



Annual Report 2022

Citizenship and Immigration Services Ombudsman
Executive Summary

June 30, 2022



Homeland
Security

MESSAGE FROM THE CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN



I am once again honored to submit an Annual Report to Congress about the state of our immigration benefits system, this time examining calendar year 2021. This Report, presented each year on June 30, details the urgent systemic issues affecting U.S. Citizenship and Immigration Services (USCIS) and identifies potential solutions to resolve these problems.

In last year's Annual Report, we explained that USCIS faced a year like no other due to the harmful effects of the COVID-19 pandemic. The pandemic turned what were already significant processing delays into unprecedented backlogs across the entire system. This year's Report examines the "snowball effects" and pain points associated with these backlogs and recommends actions USCIS can take to address not only the human consequences suffered by applicants, families, and employers but also the detrimental impacts on the agency.

While USCIS has taken numerous steps to address these issues, and we are heartened by its stated commitment to reduce these barriers, more must be done. Simply put, applicants are not only losing valuable time in their immigration journey, they are losing jobs, livelihoods, and the ability to travel. As the Report details, the path for seeking expedited or emergency benefits is less than clear, leading to additional inquiries and requests. These snowball effects also compound the agency's work, further diverting USCIS' finite resources to customer service, congressional inquiries, case assistance requests, and duplicative filings.

This Annual Report identifies operational and administrative ways to mitigate these issues, but USCIS' overriding need is monetary flexibility and independence. The agency needs the ability to hire and train additional staff to meet processing surges; plan for and attend to its many humanitarian obligations without passing those costs on to other applicants; provide true customer service; and complete its ambitious digital strategy to further streamline the adjudicative process. In our recent recommendation on USCIS' fee-for-service funding model, located on our website* and a summary of which is included in this Report, we examine this funding issue extensively and conclude that the agency should realign its approach to allow for greater flexibility. Appropriated monies were undoubtedly welcome this past year to initiate that process, but a steady stream of funding to give USCIS flexibility would alleviate burdens on all filers.

Issuing our Annual Report each June is a significant accomplishment for our small but dedicated team; however, it represents only a fraction of the diverse work we do, much of which is behind the scenes. We provide assistance to thousands of individuals struggling to understand USCIS' complexities. We effect meaningful change by listening to stakeholders and identifying and recommending solutions on a wide array of systemic issues. Achieving these goals starts with an integrated approach to our work. Our staff is made up of professionals who bring extensive experience in the immigration field from both inside and outside government and who are deeply committed to the office's mission. Our workforce here in the CIS Ombudsman's office is uniquely well-rounded and represents the best of what it means to be a public servant.

This past year our office made great strides by bringing in personnel to fill key vacancies and introducing a new Strategy team to lead strategic planning, business process reengineering, system development, and data analysis initiatives. We aim to better use data to inform our work, simplify the process for submitting evidence of trends and problems, and incorporate methods to better track and propose solutions to USCIS. We also issued our first strategic plan and are hopeful that in 2023, we will be

* www.dhs.gov/publication/cis-ombudsmans-recommendations-uscis-2022.

able to introduce local ombudsmen in important locations across the country. This effort will begin to fully realize the structure that Congress envisioned 20 years ago when it established our office.

CASE ASSISTANCE

Last year, we described how the pandemic heightened the need for our office's role as an avenue of last resort. Unfortunately, the processing delays at USCIS in 2021 created another historic upswing in our case work, resulting in 26,097 case assistance requests—a 79 percent increase over 2020, which previously represented our largest number of requests.

Despite this surge, we still strive to act on requests for case assistance in a timely manner. To do this, we take steps to ensure that our assistance provides the value that requestors expect and deserve. For example, USCIS' extensive processing delays meant it could not readily address individual inquiries where the only issue was that their case was outside of normal processing times. We were forced to deprioritize these case assistance requests and focus on those where the agency could give us meaningful results. We continue to raise delayed processing times to USCIS as a systemic issue and are optimistic that the agency will reduce processing times across benefit requests, as it has pledged to do. We hope to be able to reprioritize these types of case assistance requests when that happens.

Reordering our priorities helped us focus on requests where we believe USCIS can quickly take action to resolve the issue. These priorities include cases involving non-receipt of certain documents or notices; upcoming removal proceeding hearings; improper rejections; delays with notifying another agency when USCIS approves an immigration benefit request; and those impacting U.S. military personnel and their families.

Some of our successes this year include:

- Requesting that USCIS review the previously provided supporting documentation that clearly established the urgency and merit of the request when a terminally ill applicant's request to expedite a travel document was denied. USCIS issued the travel document a month later, and the applicant was able to visit his family overseas;
- Helping two siblings obtain approval of a family-based petition under humanitarian reinstatement after their parent passed away. They had been waiting more than 2 decades for a visa number to become available and were finally eligible to pursue a green card;

- Assisting an applicant who could not attend a naturalization ceremony due to their living facility's social distancing policy at the height of the pandemic. After we advocated for the applicant, USCIS reopened the case and the applicant became a U.S. citizen a month later; and
- Facilitating the adjudication of a pending green card application for a victim of Hurricane Ida so they could apply for disaster relief.

These are just a few examples of the many stories demonstrating how we help people to work, travel, obtain medical care, renew driver's licenses, and be reunited with their families. However, we continue to believe that backlogs and processing delays are perhaps the greatest issues facing USCIS and its stakeholders. Until USCIS resolves those issues, we expect our caseload to remain at an extraordinarily high level.

PUBLIC ENGAGEMENT

Our Public Engagement Division, established 2 years ago, provides our office with a strong presence across the country. In 2021, we connected with over 7,500 stakeholders through 143 engagements where we gathered feedback about their experiences with USCIS. These stakeholders included community and faith-based organizations; universities; national associations; local, state, and federal government partners; small businesses; and Fortune 500 companies. Our engagements give us a broad variety of perspectives on all types of immigration benefit issues. Working with USCIS, multiple federal agencies, and other DHS components, our national webinar series covered a range of topics, including:

- Combating human trafficking and forced labor in imported goods;
- The H-1B electronic registration process for attorneys and representatives;
- USCIS' online filing and customer service tools;
- The USCIS Contact Center;
- Online filing for Form I-765, *Application for Employment Authorization*, for F-1 students seeking Optional Practical Training;
- Naturalization and immigrant integration;
- Services for noncitizen veterans;
- E-filing Form I-821; and
- The Office of the Immigration Detention Ombudsman.

Our engagements help us identify problematic trends in case processing, shape how we engage with USCIS, and inform our recommendations and policy priorities. We send stakeholder messages to approximately 152,000 distribution list subscribers and followers on social media. These messages amplify and clarify USCIS policy. They include best practices for contacting USCIS, information about processing of employment-based immigrant visas, correcting errors on EADs for Afghan nationals, and what forms are available for online filing.

POLICY

Our Policy Division reviews and synthesizes information from our case assistance and public engagement efforts, consults with USCIS on these issues, and recommends operationally realistic solutions. We are very proud of the work we do all year behind the scenes to address policy-related issues. We have achieved the goal set in 2021 of issuing recommendations throughout the year and increasing the cadence by which we share trends and advice with the agency.

We issued two formal recommendations in advance of this Report. Our beneficiary notification recommendation for Form I-129, *Petition for a Nonimmigrant Worker*, urges USCIS to provide certain beneficiaries with documentation that the law requires them to have and which would help prevent unscrupulous employers from exploiting them. In our recommendation on USCIS' fee-for-service funding model, referenced above, we underscore the necessity of providing USCIS with monetary flexibility to reduce delays in processing times, prevent backlogs in the future, and fund humanitarian programs without distributing these costs to other filers. We look forward to seeing action in response to these recommendations.

We are proud that USCIS has acted on recommendations from our 2021 Report. They extended the receipt notice for Form I-751, *Petition to Remove Conditions on Residence*, to provide longer evidence of conditional permanent resident (CPR) status; waived interviews for certain CPRs; implemented a risk-based approach to maximize best practices adopted during the pandemic, such as video-facilitated interviews; developed a strategic backlog reduction plan; and advanced its digitization strategy, among others.

Outside of public view, we provide numerous informal recommendations to USCIS aimed at removing barriers to the immigration system as soon as they emerge. Our goal is to identify and recommend ways to address pressing problems. We do this by submitting memoranda to USCIS

leadership and meeting with the agency's policy and operational offices and directorates.

While not all our suggestions are acted upon, we believe our recommendations have helped lead to important changes at USCIS, such as:

- Extending the automatic extension period for certain EAD classifications;
- Clarifying that E and L nonimmigrant spouses are authorized for employment incident to their status and issuing I-9 compliant I-94s; and
- Establishing processing goals for EADs and other categories.

Our recommendations are not solely about mitigating processing delays. With the help of stakeholder engagement and our casework efforts, we identify systemic issues across benefit types and have recommended the following recent improvements made by USCIS:

- Eliminating the "bridging requirement" for B-2 visitors seeking to change their nonimmigrant status to F-1 students;
- Implementing a process where employment-based green card applicants can transfer the basis of their application to a new Form I-140, *Immigrant Petition for Alien Workers*, so that they can access an available immigrant visa when priority dates advance in the Department of State's Visa Bulletin;
- Changing procedures so that an upgraded or downgraded Form I-140 can be premium processed without the original labor certification;
- Revising request for evidence templates for O-1 nonimmigrant petitions to ensure requests align with regulatory requirements; and
- Removing the requirement where generally all employment-based adjustment of status cases require an interview.

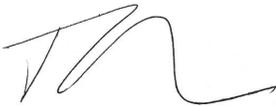
We recently provided informal recommendations on issues such as Operation Allies Welcome and Uniting for Ukraine; improving messaging related to case handling during the employment-based adjustment of status process and addressing frontlogs; the use of credit card payments; U.S. mail issues; and better access to customer service channels.

MOVING FORWARD

USCIS faces challenges ahead as it works to reduce backlogs and processing times. These goals require its full attention. Its strength lies in its people—government servants devoted to the mission of the agency to “uphold America’s promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve.” They cannot achieve these goals without help from Congress in the form of resources; from stakeholders who provide insightful feedback; and from its partners, such as our office, who constructively collaborate to ensure the agency completes its mission fairly and on time.

We applaud the agency’s commitment to removing barriers to accessing immigration benefits and look forward to our continued partnership in this effort. We especially value our collaboration with dedicated USCIS employees at all levels, especially in improving customer service (a collaboration that was just recognized with a Secretary’s Award for Innovation, a first for this office). The CIS Ombudsman’s office is equally committed to continuing and improving the timeliness of our case assistance, expanding our engagement and outreach, and enhancing our responsiveness on policy issues. I am grateful to my staff for their expertise and devotion to providing our vital and uniquely helpful service to the public and the agency.

Sincerely,



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EXECUTIVE SUMMARY

The Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) 2022 Annual Report covers calendar year 2021, as well as key developments in early 2022. It contains:

- An overview of the CIS Ombudsman’s mission and services;
- A review of U.S. Citizenship and Immigration Services (USCIS) programmatic and policy challenges during this reporting period; and
- A detailed discussion of pervasive problems, recommendations, and best practices in the administration of our immigration laws.

MITIGATING THE IMPACTS OF BACKLOGS: ANALYSES AND RECOMMENDATIONS

The Avalanche Impact of Backlogs: 2021 in Review

USCIS has always had its share of backlog issues, but none so severe in recent memory as the ones it currently confronts. These lengthy processing times and the high number of unadjudicated cases—created out of the pandemic’s unprecedented effect on its ability to operate, insufficient revenue, and employee attrition—have had a massive “snowball” effect on the agency’s operations. While the agency has taken many actions to lessen the backlog’s impact, these snowball effects multiply, doing real harm to stakeholders and adversely impacting applicants and petitioners every day. To fully address the backlogs, USCIS must also continue to address their consequences. USCIS’ commitment to mitigating its backlogs of cases, as evidenced by setting aggressive processing goals for next year, must be matched with a full commitment to eradicating the worst of these pain points for applicants and petitioners so that they may continue to work, travel, obtain evidence of status, and be able to access expedited processing, when eligible, in a meaningful and consistent way. While the agency has made a good start, the specific studies throughout this Annual Report identify additional actions that can be taken.

The Need for More Flexibility in Renewing Employment Authorization

U.S. employers depend on recruiting and retaining a stable workforce to meet their goals, and employees depend on uninterrupted work authorization to maintain steady income to support themselves and their families. Delays in renewing employment authorization documents (EADs) interrupt employment for noncitizens who had previously been found eligible while simultaneously interrupting the ability of U.S. businesses to employ their workforce continuously. USCIS has taken steps to help prevent these employment gaps, including providing for longer automatic EAD extension periods when a renewal request is filed on time, extending validity periods for certain EADs, and expediting EAD renewals in specific occupations.

As the agency commits to addressing this issue, the CIS Ombudsman recommends that USCIS:

- Build on existing automatic extension periods to allow for uninterrupted work authorization while waiting for USCIS to adjudicate a renewal EAD application;
- Provide better options for nonimmigrant spouses to renew their employment authorization;
- Allow applicants to file for renewal EADs earlier and issue renewal EADs with validity periods that begin when the original EAD expires;
- Continue to expedite EAD renewals for workers in certain occupations in the national interest;
- Further explore and augment the use of technology, including online filing and machine learning, to automate EAD processing;
- Implement new regulations that provide more flexibility for USCIS and approved workers during periods of backlogs or long processing delays;
- Increase flexibility in the Form I-9, *Employment Eligibility Verification*, process; and
- Eliminate the need for a separate EAD application when filing for certain benefits.

Increasing Accessibility to Legitimate Travel: Advance Parole

Under current regulations, certain adjustment of status (AOS) applicants who depart the United States before their Form I-485, *Application to Register Permanent Residence or Adjust Status*, is adjudicated are considered to have abandoned that application, which results in a denial. To avoid this denial and preserve their eligibility to adjust status, AOS applicants can file Form I-131, *Application for Travel Document*, to obtain an advance parole document (APD) from USCIS before leaving the United States. Due to processing delays, applicants are finding it more difficult to receive APDs in a timely manner, which has led to more requests to expedite these applications and to issue advance parole for emergencies, thus adding to the workloads of both the USCIS Contact Center and the adjudicating offices. USCIS should consider the following recommendations to reduce barriers to travel and enable USCIS to better manage the process of providing APDs to those who need them most:

- Authorize advance parole incident to the filing of Form I-485 and upon providing biometrics to USCIS, thereby eliminating the need to file Form I-131 and allowing for travel with a receipt for a pending Form I-485;
- Change the AOS abandonment provisions such that they only apply to applicants who are not under exclusion, deportation, or removal proceedings and who leave without a receipt notice evidencing advance parole;
- Move high-volume Forms I-131 into a digital environment, allowing USCIS to leverage its technological capabilities to electronically notify the applicant and U.S. Customs and Border Protection (CBP) when it grants advance parole;
- Extend the validity of APDs for individuals with pending Forms I-485 until USCIS renders a decision on the Form I-485 or to coincide with current processing times;
- Stop considering a pending Form I-131 for advance parole to be abandoned by travel abroad; and
- Improve the emergency advance parole process by creating a specific track at the Contact Center for obtaining needed in-person appointments; foster well-trained points of contact at the field offices for processing requests; develop a unified system of accountability for tracking the number of requests and outcomes of decisions rendered; and ensure consistent adjudications among field offices.

Improving Access to the Expedite Process

There are times when an applicant or petitioner may need a decision from USCIS sooner than the average processing time. In these instances, individuals or their legal representatives can submit an expedite request to USCIS if they meet certain eligibility criteria. Although USCIS is committed to delivering timely decisions, operations affected by the pandemic and insufficient resources have resulted in longer processing times. The expedite request caseload has consequently increased, further diverting resources within the agency and making it challenging for USCIS to process these requests efficiently. There is incomplete data on the number of expedite requests USCIS receives and their rate of approval and denial. Additionally, there are inconsistencies in how USCIS offices apply the criteria used to grant an expedite request. As a result, requestors find the process confusing and unreliable. To make the expedite process more efficient, USCIS should:

- Establish a centralized process for expedite requests;
- Create a new form for submitting expedite requests;
- Develop standardized guidance about the requirements and process; and
- Engage in robust data collection to maintain accountability.

Initiating a Discussion on Ways to Address the Affirmative Asylum Backlog

The asylum backlog has grown to more than 430,000 pending cases, with devastating impacts on asylum seekers and their family members. USCIS' existing asylum system cannot meaningfully reduce its backlog, let alone keep pace with incoming applications. The agency must consider new operational approaches to improve the quality and efficiency of asylum adjudications without compromising integrity or equity. The recommendations below are intended to spark a crucial discussion on innovative ways to address the backlog. The CIS Ombudsman looks forward to refining these proposals through continued engagement with stakeholders and USCIS.

- Apply best practices from refugee processing to asylum backlog reduction efforts;
- Identify and group cases to increase efficiencies in interviews and adjudications, to prioritize asylum applicants in need of immediate protection, and to deprioritize non-priority applicants, such as those who have other forms of relief available;

- Expand the role of the Asylum Vetting Center to triage cases into different case processing tracks that allow USCIS to use truncated or accelerated processing for certain groups of cases;
- Rethink case preparation processes to include case complexity analysis, focused interview guidance for specific caseloads, and interview orientation for applicants;
- Consider specialization, interview waivers, and simplifying final decisions as a way to increase case completions while supporting the welfare of officers and applicants; and
- Implement a feedback loop between USCIS and the immigration court and target protection screening efforts to improve the accuracy of decisions and ensure the effective use of government resources.
- Provide guidance to officers on how to contact EOIR to resolve discrepancies between documents submitted with an EAD application and data pulled from EOIR systems;
- Leverage information sharing and IT systems to simplify the process of creating EADs and Forms I-94;
- Designate the IJ order granting asylum as acceptable evidence for Form I-9 employment verification purposes; and
- Consider a pilot program which places USCIS immigration services officers, having authority to provide USCIS documents to new asylees, in certain immigration courts.

Eliminating Barriers to Obtaining Proof of Employment Authorization for Asylum Applicants in Removal Proceedings

Asylum seekers, particularly those in removal proceedings (defensive asylum applicants), encounter barriers to obtaining proof of their employment authorization, both while their Form I-589, *Application for Asylum and for Withholding of Removal*, is pending and after an immigration judge grants asylum. These barriers arise in part because the asylum process is split between USCIS and the Department of Justice’s Executive Office for Immigration Review (EOIR), with each agency having different powers in the process. Although EOIR has jurisdiction over defensive asylum applicants and an immigration judge (IJ) grants asylum to eligible applicants, they must apply to USCIS for an EAD and/or a Form I-94, *Arrival/Departure Record*, that demonstrates the grant of asylum.

USCIS often denies EAD applications filed by eligible defensive asylum applicants because it cannot find evidence of the pending asylum application in its systems or EOIR’s systems, which results in applicants having to submit multiple filings and endure extensive processing delays while attempting to resolve the issue. Meanwhile, those granted asylum by an IJ are instructed to call the USCIS Contact Center to request an appointment at their local USCIS field office to obtain a Form I-94. However, COVID-19 pandemic measures, contract cuts, and other measures taken by USCIS in response to its financial challenges have made certain customer services more difficult to access. USCIS should consider the following recommendations to decrease delays in processing EADs and in providing evidence of status:

USCIS’ Digital Strategy: Nearing an Inflection Point

While there is still much more work to be accomplished, the CIS Ombudsman is optimistic that USCIS’ digital strategy is nearing an inflection point. In 2021, USCIS added two high-volume forms to its online offerings: Form I-765, *Application for Employment Authorization*, and Form I-821, *Application for Temporary Protected Status*. Other frequently filed petitions and applications are slated for release in the coming year. Furthermore, in September 2021, USCIS presented Congress with its plan to make online filing available for all forms and back-end digital processing by the end of Fiscal Year (FY) 2026. As reported by the DHS Office of Inspector General, this end cannot come soon enough, as many of the disruptions to USCIS’ operations, lengthening processing times, and growing backlogs were related to the agency’s failure to fully digitize before the COVID-19 pandemic struck in 2020.

USCIS reported that there are over 8 million active accounts in myUSCIS, its public facing portal that allows filers and their representatives to open online accounts to file, view, and manage their filings electronically. Through these accounts, USCIS received approximately 1,325,000 online-filed benefit requests in FY 2021. Although USCIS has not yet implemented automation, machine processing, or artificial intelligence tools and programming on a large-scale basis, the promise exists that it will do so successfully in the future. The CIS Ombudsman is resolved to monitor progress on this issue in the coming years.

The CIS Ombudsman provides three new recommendations:

- Make application programming interface (API) integration and digitization of Form I-912, *Request for Fee Waiver*, immediate priorities;

- Develop and initiate a targeted, nationwide promotion campaign to encourage more filers to create and use a myUSCIS account to file online and communicate with USCIS; and
- Examine how it might better incentivize customers to submit their filings online, including potentially increasing the current \$10 filing fee discount.

The CIS Ombudsman reasserts a recommendation it made in its 2021 Annual Report:

- Create a central portal and system to receive and forward Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*, to the USCIS office that has the relevant benefit file.

U Nonimmigrant Status Bona Fide Determination Process: Successes and Challenges in Taking on a Backlog

The Immigration and Nationality Act (INA) empowers victims to report crimes to the police while simultaneously providing law enforcement with the tools to investigate and prosecute the perpetrators of those crimes. The INA was amended by the Victims of Trafficking and Violence Protection Act of 2000 and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to allow victims who assist law enforcement with the criminal investigation to apply for a U nonimmigrant visa by filing Form I-918, *Petition for U Nonimmigrant Status*, and receive deferred action and employment authorization. However, due to high demand for U visas, processing times have increased. To alleviate the negative effects caused by these backlogs, USCIS implemented the Bona Fide Determination (BFD) process on June 14, 2021. The BFD process allows USCIS to provide eligible petitioners with employment authorization and deferred action more expeditiously. Although USCIS experienced several challenges during implementation, the BFD process is proving to be a backlog management success.

KEY FINDINGS AND COMMONALITIES MOVING FORWARD

During the reporting period, the harmful impacts of backlogs and lengthy processing delays underscored the need for USCIS to:

- Expand flexibility in providing work and travel documents to eligible requestors;
- Make the expedite process more efficient and consistent;
- Undertake new operational approaches to address the affirmative asylum backlog;
- Continue robust digitization efforts; and
- Apply successes, such as in the U BFD process, to other programs.

By focusing on these key objectives moving forward, USCIS will be better positioned to respond to challenges faced by both stakeholders and the agency itself when backlogs exist. While USCIS ultimately requires additional revenue to address resource constraints, this year's Annual Report contains more immediate recommendations to reduce pain points experienced by stakeholders and the agency. They will better allow USCIS to focus resources on adjudications, as opposed to fielding and responding to the cascading stakeholder inquiries and complaints that such processing delays produce. The CIS Ombudsman will continue to engage with USCIS and stakeholders on these issues and put forward practical solutions that will remove barriers and improve the administration of our immigration laws.



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