

Citizenship and Immigration Services

Ombudsman

Annual Report 2012

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Homeland
Security





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Message from the Acting Ombudsman

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

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

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

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

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

Sincerely,



Debra Rogers
Acting Citizenship and Immigration Services Ombudsman

Executive Summary

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

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

Overview of the Ombudsman's Office

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

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

USCIS Year in Review: Promoting Quality and Consistency

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

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

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

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

Employment

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

Family and Children

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

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

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

Humanitarian

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

Customer Service

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



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