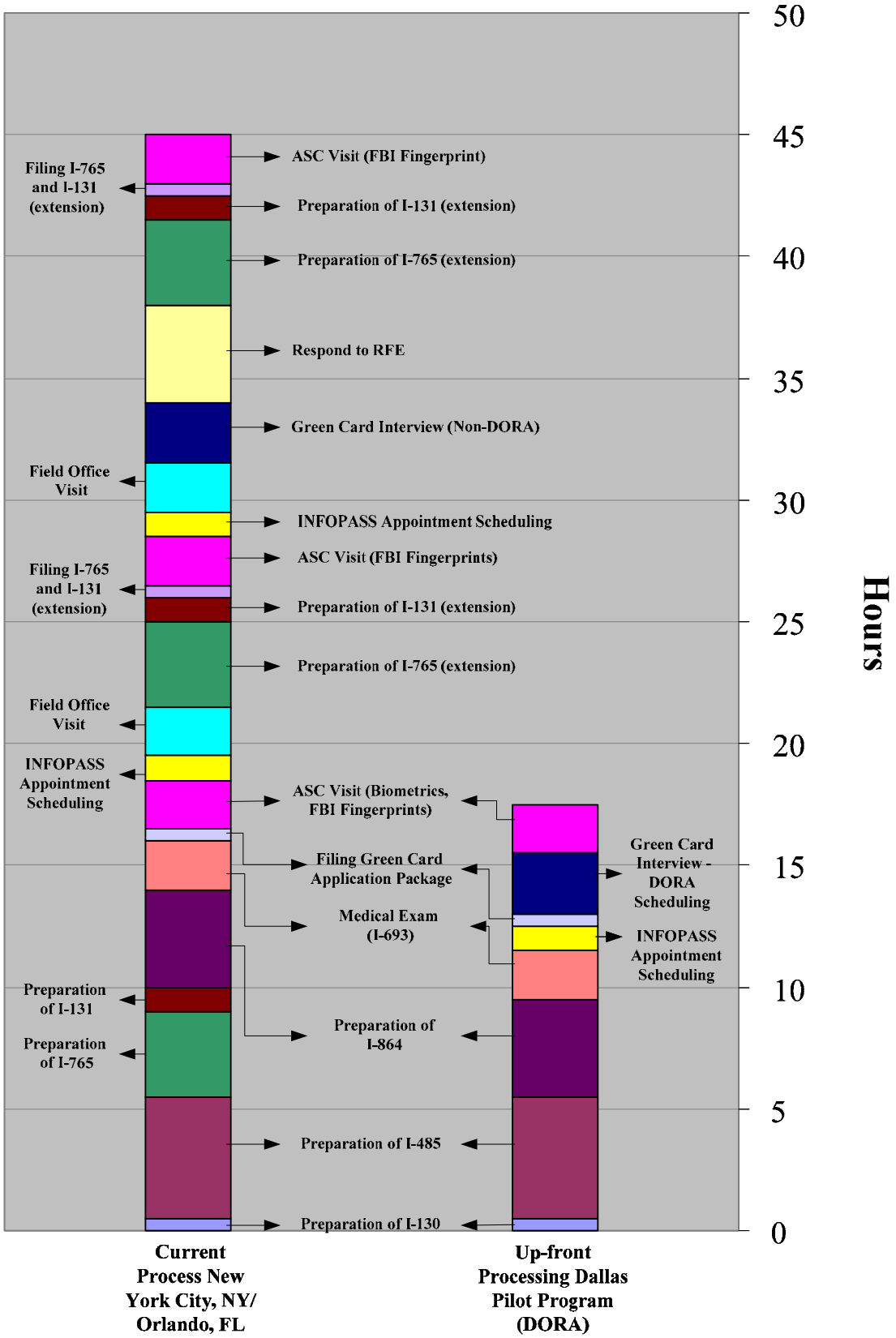
- **Customer Service:** Processing delays for qualified and meritorious applicants cause lost employment opportunities, financial hardships, and unnecessary family separation.

CASE PROBLEM

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

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

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



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

BEST PRACTICE

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

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

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

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

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

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

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

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

States, is to apply for adjustment of status[29] with USCIS provided: the individuals have established a legal basis for immigration (in this case, an approved I-140 visa petition); are eligible to immigrate; and visas are immediately available to them.

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

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

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

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

[29] *See* 8 U.S.C. § 1255.

[30] *See* 8 U.S.C. § 1153(b).

[31] *See* DOS' Visa Travel Bulletins at http://travel.state.gov/visa/frvi/bulletin/bulletin_1770.html.

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

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

[34] *See infra* section II.H.

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

In April 2006, USCIS estimated the number of pending employment-based applications for green cards to be between 170,975 and 229,291.[35] USCIS further estimated that it will complete 136,254 employment-based applications in FY 06. Based on its lower estimate, USCIS has 22 percent (30,975) more applications than it can possibly approve in a year. From its higher estimate, USCIS has 64 percent (89,291) more applications than it can approve. Thus, it remains the case that USCIS—based on its own estimates—cannot end a fiscal year without cases pending visa allocation. This, in effect, creates a perpetual backlog of green card cases.

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

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

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

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

RECOMMENDATION AR 2006 -- 02

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

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

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

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

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

C. Lack of Standardization Across USCIS Business Processes

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

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

Examples of Insufficient Standardization.

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

- **Nonimmigrant/Immigrant Adjudication**. Lack of consistent adjudication is still a problem for all applicants. USCIS has made limited progress in addressing this important issue and implemented no effective national process.

- **Forms Kits**. In the 2005 Annual Report (at p. 16), the Ombudsman reported that the Eastern Forms Center maintained 37 different forms packages for people seeking the same type of immigration benefit. During the reporting period, some reduction occurred in the number of packages, particularly since USCIS consolidated the forms process through the Lockbox. Standardization of filing procedures through the Lockbox is one of its few benefits amid other Lockbox operational problems. USCIS needs to further clarify application instructions to prevent many requests for additional evidence (RFEs) which are generated after applications are filed.

- **Processing Times**. Processing times continue to vary widely around the country. In this Report, the Ombudsman devotes section II.A to this issue.

- **Insufficient Standardization and Local Policies**. In the reporting period, the Ombudsman continued to identify specific service center and field office policy variations in so-called "gray areas" where there was no Headquarters guidance on the application of statutes, regulations, and policy. For example, some USCIS field offices adjudicate naturalizations in a one-step process. In other offices, there is a substantial time delay between separate steps for the interview and swearing-in. In other offices, the applicant must be sworn in under a judicial process, in addition to a separate administrative process, as required by the state and local judiciary.

- **Insufficient Standardization and Training**. This issue was addressed in the 2005 Annual Report (at p. 17), yet there is no substantial progress. Training is further discussed below in sections II.K and V.5.

BEST PRACTICE

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

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

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

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

D. Pending I-130 Petitions

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

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

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

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

RECOMMENDATION AR 2006 -- 03

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

E. Interim Benefits

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

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

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

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

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

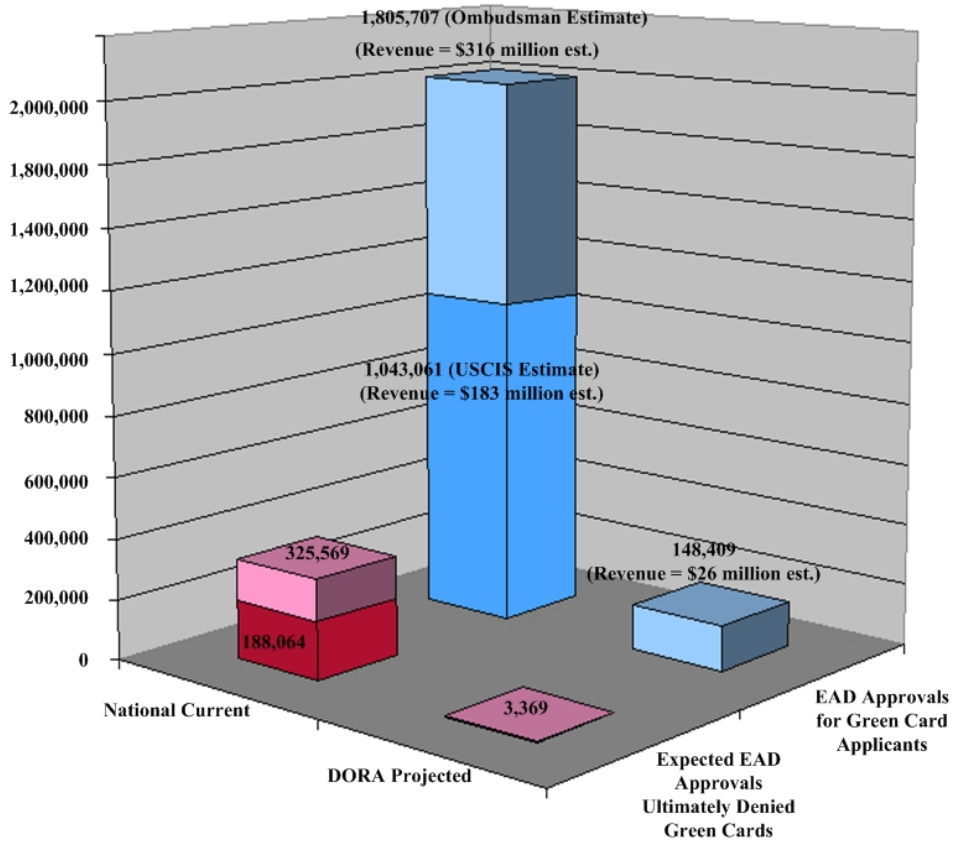
[38] *See* 8 C.F.R. §§ 223, 274a.13(d).

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

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

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

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

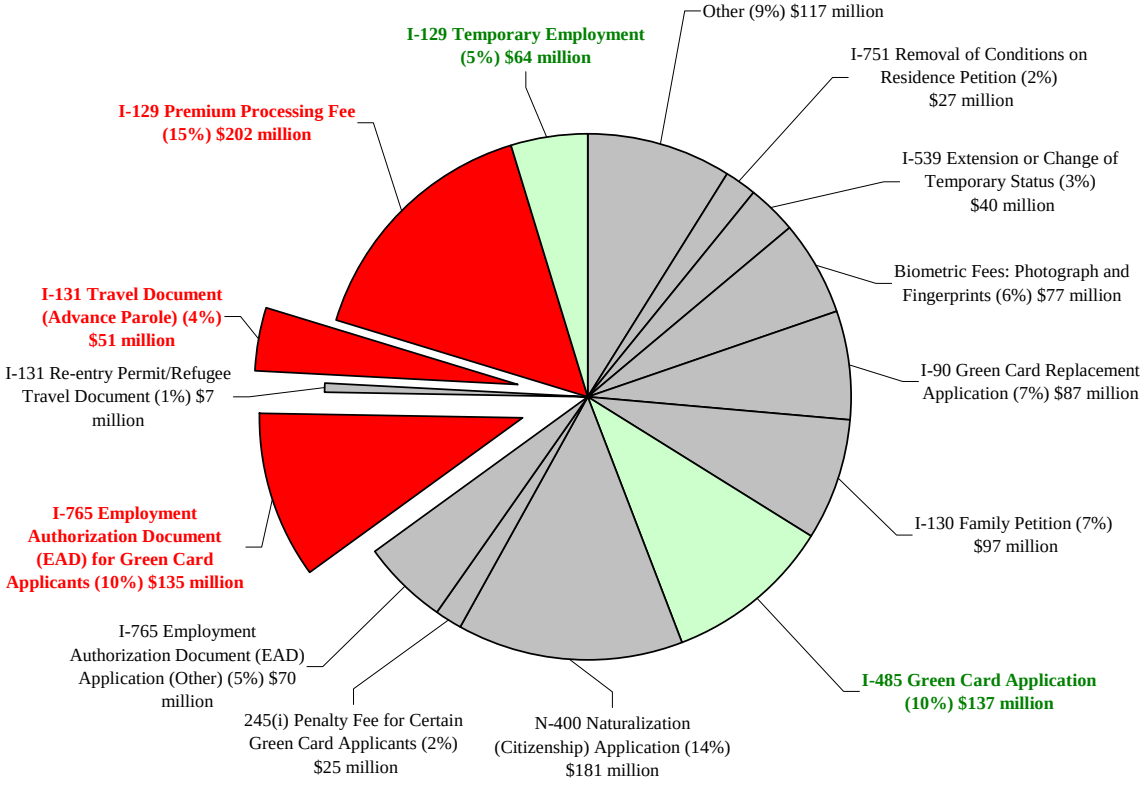


Regardless of the different estimates in number of EADs issued during the 21-month period, the difference in workloads to issue EADs between the current process and a DORA process is considerable. Had DORA been in place nationally, the number of EADs issued would have totaled approximately 148,409. Of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

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

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

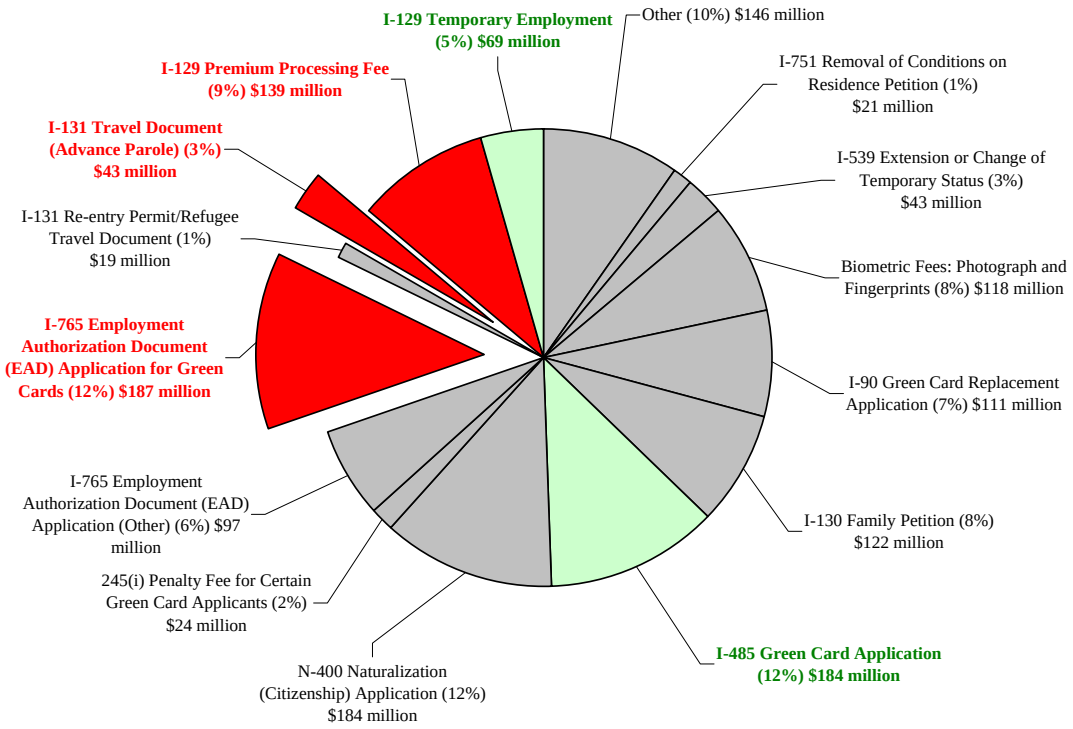
Figure 6: USCIS Fee Revenue for FY 04



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

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

Figure 7: USCIS Fee Revenue for FY 05



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

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

F. Name Checks and Other Security Checks

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

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

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

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

CASE PROBLEM

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

CASE PROBLEM

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION AR 2006 --04

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

G. Funding of USCIS

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

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

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

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

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

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

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

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

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

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

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

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

- Certain efficiencies were eliminated, for example, whereas previously one INS person accomplished a particular task before the reorganization, the task itself became divided and involved action by personnel from USCIS, ICE, and CBP.

- Several services became "shared services." For example, USCIS became the records manager for all three agencies. USCIS has since had difficulty obtaining reimbursement for these shared services.

- USCIS has been required to absorb the cost for certain legacy INS programs, for example, the processing of Freedom of Information Act requests and the Systematic Alien Verification for Entitlements (SAVE) program.

BEST PRACTICE

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

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

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

RECOMMENDATION AR 2006 -- 05

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

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

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

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

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

H. Information Technology Issues

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

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

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

[52] *See supra* note 8.

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

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

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

Specific case tracking and reporting problems include:

- **Backlog Reduction**. USCIS has been unable to provide precise information on the number of cases pending at its offices, particularly for employment-based green card cases, in part due to antiquated and inadequate information management systems. For over two years, the Ombudsman has had an outstanding data request to USCIS for this information. While USCIS has provided estimates, the Ombudsman understands that the agency is unable to provide this basic data.[55]

- **Form-Centric Versus Person-Centric Systems**. USCIS systems remain form-centric (based on the benefit sought, rather than on the individual seeking it). The adoption of a person-centric system would improve customer service, while simultaneously enhancing national security, by allowing USCIS to rapidly update information about an individual's employment, address, family status, and other important data points.

- **CLAIMS Case Management System**. The Computer Linked Application Information Management System (CLAIMS), versions 3 and 4, is the primary case management system for USCIS. CLAIMS is not user-friendly; it is a proprietary, antiquated system developed and deployed by a contractor in the early 1990s. The ability to access and update CLAIMS is limited to certain staff

[54] *See id.* at 10.

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

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

BEST PRACTICE

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

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

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

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

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

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

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

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

I. Limited Case Status Information Available to Applicants

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

CASE PROBLEM

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

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

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

[57] Ombudsman's 2004 Annual Report, at 6.

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

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

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

CASE PROBLEM

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

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

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

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

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

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

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

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

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

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

BEST PRACTICE

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

RECOMMENDATION AR 2006 -- 06

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

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

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

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

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

CASE PROBLEM

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

J. Coordination and Communication

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

1. Field Offices/Service Centers

CASE PROBLEM

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

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

CASE PROBLEM

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

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

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

CASE PROBLEM

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

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

[61] The following is the statutory provision requiring this program:

"(4) Managerial Rotation Program

(A) In general

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

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

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

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

CASE PROBLEM

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

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

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

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

(B) Report

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

2. Headquarters/Field Office Coordination

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

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

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

RECOMMENDATION AR 2006 -- 07

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

3. USCIS, Employers, and Other Government Agencies

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

CASE PROBLEM

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

[62] *See infra* section II.K.

CASE PROBLEM

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

K. Training and Staffing

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

BEST PRACTICE

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

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

1. Training

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

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

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

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

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

BEST PRACTICE

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

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

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

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

BEST PRACTICE

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

2. Staffing

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

BEST PRACTICE

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

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

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

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

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

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

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

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

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

RECOMMENDATION AR 2006 -- 08

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

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

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

III. USCIS REVENUE

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

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

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

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

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

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

[67] *See supra* note 13.

[68] *See supra* Figure 7.

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