



# Annual Report 2023

Citizenship and Immigration Services  
Ombudsman

June 30, 2023



Homeland  
Security

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Security**

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The Honorable Richard Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Jim Jordan  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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

Dear Chairmen and Ranking Members:

The Office of the Citizenship and Immigration Services Ombudsman is pleased to submit, pursuant to section 452(c) of the Homeland Security Act of 2002, its 2023 Annual Report.

I am available to provide additional information upon request.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Stiefel".

Nathan Stiefel  
(Acting) Citizenship and Immigration Services Ombudsman

# 2023 ACTING OMBUDSMAN'S MESSAGE



I am very pleased to submit this year's Annual Report to Congress on behalf of the Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) regarding the challenges faced in our immigration benefits system, this time examining calendar year 2022. 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 the adverse impacts experienced by both USCIS and its stakeholders as a result of the unprecedented backlogs the agency has accumulated due to the effects of the COVID-19 pandemic and other systemic challenges. This year's Report examines the downstream impacts of those backlogs and the additional challenges facing the agency. It further recommends some 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.

We were very pleased that this year, USCIS engaged with us beyond last year's Annual Report, discussing with our office not only their written responses, but specific actions they are taking and continue to contemplate in light of our recommendations. As a small office of fewer than 50 federal employees, the agency dwarfs us in its resourcefulness and knowledge of its own issues. But our vantage point, in particular our ability to engage with

a diverse range of stakeholders, enables us to shed light on those challenges with a unique voice. Although we do not always agree, we deeply appreciate the ear lent to us by Director Ur Jaddou, USCIS leadership, and the USCIS workforce at all levels. The agency's continued collaboration and willingness to engage with us has enhanced our ability to provide thoughtful and practical solutions to some of the biggest challenges facing the immigration system.

One such opportunity related to what we refer to as an "informal" recommendation—an idea offered to the agency to cure a problem we see without rising to the level of a more formal recommendation and response process. These suggestions are offered always with the spirit of curing a trending problem. In the summer of 2022, we noticed increasing processing times for Form I-90, *Application to Replace Permanent Resident Card (Green Card)*, to the point where they extended well beyond the 12-month period provided by the receipt notice as proof of employment and travel authorization. This meant applicants seeking to replace or extend their valid Green Cards were facing a gap of several months in which they could neither seek work nor travel internationally. In August, we recommended that USCIS deal with the symptom of that gap, as it was unclear it could bring processing times down quickly enough to avoid leaving a significant number of people without evidence of status, and extend the validity period of the receipt. USCIS not only took action the next month by changing the validity period of the receipt, but they also provided a new receipt to everyone with a pending application, ensuring the gap would not hinder any applicant's travel or employment.

## The Downstream Impacts of 2022

In many respects, both USCIS and our office remain focused on the still significant backlogs and the problems resulting from them, attempting to address symptoms while the agency works to decrease processing times as it declared it would do in March 2022. These delays are still a major concern for the agency. It has made substantial improvements in many areas; processing times for employment authorization, for example, have significantly decreased from even one year ago. But many processing times are still not within the goals set in March 2022 by the

agency—goals they were reaching for by the end of Fiscal Year (FY) 2023 and some of which are still not likely to be reached. Accordingly, we will continue to work with USCIS to alleviate the symptoms of continuing backlogs and, to the extent possible, offer ideas to minimize those backlogs as the agency strives to achieve more reasonable benefit processing times.

Not all the reasons USCIS is struggling with processing times are within its control. Global events over the past few years have found their way into the U.S. immigration system and have challenged the agency to maximize its already stretched resources. Climate events, political strife, and economic upheavals have taken their toll on the agency's capacity to serve all its customers. A growing humanitarian workload has tested the agency's technologies, its human capital, and its leadership to not only do more with less, but to identify new capacities and new processes. While Congress has appropriated money to help the agency address some of its most significant humanitarian workloads, the agency still operates on fees no longer adequate to fully cover the magnitude of the work. These populations, moreover, will present challenges to the immigration system for some time. Parole populations, those afforded Temporary Protected Status, those seeking asylum, and others will continue to impact USCIS workloads for potentially years to come. The Department of Homeland Security (DHS) and its components, including both USCIS and the CIS Ombudsman, will need to apply every ingenuity to address these needs while still maintaining the full integrity of the immigration benefits system.

Our recommendations this year, as a result, attempt to contend with some of these downstream impacts, and address some of the long-term impacts the continuing backlogs—and the new challenges—will create. Efficiencies now will help the agency cope in the years ahead as these new populations entering the country, for example, navigate their way into and through our nation's immigration system.

## **The Downstream Impacts Flow to the CIS Ombudsman**

The CIS Ombudsman, too, has maximized its resources to meet the challenges that also flowed to us as a result of the agency's situation. Our focus this past year has been on customer service, contending with the ongoing exponential increase we have seen in requests for case assistance. We have, however, been tasked to assist the efforts of the Department in other ways. We provided detailees to the Office of the Secretary, to U.S. Immigration and Customs

Enforcement, and to U.S. Customs and Border Protection in support of the Administration's immigration priorities, including 2 individuals assigned to assist the efforts of the Family Reunification Task Force. In 2022, we also provided 2 detailees to support the Department's efforts on the Southwest border. We still found time to seek to improve our work with USCIS, revising our Memorandum of Understanding with the agency to enhance the details of our working relationship. We also assisted the agency in focusing on customer service through a continuing collaboration with the USCIS Office of Access and Information Services.

Our focus on customer service reverberated in many of our actions this year. We began the process of building an external web portal to better serve the public in need of our assistance. We revised DHS Form 7001, *Request for Case Assistance*, to ease the burden on individuals and employers and provide us with more information to better assist them. We implemented a number of efficiencies, including the use of data to close cases where USCIS has already taken action after the request for assistance was filed with our office. We are also working to review cases more quickly, revamping our review and triage process to conform more closely to the agency's activities and to be performed more efficiently. We were able to reduce our own backlog of pending requests by 69 percent in 2022 and reach a standard triage time of 3 working days. We continue, however, to seek ways to address issues more quickly and precisely for requestors; to that end, we are working to build end-to-end connectivity to USCIS systems to enable us to receive better information and be more accurate with requests.

Our public engagement activities, too, focused on customer service. We were able to move further into the age of social media, expanding our reach through Twitter as well as Facebook. We expanded our use of videos in both English and Spanish, to reach a more visual audience. We took a more targeted approach, seeking out direct engagements with embassies to better assist larger populations, especially those needing humanitarian outreach. In addition, we collaborated with USCIS to provide more proactive messaging to the public on several subjects, including its employment-based immigrant visa usage, through new frequently asked questions published on the agency's website and two joint webinars on the topic.

The CIS Ombudsman's policy efforts were concentrated on fixing problems as they arose, many through informal recommendations to individual program offices and directorates. These not only included the use of increasing



the validity period of receipts to extend their use for employment and travel as mentioned above, but ranged from process “fixes,” such as temporarily increasing the maximum limit on individual daily credit card payments accepted by the Department of the Treasury to \$40,000 to enable employers to avoid “maxing out” credit card payments on H-1B cap petitions, to addressing delayed adjudication of derivatives of employment-based adjustment applicants and problems related to “aging out” of these applicants. The agency collaborated with us on their downstream populations, including improving access to Alien Documentation, Identification, and Telecommunication (ADIT) stamps for evidence of employment and travel authorization and working to access parole extensions for populations through more efficient use of existing technologies. Our hope in the coming year is to expand the public’s access to bringing us systemic issues through a new mailbox designed and staffed for that purpose.

## Moving Forward

USCIS continues to face many challenges ahead. The already-present challenge of reining in its considerable backlogs has been further complicated by the additional immediate work and ongoing long-term impacts of new populations that will continue to have a need for its services. These goals require the agency’s full attention.

While USCIS is strained in many respects by these additional workloads, it is not without resources. It has already leveraged technologies to ensure efficiency—every one of our studies looks to technologies to continue to assist the agency moving forward to reduce backlogs and provide a higher level of customer service. It also has its chief resource—approximately 20,000 employees—steeped in the central mission of the agency. And it has the ongoing mission of the agency, to ensure, as Director Jaddou noted in the USCIS Fiscal Years’ 2023-2026 Strategic Plan, the agency’s “longstanding mission and firm commitment to making the United States a stronger, more inclusive, and welcoming nation, and preserving the integrity of the U.S. immigration programs we administer.”

With help from Congress for badly needed 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, the agency can proceed on course to master its daunting tasks.

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 incredibly grateful for the staff of the CIS Ombudsman, who have helped us continue the efforts initiated under our last Ombudsman, Phyllis Coven, to streamline our case assistance services, to offer timely and practical solutions to difficult challenges, to broaden our engagement with the public, and to modernize our use of technology. On behalf of our team, I want to thank Phyllis for her leadership these last 2 years as we moved to modernize our operations and mature our organization. We have made tremendous strides in these areas through determination and diligent resolve. This dedicated group of individuals has worked tirelessly to provide our unique services to USCIS and the public we both serve. We will continue to fulfill our role in removing barriers within the immigration system and to strive toward a benefits process that is accessible, fair, and provides a well-reasoned decision in a reasonable amount of time.



Nathan Stiefel  
(Acting) Citizenship and Immigration Services Ombudsman

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# EXECUTIVE SUMMARY

The Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) in this 2023 Annual Report covers calendar year 2022, as well as key developments in early 2023. The report 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.

## Backlogs in the Long Term: 2022 in Review

USCIS began the year fully cognizant of its challenges in decreasing processing times and getting its backlogs under control and took significant steps to accomplish those goals. But 2022 brought with it significant new tasks for the agency that would create their own processing and operational challenges—challenges that the agency continues to grapple with in 2023 and which will impact future workloads. This Annual Report examines several of those challenges and makes 23 recommendations to improve operations, assist in fixing processing and policy issues, and address some of the agency's largest challenges.

## The Growing Humanitarian Mission of USCIS and its Impact on Future Workloads

Some of the backlogs that took precedence in 2022 were not entirely of the agency's own making. Global upheaval, political confrontations, and climate issues created populations in need of temporary protection, and the United States took on its share of assistance to these populations. Each program responded in different ways to different emergency scenarios, and the agency stretched

both its resources and its ingenuity to respond. But these programs will continue to present operational challenges to USCIS in the coming years. As these populations navigate the immigration system, USCIS should consider ways to mitigate the impact:

- Develop streamlined mechanisms and approaches for workloads resulting from humanitarian parole programs by establishing a more coordinated, population-specific approach for filing and processing immigration benefits for parolees accepted through these programs.
- Revise existing operational approaches and flexibilities in processing work authorization for parolees.
- Develop and implement a communications strategy for each parole program so that USCIS can provide information to parolees before their parole period expires.
- Establish specific asylum processing groupings for populations in these humanitarian parole programs.
- Continue to leverage the need for background and security checks by expanding the suspension of biometrics requirement to re-parole applicants and employment authorization renewal filings and eliminating the multiplicity of biometrics collections as a vetting necessity.
- Consider seeking some continuing form of appropriated funds to address additional USCIS workloads caused by humanitarian parole programs.

## The Use of Requests for Additional Evidence in L-1 Petitions

Stakeholders continue to report difficulties related to USCIS' issuance of requests for evidence (RFEs), a topic first studied by the CIS Ombudsman in 2010. This time, we are specifically looking at RFEs issued for extension petitions for the L-1A and L-1B nonimmigrant categories, based on stakeholder reports of overly broad and burdensome RFEs, duplicative RFEs, inconsistent adjudications, lack of deference to previous decisions,



and a misunderstanding of the standard of proof. While USCIS has made improvements to its RFE processes, more can be undertaken. To improve the quality of RFEs in L-1 petitions, and based upon the information provided above, we recommend that USCIS take steps to:

- Develop and provide training that ensures adjudicators understand how to apply the preponderance of evidence legal standard to the evidence typically presented in each type of case.
- Develop and provide annual training to ensure that adjudicators know how to comply with applicable regulations for L-1 extension cases.
- Streamline the L-1 extension petition adjudication for cases involving the same facts with no material changes (such as the same petitioner/beneficiary/job).
- Update RFE templates and systems to ensure that they are current, understandable, and concise.
- Establish a robust quality assurance program for RFEs.

## Temporary Protected Status: The Impact and Challenges of Increased Demand

The benefits of Temporary Protected Status (TPS), which provides temporary protection against deportation and work authorization to nationals of designated countries, are critical to those who benefit, but they mean that the agency carries a larger and more complex workload with each new designation or extension. There are now 16 countries with TPS designation, and almost 700,000 people who now hold this benefit in the United States. Processing work authorization for these populations in itself is a never-ending task for the agency. USCIS has taken steps to address its backlogs, but processing times continue to increase. To enhance its management of these populations, USCIS might consider some operational changes:

- Post processing times for each population seeking TPS to better inform applicants on their real wait times for status, work authorization, and travel authorization.
- Better educate employers and benefit-granting agencies (such as Divisions of Motor Vehicles and the Social Security Administration) on how to verify employment eligibility and proof of status of TPS beneficiaries to ease fears of noncompliance.
- Eliminate the separate employment authorization document (EAD) application for TPS applicants.

- Consider pursuing legislative changes to extend TPS designation periods.
- Increase case processing through technological solutions.

## A Look Back at USCIS' Unprecedented Fiscal Year 2022 Efforts to Use All Employment-Based Immigrant Visas

The unique challenges the agency encountered from Fiscal Year (FY) 2020 through FY 2022—years that corresponded to the COVID-19 pandemic—with respect to immigrant visa issuance compelled the agency to be increasingly innovative. In FY 2022, USCIS faced a daunting challenge to issue more than 280,000 employment-based immigrant visas, more than double the normal amount. Working with the Department of State, USCIS fully committed its resources to adjudicating these applications and succeeded in issuing all available visas. This historic completion rate came at a cost, however. By prioritizing this adjudication, others were further delayed, at a time when backlogs have never been more severe. To maintain the momentum and some of the best practices employed at that time, the CIS Ombudsman recommends that USCIS should:

- Explore the immediate digitization of Form I-693, *Report of Immigration Medical Examination and Vaccination Record*. In the meantime, the agency should consider establishing a central location for the receipt of new or updated medical examinations, like the centralized process created for transfers of underlying basis in FY 2022.
- Expand and build on efforts to create innovations in adjudicating adjustments, such as retrieving missing documents with in-person contact, and reusing biometrics to the extent possible, or even exempt certain benefits from biometrics collection altogether, as the agency suggested it will do for Form I-539, *Application to Extend/Change Nonimmigrant Status* applicants.
- Reassess and maximize risk-based assessment for interview referrals.

## Improving the Customer Experience from the Contact Center to the Field

In connection with the President's *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, USCIS is undertaking numerous initiatives to improve customer service. With its mission of immigration benefits administration, the agency has the particular challenge of serving a vast customer base that covers all backgrounds, nationalities, educational levels, and interests. As USCIS strives to provide more effective customer service, we offer the following suggestions for the agency to consider:

- Capitalize on technological advances to expand in-person services, including implementing virtual InfoPass appointments and additional remote capabilities, increasing the use of circuit rides, and encouraging agency-wide use of expanded-jurisdiction in-person information services.
- Use communications to improve the customer experience, and ensure they are widely publicized and reachable.
- Incorporate consistent training to build a customer service-oriented workforce.
- Invest in training and providing Contact Center representatives with the tools to be able to resolve issues more quickly.

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## BACKLOGS IN THE LONG TERM: 2022 IN REVIEW

*U.S. Citizenship and Immigration Services (USCIS) is committed to eliminating its backlogs through a strategic multi-faceted approach that involves hiring, policy initiatives, gains in operational efficiencies, and work towards a fair and equitable fee structure. In addition to hiring, USCIS is focused on improving the customer experience and workload flexibility through expanding digitization and electronic processing, leveraging systems-based verification processes to allow us to focus officer resources on truly adjudicative tasks and gain operational efficiencies, and leveraging overtime to focus on backlog reduction in critical caseloads.<sup>1</sup>*

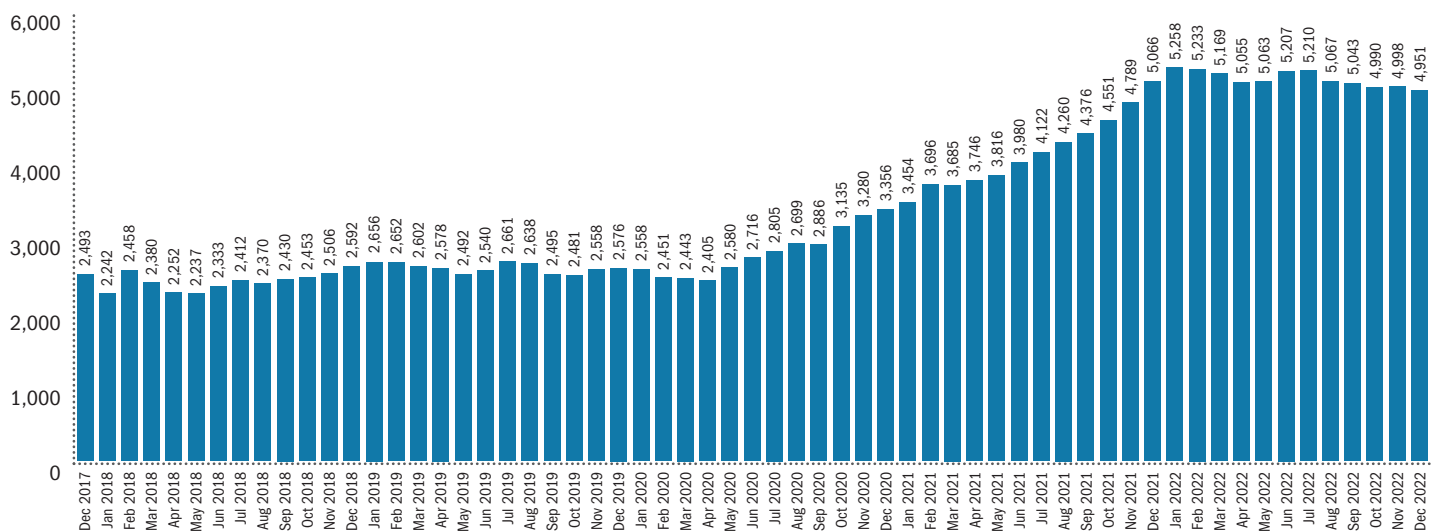
USCIS began 2022 with significant incentive to reduce its own unprecedented backlogs. USCIS was engaged in a major policy objective of ensuring that every employment-based immigrant visa was made available as a result of pandemic-related overages and shortfalls. Also concurrently, the agency tasked itself with shortening processing times for several complex and aging caseloads. But 2022 brought with it significant new tasks for the agency that would create their own processing and operational challenges—challenges that the agency continues to grapple with in 2023 and which will impact future workloads.

The CIS Ombudsman also had challenges of its own as a direct result of USCIS backlogs. The CIS Ombudsman is an “office of last resort” where USCIS stakeholders may request assistance on cases that lack adjudicative decisions, are operating outside of normal timeframes, or have encountered problems in the course of their adjudication

<sup>1</sup> Letter from USCIS Director Ur Jaddou to Sen. Tammy Baldwin (Oct. 25, 2022); [https://www.uscis.gov/sites/default/files/document/foia/Employment\\_Authorization\\_Document\\_processing-Senator\\_Baldwin.pdf](https://www.uscis.gov/sites/default/files/document/foia/Employment_Authorization_Document_processing-Senator_Baldwin.pdf) (accessed May 29, 2023).



**Figure 1.1** Backlog Trends, December 2017–December 2022 (Backlog Forms in Thousands)



Source: Department of Homeland Security, United States Citizenship and Immigration Services Budget Overview, FY 2024 Congressional Justification, Operations and Support at 11; <https://www.dhs.gov/publication/congressional-budget-justification-fiscal-year-fy-2024> (accessed May 31, 2023).

(missing decisions, clear agency error, etc.). Because of USCIS’ growing backlogs, the CIS Ombudsman has also faced difficult decisions about how to best prioritize its limited resources to be able to serve as many people as possible. The office’s actions resulted in a substantial reduction of processing times for Department of Homeland Security (DHS) Form 7001, *Request for Case Assistance*, which has led to an ability to help more of those needing assistance with their cases pending with USCIS.

Throughout 2022, the agency was beset by complications it could not have foreseen. Employing best efforts, such as technology solutions (including expanding online filing), processing innovations, and traditional efforts such as increased hiring and training, it attempted to maximize its responsiveness to those complications. Fully exploiting the innovativeness of an operation as large and complex as USCIS, and with as substantial a mission, however, requires time and effort. The agency’s efforts to be agile and responsive were effective, but not on all fronts.

By contrast, the CIS Ombudsman, with a much smaller and more focused mission, also found itself with a need for agility in 2022. Its central challenge was also far more focused, and as a result was able to more completely reduce its backlogs and turn more of its focus to the rest of the mission it holds equally important—working with those interested in immigration benefits administration to effect positive changes.

Many of the challenges USCIS faced in 2022, and continues to face in 2023, have arisen as a result of impacts beyond its control, resulting in the need to make difficult operational decisions in a dynamic and resource-limited environment. Nevertheless, these decisions will likely continue to have significant impact on USCIS’ mission and pending workloads for many years to come.

***The Focus on Tackling Backlogs.*** The agency began Fiscal Year (FY) 2022 by working to ameliorate the “downstream impacts” of the COVID-19 pandemic and its aftermath, dealing with its most immediate backlogs and other cases that required priority attention. The compounded impacts of the growing accumulations of applications and petitions, including significant increases in processing times, had long been felt by the agency, and it was applying a myriad of tools and resources at its disposal to tackle them. This task alone was enormous, given the sustained growth of benefit requests that languished beyond processing time goals for the last several years.

Those adjudications that appear to have been given the highest priority included employment-based immigrant visa adjustments and naturalization applications. Both of these benefit types were adversely impacted by the distancing effects of the pandemic, and many required in-person interviews or the pickup and review of physical paper files. The agency prioritized employment-based visas given the high visibility and the loss of such visas when not

used.<sup>2</sup> This was a critical effort across the agency, given that any unused visas at the end of the fiscal year would become unavailable starting on October 1, 2022, the start of FY 2023.<sup>3</sup> The prioritization of naturalization applications was also a reasonable choice for USCIS to make due to the significance of the benefit. The limited ability of USCIS to conduct in-person interviews and naturalization oath ceremonies during the pandemic necessitated a post-pandemic response. In FY 2022, USCIS completed 1,075,700 naturalization applications and administered the Oath of Allegiance for a total of 967,400 new U.S. citizens.<sup>4</sup> This number was augmented by additional applications for derivative citizenship. This number “represents a 62 percent reduction in the net backlog of naturalization applications (Form N-400) from the end of FY 2021 to FY 2022, and the highest number of naturalized citizens in almost 15 years.”<sup>5</sup>

These decisions, however necessary, came at a price. USCIS is a fee-based agency with finite resources. The determinations to prioritize certain applications and petitions meant that other workloads could not be addressed as robustly as the priority programs. This unsurprisingly results in drifting processing times, and the agency’s priorities in 2022 led to the same outcome. Many of those case types that were deemed lesser priorities continued to be worked at a slower pace, with fewer adjudications being completed, while applications of the same type continued to be received, increasing backlogs in those areas.

Some of these applications and petitions have historically been given lesser priority for a wide variety of reasons. These include a lack of sufficient staff to address them,

and in some cases for lengthy time frames.<sup>6</sup> Many of those that were not given higher priority are chosen because it is logical to do so based upon time sensitivities. For example, those who have filed Form I-751, *Petition to Remove Conditions on Residence*, are filing to remove the conditional status of the lawful permanent residence; the petitioners continue to maintain their lawful permanent residence status and travel and employment permission while the petition remains pending. Those filing Form I-130, *Petition for Alien Relative*, that do not yet have an immigrant visa immediately available to them (virtually all family-based immigrants other than immediate relatives) cannot take the next step in the permanent residence process until their priority date becomes current. Refugee or asylee adjustment applicants can maintain employment authorization by virtue of their status (although they can and often do request an employment authorization document (EAD) to demonstrate employment eligibility).<sup>7</sup>

Delays, however, especially lengthy ones, exact a price to those whose applications and petitions remain pending. As we wrote last year, delays in the processing of applications have an undeniable adverse impact on USCIS’ customers.<sup>8</sup> For instance, petitioners with pending I-751s have no ability to file for naturalization or even move on with their lives. Even a legitimate divorce can impact the outcome of the adjudication, and a troubled marital relationship could be adversely impacted with a lengthy delay. Petitioners with pending Forms I-730, *Refugee/Asylee Relative Petition*, cannot reunite with their loved ones. Petitioners who file Form I-601, *Application for Waiver of Grounds of Inadmissibility*, to proceed on immigrant visas cannot move forward on their permanent residence status. These are all intensive, complex applications requiring substantial time for an adjudication and any delays will have an impact on those beneficiaries and petitioners as well as USCIS. At some point, the diversion of staffing and resourcing for any program that has “lesser priority” will still require resources to devote time and effort into

<sup>2</sup> For more information, see “A Look Back at USCIS’ Unprecedented Fiscal Year 2022 Efforts to Use All Employment-Based Visas: Unqualified Success, or a Must-Needed Win for the Agency Amid Systemic Problems?” *infra*.

As a very general rule, a higher percentage of all eligible applicants seek to adjust their status from nonimmigrant to immigrant in the employment-based categories than seek adjustment in the family-based categories. This results from the ability of an employment-based nonimmigrant who is present in the United States in either H-1B or L visa statuses to maintain what is known as “dual intent”—the ability to be a nonimmigrant and seek immigrant status at the same time—an option not provided by statute to other nonimmigrant statuses, who are presumed to have immigrant intent unless they can demonstrate otherwise. Immigration and Nationality Act (INA) 214(b); 8 U.S.C. § 1184(b). Accordingly, family-based immigrants generally do not seek adjustment of status unless they are legally residing in the United States.

<sup>3</sup> INA § 201(d)(2)(C), 8 U.S.C. § 1151(d)(2)(C).

<sup>4</sup> USCIS, “Fiscal Year 2022 Progress Report,” December 2022, p. 3; [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed May 20, 2023).

<sup>5</sup> *Id.*

<sup>6</sup> In April 2022, USCIS Director Ur Jaddou testified to Congress that at that time the agency was facing nearly 4,000 vacancies. “United States Citizenship and Immigration Services FY 2023 Budget Request” *before the Subcommittee on Homeland Security of the House of Representatives Comm. on Appropriations*, 117th Cong. 2nd Sess. (2022) (written testimony of Ur M. Jaddou, Director of USCIS) at 4; <http://docs.house.gov/meetings/AP/AP15/20220406/114604/HHRG-117-AP15-20220406-SD001.pdf> (accessed June 9, 2023).

<sup>7</sup> Refugees and asylees are employment eligible incident to their status and are authorized to work indefinitely because their immigration status does not expire. Handbook for Employers 6.3. Refugees and asylees who qualify and are seeking adjustment pursuant to INA § 209 may seek separate employment authorization documentation although it is not required. 8 C.F.R. §§ 274a.12(a)(3), (5).

<sup>8</sup> See generally CIS Ombudsman Annual Report 2022, pp. 2–11.



clearing their growing backlogs and shortening their processing times.

The decision to prioritize some applications and de-prioritize others continues to negatively impact processing times. At the end of December 2022, the median processing time for Form I-765, *Application for Employment Authorization* based on an adjustment of status application, decreased to 5.7 months—an impressive feat for a huge workload that has plagued the agency with its volume.<sup>9</sup> But many other form types continued to show a distinct lack of progress in reducing lengthy processing times. The median processing time for Form I-130 was 13.6 months, I-751s were at 19.5 months, and the average processing time for Form I-601A, *Application for Provisional Unlawful Presence Waiver*, was 34.3 months.<sup>10</sup> While USCIS has not provided any estimates on backlog reduction efforts related to Form I-589, *Application for Asylum and for Withholding of Removal*, for affirmative asylum, processing times are likely now approaching a decade as backlogs in that humanitarian program now stand at 842,000<sup>11</sup> and are projected to reach historical records of over 1 million by the end of calendar year 2024.

All of these delays continue today. Current median processing times for FY 2023 show a lack of significant forward movement in many form types. For example, Form I-751 is at a median time of 19.9 months; I-601As are at a median processing time of 40.7 months. Even Form I-130 is currently displaying a median processing time for FY 2023 of 12.3 months for immediate relatives—those petitions for which visas are immediately available.<sup>12</sup> For all I-130s, USCIS recently submitted to Congress that its April 2023 average processing time is 15.2 months.<sup>13</sup>

*“Although there is much work ahead to deliver timely decisions to all customers, USCIS continues to apply every workforce, policy, and operational tool at its disposal to reduce backlogs and processing times.” —USCIS, “Fiscal Year 2022 Progress Report,” December 2022*

**Working to Mitigate Backlogs.** In 2022, USCIS worked hard at all levels to address its backlog challenges. The agency knew it had to re-establish public faith in the immigration benefits systems after years of lengthening processing times, exacerbated by the closures of the early pandemic and the many adjustments to operations that followed. Agency leadership set ambitious goals on many applications and petitions, and in March 2022, they established these goals publicly, ambitiously setting roughly a year and a half to accomplish them.<sup>14</sup>

**Figure 1.2** USCIS Cycle Time Processing Goals for October 2023

2 Weeks		6 Months	
I-129 Premium	N-400	I-526	
I-140 Premium	N-600	I-600	
2 Months		N-600K	I-600A
I-129 Non-Premium	I-485	I-730	
3 Months		I-140 Non-Premium	I-800
I-765	I-130 Immediate Relative	I-800A	
I-131 Advance Parole	I-129F Fiancé(e)	I-90	
I-539	I-290B	I-821D Renewals	
I-824	I-360		
	I-102		

Source: USCIS Web page, “Reducing Processing Backlogs” (Mar. 29, 2022); <https://egov.uscis.gov/processing-times/reducing-processing-backlogs> (accessed May 27, 2023).

First, USCIS prioritized hiring to try to mitigate the attrition experienced during the long hiring freeze and ensure adequate staffing to work down its backlogs. USCIS set a determined goal to hire more than 4,400

<sup>9</sup> USCIS, “Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year, Fiscal Year 2018 to 2023 (up to April 30, 2023);” <https://egov.uscis.gov/processing-times/historic-pt> (accessed June 2, 2023).

<sup>10</sup> USCIS, “All USCIS Number of Service-Wide Forms by Quarter, Form Status, and Processing Time, October 1, 2022-December 31, 2022” (Apr. 5, 2023); [https://www.uscis.gov/sites/default/files/document/data/Quarterly\\_All\\_Forms\\_FY2023\\_Q1.pdf](https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2023_Q1.pdf) (accessed May 30, 2023).

<sup>11</sup> CIS Ombudsman Notes from USCIS Asylum Quarterly, June 13, 2023 (in the possession of the CIS Ombudsman).

<sup>12</sup> USCIS, “Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year, Fiscal Year 2018 to 2023 (up to April 30, 2023);” <https://egov.uscis.gov/processing-times/historic-pt> (accessed June 2, 2023).

<sup>13</sup> USCIS, “Report to Congress, Number of Service-Wide Forms by Month, Form Status and Processing Time, April 2023 (May 23, 2023);” [https://www.uscis.gov/sites/default/files/document/reports/Appropriation\\_Requirement\\_April\\_2023.csv](https://www.uscis.gov/sites/default/files/document/reports/Appropriation_Requirement_April_2023.csv) (accessed June 3, 2023).

<sup>14</sup> USCIS News Release, “USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders” (Mar. 29, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work> (accessed May 29, 2023).

additional staff by December 31, 2022.<sup>15</sup> As Senior Advisor to the Director Doug Rand observed, “The director set very ambitious hiring goals and the Congress helped with appropriations to hire faster. We are very close to meeting our hiring goals and now have more capacity than we did to do our mission.”<sup>16</sup>

Second, it took steps to mitigate processing inefficiencies. The agency implemented longer validity periods on certain documents, such as EADs for several populations. It increased reuse of biometrics and reinstituted the use of mobile biometrics capture.<sup>17</sup> It also expanded the use of premium processing.<sup>18</sup> Implementing the Emergency Stopgap USCIS Stabilization Act, USCIS announced a phased-in implementation, ensuring that not only the Congressional exhortation of not impacting non-premium adjudications would be met, but also that the implementation of new premium processing adjudications would help subsidize the infrastructure needed for further expansion.<sup>19</sup>

The agency also sought to maximize implementation of technology. It focused on digitizing for internal processing as many form types as could be managed. It also unveiled the online filing of several forms, including the much-anticipated electronic version of Form I-589.<sup>20</sup> Acceptance of the online version has been widespread; as of June 2023, 224,000 applications had been filed online.<sup>21</sup> It sought to maximize use of online accounts by customers, adding real benefit to users in the form of

secure messaging and the promise of more personalized processing times.

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*“To meet Congress’ expectations of improved processing times, customers must be positioned with the necessary tools, services, and understanding to participate and take advantage of the electronic filing process. USCIS is working on initiatives to incentivize public adoption of electronic filing such as policy changes, rulemaking, marketing strategies, and increased outreach and education opportunities with stakeholders.”<sup>22</sup>*

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These efforts continued into 2023, with the development and opening of the Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center, the sixth service center and the first to focus exclusively on humanitarian and similar workload cases.<sup>23</sup> The first service center not fully tied to a physical location, and for which the plan is for a fully virtual center, the HART Service Center is expected to focus on certain humanitarian benefits. It is also expected to have a dedicated workforce, ensuring that applications under its portfolio are less likely to fall behind other priorities.

And finally, the agency continued to address symptoms of the continuing backlogs. The most obvious of these include a temporary final rule, promulgated in May 2022 and valid until October 2023, which adjusted EAD receipt validity for many applications from 180 days or 240 days to 540 days.<sup>24</sup> It extended the validity of several other kinds of receipts, such as for Form I-90, *Application to Replace Permanent Resident Card (Green Card)*,<sup>25</sup> and for Form I-751, to enable them to continue to be used for employment and travel authorization.<sup>26</sup> It also re-evaluated

<sup>15</sup> USCIS News Release, “USCIS Celebrates Public Service Recognition Week” (May 3, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-celebrates-public-service-recognition-week#:~:text=In%20the%20coming%20months%2C%20USCIS,employees%20and%20attract%20new%20talent> (accessed May 21, 2023).

<sup>16</sup> Roy Maurer, “USCIS Officials Say Agency Is Recovering from Pandemic Lows,” Society for Human Resource Management (Feb. 27, 2023); <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/uscis-officials-say-agency-recovering-from-pandemic-lows.aspx> (accessed May 30, 2023).

<sup>17</sup> See, e.g., Letter from USCIS Director Ur Jaddou to Sen. Keihl (Mar. 20, 2023); [https://www.uscis.gov/sites/default/files/document/foia/Biometrics\\_appointments-Senator\\_Kiehl.pdf](https://www.uscis.gov/sites/default/files/document/foia/Biometrics_appointments-Senator_Kiehl.pdf) (accessed June 3, 2023).

<sup>18</sup> USCIS News Release, “USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders” (Mar. 29, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work> (accessed May 25, 2023).

<sup>19</sup> “Implementation of the Emergency Stopgap USCIS Stabilization Act,” 87 Fed. Reg. 18227 (Mar. 30, 2022).

<sup>20</sup> USCIS News Alert, “USCIS Announces Online Filing for Affirmative Asylum Applications” (Nov. 9, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-online-filing-for-affirmative-asylum-applications> (accessed June 3, 2023).

<sup>21</sup> CIS Ombudsman Notes from USCIS Asylum Quarterly, June 13, 2023 (in the possession of the CIS Ombudsman).

<sup>22</sup> USCIS, “Section 4103 Plan Pursuant to the Emergency Stopgap USCIS Stabilization Act—Fiscal Year 2021 Report to Congress,” p. v (Sept. 7, 2021).

<sup>23</sup> USCIS Press Release, “USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center” (undated); <https://www.uscis.gov/sites/default/files/document/notices/USCISOpenstheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf> (accessed May 29, 2023).

<sup>24</sup> “Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants,” 86 Fed. Reg. 26614 (May 4, 2022).

<sup>25</sup> USCIS News Alert, “USCIS Extends Green Card Validity Extension to 24 Months for Green Card Renewals” (Sept. 28, 2022); <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-extension-to-24-months-for-green-card-renewals> (accessed June 15, 2023).

<sup>26</sup> USCIS News Alert, “USCIS Extends Green Card Validity for Conditional Permanent Residents with a Pending Form I-751 or Form I-829” (Jan. 23, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-for-conditional-permanent-residents-with-a-pending-form-i-751-or> (accessed June 15, 2023).

existing policies, for example issuing policy guidance to allow certain E and L spouses to use I-94 cards, rather than requiring them to obtain EADs, as evidence of employment authorization incident to their status.<sup>27</sup>

While these steps addressed necessary issues to give the agency workforce sufficient breathing space to take on its backlogs, the majority of these actions address only the symptoms and not the root causes of backlogs themselves. Prioritization steps are necessary, but the larger stumbling blocks of the underlying adjudications remain. The steps addressing some of the symptoms of backlogs, in fact, create “downstream impacts” or ripples of their own. Long-pending adjustments, applications to remove conditional status, and similar adjudications require applicants to maintain benefits such as employment authorization and advance parole. They also require increasing resources toward maintaining lines of communication for inquiries, emergencies, and work on those spiraling ancillary applications. The larger the pool of such applications and petitions (for which many of USCIS’ customers have already paid) remains unadjudicated, the larger the pool of ancillary benefits that require maintenance—and for a longer period.

**Events Out of the Agency’s Control.** These challenges were exacerbated in 2022 by external events over which the agency had little or no control. First, the depletion of resources to the Southern border (primarily asylum officers to conduct credible fear interviews) continued to impact the affirmative asylum caseload and the agency’s ability to chip away at it.<sup>28</sup>

DHS and the Department of Justice’s (DOJ’s) Executive Office for Immigration Review (EOIR) published the joint Credible Fear and Asylum Processing interim final rule, which allows for the transfer of jurisdiction over some applications for asylum for individuals subject to expedited removal from EOIR to USCIS. The rule placed not only credible fear determinations but also “asylum merits interviews” in the hands of asylum officers, moving the consideration of asylum applications of those who established a credible fear from DOJ’s immigration courts

to USCIS asylum officers.<sup>29</sup> The rule, promulgated in March 2022, became effective on May 31, 2022.<sup>30</sup> The agencies assured the public that it would implement the rule gradually in a “phased manner,” placing only a few hundred applicants each month in this new process and building up capacity over time.<sup>31</sup> That has turned out to be very much the case; as of the end of February 2023, almost a year after implementation, only 4,760 individuals had been referred for processing under the new rule, with 1,850 establishing credible fear and 233 being granted asylum.<sup>32</sup> With implementation paused during the lifting of Title 42, the rule remains in limbo until resumption.<sup>33</sup> The same asylum officers, however, continue to be needed for credible fear interviews at the border, and so remain diverted from adjudicating affirmative asylum cases.<sup>34</sup>

Not only did this divert resources from existing asylum office workloads, but it also created new ones; by definition, the asylum merits process falls entirely to USCIS under this new process.<sup>35</sup> USCIS was given funding by Congress to hire new asylum officers for both the new processes and to assist in driving down the backlog.<sup>36</sup> This was especially welcome funding, as

<sup>29</sup> USCIS Web page, “FACT SHEET: Implementation of the Credible Fear and Asylum Processing Interim Final Rule” (Dec. 12, 2022); <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/fact-sheet-implementation-of-the-credible-fear-and-asylum-processing-interim-final-rule> (accessed May 21, 2023).

<sup>30</sup> “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” 87 Fed. Reg. 18078 (Mar. 29, 2022).

<sup>31</sup> USCIS Web page, “FACT SHEET: Implementation of the Credible Fear and Asylum Processing Interim Final Rule” (Dec. 12, 2022); <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/fact-sheet-implementation-of-the-credible-fear-and-asylum-processing-interim-final-rule> (accessed May 21, 2023).

<sup>32</sup> Asylum Processing Rule Cohort Report, February 2023 (Apr. 20, 2023); <https://www.dhs.gov/immigration-statistics/special-reports/asylum-processing-rule-report> (accessed May 21, 2023).

<sup>33</sup> Hamed Aleaziz, “Signature Biden asylum reform policy is now on hold,” Los Angeles Times (Apr. 12, 2023); <https://www.latimes.com/politics/story/2023-04-12/biden-asylum-processing-rule-pause> (accessed May 21, 2023).

<sup>34</sup> Nouran Salahieh and Rosa Flores, “‘It will get worse.’ Asylum officers, Secret Service agents and troops have surged toward border with Title 42’s expiration,” CNN (May 12, 2023); <https://www.cnn.com/2023/05/11/us/title-42-expires-border-immigration-thursday/index.html> (accessed May 21, 2023). Approximately “1,000 asylum officers were being sent to Border Patrol and immigration detention facilities to help screen asylum requests,” according to DHS Secretary Mayorkas.

<sup>35</sup> “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” 87 Fed. Reg. 18078, 18081 (Mar. 29, 2022).

<sup>36</sup> Continuing Appropriations Act, 2022, § 132, Pub. L. 117-43.

<sup>27</sup> USCIS Policy Alert, PM-2022-11, “Documentation of Employment Authorization for Certain E and L Nonimmigrant Dependent Spouses” (Mar. 18, 2022); <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220318-EmploymentAuthorization.pdf> (accessed May 20, 2023).

<sup>28</sup> Credible fear interviews for those subject to expedited removal who articulate a desire to apply for asylum, or a fear of returning to their country, are conducted by USCIS asylum officers. USCIS Web page, “Questions and Answers: Credible Fear Screening,” <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening> (May 11, 2023) (accessed May 20, 2023). For a thorough discussion of the affirmative asylum backlog, please see CIS Ombudsman Annual Report 2022, pp. 42–53.



asylum officers continue to experience a relatively high rate of attrition.<sup>37</sup>

But there was more that became the agency's responsibility in 2022. The agency entered FY 2022 already in the midst of processing Afghans entering the United States through Operation Allies Welcome, an operation commenced that summer; DHS had been placed at the head of the operation in August 2021.<sup>38</sup> USCIS was heavily involved in processing these individuals as parolees, or pursuant to special immigrant visas (or both) and resettling others as refugees.<sup>39</sup> In many cases, USCIS also processed employment authorizations for these thousands of individuals.<sup>40</sup> USCIS not only has had to engage in this initial processing to enable these individuals to enter the United States, but has also now begun to contend with their impact. Two years into their presence in the United States, most Afghan nationals are expected to apply for asylum, Temporary Protected Status (TPS), or to begin the process of re-parole—or in many cases all three.

Second, while the agency was adjusting to the additional work presented by Afghan refugees and others, the invasion of Ukraine by Russia resulted in another global refugee emergency which the agency found itself handling. The Uniting for Ukraine (U4U) program was created to meet that specific need, innovating a process for individual consideration for parole while streamlining the adjudication function as much as possible. On April 21, 2022, USCIS opened up the U4U program, providing a process for Ukrainians outside the United States to come and stay temporarily for a period of parole of up to 2 years after being sponsored by a U.S. entity.<sup>41</sup> The program ensured that approximately 116,000 Ukrainians were granted parole through the program in 2022, with an additional 22,500 being granted parole at the border before

the program was initiated.<sup>42</sup> The U4U program became the model for the Venezuelan parole program, which was announced on October 12, 2022, to disincentivize irregular migration of Venezuelans along the Southern border.<sup>43</sup> This was followed by the expansion of the program model to include Haitians, Cubans, and Nicaraguans in January 2023, allowing a total of up to 30,000 parolees per month to come to the United States following a process similar to that for Ukrainians, with financial sponsorship.<sup>44</sup> The programs were innovative, relying upon the use of the online account and the CBP One™ mobile application to access filing options and contacting beneficiaries. But even a streamlined adjudication of thousands of applications each month has added considerably to USCIS workloads.

Third, allied closely with the use of parole to meet humanitarian needs was the expansion of TPS. In 2022, USCIS implemented new TPS designations or implemented redesignations or extensions; these included Afghanistan, Burma, Cameroon, Ethiopia, Haiti, Somalia, Sudan, Syria, Ukraine, Venezuela, and Yemen. In FY 2021 and FY 2022 combined, “USCIS received 483,000 initial TPS applications—an extraordinary number of new filings, of which nearly half have been approved.”<sup>45</sup> This meant, however, that half remained unadjudicated, contributing to a growing backlog of TPS applications, and their ancillary employment authorization applications.<sup>46</sup>

Finally, the agency is still operating under a fee rule promulgated in 2016.<sup>47</sup> This means the money that is paying for current expenses, from facilities to salaries, is based on fee calculations (specifically, what it cost the agency to administer immigration benefits adjudication) made almost a decade ago.<sup>48</sup>

<sup>37</sup> U.S. Government Accountability Office (GAO) Report, “U.S. Citizenship and Immigration Services: Actions Needed to Address Pending Caseload,” GAO-21-529 (Aug. 2021), p. 38; <https://www.gao.gov/products/gao-21-529> (accessed June 9, 2023).

<sup>38</sup> DHS Web page, “Operation Allies Welcome” (May 8, 2023); <https://www.dhs.gov/allieswelcome> (accessed May 21, 2023).

<sup>39</sup> See generally, DHS, “Fact Sheet on Operation Allies Welcome” (Nov. 10, 2021); <https://www.dhs.gov/publication/fact-sheet-operation-allies-welcome> (accessed June 3, 2023).

<sup>40</sup> On November 21, 2022, USCIS announced that Afghans paroled into the United States under Operation Allies Welcome (OAW) and certain Afghans paroled under Operation Enduring Welcome (OEW) are employment authorized incident to parole. Congress passed legislation equating certain Afghan and Ukrainian to refugees with respect to certain benefits, including employment authorization incident to status. Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. 117-43, Div. C, Title V (Sept. 30, 2021); Additional Ukraine Supplemental Appropriations Act, 2022, Pub. L. 117-128, Sec. 401(b) (May 21, 2022).

<sup>41</sup> DHS Web page, “Uniting for Ukraine” (Apr. 28, 2023); <https://www.dhs.gov/ukraine> (accessed May 20, 2023).

<sup>42</sup> Information provided by USCIS (Mar. 6, 2023).

<sup>43</sup> DHS Press Release, “DHS Announces New Migration Enforcement Process for Venezuelans” (Oct. 12, 2022); <https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans> (accessed May 20, 2023).

<sup>44</sup> USCIS Web page, “Processes for Cubans, Haitians, Nicaraguans, and Venezuelans” (May 18, 2023); <https://www.uscis.gov/CHNV> (accessed May 30, 2023).

<sup>45</sup> USCIS, “Fiscal Year 2022 Progress Report” (December 2022); [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed May 21, 2023).

<sup>46</sup> For further discussion of TPS applications and their growing presence in the USCIS workload, see “TPS,” *infra*.

<sup>47</sup> USCIS Web page, “Filing Fees” (May 19, 2023); <https://www.uscis.gov/forms/filing-fees> (accessed June 3, 2023).

<sup>48</sup> For further discussion on the impacts of the agency's current fee for service model, see CIS Ombudsman *Recommendation 63, The Challenges of the Current USCIS Fee-Setting Structure* (June 15, 2022); [https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN\\_2022\\_FEE\\_FOR\\_SERVICE\\_RECOMMENDATION\\_FINAL.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN_2022_FEE_FOR_SERVICE_RECOMMENDATION_FINAL.pdf)

## The Downstream Impact of USCIS Backlogs on the CIS Ombudsman

Meanwhile, the downstream impacts of USCIS backlogs continues to be felt at the Office of the CIS Ombudsman. One of the office's statutory missions is to assist individuals and employers experiencing problems at USCIS.<sup>49</sup> With USCIS continuing to experience backlogs across its benefit adjudications, assisting these applicants remains a high priority for the CIS Ombudsman.

***Prioritizing the Growing Caseload.*** In calendar year 2022, the CIS Ombudsman once again received record-high numbers of requests for case assistance. We received 27,137 new requests for assistance. This constituted a 4 percent increase from 2021 and an 86 percent increase from 2020.

Unfortunately, this increased workload did not come with new staff to accomplish it. Without approval to hire additional employees, then-CIS Ombudsman Phyllis Coven tasked the office with identifying ways to “work smarter” while taking into consideration USCIS’ own backlog reduction efforts and their policy or operational changes. As a result, we implemented a new triage process to identify incoming requests by the issue or difficulty described on the DHS Form 7001. We began assigning cases by priority issues because these were where we knew USCIS would be able to take action. For requests where the sole reason was lengthy processing delays, we continued to work these in the order received as we knew USCIS was making efforts to address its own backlog. The CIS Ombudsman also continued to communicate with USCIS on upcoming or existing operational or policy changes so that it could be more strategic with how issues were presented to or acted on with USCIS for faster or more universal action.

The complete revamp of the casework review process resulted in reducing the CIS Ombudsman’s case assistance requests backlog by 69 percent (from 6,434 requests to 1,969 requests) during the 2022 calendar year. The CIS Ombudsman was also able to reduce the amount of time its customers received updates on their requests from 5 months to only 3 months for requests involving delayed processing times (the most common request). The requests that fell under our priority tiers were assigned and worked within a month of receipt in December 2022. This work continues as the CIS Ombudsman monitors USCIS’ processing times in addition to operational and policy changes. This allows the CIS Ombudsman to remain agile with its own caseload and provide customers and

stakeholders with as much information as possible in a timely manner.

***Continuing to Leverage Engagement.*** Our Public Engagement Division, established 3 years ago, continued to establish new relationships and strengthen existing partnerships with stakeholders across the country. In 2022, we connected with over 14,300 stakeholders representing more than 220 unique organizations through 143 engagements. These stakeholders included community and faith-based organizations; legal representatives; employers; universities; national associations; federal, state and local government partners; and foreign embassies. These engagements allowed us to gather feedback from diverse stakeholder groups on a wide range of immigration benefit issues.

Throughout the year, we collaborated closely with USCIS and other federal partners to host a national webinar series on various immigration topics, with more than 5,000 participants. Topics included:

- Employment-Based Immigrant Visas: Looking Back at FY 2022 and Ahead to FY 2023
- Interagency Engagement on International Student Issues
- Overview of USCIS Online Accounts for Attorneys and Accredited Representatives
- The CIS Ombudsman’s 2022 Annual Report to Congress
- USCIS’ Backlog Reduction Efforts
- Employment-Based Immigrant Visas—A Conversation with USCIS on the Statutory Framework and Pandemic Challenges
- Overview of the USCIS Online Account for Applicants

In addition, the CIS Ombudsman hosted a series of listening sessions to help inform our policy priorities in multiple areas, including nonimmigrant employment-based requests for evidence; advance parole; expedite requests; the U visa bona fide determination process; USCIS’ application programming interface; EADs; USCIS and EOIR coordination on asylum issues; and changes to DHS Form 7001. In 2022, the office also hosted the first Fireside Chat with then-CIS Ombudsman Phyllis Coven and USCIS Director Ur Jaddou to discuss mutual challenges and accomplishments from FY 2022 and a look ahead to the challenges of FY 2023.

<sup>49</sup> Homeland Security Act of 2002 (HSA) § 452(b)(1), 6 U.S.C. § 272(b)(1).

The CIS Ombudsman’s public engagements help to identify trends and pervasive problems that individuals and employers are encountering with USCIS and helps shape policy recommendations to USCIS. In addition to hosting national webinars and smaller stakeholder meetings, the CIS Ombudsman develops tip sheets and other resources and seeks to amplify and clarify USCIS policy and program updates through social media and stakeholder messages. In 2022, 45 messages were sent to nearly 140,000 subscribers on diverse topics such as obtaining an Alien Documentation, Identification and Telecommunication (ADIT) stamp, special instructions for Form I-130; updated information on Employment-Based Form I-485 Supplement J; and tips on when to contact a USCIS Lockbox.

***Continuing the Work to Bring Solutions to USCIS.*** The CIS Ombudsman’s Policy Division continued to focus on the immediate and long-term impacts stemming from the ensuing backlogs. We meet with USCIS program offices and directorates on a frequent basis—monthly in most cases—to point out the most pressing problems and try to achieve workable solutions. We raise many seemingly mundane issues to seek to streamline operations or offer options to cure existing problems. Many are potential solutions the agency may already be contemplating. We provide an external perspective on those possible answers to assist the agency in assessing their impacts. On occasion, we can offer not only an external assessment of their internal workings but also novel ideas to help them meet some of their challenges.

The CIS Ombudsman submitted informal recommendations to USCIS throughout 2022 on topics ranging from “front log” issues for asylum applicants (in particular, defensive asylum applicants needing receipts to be able to seek biometrics appointments from USCIS related to hearings pending before immigration judges at DOJ) as well as expanding the use of receipts for travel and employment authorization. For the latter, for example, we provided to USCIS in August 2022 an informal recommendation on expanding the use of receipts for I-90 applicants<sup>50</sup> and issuing ADIT stamps by mail, both of which USCIS implemented shortly thereafter.<sup>51</sup>

We also issued two formal recommendations to USCIS during FY 2022. The first, issued in March 2022, referenced the need for nonimmigrant worker beneficiaries (in particular H-2A and H-2B beneficiaries) to receive notification of the outcomes of petitions in which they are named as beneficiaries. USCIS’ response to this recommendation voiced its concerns regarding the notice, especially with regard to the standing of any beneficiary with respect to the petition, which is filed not by the nonimmigrant employee but by the employer (although it acts as a change or extension of status for the employee as well). Congress, however, had the last word. In the FY 2023 appropriations legislation for DHS, USCIS was ordered to “establish a process whereby workers may confirm that they are the beneficiaries of H-2A or H-2B petitions and can receive information about their own immigration status, including their authorized period of stay and the status of any requested visa extensions.”<sup>52</sup>

The second formal recommendation, issued in June 2022, focused on the USCIS fee-for-service funding model, specifically on the unpredictability of the fee-setting model against so many other things happening in the immigration world. The challenges of 2022 made this even more apparent, as humanitarian parole and TPS expanded and as asylum applications—all applications acknowledged to be underfunded—grew significantly.

The CIS Ombudsman also issued an Annual Report to Congress with 5 separate sets of recommendations, a total of 32 recommendations across some of the more pervasive problems facing the agency. The agency’s response, which was received in May 2023, agreed with several of the assessments presented by the report.<sup>53</sup> The CIS Ombudsman is most appreciative of the agency’s willingness to listen to our recommendations. While USCIS does not always agree on the problems highlighted by the CIS Ombudsman’s recommendations or the proposed solutions, agency leaders and subject matter experts across the enterprise have engaged in meaningful dialogue to improve operations and contribute to positive outcomes.

<sup>50</sup> USCIS News Alert, “USCIS Extends Green Card Validity Extension to 24 Months for Green Card Renewals” (Sept. 28, 2022); <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-extension-to-24-months-for-green-card-renewals> (accessed May 29, 2023).

<sup>51</sup> USCIS News Alert, “USCIS Announces Additional Mail Delivery Process for Receiving ADIT Stamp” (Mar. 16, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-announces-additional-mail-delivery-process-for-receiving-adit-stamp> (accessed May 27, 2023).

<sup>52</sup> Consolidated Appropriations Act, 2023, Explanatory Statement, Book 1, Div. F, Title IV.

<sup>53</sup> For a full assessment of the recommendations and the USCIS responses, please see the Appendices, *infra*.



## The Job that Lies Ahead

USCIS will be facing the impacts of the immigration events of 2022 for a long time to come. These new populations bring with them long-lasting challenges for the immigration system as they move through it, either to remain long term or to return as global conditions warrant. Their need for continuing work authorization alone will be a test of the agency's technology and efficiencies. The agency is expected to balance maximizing efficiency with ensuring integrity, enabling only those continuing to be eligible to move through the legal immigration system. Every efficiency and technological breakthrough help the agency do its job more effectively, but only with the assistance of the most important of its resources—its employees. USCIS has asked for, and received, additional staff to help with the growing workloads it will continue to bear; however, more will be needed to meet the important demands of both adjudication and customer service.

When testifying last year before Congress, Director Jaddou observed that the agency remained committed to its processing goals: "Every single applicant who seeks a benefit from USCIS should get an answer—be it yes

or no—in a reasonable amount of time."<sup>54</sup> The agency defined "reasonable" for the majority of its benefits, and then found itself diverted from that task with a new set of challenges. Those challenges stand between it and attaining those reasonable processing time goals, and only time will tell whether they can be achieved under current resourcing.

USCIS is not without resources to achieve its aggressive goals within a reasonable time period in the future, if not within the next year. Its emphasis on technology, which has been ramped up in recent years, has the promise to finally see returns on its decades-long investment, as more applications move toward digitization and internal online processing and, in time, fully end-to-end electronic capabilities. Its recent hiring initiatives have added thousands of new employees that, once fully trained and inculcated in the USCIS mission, will be able to contribute to tackling the adjudicative backlog using that technology. With the correct framework of balancing integrity with resource management efficiency, and with an eye towards transparency and good public service, USCIS will be able to identify opportunities to accomplish the difficult mission that lies ahead.

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<sup>54</sup> "United States Citizenship and Immigration Services FY 2023 Budget Request" *before the* Subcommittee on Homeland Security of the House of Representatives Comm. on Appropriations, 117th Cong. 2nd Sess. (2022) (written testimony of Ur M. Jaddou, Director of USCIS); <http://docs.house.gov/meetings/AP/AP15/20220406/114604/HHRG-117-AP15-20220406-SD001.pdf> (accessed May 30, 2023).



# THE GROWING HUMANITARIAN MISSION OF USCIS AND ITS IMPACT ON FUTURE WORKLOADS

**Responsible Directorates:** Service Center Operations, Field Operations, and Refugee, Asylum, and International Operations

## Introduction

Through the implementation of humanitarian programs in 2022 such as Operation Allies Welcome (OAW), Uniting for Ukraine (U4U), and in early 2023 a parole process for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), U.S. Citizenship and Immigration Services (USCIS) and its interagency partners have demonstrated that the government is willing to develop legal pathways that accelerate specific processes and increase capacity to respond to emergent humanitarian crises. These actions have aligned with a deliberate choice by the government to expand the use of humanitarian parole programs and,

for the first time in almost 2 decades, establish a process for individuals in the United States to privately sponsor individuals who apply for humanitarian parole under Section 212(d)(5)(a) of the INA. The intention of the sponsorship process is to ensure the individual parolee's financial stability in the United States and help reduce or eliminate reliance on government public assistance and welfare programs. Each humanitarian program has been a response to specific emergency scenarios. As such, each parole group presents unique policy and operational challenges to USCIS as individual parolees are likely to pursue a permanent immigration status.

Granting humanitarian parole is an extraordinary measure that enables USCIS to offer temporary protection to those in specific urgent circumstances. As a temporary emergency program, it does not provide noncitizens a way to remain in the country permanently. Nonetheless, the longer parolees remain in the United States, the more likely they will seek additional USCIS services such as re-parole, work authorization renewals, and extensions. Many individuals in these populations will need to navigate the complex elements of the U.S. immigration system to continue their temporary protection or secure permanent immigration status. These populations will require more permanent settlement solutions with better alternatives than are currently available, or at least they will need the Department of Homeland Security (DHS) to extend the current programs. Accordingly, USCIS must find a way to better manage its resources to take on the increasing workloads these populations may create. This article seeks to identify the downstream ramifications of these special programs and offer recommendations to mitigate the cascading impacts.

## Recommendations

These parolee populations will present myriad challenges to the agency as they remain in the United States, pursue livelihoods, and establish themselves in communities. To mitigate the impact on the agency and the populations themselves as they navigate the immigration system, and as explained through this study, USCIS should consider the following:

1. Develop streamlined mechanisms and approaches for workloads resulting from humanitarian parole programs.
2. Revise existing operational approaches and flexibilities in processing work authorization for parolees.
3. Develop and implement a communications strategy for each parole program so that USCIS can provide information to parolees before their parole period expires.
4. Establish specific asylum processing groupings for populations in these humanitarian parole programs.
5. Continue to leverage the need for recurring background and security checks.
6. Consider seeking appropriated or discretionary public funds to address additional USCIS workloads caused by humanitarian parole programs.

## Parole in the U.S. Immigration System

Granting parole is a discretionary decision. USCIS and other DHS components are not required to grant humanitarian parole to any person based on pre-determined criteria. Instead, it is granted on a “case-by-case” basis,<sup>55</sup> requiring DHS to evaluate each applicant individually.

In essence, immigration parole is official permission for noncitizens without another status to enter and temporarily remain in the United States. It is a discretionary protection similar to the concepts of Temporary Protected Status (TPS)<sup>56</sup> and Deferred Enforced Departure (DED).<sup>57</sup> Eligible individuals in these populations can work and remain in the United States for a prescribed period of time because of safety concerns and other urgent circumstances in their country of origin. Unlike TPS or DED, parole is generally granted to individuals outside the United States.

Parole is not a method for circumventing normal visa-issuing procedures<sup>58</sup> or other immigration pathways like the refugee resettlement process.<sup>59</sup> Under U.S. immigration law, being allowed to enter the United States under parole is not the same as being admitted<sup>60</sup> into the country. Moreover, the grant of parole does not confer

<sup>55</sup> USCIS Web page, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States” (Sept. 9, 2022); <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS>; (accessed Apr. 26, 2023).

<sup>56</sup> The Secretary of DHS may designate a foreign country for TPS if conditions in the country meet statutory requirements regarding ongoing armed conflict, natural disasters (including epidemics), or other extraordinary and temporary conditions in the country that temporarily prevent its nationals from returning safely. *See generally* Temporary Protected Status and Deferred Enforced Departure (Dec. 13, 2022); <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/temporary-protected-status-and-deferred-enforced-departure> (accessed Apr. 13, 2022); <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/temporary-protected-status-and-deferred-enforced-departure> (accessed Apr. 26, 2023); *see also* “Temporary Protected Status: The Impact and Challenges of Increased Demand,” *infra*.

<sup>57</sup> Although DED is not a specific immigration status, individuals covered by DED are not subject to removal from the United States for a designated period of time. *See generally* USCIS Web page, “Deferred Enforced Departure” (Jan. 26, 2023); <https://www.uscis.gov/humanitarian/deferred-enforced-departure> (accessed Apr. 26, 2023).

<sup>58</sup> 9 FAM 202.3-2(A) (U) Parole Authorization, f. (U).

<sup>59</sup> Individuals granted refugee status overseas by DHS are brought to the United States for resettlement by the U.S. Department of State. *See generally* Department of Health and Human Services, Office of Refugee Resettlement (HHS/ORR) Web page, “Who We Serve—Refugees” (Mar. 16, 2022); <https://www.acf.hhs.gov/orr/policy-guidance/who-we-serve-refugees> (accessed Apr. 16, 2023).

<sup>60</sup> *See* INA § 101(a)(13)(A); 8 U.S.C. § 1101(a)(13)(A). A noncitizen is admitted if the following conditions are met: the noncitizen applied for admission as an alien at a port of entry and an immigration officer inspected the applicant for admission as an alien, authorizing them to enter the United States in accordance with the procedures for admission.

any immigration benefits on its own, and commonly parolees do not receive the resettlement assistance given to refugees.<sup>61</sup> However, parolees are eligible to apply for employment authorization, file for asylum or, if available, request to be re-paroled.

## Authority to Grant Parole

The Secretary of Homeland Security (DHS Secretary) has delegated parole authority to three immigration agencies within DHS:<sup>62</sup> USCIS, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). In September 2008, USCIS, CBP, and ICE entered into a Memorandum of Agreement (MOA) for, among other things, parole management.<sup>63</sup> The MOA establishes a system for managing parole requests from noncitizens to determine which agency has jurisdiction over each request. The MOA discusses two case management policies: (1) consolidating primary and secondary applications for one agency to review; and (2) stating that re-parole requests will be evaluated by the same agency that granted the initial request.

While there is only one parole authority, there are different types of parole DHS can issue depending on the circumstances surrounding the request.<sup>64</sup> To appropriately direct and track parole requests, the DHS Secretary has delegated this authority to the three agencies mentioned above based on their unique mission and capabilities.<sup>65</sup> For example, since CBP enforces immigration laws at the border, it is better positioned to make on-the-spot decisions about parole requests at U.S. ports of entry.<sup>66</sup> On the other hand, ICE is responsible for apprehending,

detaining, and removing noncitizens who an immigration judge orders removable; therefore, it usually handles parole requests from individuals in removal proceedings or who have previously been removed or deported.<sup>67</sup> For USCIS, it is commonly the evaluation and adjudication of parole requests from individuals abroad seeking to enter the United States,<sup>68</sup> as well as other requests by eligible individuals who are inside the country and seek parole in place.<sup>69</sup>

There are no current limits on how many noncitizens can receive parole, and the length of parole granted is typically tied to the purpose of the parole. Most common requests from abroad are filed by individuals requesting parole for urgent humanitarian reasons. While there is no statutory or regulatory definition of “urgent humanitarian reasons” under the jurisdiction of USCIS, officers review and make decisions on these requests considering all facts and circumstances.<sup>70</sup> Because of the “urgent humanitarian reasons” premise, various programs to provide humanitarian parole have been created to help specific populations by providing a pathway to the United States and temporarily allowing significant numbers of noncitizens to stay in the United States following armed conflicts or other major crises in their country. These are sometimes called “categorical parole” programs,<sup>71</sup> and the recently established humanitarian parole programs described in this study fit this description.

<sup>61</sup> A refugee is any person who is outside his or her country of nationality or habitual residence and is unable or unwilling to return to or seek protection of that country due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. HHS/ORR Web page, “Who We Serve—Refugees” (Mar. 16, 2022); <https://www.acf.hhs.gov/orr/policy-guidance/who-we-serve-refugees> (accessed Apr. 26, 2023).

<sup>62</sup> See INA § 212(d)(5), § 1182(d)(5)(A), providing authority to the Attorney General to parole noncitizens into the United States. (The Homeland Security Act of 2002, Pub. L. No. 107-296, *codified at* 6 U.S.C. § 402(A), transfers authority for immigration matters, including parole, to the DHS Secretary.)

<sup>63</sup> USCIS Interoffice Memorandum, “Memorandum of Agreement between USCIS, ICE and CBP” (Sept. 29, 2008); <http://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf> (accessed Apr. 26, 2023).

<sup>64</sup> This study focuses on special humanitarian parole programs, for information on the other types of parole see Andorra Bruno, Congressional Research Service, “Immigration Parole,” pp. 4–6 (Oct. 15, 2020).

<sup>65</sup> USCIS Interoffice Memorandum, “Memorandum of Agreement between USCIS, ICE and CBP” (Sept. 29, 2008); <http://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf> (accessed Apr. 26, 2023).

<sup>66</sup> CBP Web page, “Humanitarian Parole” (Nov. 7, 2022); [https://helpspanish.cbp.gov/s/article/Article-1639?language=en\\_US](https://helpspanish.cbp.gov/s/article/Article-1639?language=en_US) (accessed Apr. 26, 2023).

<sup>67</sup> These requests are commonly submitted via USCIS to the address for Humanitarian Parole request and then forwarded to ICE for processing. See generally USCIS Web page, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States” (Sept. 9, 2022); <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (accessed Apr. 26, 2023).

<sup>68</sup> USCIS Web page, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States” (Sept. 9, 2022); <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (accessed Apr. 26, 2023).

<sup>69</sup> For example, USCIS may grant parole in place on a case-by-case basis for urgent humanitarian reasons or significant public benefit to members of the military and their immediate family. See generally USCIS Web page, “Discretionary Options for Military Members, Enlistees and Their Families” (Apr. 25, 2022); <https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families> (accessed Apr. 26, 2023).

<sup>70</sup> An applicant may demonstrate urgency by establishing a reason to be in the United States that calls for immediate or other time-sensitive action, including (but not limited to) critical medical treatment, or the need to visit, assist or support a family member who is at an end-of-life stage of an illness or disease. See generally USCIS Web Page, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States” (Sept. 9, 2022); <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (accessed Apr. 26, 2023).

<sup>71</sup> USCIS Web page, “USCIS to End Certain Categorical Parole Programs” (Aug. 2, 2019); <https://www.uscis.gov/archive/uscis-to-end-certain-categorical-parole-programs> (accessed Apr. 26, 2023).



## A Look at Humanitarian Parole Programs

Humanitarian parole programs are designed to consider immigration parole for entire groups of individuals based on pre-set criteria. In the case of individuals outside the United States, DHS uses this discretionary authority to allow noncitizens to enter the country under two categories:<sup>72</sup>

- Urgent humanitarian reasons, or
- Significant public benefit.

Congress did not define the phrase “urgent humanitarian reasons or significant public benefit,” entrusting the interpretation and application of these standards to the DHS Secretary. Although there are currently no statutory or regulatory definitions for these terms, they have taken on particular meanings, as stated in DHS’s parole MOA. DHS has generally construed “urgent humanitarian reasons” as urgent medical, family, and related needs and “significant public benefit” as limited to situations that may benefit the larger community, such as participation in legal proceedings.<sup>73</sup> However, as practice has evolved in response to specific circumstances or humanitarian considerations, DHS has developed special humanitarian parole programs for various classes of individuals.

An earlier humanitarian parole program comparable to the most recent use of parole authority is the one created after the fall of the South Vietnamese government in 1975 and the withdrawal of U.S. troops from mainland Southeast Asia.<sup>74</sup> This program, known as the Indochinese Refugee Program, allowed an unlimited number of noncitizens from this region, either individually or as members of a group, to enter the United States without visas under the Attorney General’s discretionary parole authority. More than 140,000 noncitizens from that region were evacuated and processed from reception centers into U.S. communities.<sup>75</sup> In response to this crisis, the U.S. government enacted the Indochina Migration and

Refugee Assistance Act, enabling \$455 million for a 2-year evacuation and resettlement program.<sup>76</sup>

The Adjustment of Status of Indochina Refugees Act was enacted to enable the creation of a record of admission for permanent residence for eligible individuals. Accordingly, the Act authorized refugees who were paroled into the United States from mainland Southeast Asia after March 31, 1975, but before January 1, 1979, to adjust status to that of a Lawful Permanent Resident (LPR).<sup>77</sup> Over the next 2 decades more than 3 million people fled Vietnam, Laos, and Cambodia, with more than a million resettling in the United States.<sup>78</sup> The steady arrival of people fleeing from the deteriorated social and economic conditions in these countries was also made possible by the Orderly Departure Program (ODP)<sup>79</sup> of 1979, which made it possible for refugees to be paroled from Vietnam into the United States from 1980 to 1997. As a humanitarian response, this program subsequently evolved with the enactment of the Foreign Operations Appropriations Act of 2001,<sup>80</sup> providing for adjustment of status to lawful permanent residence for eligible nationals of Vietnam, Cambodia, and Laos who were paroled in under the auspices of the ODP.<sup>81</sup>

The Indochinese parole programs parallel the OAW program’s dramatic evacuation efforts after the United States withdrew troops from Afghanistan. As such, the OAW and Indochinese programs share many of the same challenges that arise from a sizeable number of noncitizens entering the United States at the same time as parolees. The Southeast Asian parolees had to overcome similar

<sup>72</sup> 8 C.F.R. § 212.5(b).

<sup>73</sup> USCIS Web page, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States” (Sept. 9, 2022); <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (accessed Apr. 26, 2023).

<sup>74</sup> Mainland Southeast Asia is also referred to as Indochina or the Indochinese Peninsula. The countries that are a part of the Indochinese Peninsula include Myanmar, Cambodia, Laos, Vietnam, Thailand, and Peninsular Malaysia. See World Atlas Web Page, Indochina; Diptarka Ghosh (Apr. 21, 2021); <https://www.worldatlas.com/geography/indochina.html> (accessed Apr. 26, 2023).

<sup>75</sup> U.S. Government Accountability Office (GAO) Report, “Domestic Resettlement of Indochinese Refugees: Struggle for Self-Reliance,” HRD-77-35; B-133001 (May 7, 1977) 2; <https://www.gao.gov/assets/hrd-77-35.pdf> (accessed Apr. 26, 2023).

<sup>76</sup> The Indochina Migration and Refugee Assistance Act of 1975, Pub. L. No. 94-23; *codified at* 22 U.S.C. § 2601.

<sup>77</sup> The Indochinese Refugees Permanent Residence Status Adjustment and Refugee Assistance Extension Act of 1977, Pub. L. No. 95-145; 8 U.S.C. § 1255. The act also amended the Indochina Migration and Refugee Assistance Act of 1975 to extend the period for resettlement assistance.

<sup>78</sup> Roos, Dave, History Web page, “How the End of the Vietnam War Led to a Refugee Crisis” (Sept. 1, 2021); <https://www.history.com/news/vietnam-war-refugees> (accessed June 2, 2023).

<sup>79</sup> The ODP was established in a 1979 Program Memorandum of Understanding between the United Nations High Commissioner for Refugees and the government of Vietnam to provide a safe and legal means for people to leave Vietnam rather than dangerously by boat for family reunions and humanitarian reasons. See United States General Accounting Office Report, “The Orderly Departure Program from Vietnam” GAO/NSIAD 90-137 (Apr. 11, 1990) 2; <https://www.gao.gov/assets/hrd-77-35.pdf> (accessed June 2, 2023).

<sup>80</sup> The Foreign Operations Appropriations Act of 2001, Pub. L. No. 106-429; § 586.

<sup>81</sup> USCIS Web page, “Green Card Through the Indochinese Parole Adjustment Act” (Jan. 27, 2020); <https://www.uscis.gov/green-card/green-card-eligibility/green-card-through-the-indochinese-parole-adjustment-act> (accessed June 6, 2023).

challenges integrating into U.S. communities.<sup>82</sup> This population also had to rely on both non-governmental and governmental resettlement agencies, and often additionally relied upon sponsors for support before parolees became financially self-sufficient. Specifically, just like Afghan nationals, as parolees in “indefinite voluntary departure status,” many indicated that their temporary status was a significant concern and hindrance to permanent resettlement.<sup>83</sup>

Another similar parole program is the Central American Minors (CAM)<sup>84</sup> Refugee/Parole Program established by USCIS and the Department of State (DOS) in 2014.<sup>85</sup> Similar to the CHNV parole program that has expanded parole to encourage individuals to seek orderly and lawful pathways to migration and reduce overcrowding along the southwest border,<sup>86</sup> CAM was established to help children avoid dangerous trips to the border by affording them an in-country process for safe relocation to the United States as refugees or parolees.<sup>87</sup> One key difference is that CAM operates under a dual refugee/parole framework. If an applicant is denied refugee status, then USCIS may consider on a case-by-case basis whether they qualify for parole.<sup>88</sup> The CAM program was in place from 2014 until 2017.<sup>89</sup> During that period, USCIS received 10,500

applications and admitted 3,092 individuals to the United States as either refugees or parolees.<sup>90</sup> On March 10, 2021, DOS announced the reopening of the CAM program<sup>91</sup> and USCIS developed plans to expand the program and accept new applications, reinstating those who were suspended when the program closed.<sup>92</sup> On April 11, 2023, DHS and DOS published a federal register notice announcing enhancements for the CAM program.<sup>93</sup> Since the restart of the CAM program, there have been 425 CAM parole arrivals.<sup>94</sup>

With the introduction of each program, USCIS has learned it needs to adapt processes to the specific circumstances affecting each population. For example, OAW became a multi-agency effort in which parole authority was the most effective tool to quickly allow an *en masse* entry of Afghan nationals into the United States for temporary protection. The U.S. government also launched the Sponsor Circle Program through which small groups of U.S. residents collectively committed to facilitate integration efforts for Afghan individuals.<sup>95</sup> Under OAW, Afghan nationals were paroled into the United States for a period of up to 2 years.

The establishment of U4U was primarily based on lessons learned following the implementation of OAW. One new factor implemented in the U4U program involved the expanded use of private sponsorship programs, allowing organizations to financially back individuals seeking to sponsor parole beneficiaries. These individuals then sponsor the parolees by filing Form I-134A, *Online Request to be a Supporter and Declaration of Financial Support*, with USCIS.<sup>96</sup> Ukrainian nationals paroled under the U4U program were also paroled for a period of up to 2

<sup>82</sup> Robert Marsh, Social Security Bulletin, “Socioeconomic Status of Indochinese Refugees in the United States: Progress and Problems” (Oct. 1980); <https://www.ssa.gov/policy/docs/ssb/v43n10/v43n10p11.pdf> (accessed Apr. 26, 2023).

<sup>83</sup> U.S. GAO Report, “Domestic Resettlement of Indochinese Refugees: Struggle for Self-Reliance,” HRD-77-35; B-133001 (May 7, 1977) 7; <https://www.gao.gov/assets/hrd-77-35.pdf> (accessed Apr. 26, 2023).

<sup>84</sup> USCIS Web page, “Central American Minors (CAM) Program” (Apr. 13, 2023); <http://www.uscis.gov/humanitarian/refugees-asylum/refugees/country-refugeeparole-processing-minors-honduras-el-salvador-and-guatemala-central-american-minors-cam> (accessed Apr. 26, 2023).

<sup>85</sup> The CIS Ombudsman conducted an extensive engagement and comprehensive study of the CAM program in response to concerns pertaining to the program’s operational structure and effectiveness the eligibility requirements. See Ombudsman’s Annual Report 2016, p. 20. The CIS Ombudsman also issued a formal recommendation to improve the administration of the Central American Minors (CAM) Refugee/Parole program. See CIS Ombudsman Recommendation 61, “Recommendation on the Central American Minors CAM Refugee/Parole Program” (Dec. 21, 2016); [https://www.dhs.gov/sites/default/files/publications/citizenship\\_and\\_immigration\\_service\\_ombudsman.pdf](https://www.dhs.gov/sites/default/files/publications/citizenship_and_immigration_service_ombudsman.pdf) (accessed Apr. 26, 2023).

<sup>86</sup> White House Fact Sheet, “Biden-Harris Administration Announces New Border Enforcement Actions” (Jan. 5, 2023); <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/> (accessed Apr. 26, 2023).

<sup>87</sup> USCIS Web page, “Central American Minors (CAM) Program” (Apr. 13, 2023); <http://www.uscis.gov/humanitarian/refugees-asylum/refugees/country-refugeeparole-processing-minors-honduras-el-salvador-and-guatemala-central-american-minors-cam> (accessed Apr. 26, 2023).

<sup>88</sup> *Id.*

<sup>89</sup> “Termination of the Central American Minors Parole Program,” 82 Fed. Reg. 38926 (Aug. 16, 2017).

<sup>90</sup> National Immigration Forum Fact Sheet, “Central American Minors (CAM) Program” (Mar. 19, 2021); <https://immigrationforum.org/article/fact-sheet-central-american-minors-cam-program> (accessed Apr. 26, 2023).

<sup>91</sup> DOS Web page, “Restarting the Central American Minors Program” (Mar. 10, 2021); <https://www.state.gov/restarting-the-central-american-minors-program/> (accessed Apr. 13, 2023).

<sup>92</sup> USCIS Web page, “Central American Minors (CAM) Program” (Apr. 13, 2023); <http://www.uscis.gov/humanitarian/refugees-asylum/refugees/country-refugeeparole-processing-minors-honduras-el-salvador-and-guatemala-central-american-minors-cam> (accessed Apr. 26, 2023).

<sup>93</sup> “Bureau of Population, Refugees, and Migration; Central American Minors Program,” 88 Fed. Reg. 21694 (Apr. 11, 2023).

<sup>94</sup> Information provided by USCIS (Mar. 15, 2023).

<sup>95</sup> The Sponsor Circle Program is an emergency response, community-led resettlement initiative that allows everyday Americans to take on the responsibility of welcoming newcomers to their communities by providing basic necessities. See Sponsor Circles Web Page, “The Sponsor Circle Program” (2021); <https://www.sponsorcircles.org/about> (accessed Apr. 26, 2023).

<sup>96</sup> USCIS Web page, “I-134A, Online Request to be a Supporter and Declaration of Financial Support” (Jan. 17, 2023); <https://www.uscis.gov/i-134a> (accessed Apr. 26, 2023).



years.<sup>97</sup> Soon after, the CHNV programs evolved from the U4U framework.

In the past few years, the U.S. government's increased use of parole has attracted growing attention. Critics expressed concern these humanitarian parole programs undermine the limitations implied by the case-by-case basis approach. As a result, advocates have filed lawsuits and Congressional representatives have introduced bills in an effort to place limits on the executive branch's use of

parole authority.<sup>98</sup> Regardless, until the law or regulations change around the use of parole authority, USCIS has jurisdiction over these humanitarian parole programs and will continue to be required to process these present and future additional workloads.

<sup>97</sup> CBP issued parole to a number of Ukrainians at U.S. port of entries before the implementation of U4U; these parolees were given a 1-year parole period. Information provided by USCIS (Mar. 6, 2023).

<sup>98</sup> Bloomberg Government Web page; Gilmer, Ellen M., "Why Biden Officials Are Flexing More Immigration 'Parole' Power" (Jan. 23, 2023); <https://about.bgov.com/news/why-biden-officials-are-flexing-more-immigration-parole-power/> (accessed Apr. 27, 2023).

Following OAW and U4U, the United States implemented the CHNV humanitarian parole programs (on October 19, 2022 for Venezuelans and on January 6, 2023 for Cubans, Haitians and Nicaraguans), through which nationals from these countries may come as parole beneficiaries to the United States in a safe and orderly way.

Basic steps in the CHNV process include:

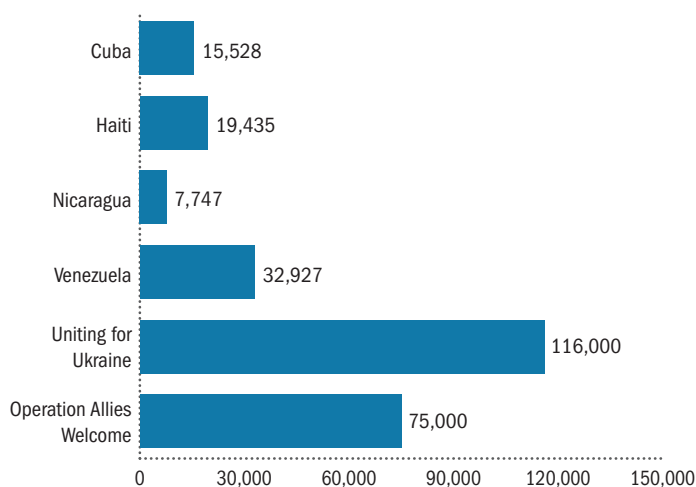
1. Eligible supporters file Form I-134A online with USCIS.
2. If USCIS confirms a supporter, the listed beneficiary will receive an email from USCIS with instructions on creating a USCIS online account.
3. The beneficiary must verify their biographic information in the USCIS online account and attest to eligibility, including health and vaccination requirements.
4. After confirming biographic information in their USCIS online account and completing the required eligibility attestations, the beneficiary will receive instructions through their USCIS online account on how to access the CBP One™ mobile application. Individuals should only submit an attestation once they confirm all biographic information is correct.
5. The beneficiary will receive a notice in their USCIS online account confirming whether CBP will provide them with advance authorization to travel to the United States. The travel authorization is valid for 90 days. Beneficiaries are responsible for securing their travel to the United States.
6. Approval of advance authorization to travel does not guarantee entry or parole. Parole is a discretionary determination made by CBP at the port of entry.
7. As part of the inspection, beneficiaries will undergo additional screening and vetting, including additional fingerprinting and biometric vetting consistent with the CBP inspection process at a port of entry.
8. Individuals determined to pose a national security or public safety threat or otherwise not warrant parole as a matter of discretion upon inspection will be processed under an appropriate processing pathway. For example, they may be referred to ICE.
9. Individuals granted parole under this process will be paroled into the United States for up to 2 years and will be eligible to apply for employment authorization under existing regulations.

Source: USCIS Web page, "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans" (May 18, 2023); <https://www.uscis.gov/CHNV> (accessed June 5, 2023).

## The Humanitarian Parole Programs' Downstream Ramifications

The number of humanitarian or significant public benefit parole requests have increased drastically over the last few years. One of the most predictable downstream challenges USCIS will face as a result is an increase in workloads across different form types and services, such as Form I-131, *Application for Travel Document*, for re-parole requests and advance parole travel documents; Form I-765, *Application for Employment Authorization*; and Form I-589, *Application for Asylum and for Withholding of Removal*. USCIS may also see an increase in Form I-730, *Refugee/Asylee Relative Petition*, as those granted asylum seek to reunify with family members. The agency will also see eventual increases in Form I-130, *Petition for Alien Relative*; Form I-485, *Application to Register Permanent Residence or Adjust Status*; and Form N-400, *Application for Naturalization*.

**Figure 2.1** Parolee Numbers by Program as of March 1, 2023



Source: Data provided by USCIS (Mar. 6, 2023 and Apr. 13, 2023).

Each application or petition will be a new task for USCIS to handle, making it challenging to keep up with any increasing demand. USCIS' capacity to meet competing workload priorities continues to create operational bottlenecks, leading to the unprecedented backlogs that we discussed in last year's Annual Report.<sup>99</sup> With the agency's understaffed levels, workload increases can force USCIS to shift priorities, staffing, and resources from one particular type of cases to another, causing delays in processing and adjudicating other benefits. In

the absence of Congressional action and already facing strained resources, increasing delays and competing priorities, USCIS will experience substantial impacts as it bears the administrative burden of continuing to see to the immigration needs of these groups.

Therefore, USCIS should consider taking proactive steps to mitigate some of those impacts. The agency has already demonstrated its capacity to enhance and streamline specific processes in the surge of certain priorities to the detriment of others. Implementing the latest humanitarian parole program allows the agency to optimize other processes. If USCIS develops streamlined mechanisms and approaches for workloads resulting from humanitarian parole programs, it could adopt those approaches and shape them on a larger scale to the agency's more traditional adjudicative functions. If USCIS continues to take on additional workloads in parole programs, implementing systematic processing of these, and future, such programs will enable USCIS to more efficiently streamline immigration benefit filings for these populations.

***The Increasing Workload of Employment Authorization Document Applications.*** Because parolees must apply separately for an Employment Authorization Document (EAD), one immediate impact of these populations is an increase in the number of EAD applications USCIS receives. For example, approximately 22,500 Ukrainian nationals received parole before the U4U program began.<sup>100</sup> We learned from stakeholders that a number of Ukrainian parolees have experienced delays after filing Form I-765 in receiving their initial EAD.<sup>101</sup> Additionally, as of February 2023, more than 116,000 Ukrainian nationals who have been granted parole under the U4U program were also eligible to apply for an EAD. After their initial filing, those who do not depart will eventually need to renew parole if DHS extends the program or will seek another immigration status under a new eligible category, such as TPS. While it may be speculated that the U4U streamlined process mitigated EAD backlog issues, USCIS and its stakeholders must still consider the implication of how just one population can potentially add at least 138,500 more applications to an already saturated workload.<sup>102</sup> Therefore, employment applications from all of the other humanitarian parole

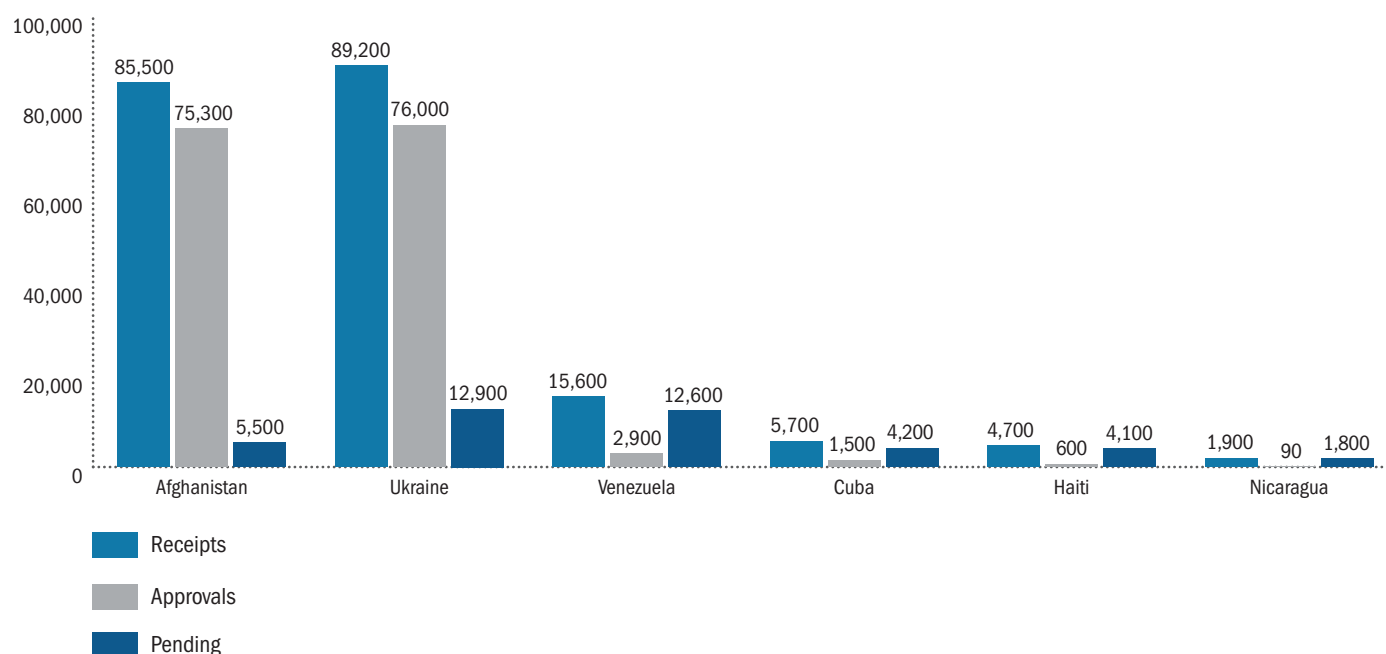
<sup>100</sup> Information provided by USCIS (Mar. 6, 2023).

<sup>101</sup> Information provided by stakeholders (Mar. 21, 2023).

<sup>102</sup> USCIS continues to apply every workforce, policy, and operational tool at its disposal to reduce backlogs and processing times. USCIS, "Fiscal Year 2022 Progress Report," "Reducing Backlogs Through Innovation" (Dec. 2022); [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed Apr. 26, 2023). USCIS is experiencing an unprecedented backlog of benefit requests, including initial and renewal EAD applications. See also CIS Ombudsman's Annual Report 2022, p. 47.

<sup>99</sup> CIS Ombudsman's Annual Report 2022, p. 2.

**Figure 2.2** EAD Receipts by Parole Population as of April 2023



Source: Data provided by USCIS (Apr. 13, 2023).

programs will substantially increase the volume of the overall EAD workload.

If USCIS allowed for parolees to request their initial EAD during the eligibility attestation step<sup>103</sup> of the new humanitarian parole programs' enhanced process, then the agency would not have to separately adjudicate additional employment authorization applications. Additionally, USCIS data shows CHNV parolees have a combined average of 99.25 percent EAD approval rate. With an employment authorization incident-to-parole structure,<sup>104</sup> USCIS can save significant time when issuing parolees their initial EAD.

Some parolees will also apply for LPR status through a qualifying relationship or category. Our office learned that some Afghan nationals are already seeking LPR

status through their special immigrant visa (SIV)<sup>105</sup> category. In addition, some Cubans may already have a viable LPR option because of the Cuban Adjustment Act,<sup>106</sup> and some Haitians may already have an available path if eligible under the Haitian Family Reunification Program (HFRP).<sup>107</sup> Although these applications may not overwhelm USCIS' system, one common denominator here is the repeatedly mentioned pain point and most known bottleneck of the agency—EAD processing. While these LPR applications remain pending, applicants would still need to obtain EADs and eventually renew them.

<sup>103</sup> Submit Request in CBP One Mobile Application: After confirming biographic information in the online account and completing required eligibility attestations. See USCIS Web Page, "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans" (Mar. 22, 2023); <https://www.uscis.gov/CHNV> (accessed Apr. 24, 2023).

<sup>104</sup> Employment authorization applications filed by Category (c)(11) applicants are generally subject to USCIS' discretion, the same as their parole status. USCIS has the authority to update policy to limit this employment incident to status to only those paroled under the new humanitarian parole programs. See USCIS Web Page, "USCIS Issues Policy Guidance on Employment Authorization for Parolees" (Aug. 19, 2019); <https://www.uscis.gov/archive/uscis-issues-guidance-on-discretionary-employment-authorization-for-parolees> (accessed Apr. 26, 2023).

<sup>105</sup> USCIS Web page, "Green Card for an Afghan Who Was Employed by or on Behalf of the U.S. Government" (Mar. 30, 2023); <https://www.uscis.gov/green-card-for-an-afghan-employed-behalf-us-government> (accessed Apr. 26, 2023).

<sup>106</sup> Cuban Adjustment Act of 1966 (CAA), Pub. L. No. 89-732; *codified at* 8 U.S.C. §§ 1255.

<sup>107</sup> USCIS Web page, "The Haitian Family Reunification Parole (HFRP) Program" (June 22, 2022); <https://www.uscis.gov/humanitarian/humanitarian-parole/the-haitian-family-reunification-parole-hfrp-program> (accessed Apr. 26, 2023). See also USCIS Web page, "The Haitian Family Reunification Parole (HFRP) Program" (June 22, 2022); <https://www.uscis.gov/humanitarian/humanitarian-parole/the-haitian-family-reunification-parole-hfrp-program> (accessed Apr. 26, 2023).

**Figure 2.3** Adjustment Applications Pending by Parole Program

Form I-485	Receipts	Pending
I-485 - OAW	16,761	12,293
I-485 - Ukraine U4U	905	893
I-485 - Cuba Parole	4	4
I-485 - Haiti Parole	17	17
I-485 - Nicaraguan Parole	1	1
I-485 - Venezuela Parole	26	26

Source: Data provided by USCIS (Apr. 13, 2023).

USCIS implemented a temporary final rule<sup>108</sup> that extended the EAD validity period for over 400,000 noncitizens and immediately restored the ability to work for tens of thousands of noncitizens whose EADs had expired through no fault of their own.<sup>109</sup> USCIS should consider keeping these automatic extensions available and add category (c) (11) (paroled in the public interest)<sup>110</sup> to the list of eligible employment categories, provided it also engages in the needed screening and vetting to ensure public safety and national security.<sup>111</sup>

### ***The Uncertainty of Re-Parole Will Increase***

**USCIS' Workload.** At the end of a parole period, parolees who remain in the United States will begin to file new applications with USCIS as they seek to extend parole or obtain a new immigration status. Parolees may pursue multiple permanent and non-permanent immigration pathways simultaneously, so it would be beneficial if USCIS developed and implemented a communications strategy for each parole program so the agency can provide information to parolees before their parole period expires. These campaigns should be focused on the secondary

benefits (if any) and the possible consequences of each alternative path. This would help set expectations for beneficiaries and their supporters and also standardize how USCIS communicates its progress towards decisions on re-parole or other extensions.

When DHS announced re-parole for Ukrainians, it had yet to announce any plans for the thousands of Afghan nationals for the soon-to-expire OAW parole period. We learned from stakeholders that uncertainty and anxiety was building up considerably, reaching a fever pitch among Afghan parolees as they arrived at the end of their parole period without any news about re-parole opportunities. Without reassurance of re-parole, parolees are likely to feel the urgency to file for any available pathway to lawfully remain in the country beyond their parole end date. Stakeholders have informed us that it is common for individuals in this group to file multiple applications with USCIS, such as TPS,<sup>112</sup> asylum, and for those eligible, adjustment of status (AOS) under the SIV category—for as many benefits as they are eligible.<sup>113</sup> In early May 2023, however, DHS announced<sup>114</sup> that a re-parole process would be available for certain Afghan nationals paroled into the United States, helping to stabilize community uncertainties and demonstrating a path forward.

As of March 2023, approximately 75,000 Afghans (under OAW) and approximately 116,000 Ukrainians (under U4U) have received parole to enter the United States.<sup>115</sup> The problem lies with the expiration tag attached to these populations' statuses.<sup>116</sup> Even while these numbers seem to be historically manageable in comparison to USCIS' entire spectrum, as each group seeks alternatives to extend their stay in the United States, the volume and

<sup>112</sup> Note that while Haiti, Venezuela, Nicaragua, and Ukraine are all designated for Temporary Protected Status (TPS), recent CHNV and U4U parolees would not meet the residency requirements for TPS unless the dates are expanded in a future Federal Register notice.

<sup>113</sup> Information provided by stakeholders (Mar. 21, 2023). See also DOS Web page, "Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government" (2022); <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html#top> (accessed Apr. 26, 2023). Information provided by stakeholders (Mar. 21, 2023). See also DOS Web page, "Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government" (2022); <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html#top> (accessed Apr. 26, 2023).

<sup>114</sup> DHS Press Release, "DHS Announces Upcoming Re-parole Process for Afghan Nationals" (May 5, 2023); <https://www.dhs.gov/news/2023/05/05/dhs-announces-upcoming-re-parole-process-afghan-nationals> (accessed May 5, 2023).

<sup>115</sup> Information provided by USCIS (Mar. 6, 2023).

<sup>116</sup> 23,800 Afghans have no other options but re-parole because they have no other application filed. USCIS Electronic Reading Room, "National Engagement on Creating a USCIS Online Account to Prepare Afghan Nationals for Re-Parole and Other Immigration Options" (May 15, 2023).

<sup>108</sup> "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants," 87 Fed. Reg. 26614, 26652 (May 4, 2022).

<sup>109</sup> USCIS, "Fiscal Year 2022 Progress Report," p. 5 (Dec. 2022); [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed Apr. 26, 2023).

<sup>110</sup> Most individuals paroled into the United States for urgent humanitarian or significant public benefit purposes under INA 212(d)(5) are eligible to seek employment authorization under category (c)(11). See USCIS News Alert, "Parolees Can Now File Form I-765 Online" (Jul. 28, 2022); <https://www.uscis.gov/newsroom/alerts/parolees-can-now-file-form-i-765-online> (accessed Apr. 28, 2022); <https://www.uscis.gov/newsroom/alerts/parolees-can-now-file-form-i-765-online> (accessed Apr. 26, 2023).

<sup>111</sup> USCIS Web page, "Automatic Employment Authorization Document (EAD) Extension" (Mar. 2, 2023); <https://www.uscis.gov/eadautoextend> (accessed Apr. 26, 2023).



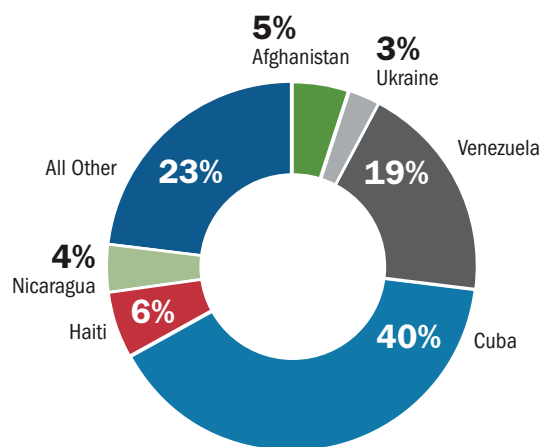
flow of filings and inquiries will increase simultaneously rather than at an incremental (and more manageable) pace.<sup>117</sup> Ukrainian and Afghan parolees are just one piece of the puzzle. USCIS may face similar difficulties and uncertainties with the CHNV programs in the future and has yet to see what potential workload volume will be added by these populations. So far, the CHNV programs have allowed 75,637 individuals to be paroled into the United States;<sup>118</sup> at 30,000 per month, this total population is as yet unknown. Were additional humanitarian or family reunification parole programs to be added to USCIS' workload, the resource strains and need for streamlined management of paroles, EADs, recurrent screening and vetting, and automatic approval of EADs once backlogs accrue will continue to increase in necessity.

**Adding to the Asylum Backlog.** As the USCIS Asylum Division looks for solutions and resources to reduce the asylum backlog, it becomes ever more important for asylum cases to be adjudicated more efficiently. A grant of asylum allows a noncitizen to remain in the United States, creates a path to lawful permanent residence and, eventually citizenship, and allows for certain family members to obtain lawful immigration status.<sup>119</sup> However, the asylum process is complex and USCIS already has a large asylum backlog.<sup>120</sup> If USCIS ends up needing to prioritize asylum applications from humanitarian parole populations, as it now does with cases from OAW parolees,<sup>121</sup> the Asylum Division would have to shift resources to address these priority filings. The Asylum Division currently does not have the capacity for additional prioritization of asylum applications filed by all noncitizens paroled into the United States under CHNV or U4U while also expediting the asylum applications filed

by OAW,<sup>122</sup> completing increased protection screenings of noncitizens arriving at the border and completing Asylum Merits Interviews, under the Asylum Processing Interim Final Rule.<sup>123</sup> Shifting asylum resources would not necessarily achieve the efficiency needed to adjudicate higher volumes of asylum filings. Instead, it would limit the Division's ability to complete cases.

USCIS can expect a significant increase in asylum applications from individuals with expiring humanitarian parole. The USCIS Asylum Division indicated that at the beginning of FY 2023 noncitizens from Cuba and Venezuela comprised more than 50 percent of asylum filings, with Cuba taking the top at 40 percent, as referenced in *Figure 2.4, Affirmative Asylum Receipts Distribution, FY 2023 As Of Second Quarter*.

**Figure 2.4,** Affirmative Asylum Receipts Distribution, FY 2023 As Of Second Quarter



Source: Data provided by USCIS (Feb. 28, 2023 and Apr. 13, 2023).

USCIS continues to receive historic levels of asylum receipts in FY 2023, particularly from nationals of Cuba, Haiti, Nicaragua, and Venezuela.<sup>124</sup> In FY 2023 through March 9, USCIS has received 164,000 asylum applications, of which 62 percent (*i.e.*, 101,900 applications) were filed by nationals of Cuba, Haiti, Nicaragua, and Venezuela.<sup>125</sup> However, at this early point

<sup>117</sup> Applying for other benefits can be a bridge while waiting for re-parole. USCIS expects processing times for asylum and TPS to increase in the coming months due to backlogs. USCIS Electronic Reading Room, "National Engagement on Creating a USCIS Online Account to Prepare Afghan Nationals for Re-Parole and Other Immigration Options" (May 15, 2023).

<sup>118</sup> Information provided by USCIS (Apr. 13, 2023).

<sup>119</sup> See INA § 208(c)(1), 8 U.S.C. § 1158(c)(1) (prohibiting removal or return of a noncitizen granted asylum to the noncitizen's country of nationality, or in the case of a person who has no nationality, the country of last habitual residence (unless asylum status has been terminated)); INA § 209(b), 8 U.S.C. § 1159(b) (allowing adjustment of status for noncitizens granted asylum); INA § 316(a), 8 U.S.C. § 1427(a) (describing naturalization requirements for lawful permanent residents); INA § 208(b)(3), 8 U.S.C. § 1158(b)(3) (allowing derivative asylum for an asylee's spouse and unmarried children).

<sup>120</sup> USCIS Asylum Quarterly Engagement and Listening Session (Dec. 12, 2022); [https://www.uscis.gov/sites/default/files/document/foia/Asylum\\_Quarterly\\_Engagement-FY23\\_Quarter\\_1\\_Script\\_and\\_Talking\\_Points.pdf](https://www.uscis.gov/sites/default/files/document/foia/Asylum_Quarterly_Engagement-FY23_Quarter_1_Script_and_Talking_Points.pdf) (accessed June 2, 2023).

<sup>121</sup> USCIS is required to prioritize asylum applications file by OAW parolees. Extending Government Funding and Delivering Emergency Assistance Act of 2022, § 2502(c), Pub. L. No. 117-43.

<sup>122</sup> 16,782 asylum applications have been filed by Afghan nationals, 14,119 remain pending. Information provided by USCIS in USCIS Online Account Overview for Afghan Nationals to Prepare for New Re-parole Application Process webinar (May 15, 2023).

<sup>123</sup> Information provided by USCIS (Apr. 13, 2023).

<sup>124</sup> USCIS is on the way to exceeding the historic high of 237,900 affirmative asylum applications that USCIS received in FY2022. Information provided by USCIS (Apr. 13, 2023).

<sup>125</sup> Information provided by USCIS (Apr. 13, 2023).

in the CHNV parole process, it is unlikely that most of these asylum applicants were paroled into the United States under the CHNV parole processes, but rather entered the country through other means. In addition, in FY 2023 through March 9, USCIS has received fewer than 700 asylum applications filed by Ukrainian nationals, constituting approximately 0.4 percent of all FY 2023 affirmative asylum receipts.<sup>126</sup> It is probable that USCIS will start to receive more asylum applications filed by Ukrainian nationals as more time passes since the beginning of U4U.<sup>127</sup>

In FY 2023 (through March 9), USCIS has completed approximately 16,200 asylum cases, of which 44 percent were filed by Afghan nationals, 18 percent were filed by nationals of Cuba, Haiti, Nicaragua, and Venezuela, and 38 percent were filed by nationals of other countries.<sup>128</sup> More efficient processing of these populations, without compromising security, is critical.<sup>129</sup> While remaining impartial, USCIS can consider the distinctive characteristics of these populations, as they were considered by the U.S. government to extend humanitarian parole eligibility and categorize each group to improve the asylum case preparation process. This grouping approach will help organize and track workloads while easing the review process to grant meritorious claims and deny baseless ones with minimal delay.

***Increased Pressure on Vetting Processes.*** USCIS will likely face continuing scrutiny regarding the screening and vetting processes<sup>130</sup> of beneficiaries in these programs and a heightened demand for enhanced background and security checks for each individual.<sup>131</sup> A recent report from the DHS Office of Inspector General (OIG) determined DHS encountered obstacles when screening, vetting, and inspecting Afghan evacuees arriving in the United

States as part of OAW.<sup>132</sup> In its analysis, the DHS OIG learned that CBP sometimes needed more data or accurate information to vet all parolees thoroughly. The DHS OIG recommended that CBP establish recurring vetting processes for all parolees evacuated during OAW, to be carried out during their parole period.<sup>133</sup>

As part of its administration of immigration benefits, USCIS has the general authority to require and collect biometrics, which include fingerprints, photographs, and digital signatures from any person seeking an immigration benefit. Biometrics collection allows USCIS to verify a person's identity, produce secure documents, and facilitate required criminal and national security background checks to protect national security and public safety, as well as to ensure that the person is eligible for the benefit sought.<sup>134</sup> Recurrent vetting can, however, be performed without duplicative requests for biometrics that simply clog the system. While USCIS has made a significant effort to reuse biometrics, it can continue to review ways to ensure such reuse remains a viable option.

There are lessons for USCIS to learn from the DHS OIG study about CBP's handling of OAW parolee screening and it would be wise for the agency to leverage the need for background and security checks by taking a systematic approach to how it collects biometrics and uses them to vet applicants. While security checks enhance national security and protect the integrity of the immigration process, standardized screening and vetting processes would likely improve USCIS' ability to adjudicate benefits in a timely manner. As each parolee begins to navigate the immigration system seeking extensions or more permanent status, USCIS should try to focus on the individual's entire filing history with the agency to identify duplicative cases and determine whether the application should trigger a new screening process or whether the background requirement is satisfied based on a review of information already on record.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> See CIS Ombudsman's Annual Report 2022, pp. 42–53.

<sup>130</sup> For purposes of this discussion, “vetting” refers to the individualized scrutiny of an individual in the context of an application, whereas “screening” refers to a more generalized examination of data at a population level to identify characteristics requiring more scrutiny.

<sup>131</sup> Critics of the use of parole authority already consider the policies behind it to be highly flexible, so they find parole programs to be too broad and a contradiction to the case-by-case basis for “urgent humanitarian reasons” or “significant public benefit” parole determination. They have expressed concerns, particularly regarding border security and the integrity of the parole programs. Lone Star State Republican House delegation, “A Commitment to Secure the Border A Framework By Texans For Texas” at 7; <https://mccaughouse.gov/sites/evo-subsites/mccaughouse.gov/files/evo-media-document/commitment-to-secure-the-border.pdf> (accessed Apr. 26, 2023).

<sup>132</sup> U.S. Office of Inspector General, “DHS Encountered Obstacles to Screen, Vet, and Inspect All Evacuees during the Recent Afghanistan Crisis (REDACTED),” OIG-22-64 (Sept. 6, 2022); <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-64-Sep22-Redacted.pdf> (accessed Apr. 26, 2023).

<sup>133</sup> *Id.*

<sup>134</sup> 1 USCIS Policy Manual, Pt. C, Ch. 1(A)(B); <https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-1> (accessed Apr. 26, 2023).



## The Financial Impact on USCIS of Parole Populations

According to USCIS, in FY 2022, the agency issued more than 92,000 work permits for Afghan nationals and adjudicated benefits to facilitate Afghan resettlement in the United States, such as asylum and special immigrant status. It also issued nearly 120,000 travel authorizations to Ukrainian nationals and their immediate family members who were impacted by Russia's invasion of Ukraine.<sup>135</sup> Nonetheless, the agency recognizes that its progress in these humanitarian services (and backlog reduction efforts) were possible with the support of necessary appropriations by Congress.<sup>136</sup> The Extending Government Funding and Delivering Emergency Assistance Act (Emergency Assistance Act) appropriated funds to USCIS for necessary expenses supporting OAW.<sup>137</sup> The Consolidated Appropriations Act of 2022 allocated funding for USCIS to address processing backlogs and delays.<sup>138</sup> It also made aid available (not directly to USCIS) for Ukrainians for migration and refugee assistance. This Congressional funding has temporarily helped USCIS return to firmer fiscal footing;<sup>139</sup> however, these funds were limited and for specific purposes.

Before the Emergency Assistance Act and the Consolidated Appropriations Act of 2022, the last time USCIS received appropriated funds to support its humanitarian programs was in FY 2011.<sup>140</sup> The agency has been sustaining the costs associated with its humanitarian workloads almost

entirely by its fee-paying customers<sup>141</sup> even though it serves some of the same interests and same programs that the Departments of State and Health and Human Services administer with appropriated funding.<sup>142</sup> As the number of parolees increases with each humanitarian parole program, so does the volume of potential workloads and the operating costs that come with them. While the U.S. government expands its existing humanitarian mission and responds to emerging priorities,<sup>143</sup> Congress cannot lose sight that USCIS is a predominantly fee-funded agency with finite resources. Implementing these humanitarian parole programs without additional funding puts a strain on the agency's resources. The agency has already extended and expanded fee exemptions and expedited processing for Afghan nationals. To request humanitarian parole under U4U or CHNV, neither the U.S.-based supporter nor the beneficiary pays a filing fee for Form I-134A or to receive travel authorization to the United States. Once in the United States, USCIS exempts the filing fee for employment authorization filings for OAW<sup>144</sup> and U4U<sup>145</sup> parolees. Other eligible parolees like those in the CNHV program can request a fee waiver under the fee waiver authority<sup>146</sup> when filing for employment authorization.<sup>147</sup> Waiving fees associated with these humanitarian programs implies that other fees will be required to be reprogrammed to cover the costs.

All these programs require diverting funding and employee resources within USCIS from other immigration

<sup>135</sup> USCIS News Alert, "USCIS Releases New Data on Effective Reduction of Backlogs, Support for Humanitarian Missions, and Fiscal Responsibility" (Dec. 7, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-releases-new-data-on-effective-reduction-of-backlogs-support-for-humanitarian-missions-and> (accessed Apr. 26, 2023).

<sup>136</sup> USCIS, "Fiscal Year 2022 Progress Report," December 2022, p. 14 (Dec. 2022); [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed Apr. 26, 2023).

<sup>137</sup> Extending Government Funding and Delivering Emergency Assistance Act of 2022; Div. A, § 132, Pub. L. No. 117-43 (2021).

<sup>138</sup> Consolidated Appropriations Act of 2022; Div. F, Title IV, Pub. L. No. 117-103 (2022).

<sup>139</sup> USCIS, "Fiscal Year 2022 Progress Report," December 2022, p. 12 (Dec. 2022); [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed Apr. 26, 2023).

<sup>140</sup> Information provided by USCIS (Oct. 13, 2021). (USCIS found it necessary to include the costs of its Refugee, Asylum and International Directorate, its SAVE program, and the Office of Citizenship back into its funding modeling after Congress failed to appropriate sufficient public funds for these programs.) See "U.S. Citizenship and Immigration Services Fee Schedule," 75 Fed. Reg. 58961, 58966 (Sept. 24, 2010).

<sup>141</sup> Section 286(m) of the INA authorizes USCIS to set its fees at a level to allow it to provide immigration benefit services to "asylum applicants and other immigrants." While this language authorizes the agency to shift the cost burden of these services to other fee-paying customers, Congress did appropriate funds to USCIS prior to 2010 for the purpose of supporting the country's humanitarian programs. INA § 286(m); 8 U.S.C. § 1356(m).

<sup>142</sup> CIS Ombudsman Recommendation 63, "The Challenges of the Current USCIS Fee-Setting Structure" (June 15, 2022); [https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN\\_2022\\_FEE\\_FOR\\_SERVICE\\_RECOMMENDATION\\_FINAL.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN_2022_FEE_FOR_SERVICE_RECOMMENDATION_FINAL.pdf) (accessed Apr. 26, 2022).

<sup>143</sup> DHS recently announced it is creating new family reunification parole processes for El Salvador, Guatemala, Honduras and Colombia. The agency is also modernizing existing family reunification parole processes for Cuba and Haiti. See DHS Fact Sheet, "U.S. Government Announces Sweeping New Actions to Manage Regional Migration" (Apr. 27, 2023); <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration> (accessed Apr. 27, 2023).

<sup>144</sup> USCIS Web page, "Information for Afghan Nationals Afghan National Parolees—Information about Employment Authorization" (May 8, 2023); <https://www.uscis.gov/humanitarian/information-for-afghan-nationals> (accessed May 11, 2023).

<sup>145</sup> USCIS Web page, "Uniting for Ukraine—After the Beneficiary Is Paroled into the United States" (Feb. 22, 2023); <https://www.uscis.gov/ukraine> (accessed May 11, 2023).

<sup>146</sup> 8 C.F.R. § 103.7(c) (2008); INA § 286(m), 8 U.S.C. § 1356(m).

<sup>147</sup> USCIS Web page, "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans—After the Beneficiary is Paroled into the United States" (May 1, 2023); <https://www.uscis.gov/CHNV> (accessed May 11, 2023).

programs, and will continue to do so until individuals in these groups are able and choose to safely return to their country or successfully adjust to a permanent status here in the United States. In the recent proposed fee rule, the agency noted that its costs have increased considerably due in part to expanded humanitarian casework and it accordingly must increase filing fees for employment-based immigration applications to offset the costs of its humanitarian workload. USCIS has been open about how it cannot maintain adequate service levels with its current level of resources without lasting impacts on operations. DHS, its supporters, and its stakeholders should continue to advocate for some form of appropriated funds to address USCIS workloads caused by humanitarian parole programs.

## More Cascading Effects

Regardless of which immigration benefits these parolees seek, USCIS must also consider the impact that increasing humanitarian parole programs have on the agency's customer service inquiries and other non-adjudicative tasks. The agency should generally expect an increase in case status inquiries, especially when processing times increase. The uncertainty around these programs makes it even more likely that these individuals will use every possible avenue to stay watchful of their cases. For example, the CIS Ombudsman has seen a significant amount of Form I-134A related requests for case assistance in early 2023. These inquiries comprised 19 percent of our overall case assistance request workload during February 2023.<sup>148</sup> Around the same period, the USCIS Contact Center also reported increased inquiries regarding Form I-134A issues via secure messages and phone calls. The number of inquiries had grown from 31,318 to more than 50,000 pending inquiries.<sup>149</sup> This increase is partly due to the confusion around the requirements and process for sponsors filing Form I-134A for Cubans, Haitians, Nicaraguans, and Venezuelans seeking parole. It is important to note that these inquiries are coming at the very initial stages of these parolees' U.S. immigration journey and represent a window into what could happen as the number of noncitizens seeking parole increases and as they require additional services from the agency.

## Shared Impact between USCIS and EOIR

Parolees who feel the urgency to seek a permanent status and protection could start rushing through the immigration system and hastily apply for immigration benefits without fully understanding the complexity of the process.<sup>150</sup> These types of hasty applications could have consequences that may leave them facing removal proceedings. As the number of parolees in the United States continues to grow, so might the possibility that some may be removable in the future, spilling into the Department of Justice's Executive Office for Immigration Review (EOIR) and adding to the immigration court backlog.<sup>151</sup>

While having parolees shift into EOIR jurisdiction may seem like a relief on USCIS' workload, that is not necessarily the actuality. If USCIS denies an asylum application in the affirmative asylum process after an individual's parole period has expired, they are referred for removal but can utilize the defensive asylum process to renew the request for asylum. Asylum seekers in removal proceedings are eligible for 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. Although EOIR has jurisdiction over defensive asylum, eligible applicants must still file with USCIS for an EAD.

## In the Meantime

The volume of immigration benefit filings associated with these populations will continue to pose challenges to the agency and the immigration system as a whole. The U.S. government has provided them with a much-needed critical but temporary humanitarian benefit. Still, without clear next steps, USCIS needs to consider how to better manage this important workload and develop a well-communicated plan of action.

The agency has already taken many positive steps to manage these populations on their next steps in the immigration cycle, such as:

- Placing Forms I-765 under the parolee filing category into streamlined case processing. Streamlined case processing allows certain cases to be processed

<sup>150</sup> Information provided by stakeholders (Mar. 21, 2023)

<sup>151</sup> As of the first quarter of FY 23 the total number of pending cases is 1,874,336. EOIR Report, "Executive Office for Immigration Review Adjudication Statistics: Pending Cases, New Cases, and Total Completions" (Jan. 16, 2023); <https://www.justice.gov/eoir/page/file/1242166/download> (accessed Apr. 24, 2023).

<sup>148</sup> CIS Ombudsman Cases and Contractor Casework Tracking (Feb. 2023).

<sup>149</sup> Information provided by USCIS (Feb. 14, 2023).

without manual review, which may result in faster adjudication.<sup>152</sup>

- Providing a one-year extension to Ukrainian nationals paroled into the United States at a port of entry before the implementation of the U4U program. The period of parole will be extended from the current expiration date without a gap and for those with employment authorization, USCIS will automatically extend their EAD through the extended parole period.<sup>153</sup>
- Establishing Afghan Support Centers across the country to support a streamlined process to re-parole eligible Afghan nationals who arrived in the United States under humanitarian parole through OAW so they can continue living and working legally. Eligible Afghan nationals are able to apply for a 2-year re-parole period.<sup>154</sup>
- The USCIS Asylum Division continues to schedule asylum interviews within the last-in, first-out priorities (LIFO)<sup>155</sup> and expedites cases as required by statute<sup>156</sup> for asylum applicants paroled into the United States under OAW.

While these actions help the agency address the current implications of these humanitarian parole programs, further steps are needed to maintain its workloads. To ensure the agency remains functional and equipped to deal with U.S. government initiatives regarding this type of humanitarian response and any other immigration priority directives, Congress should redefine how and what support it must provide to USCIS, as well as, what level of oversight is required to ensure that resources are efficiently utilized.

## Recommendations

However temporary each noncitizen's stay may be in the United States, they will require the agency's assistance to maintain a meaningful life and support themselves financially. USCIS must adapt accordingly, planning ahead for both short and long-term operational inevitabilities. Many, if not most, may settle permanently after receiving humanitarian parole and will be seeking to apply for available and long-term legal options. As these populations navigate the immigration system, USCIS should consider the following to mitigate the impact on them and the agency:

### *Immediate needs*

#### **1. *Develop streamlined mechanisms and approaches for workloads resulting from humanitarian parole programs by:***

- Establishing a more coordinated, population-specific approach for filing and processing immigration benefits for parolees who were accepted through these recent programs. The agency has already taken steps to do so by implementing the U4U and the CHNV programs. For example, USCIS enhanced the standard parole process<sup>157</sup> into a more agile process by streamlining its use of Form I-134A; however, additional resources are required to support this enhancement to keep receipts current if it is to have a meaningful impact.
- Adopting the population-specific streamlined approach of these humanitarian parole programs to group and streamline future immigration filings from these populations. USCIS already has demonstrated a similar capability as it does when it places into streamlined case processing certain Form I-765 filings.

#### **2. *Revise existing operational approaches and flexibilities in processing work authorization for parolees:***

- To improve efficiency and reduce Form I-765 processing workloads, eliminate the need for a separate EAD initial application for individuals granted humanitarian parole under these programs. USCIS should consider adding to the enhanced humanitarian parole program a streamlined process

<sup>152</sup> USCIS News Alert, "Parolees Can Now File Form I-765 Online" (Jul. 28, 2022); <https://www.uscis.gov/newsroom/alerts/parolees-can-now-file-form-i-765-online> (accessed Apr. 26, 2023).

<sup>153</sup> Specifically, Ukrainian nationals paroled into the United States at a port of entry between February 24, 2022 and April 25, 2022 will be considered for a one-year extension to align with the two-year parole period provided under U4U. See DHS Web page, "Uniting for Ukraine, Information for Ukrainians Paroled Before United for Ukraine" (Mar. 21, 2023); <https://www.dhs.gov/ukraine> (accessed Apr. 26, 2023).

<sup>154</sup> USCIS announced it will open six Afghan Support Centers between May and September 2023 in Phoenix, Tucson, Sacramento, Pittsburgh, Seattle, and Oklahoma City. USCIS Electronic Reading Room, "National Engagement on Creating a USCIS Online Account to Prepare Afghan Nationals for Re-Parole and Other Immigration Options" (May 15, 2023).

<sup>155</sup> For information about LIFO scheduling, see USCIS Web page, "Affirmative Asylum Interview Scheduling" (May 31, 2022); <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling> (accessed Apr. 27, 2023).

<sup>156</sup> Under the Extending Government Funding and Delivering Emergency Assistance Act USCIS is required to conduct the initial interview for an OAW asylum applications within 45 days of filing and, if there are no exceptional circumstances, to complete the final adjudication within 150 days of filing. See USCIS Web page, "Information for Afghan Nationals, Asylum" (Apr. 3, 2023); <https://www.uscis.gov/humanitarian/information-for-afghan-nationals> (accessed Apr. 24, 2023).

<sup>157</sup> USCIS Web page, "Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States, Parole Process" (Sept. 9, 2022); <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (accessed Apr. 26, 2023).



for parolees to request their initial EAD while at the same time they are attesting their eligibility. After CBP allows the beneficiary to enter the United States, the beneficiary could attest again that they are now in parole status. USCIS could then confirm the status in CBP databases and save significant time and resources by issuing an EAD without having to separately adjudicate Form I-765.

- Maintain the current automatic extension periods of EADs as a safeguard for all populations in temporary status with lengthy EAD processing and add the humanitarian parole category to the list of employment categories eligible for an automatic extension. While it is a temporary solution, it would still continue to benefit USCIS and applicants as the agency works to eliminate backlogs for pending EAD applications.

**3. *Develop and implement a communications strategy for each parole program so that USCIS can provide critical information to parolees before their parole period expires:***

- While the agency works on finalizing a plan of action to address parole end periods, it should share available information with parolees. USCIS can provide information to the parole populations at pre-set intervals, such as 3 months and 1 month before the parole period expires, until the agency can issue a final directive. The strategy could be tied to USCIS' process of developing policy. This communications strategy can then be established as a standard operating procedure for future humanitarian parole programs.
- USCIS is better positioned to reduce the number of unsupported, hasty, and duplicative filings by having an informed applicant. Improve and maintain targeted and specific information campaigns to better educate parolees on the alternatives available to them should they seek to extend their stay. Each population is affected by different conditions, and each parolee's eligibility for an immigration benefit is also attached to their set of individual circumstances.

***Long-term needs***

**4. *Establish specific asylum processing groupings for populations in these humanitarian parole programs:***

- USCIS has the basis to parallel a similar approach in the asylum case preparation process using the population-specific method of the new humanitarian parole programs. While the determination to grant parole is done on a case-by-case basis review of each request, these humanitarian parole programs share pre-set criteria that allow them to be grouped because of the urgent circumstances for which the U.S. government made parole available. The USCIS Asylum Division can use these shared characteristics to group these cases by program, not to make a blanket decision, but to identify them as parolees, facilitate the process flow and track the allocation of resources.

**5. *Continue to leverage the need for background and security checks by:***

- Expanding the suspension of biometrics requirement to re-parole applicants for extensions and employment renewal authorization filings. USCIS has temporarily suspended the biometrics requirements for certain applicants filing Form I-539, *Application to Extend/Change Nonimmigrant Status*, for change and extension of nonimmigrant status. As the agency focused its efforts on reducing backlogs, this tool allowed for operational improvements and reduced processing times. As such, since USCIS is committed to making that requirement permanent for I-539 applicants, the agency should seek to expand this practice into other filings and extensions.
- Eliminating the multiplicity of biometrics collections as a vetting necessity as individuals advance in their immigration journeys. As discussed earlier, parolees may pursue multiple immigration pathways simultaneously. If USCIS were to conduct a full vetting process on every application filed by each individual from these programs, not only would the agency be employing an inefficient use of resources, but it also might decrease effectiveness in the application process.



USCIS should instead take a systematic approach that focuses on the individual's entire filing history with the agency to quickly identify any material changes in their eligibility, status, and potential fraud and security concerns. Recurrent vetting has a viable role in the downstream journeys of all applicants for immigration benefits, but that role can be more effective when applied in a focused manner rather than routinized.

**6. *Consider seeking some continuing form of appropriated funds to address additional USCIS workloads caused by humanitarian parole programs:***

- Continue to urge Congress to support USCIS' efforts to reduce its backlog and the costs associated with the agency's growing workloads in response to urgent humanitarian initiatives. While other agencies receive appropriated funding for similar humanitarian casework, USCIS must offset its

limited resources to support the costs of delivering humanitarian-related benefits.

As the main adjudicative arm of immigration benefits, USCIS must ensure that it remains functional and focused on its promise of transparency and responsiveness.<sup>158</sup> Consequently, should USCIS adopt these recommendations, its action could help reduce the number of inquiries from these populations and mitigate the risk of applicants being referred to EOIR because of erroneous or hasty filings, ensuring that USCIS continues to maintain the ability to meet its important humanitarian mission as outlined by Congress and the President.

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<sup>158</sup> FYs 2023–2026 Strategic Plan Report, U.S. Citizenship and Immigration Services, p. 5 (2023); <https://www.uscis.gov/sites/default/files/document/reports/StrategicPlanFY23.pdf> (accessed Apr. 26, 2023).



# THE USE OF REQUESTS FOR ADDITIONAL EVIDENCE IN L-1 PETITIONS

**Responsible Directorate:** Service Center Operations

## Introduction

We first reported on U.S. Citizenship and Immigration Services' (USCIS) use of requests for evidence (RFEs) in our 2010 Annual Report to Congress.<sup>159</sup> At that time, we reviewed the agency's RFE policy and discussed the merits and demerits of using RFEs in H-1B (specialty occupation worker)<sup>160</sup> and L-1 (intracompany

transferee)<sup>161</sup> petitions from the perspective of both the agency and benefit requestors (i.e., petitioners or applicants). We concluded that study making four recommendations to USCIS (discussed below).<sup>162</sup>

USCIS performance data and input from stakeholders indicate that many of the same challenges and difficulties we identified in our 2010 Annual Report remain for those

<sup>159</sup> CIS Ombudsman's Annual Report 2010, pp. 36–48.

<sup>160</sup> "U.S. businesses use the H-1B program to temporarily employ foreign workers in a specialty occupation that requires theoretical or technical expertise in a certain field, such as science, engineering, or computer programming." USCIS, *Handbook for Employers M-274*, 6.5 H-1B Specialty Occupations (Apr. 27, 2020); <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/60-evidence-of-status-for-certain-categories/65-h-1b-specialty-occupations> (accessed May 1, 2023).

<sup>161</sup> The INA defines a L-1 Intracompany Transferee as "an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge." INA § 101(a)(15)(L); 8 U.S.C. § 1101(a)(15)(L).

<sup>162</sup> CIS Ombudsman's Annual Report 2010, pp. 47–48.

submitting L-1 petitions. While the H-1B RFE rate has fallen to 9.6 percent, L-1 filings are issued RFEs nearly four times as often.<sup>163</sup>

As the H-1B RFE rate appears to be at a nominal level<sup>164</sup> and in alignment with the agency's policy statements on when an RFE is appropriate, this study is focused on RFEs issued for L-1A<sup>165</sup> and L-1B<sup>166</sup> petitions. Based on our review of pertinent USCIS data, our own review of a random sampling of completed L-1 filings that were issued RFEs in FY 2022, and engagements with interested stakeholders, the CIS Ombudsman makes the following five recommendations to USCIS:

1. Develop and provide training that ensures adjudicators understand how to apply the legal standard of “preponderance of evidence” to evidence typically presented in each type of case.
2. Develop and provide annual training to ensure adjudicators know how to comply with applicable regulations for L-1 extension cases.
3. Streamline the L-1 extension petition process when the case involves the same facts (specifically, the same petitioner/beneficiary/job).

4. Update RFE templates and systems to ensure that RFEs are precise, easily understandable, and do not contain excess verbiage.
5. Establish a robust quality assurance program for RFEs.

## What Are RFEs?

USCIS' Policy Manual states that the agency issues RFEs to request missing initial or additional evidence from benefit requestors.<sup>167</sup> The information sought is meant to help the adjudicator determine whether to grant or deny the application or petition.<sup>168</sup> USCIS' Policy Manual provides the parameters for the issuance of an RFE, noting that an adjudicator should issue an RFE when the facts and law warrant its issuance, but should not issue an RFE if the adjudicator determines the evidence already submitted establishes eligibility or ineligibility, observing that unnecessary RFEs “can delay case completion and result in additional unnecessary costs to both the government and the benefit requestor.”<sup>169</sup>

The Policy Manual also states that “RFEs should:

- Identify the eligibility requirement(s) that has not been established and why the evidence submitted is insufficient;
- Identify any missing evidence specifically required by the applicable statute, regulation, or form instructions;
- Identify examples of other evidence that may be submitted to establish eligibility; and
- Request that evidence.”<sup>170</sup>

<sup>163</sup> USCIS Web page, “Form I-129 Petition for a Nonimmigrant Specialty Occupation Worker (H-1B) by Fiscal Year, Month and Case Status (October 1, 2016–December 31, 2022)” (Mar. 31, 2023); [https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?ddt\\_mon=&ddt\\_yr=2023&query=Nonimmigrant+Worker+Petitions&items\\_per\\_page=10](https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?ddt_mon=&ddt_yr=2023&query=Nonimmigrant+Worker+Petitions&items_per_page=10) (accessed May 23, 2023).

<sup>164</sup> According to publicly available data, the H-1B RFE rate in Fiscal Year 2022 was 9.6 percent. This contrasts with prior H-1B RFE rates in years past that were much higher, for example 38 percent in 2018, and 40.2 percent in 2019. See USCIS, “Report on H-1B Petitions Fiscal Year 2022 Annual Report to Congress” (Feb. 22, 2023); <https://www.uscis.gov/sites/default/files/document/reports/FY-2022-Annual-Report-H-1B-Petitions.pdf> (accessed May 22, 2023).

<sup>165</sup> The L-1A nonimmigrant classification enables (1) a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States, or (2) a foreign company that does not yet have an affiliated U.S. office to send an executive or manager to the United States with the purpose of establishing one. USCIS Web page, “L-1A Intracompany Transferee Executive or Manager” (May 4, 2021); <https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager> (accessed Feb. 28, 2023).

<sup>166</sup> The L-1B nonimmigrant classification enables (1) a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization's interests from one of its affiliated foreign offices to one of its offices in the United States, or (2) a foreign company that does not yet have an affiliated U.S. office to send a specialized knowledge employee to the United States to help establish one. INA § 101(a)(15)(L); 8 U.S.C. § 1101(a)(15)(L); USCIS Web page, “L-1B Intracompany Transferee Specialized Knowledge” (May 4, 2022); <https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge> (accessed Feb. 28, 2023).

<sup>167</sup> 1 USCIS Policy Manual, Pt. E, Ch. 6(F); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed May 1, 2023).

<sup>168</sup> Applicable regulations governing the use of RFEs can be found at 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii). Addressing initial evidence, § 103.2(b)(8)(ii) states: “If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.” § 103.2(b)(8)(iii) addresses other evidence, stating: “If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the benefit request for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the benefit request and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.”

<sup>169</sup> 1 USCIS Policy Manual, Pt. E, Ch. 6(F); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed May 31, 2023).

<sup>170</sup> USCIS Policy Manual, Pt. E, Ch. 6(F)(3); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed May 1, 2023).

The Policy Manual also contains a relevant section entitled “Considerations Before Issuing Requests for Evidence or Notices of Intent to Deny,” noting that instead of or in addition to issuing an RFE, the officer may also perform additional research, interview the benefit requestor or other witnesses, or initiate an investigation.<sup>171</sup>

Finally, providing guidance to adjudicators on what “performing additional research” means in this context, the Policy Manual is clear:

“Although the burden of proof to establish eligibility for an immigration benefit is on the benefit requestor, an officer may assess, before issuing an RFE or a [Notice of Intent to Deny] NOID, whether the information or evidence needed is available in USCIS records or systems. Officers have the discretion to validate assertions or corroborate evidence and information by reviewing USCIS (or other governmental) files, systems, and databases, or by obtaining publicly available information that is readily accessible.

“For example, an officer may, in the exercise of discretion, verify information relating to a petitioner’s corporate structure by consulting a publicly available government website or corroborate evidence relating to a person’s history of nonimmigrant stays in the United States by searching a U.S. government database (citations omitted).”<sup>172</sup>

## How USCIS Adjudicates Benefit Submissions

It is incumbent on an immigration benefit requestor to demonstrate that they are eligible for the immigration benefit sought.<sup>173</sup> A requestor therefore must submit relevant, probative, and credible evidence demonstrating that the petition or application meets each specific eligibility requirement.<sup>174</sup> There are two types of evidence: primary evidence and secondary evidence. Primary evidence proves an eligibility requirement on its own; secondary evidence is evidence that may demonstrate a fact is more likely than not true but is “not derive[d] from

a primary, authoritative source.”<sup>175</sup> If the requestor’s evidence meets the burden of proof to establish their eligibility for the benefit, in most cases USCIS can then approve the benefit. However, in addition to meeting basic requirements for the immigration benefit sought, in some cases requestors must also show that their request merits a favorable exercise of discretion.<sup>176</sup>

**Preponderance of Evidence Legal Standard.** When evaluating submitted evidence, USCIS generally uses the “preponderance of evidence” legal standard of review.<sup>177</sup> USCIS adjudicators examine each piece of evidence to determine whether it is:

- relevant, probative, and credible, and
- sufficient (both individually and together with the other evidence) to determine if a fact is more likely than not true, or probably true.<sup>178</sup>

Importantly, the preponderance of evidence legal standard does not demand that the benefit requestor convince a reviewing adjudicator that the submission should be approved, or to extinguish all doubt about whether a given fact or conclusion is true. Rather, when probative and credible evidence is advanced that tends to make a fact more likely than not true, the preponderance of evidence legal standard teaches that fact has been established even if incontrovertible evidence is absent.<sup>179</sup>

In conducting an adjudication, USCIS adjudicators assign a weight to each piece of evidence. The term “weight” in this context means evaluating the strength, value, and believability of that evidence. In some cases, the requestor may submit primary evidence (e.g., an

<sup>175</sup> 1 USCIS Policy Manual, Pt. E, Ch. 6(B); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed May 1, 2023).

<sup>176</sup> 1 USCIS Policy Manual, Pt. E, Ch. 8; <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8> (accessed May 1, 2023).

<sup>177</sup> 1 USCIS Policy Manual, Pt. E, Ch. 4(B); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-4> (accessed May 1, 2023). The “burden of proof” establishes which party must advance evidence to prove a fact. As applied to administrative adjudications, the burden of proof describes which party is charged with the responsibility of providing evidence in the matter at hand. In nearly all USCIS immigration benefit proceedings, the burden of proof is on the benefit requestor.

<sup>178</sup> *Id.* See also *Matter of Chawathe*, 25 I & N Dec. 369 (AAO 2010) and *Matter of Soo Hoo*, 11 I & N Dec. 151 (BIA 1965).

<sup>179</sup> USCIS training materials provide an alternative gloss on this: “... the purpose of the RFE is not to remove all doubt of ineligibility as that would be an application of a higher standard.” Furthermore, in the same document, the training materials discourage adjudicators from issuing RFEs based on conjecture. Elsewhere, in the context of applying an even higher standard of proof, “clearly and beyond doubt,” the materials state: “adjudicator [may not] properly deny adjustment on the basis of a purely hypothetical possibility that the applicant might be inadmissible. There must be at least some evidence that would permit a reasonable person to make a particular factual finding. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

<sup>171</sup> 1 USCIS Policy Manual, Pt. E, Ch. 6(F)(2); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed May 1, 2023). This same passage states: “[e]ach option requires varying degrees of resources. Therefore, officers should carefully evaluate each option when deciding next steps.”

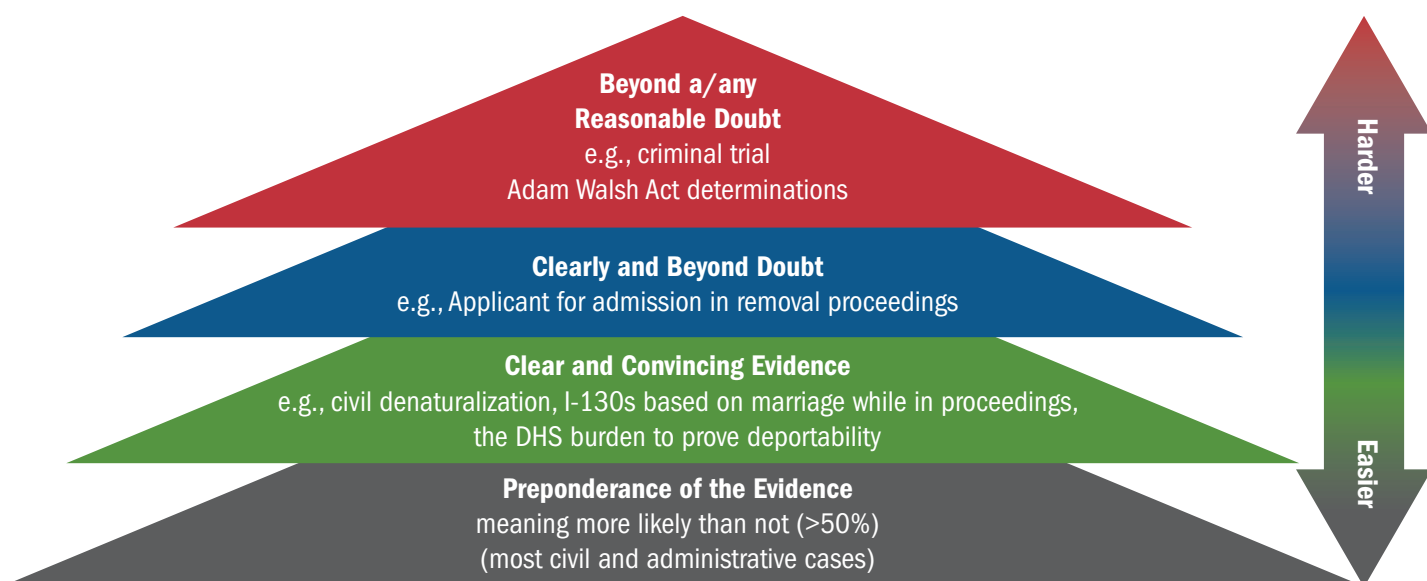
<sup>172</sup> *Id.*

<sup>173</sup> See 1 USCIS Policy Manual, Pt. E, Ch. 4(A); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-4> (accessed May 1, 2023).

<sup>174</sup> 1 USCIS Policy Manual, Pt. E, Ch. 6; <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed June 6, 2023).



**Figure 3.1** Basic Standards of Proof—The Level of Proof (Evidence) to Prove a Fact



Source: USCIS Training Module BSC 261, Burden and Standards of Proof, Participant Guide. Revision Date: February 2021, USCIS Academy Training Center.

official birth certificate), which makes issuing a decision a relatively straightforward exercise. In others, however, requestors rely on secondary evidence (e.g., a sworn statement, written accounts of oral histories, or other evidence from non-governmental or unofficial sources, etc.) to prove specific eligibility requirements. Often petitioners submit multiple pieces of evidence to establish that they meet the applicable eligibility requirements. Since secondary evidence is by definition less persuasive than primary evidence, it is here where the task of assigning weight is more difficult.

When the required initial evidence is missing or clearly does not establish eligibility, USCIS can deny the case for lack of initial evidence or ineligibility. Alternatively, adjudicators are to issue an RFE or NOID explaining what evidence is missing or is still needed.<sup>180</sup> The requestor must then respond to the RFE or NOID<sup>181</sup> by the due date and submit all the evidence requested, or risk having their application denied as abandoned.

**USCIS' Deference Policy.** USCIS generally approves or denies applications on a case-by-case basis.<sup>182</sup> Yet it also has employed a “deference” policy that applies when adjudicating petition extension cases.<sup>183</sup> In these

cases, since the requestor was previously approved for the status requested, the deference policy instructs USCIS adjudicators to approve cases when the extension filing involves the same parties and facts as the initial petition. This is both logical and useful since the facts and the law have been evaluated previously by the agency, and absent a change, allows the agency to conserve resources by eliminating repetitive review.

The agency's current deference policy<sup>184</sup> instructs that when adjudicating extension requests involving the same parties and facts, USCIS adjudicators are expected to defer to the previous determination, but should not defer to prior approvals in cases where:

- The previous decision involved a material error,
- There has been a material change in circumstances or eligibility requirements, or
- There is new material information that adversely impacts requestor's eligibility, for example indicators of petition fraud.<sup>185</sup>

<sup>180</sup> 8 C.F.R. § 103.2(b)(8).

<sup>181</sup> While similar in some ways to an RFE, a Notice of Intent to Deny (NOID) is distinct and is beyond the scope of this article.

<sup>182</sup> 2 USCIS Policy Manual, Pt. A, Ch. 4(B)(1); <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (accessed June 5, 2023).

<sup>183</sup> *Id.*

<sup>184</sup> USCIS Policy Alert, “Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity” (Apr. 27, 2021); <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf> (accessed May 24, 2023). USCIS first issued guidance to adjudicators on the use of deference on April 23, 2004, but this guidance was rescinded on October 23, 2017, and subsequently restored in April 2021.

<sup>185</sup> 2 USCIS Policy Manual, Pt. A, Ch. 4(B)(1); <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (accessed May 1, 2023).

If an adjudicator is inclined to deviate from a previous approval, they “must articulate the reason for not deferring to the previous determination.”<sup>186</sup> The Policy Manual further states that “deviation from a previous approval carries important consequences and implicates predictability and consistency concerns,” so much so that the deference policy requires adjudicators to “*obtain supervisory approval before deviating from a prior approval in their final decision*” (emphasis added).<sup>187</sup>

The CIS Ombudsman believes the agency’s deference policy promotes necessary efficiency. It streamlines the adjudication process by acknowledging that the preceding filing involving the same parties and facts was deemed approvable. This policy produces regularity and predictability without sacrificing integrity. It has always been troublesome, however, that the policy has its limitations, in particular, one aspect of the deference policy, entitled “Cases Involving Previous Determinations by Other Agencies.” This subsection states:

“USCIS officers consider, but do not defer to, previous eligibility determinations on petitions or applications made by CBP [U.S. Customs and Border Protection] or DOS [the U.S. Department of State]. Officers make determinations on the petition filed with USCIS corresponding evidence on record, as provided above.”<sup>188</sup>

This exception disallows giving deference to extensions that were previously adjudicated by CBP officers implementing authorities granted to them under the United States-Mexico-Canada Agreement (USMCA),<sup>189</sup> and to individuals entering on L-1 blanket petitions whose visas are adjudicated by DOS consular officers pursuant to a regulatory provision authorizing them to adjudicate an individual beneficiary’s eligibility.<sup>190</sup> Blanket L petitions are limited to the largest multinational companies, those

with three or more domestic and foreign branches, subsidiaries, or affiliates, and have at least 1,000 U.S. employees, or \$25 million in annual combined sales from U.S. subsidiaries or affiliates, or have obtained approval of petitions for at least 10 “L” managers, executives, or specialized knowledge professionals during the previous 12 months.<sup>191</sup> Essentially, these are U.S. entities that have proven to USCIS that they are presumptively qualified to serve as an L-1 petitioner. Additionally, pursuant to a corresponding regulatory provision, consular officers “may grant ‘L’ classification only in clearly approvable applications.”<sup>192</sup> The legal standard of review used by a DOS consular officer when reviewing a blanket L visa petition—“clearly approvable”—actually exceeds the “more likely than not” preponderance of evidence legal standard used by USCIS. There appears to be no stated rationale for USCIS’ position to exclude DOS-approved blanket L adjudications presented by a beneficiary at a consular post.

**The Impact of RFEs.** An RFE can have negative consequences. Processing delays are the most immediate and general consequence. When an adjudicator issues an RFE, the case will remain pending until the required documents are submitted. The case may remain pending for even longer due to external factors, such as mailing delays, the time taken for gathering evidence, difficulty in obtaining additional evidence, file transfers within the agency, or even the temporary unavailability of the adjudicator to assess the evidence once the petitioner’s response is received.

RFEs generally increase costs to the petitioner. While eventually most L-1 requestors can and do respond successfully to an RFE and ultimately obtain the desired outcome,<sup>193</sup> many will retain an attorney to prepare a response, especially in L-1 cases. While not always true, receiving an RFE can also result in a delay of crucial assignments or projects, again imposing yet another cost on a petitioner. While the proposed beneficiary of an L-1 petition is not considered a direct party to the filing itself, the issuance of an RFE can also significantly disrupt the beneficiary’s travel plans, create schooling problems for

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> 2 USCIS Policy Manual, Pt. A, Ch. 4(B)(2); <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (accessed May 1, 2023).

<sup>189</sup> Pursuant to the United States-Mexico-Canada Agreement (USMCA), CBP officers may adjudicate visa petitions filed by Canadian citizens who present themselves at the U.S. border seeking admission in L-1, TN, E-1, E-2, and H-1B status. However, the standard of proof CBP applies when reviewing such petitions is beyond the scope of this study. See generally United States-Mexico-Canada Agreement Implementation Act, Pub. L. No. 116-113; 19 U.S.C. § 4501 (2020) and Conforming Amendments Related to Temporary Entry of Business Persons Under the Agreement Between the United States of America, the United Mexican States, and Canada; <https://www.federalregister.gov/documents/2022/07/11/2022-14728/conforming-amendments-related-to-temporary-entry-of-business-persons-under-the-agreement-between-the> (accessed June 3, 2023).

<sup>190</sup> 8 C.F.R. § 214.2(l)(5)(i).

<sup>191</sup> 8 C.F.R. § 214.2(l)(4)(i).

<sup>192</sup> 8 C.F.R. § 214.2(l)(5)(ii)(E).

<sup>193</sup> Data shows that 65.1 percent of L-1 cases that receive an RFE are ultimately approved. USCIS Web page, “Form I-129 Petition for a Nonimmigrant Worker, Intracompany Transferee Executive or Manager (L-1A) Intracompany Transferee Specialized knowledge (L-1B) by Fiscal Year, Month and Case Status (October 1, 2016–December 31, 2022)” (Mar. 31, 2023); [https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?ddt\\_mon=&ddt\\_yr=2023&query=Nonimmigrant+Worker+Petitions&items\\_per\\_page=10](https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?ddt_mon=&ddt_yr=2023&query=Nonimmigrant+Worker+Petitions&items_per_page=10) (accessed May 23, 2023).

dependent children, and affect their personal finances as they wait for USCIS to approve the petition. These tangible costs can add up quickly.

Additionally, the issuance of an RFE imposes costs on the agency which may not be fully covered by filing fees.<sup>194</sup>

<sup>194</sup> Based on USCIS’ explanation of how it sets its fees, it is unclear whether USCIS is capturing the complete cost burden to the agency of the issuance of RFEs. USCIS informed the CIS Ombudsman that adjudicator “touch-time” (i.e., the amount of time that when the adjudicator is reviewing and deciding on a benefit submission) broadly captures touch-time involving RFEs. We were also informed, however, that the agency does not separately measure or track RFE touch-time. In the Supporting & Related Materials in the most recent Fee Rule proposal published in the Federal Register on January 4, 2023, the agency states: “USCIS uses completion rates to identify the adjudicative time required to complete each specific form type. The rate for each form type represents the average time required for an Immigration Service Officer (ISO) to adjudicate that form type.” USCIS “Immigration Examinations Fee Account Fee Review Model Documentation” (Jan. 2023), p. 13; <https://www.regulations.gov/document/USCIS-2021-0010-0030> (accessed May 24, 2023). At a minimum, it does not appear that the additional handling and mailing costs to send out RFEs and route the responses back to the adjudicator are captured.

Adjudicators must take the time to draft the RFE and review the case after the response comes back to determine if the additional information allows them to render a final decision, which also adds to the amount of time the adjudication takes. Issuing more RFEs accordingly impacts the overall processing time for all L-1 petitions filed—time that is justified if the RFEs themselves are.

### CIS Ombudsman’s 2010 RFE Recommendations and USCIS’ Response

In our first review of RFEs in the CIS Ombudsman’s 2010 Annual Report, we determined that USCIS’ use of RFEs had become a systemic problem that impaired agency productivity and delayed adjudications, and their widespread use was unjustified. We issued four recommendations to USCIS.

2010 Annual Report Recommendations	USCIS’ Response to the 2010 Annual Report (November 2010)
(1) Implement new and expanded training to ensure that adjudicators understand and apply the preponderance of evidence [legal] standard in adjudications.	<ul style="list-style-type: none"><li>USCIS acknowledged the benefit of training and stated that it was implementing additional training for immigration services officers (ISOs) on the standards of evidence, including expanded instruction and practical exercises.</li><li>USCIS stated that it was developing a more uniform standard for how ISOs are to determine whether evidentiary support is sufficient for immigration petitions.<sup>195</sup></li></ul>
(2) Require adjudicators to specify the facts, circumstances, and derogatory information necessitating the issuance of an RFE.	<ul style="list-style-type: none"><li>USCIS was developing an RFE program for all service centers, the “RFE Project,” with the goal of reviewing and rewriting all RFEs as needed to create a library from which all centers will draw standardized template language.</li><li>USCIS stated that it would conduct training for each service center on using standardized templates and evidentiary requirements.</li></ul>
(3) Establish clear adjudicatory L-1B guidelines through the structured notice and comment process of the Administrative Procedure Act.	<ul style="list-style-type: none"><li>USCIS concurred in part with the recommendation, stating that “specialized knowledge” can best be clarified through more detailed guidance, rejecting our proposal to develop guidelines through the notice and comment rulemaking process.</li><li>USCIS stated that it was working on publishing a precedent decision or series of decisions on specialized knowledge as well as updating its existing “specialized knowledge” memoranda in conjunction with a corresponding revision of the AFM [Adjudicator’s Field Manual] regarding the “L” nonimmigrant visa.</li></ul>

<sup>195</sup> USCIS 2010 Annual Report Response, p. 6 (Nov. 9, 2010); <https://www.uscis.gov/sites/default/files/document/reports/cisomb-2010-annual-report-response.pdf> (accessed Apr. 24, 2023).

(4) Require a uniform RFE checklist that adjudicators must use in connection with issuing an RFE and implement a pilot program requiring 100% supervisory review of one or more product lines.

- USCIS stated that it routinely conducts quality reviews on all forms and classifications at its service centers, as well as on RFEs.
- Although many supervisors conduct quality reviews as part of the performance evaluation of their employee and “periodic reviews” and “spot check” reviews concurrently occur, USCIS believed it would be too time-consuming and resource-intensive to routinely conduct 100 percent RFE reviews on one or more product lines.
- USCIS suggested that, when new guidance is issued or training has occurred, it may implement 100 percent supervisory review for a limited time to ensure adjudicators correctly apply the new guidance.
- USCIS cited to its “RFE Project” where it published updated RFE templates for each nonimmigrant business visa classification for public comment. It stated that a vital part of the project would be training at service centers to teach adjudicators how to use the revised RFE templates.
- USCIS said that it would be difficult to develop a uniform checklist for adjudicators to complete before issuing an RFE. It gave the example of Form I-129, *Petition for a Nonimmigrant Worker*, which can be used to petition for 19 different nonimmigrant classifications, each with several variations.

Source: USCIS 2010 Annual Report Response, pp. 9–10 (Nov. 9, 2010); <https://www.uscis.gov/sites/default/files/document/reports/cisomb-2010-annual-report-response.pdf> (accessed Apr. 24, 2023). USCIS issued L-1B Policy Guidance (PM-602-0111) on August 17, 2015. USCIS Policy Memorandum, “L-1B Adjudications Policy,” PM-602-0111 (Aug. 17, 2015); <https://www.aila.org/File/DownloadEmbeddedFile/65500> (accessed Apr. 25, 2023). On August 16, 2022, USCIS issued additional L-1 policy guidance via a USCIS Policy Alert, “L-1 Intracompany Transferees,” PA-2022-20 (Aug. 16, 2022); <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220816-IntracompanyTransferees.pdf> (accessed May 19, 2023). This guidance has been integrated into the agency’s Policy Manual regarding intracompany transferees. 2 USCIS Policy Manual, Pt. L; <https://www.uscis.gov/policy-manual/volume-2-part-l> (accessed Apr. 25, 2023).

During our current review, we learned that USCIS does use checklists for some forms, including for example, Form I-140, *Immigrant Petition for Alien Workers*, which like Form I-129 has multiple variations for its various sub-classifications (including L-1s). USCIS advised, however, that it does not currently use either a generalized checklist for RFEs that ensures that adjudicators complete certain actions and comply with controlling guidance before issuing an RFE, such as identifying in the RFE each piece of evidence submitted in the original filing with an explanation of why it was not deemed sufficient to establish a material fact.<sup>196</sup> In the absence of a checklist that becomes part of the official record of proceedings,<sup>197</sup> there is concern that the RFE process lacks standardization, which opens the potential of issuing improvident RFEs or those otherwise not in compliance with adjudications policy.

## Stakeholder Concerns

Consistent with our 2010 RFE study, stakeholders continue to identify difficulties with USCIS RFEs.<sup>198</sup> In summary, stakeholders claim RFEs issued by the agency are:

- **Redundant**—Stakeholders have long reported receiving RFEs seeking documents and other information that they previously submitted, causing many to question whether the reviewing adjudicator is thoroughly reviewing the file or instead is skimming through the submission.
- **Boilerplate**—Stakeholders also complain that the RFEs that are issued are overly lengthy, include pages of boilerplate language which are not useful, and are not tailored to the facts of the case. For example, in response to a petition seeking an L-1A executive, petitioners are often sent an RFE that not only discusses the elements of proof for an L-1A executive position, but also contains boilerplate passages discussing intracompany managers or specialized workers—which are irrelevant to the petition submitted.
- **Burdensome**—Stakeholders also express dismay with receiving RFEs that request multiple documents establishing or corroborating the same fact, requests that the petitioner considers proprietary or confidential,

<sup>196</sup> Information provided by USCIS (Feb. 27 and Apr. 26, 2023).

<sup>197</sup> For information on what constitutes a “record of proceedings,” see 1 USCIS Policy Manual, Pt. E, Ch. 2; <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-2> (accessed May 1, 2023).

<sup>198</sup> Information provided by stakeholders (Nov. 30 and Dec. 15, 2022).



requests for information that would be burdensome given the size of the company and the volume of data that would be responsive to the request, and, not infrequently, requests for named individuals’ salary information. On this last point, stakeholders inform the CIS Ombudsman that the confidentiality of an individual’s salary is sometimes protected by a foreign country’s privacy laws.<sup>199</sup>

- *Inaccurate*—Stakeholders further report that they receive RFEs that state the evidence offered was insufficient to establish a specific proof element, but in reciting the evidence that was considered, fails to refer to all the evidence submitted, causing concern that it was not considered or was separated from the filing.
- *Inadequate*—Perhaps most importantly, stakeholders frequently assert that RFEs cite to petitioner statements or documents submitted in support of a proof element, but then jump to the conclusion that the evidence submitted

<sup>199</sup> Stakeholders referenced privacy and confidentiality provisions found in the European Union’s (EU) General Data Protection Regulation, commonly referred to as GDPR. Official Journal of the European Union, “Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),” L 119/1 (2016); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679> (accessed June 5, 2023).

is considered insufficient without explaining why, leaving the benefit requestor to have to guess at the deficiency.

## USCIS L-1 RFE Performance Data (2017–2023)

According to publicly posted performance data reporting composite L-1A and L-1B RFE data, shown below, from Fiscal Year (FY) 2016 through Quarter 1 of FY 2023, USCIS issued RFEs in 45.7 percent of completed cases, including those requesting a petition extension. In FY 2020, when USCIS policy explicitly barred its adjudicators from affording deference to prior USCIS adjudications involving the same petitioner, beneficiary, and underlying facts, 54.4 percent of completions had an RFE, meaning that an RFE was issued in more than half of all L-1 petitions completed. In FY 2021, the RFE rate remained high, with the agency still issuing RFEs in slightly more than half (52.3 percent) of completed cases. USCIS reinstated its deference policy midway through FY 2021.<sup>200</sup>

FY 2022 data shows a marked drop in L-1 RFE rates, down from 52.3 to 36.5 percent, which we believe is reflective of a full year of adjudications completed under

<sup>200</sup> USCIS Policy Alert, “Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity” (Apr. 27, 2021); <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf> (accessed May 24, 2023).

**Figure 3.2** Form I-129 L-1A and L-1B Petitions, FY 2017–FY 2023 (Q1)

Period		Petitions by Case Status							
Fiscal Year	Petitions Received	Initially Approved	Initially Denied	Total Completions	Approved (%)	Completions with RFE	Completions with RFE (%)	Approved with RFE	Approved with RFE (%)
<b>Total (FY 2017 to Q1 FY 2023)</b>	<b>255,706</b>	<b>200,830</b>	<b>54,711</b>	<b>255,541</b>	<b>78.60%</b>	<b>116,686</b>	<b>45.70%</b>	<b>66,582</b>	<b>57.10%</b>
2017 Total	42,808	35,681	8,477	44,158	80.80%	16,002	36.20%	7,915	49.50%
2018 Total	41,298	29,535	8,426	37,961	77.80%	17,325	45.60%	9,168	52.90%
2019 Total	41,191	29,334	11,467	40,801	71.90%	22,155	54.30%	11,246	50.80%
2020 Total	40,068	25,943	8,694	34,637	74.90%	18,758	54.20%	10,582	56.40%
2021 Total	39,409	32,891	8,552	41,443	79.40%	21,688	52.30%	14,175	65.40%
2022 Total	41,797	38,781	7,617	46,398	83.60%	16,943	36.50%	11,028	65.10%
2023 Total (Q1)	9,135	8,665	1,478	10,143	85.40%	3,815	37.60%	2,468	64.70%

Source: USCIS Web page, “Form I-129 Petition for a Nonimmigrant Worker, Intracompany Transferee Executive or Manager (L-1A) Intracompany Transferee Specialized Knowledge (L-1B) by Fiscal Year, Month and Case Status (October 1, 2016–December 31, 2022)” (Mar. 31, 2023); [https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?ddt\\_mon=&ddt\\_yr=2023&query=Nonimmigrant+Worker+Petitions&items\\_per\\_page=10](https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?ddt_mon=&ddt_yr=2023&query=Nonimmigrant+Worker+Petitions&items_per_page=10) (accessed May 23, 2023).

the agency’s reinstated deference policy. FY 2023 data, while still preliminary, shows that the L-1 RFE rate rose only slightly, from 36.5 to 37.6 percent of completed cases as of the first quarter.

Apart from the RFE rates, USCIS performance data also shows that in FY 2022, nearly two-thirds (65.1 percent) of all cases that received an RFE were subsequently approved. FY 2023 data through the first quarter held steady, with 64.7 percent being subsequently approved.

## The CIS Ombudsman’s Review of Randomized L-1 RFE Cases

To ensure that this study is both thorough and complete, the CIS Ombudsman, with USCIS’ cooperation, conducted a limited review of random L-1 petitions in which USCIS issued an RFE. We worked with USCIS to obtain separate small RFE data sets for L-1A and L-1B petitions. From a list of more than 9,000 L-1 extension cases completed in FY 2022, we randomly selected 20 L-1A and 20 L-1B extension cases that had been issued RFEs, and for each, we had CIS Ombudsman staff conduct a full review of the “record of proceedings” in each case. Each reviewer separately reviewed all 40 cases using the same review criteria to assess if the RFE was properly issued, and if not, what we found to be problematic, which included:

- Were the requested documents submitted in the initial filing?
- Did the evidence initially submitted clearly meet the preponderance of evidence legal standard?
- Did the RFE request a breakdown of the job duties even though the initial submission provided sufficient specifics?
- Did the RFE fail to identify all evidence submitted?
- Did the RFE discount the petitioner’s statement of case or elements of proof without cause?
- Did the RFE explain why particular evidence presented was insufficient?
- Was there a weight of evidence problem, *e.g.*, was it determined to be self-serving?
- Did the RFE request excessive/unnecessary corroboration?
- Did the RFE clearly fail to identify what eligibility requirements the requestor had not met?

When our reviewers agreed on whether a particular RFE was proper or had overlapping concerns about the RFE, we

coded those cases using the above criteria and registered the results. When the reviewers irreconcilably conflicted, we noted that fact and considered the RFE properly issued. (In such cases, we concluded that there was room for reasonable minds to differ on material issues, including whether the preponderance of evidence legal standard was met.)

Based on this limited sampling, we assessed that 21 of the 40 L-1A and L-1B files reviewed involved the issuance of questionable RFEs. Based on our review of the facts and documentation submitted, we concluded that the burden of proof was met in favor of the benefit sought by a preponderance of evidence based on the record of the original filing, and its supporting documents. In reaching this conclusion, our case review approach included what we have come to believe to be important considerations that reviewing adjudicators do not appear to be taking into account:

- In petition extension filings for beneficiaries who were previously approved for an L-1 visa based on a blanket L petition, meaning where a DOS consular officer previously determined that the request was “clearly approvable,” we followed USCIS’ current position that it does not defer to adjudications made by other agencies.<sup>201</sup> However, consistent with the agency’s deference policy, we also gave “consideration” to the prior adjudication, and deemed it as an important “fact” that is part of the “record,” and accordingly entitled to evidentiary weight—weight that appeared to be missing from the adjudication.
- Where we found nothing in the record of proceedings to cause us to question the representation advanced in a petitioner statement of the case included with the filing, and specifically describing the basis for the company’s claim of status as a qualified multinational enterprise with one or more affiliated entities in the United States and overseas, and or otherwise describing the nature of the L-1 position (executive, managerial, or specialized knowledge) and the beneficiary’s qualifications to fill the position, we credited that statement as material,

<sup>201</sup> 2 USCIS Policy Manual, Pt. A, Ch. 4(B)(2); <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (accessed May 1, 2023).

probative, and credible evidence that had to be given evidentiary weight.<sup>202</sup>

We also found it noteworthy that some adjudicators appear to highlight certain words or passages in a given support document, presumably as an aid to assist them as they adjudicate the submission, but in most of the cases, neither petitioners' statements nor supporting documents were annotated. Additionally, we found that one of the files contained a checklist, but USCIS advised that this may have been produced by the adjudicator, and is not an official standardized checklist.<sup>203</sup> Lastly, USCIS advised that it does not have a specific protocol requiring or prohibiting adjudicators from making notes and/or adding them to the official record of proceedings, but if notes were made on the documents or inserted into the file, they would not be removed.<sup>204</sup>

## The Use of RFEs in L-1s

***USCIS Should Develop Case-Based Trainings on the Preponderance of Evidence Legal Standard.*** The quantity and quality of RFEs issued today remains a CIS Ombudsman concern despite USCIS' multi-year "RFE Project" to address some of the recommendations in our 2010 Annual Report.

Our principal conclusion is that despite the efforts made to date, USCIS adjudication training and guidance do not appear to fully instruct adjudicators on how to apply the preponderance of evidence legal standard. What we found was that during the initial adjudicator training ("Basic") at the USCIS Training Academy, only 2 hours of a 5 week program appear to directly address the preponderance of evidence legal standard.<sup>205</sup> In addition, in a 16-page training document that expressly addresses the subject of legal standards of proof and the burdens of proof, approximately 2 pages were dedicated specifically to the preponderance of evidence legal standard, 2 pages to

"clear and convincing," a standard applied infrequently and in very limited circumstances,<sup>206</sup> and 1 page to "beyond any reasonable doubt," a standard used only in filings made pursuant to the Adam Walsh Child Protection and Safety Act of 2006.<sup>207</sup> As to the 2 pages covering the preponderance standard, they merely repeat the same USCIS Policy Manual material cited earlier in this study. The Basic materials also include optional materials on standards of proof.

Further, USCIS reports that training on preponderance of the evidence is generally issued to new officers or as a refresher training when deemed appropriate by respective Service Center leadership. The Office of the Chief Counsel (OCC) has led preponderance training in the past based on need, as determined by local management or counsel. "When giving L-1 training, examples/scenarios related to preponderance of the evidence are worked into discussions or case reviews, as appropriate."<sup>208</sup> The CIS Ombudsman believes that a more standardized and consistently reinforced training program is needed to better serve the agency.

Without such standardized training on the application of the preponderance of evidence standard to specific facts in what are relatively complex submissions, unnecessary RFEs can result. Such RFEs unnecessarily burden the adjudications process, contribute to longer processing times and mounting backlogs, and undermine the agency's obligation to provide high-quality services to its customers in exchange for the filing fees paid.

We recognize that USCIS adjudicators have a challenging task in adjudicating any case, as while they review, weigh, and analyze the provided evidence they must also look for indicators of fraud, adjust to new policy announcements, and work quickly to meet aggressive case completion goals. Meeting all of these objectives can lead to less than

<sup>202</sup> *Treasure Craft of California*, 14 I & N Dec. 190, 194 (Reg. Comm. 1972) ("The petitioner's statement *must be given due consideration*; however, this Service is not precluded from rejecting such statement when it is contradicted by other evidence in the record of the matter under consideration" (*emphasis added*). Additionally, the CIS Ombudsman notes that Form I-129, *Petition for Nonimmigrant Worker*, like other forms, contains a "Declaration, Signature, and Contact Information of Petitioner or Authorized Signatory" section, which in pertinent, states: "I certify, under *penalty of perjury*, that I have reviewed this petition and that *all of the information contained in the petition*, including all responses to specific questions, *and in the supporting documents, is complete, true, and correct*" (*emphasis added*). Form I-129, *Petition for Nonimmigrant Worker*; <https://www.uscis.gov/sites/default/files/document/forms/i-129.pdf> (accessed June 3, 2023).

<sup>203</sup> Information provided by USCIS (June 2, 2023).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> Specifically, the clear and convincing standard is applied in adjustment of status filings based upon marriages entered into while the applicant was in removal proceedings (INA § 245(e)(3); 8 U.S.C. § 1255(e)(3)); parent-child relationship petitions where the petitioner previously failed to claim the child (*Matter of Ma*, 20 I&A Dec. 394 (BIA 1991)); certificate of citizenship applications in which the applicant must establish a blood relationship with their U.S. citizen (INA § 309(a); 8 U.S.C. § 1409(a)); and filings where the petitioner seeks to qualify the beneficiary for exceptions to H-1B and L-1 nonimmigrant time limitations (8 C.F.R. §§ 214.2(h)(13)(v) and 214.2(l)(12)(ii)).

<sup>207</sup> These are cases involving a petitioner who was previously convicted of specified offense against a minor. USCIS Interoffice Memorandum, "Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006" (Feb. 8, 2007); <https://www.uscis.gov/sites/default/files/document/memos/adamwalshact020807.pdf> (accessed May 19, 2023).

<sup>208</sup> Information provided by USCIS (June 2, 2023).

consistent results, especially in cases involving highly complex business or technical matters.

We reviewed portions of training modules USCIS currently uses to train newly hired adjudicators and determined that no single training module or period of time appears to be dedicated specifically to developing expertise in assigning weight to the evidence. This skill is critical in deciding when to issue an RFE, what additional information to request, and ultimately whether to approve the application or petition. Although we found references to the preponderance of evidence standard in several training modules on specific petition types, they were brief, conclusory, and not particularly instructive.

While we did find two instances in the training materials where factual scenarios were discussed and analyzed applying the preponderance standard, they were limited to petitions for relatives and adjustment of status, as well as naturalization cases. Absent from the materials are any discussion and authoritative analysis of how to apply controlling law, regulation, and policy using the preponderance standard, especially in L-1 petition fact patterns or other complex business-related petitions. USCIS did inform the CIS Ombudsman that it does conduct analysis of real-world business immigration filings at service centers, but it appears this is non-standardized training, informal, and the CIS Ombudsman was not provided with any materials used.<sup>209</sup> These are conducted post-adjudication or after a decision is sent back to a service center for further action after being overturned by the Administrative Appeals Office.<sup>210</sup>

The CIS Ombudsman believes that USCIS adjudicators could benefit by supplementing its existing training using a case-study format. Such training would inculcate adjudicators on the agency's approved assessment in a real-world scenario, and most ideally, would allow instructors to explain the rationale for the correct conclusions. In trainings facilitated by skilled instructors, adjudicators would move well beyond the ability to identify correctly and define the evidentiary standard; the case study format would provide standardized training on *how* they are expected to apply the standard.

As we recommended in 2010, classroom training on the application of the preponderance of evidence standard using real-world cases specific to petition/application types is needed. Ideally, such trainings would cover:

- A discussion of the probative value and weight of the various materials submitted

- A discussion of why the evidence that was provided in the case study satisfied or failed to satisfy particular immigration benefit requests' eligibility requirements
- A discussion of any factual or legal questions raised by the evidence presented or of record
- A discussion of whether the submission should be adjudicated based on the information provided, and if not, why the issuance of an RFE is appropriate
- An official and clear agency answer to each of the above discussion points, so that the adjudicator has a transparent and uniform framework for factual analysis.

***Adjudicators Do Appear to be Giving Deference to Prior USCIS Decisions in Extension Cases.*** Stakeholders have provided the CIS Ombudsman with several examples of L-1 extension filings demonstrating that at least some reviewing adjudicators in certain cases are refusing to give deference to a prior USCIS adjudication on the same facts, as is instructed by existing policy. Of the 40 random cases, most were filings involving petitions where the previous petition approval was made by a DOS consular officer, and not by USCIS. We therefore cannot cite to our case review as providing useful insight on this issue.

Based on the L-1 performance data previously cited showing that L-1 RFE rates dropped from 52.3 to 36.5 percent in the year following the agency's reinstatement of its previous longstanding deference policy, we believe USCIS adjudicators are applying this policy.

***Consideration of USCIS' "RFE Project."*** In partial response to stakeholder complaints, and parallel to our 2010 recommendations, USCIS undertook a project in April 2010 to review and revise its RFE templates.<sup>211</sup> This project included soliciting feedback from the public on each proposed RFE template revision, inclusive of the L-1B petitions. Interested stakeholders participated in this project and provided comments to the agency prior to their usage.

The CIS Ombudsman acknowledges the significant time and resources USCIS expended in revising its templates. But it is worth considering whether USCIS relied heavily on this project as a "silver bullet" to address stakeholder complaints about unnecessary and/or uninformative RFEs. The revised RFE templates did serve to standardize RFEs, resulting in the issuance of more uniform RFEs containing accurate references to applicable statutes, regulations,

<sup>209</sup> Information provided by USCIS (June 2, 2023).

<sup>210</sup> Information provided by USCIS (Feb. 7, 2023).

<sup>211</sup> USCIS Web page, "Review and Revision of Request for Evidence Templates" (Mar. 9, 2018); <https://www.uscis.gov/outreach/feedback-opportunities/review-and-revision-of-request-for-evidence-templates> (accessed Apr. 27, 2023).



policies, and cases regardless which service center or adjudicator was working a given product line. In a larger sense, however, RFE data and continuing stakeholder concerns<sup>212</sup> about RFEs demonstrate the “RFE Project” did not substantially reduce the incidence of what appear to be unnecessary RFE issuances. Further, it does not appear that the revised RFE templates improved the precision and clarity of RFEs as those examined by the CIS Ombudsman continue to lack the adjudicator’s reason for concluding that the evidence provided was deemed insufficient to establish a given element of proof. Right or wrong, this deficiency causes stakeholders to conclude that USCIS is demanding more evidence than what is required by the preponderance of evidence legal standard.<sup>213</sup>

***Adjudicators Are Not Currently Making Use of All Available USCIS Systems Before Issuing an RFE.***

During this study the CIS Ombudsman asked USCIS whether adjudicators have the ability to access information about prior filings and outcomes as they are reviewing case submissions. For example, a search of USCIS’ Computer Linked Application Information Management System (CLAIMS 3) may inform an adjudicator that prior petitions filed by the same employer have been regularly approved, or denied, or even sent RFEs.<sup>214</sup> Consideration of such information of record may be determinative in close cases where an adjudicator is considering whether or not to issue an RFE. Responding to our inquiry, USCIS confirmed that adjudicators do have access to systems that provide such information, and further advised that they may also request and consider information found in prior petitioner cases to assist them in determining whether to approve a case or issue an RFE.

The USCIS Policy Manual reminds adjudicators that before issuing an RFE, they have “discretion to validate assertions or corroborate evidence and information by reviewing USCIS (or other governmental) files, systems, and databases, or by obtaining publicly available information that is readily accessible.”<sup>215</sup> Exchanges with USCIS on this point informed the CIS Ombudsman that adjudicators do not routinely nor proactively search for

such information, citing generally to the lack of adequate time to conduct such additional research.<sup>216</sup>

In addition, L-1 petitions are one of the categories eligible for premium processing.<sup>217</sup> With the passage of the Emergency Stopgap USCIS Stabilization Act and its implementing regulations, while adjudicators have more time to adjudicate some newly added premium processed petitions and applications, the new legislation did not alter the previous 15-day premium processing requirement for L-1 petitions.<sup>218</sup> The 15-day requirement creates even more pressure on adjudicators to complete their review without first performing additional research of previous petitions that may have been filed by the employer, for other beneficiaries, on issues related to the petitioner itself.

To review previous files in what is still a paper-based system would require these files to be returned to the adjudicator from records storage facilities or archives—which is not a speedy process. The agency would need to build such a review into existing or future systems and rely on online processing for review of the contents of previous files to become routine.

We do encourage the consideration of this kind of review, however, as a means to establish not only a potential reduction of RFEs but as a way to enhance review integrity. This may only be possible when online processing of L-1 petitions is fully incorporated in the adjudication process—something still some years away. The agency might find it worthwhile to put such a consideration into the development of this petition processing as it builds out its capabilities, as petitioners of Ls and other employment-based petitions can often file multiple benefit requests over the course of even just a few years. We recognize this works both ways, enabling adjudicators to spot adverse trends as well as avoid RFEs, but such activity acts as additional quality assurance and improves integrity outcomes.

***USCIS Needs to Establish an RFE Quality Assurance Program.*** According to information provided to our office, at some point in the past USCIS included L-1 visa classification petitions as part of its National Quality Review program, but they do not appear to be included at this time. More importantly, however, USCIS does not have a quality assurance program in place to systematically assess whether unnecessary RFE are being

<sup>212</sup> Information provided by stakeholders (Nov. 30 and Dec. 15, 2022).

<sup>213</sup> *Id.*

<sup>214</sup> CLAIMS 3 is a USCIS case management system that supports the maintenance and tracking of officer casework documentation for many immigration-related requests, except for naturalization, intercountry adoption, and certain requests for asylum and refugee status. *See* DHS Web page, “DHS/USCIS/PIA-016 Computer Linked Application Information Management System (CLAIMS 3) and Associated Systems” (Mar. 31, 2021); <https://www.dhs.gov/publication/dhsuscispia-016-computer-linked-application-information-management-system-claims-3-and> (accessed June 3, 2023).

<sup>215</sup> 1 USCIS Policy Manual, Pt. E, Ch. 6(F)(2); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed May 31, 2023).

<sup>216</sup> Information provided by USCIS (Feb. 7, 2023).

<sup>217</sup> 8 C.F.R. § 106.4(e)(5).

<sup>218</sup> *See* Continuing Appropriations Act, 2021 and Other Extensions Act, § 4102, Pub. L. No. 116-159; 8 U.S.C. § 1356 (2020). *See also* 8 C.F.R. § 106.4(e)(5).

issued.<sup>219</sup> Rather, we learned that the agency’s approach to quality assurance as applied to RFEs is as follows:<sup>220</sup>

- Supervisory immigration services officers (SISOs) review 100 percent of the cases on which new immigration adjudicators work. SISOs do so until they determine the new adjudicator can independently review cases.
- SISOs review randomly selected completed cases as part of their employees’ monthly review. If the adjudicator issued an RFE in the case, their supervisor will review that RFE.
- Any second RFE in the same case matter requires a mandatory supervisor review.

As discussed above, given the cost burden that unnecessary RFEs impose on petitioners (and the sponsored beneficiary and their family) as well as the agency, a robust quality assurance review process would improve adjudications, ensure a more consistent set of outcomes, and lead to decreased processing times.

Unnecessary RFEs delay the case and some stakeholders report that responding to RFEs can sometimes triple or quadruple the costs of preparing the original petition.<sup>221</sup> Unnecessary RFEs also burden the agency itself, bogging down USCIS operations, increasing processing times, and encumbering the agency as it seeks to use its limited resources efficiently. Alternatively, a more structured quality control program would ensure that RFEs are only sent in cases where they are needed.

## Recommendations

While this RFE study was limited to L-1 petitions, many of these same recommendations are transferable to the issuance of RFEs in other employment-related immigrant and nonimmigrant visa petition filings, such as Form I-140, and petitions seeking a worker classification as an H-1B Specialty Occupation Worker; O-1 Individual of Extraordinary Ability or Achievement; P Athlete, Entertainer, or Groups (and associated support personnel); and R-1 Religious Worker.

To improve the quality of RFEs in L-1 cases, and based upon the information provided above, we recommend that USCIS take steps to:

1. ***Develop and provide training that ensures adjudicators understand how to apply the preponderance of evidence legal standard to the evidence typically presented in each type of case by:***
  - a. Designing new classroom training on the preponderance of evidence legal standard using actual cases.
  - b. Including in the new preponderance of evidence trainings how to properly evaluate each separate piece of evidence independently, and how the strength of each case must also be evaluated applying a totality of the evidence presented approach.
  - c. Requiring a mandatory annual refresher training on the preponderance of evidence legal standard for all USCIS personnel who adjudicate cases, and their direct supervisors.
2. ***Develop and provide annual training to ensure that adjudicators know how to comply with applicable regulations for L-1 extension cases.*** USCIS’ OCC should work with the Office of Policy and Strategy and the relevant operational directorates to develop a separate, mandatory training module for adjudicators who are assigned, or may be assigned, to work on L-1 extension filings by the same employer for the same beneficiary and job position. The training module should cover:
  - a. The correct application of the agency’s deference policy as outlined in the USCIS Policy Manual<sup>222</sup> and in the Policy Alert (Subject: Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity) issued on April 27, 2021.
  - b. The application of 8 C.F.R. § 214.2(l)(14)(i) when considering the *extension of visa petition validity in individual L-1 filings*. Section 214.2(l)(14)(i) states, “The petitioner shall file a petition extension on Form I-129 to extend an individual petition under section 101(a)(15)(L) of the Act. *Except in those petitions involving new offices, supporting documentation is not required*, unless requested by the director” (emphasis added).

<sup>219</sup> Information provided by USCIS (Feb. 7, 2023). This would include not only L-1 filings, but also petitions seeking H-1B Specialty Occupations, O-1 Individuals with Extraordinary Ability or Achievement, and others.

<sup>220</sup> Information provided by USCIS (Feb. 7 and Apr. 26, 2023).

<sup>221</sup> Information provided by stakeholders (Nov. 30 and Dec. 15, 2022).

<sup>222</sup> 2 USCIS Policy Manual, Pt. A, Ch. 4(B)(1); <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (accessed May 1, 2023).

**3. *Streamline the L-1 extension petition adjudication for cases involving the same facts with no material changes (such as the same petitioner/beneficiary/job).***

To accomplish this streamlined processing, USCIS should contemplate the following:

- a. Consider extending the deference policy to decisions made by the Department of State.<sup>223</sup>
- b. Establish a rebuttable presumption that timely-filed extension petitions with no material changes in the job, petitioner, and beneficiary are approvable. This would mean that USCIS may only issue an RFE, NOID, or denial if the case has materially relevant derogatory evidence.
- c. Consider whether, in the long term, it may be cost-effective to enhance existing systems to capture information to enable adjudicators to review the outcome of previous petitions filed, as well as the approval history of the petitioner for similar petitions, to determine if an issue has been addressed previously.

**4. *Update RFE templates and systems to ensure that they are current, understandable, and concise.***

USCIS can do so by:

- a. Omitting references to the controlling law or regulation. USCIS can assume that filers already know these requirements when they file their petition.
- b. Plainly and precisely state which petition eligibility requirements were satisfied, and which were not. For those that were not, the RFE should identify each piece of evidence that was submitted and clearly articulate why that evidence was deemed insufficient or its weight was deemed insufficient to satisfy the requirement at issue. Doing so would allow the petitioner to focus attention on weaknesses in the evidence initially submitted, and to present stronger and/or more evidence to establish that the particular element of proof is more likely true than not, and consequently should satisfy the preponderance standard. While it may take an adjudicator more time to draft an RFE under this approach, it provides the petitioner with a clear understanding of the issue(s). Where the response provided by the petitioner then correctly addresses the adjudicator's concern, the case should be approved, saving the adjudicator the time it would take to draft a denial decision. On balance, both

the petitioner and the agency would benefit from this approach.

**5. *Establish a robust quality assurance program for RFEs by:***

- a. Assigning each adjudicator a control number and running monthly reports to identify the average rate that adjudicators are issuing RFEs. USCIS can identify any adjudicator producing too many or too few RFEs than are within acceptable parameters to identify areas where RFE issuance is a concern.
- b. Establishing an internal escalation program when a supervisor identifies preponderance of evidence concerns, which may include adjudicator retraining or additional performance compliance measures.
- c. Developing an RFE audit program where files that contain an RFE are checked to determine if the recommended RFE checklist was completed and accurately reflects the state of the record of proceedings when the RFE was issued.
- d. Conducting random supervisory review of at least 10 percent of all RFE cases to determine if the record of proceedings supports the RFE issuance.

The issuance of unnecessary or deficient RFEs drives up the cost of adjudicating these petitions, both on the filer and the agency, and contributes to longer processing times. We believe that additional training on the preponderance of evidence legal standard of review, along with the implementation of a robust quality assurance program, will ultimately enhance the performance of adjudicators, yield better quality adjudications, and logically, lead to increased operational efficiencies.

<sup>223</sup> As noted previously, consideration of providing deference to adjudications by CBP pursuant to the USMCA was beyond the scope of this study.





# TEMPORARY PROTECTED STATUS: THE IMPACT AND CHALLENGES OF INCREASED DEMAND

**Responsible Directorate:** Service Center Operations

## Introduction

As the Department of Homeland Security (DHS) designated, redesignated, and extended Temporary Protected Status (TPS) for 9 countries in 2022, U.S. Citizenship and Immigration Services (USCIS) handled a corresponding expansion of the number of noncitizens who sought eligibility. TPS provides temporary protection against removal from the United States, as well as work and travel authorization, to nationals of designated countries (or individuals with no nationality and last habitually residing in that country) experiencing an ongoing armed conflict, environmental disaster, or other extraordinary and temporary circumstances. Providing these benefits gives USCIS a larger workload with each new designation,

redesignation, or extension. The strain of additional TPS applications (legislatively limited to a minimal fee set more than 3 decades ago) adds to USCIS' backlogs. Processing work and travel authorization for these populations alone is a never-ending task for the agency. Statutory limitations on TPS prevent USCIS from issuing work authorization for longer periods, but the agency can still find efficiencies by reducing some of the travel and employment authorization burdens it faces with these populations.

Although TPS does not provide a permanent solution to the hundreds of thousands of individuals facing unsafe conditions in their home countries that impede their return, it remains a lifeline to them. With the benefits of the status, TPS beneficiaries can make positive contributions to the American economy and send remittances to the



countries experiencing unsafe conditions. The burdens on the agency resulting from the increased designations must therefore be balanced alongside Congress' intent to provide humanitarian relief to a group of individuals based on their connection to a foreign country. In this study, we explore the impact of TPS on USCIS resources and conclude with recommendations as to how the agency can better manage an unpredictable humanitarian workload.

## Recommendations

1. Post processing times for each TPS population to better inform applicants on their real wait times for TPS status, work authorization, and travel authorization.
2. Better educate employers and benefit-granting agencies (such as Divisions of Motor Vehicles (DMVs) and the Social Security Administration (SSA)) on how to verify the employment eligibility and proof of status of TPS beneficiaries to ease their fears of noncompliance.
3. Eliminate the separate employment authorization document (EAD) application for TPS applicants.
4. Consider pursuing legislative changes to extend TPS designation periods.
5. Increase case processing through technological solutions.

## Background

Congress created TPS as part of the Immigration Act of 1990 (IMMACT 90) to establish a uniform process and standard for granting temporary humanitarian protection in the United States, for noncitizens already in this country whose home countries are in crisis.<sup>224</sup> Before IMMACT 90, the Attorney General used prosecutorial discretion to decide whether to permit individuals from certain countries to stay in the United States due to conditions in their home country, but critics alleged a lack of transparency often resulted in politically motivated decisions.<sup>225</sup>

<sup>224</sup> IMMACT 90, § 302, Pub. L. No. 101-649; as codified in 8 U.S. Code 1254a (Nov. 29, 1990).

<sup>225</sup> See Madeline Messick and Claire Bergeron, "Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent," Migration Policy Institute (July 2, 2014); <https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent> (accessed Mar. 31, 2023). See also Eva Segerblom, "Temporary Protected Status: An Immigration Statute that Redefines Traditional Notions of Status and Temporariness," 7 Nev. L.J. 664 (2007).

**What Is TPS?** Section 244 of the INA allows eligible individuals from designated countries to remain temporarily in the United States. The DHS Secretary, in consultation with USCIS and other federal agencies such as the Department of State (DOS), designates countries for TPS if their nationals (or individuals with no nationality who last habitually resided in that country) cannot return safely due to ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions.<sup>226</sup> In response to the civil war raging in El Salvador, the country was designated for TPS at the same time section 244 of the INA went into effect.<sup>227</sup> In January 1999, Honduras and Nicaragua were designated for TPS after Hurricane Mitch devastated most of Central America in October 1998.<sup>228</sup>

TPS designation can be for an initial period of anywhere from 6 to 18 months and extended indefinitely for periods of up to 18 months when the conditions that justified the designation continue.<sup>229</sup> As a result of multiple extensions, many TPS beneficiaries have lived in the United States for more than 2 decades. For example, TPS for Honduras and Nicaragua has been continuously extended since 1999, allowing those who were beneficiaries of the initial designations to continue to remain in the United States for over 20 years.<sup>230</sup>

DHS has re-designated TPS for countries to provide protection to individuals who came to the United States after the initial designation but require protection because conditions in the designated country remain adverse.

<sup>226</sup> INA § 244(b)(1); 8 U.S.C. § 1254a(b)(1) and U.S. Government Accountability Office Report, "Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions," GAO-20-134 (Apr. 2020), pp. 15–27; <https://www.gao.gov/assets/gao-20-134.pdf> (accessed Apr. 25, 2023). Although section 244(a)(1) of the INA still refers to the Attorney General, those references are understood to refer to the Secretary of DHS since certain immigration functions, including parole authority, transferred to the DHS under the Homeland Security Act of 2002.

<sup>227</sup> IMMACT 90, § 303, Pub. L. No. 101-649; as codified in 8 U.S.C. § 1254a note (Nov. 29, 1990).

<sup>228</sup> Jill H. Wilson, Congressional Research Service, "Temporary Protected Status and Deferred Enforced Departure," p. 10 (Nov. 28, 2022).

<sup>229</sup> INA § 244(b)(2)(B) and (3)(C); 8 U.S.C. § 1254a(b)(2)(B) and (3)(C).

<sup>230</sup> DHS continuously extended the designations until issuing termination notices in 2018 and 2017, respectively, and since then, has continued the validity of documentation for these beneficiaries through the Federal Register. See USCIS Web page, "Temporary Protected Status Designated Country: Honduras" (Nov. 14, 2022); <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras> (accessed Mar. 12, 2023) and "Temporary Protected Status Designated Country: Nicaragua" (Nov. 14, 2022); <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-nicaragua> (accessed Mar. 12, 2023). See also Madeline Messick and Claire Bergeron, "Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent," Migration Policy Institute (Jul. 2, 2014); <https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent> (accessed Mar. 12, 2023).

Circumstances that trigger a TPS designation are typically temporary, but some can have long-lasting impacts on the country and require far more than 18 months to recover from. That time in the United States can lead to a more permanent status gained through a different immigration benefit for which the TPS beneficiary might qualify, such as a grant of asylum leading to permanent residence. Others in the TPS population have not pursued or obtained a permanent immigration pathway, but they can remain here long enough to solidify roots, raise children who are more familiar with American culture than their own, and have U.S. citizen children.

In 2022, DHS redesignated TPS for 3 of the 16 designated countries, permitting an additional 3,485 people to file for initial TPS.<sup>231</sup> These redesignations expand relief but also increase demand on USCIS services. For example, DHS redesignated Haiti for TPS in January 2023, estimating that 105,000 additional individuals in the United States would be eligible for TPS under this redesignation; if all apply, they could almost double the approximate number of current Haitian TPS beneficiaries. *See Figure 4.1, Countries and Populations Designated for TPS as of December 2022.*

The United States is far from alone in offering these temporary protections, but such protections vary. Other countries offer similar protection to individuals who are unable to remain or return to their country of nationality due to unsafe conditions. Colombia, for example, has granted 10 years' legal status to more than 1 million Venezuelans fleeing political and social instability in their country.<sup>232</sup> The countries that make up the European Union have granted temporary protection to Ukrainians displaced on or after February 24, 2022, as a result of the Russian invasion that began on that date.<sup>233</sup> In contrast, the United States grants temporary legal status for a shorter period of time and with a regressive date restriction.

**Who Gets TPS?** Sixteen countries are designated for TPS, and the number of individuals protected or potentially protected by TPS as of December 2022 was over 681,000. *See Figure 4.1, Countries and Populations Designated for TPS as of December 2022.* Central Americans make up the largest portion of individuals protected by TPS—almost 47 percent. While in the United States, TPS recipients work, buy houses, establish businesses and raise U.S. citizen children,<sup>234</sup> thus making contributions to the U.S. economy. Moreover, because many recipients have been here for more than 20 years, they have also established firm roots in their American communities. They also send remittances to their family members remaining in their home country.<sup>235</sup> Although TPS does not provide a path to lawful permanent resident status or U.S. citizenship, recipients can apply for other permanent immigration statuses for which they become eligible, such as asylum, among others. However, those who entered the country unlawfully may not be able to overcome additional barriers to qualify for permanent immigration status. They would need Congress to pass a law allowing TPS beneficiaries to adjust their status to lawful permanent resident status.<sup>236</sup>

**Terminating TPS.** DHS has terminated TPS designations for 16 countries (and one territory).<sup>237</sup> When doing so, it has given individuals with TPS status from those countries time to change to another status that permits them to remain legally in the United States or prepare to depart if they do not have another legal immigration path. This authority reflects the very temporary nature of TPS; the designation itself depends on the circumstances that prevented people from returning home safely and how long those circumstances continue, as any extension decision must demonstrate the continuing need for TPS. From 2017 to 2018, DHS terminated TPS for El Salvador, Honduras, Nepal, Nicaragua, Haiti (2011 designation), and Sudan (2013 designation), after finding that these countries

<sup>231</sup> “Extension and Redesignation of Burma (Myanmar) for Temporary Protected Status,” 87 Fed. Reg. 58515, 58520 (Sept. 27, 2022); “Extension and Redesignation of South Sudan for Temporary Protected Status,” 87 Fed. Reg. 12190, 12191 (Mar. 3, 2022); and “Extension and Redesignation of Syria for Temporary Protected Status,” 87 Fed. Reg. 46982, 46983 (Aug. 1, 2022).

<sup>232</sup> Diana Roy and Claire Klobucista, “What is Temporary Protected Status?” Council on Foreign Relations Backgrounder (Jan. 4, 2023); <https://www.cfr.org/backgrounder/what-temporary-protected-status> (accessed Mar. 31, 2023).

<sup>233</sup> Council Implementing Decision (EU) No. 2022/382 of 4 Mar. 2022, Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine within the Meaning of Art. 5 of Directive 2001/55/EC, and Having the Effect of Introducing Temporary Protection, 2022 J.O. (L 71) 1; <https://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=celex:32022D0382> (accessed Mar. 31, 2023).

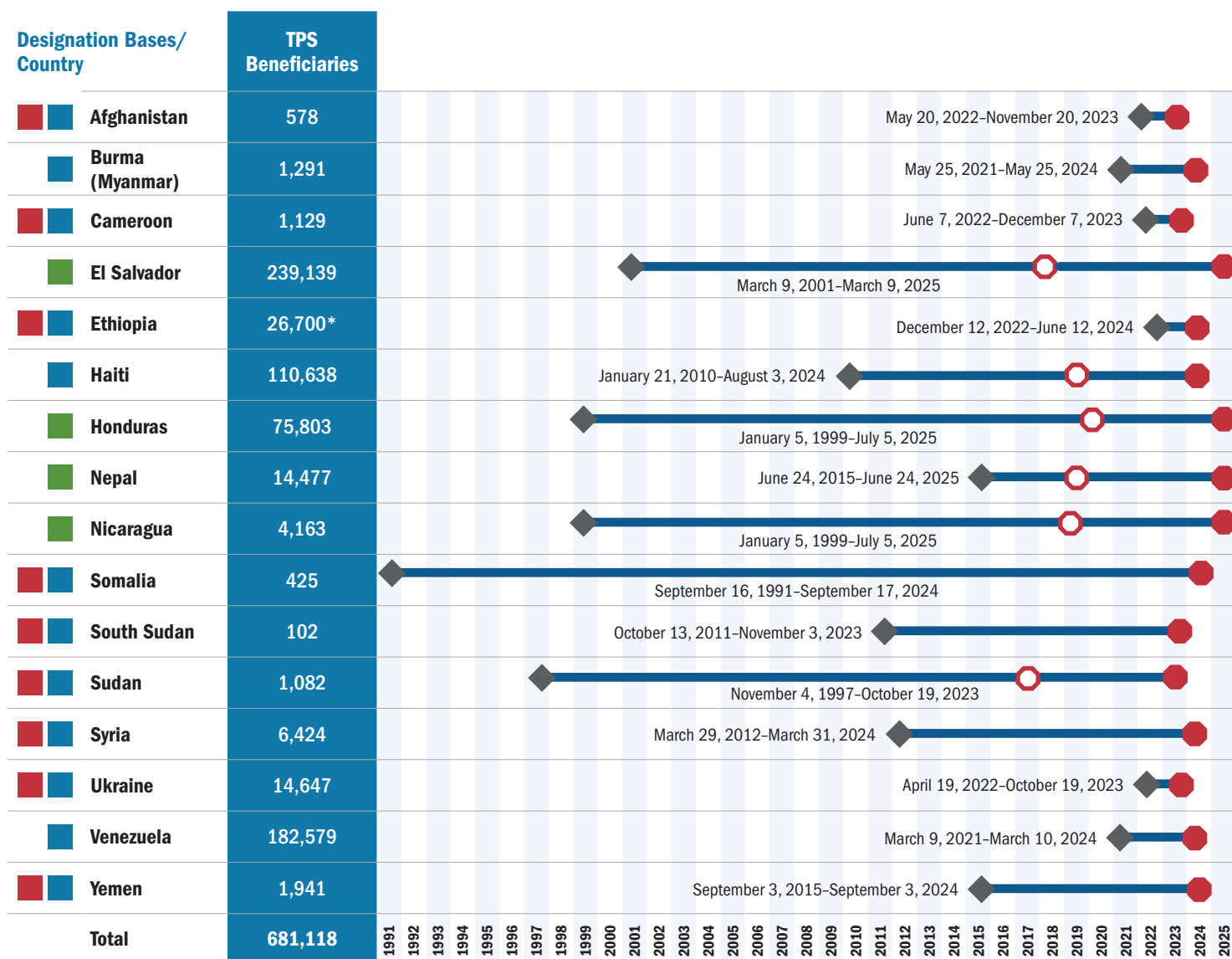
<sup>234</sup> See Cecilia Menjivar, UCLA Latino Policy & Politics Initiative “Temporary Protected Status for Central American Immigrants: Advancing Immigrant Integration Despite Its Uncertainty” (Aug. 2020); <https://latino.ucla.edu/wp-content/uploads/2021/08/CM-Faculty-Brief.pdf> (accessed Apr. 1, 2023).

<sup>235</sup> See Jacob Czarnecki, “The Value of Temporary Protected Status as a U.S. Policy Tool,” Niskanen Center (June 28, 2021); <https://www.niskanencenter.org/the-value-of-temporary-protected-status-as-a-u-s-policy-tool/> (accessed Feb. 28, 2023).

<sup>236</sup> INA § 244(h); 8 U.S.C. § 1254a(h).

<sup>237</sup> See Executive Office for Immigration Review Web page, “Temporary Protected Status” (Mar. 13, 2023); <https://www.justice.gov/eoir/temporary-protected-status#Afg> (accessed Mar. 31, 2023).

**Figure 4.1** Countries and Populations Designated for TPS as of December 2022



#### Bases for Designations

- Ongoing armed conflict
- Environmental disaster
- Extraordinary and temporary conditions

#### Types of TPS Decisions

- Designation
- Termination
- Termination (temporarily blocked due to ongoing litigation)

Sources: Information provided by USCIS to the CIS Ombudsman on May 3, 2023; USCIS Web page, "Temporary Protected Status" (Mar. 13, 2023); <https://www.uscis.gov/humanitarian/temporary-protected-status> (accessed May 23, 2023); and DHS Federal Register notices.

\*Estimated number of Ethiopians in the U.S. who are eligible to apply for TPS once registration opened on December 12, 2022. Voice of America, "Ethiopians in the US Can Apply for Temporary Protected Status Soon" (Dec. 10, 2022); <https://www.voanews.com/a/ethiopians-in-us-can-apply-for-temporary-protected-status-soon-/6871299.html#:~:text=DHS%20said%20about%2026%2C700%20Ethiopians,United%20States%20came%20from%20Ethiopia> (accessed May 10, 2023).

no longer met the conditions for TPS designation.<sup>238</sup> However, litigation ensued and these terminations were blocked after the presiding judges issued a preliminary injunction and stay of proceedings order.<sup>239</sup> In light of the litigation, DHS issued federal register notices (FRNs): 1) announcing continuation of TPS benefits for individuals effected by the litigation;<sup>240</sup> 2) redesignating TPS for Haiti and Sudan;<sup>241</sup> and 3) rescinding the termination of TPS for El Salvador, Honduras, Nepal, and Nicaragua and extending TPS for these countries for 18 months.<sup>242</sup>

## TPS Will Continue to Increase Multiple Workloads for USCIS

USCIS acknowledges that the biggest challenge it has faced during the past 5 years regarding the operation of the TPS program “has been the overall increase in the total number of TPS and related filings, balanced against competing agency priorities and resources.”<sup>243</sup> In the last decade, USCIS has seen TPS expand from a few countries to 16 countries, causing a significant increase

in the number of filings. Political strife and natural disasters occur with little to no warning. The United States currently has over 681,000 individuals who cannot return home safely, and this number increases when TPS-designated countries cannot quickly recover from extraordinary circumstances, or environmental disasters or new conflicts, natural disasters, or other extraordinary and temporary conditions develop in other countries. TPS is an effective and efficient solution to support groups in the United States who find themselves unable to return home safely but are unable to meet at least one of the categories under section 101(a)(42)(A) of the INA to qualify for asylum.<sup>244</sup>

The increase in filings for TPS and related applications has caused increases in processing times and contributed to USCIS’ overall backlog. The longer processing times create or exacerbate adverse impacts on applicants, their communities, and USCIS. Applicants cannot support their families, recover from the conditions that resulted in their departure or inability to return home, or contribute to American society. Businesses and services in their communities also suffer as a result, as some TPS beneficiaries work in healthcare and food-related industries and were recognized as essential workers during the COVID-19 pandemic.<sup>245</sup> For USCIS, the increasing workload and longer processing times divert officer time away from adjudicating applications as they instead respond to expedite requests and address increased legal actions demanding immediate adjudication of benefit requests.<sup>246</sup> Given the importance of the USCIS humanitarian mission, the agency must be able to manage its current workload and be nimble enough to handle future TPS designations.

## TPS Applications Are Rapidly Increasing

USCIS adjudicates nearly all requests for TPS,<sup>247</sup> and these requests have increased exponentially, especially within the last few years that saw an expansion of the countries designated for TPS. In Fiscal Year (FY) 2020, USCIS received 13,600 Forms I-821, *Application for Temporary*

<sup>238</sup> “Termination of the Designation of El Salvador for Temporary Protected Status,” 83 Fed. Reg. 2654 (Jan. 18, 2018); “Termination of the Designation of Honduras for Temporary Protected Status,” 83 Fed. Reg. 26074 (June 5, 2018); “Termination of the Designation of Nepal for Temporary Protected Status,” 83 Fed. Reg. 23705 (May 22, 2018); “Termination of the Designation of Nicaragua for Temporary Protected Status,” 82 Fed. Reg. 59636 (Dec. 15, 2017); “Termination of the Designation of Haiti for Temporary Protected Status,” 83 Fed. Reg. 2648 (Jan. 18, 2018); and “Termination of the Designation of Sudan for Temporary Protected Status,” 82 Fed. Reg. 47228 (Oct. 11, 2017).

<sup>239</sup> See *Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status: Extension of the Temporary Protected Status Designation for El Salvador*, 88 Fed. Reg. 40282, 40284 (June 21, 2023); see also USCIS Web page, “Update on *Bhattarai v. Nielsen*” (Nov. 14, 2022); <https://www.uscis.gov/humanitarian/temporary-protected-status/update-on-bhattarai-v-nielsen> (accessed May 1, 2023).

<sup>240</sup> USCIS News Alert, “DHS Continues Temporary Protected Status and Related Documentation for Certain Beneficiaries of TPS” (Nov. 14, 2022); <https://www.uscis.gov/newsroom/alerts/dhs-continues-temporary-protected-status-and-related-documentation-for-certain-beneficiaries-of-tps> (accessed Mar. 31, 2023).

<sup>241</sup> “Extension and Redesignation of Haiti for Temporary Protected Status,” 88 Fed. Reg. 5022 (Jan. 26, 2023) and “Designation of Sudan for Temporary Protected Status,” 87 Fed. Reg. 23202 (Apr. 19, 2022).

<sup>242</sup> *Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status: Extension of the Temporary Protected Status Designation for El Salvador*, 88 Fed. Reg. 40282 (June 21, 2023); “Reconsideration and Rescission of Termination of the Designation of Nicaragua for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Nicaragua,” 88 Fed. Reg. 40294 (June 21, 2023); “Reconsideration and Rescission of Termination of the Designation of Honduras for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Honduras,” 88 Fed. Reg. 40304 (June 21, 2023); “Reconsideration and Rescission of Termination of the Designation of Nepal for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Nepal,” 88 Fed. Reg. 40317 (June 21, 2023).

<sup>243</sup> Information provided by USCIS (May 3, 2023).

<sup>244</sup> See INA § 208(b)(1)(B)(i); 8 U.S.C. § 1158(b)(1)(B)(i).

<sup>245</sup> See Nicole Prchal Svajlenka and Tom Jawetz, “A Demographic Profile of TPS Holders Providing Essential Services During the Coronavirus Crisis,” Center for American Progress (Apr. 14, 2020); <https://www.americanprogress.org/article/demographic-profile-tps-holders-providing-essential-services-coronavirus-crisis/> (accessed Apr. 1, 2023).

<sup>246</sup> See generally CIS Ombudsman Annual Report 2022, pp. 6–7.

<sup>247</sup> The Executive Office for Immigration Review is authorized to adjudicate an application for TPS for an individual in immigration court proceedings in limited circumstances. See 8 C.F.R. §§ 244.7(d), 244.11, 1244.7(d) and 1244.11.



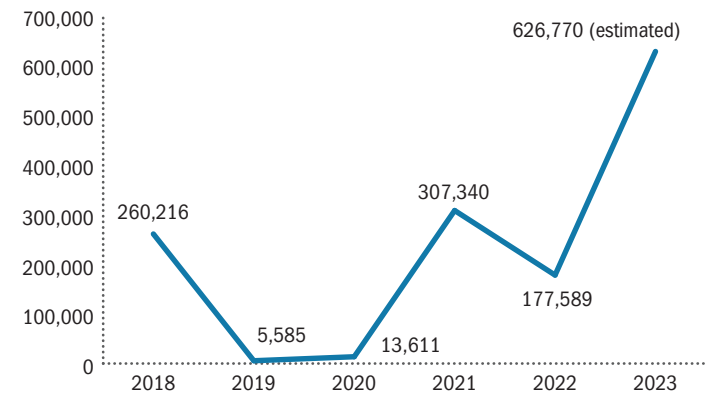
*Protected Status*; however, during the first quarter of FY 2023 alone, USCIS received 124,000 forms<sup>248</sup>—9 times the total receipts in a previous year. Adjusting to a drastic increase in a short period of time is difficult under normal circumstances given USCIS’ current fee-setting structure, but other factors such as staffing shortages and the COVID-19 pandemic compound the problems.<sup>249</sup> In response to the CIS Ombudsman’s request for data, USCIS said the completion rate for Form I-821 from FY 2019 to FY 2022 increased from less than 30 minutes (0.48) to almost an hour (0.81).<sup>250</sup> USCIS has taken steps to timely process TPS applications by increasing staff, authorizing overtime, and offering online filing for all TPS designations, and saw a slight decrease in the completion rate from 0.83 in FY 2021 to 0.81 in FY 2022.<sup>251</sup>

However, the slight decrease in the completion rate in FY 2022 has not resulted in improved processing times. The processing time for Form I-821 in FY 2018 was 2.9 months and increased to 10.2 months in FY 2022.<sup>252</sup> Clearly, as USCIS has more applications to process, applicants must wait longer to get to the adjudication stage. Applicants waiting for USCIS to complete their initial application for TPS are harmed by the longer wait, yet processing times continue to increase. The average processing time for TPS applications in FY 2023 (as of March 2023) has increased to almost 15 months.<sup>253</sup>

Although it is impossible to predict when and where the next devastating event will take place that will lead to a TPS designation, the demand for TPS is likely to grow given individuals around the world are facing displacement caused by extreme weather events, political instability, and human

rights violations, among other crises.<sup>254</sup> USCIS predicts receiving 626,770 Forms I-821 in FY 2023<sup>255</sup>—more than twice what it received in FY 2021, the year with the second highest number of receipts between FY 2018 and 2022. See Figure 4.2, *TPS Annual Receipts, FY 2018–2023*.

**Figure 4.2** TPS Annual Receipts, FY 2018–2023



Sources: USCIS quarterly reports on all form types from FYs 2018 to 2022 available on its web pages and “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 88 Fed. Reg. 402, 454 (Jan. 4, 2023) (“2023 Proposed Fee Rule”).

Following each new designation, the agency must accommodate a larger workload. With the exception of USCIS’ newest service center,<sup>256</sup> all service centers have become involved in processing these populations.<sup>257</sup>

<sup>248</sup> Information provided by USCIS (May 3, 2023).

<sup>249</sup> *Id.* See also Letter from USCIS Director Ur Jaddou to Sen. Jeanne Shaheen (Mar. 20, 2023); [https://www.uscis.gov/sites/default/files/document/foia/Temporary\\_Protected\\_Status\\_Employment\\_Authorization\\_Document\\_processing-Senator\\_Shaheen.pdf](https://www.uscis.gov/sites/default/files/document/foia/Temporary_Protected_Status_Employment_Authorization_Document_processing-Senator_Shaheen.pdf) (accessed Apr. 22, 2023).

<sup>250</sup> Information provided by USCIS (May 3, 2023). Completion rate is the average hours per adjudication of an immigration benefit request and represents the time an adjudicator handles the case, *i.e.* “touch time” but does not include the time the case is in the queue awaiting adjudication. “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 88 Fed. Reg. 402, 446 (Jan. 4, 2023) (“2023 Proposed Fee Rule”).

<sup>251</sup> Information provided by USCIS (May 3, 2023).

<sup>252</sup> USCIS Web page, “Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year: Fiscal Year 2018 to 2023 (up to March 31, 2023);” <https://egov.uscis.gov/processing-times/historic-pt> (accessed Apr. 22, 2023).

<sup>253</sup> USCIS Web page, “Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year: Fiscal Year 2018 to 2023 (up to March 31, 2023);” <https://egov.uscis.gov/processing-times/historic-pt> (accessed Apr. 22, 2023).

<sup>254</sup> See generally Department of State, “2022 Country Reports on Human Rights Practices” (Mar. 20, 2023); <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/> (accessed May 12, 2023). See also African Union Press Releases Web page, “The African Union Commission and the United Nations Office for the Coordination of Humanitarian Affairs launch the Global Humanitarian Appeal for 2023 A record US \$51.5 billion required to reach 230 million people in crisis” (Dec. 1, 2022); <https://au.int/en/pressreleases/20221201/african-union-commission-and-united-nations-office-coordination-humanitarian> (accessed Apr. 21, 2023); United Nations, Climate Action Web page, “The Climate Crisis is a Humanitarian Crisis;” <https://www.un.org/en/climatechange/the-climate-crisis-is-a-humanitarian-crisis> (accessed Apr. 21, 2023); and Madeline Messick and Claire Bergeron, “Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent,” Migration Policy Institute (Jul. 2, 2014); <https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent> (accessed Mar. 8, 2023).

<sup>255</sup> 2023 Proposed Fee Rule, 88 Fed. Reg. at 454.

<sup>256</sup> On March 30, 2023, USCIS announced the opening of the Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center. HART is the sixth service center within USCIS’ Service Center Operations Directorate (SCOPS) and the first to focus solely on humanitarian and other workload cases, which do not include TPS. USCIS News Alert, “USCIS Opens the Humanitarian Adjustment, Removing Conditions and Travel Documents (HART) Service Center” (Mar. 30, 2023); <https://www.uscis.gov/sites/default/files/document/notices/USCISOpensTheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf> (accessed Apr. 21, 2023).

<sup>257</sup> Information provided by USCIS (May 3, 2023).

TPS extensions also create new streams of work for USCIS because section 244 (c)(3)(C) of the INA requires TPS beneficiaries to re-register annually. The re-registration process and filing period are provided in an extension FRN. USCIS applies the re-registration requirement to individuals from countries designated for TPS for more than a year,<sup>258</sup> which covers all TPS designated countries since DHS's practice has been to designate countries for the maximum period of 18 months. This means that all TPS beneficiaries, including those who initially receive TPS from an Executive Office for Immigration Review (EOIR) immigration judge or the Board of Immigration Appeals, must re-register with USCIS.<sup>259</sup> However, due to delays in processing, USCIS may not have completed the TPS applicant's initial registration application by the time the re-registration period opens. USCIS does not require these applicants to file again, but the overlap in instructions can cause confusion. Although individuals with pending initial TPS applications do not file another form, for those who have completed the initial registration process, they are a stream of work for USCIS once again. Moreover, it is a workload without a corresponding fee. The applicant does not pay a fee to re-register, which requires USCIS to rely on its existing resources to fund an additional workload. If the re-registration period were longer or omitted, both of which would require an act by Congress, then USCIS would not have this additional workload to contend with. In FY 2022, USCIS received more than 44,000 applications for re-registration.<sup>260</sup>

Re-registration applicants submit the same form and answer the same questions as initial registration applicants. However, re-registration applicants who were granted a waiver of a ground of inadmissibility with their prior TPS application do not need to get another waiver for the same circumstances and may not have to submit biometrics again.<sup>261</sup> Adjudicators review the Form I-821 re-registration for completeness and to verify the nationality, A-Number, and information provided on the form. While there are likely to be some changes (such as address changes), the applicant is generally providing the same information USCIS already requested previously.

## More Work and Travel Authorization Applications with Each TPS Designation

Additional TPS designations, as well as TPS extensions and re-designations, increase the workload of ancillary benefits, such as employment and travel authorizations. As Form I-821 receipts have increased, Form I-765, *Application for Employment Authorization*, receipts have also increased. The number of pending Forms I-765 has risen more than tenfold, from fewer than 150,000 in 2010 to over 1.5 million in 2022.<sup>262</sup> Once applicants receive TPS, the INA requires USCIS to authorize the TPS beneficiaries for employment and provide them "with an 'employment authorized' endorsement or other appropriate work permit."<sup>263</sup> TPS beneficiaries are authorized to work incident to their TPS status. Certain individuals authorized to work incident to their status are not required to have an EAD as proof of employment authorization (for example, asylum holders) but TPS beneficiaries are not part of this group. Despite the statute indicating that an EAD itself is not required, they must apply to USCIS for a document evidencing employment authorization. In FY 2022, USCIS received almost 100,000 Forms I-765 for work authorization associated with TPS applicants and beneficiaries alone<sup>264</sup> and 23,043 Forms I-131, *Application for Travel Document*, associated with TPS applicants and beneficiaries.<sup>265</sup> Although this may be a small percentage of the more than 8 million applications and petitions USCIS received in FY 2022, it is still a workload that could potentially be avoided.

Terminating a country's TPS designation does not always result in a corresponding decrease in USCIS' workload. When TPS ends, USCIS will field different challenges as these individuals seek other benefits which enable them to continue U.S. residence. For example, DHS terminated Liberia's designation in 2007 but many of its nationals were also eligible for Deferred Enforced Departure, another form of temporary protection that includes work authorization which USCIS must adjudicate.<sup>266</sup> Others

<sup>258</sup> 8 C.F.R. § 244.17.

<sup>259</sup> INA § 244(c)(3)(C); 8 U.S.C. § 1254a(c)(3)(C).

<sup>260</sup> Data extracted from USCIS data (Feb. 23, 2023).

<sup>261</sup> Instructions for Form I-821, *Application for Temporary Protected Status*, pp. 2 and 13; <https://www.uscis.gov/sites/default/files/document/forms/i-821instr.pdf> (accessed May 30, 2023).

<sup>262</sup> David Bier, "USCIS's Immigration Backlogs Hit 8.8 million," CATO Institute (Nov. 7, 2022); <https://www.cato.org/blog/uscis-immigration-backlogs-hit-88-million> (accessed Mar. 5, 2023).

<sup>263</sup> INA § 244 (a)(1)(B); 8 U.S.C. § 1254a(a)(1)(B).

<sup>264</sup> In FY 2022, USCIS received 99,561 initial and renewal requests for employment authorization in the (a)(12) and (c)(19) categories. Information provided by USCIS (Feb. 27, 2023).

<sup>265</sup> Information provided by USCIS (May 3, 2023).

<sup>266</sup> The White House, "Memorandum on Extending and Expanding Eligibility for Deferred Enforced Departure for Liberians" (June 27, 2022); <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-extending-and-expanding-eligibility-for-deferred-enforced-departure-for-liberians/> (accessed on Mar. 5, 2023).

may apply for more permanent immigration benefits for which they may be eligible, such as asylum or family-based immigration. Although these individuals no longer have to re-register for TPS, they may continue to be eligible for employment authorization and need to apply for an EAD under a new category, thus continuing to be a part of USCIS' substantial Form I-765 backlog.<sup>267</sup>

## Capped Filing Fees Impede USCIS' TPS Work

Funding the program with a statutory cap on TPS filing fees leaves the program under-resourced, straining the agency's ability to meet increased demand. USCIS operates on a fee-for-service funding model, with approximately 96 percent of its budget funded by the filing fees it collects.<sup>268</sup> USCIS reviews its fees biennially and adjusts them to recover the operating costs of providing immigration adjudication and naturalization services. Costs are based on forecasts for future years and not based on actual costs by immigration benefit request.<sup>269</sup> The filing fee and the unpredictability inherent in the TPS program challenge this funding model.

Congress authorized USCIS to charge a "reasonable fee" sufficient to cover the administration costs of TPS, but capped the initial registration fee at \$50 back in 1990.<sup>270</sup> USCIS would have to charge \$112 now to have the same purchasing power as \$50 in 1990.<sup>271</sup> In FY 2022, USCIS received \$5.6 million in revenue from Form I-821 applications.<sup>272</sup> Even if the filing fee increased to account for inflation, however, it would still not meet USCIS' operational costs for adjudication of the Form I-821.<sup>273</sup>

USCIS can charge fees for fingerprinting, biometrics, and other necessary services. Under the current fee structure, applicants pay an \$85 biometric services fee in addition

to the Form I-821 filing fee, but USCIS has proposed reducing the fee for TPS applicants to \$30, helping TPS applicants afford the fees but at a presumed cost to the agency.<sup>274</sup> The same deficit exists when calculating the workload volume and fee for ancillary forms associated with TPS, such as Forms I-131 and I-765, due to the possibility of the basis for eligibility terminating or expanding limits USCIS' ability to estimate how many of these forms it will receive from TPS beneficiaries.<sup>275</sup> USCIS may recover the unfunded cost with fees charged to other immigration benefit requests.<sup>276</sup> However, when setting its fees, USCIS says that it does not take into consideration the cost and revenue of programs that are temporary by definition or where it is possible that the program will diminish or cease to exist.<sup>277</sup> This approach prevents USCIS from accurately projecting future application volume and revenue to avoid a budget shortfall.<sup>278</sup>

In addition, these fees can also be waived if the applicant is unable to pay them. In FY 2022, USCIS received 17,628 Forms I-821 with fee waiver requests.<sup>279</sup> Although each noncitizen's economic situation is different, most people are economically strained as a direct result of the justification for TPS designation. Thus, limiting USCIS' determination of what this vulnerable population can reasonably pay prevents the agency from covering costs fully or at least at the same rate as in 1990. The CIS Ombudsman has recommended that USCIS consider encouraging Congress to fund humanitarian programs to resolve resource issues.<sup>280</sup>

<sup>267</sup> 2023 Proposed Fee Rule, 88 Fed. Reg. at 428.

<sup>268</sup> The Immigration Examinations Fee Account funds the full costs of providing immigration adjudication and naturalization services and in FY 2021, comprised of 83 percent non-premium processing revenue and 13 percent premium funding, with the remaining USCIS funding coming from appropriations (approximately 3 percent) or other fee accounts (approximately 1 percent). "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" 2023 Proposed Fee Rule, 88 Fed. Reg. at 417.

<sup>269</sup> Information provided by USCIS (May 3, 2023).

<sup>270</sup> IMMACT 90, § 302, Pub. L. No. 101-649; *codified in* 8 U.S. Code 1254a(c) (1)(B) (Nov. 29, 1990).

<sup>271</sup> Federal Reserve Bank of Minneapolis Web page, "Inflation Calculator," <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator> (accessed on Mar. 5, 2023).

<sup>272</sup> 2023 Proposed Fee Rule, 88 Fed. Reg. at 454.

<sup>273</sup> Information provided by USCIS (May 3, 2023).

<sup>274</sup> USCIS proposes to include the biometric services cost into the underlying immigration benefit request fees based on the cost for the specific request; however, the TPS biometrics fee would continue to be a separate fee and based only on the direct cost to the Applicant Support Center and Federal Bureau of Investigation. 2023 Proposed Fee Rule, 88 Fed. Reg. at 485.

<sup>275</sup> 2023 Proposed Fee Rule, 88 Fed. Reg. at 454.

<sup>276</sup> 2023 Proposed Fee Rule, 88 Fed. Reg. at 418.

<sup>277</sup> 2023 Proposed Fee Rule, 88 Fed. Reg. at 454.

<sup>278</sup> 2023 Proposed Fee Rule, 88 Fed. Reg. at 447.

<sup>279</sup> Information provided by USCIS (Mar. 3, 2022, Sept. 15, 2022, and Feb. 27, 2023).

<sup>280</sup> CIS Ombudsman Recommendation 63, "The Challenges of the Current USCIS Fee-Setting Structure" (June 15, 2022)" (June 15, 2022); [https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN\\_2022\\_FEE\\_FOR\\_SERVICE\\_RECOMMENDATION\\_FINAL.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN_2022_FEE_FOR_SERVICE_RECOMMENDATION_FINAL.pdf) (accessed May 2, 2023).



## The TPS Statute and USCIS Processes Can Lead to Uneven Protection

***Delays in the FRN Process Increase Anxiety.*** DHS may announce the designation, extension or redesignation of a country for TPS through a news release, but those actions do not go into effect until they are published in the Federal Register.<sup>281</sup> Applicants cannot submit their Form I-821 until the start of the registration period announced in the FRN. However, there can be delays between the issuance of the news release and publication of the FRN. Communicating with the public before the FRN is actually published can give individuals a sense of relief and enable them to prepare their applications and necessary documentation, but the communications themselves provide no benefit and leave many unanswered questions. In addition, stakeholders have reported that delays in publishing the FRN resulted in TPS beneficiaries not being able to seek jobs and having difficulty obtaining driver's licenses and other forms of state-issued identity documents.<sup>282</sup>

The INA does not specify how soon DHS must publish the FRN after deciding to designate a country for TPS. USCIS strives to publish the notices “as expeditiously as possible after the Secretary makes a TPS decision,” but timeframes do vary.<sup>283</sup> When a decision is made to designate a country, USCIS must draft the corresponding FRN and clear it through various levels of review before publishing it in the Federal Register. The notice includes when the determination and validity period go into effect, the registration period, the number of individuals who are likely to be eligible for TPS, and other related information. As significant regulatory actions, these FRNs are subject to review by the White House's Office of Information and Regulatory Affairs (OIRA).<sup>284</sup> Additionally, before FRN publication, USCIS must coordinate the timing of publication with various government stakeholders to ensure all necessary operational concerns are addressed and that communications materials will be available and distributed to external stakeholders.<sup>285</sup> FRNs have been published within days of DHS's press releases for some countries, but for others the FRN came a month

or more later. In 2022, the FRN for initial designations generally published within 2 months of the DHS news release, with the TPS designation for Afghanistan being slightly more delayed at 66 days. While USCIS has made strides in minimizing the time between announcing a TPS designation and publishing the FRN by expediting the drafting and length of review time for such regulatory actions,<sup>286</sup> individuals needing relief remain anxious in the interim because the timing is still too long.

This notice requirement also applies to the extension of a TPS designation. Extension FRNs provide essential information for TPS beneficiaries and employers but DHS often publishes them close to the initial TPS designation's expiration date. For example, DHS published the notice extending TPS for Somalia 4 days before the expiration date, leaving TPS beneficiaries with no documentation or nothing more than an expiring EAD that caused confusion for employers completing Form I-9, *Employment Eligibility Verification*. DHS must review the conditions in the designated country and decide whether they warrant continued designation of TPS “at least 60 days before the end of the period of designation” and publish “on a timely basis” a notice of the determination.<sup>287</sup> The FRN also provides an explanation of DHS's action and how it affects employment and eligibility verification for benefits. The INA provides only that the extension be published “on a timely basis.” This undefined period still provides a level of expectation by TPS beneficiaries on when they will be able to re-register and have pertinent information they can share with employers.

### ***Designation and Re-designation Dates Exclude***

***Some Who Could Benefit from TPS.*** As the agency that manages and coordinates the TPS review process for DHS, USCIS has a responsibility to align the TPS program with Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, and Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. However, eligibility requirements for TPS and USCIS processes can unintentionally create real barriers or artificial dividing lines between who receives protection and who does not. Real or perceived inequities harm the public's perception of the way USCIS administers immigration benefits.

One obvious dividing line is the designation date. To be eligible, individuals must have been continuously physically present in the United States since the most recent designation

<sup>281</sup> INA § 244(b), 8 U.S.C. § 1254a(b).

<sup>282</sup> “Policy Brief: Results from Practitioner Survey on Issues with TPS Adjudications,” Temporary Protected Status-Deferred Enforced Departure Administrative Advocacy Coalition (Mar. 2023); <https://www.tpsdedaac.org/s/2023-3-14-Policy-Brief-TPS-Adjudications.pdf> (accessed May 30, 2023).

<sup>283</sup> U.S. Government Accountability Office Report, “Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions,” GAO-20-134 (Apr. 2020), p. 32; <https://www.gao.gov/assets/gao-20-134.pdf> (accessed Apr. 25, 2023).

<sup>284</sup> Information provided by USCIS (Apr. 25, 2023).

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> INA § 244(b)(3); 8 U.S.C. § 1254a(b)(3).



date of the country and continuously residing in the United States since the date specified for the country.<sup>288</sup> Many designations are prompt responses to the emergency that occasions them, but conditions in the country can continue to deteriorate after the TPS designation date, forcing more people to flee, but not qualify for TPS. Individuals who leave their country due to the ongoing circumstances that triggered the designation but arrive in the United States after the designation date also need protection. However, they are not eligible unless the DHS Secretary re-designates the country for TPS, which will include later required dates of continuous and physical presence. For example, the current TPS designation for Ukrainians is available to those who can show continuous residence in the United States since April 11, 2022.<sup>289</sup> Stakeholders have expressed concern that this date does not account for the Ukrainians who were paroled into the United States after April 11, 2022, but who nevertheless fled Ukraine due to the Russian invasion on which the TPS designation was predicated.<sup>290</sup>

U.S. Customs and Border Protection (CBP) can grant these individuals humanitarian parole at the port of entry, but generally the protection period will be for less time and the parolee will not be eligible for employment authorization. Although CBP can grant re-parole, in the case of Ukraine and Afghanistan, USCIS implemented a re-parole process through online and paper filings for these populations allowing them to remain in the United States since the invasion and negative conditions in those countries continue.

Having fewer financial resources can also create barriers to receiving and providing efficient processing of TPS benefits. On November 29, 2021, USCIS announced TPS applicants may file Forms I-821 and I-765 online. However, applicants unable to pay the filing fees for TPS must still submit paper forms because online filing is not available to applicants requesting a fee waiver. With online filing, applicants can spend less time completing and submitting their applications—USCIS estimates it will take 2.23 hours for an individual to complete a paper-filed Form I-821, compared to 1.92 hours to complete and submit the form online—and avoid common mistakes on applications such as missing a signature or page, or not answering all of the required questions. Despite these benefits, USCIS estimates only one-third of filers will file online.<sup>291</sup> USCIS cannot fully realize the benefits of its technological investments

when a significant portion of the TPS population still files paper forms. Electronic processing and online filing creates opportunities for streamlining the application process and increasing adjudication efficiency. USCIS is working on a way to allow applicants to file fee waiver requests online.<sup>292</sup> The CIS Ombudsman has previously recommended that USCIS keep and improve the pace of its current digital strategy activities by setting electronic processing and online filing for Form I-912 as immediate priorities.<sup>293</sup> Although USCIS is taking steps toward meeting the CIS Ombudsman’s recommendations, the agency can do more to decrease processing times by increasing adjudication efficiencies.

## The Challenges that TPS Applicants Encounter

USCIS’ inability to adjudicate cases quickly risks diminishing the nation’s ability to fulfill the intent of the TPS program. TPS allows individuals affected by unexpected and disastrous events to remain in a safe place and support themselves until they can return home. However, as the number of requests for TPS have increased, so have processing times. From FY 2018 to FY 2023, the average processing time for Form I-821 has more than quadrupled to 14.9 months.<sup>294</sup> An individual’s processing time can be different based on a wide variety of factors, including but not limited to the designated country, the USCIS service center adjudicating the application, and whether it is an initial or re-registration application. If the applicant filed a Form I-765 subsequent to filing Form I-821, they may have to wait another 3 months to receive their EAD.<sup>295</sup> Applicants can remain in the United States while their initial applications are pending, but they cannot legally work or access needed services while they are here if they have no other approved immigration status or basis for employment authorization. With these lengthy processing times, some applicants cannot work at all during the initial period of TPS designation. A frequent complaint that stakeholders hear about from individuals trying to access TPS benefits is processing times.<sup>296</sup>

<sup>292</sup> Information provided by USCIS (May 3, 2023).

<sup>293</sup> CIS Ombudsman Annual Report 2022, p. 63.

<sup>294</sup> In FY 2018, the median processing time for Form I-821 was 2.9 months. USCIS Web page, “Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year: Fiscal Year 2018 to 2023 (up to Jan. 31, 2023);” <https://egov.uscis.gov/processing-times/historic-pt> (accessed Mar. 8, 2023).

<sup>295</sup> CIS Ombudsman Notes from USCIS Webinar, “Temporary Protected Status Extension and Redesignation for Haiti” (Mar. 21, 2023)(in the possession of the CIS Ombudsman).

<sup>296</sup> Information provided by stakeholders (Oct. 18, 2022).

<sup>288</sup> INA § 244(c)(1)(A).

<sup>289</sup> “Notice of Temporary Protected Status (TPS) Designation,” 87 Fed. Reg. 23211 (Apr. 19, 2022).

<sup>290</sup> Information provided by stakeholders (Nov. 14, 2022).

<sup>291</sup> USCIS estimates it will receive 453,600 paper-filed I-821s and 113,400 online I-821 (for a total of 567,000) but does not mention in what period of time. 2023 Proposed Fee Rule, 88 Fed. Reg. at 578.

Unique circumstances can make a long processing time even longer. For example, USCIS receives inadmissibility waiver requests from TPS applicants, and these requests further delay the TPS application. Individuals are ineligible for TPS if they are inadmissible to the United States for certain criminal or national security-related reasons under section 212(a) of the INA; convicted of any felony or two or more misdemeanors committed in the United States; or are barred from asylum.<sup>297</sup> USCIS may waive certain grounds of inadmissibility for humanitarian purposes, to assure family unity, or when it is in the public interest. If TPS applicants are aware that a waivable ground of inadmissibility applies to them and they need a waiver to receive TPS, they can submit a Form I-601, *Application for Waiver of Grounds of Inadmissibility*—with a significant filing fee of \$930—together with their TPS application package. Alternatively, if USCIS discovers the inadmissibility while deciding the Form I-821, it will instruct the applicant to submit a Form I-601. Although being proactive can be more efficient, both scenarios increase the time to receive TPS because the processing time for the Form I-601 is 27.5 months. With the maximum TPS designation of 18 months, the applicant faces the possibility of not receiving TPS before their eligibility terminates.

While those requiring protection need it quickly, USCIS must also protect the country and the integrity of the program by thorough vetting of applicants for eligibility and national security concerns and ensuring only those who qualify receive TPS. Simply hiring more staff is not viable given the unpredictability of demand and the sheer numbers involved. USCIS recognizes that it must also streamline the application process and leverage technology to reduce processing times.

## Missing Processing Times Lead to Confusion Among Applicants

With the backlogs, many TPS applicants naturally seek information about processing times, but USCIS does not provide enough information to manage the expectations of all TPS beneficiaries. For example, on its case processing times webpage, USCIS does not display processing times for Form I-821 filed by Cameroonian or Ethiopian nationals. USCIS generally needs at least 6 months of data before providing processing times,<sup>298</sup> so it may not have enough data for Ethiopia since that country's registration period opened in December 2022. However, USCIS has

been accepting applications from Cameroonian nationals since June 2022 so the lack of posted processing times for Cameroon is not a phenomenon of timing.

The lack of posted processing times also prevents applicants and petitioners from knowing when they can submit a case inquiry to USCIS. The agency has stated it is “. . . working to develop processing times for all forms, form categories, and offices” and that applicants may submit an inquiry to USCIS if their case has been pending over 6 months.<sup>299</sup> However, TPS applicants have reached out to the CIS Ombudsman's office because they could not submit an inquiry with USCIS even after their application had been pending for 6 months.

In FY 2023, the CIS Ombudsman received nearly 1,100 requests for case assistance from individuals with a pending Form I-821. Over 60 percent of the time, these individuals were reaching out for assistance because their cases were outside normal processing times. Congressional offices are also experiencing an increase in requests for assistance as a result of delays in processing.<sup>300</sup> Considering the current average Form I-821 processing time is 14.3 months, these case inquiries may essentially be meaningless or unnecessarily require USCIS' attention. If USCIS posted processing times for these TPS designations, they could avoid these meaningless case inquiries and therefore reduce their workload, as well as that of the CIS Ombudsman and congressional offices.

Applicants also search for processing times and case information about their TPS-based EAD applications. Although USCIS has made progress in reducing processing times for EADs, especially renewals,<sup>301</sup> processing times for initial EADs remain a concern because TPS applicants with no other status have no employment authorization. As TPS populations grow, this concern results in increased inquiries to the CIS Ombudsman.<sup>302</sup> Except for El Salvador and Haiti, there are no posted processing times for Forms I-765 associated with a TPS application. All other TPS-based EAD applicants are included within the category called

<sup>297</sup> See 8 C.F.R. §§ 244.3 and 244.4.

<sup>298</sup> See generally USCIS Web Page, “Case Processing Times,” <https://egov.uscis.gov/processing-times/more-info> (accessed June 7, 2023) (“The processing time displayed on the USCIS website is the amount of time it took [the agency] to complete 80% of adjudicated cases over the last six months.”)

<sup>299</sup> USCIS Web page, “Frequently Asked Questions About Processing Times,” <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Mar. 8, 2023).

<sup>300</sup> See Suzanne Monak, “Immigration Agency Backlog Weighs on Congressional Offices,” *Roll Call* (July 18, 2022); <https://rollcall.com/2022/07/18/immigration-agency-backlog-weighs-on-congressional-offices/> (accessed June 20, 2023).

<sup>301</sup> USCIS, “Fiscal Year 2022 Progress Report” (Dec. 2022); [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed May 24, 2023).

<sup>302</sup> The CIS Ombudsman 2022 Annual Report includes an article on the EAD backlogs and includes recommendations to address them. See CIS Ombudsman Annual Report 2022, p. 12.

“I applied for my Employment Authorization Document in April. It was supposed to take 3-5 months to arrive. It’s been 7 months already and I haven’t received a response. Since I haven’t been able to work, I have struggled immensely to support myself. I requested to expedite the processing of my case based on financial hardship but was denied without an explanation. I submitted an e-Request to inquire about my applications and claimed that my case was outside processing times. I was supposed to be contacted by the [ . . . ] service center with a response but never got it.”

Source: Information received in a request for case assistance by the CIS Ombudsman.

“all other applications for employment authorization” on the USCIS processing times web page.<sup>303</sup> USCIS can provide greater transparency for applicants as to their actual timeframes for employment eligibility by posting processing times specific to all TPS populations. USCIS is expanding the I-765 EAD processing times displayed on its website to include each TPS-designated country as times are ready for display and agency resources allow.<sup>304</sup> In the meantime, nationals of newly added countries such as Afghanistan, Ukraine, and Venezuela are dependent on EADs to be able to legally work, and a continuing lack of work authorization or even information regarding processing times, remains a concern.

Similarly, USCIS implemented a new TPS travel authorization process in July 2022 but has not made corresponding changes to its processing times webpage. Before, TPS applicants submitted Form I-131 and received advance parole documents (also known as Form I-512 or I-512L) from USCIS if they met the requirements. Now, TPS applicants still submit Form I-131 to apply for travel authorization, but USCIS will issue them a new travel authorization document, called a Form I-512T, *Authorization for Travel by a Noncitizen to the United States*, that serves as evidence of its consent for the applicant to travel outside the country.<sup>305</sup> When applicants go to USCIS’ processing times web page, there is no option to see processing times for Forms I-131 requesting

a TPS travel authorization document. USCIS can provide greater transparency for applicants as to their actual timeframes for this benefit by posting processing times specific to this form category.

When applicants file another application, either together with or after filing Form I-821, they often are uncertain about which processing time to follow on USCIS’ web page. The processing time posted for a Form I-765 filed by a TPS applicant refers only to applicants who submit the form after filing Form I-821, not to those who filed the Form I-765 together with Form I-821. A different adjudicator may render a decision on the Form I-765 if it is submitted separately from the I-821 at a later date.<sup>306</sup> Another example is the Form I-601, which applicants may submit either at the same time they file Form I-821 or afterwards. The adjudicator for the I-821 will also consider any related Form I-601.<sup>307</sup> The processing time listed for Form I-601 is 27.5 months, but it is not clear from the processing time website when TPS applicants should follow this processing time, or the processing time listed for Form I-821.

## How USCIS Issues EADs to TPS Applicants

To ensure TPS applicants receive protection quickly, USCIS can issue an EAD if it finds that the applicant is preliminarily eligible for TPS upon initial review (known as a *prima facie* determination).<sup>308</sup> This means TPS applicants can receive work authorization before USCIS decides whether to grant them TPS. To establish *prima facie* eligibility, the applicant must provide sufficient evidence of identity, nationality, date of entry, and continuous residence and physical presence in the United States for the TPS designated country.<sup>309</sup> USCIS issued almost 72,100 initial *prima facie* EADs in FY 2022.<sup>310</sup> USCIS takes a “one touch” approach,<sup>311</sup> which means that when USCIS first gets a TPS application:

<sup>306</sup> Information provided by USCIS (May 3, 2023).

<sup>307</sup> *Id.*

<sup>308</sup> INA 244(a)(4); 8 U.S.C. § 1255a(a)(4).

<sup>309</sup> USCIS Adjudicator’s Field Manual, § 38.1(e)(5)(A).

<sup>310</sup> USCIS, “Form I-765 Application for Employment Authorization: All Receipts, Approvals, Denials Groups by Eligibility Category and Filing Type (Fiscal Year 2022); [https://www.uscis.gov/sites/default/files/document/data/I-765\\_Application\\_for\\_Employment\\_FY03-22\\_AnnualReport.pdf](https://www.uscis.gov/sites/default/files/document/data/I-765_Application_for_Employment_FY03-22_AnnualReport.pdf) (accessed Apr. 25, 2023).

<sup>311</sup> Letter from USCIS Director Ur Jaddou to Sen. Jeanne Shaheen (Mar. 20, 2023), p.2; [https://www.uscis.gov/sites/default/files/document/foia/Temporary\\_Protected\\_Status\\_Employment\\_Authorization\\_Document\\_processing-Senator\\_Shaheen.pdf](https://www.uscis.gov/sites/default/files/document/foia/Temporary_Protected_Status_Employment_Authorization_Document_processing-Senator_Shaheen.pdf) (accessed Apr. 22, 2023).

<sup>303</sup> USCIS Web page, “Check Case Processing Times,” <https://egov.uscis.gov/processing-times/> (accessed Mar. 9, 2023).

<sup>304</sup> Information provided by USCIS (May 3, 2023).

<sup>305</sup> USCIS Web page, “I-131, Application for Travel Document” (Jan. 23, 2023); <https://www.uscis.gov/i-131/> (accessed Mar. 9, 2023).



- If the adjudicator approves the TPS application, USCIS will issue the applicant an EAD under category (a)(12) as a *TPS beneficiary*.
- If the adjudicator needs more evidence and sends the applicant a request for evidence (RFE) or notice of intent to deny (NOID), USCIS will usually issue the applicant a *prima facie* EAD under category (c)(19) as a *TPS applicant* while waiting for the applicant to respond to the RFE or NOID. The (c)(19) EAD would be valid until USCIS issues a final decision on the TPS application or 60 days after the date that an FRN is published for the termination of TPS designation.<sup>312</sup>

Because TPS applications remain mostly paper based, USCIS considers this “one touch” approach to be the most efficient and quickest way to give benefits to the greatest number of eligible TPS applicants in a paper-based environment. As USCIS’ electronic processing capabilities continue to grow, it is evaluating other steps it can take to reach a *prima facie* determination sooner.<sup>313</sup>

## Applicants Can Encounter Difficulties in Showing Proof of Work Authorization

Stakeholders have shared with the CIS Ombudsman that processing delays and confusion about TPS work authorization documents have led TPS beneficiaries to encounter problems obtaining and maintaining employment, as well as obtaining or renewing driver’s licenses, while their employment authorization renewal applications are pending. More can be done, however, to educate employers regarding acceptable documents for proof of status and employment authorization, because some employers are not accepting the admittedly confusing documents that can be presented.<sup>314</sup>

It is against the law for employers to hire noncitizens who are not authorized to work in the United States.<sup>315</sup> Consequently, employers must verify that all potential employees are authorized for employment by requiring employees to complete Form I-9 and present certain documents proving their identity and employment authorization.<sup>316</sup> If the documents presented have an expiration date, the employer must re-verify the employee’s eligibility to work no later than the date those documents expire. At that time, the employee must present a document that shows current employment authorization to be eligible for continued employment.<sup>317</sup>

Meanwhile, regulations require noncitizens in certain immigration-related categories to obtain an EAD to establish employment authorization and satisfy Form I-9 requirements.<sup>318</sup> Under USCIS regulations, TPS applicants and beneficiaries are required to have an EAD,<sup>319</sup> but USCIS continues to experience unprecedented backlogs in processing EAD applications. Delays in adjudicating initial EAD applications leave these individuals without the ability to support themselves legally. Delays in renewing EADs interrupt employment for TPS beneficiaries who have already proven themselves eligible while simultaneously disrupting employment in U.S. businesses.

As a result, the agency has taken certain steps to demonstrate work-eligible status for TPS beneficiaries, and an expired or expiring EAD does not necessarily mean that the card holder is no longer eligible to work. It has now become common for USCIS to extend TPS beneficiaries’

<sup>315</sup> See INA § 274A(a); 8 U.S.C. § 1324a(a).

<sup>316</sup> See INA § 274A(b); 8 U.S.C. § 1324a(b); and 8 C.F.R. § 274a.2(b)(1). See also USCIS Web page, “Form I-9, Employment Eligibility Verification” (Apr. 27, 2020); <https://www.uscis.gov/i-9> (accessed Apr. 25, 2023); USCIS Handbook for Employers, M-274 § 4.0 (Apr. 27, 2020); <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/40-completing-section-2-of-form-i-9> (accessed Apr. 25, 2023) (“Within three business days of the date employment begins, the employee must present an original document or documents (or an acceptable receipt) . . . that shows the employee’s identity and employment authorization”).

<sup>317</sup> 8 C.F.R. § 274a.2(b)(4)(vii); USCIS Handbook for Employers, M-274 § 5.1 (Apr. 27, 2020); <https://www.uscis.gov/i-9-central/handbook-for-employers-m-274/50-completing-section-3-of-form-i-9/51-reverifying-employment-authorization-for-current-employees> (accessed Apr. 26, 2023) (“You must reverify an employee’s employment authorization no later than the date employment authorization expires.”).

<sup>318</sup> 8 C.F.R. § 274a.12(c).

<sup>319</sup> 8 C.F.R. § 274a.12(a)(12) and (c)(19). Contrast to USCIS Web Page, “Form I-9 Acceptable Documents” (Feb. 3, 2023); <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents> (accessed Mar. 10, 2023). Form I-94, *Arrival/Departure Record*, issued by DHS to asylees or work-authorized nonimmigrants (for example, H-1B nonimmigrants) because their immigration status is considered sufficient evidence to establish employment authorization for I-9 purposes.

<sup>312</sup> 8 C.F.R. § 244.13(a)-(b).

<sup>313</sup> Letter from USCIS Director Ur Jaddou to Sen. Jeanne Shaheen (Mar. 20, 2023), p. 2; [https://www.uscis.gov/sites/default/files/document/foia/Temporary\\_Protected\\_Status\\_Employment\\_Authorization\\_Document\\_processing-Senator\\_Shaheen.pdf](https://www.uscis.gov/sites/default/files/document/foia/Temporary_Protected_Status_Employment_Authorization_Document_processing-Senator_Shaheen.pdf) (accessed Apr. 22, 2023).

<sup>314</sup> The INA protects all work-authorized individuals from unfair documentary practices relating to the employment verification process, and the Immigrant and Employee Rights (IER) section in the Department of Justice’s (DOJ’s) Civil Rights Division enforces the anti-discrimination provision of the INA. The IER also educates employers, employees, and the general public on their rights and responsibilities under the INA’s anti-discrimination provisions. Employees and employers can call to receive assistance in resolving potential immigration-related employment disputes. IER receives thousands of calls each year and has been able to intervene to save TPS recipients’ jobs. See DOJ Web page, “Overview of the Immigrant and Employee Rights Section” (July 28, 2017); <https://www.justice.gov/crt/overview-immigrant-and-employee-rights-section> (accessed May 14, 2023).



work authorization beyond the expiration date of their EAD without sending them an updated EAD:

- EADs for TPS applicants and beneficiaries are eligible for an automatic extension if they file an application to renew an EAD on time and in the same category.<sup>320</sup> USCIS published a temporary final rule that extended the existing automatic extension period for certain EADs, including those based on being a TPS beneficiary, from 180 to 540 days beyond its expiration date or until the date USCIS adjudicates the renewal application, whichever is earlier.<sup>321</sup> The Form I-797, *Notice of Action*, USCIS issues to show the TPS beneficiary has a pending application to renew their EAD acts as a receipt document extending the employment authorization status for the time permitted; however, a new EAD may still be needed after that time.
- If an FRN was published extending a TPS designation, it will provide information explaining employment verification and may include language that EADs held by the TPS beneficiaries are extended until the new TPS designation termination date or some other date. It would then be sufficient for the TPS holder to present their employer with just their expired or expiring EAD. Some will also print out the FRN for their employer.
- USCIS also has issued an individual notice indicating the extension of the TPS beneficiary's EAD.

Even after someone obtains work authorization, they may encounter problems when presenting the somewhat unique documentation with which TPS beneficiaries demonstrate employment authorization.

Given the various approaches USCIS has used to extend work authorization for TPS beneficiaries, employees and employers can become confused. Some employers, no matter the size or industry, have failed to accept the valid

documentation and demand additional documents.<sup>322</sup> Employers who are onboarding a TPS beneficiary for the first time may have to do more research to find out what documents are acceptable. If they are unfamiliar with USCIS' processes, they may naturally be hesitant to verify an employee based on a printout of an FRN or a web announcement when the physical EAD before them is expired. Even employers who are used to hiring TPS beneficiaries may ask for more or different documents when they are presented with a situation different from what they are used to due to a change in USCIS processes or documents. Employees themselves may not be aware of their rights and may not know how to assert themselves or know the impact of being eligible for employment authorization under more than one category (for example, a TPS beneficiary who is also eligible for employment authorization as an applicant with a pending asylum or adjustment of status application), which can compound the issue of ascertaining acceptable documents.

The U.S. Government Accountability Office (GAO) reviewed the various methods that USCIS informs employers and benefit-granting agencies on how to verify automatic extensions of TPS employment authorization documents—FRNs, USCIS' *Handbook for Employers* (M-274), and information published on USCIS' website—and found that DHS provided inconsistent guidance on employment authorization across these sources of information.<sup>323</sup> Employers are not expected to be experts on documents, but they are expected to accept documents that reasonably appear to be genuine and to relate to the person presenting them.<sup>324</sup> Staying current on acceptable documents can be challenging for human resource professionals, much less generalists such as office managers or supervisors who handle such duties for smaller employers.

<sup>320</sup> 8 C.F.R. § 274a.13(d).

<sup>321</sup> "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants," 87 Fed. Reg. 26614 (May 4, 2022); see also USCIS Web page, "Automatic Employment Authorization Document (EAD) Extension" (Mar. 2, 2023); <https://www.uscis.gov/eadautoextend> (accessed May 22, 2023).

<sup>322</sup> Information provided by stakeholders (Mar. 21, 2023). See also DOJ Web page, "Telephone Interventions" (June 13, 2022); <https://www.justice.gov/crt/telephone-interventions-2> (accessed May 14, 2023) (brief descriptions of IER's interventions related to TPS beneficiaries); DOJ Web page, Justice News, "Justice Department Secure Agreement with Florida Restaurant Franchisee to Resolve Immigration-Related Discrimination Claim" (Apr. 10, 2023); <https://www.justice.gov/opa/pr/justice-department-secures-agreement-florida-restaurant-franchisee-resolve-immigration> (accessed Apr. 26, 2023) (although the employee's immigration status is not indicated in the new release, the scenario described is one that TPS beneficiaries could experience).

<sup>323</sup> U.S. GAO, "Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions," GAO-20-134 (Apr. 2020); <https://www.gao.gov/assets/gao-20-134.pdf> (accessed Apr. 25, 2023).

<sup>324</sup> USCIS, *Handbook for Employers*, M-274 § 12.0 (May 20, 2022); <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/120-acceptable-documents-for-verifying-employment-authorization-and-identity> (accessed Apr. 26, 2023).

The GAO recommended that USCIS take steps to provide consistent guidance on the mechanisms it may use to communicate automatic extensions of TPS EADs. USCIS concurred with the recommendation and in 2022 updated its *Handbook for Employers* to consistently identify each of the official mechanisms that USCIS may use to communicate automatic extensions of TPS EADs. Nevertheless, TPS beneficiaries continue to be denied employment and benefits and experience delays in the verification process, putting them at risk of losing their jobs or not being hired at all due to confusion about their authorization to work in the United States.<sup>325</sup>

USCIS includes Form I-9 completion information for employers and employees in TPS FRNs and publishes guidance about completing Form I-9 for employees who are TPS beneficiaries on its web page “I-9 Central” and *Handbook for Employers*.<sup>326</sup> USCIS has not presented TPS-tailored webinars or training to employers.<sup>327</sup> Better training and education for employees and employers on such issues as to what countries have TPS designation, the documents TPS employees may have and why not all of them will have the same documents, the difference between TPS and parole EADs, when an employee is eligible for an automatic extension, and how and where to find more information to stay up to date can lead to fewer missed employment opportunities and unnecessary inquiries. For the TPS holder, it protects them from being vulnerable to unfair employment-related actions.

## Difficulties in Showing Proof of Status for Other Benefits

Stakeholders and requests for case assistance to the CIS Ombudsman have also noted that TPS beneficiaries face similar challenges when trying to obtain a driver’s license, Social Security benefits, or another benefit from a government benefit-granting agency.<sup>328</sup> SAVE is a USCIS online verification process for federal, state, and local agencies that grant benefits such as driver’s licenses and Social Security benefits. SAVE compares the applicant’s biographic information (first and last name, date of birth, and a numeric identifier such as an A-Number, Form I-94 number, or unexpired foreign passport number) provided to the benefit-granting agency to what is in USCIS systems. When these government agencies enter information into SAVE, the system generally provides an automated response quickly

verifying the individual’s status or asking for additional information.<sup>329</sup> If a manual review is required, then the process can take over a month to complete due to increases in demand. Between FYs 2020 and 2022, SAVE received 710,309 requests for verification related to TPS holders.<sup>330</sup> For FYs 2020 and 2022, more than 97 percent of SAVE TPS verifications occurred through automated verification, but a significantly higher number of TPS verifications had to go through manual verification due to an information technology issue that caused SAVE’s initial automated response not to reflect some TPS automatic extensions, which was identified and corrected.<sup>331</sup> In these situations, SAVE instructed user agencies to follow SAVE’s policy of submitting the case for manual review to verify the TPS automatic extension. However, TPS beneficiaries also sought assistance from the Department of Justice’s Immigrant and Employee Rights Section (IER) because the benefit-granting agency either did not submit their case for manual review or inform them of the result of the manual review.<sup>332</sup>

If the benefit-granting agency does not accept the documents presented by an individual, it will not initiate the SAVE process, thus denying that person an opportunity to prove they are eligible. SAVE has increased outreach to benefit-granting agencies through updated resource material and targeted engagement sessions to raise awareness of procedures for verifying auto-extended TPS and other EADs and the need for agencies to reduce duplicate cases and provide more accurate information when they submit their requests. It has also made system improvements to increase automated responses and account for changes in immigration-related documentation.<sup>333</sup> In addition, USCIS analyzes benefit-granting agency behaviors, and SAVE relationship managers proactively work with agencies to identify and address behaviors that increase the SAVE backlog and impact benefit applicants negatively.<sup>334</sup>

<sup>325</sup> Information provided by stakeholders (Dec. 7 and 16, 2022; Mar. 21 and 22, 2023).

<sup>326</sup> Information provided by USCIS (May 3, 2023).

<sup>327</sup> *Id.*

<sup>328</sup> Information provided by stakeholders (Mar. 21, 2023).

<sup>329</sup> USCIS Web page, “SAVE Verification Process” (Jan. 12, 2023); <https://www.uscis.gov/save/about-save/save-verification-process> (accessed May 17, 2023).

<sup>330</sup> Information provided by USCIS (May 3, 2023).

<sup>331</sup> *Id.*

<sup>332</sup> Information provided by stakeholders (Mar. 21, 2023). See also DOJ Web page, “Telephone Interventions” (June 13, 2022); <https://www.justice.gov/crt/telephone-interventions-2> (accessed May 14, 2023) (brief descriptions of IER’s interventions related to TPS beneficiaries).

<sup>333</sup> Information provided by USCIS (May 3, 2023).

<sup>334</sup> *Id.*

## Recommendations

1. **Post processing times for each TPS population to better inform applicants on their real wait times for TPS status, work authorization, and travel authorization.** These vulnerable populations are dependent on EADs and travel authorization to be able to legally work and travel and a continuing lack of authorization or even information regarding processing times is a substantial concern.
  - a. Post processing times for Form I-765 for TPS applicants (EAD category C19) and TPS beneficiaries (EAD category A12) either for each country designated for TPS or as an aggregate TPS category, rather than under the “All other applications for employment authorization” label. Providing more targeted processing times will manage expectations and inform applicants when they can inquire about their case with USCIS, saving resources on both sides.
  - b. Post processing times for the Form I-131 for TPS beneficiaries who seek travel authorization.
  - c. Provide more realistic timeframes for when an applicant can inquire about a pending Form I-821 when the designated country is not listed on the processing times page.
2. **Better educate employers and benefit-granting agencies (such as DMVs and the Social Security Administration) on how to verify employment eligibility and proof of status of TPS beneficiaries to ease fears of noncompliance.** Most employers are not immigration experts and find it challenging to keep up with immigration updates related to employment authorization, leading to potential violations. To reach a broader audience, USCIS should:
  - a. Provide information on employment verification of interest to employers during its TPS engagements and provide an opportunity for employers to submit questions.
  - b. Conduct additional educational sessions for employers in coordination with IER and partner with the Department of Labor or nonprofit organizations to engage in an employee rights education initiative (such as a Know Your Rights campaign).
3. **Eliminate the separate EAD application for TPS applicants.** Instead of submitting redundant forms, TPS applicants can indicate on their Form I-821 that they would like proof of employment authorization. The INA mandates employment authorization for TPS

recipients as well as applicants who have established *prima facie* eligibility for TPS. USCIS could explore possible changes to regulations (and the list of acceptable documents for employment verification) that would allow these individuals to receive proof of employment authorization for the I-9 process—whether a notice or some other verification—once USCIS finds *prima facie* eligibility or grants TPS, whichever comes first.

4. **Consider pursuing legislative changes to extend TPS designation periods.** The current maximum period of 18 months appears to be inadequate given how often designations are extended. A longer designation period would also give USCIS more time to complete requests for TPS and related applications, such as EADs.
5. **Increase case processing through technological solutions.**
  - a. Prioritize authorizing individuals to file a fee waiver request online and share a timeline with the public. Until USCIS approves this capability, USCIS should explore accepting a copy of a waiver request form as a downloaded attachment to the online filing of the primary application.
  - b. Continue exploring streamlined processing for initial and re-registrant applicants by modifying the Form I-821 and leveraging electronic processing and USCIS online accounts. Suggestions include providing a shorter version of Form I-821 so the applicant does not have to provide information that USCIS already has. For example, USCIS can include a checkbox on Form I-821 that re-registrants can mark if none of their information has changed. Adjudicators can then focus on the applicants whose information has changed since their previous approval as that may affect their continued eligibility for TPS. The agency could also leverage USCIS online accounts to allow individuals to request re-registration from their online account.

Global political and climate changes will contribute to a continuing need by individuals for temporary protection in the United States, a role that TPS was intended to fill. That continuing need, however, compounds USCIS’ resource constraints and ability to provide services. Processing work authorization alone for these populations is a never-ending task for the agency. USCIS has taken steps to mitigate these strains, but it can do more to better manage these populations’ needs and can still gain efficiencies by reducing some of the burdens created by its own regulations.





## A LOOK BACK AT USCIS' UNPRECEDENTED FISCAL YEAR 2022 EFFORTS TO USE ALL EMPLOYMENT-BASED VISAS: Unqualified Success, Or A Must-Needed Win For The Agency Amid Systemic Challenges?

**Responsible Directorates:** Field Operations, Service Center Operations

### Introduction

*"What we can do is make sure that every single [employment-based] green card that is allocated gets utilized. We were bound and determined to utilize every single one this past fiscal year. And we did. It was immensely important to the agency and to the Administration."*—Doug Rand, Senior Advisor to the Director, speaking at the Society for Human Resource Management Employment Law & Compliance Conference, February 27, 2023.<sup>335</sup>

The onset of the COVID-19 pandemic in March 2020 introduced numerous challenges for the country's immigration system and for the agencies that administer that system, especially in the distribution of numerically-limited immigrant visas. Through March 2020, agencies were on track to utilize all available family-sponsored and employment-based visas. Beginning March 20, 2020, however, all embassies and consulates were closed for routine immigrant and nonimmigrant visa appointments for several months, which greatly limited the Department

<sup>335</sup> SHRM Web page, "USCIS Officials Say Agency Is Recovering from Pandemic Lows" (Feb. 27, 2023); <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/uscis-officials-say-agency-recovering-from-pandemic-lows.aspx> (accessed Apr. 13, 2023).



of State's (DOS) visa issuance for the fiscal year (FY).<sup>336</sup> FY 2020 saw tens of thousands of immigrant visas not distributed in the year in which they were available.

As a result, in FY 2021 the agency was under acute pressure to deliver more services than ever before in adjudicating employment-based adjustment applications and to utilize these visas in a timely fashion. That year, U.S. Citizenship and Immigration Services (USCIS) adjudicated more employment-based adjustment of status cases to completion than it had in any previous year; USCIS and DOS together completed and used up approximately 170,000 of the 290,000 employment-based immigrant visas available. But this again fell short of the total of available employment-based visas for that year.

FY 2022 presented the resulting challenge: using up the more than 280,000 immigrant visas available in the employment-based category, roughly the same number as the year before. USCIS, having fallen short the previous 2 years in using up these visa numbers, fully committed resources to ensuring the adjudication of these applications. By concentrating adjudications of most adjustments in field offices after the approval of the underlying immigrant petitions, the agency maximized its adjudicators to review and finalize hundreds of thousands of applications. It actively engaged the filing community, using social media to alert applicants to changes, and generally prioritized these applications at the field office level.

The agency's stated goal as FY 2022 arrived was clear—ensure none of the approximately 280,000 available employment-based visas would go unused. This historic completion rate was not without its cost, however. By prioritizing processing and adjudication of employment-based applications, adjudication of filings for others were further delayed, particularly for those forms adjudicated at USCIS field offices. USCIS also broke with its typical “first-in, first-out” approach, as cases were moved to field offices based on readiness for adjudication, leaving behind some whose filings may have been earlier but were not ready for adjudication. During these efforts, USCIS encountered additional issues that required their own unique operational responses, such as a lack of or expired

medical examination records, or derivative applications not moving forward with primary beneficiaries.

This report will build on the information provided during two webinars hosted by the CIS Ombudsman with the participation of USCIS, held on May 26, 2022,<sup>337</sup> and October 27, 2022, respectively.<sup>338</sup> In those webinars, representatives from USCIS presented the public with a high-level overview of the extraordinary challenges it encountered because of the onset of the COVID-19 pandemic, and its success in not allowing any employment-based visas to go unused in FY 2022. This study will however offer additional insight into areas where the agency had both unqualified success and less than unqualified success—concerns deserving further scrutiny and from which the agency can glean instruction for the future. It will look to FY 2023 and beyond, exploring ways the lessons learned from this extraordinary period can guide the agency's processes going forward.

## A Brief Primer on Annual Visa Availability

The INA governs how noncitizens obtain visas to enter and temporarily or permanently reside in the United States. The statute establishes a maximum number of noncitizens who “may be issued immigrant visas or who may otherwise acquire the status” of a lawful permanent resident within a fiscal year for the family-sponsored, employment-based, and diversity visa categories.<sup>339</sup> Although it can fluctuate, during a typical fiscal year, there are approximately 421,000 preference category and diversity immigrant visas available for issuance in total. As displayed in *Figure 5.1*, they break down as follows: 226,000 visas for the family-sponsored preference categories and 140,000 visas for the employment-based preference categories.<sup>340</sup> Immediate relatives (parents, spouses, and minor children of U.S. citizens) are admitted without a statutory cap on annual numbers.

<sup>336</sup> DOS, “Report of the Visa Office 2022, Table I Immigrant and Nonimmigrant Visas Issued at Foreign Posts Fiscal Years 2018-2022” (undated); [https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2022AnnualReport/FY22\\_Table\\_I.pdf](https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2022AnnualReport/FY22_Table_I.pdf) (accessed May 4, 2023). Table I notes, “Due to the COVID-19 pandemic, posts were instructed to suspend routine visa services and provide only mission critical and emergency services in late March 2020. This had a significant impact on the provision of immigrant and nonimmigrant visa-related services. Posts were only able to resume limited services on a post-by-post basis beginning in July 2020, as local conditions allowed.”

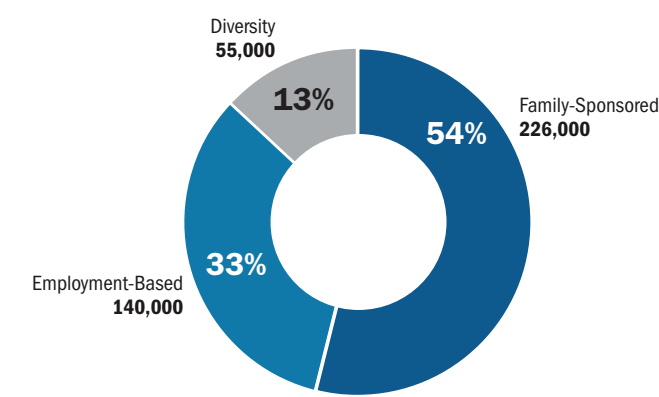
<sup>337</sup> CIS Ombudsman's Webinar Series, “Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges,” May 26, 2022.

<sup>338</sup> CIS Ombudsman's Webinar Series, “Employment-Based Immigrant Visas: Looking Back at Fiscal Year (FY) 2022 and Ahead to FY 2023 with USCIS,” Oct. 27, 2022.

<sup>339</sup> INA § 201; 8 U.S.C. § 1151.

<sup>340</sup> Although not relevant to this discussion, Section 203(c) of the INA (8 U.S.C. § 1153) provides up to 55,000 immigrant visas each fiscal year to permit additional immigration opportunities for persons from countries with low admissions during the previous 5 years. This is known as the Diversity Immigrant Visa program, which is administered by DOS.

Figure 5.1 Immigrant Visas—Actual Annual Limits



Source: INA §§ 201(c), (d), and (e); 8 U.S.C. §§ 1151(c), (d), and (e).

Once a noncitizen is the beneficiary of an approved immigrant petition and a visa is immediately available to them, there are two paths to becoming a lawful permanent resident through the employment-based and family-sponsored categories, otherwise known as obtaining a Green Card. Both tracks require USCIS to first approve an immigrant visa petition (specifically Form I-130, *Petition for Alien Relative*, or Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, for family filings or Form I-140, *Immigrant Petition for Alien Workers*, Form I-360 or Form I-526, *Immigrant Petition by Standalone Investor*, for one of the employment preference categories). Historically, the vast majority of employment-based immigrant visa beneficiaries apply for adjustment of status in the United States by filing Form I-485, *Application to Register Permanent Residence or Adjust Status*, with USCIS.<sup>341</sup> Many applicants seeking an employment-based visa are present in the United States working pursuant to nonimmigrant status, including but not limited to those working in H-1B, L, or O status. Adjusting their status allows a noncitizen to get a green card in the United States without having to return to their home country to complete the visa process. The remaining (much smaller) number of beneficiaries typically obtain their visas abroad after USCIS notifies DOS of the approval of the immigrant petition and a consular office schedules an interview and processes the noncitizen’s case to determine their eligibility

<sup>341</sup> For instance, from FY 2012 to FY 2022, nearly 85 percent of employment-based lawful permanent residents adjusted status in the United States, while the remaining approximately 15 percent were outside the United States and obtain visas through DOS. See “2021 Yearbook of Immigration Statistics,” DHS Office of Immigration Statistics, at Table 6. For FY 2022 adjustment of status data, see “Legal Immigration and Adjustment of Status Report Fiscal Year 2022, Quarter 4,” DHS Office of Immigration Statistics, at Table 1B.

for an immigrant visa.<sup>342</sup> Following consular processing, the beneficiary of an immigrant petition is inspected by U.S. Customs and Border Protection (CBP) to determine whether to admit the noncitizen in the United States as a lawful permanent resident, where they can then live and work on a permanent basis.<sup>343</sup>

Congress established five employment-based categories, made up of: (1) priority workers (EB-1); (2) members of the professions holding advanced degrees or of exceptional ability (EB-2); (3) skilled workers, professionals, and other workers (EB-3); (4) special immigrants, comprised mainly of special immigrant juveniles, ministers of religion, and religious workers (EB-4); and (5) employment creation immigrants (EB-5).<sup>344</sup> The overall employment-based annual limit between the five categories is divided based on fixed percentages. EB-1, EB-2, and EB-3 each receive 28.6 percent of the overall limit, and EB-4 and EB-5 each receive 7.1 percent of the overall limit, as shown in Figure 5.2, *Allocation of Employment-Based Immigrant Visas by Statute*.

Figure 5.2 Allocation of Employment-Based Immigrant Visas by Statute

Employment-Based Categories		FY Visa Allotment
EB1	Priority Workers	28.6% (40,040)
EB2	Members of Professions Holding Advanced Degrees or Persons of Exceptional Ability	28.6% (40,040)
EB3	Skilled Workers, Professionals, and Other Workers	28.6% (40,040)
EB4	Special Immigrants	7.1% (9,940)
EB5	Employment Creation (Investors)	7.1% (9,940)
Employment-Based Total		140,000

Source: CIS Ombudsman’s Webinar Series, “Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges,” May 26, 2022.

The employment-based allotment held steady at approximately 140,000 visas through much of the last decade, but due to the widespread COVID-19 pandemic-related closures of both DOS consulates and USCIS offices in the spring of 2020, the employment-based allotment ballooned in FY 2021 and FY 2022 because of a statutory rollover of unused family-sponsored immigrant visas.

<sup>342</sup> See “Immigrant Visa Process Overview,” Foreign Affairs Manual at 9 FAM 504.1.

<sup>343</sup> 8 C.F.R. § 235.1(f).

<sup>344</sup> INA § 203(b), 8 U.S.C. § 1153(b).

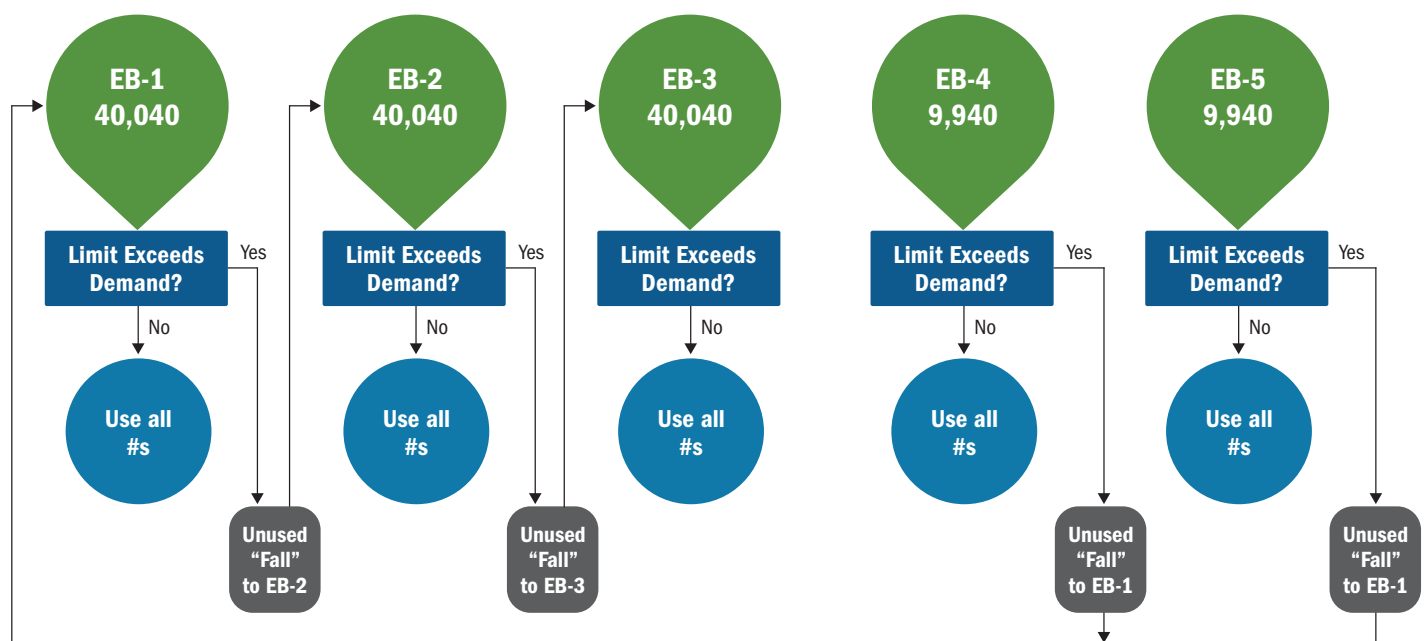
In short, unused family-sponsored visas at the end of a fiscal year roll over and are added to the normal statutory allocations in the employment line in the next succeeding fiscal year.<sup>345</sup> (If those visas continue to go unused a second year, they are then eliminated from the allocation rolls.)

Because of the consular closures in particular, the pandemic coincided with a sharp reduction in family-sponsored visa usage; those visa numbers were then added to the employment-based visa limits in FY 2021, and unused FY 2021 visa numbers were added again in FY 2022.<sup>346</sup> In FY 2021, the difference between the available family-sponsored visa numbers and the number of visas issued was 141,507. As a result, the FY 2022 employment-based annual allotment was 140,000 plus 141,507, or a total of 281,507.<sup>347</sup>

**The “Fall Up/Fall Down” Phenomenon.** Congress also created statutory provisions which allow immigrant visas “not required” in a particular employment-based category to be made available in another employment-based category.<sup>348</sup> These USCIS colloquially refers to as the “fall up/fall down” provisions. Specifically, visas not required in EB-4, and any unreserved visas not required in EB-5, are made available in EB-1; visas not required in EB-1 are made available in EB-2; and visas not required in EB-2 are made available in EB-3. There is no provision in the statute making visas that are not used in the EB-3 category in a given fiscal year available for another category.<sup>349</sup>

USCIS has offered the following visualization of the “fall up/fall down” statutory provisions:

**Figure 5.3** The Fall Up/Fall Down of Employment-Based Visas



Source: USCIS, CIS Ombudsman’s Webinar Series, “Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges,” May 26, 2022.

<sup>345</sup> Under INA § 201(d); 8 U.S.C. § 1151(d), the worldwide level of employment-based immigrants for a fiscal year is 140,000 plus, as noted under § 201(d)(1)(C), the “difference (if any) between the maximum number of visas which may be issued under section 1153(a) (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.”

<sup>346</sup> See USCIS Web page, “Fiscal Year 2022 Employment-Based Adjustment of Status FAQs [Archived Content]” (Aug. 26, 2022); <https://www.uscis.gov/archive/fiscal-year-2022-employment-based-adjustment-of-status-faqs> (accessed June 1, 2023).

<sup>347</sup> DOS published this official determination of the FY 2022 employment-based annual limit in the September 2022 Visa Bulletin. DOS, Bureau of Consular Affairs, “Visa Bulletin for September 2022,” No. 69, Vol. X (Aug. 3, 2022); <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-september-2022.html>.

<sup>348</sup> INA § 203(b); 8 U.S.C. § 1153(b).

<sup>349</sup> With the enactment of the “EB-5 Reform and Integrity Act of 2022” on March 15, 2022, Congress established special rules for the carryover of some unused EB-5 visas from one fiscal year to the next. As a result, EB-5 visas reserved for certain qualifying immigrant investors that are “not required” will remain available within the same EB-5 category for the immediately succeeding fiscal year and will not be made available in EB-1. Consolidated Appropriations Act of 2022, Div. BB, § 102(a)(2), Pub. L. 117-103, 136 Stat. 49; INA § 203(b)(5); 8 U.S.C. § 1153(b)(5) (2022).

During FY 2022, the “fall up/fall down” provisions resulted in additional visas being made available in the EB-2 preference category.

### ***The Further Complication of Per-Country Limits.***

Under the statute, “the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 203 [1153] in any fiscal year may not exceed seven percent (in the case of a single foreign state) or two percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.”<sup>350</sup> Accordingly, there is a seven percent annual per-country limit that applies to all the family-sponsored and employment-based preference categories combined. The INA’s per-country limit does not apply separately to the family-sponsored line or the employment-based line, nor does it apply separately to individual preference categories; it is applied to the aggregate total across all the categories. Put differently, the seven percent limit applies in the aggregate to all family-sponsored and employment-based visas used by nationals of a given foreign state. For example, the sum of the family-sponsored and employment-based limit for FY 2023 is estimated to be 423,000, a figure reached by taking the projected employment-based cap of 197,000 for FY 2023 and adding the 226,000 family-sponsored cap. Natives of a single foreign state may receive up to seven percent of that total, or 29,610 visas. If natives of a single foreign state use fewer visas in the family preferences, they are eligible to use more visas in the employment preferences, up to the seven percent of the total to which they are entitled. If natives of one of these foreign states only use, for example, 5,000 family-sponsored visas, they are eligible to use up to 24,610 employment-based visas in the same fiscal year, divided in any way between the various employment-based categories. Further, if the number of available visas within a particular employment-based category exceeds the demand for those visas within a calendar quarter, then the remaining visa numbers in that category may be used without regard to the per-country limit.<sup>351</sup>

***The Visa Bulletin and Establishing “Final Action Dates” and “Dates for Filing.”*** DOS publishes a Visa Bulletin every month that governs the issuance of immigrant visas.<sup>352</sup> The Secretary of State has the authority under the INA to oversee the numerical control process for immigrant visas, maintain waiting lists of applicants for

visas, and make reasonable estimates of the anticipated numbers of visas to be issued and rely on such estimates in authorizing the issuance of visas.<sup>353</sup> DOS uses the Visa Bulletin to manage both the potential flow of new applications as well as final visa use through immigrant visa issuance or adjustment of status. DOS collaborates closely with USCIS on the generation of the Visa Bulletin, and both agencies share data and adjudication projections to inform DOS’s “reasonable estimates.”<sup>354</sup>

There are three primary sections in the Visa Bulletin, referencing family-sponsored, employment-based, and diversity visa availability. For the family-sponsored and employment-based visa categories, DOS now publishes two charts each month: “Final Action Dates” and “Dates for Filing.” The Final Action Dates chart governs immigrant visa issuance (and adjustment of status) and is the chart traditionally published in the Visa Bulletin. The Dates for Filing chart was added in October 2015 and is used by DOS and USCIS in different ways.<sup>355</sup> While a category being “Current” or a noncitizen having a priority date earlier than the relevant entry in the Dates for Filing chart indicates that the noncitizen is “within a timeframe justifying immediate action in the application process,” DOS does not accept unsolicited required documents based on those dates. Instead, DOS uses the Dates for Filing chart to guide its internal processes and will send a notification to the noncitizens with detailed instructions about how to assemble and submit the required documents to the National Visa Center. By way of contrast, if USCIS allows the use of the Dates for Filing chart in a given month, a noncitizen may apply for adjustment of status based on that chart, without the need to wait for separate notification from the agency. USCIS indicates on its website whether for a particular month applicants should use the “Final Action Dates” chart or the “Dates for Filing” chart in that month’s Visa Bulletin.<sup>356</sup>

When the amount of demand for a particular category/country exceeds the supply of visa numbers available, the category/country is considered “oversubscribed,” and a

<sup>353</sup> INA §§ 203(e), (f), and (g); 8 U.S.C. §§ 1153(e), (f), and (g).

<sup>354</sup> INA § 203(g); 8 U.S.C. § 1153(g). The Office of the CIS Ombudsman hosts regular meetings with USCIS and DOS to discuss family-sponsored and employment-based petition flows, inventory data, and year-to-date visa use to inform estimates in authorizing visa issuance.

<sup>355</sup> See USCIS Web page, “USCIS Announces Revised Procedures for Determining Visa Availability for Applicants Waiting to File for Adjustment of Status [Archived Content]” (Sept. 9, 2015); <https://www.uscis.gov/archive/uscis-announces-revised-procedures-for-determining-visa-availability-for-applicants-waiting-to-file> (accessed May 8, 2023).

<sup>356</sup> See USCIS Web page, “Adjustment of Status Filing Charts from the Visa Bulletin” (June 9, 2023); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin> (accessed June 21, 2023).

<sup>350</sup> INA § 202(a)(2); 8 U.S.C. § 1152(a)(2).

<sup>351</sup> INA § 202(a)(5)(A); 8 U.S.C. § 1152(a)(5)(A).

<sup>352</sup> See DOS, Bureau of Consular Affairs, “The Visa Bulletin,” <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (accessed May 8, 2023).



visa availability cutoff date is established. The cutoff date is the priority date (the date upon which the underlying labor certification application was accepted for processing by the Department of Labor, or if exempt from the labor certification requirement, the date the immigrant visa petition was accepted for processing by USCIS) of the first applicant who could not be accommodated for a visa number.<sup>357</sup> Only persons with a priority date earlier than the cutoff date for their country/category have a visa available and may be approved for adjustment of status or issued an immigrant visa in a family-sponsored or employment-based preference category.<sup>358</sup> DOS publishes these cutoff dates in the Final Action Dates chart in the monthly Visa Bulletin.<sup>359</sup>

Sometimes when DOS, in collaboration with USCIS, establishes a Final Action Date it results in retrogression. Retrogression is the backwards movement of a Final Action Date for a particular country or category from one month to the next. The effect of retrogression is to make visas available to a smaller population of applicants. Typically, DOS retrogresses a particular Final Action Date toward the end of the fiscal year to ensure that visa use remains within the limits established by Congress.<sup>360</sup>

## The Unprecedented Challenges of Fiscal Year 2020 on Visa Issuance

As discussed in the CIS Ombudsman's 2021 Annual Report, FY 2020 was truly a year like no other for USCIS.

Closure of all embassies and DOS consulates for routine immigrant and nonimmigrant visa appointments as of March 20, 2020, essentially ended DOS visa use for the fiscal year. Similar closures of USCIS offices were shorter; the number of limited reopening of offices by July 2020 grew while those locations accommodated new health mandates. Employment-based visa processing was able to continue to a limited extent through the remainder of FY 2020, as most applications were adjudicated without interview. As reported in the 2021 Annual Report, USCIS innovated as the pandemic went on, incorporating remote interview pilots where they were needed, increasing the

remote work of its employees where possible, and shifting workloads to maximize adjudications.<sup>361</sup> As DOS capacity was impacted with the onset of the COVID-19 pandemic, there was an immediate reduction in DOS employment-based visa use, from over 28,000 in FY 2019 to around 14,700 in FY 2020.<sup>362</sup> Considering the closure of consular posts, USCIS needed to increase its adjudication of employment-based adjustment of status applications if the agencies were to use the available visas. In response, USCIS amplified its employment-based adjustment of status efforts in the second half of FY 2020 and used over 20,000 more visas in that fiscal year than were used in either FY 2019 or 2018.<sup>363</sup>

Fortuitously, as it turned out, in January 2020, USCIS leadership approved a return to a risk-based interview waiver determination for employment-based adjustment of status applications that went into effect in March of that year.<sup>364</sup> Prior to this, USCIS had shifted the responsibility to adjudicate employment-based Forms I-485 to the Field Operations Directorate (FOD) in 2017, as part of an effort in response to Executive Order 13769, positing that interviewing all applicants and derivatives was an essential integrity measure that should be taken.<sup>365</sup>

With this return to a risk-based interview waiver approach, it was anticipated that most employment-based adjustment of status applications could be adjudicated without interview.<sup>366</sup> With USCIS office closures requiring officers to work from home and with few if any interviews able to be scheduled in field offices, employment-based adjustment of status applications were ideal cases for newly teleworking officers.<sup>367</sup> FOD took steps to ship the applications from the National Benefits Center to field offices and then distribute the workload to officers at home. At the same time, DOS advanced the Final Action Dates in the employment-based categories in the

<sup>361</sup> See CIS Ombudsman's Annual Report 2021, pp. 6–13.

<sup>362</sup> DOS, "Report of the Visa Office 2022, Table I Immigrant and Nonimmigrant Visas Issued at Foreign Posts Fiscal Years 2018–2022" (undated); [https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2022AnnualReport/FY22\\_Table\\_I.pdf](https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2022AnnualReport/FY22_Table_I.pdf) (accessed May 4, 2023).

<sup>363</sup> DHS Office of Immigration Statistics Web page, "Legal Immigration and Adjustment of Status Report Quarterly Data" (Apr. 3, 2023); <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration/year-end> (accessed June 6, 2023). Data Report Tables 1B for FYs 2018 and 2019 show USCIS utilized 110,347 and 110,689 employment-based visas, respectively. Data Report Table 1B for FY 2020 shows USCIS used 133,741 employment-based visas.

<sup>364</sup> Information provided by USCIS (Apr. 26, 2023).

<sup>365</sup> Executive Order 13769 of January 27, 2017, *Protecting the Nation from Foreign Terrorist Entry into the United States*, 82 Fed. Reg. 8977 (Feb. 1, 2017).

<sup>366</sup> Information provided by USCIS (Apr. 26, 2023).

<sup>367</sup> *Id.*

<sup>357</sup> 8 C.F.R. § 204.5(d).

<sup>358</sup> See USCIS Web page, "Visa Availability and Priority Dates" (Apr. 29, 2020); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates> (accessed June 1, 2023).

<sup>359</sup> See DOS, Bureau of Consular Affairs, "The Visa Bulletin;" <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (accessed May 8, 2023).

<sup>360</sup> See USCIS Web page, "Visa Retrogression" (Mar. 8, 2018); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/visa-retrogression> (accessed May 5, 2023).

Visa Bulletin based on existing USCIS cases, as they were continuing to be worked, to facilitate the use of visas through adjustment of status.<sup>368</sup> Even after field offices reopened, the interview-waived employment-based adjustment of status applications remained an ideal workload for officers in light of pandemic-related interview restrictions at field offices.

As an additional impact from the pandemic, receipts of all new cases dropped precipitously in April and May 2020, and agency revenue plummeted by 40 percent, which forced USCIS to take drastic measures to cut costs.<sup>369</sup> Workforce attrition, and a hiring freeze that ran from May 1, 2020 through March 31, 2021, reduced the agency's capacity to complete cases, even as incoming caseloads gradually approached pre-COVID levels.<sup>370</sup> Though revenue began to rebound by June 2020, adjudication capacity was severely impaired by the continued hiring freeze, workforce attrition, elimination of overtime, and \$500 million in budget cuts that included reducing contract worker staffing at the National Benefits Center by over 1,000 positions.<sup>371</sup>

These extraordinary conditions, in addition to the effects of the 2020 presidential proclamations limiting DOS visa issuance,<sup>372</sup> led to a shortfall in the family-sponsored number use of over 122,280 visas, which was added to the employment-based total for FY 2021. The shortfall in employment-based visa use for FY 2020 was also

much higher than typical levels prior to the pandemic. Despite the efforts of both DOS and USCIS to increase employment-based adjustment of status adjudications, visa use for the fiscal year fell 9,100 short of the total 156,253 employment numbers available.<sup>373</sup>

## Fiscal Year 2021—Beginning to Return to Normal?

Prioritizing employment-based adjustment of status requests during every step of the processing and adjudication of applications at both FOD and its remote adjudications partner, the Service Center Operations Directorate (SCOPS), USCIS used approximately 43,000 more employment-based visas in the second year of the pandemic than it did in the first, and 66,000 more visas than during either of the last 2 pre-pandemic fiscal years.<sup>374</sup> DOS visa processing also recovered slightly, but consular posts continued to be closed or have severe capacity restrictions, significantly reducing their contribution to immigrant visa use.<sup>375</sup> While they fell short of the exceptionally high employment-based limit of 262,288 in FY 2021,<sup>376</sup> both agencies employed significant efforts to use as many of the available numbers as they could.

A significant challenge for USCIS as FY 2021 opened was a surge in employment-based adjustment of status applications filed in the first quarter. This surge was partly in response to the high availability of employment visas—more than any other fiscal year before it—as well as a high volume of receipts associated with the now-enjoined fee rule and aggressive Visa Bulletin date movement. Due to the increased availability of employment-based visas referenced, DOS advanced the cutoff dates in the October 2020 Visa Bulletin for oversubscribed countries, including

<sup>368</sup> Beginning in May 2020, DOS began advancing the Final Action Dates in the employment-based categories in the Visa Bulletin and continued this trend through the remainder of FY 2020. *See generally* the archived Visa Bulletins for FY 2020 at DOS, Bureau of Consular Affairs, “The Visa Bulletin,” <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (accessed May 17, 2023).

<sup>369</sup> USCIS Report, “Fiscal Year 2022 Progress Report” (Dec. 2022), p. 11; [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed Apr. 24, 2023).

<sup>370</sup> *Id.* at 13.

<sup>371</sup> *Id.* at 11.

<sup>372</sup> Presidential Proclamation 10014 of April 22, 2020 suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. “Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak,” 85 Fed. Reg. 23441 (accessed June 1, 2023). Proclamation 10052 of June 22, 2020, amended and extended this suspension through December 31, 2020. “Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak,” 85 Fed. Reg. 38263 (accessed June 1, 2023). Proclamation 10131 of December 31, 2020, extended this suspension through March 31, 2021. “Suspension of Entry of Immigrants and Nonimmigrants Who Continue to Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak,” 86 Fed. Reg. 417 (accessed June 1, 2023). The suspension of entry of certain noncitizens was subsequently revoked, however, by Proclamation 10149 on February 24, 2021. “Revoking Proclamation 10014,” Fed. Reg. 11847 (accessed June 1, 2023).

<sup>373</sup> DOS, “Report of the Visa Office 2020, Table V Part 1 Immigrant Visas Issued and Adjustments of Status Subject to Numerical Limitations Fiscal Year 2020” (undated); <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport-TableV.pdf> (accessed June 5, 2023).

<sup>374</sup> DHS Office of Immigration Statistics Web page, “Legal Immigration and Adjustment of Status Report Quarterly Data” (Apr. 3, 2023); <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration/year-end> (accessed June 6, 2023).

<sup>375</sup> DOS, “Report of the Visa Office 2022, Table I Immigrant and Nonimmigrant Visas Issued at Foreign Posts Fiscal Years 2018–2022” (undated); [https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2022AnnualReport/FY22\\_Table\\_I.pdf](https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2022AnnualReport/FY22_Table_I.pdf) (accessed May 4, 2023). The DOS employment-based total for FY 2020 was 14,694, while the total for FY 2021 was 19,779.

<sup>376</sup> USCIS Web page, “Fiscal Year 2022 Employment-Based Adjustment of Status FAQs [Archived Content]” (Aug. 26, 2022); <https://www.uscis.gov/archive/fiscal-year-2022-employment-based-adjustment-of-status-faqs> (accessed June 1, 2023).

China and India in the EB-2 and EB-3 categories.<sup>377</sup> Contemporaneous with the Visa Bulletin movement, the new USCIS fee schedule was to become effective in October 2020.<sup>378</sup> Both the Visa Bulletin movement, as well as the scheduled increase in fees, prompted the filing of tens of thousands of petitions and applications, either to file before the fee increases went into effect or in response to visas becoming available with the Visa Bulletin movement following October 1st. This surge in applications hit USCIS intake facilities still operating below their pre-pandemic level due to COVID-related restrictions, as well as due to the effects of the agency's resource limitations and fiscal crisis.<sup>379</sup> Indeed, as of the date of publication of this Annual Report, a number of these applications remain pending with USCIS.<sup>380</sup>

<sup>377</sup> DOS, Bureau of Consular Affairs, "Visa Bulletin for October 2020," No. 46, Vol. X (Sept. 8, 2020); <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-october-2020.html>. The October 2020 Visa Bulletin announced: "Employment-based: All of the Final Action and Application Filing Dates have been advanced at a very rapid pace, in anticipation of the FY 2021 annual limit being approximately 261,500, an all-time high. The movement of these dates has been taken in consultation with USCIS Office of Policy and Strategy to accommodate processing plans for USCIS Offices during the coming fiscal year and to maximize number use within the FY 2021 annual limits. Pending demand, in the form of applications for adjustment of status, and documentarily qualified immigrant visa applicants, is well below the estimated annual limit of 261,500." The 261,500-figure presented here was an early estimate and was subsequently revised to a total of 262,288, as noted in USCIS's FY 2022 Employment-Based Adjustment of Status FAQs.

<sup>378</sup> On August 3, 2020, DHS published the USCIS final fee schedule, with an effective date of October 2, 2020, to adjust USCIS filing fees and to make changes to certain other immigration benefit request requirements. On September 29, 2020, the United States District Court for the Northern District of California granted a motion for a preliminary injunction of the 2020 fee rule and stayed the final rule's effective date. *Immigration Legal Resource Center et al., v. Wolf, et al.*, 491 F. Supp. 3d 520 (N.D. Cal. 2020). On October 9, 2020, the United States District Court for the District of Columbia also granted a motion for a preliminary injunction and stay of the effective date of the final rule. *Northwest Immigrant Rights Project, et al. v. United States Citizenship and Immigration Services, et al.*, 496 F. Supp. 3d 31 (D.D.C. 2020). DHS continues to comply with the terms of those orders, and USCIS continues to accept the fees that were in place before October 2, 2020, and to follow the guidance in place before October 25, 2019, to adjudicate fee waiver requests.

<sup>379</sup> CIS Ombudsman's Webinar Series, "Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges," May 26, 2022.

<sup>380</sup> The Office of the CIS Ombudsman requested data from USCIS on the specific number of still-pending applications received during the first quarter of FY 2021. Unfortunately, that data was not available for analysis at the time of publication. USCIS explained, however, that a lack of visa availability is the principal reason why upwards of 90 percent of applications received in the first quarter of FY 2021 remain pending and cannot be approved at this time. For many such applications (in the India EB-3 category, with priority dates between January 1, 2014, and January 1, 2015) an immigrant visa has never been available for issuance under the Final Action Dates chart. For others, visas were available only for a few months and their applications were not adjudicated in that narrow window. Information provided by USCIS (Apr. 26, 2023).

In November and December 2020, the CIS Ombudsman experienced a marked increase in requests for case assistance related to delayed receipt notification, signaling a considerable slowdown in USCIS intake and receipting benefit requests. The imbalance between the surge of applications and the lower capacity at intake facilities created what USCIS referred to as a "front-log" of benefit requests awaiting receipt. To address the front-log, USCIS adjusted processes, including easing space restrictions at the lockboxes and moving to 3 shifts for personnel there. As a result of these actions, lockbox facilities eliminated the front-log of more than 1 million forms between January and July of 2021. Since hygiene and public health measures also limited the capacity of USCIS biometrics processing and capture facilities, USCIS enacted a new policy of using, to the extent possible, biometrics previously provided by adjustment of status applicants.<sup>381</sup> This change in process eliminated the need for new biometrics appointments and freed up resources at Application Support Centers for other applicants. The agency reused biometrics for over 2 million applicants beginning in March 2020 and reduced pending appointments from 1.4 million in January 2021 to approximately 155,000 as of September 2021.<sup>382</sup> Moving into the second year of the pandemic, these processing adjustments were clearly having a positive impact.

Efforts to use employment-based visas in FY 2021, however, were hampered by expired or missing Forms I-693, *Report of Immigration Medical Examination and Vaccination Record*. Applicants for employment-based adjustment of status are required to provide a valid Form I-693 to demonstrate eligibility and show they are free from health conditions that would make them inadmissible.<sup>383</sup> Medical examinations are not often received at the time adjustment of status applications are submitted because the form is valid for a limited period of time. The agency typically receives this information by sending the applicant a Request for Evidence (RFE). However, this standing practice was not conducive to the agency's efforts to rapidly prioritize the adjudication of adjustment of status requests during the fiscal year; so accordingly, the agency took certain steps to address the issue of expired or missing Forms I-693.

<sup>381</sup> USCIS Web page, "USCIS Announces FY 2021 Accomplishments" (Dec. 16, 2021); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-fy-2021-accomplishments> (accessed May 9, 2023).

<sup>382</sup> *Id.*

<sup>383</sup> 8 C.F.R. § 245.5.



Generally, the I-693 is considered valid for 2 years after the date the civil surgeon signed the form.<sup>384</sup> On August 12, 2021, the agency temporarily extended the validity period of Form I-693 from 2 years to 4 years through the end of FY 2021.<sup>385</sup> This allowed the agency to adjudicate cases with medical examinations that would previously have been considered invalid. USCIS also took the uncommon step of aggressively identifying applications that lacked a valid Form I-693 and then directly contacting those applicants for resolution not only through the issuance of RFEs but also through email, text messages, and phone calls.

Employment-based visa use for the agency in FY 2021 was more than 50 percent higher than during a typical pre-pandemic fiscal year,<sup>386</sup> and yet, stakeholder and public concern understandably concentrated on the approximately 208,000 visas, including 66,781 employment visas, USCIS and DOS were unable to use.<sup>387</sup> With the flexibilities and innovations introduced in FY 2021, and an improving fiscal outlook, USCIS was on a better footing to tackle the daunting task that lay ahead in FY 2022.

## Fiscal Year 2022—A Clear Message and an Ambitious Goal

*“We are committed to taking every viable policy and procedural action to maximize the use of all available visas and are well-positioned to do so.”* Sept. 8, 2022, from the USCIS Twitter Account.<sup>388</sup>

While the above statement demonstrates the agency’s confidence near the end of FY 2022 that it would utilize

all employment-based visas as it set out to,<sup>389</sup> USCIS officials may not have been so self-assured when it opened the fiscal year. It faced a historically high number of available employment visas of over 281,000. This was accompanied by multiple issues standing in the way of the agency achieving its stated goal, such as the lapse in authorization of the EB-5 regional center program between the end of June 2021 and March 2022; the uncertainties surrounding issuance of EB-5 visas impacted the ability of USCIS and DOS to make reasonable estimates and adjust the Visa Bulletin accordingly.<sup>390</sup> Like the year before, the employment-based adjustment of status workload seemed to be the agency’s highest priority in FY 2022, and these applications, as well as their underlying Form I-140 petitions, were prioritized at every step of the process. By the end of the fiscal year, USCIS and DOS used all the available employment-based visas, apart from 6,396 EB-5 visas that Congress allowed them to carry over to the next fiscal year.<sup>391</sup> Figure 5.4 shows employment-based visa issuances for each year from FY 2018 through FY 2022.

Meeting weekly with operational components, as well as with the Office of Policy and Strategy and the Office of Performance and Quality during the fiscal year, USCIS senior leadership tracked visa use progress, identified challenges in real-time, and developed strategies to maximize the use of all available visas.<sup>392</sup> Building on efforts begun in FY 2021, agency leadership identified key steps to employ in FY 2022 to ensure no employment visas would go unissued. These included:<sup>393</sup>

- Working closely with DOS to encourage additional applications and transfers of the underlying basis (petition) in the EB-1 and EB-2 categories, if eligible, particularly by advancing the dates for India and China.

<sup>384</sup> USCIS Web page, “I-693, Report of Immigration Medical Examination and Vaccination Record” (Mar. 31, 2023); <https://www.uscis.gov/i-693> (accessed May 16, 2023).

<sup>385</sup> USCIS Web page, “USCIS Temporarily Extending Validity Period of Form I-693” (Aug. 12, 2021); <https://www.uscis.gov/newsroom/alerts/uscis-temporarily-extending-validity-period-of-form-i-693> (accessed Apr. 13, 2023).

<sup>386</sup> USCIS Web page, “USCIS Announces FY 2021 Accomplishments” (Dec. 16, 2021); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-fy-2021-accomplishments> (accessed Apr. 13, 2023).

<sup>387</sup> See Boundless Immigration, “Over 200,000 Green Cards Wasted in 2021 as Backlog Explodes” (Jan. 1, 2022); <https://www.boundless.com/blog/uscis-wastes-200k-green-cards-backlog-triples> (accessed Apr. 22, 2023). See also Cato Institute, “Agencies Wasted ¼ of Employment Green Cards in 2021” (Apr. 12, 2022); <https://www.cato.org/blog/agencies-wasted-1/4-employment-green-cards-2021> (accessed Apr. 22, 2023).

<sup>388</sup> @USCIS. “Through August 31, 2022, USCIS and @StateDept used 263,510 employment-based immigrant visas (preliminary data). We are committed to taking every viable policy and procedural action to maximize the use of all available visas and are well-positioned to do so.” *Twitter*, Sept. 8, 2022, 6:18 p.m. ET, <https://twitter.com/USCIS/status/1568000968561930240>.

<sup>389</sup> In the final quarter of FY 2022 alone, USCIS officers worked cases 7 days a week to address pending applications, efforts made possible through overtime resources specifically directed for backlog reduction by congressional appropriations. USCIS Fiscal Year 2022 Progress Report, December 2022, p. 4; [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed Apr. 24, 2023).

<sup>390</sup> During this period, it was unclear if or when the regional center program would be reauthorized, which delayed movements in the Visa Bulletin reflecting the potential “fall up” of otherwise unused EB-5 numbers. See CIS Ombudsman’s Webinar Series, “Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges,” May 26, 2022.

<sup>391</sup> USCIS Web page, “Fiscal Year 2023 Employment-Based Adjustment of Status FAQs” (last updated May 8, 2023); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/fiscal-year-2023-employment-based-adjustment-of-status-faqs> (accessed May 10, 2023). Of the available visas for FY 2022, USCIS and the Executive Office for Immigration Review (EOIR) approved more than 220,000 employment-based adjustment of status applications.

<sup>392</sup> Information provided by USCIS (Apr. 26, 2023).

<sup>393</sup> *Id.*



- Considering capacity restrictions, adjusting the prioritization of Form I-140 adjudications to focus on petitions where the beneficiaries could receive visas in FY 2022 (after premium petitions).
- Transferring visa-available, petition-approved Forms I-485 to FOD from SCOPS, allowing the service centers to focus on Forms I-140 while field offices focused on Forms I-485.
- Adjudicating interview-waived, employment-based cases at any field office based on available adjudication capacity, ensuring that applications were processed as quickly and efficiently as possible rather than remaining backlogged at offices overwhelmed by applications filed by local residents.
- Proactively identifying applications that would be approvable but for a missing or invalid Form I-693 and sending an RFE to the applicant requesting this information.

Despite the Visa Bulletin listing EB-1 as “Current” all year and EB-2 being “Current” for all countries except India and China, by the end of December 2021 it was clear that too few potential applicants had filed for adjustment of status in those categories. This meant that while USCIS and DOS were on track to use all the EB-3 and EB-4 visas, there was danger of falling short in EB-1 and EB-2 due to a lack of “inventory” (in other words, employment-based adjustment cases in those preference categories that could be adjudicated). To address the inadequate EB-1 and EB-2 inventory, DOS, in collaboration with USCIS, set the EB-1 and EB-2 dates aggressively in the Visa Bulletin and continued to advance the India EB-2 dates all year. USCIS allowed the use of the Dates for Filing chart to stimulate sufficient new filings through May 2022.<sup>394</sup> The agency also communicated with the public on numerous occasions over the first 4 months of 2022 through its website, social media channels, and outreach events with businesses to highlight the lack of sufficient EB-1 and EB-2 inventory and encourage noncitizens to consider applying.<sup>395</sup>

USCIS established a new process and a dedicated single mailing address to receive “transfer of underlying basis” requests, and urged eligible applicants to consider transferring the underlying basis of their pending

adjustment of status applications.<sup>396</sup> A transfer of an underlying basis request is a way in which noncitizens who already have a pending adjustment of status application submitted using one ground of eligibility may send a written request to transfer the basis of the pending application to another eligibility category. For example, if an individual submitted an adjustment of status application based on an EB-3 petition but also has an approved or pending EB-2 petition, they may ask USCIS to transfer the pending adjustment of status application to the EB-2 petition. Specifically, the agency encouraged eligible applicants to consider transferring the basis of their adjustment of status applications to either EB-1 or EB-2 where possible, given the historically high number of visas available, and the lack of agency inventory, in those categories.<sup>397</sup> The new process provided a centralized filing location at the USCIS Western Forms Center for receiving the I-485, Supplement J and utilized USCIS’ digital tools to electronically distribute these transfer requests to the offices and service centers processing the adjustment of status applications.<sup>398</sup>

For the inventory on hand, USCIS was constrained from adjudicating concurrently filed adjustment of status applications until the underlying Form I-140 petitions were approved. Due to capacity limitations and the effects of premium processing, USCIS experienced challenges in approving sufficient Forms I-140 to move the related adjustment of status applications into the hands of adjudicators.<sup>399</sup> For FY 2022, the agency shifted adjudication-ready adjustment of status applications in EB-1 through EB-3 from SCOPS to FOD for adjudication to best match the workload with the available resources, a change in process that was critical to the agency’s success in utilizing the employment-based visas for the fiscal year.<sup>400</sup>

<sup>396</sup> USCIS Web page, “Fiscal Year 2022 Employment-Based Adjustment of Status FAQs [Archived Content]” (Aug. 26, 2022); <https://www.uscis.gov/archive/fiscal-year-2022-employment-based-adjustment-of-status-faqs> (accessed June 1, 2023).

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

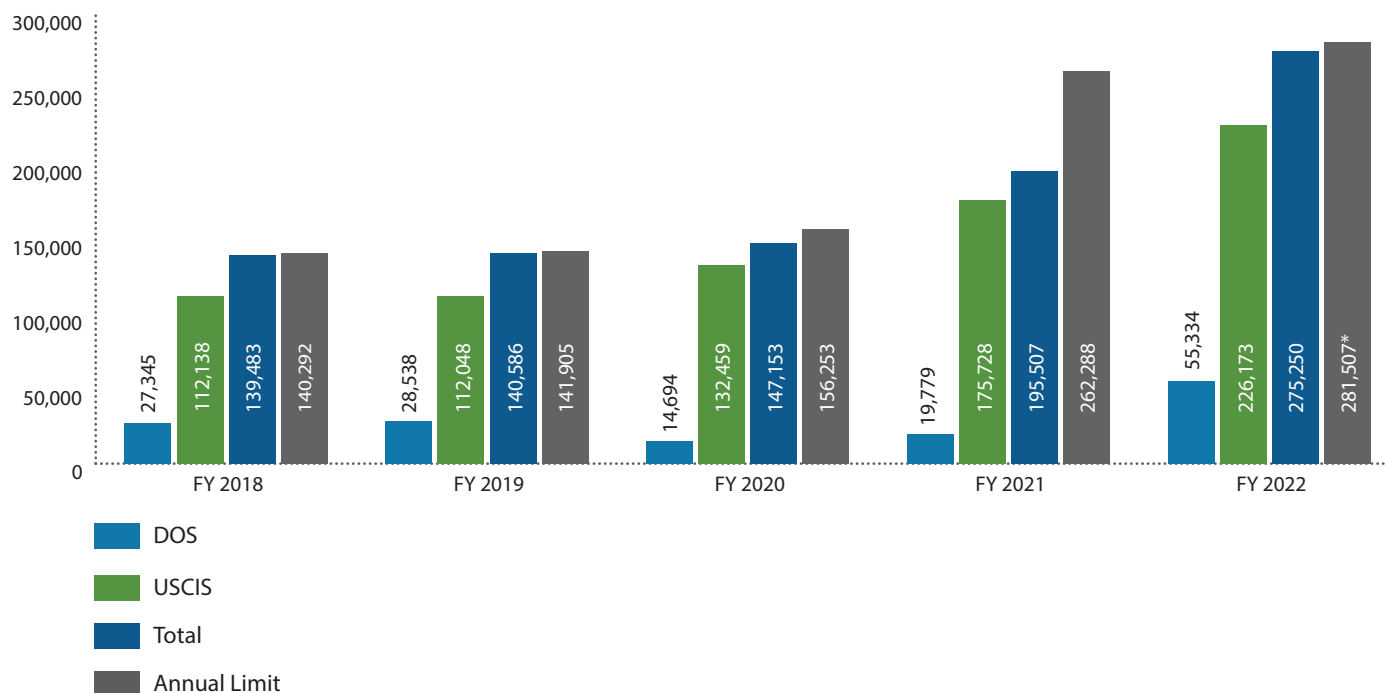
<sup>399</sup> CIS Ombudsman’s Webinar Series, “Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges,” May 26, 2022.

<sup>400</sup> Information provided by USCIS (Apr. 26, 2023). USCIS states that when managing its employment-based adjustment of status inventory, there is no category that USCIS specifically labels “adjudication-ready.” In its inventory analysis and processing, USCIS differentiates between applications that are “visa available and petition approved” and those that are not. “Visa available” means that the applicant has a priority date earlier than the date shown in the Final Action Dates chart for their country and category (or the Visa Bulletin shows that the category is Current). “Petition approved” means that the petition underlying the adjustment of status application has been approved.

<sup>394</sup> CIS Ombudsman’s Webinar Series, “Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges,” May 26, 2022.

<sup>395</sup> See, e.g., USCIS Web page, “USCIS Urges Eligible Individuals to Consider Applying for Adjustment of Status in the EB-2 Category Based on the April Visa Bulletin Date for Filing for India” (Mar. 17, 2022); <https://www.uscis.gov/newsroom/alerts/uscis-urges-eligible-individuals-to-consider-applying-for-adjustment-of-status-in-the-eb-2-category> (accessed May 11, 2023).

## 5.4 Employment-Based Visa Allocations FY 2018–FY 2022



\*This approximate number includes 6,396 EB-5 visas not issued in FY 2022 that Congress allowed to carry over to the next fiscal year.

Source: CIS Ombudsman's Webinar Series, "Employment-Based Immigrant Visas: Looking Back at Fiscal Year (FY) 2022 and Ahead to FY 2023 with USCIS," Oct. 27, 2022, as well as DOS "Report of the Visa Office 2022," Table V Part 4.

Finally, as in FY 2021, USCIS continued to struggle with the lack of valid Forms I-693 with employment-based adjustment of status applications. While the agency encouraged applicants *not* to interfile or proactively send in medical examination documentation to match up with the adjustment application, it again acted to identify applications missing valid medical examinations and contacted those applicants directly through different channels, efforts that proved to be particularly crucial in the third quarter of FY 2022. Furthermore, the rule requiring the civil surgeon to sign the Form I-693 no more than 60 days prior to filing for the benefit, including adjustment applications, was temporarily waived through the end of September 2022 (and then extended through March 31, 2023).<sup>401</sup>

### ***Pain Points Associated with USCIS' FY 2022 Efforts.*** Prioritization of employment-based adjustment

<sup>401</sup> USCIS Web page, "USCIS Temporarily Waiving 60-Day Rule for Civil Surgeon Signatures" (Dec. 9, 2021); <https://www.uscis.gov/newsroom/alerts/uscis-temporarily-waiving-60-day-rule-for-civil-surgeon-signatures> (accessed May 6, 2023). USCIS Web page, "Extension of Temporary Waiver of 60-Day Rule for Civil Surgeon Signatures on Form I-693" (Sept. 29, 2022); <https://www.uscis.gov/newsroom/alerts/extension-of-temporary-waiver-of-60-day-rule-for-civil-surgeon-signatures-on-form-i-693> (accessed May 6, 2023).

applications above most other form types was the hallmark of USCIS' adjudication efforts in FY 2022. As a result, resources could not be aligned to maximize work on all forms; processing times for other benefits, already higher than in recent years, grew even longer. While the Form N-400, *Application for Naturalization*, was adjudicated at historic numbers,<sup>402</sup> other benefits that require interviews and in-person interaction at field offices were, in some cases, deprioritized, given the agency's finite adjudication resources. In particular, backlogs in most adjudications that typically require face-to-face interaction at field offices continued to increase, to the detriment of those populations.<sup>403</sup>

During an October 2022 webinar with the CIS Ombudsman, USCIS representatives acknowledged that the prioritization of employment-based adjustment work encompassed certain tradeoffs within the agency's workload, though no information on specific tradeoffs

<sup>402</sup> USCIS adjudicated more than 1 million applications for naturalization in FY 2022 (for the first time since FY 2008). USCIS Report, "Fiscal Year 2022 Progress Report" (Dec. 2022), p. 3; [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed Apr 24, 2023).

<sup>403</sup> For a discussion of the general impacts of backlogs on USCIS processing, see CIS Ombudsman's Annual Report 2022, pp. 6–9.

was offered in that forum.<sup>404</sup> Looking closely at processing times provided by the agency, however, as well as issues raised by stakeholders, a picture of these tradeoffs emerges.

Above all, processing times in forms primarily handled by FOD grew. Median processing times for Form I-130 grew quarter over quarter throughout FY 2022, with the 4<sup>th</sup> quarter showing a processing time of approximately 14 months, higher than it has been at any time over the last 5 years. Though trending downward in the first 6 months of this fiscal year, at 13.2 months the processing time for the I-130 continues to be higher for FY 2023 than it has been historically.<sup>405</sup> Form I-751, *Petition to Remove Conditions on Residence*, is adjudicated at field offices as well as service centers, and both directorates experienced a precipitate increase in median processing times throughout FY 2022 and into FY 2023. The median processing time for Form I-751 at field offices was 20.4 months through March 14, 2023, while at the service centers this time stood at 19.5 months, both markedly higher than they have been in years past.<sup>406</sup> Likewise, Form I-212, *Application for Permission to Reapply for Admission into the United States After Deportation or Removal*, and Form I-601, *Application for Waiver of Grounds of Inadmissibility*, each saw a sharp increase in median processing times through the end of FY 2022 and into FY 2023.<sup>407</sup>

The increase in processing times is not the only blemish the agency experienced in an otherwise successful year for field adjudication. USCIS processed an estimate of

only around 12,450 family-sponsored visas in FY 2022,<sup>408</sup> much fewer than the annual average of nearly 19,000 over the 10 years preceding FY 2022.<sup>409</sup> The December 2022 Visa Bulletin announced that the preliminary consolidated number use by DOS and USCIS for FY 2022 left approximately 57,000 unused family-sponsored visa numbers, which has now been added to the employment-based visa total for FY 2023.<sup>410</sup> While significantly lower than the total for FY 2022, this spillover of visas still holds the potential to exacerbate processing delays for immigration benefits outside of the prioritized employment-based line. In other words, the immediate future will continue to be impacted by higher than typical employment-based visa totals, compounded by increasing inventories and longer processing times for family-based immigrant visas. Virtually all of these are processed in the field, where the intensive in-person services historically tasked to FOD will also continue.

USCIS has sought efficiencies to concentrate its efforts in adjudicating these cases. It expanded its risk-based assessment for interview waivers for conditional permanent residents who have filed Form I-751.<sup>411</sup> Similarly, it also rescinded a November 2020 policy memorandum that required interviews of all petitioners filing Form I-730, *Refugee/Asylee Relative Petition*, and instead will return to interviewing these petitioners on a case-by-case basis.<sup>412</sup> Without the ability to waive interviews for certain applications and petitions in FY 2021 and FY 2022, USCIS would very likely not have issued visas in the numbers they did in those years, and certainly backlogs and processing times would have increased even

<sup>404</sup> CIS Ombudsman's Webinar Series, "Employment-Based Immigrant Visas: Looking Back at Fiscal Year (FY) 2022 and Ahead to FY 2023 with USCIS," Oct. 27, 2022. During that webinar, USCIS stated, "It is true that there are always tradeoffs when USCIS prioritizes a particular category of work. However, USCIS and its partners at DOS are committed to using the available employment-based visa numbers and are aware of the importance of our efforts to the many families who have waited years for the opportunity to become Lawful Permanent Residents."

<sup>405</sup> Information provided by USCIS (Apr. 26, 2023). When providing data on historic processing times, USCIS noted processing times are defined as the number of months it took for an application, petition, or request to be processed from receipt to completion in a given time period. Processing times may differ from previously published reports due to system updates and post-adjudicative outcomes, and discrepancies from past historical processing time reports may exist due to differences in reporting procedures. The processing times for the second quarter of FY 2023 reported here are current through March 14, 2023.

<sup>406</sup> *Id.*

<sup>407</sup> *Id.*

<sup>408</sup> DHS Office of Immigration Statistics Web page, "Legal Immigration and Adjustment of Status Report Quarterly Data" (Apr. 3, 2023); <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration/year-end> (accessed June 6, 2023). Data for family-sponsored visa use in FY 2022 is found in "Legal Immigration and Adjustment of Status Report Tables FY 2022 Q4 Final D'ed Version," Table 1B (Mar. 8, 2023); [https://www.dhs.gov/sites/default/files/2023-04/2023\\_0308\\_plcy\\_legal\\_immigration\\_adjustment\\_of\\_status\\_report\\_fy\\_2022q4\\_final\\_d\\_0.xlsx](https://www.dhs.gov/sites/default/files/2023-04/2023_0308_plcy_legal_immigration_adjustment_of_status_report_fy_2022q4_final_d_0.xlsx) (accessed June 21, 2023).

<sup>409</sup> DHS Office of Immigration Statistics Web page, "LPR Yearbook Tables 8 to 11 Expanded" (Dec. 12, 2022); [https://www.dhs.gov/immigration-statistics/readingroom/lpr/table\\_8\\_to\\_11\\_expanded](https://www.dhs.gov/immigration-statistics/readingroom/lpr/table_8_to_11_expanded) (accessed June 6, 2023).

<sup>410</sup> DOS, Bureau of Consular Affairs, "Visa Bulletin for December 2022," No. 72, Vol. X (Nov. 10, 2022); <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-december-2022.html>.

<sup>411</sup> USCIS Web page, "USCIS Implements Risk-Based Approach for Conditional Permanent Resident Interviews" (Apr. 7, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-implements-risk-based-approach-for-conditional-permanent-resident-interviews> (accessed May 10, 2023).

<sup>412</sup> USCIS Web page, "USCIS Reverts to Previous Criteria for Interviewing Petitioners Requesting Derivative Refugee and Asylee Status for Family Members" (Dec. 10, 2021); <https://www.uscis.gov/newsroom/alerts/uscis-reverts-to-previous-criteria-for-interviewing-petitioners-requesting-derivative-refugee-and> (accessed May 11, 2023).

more than they did. While a wider application of risk-based interviewing would increase adjudicative efficiency, and is a policy strongly encouraged, some applications and petitions will continue to require resource-intensive interviews. USCIS officers in the field will be split doing both types—benefits that require interviews as well as those that do not. Unless resources are maximized where appropriate, and work assigned to directorates to best match skill sets, even employing larger numbers of interview waivers may still result in longer delays for other benefit types, as was seen in FY 2022.

There are also lingering problems with respect to the employment-based immigrant petitions that remain. Following both the May and October 2022 webinars with USCIS, the CIS Ombudsman received dozens of additional stakeholder questions. A cross-section of these questions reveals the concerns stakeholders continued to have. For example, in FY 2021 and FY 2022, the agency processed some cases out of order, breaking from its typical practice of first-in, first-out to move adjudication-ready files forward, and this caused great concern among some individuals with pending applications, as they witnessed newer cases being resolved while theirs appeared to languish.

Another point of anxiety for stakeholders arose when in some cases USCIS approved the principal applicant's adjustment of status application but not the dependent family members' derivative applications, even though the derivative family members' priority date was current at the time. Some of those applications remain pending, and due to the visa retrogression that occurred on October 1, 2022, some could remain pending for years. As of March 6, 2023, there were approximately 1,800 pending adjustment of status applications submitted by derivative spouses and children, where the principal applicant was approved in FY 2021 or FY 2022.<sup>413</sup> Approximately 1,200 of those applications did not have an available visa as of the March 2023 Visa Bulletin.<sup>414</sup>

USCIS has stated that one of the primary reasons a derivative may not follow the principal is for security reasons. If background checks are completed for the principal, but those checks are absent for the derivative (for example, when a derivative turns 14 years old and then needs to have biometrics taken), the principal's case will move forward without the derivative. Another reason can be found in cases where an RFE or Notice of Intent to Deny (NOID) has been issued for the derivative's application but not the principal's, which would once

again delay the derivative's case.<sup>415</sup> In FY 2023, USCIS continues to identify applications filed by derivatives where the principal's application was approved in FY 2022, and if a visa is available to the derivative applicant, USCIS will adjudicate their application as it focuses on adjudicating all applications with approved underlying petitions and available visas.<sup>416</sup>

USCIS has also taken action in FY 2023 to update its policy on when an immigrant visa becomes available for the purpose of calculating an individual's age under the Child Status Protection Act (CSPA). In this update to its Policy Manual, USCIS will now use the Dates for Filing chart to calculate ages for CSPA purposes.<sup>417</sup> In its web alert announcing this guidance update, USCIS acknowledged, "...between October and December of 2020, certain noncitizens were permitted to file their adjustment of status applications under the Dates for Filing chart of the Visa Bulletin. However, the Final Action Date chart never advanced sufficiently for their applications to be approved. These noncitizens filed their adjustment of status applications with the requisite fee without knowing whether the CSPA would benefit them."<sup>418</sup> This change in guidance could have a positive impact on outcomes for those derivative children who were unable to adjust status with their principal family members, and who may accordingly be in danger of aging out of that benefit.

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<sup>413</sup> *Id.*

<sup>416</sup> CIS Ombudsman's Webinar Series, "Employment-Based Immigrant Visas: Looking Back at Fiscal Year (FY) 2022 and Ahead to FY 2023 with USCIS," Oct. 27, 2022.

<sup>417</sup> USCIS Web page, "USCIS Updates Child Status Protection Act (CSPA) Age Calculation for Certain Adjustment of Status Applicants" (Feb. 14, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-updates-child-status-protection-act-cspa-age-calculation-for-certain-adjustment-of-status> (accessed May 17, 2023).

<sup>418</sup> *Id.*

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<sup>413</sup> Information provided by USCIS (Apr. 26, 2023).

<sup>414</sup> *Id.*



## Fiscal Year 2023 and Beyond

Many applicants remain in the employment-based visa queue.<sup>419</sup> While much smaller than the total in 2022, FY 2023 again opened with an elevated number of available employment-based visas. The preliminary estimate for the employment-based annual limit in FY 2023 is approximately 197,000, including a spillover of approximately 57,000 unused family-sponsored visas from FY 2022.<sup>420</sup> Again, USCIS has stated its intent to move aggressively to ensure none of these visas go unissued.<sup>421</sup> In doing so, the agency should take great care to learn from the FY 2022 pain points to ensure any added processing delays for benefits other than employment-based petitions and applications or further contributions to the backlog are minimal.

In FY 2023, USCIS has stated employment-based adjustment of status applications in EB-1 through EB-3 will generally be adjudicated by FOD, applications in EB-4 will be adjudicated by both FOD and SCOPS, depending on the specific category, and applications in EB-5 will be adjudicated by SCOPS at the California Service Center. Following on its efforts in FY 2022, the agency has adopted, and in some instances expanded, strategies used in that fiscal year for 2023. USCIS will continue to prioritize Form I-140 adjudications to focus on petitions where the beneficiaries can receive visas in FY 2023 (after premium-processed petitions).<sup>422</sup> In

FY 2022, USCIS transferred visa available, petition approved Forms I-485 to FOD from SCOPS, allowing SCOPS to focus on Forms I-140 while FOD focused on the I-485s. USCIS has taken this a step further in FY 2023 and intends to transfer all EB-1 through EB-3 adjustment of status applications from SCOPS to FOD for adjudication after the approval of the underlying petition.<sup>423</sup> Finally, continuing efforts from both FY 2021 and FY 2022, FOD will adjudicate interview-waived, employment-based cases at any field office based on available adjudication capacity, to ensure that applications are processed as quickly and efficiently as possible rather than remaining backlogged at offices overwhelmed by applications filed by local residents.<sup>424</sup>

## Reflections and Considerations

The unique challenges the agency encountered from FY 2020 through FY 2022 put pressures on USCIS in multiple ways, compelling the agency to be more innovative, and to be increasingly flexible and nimble. The CIS Ombudsman encourages the agency to continue to move forward in a manner that not only maintains this momentum, but to do so with foresight and a strong commitment to efficiency and improving the experience of those individuals relying on the agency for timely processing of their immigration benefit requests. Approached in this way, the enduring legacy of the challenges USCIS faced during the pandemic and its aftermath can be one of positive change.

For instance, to avoid the kinds of delays the agency experienced (and continues to experience) with missing or expired medical examinations, USCIS should explore the immediate digitization of the Form I-693. In the meantime, the agency should consider establishing a central location for the receipt of new or updated medical examinations, like the centralized process created for transfers of underlying basis in FY 2022. Speaking at a recent conference, FOD leadership stated the agency had recently changed its processes for the Form I-693 and requests to applicants to submit their medical examination will now come from the National Benefits Center rather than from field offices.<sup>425</sup> Though this new process is welcomed as a means to free up field office resources, a centralized filing location such that applicants could “interfile” the Form I-693, while aggressively working to digitize the form, could eliminate the need

<sup>419</sup> USCIS Report, “FY22 Appropriations Reporting Requirement—Application Processing Data for March 2023” (Apr. 24, 2023); [https://www.uscis.gov/sites/default/files/document/resource-information-center-queries/Appropriation\\_Requirement\\_March\\_2023.csv](https://www.uscis.gov/sites/default/files/document/resource-information-center-queries/Appropriation_Requirement_March_2023.csv) (accessed May 10, 2023); “Form I-140, I-360, I-526 Approved EB Petitions Awaiting Visa Final Priority Dates (Fiscal Year 2023, Quarter 1)” (Apr. 5, 2023); [https://www.uscis.gov/sites/default/files/document/data/EB\\_I140\\_I360\\_I526\\_performancedata\\_FY2023\\_Q1.pdf](https://www.uscis.gov/sites/default/files/document/data/EB_I140_I360_I526_performancedata_FY2023_Q1.pdf). For instance, at the end of March 2023, there were 211,273 employment-based Forms I-485 pending with USCIS, with 143,560 pending for longer than 6 months. Additionally, as of the end of Dec. 2022, there were a total of 629,693 Forms I-140, I-360, and I-526 approved employment-based petitions awaiting visa availability.

<sup>420</sup> USCIS Web page, “Fiscal Year 2023 Employment-Based Adjustment of Status FAQs” (last updated May 8, 2023); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/fiscal-year-2023-employment-based-adjustment-of-status-faqs> (accessed May 10, 2023). The total visa number also includes 6,396 EB-5 visas that carry over from FY 2022, in the three reserved “Rural Area,” “High Unemployment,” and “Infrastructure Project” subcategories created by the EB-5 Reform and Integrity Act of 2022.

<sup>421</sup> *Id.* On its FY 2023 employment-based FAQs web page, USCIS states, “Through March 31, 2023, the two agencies have used more than 110,000 employment-based immigrant visas (FY 2023 data is preliminary and subject to change). USCIS is approving adjustment of status applications in the employment-based preference categories at a steady rate and is committed, with its partners at DOS who are also processing a high volume of visas, to using all the available employment-based visas in FY 2023. USCIS will continue to take multiple, proactive steps in coordination with its partners at DOS to maximize the issuance of visas.”

<sup>422</sup> Information provided by USCIS (Apr. 26, 2023).

<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

<sup>425</sup> CIS Ombudsman notes from the American Immigration Lawyers Association Spring Conference, Apr. 27–28, 2023.

for soliciting this information through the issuance of RFEs, which contribute to excessive processing times. The CIS Ombudsman applauds the agency's decision to permanently remove the 60-day rule for civil surgeon signatures on the Form I-693.<sup>426</sup> Following the temporary removal of this requirement in FY 2022, and the policy's subsequent extension, making the change permanent signals USCIS' willingness to identify and amend potential barriers to the efficient and fair administration of immigration benefits.

Furthermore, USCIS should also expand and build on efforts to reuse biometrics to the extent possible, or even exempt certain benefits from biometrics collection altogether, as the agency suggested it will do for all Form I-539, *Application to Extend/Change Nonimmigrant Status* applicants. Most benefits will continue to require biometrics, however, and USCIS should work to innovate its collection of this information. Moving in this direction, on March 7, 2023, USCIS introduced updated policy changes on the use of domestic mobile biometrics collections. If mobile collection is unavailable due to an individual's remote location, USCIS will work with local law enforcement or other DHS components to collect the biometrics on the agency's behalf.

Other innovations in adjudication will help the agency winnow down its backlog of adjustment cases. The CIS Ombudsman recently learned of a best practice, initiated in the FOD Southeast region, that has helped thousands of applicants move their cases to completion. Adjudicators were empowered to seek missing documents in adjustment cases through telephonic contact. Applicants were given the opportunity to provide the necessary documents so they could be quickly moved to the interview stage, thus saving the need to issue a written RFE for an administrative but

essential matter. Response rates have been high, managing to bring to completion thousands of cases as the practice has been picked up elsewhere throughout the country. Innovative practices such as these telephonic RFEs can help USCIS work down its backlogs by being deployed wisely but consistently.

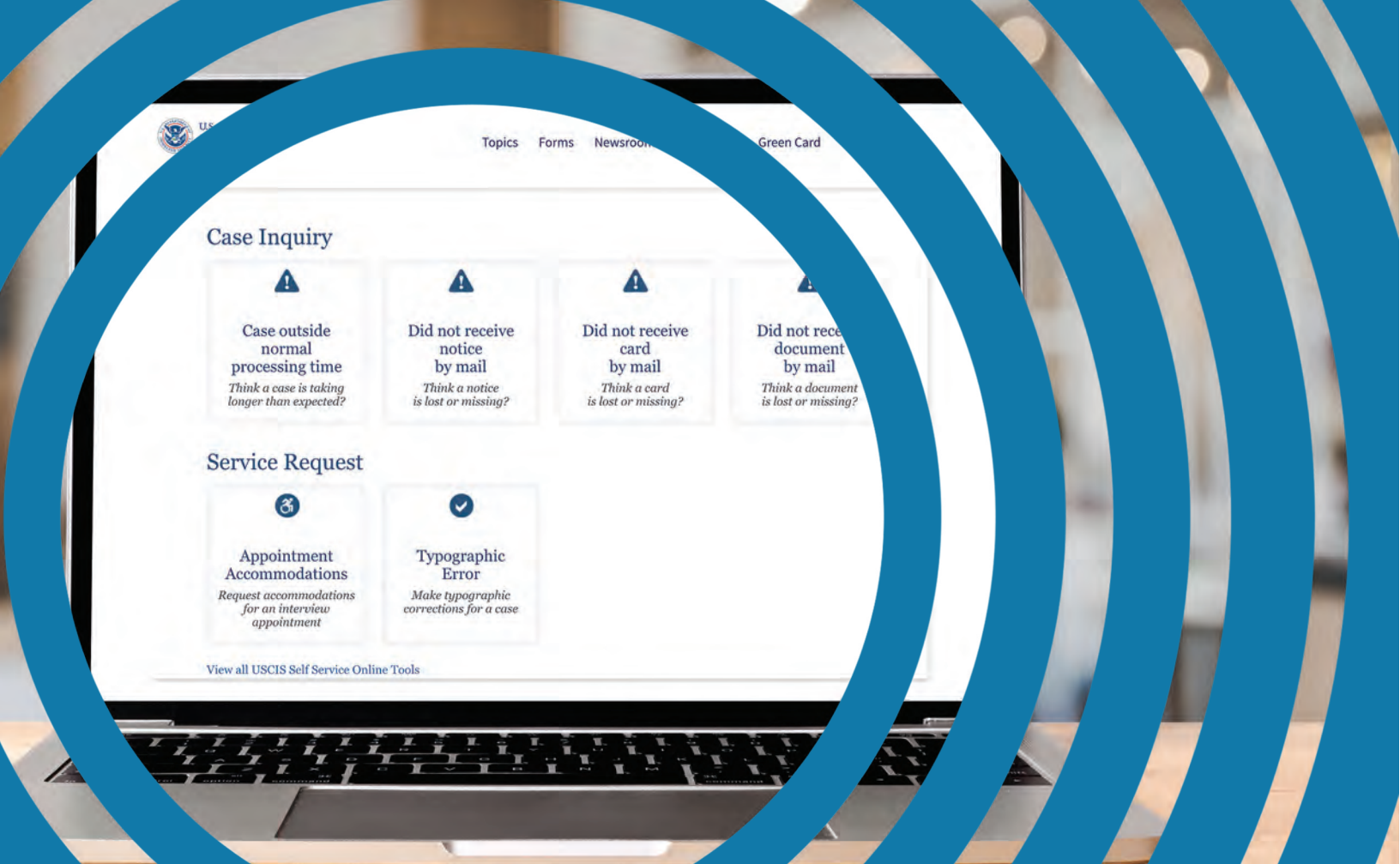
Even with the ongoing evolution to that of a more innovative agency willing to leverage technology for improved efficiency and resolving issues remotely, there are adjudications that will continue to require face-to-face interaction. A risk-based assessment for interview referrals is a tool that the agency has already expanded and should strive to maximize. Far from the 2017 requirement to interview nearly all applicants and their derivatives, implementing a risk-based assessment across all adjudications would allow USCIS to focus its limited and specialized field resources on the cases that do require interviews, and on other in-person appointments for information and applicant services. These face-to-face activities are the historic work of the agency's field offices, and with certain improvements in processing will be well positioned to continue that vital in-person work.

The agency's never-ending need to expend resources on benefits adjudications that require live interaction (in-person interviews, site visits, and similar activities) will always mean a significant expenditure of limited resources. This can be balanced, however, with judicious application of efficiencies on those applications that do not. USCIS has proven it can manage a staggering task by redirecting resources to directorates or offices to temporarily address specific challenges, but in doing so, it must ensure that adequate resources remain to handle the more daunting tasks of avoiding further backlogs and equalizing the distribution of its adjudication activities.

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<sup>426</sup> USCIS Web page, "USCIS Removes 60-Day Rule for Civil Surgeon Signatures on Form I-693" (Mar. 31, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-removes-60-day-rule-for-civil-surgeon-signatures-on-form-i-693> (accessed May 11, 2023).

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## IMPROVING THE CUSTOMER EXPERIENCE FROM THE CONTACT CENTER TO THE FIELD

**Responsible Directorates:** External Affairs, Field Operations

### Introduction

Customer service should always be an inherent concern of any federal agency that interacts directly with the public. U.S. Citizenship and Immigration Services (USCIS), with its mission of immigration benefits administration, has the particular challenge of serving a vast customer base that covers all backgrounds, nationalities, educational levels, and interests. Over the course of its existence, the agency has implemented many initiatives to improve the customer

service experience for applicants and petitioners.<sup>427</sup> However, the needs and expectations of the public often change with new technologies, new immigration programs, and world events such as the COVID-19 pandemic, and USCIS now finds itself in need of rebuilding trust with the public through its customer service approach.

<sup>427</sup> When referring to customer service, we intend the Oxford Dictionary definition of “the help and advice that a company gives people that buy or use its product or services.” In the President’s *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, the term “customer experience” is defined as the public perceptions of and overall satisfaction with interactions with an agency, product, or service. Executive Order 14058 of December 13, 2021, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, 86 Fed. Reg. 71357, 71358 (Dec. 16, 2021).



Informed by President Biden’s Executive Order 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*,<sup>428</sup> USCIS recently published its *Fiscal Years 2023-2026 Strategic Plan*.<sup>429</sup> The agency made customer service one of its major themes and showed a keen understanding of the issues it needs to address. It committed to investing resources, including by working with both internal and external partners,<sup>430</sup> to find better ways to carry out its mission while striving to achieve a more equitable and efficient customer experience.<sup>431</sup> The CIS Ombudsman has heard from stakeholders about areas where USCIS still faces challenges in offering this kind of customer service. Customers and stakeholders have expressed frustration with a lack of access to in-person communications and services, especially when they encounter an urgent situation such as the need to travel abroad due to medical emergencies.<sup>432</sup> Stakeholders have also expressed additional sources of frustration, such as increasing delays in receiving decisions or conflicting directives as to when an attorney or interpreter can participate in an interview via telephone.<sup>433</sup> While the agency has made significant strides in many areas of customer service, others remain a challenge.

## The Current State of Customer Service at USCIS

***USCIS has Increasingly Relied on Online Customer Service.*** USCIS has made no secret of its resource limitations and the need to maximize staffing on adjudication of its millions of benefit requests rather than on support services—and on support services in which human interaction is essential, rather than on information that can be obtained in other ways. In an effort to increase efficiency and ensure that resources are used where most needed, USCIS has expanded its virtual services to “do more with less” and preserve the use of live assistance

where essential to resolve the problem.<sup>434</sup> For inquiries that do not require human intervention, the agency has moved customers to online tools to find the answers. The COVID-19 pandemic served as a catalyst for the agency to further expand its virtual services to assist customers and to preserve the time of adjudicators and other officers (Immigration Service Officers, or ISOs), for work requiring human interaction.

The agency relies on these services, which now include:

- ***USCIS.gov.*** The USCIS.gov website is one of the most widely used resources the agency offers, with over 99.5 million customers accessing it in fiscal year (FY) 2022.<sup>435</sup> The site has many pages translated into several languages to further assist the public.
- ***Emma.*** Since December 2015, via the website, customers can chat with Emma, USCIS’ virtual assistant, and receive responses to their inquiries, such as what form to use to apply for citizenship.<sup>436</sup> If Emma cannot fully answer the customer’s questions and if the inquiry fulfills certain criteria (for example, it is a reschedule request), Emma may connect the customer to a Contact Center representative who can engage in a live chat with the customer.<sup>437</sup> The live chat feature was launched in September 2017.<sup>438</sup>
- ***USCIS Contact Center.*** Another resource on which the agency has become increasingly reliant is its Contact Center, which was established to centralize and make more consistent the dissemination of information and offer the public a way to call the agency. If the Contact Center representative cannot resolve a customer’s question on the call, the representative will create an electronic inquiry in USCIS’ Service Request Management Tool (SRMT). This inquiry goes to the field office or service center handling the customer’s case.
- ***E-Requests.*** The customer may also submit an online case inquiry on their own by going to <https://egov.uscis.gov/e-request/Intro.do>. The customer can generally expect a response within 15 calendar days.<sup>439</sup> If the inquiry falls under the prioritized request category, such as a change of address, military referral, or

<sup>428</sup> Executive Order 14058 directs federal agencies to recommit to be “of the people, by the people, [and] for the people” to solve the complex challenges our nation faces. It goes on to mandate the federal government to develop and establish process that focus on the people’s experience it serves, prioritizing those that historically have been underserved. Executive Order 14058 of December 13, 2021, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, 86 Fed. Reg. 71357 (Dec. 16, 2021).

<sup>429</sup> “FYs 2023-2026 Strategic Plan U.S. Citizenship and Immigration Services,” published Jan. 27, 2023. <https://www.uscis.gov/newsroom/news-releases/uscis-releases-new-strategic-plan-highlighting-long-term-goals> (accessed on June 2, 2023).

<sup>430</sup> Information provided by USCIS (Nov. 28, 2022).

<sup>431</sup> *Id.*

<sup>432</sup> Information provided by stakeholders (Mar. 21, 2023).

<sup>433</sup> Information provided by stakeholders (Apr. 18, 2023).

<sup>434</sup> CIS Ombudsman’s Annual Report 2019, pp. 44–55; USCIS 2019 Annual Report Response, pp. 5–6 (Jan. 24, 2020) (accessed Mar. 31, 2023).

<sup>435</sup> Information provided by USCIS (May 17, 2023).

<sup>436</sup> *Id.*

<sup>437</sup> USCIS Web page, “USCIS Contact Center” (Mar. 8, 2023); <https://www.uscis.gov/contactcenter> (accessed Mar. 24, 2023).

<sup>438</sup> Information provided by USCIS (May 17, 2023).

<sup>439</sup> 4 USCIS Policy Manual, Pt. A, Ch. 4; <https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-4> (accessed Mar. 24, 2023).

accommodation request, USCIS will answer the inquiry within 7 calendar days.<sup>440</sup>

- *Online Accounts.* Customers can also set up their own USCIS online account to track their petitions and applications once they have a receipt number, find a civil surgeon in their area, and study for the civics test if they apply for U.S. citizenship.

While these tools have helped the agency to use its employees' time more strategically, one of the effects has been that customers go through wildly different experiences based on their needs and technological savvy. USCIS benefits each time a customer finds an answer without needing to call or visit a field office, as resources not spent on supporting the in-person assisted interactions can be refocused to other tasks such as adjudicating cases. However, there will always be a percentage of services that necessitate human interaction. Computer literate customers can now easily access general information and find answers to routine questions. Conversely, customers have a more difficult time securing in-person services when needed.<sup>441</sup> Stakeholders report that if they cannot find an answer using USCIS' self-service tools, there are no convenient alternative ways to get answers in real time from the agency.<sup>442</sup> Especially when a customer has an emergency that needs an immediate resolution, the virtual service tools are not enough to cover the spectrum of customer needs.

#### ***Online Tools do not Always Give the Desired Assistance.***

The CIS Ombudsman has heard from many stakeholders in recent years regarding their frustration with not being able to speak to a USCIS staff member or appear at a USCIS office without an appointment.<sup>443</sup> In particular, when a customer is experiencing an emergency—such as obtaining an Alien Documentation, Identification, and Telecommunication (ADIT) stamp or advance parole document for travel during a family crisis, or proof of status for employment—the timelines of USCIS' online services will not meet their needs and they are often turned away at a field office if they do not have an appointment.<sup>444</sup> There are times when the customer needs immediate help so they can travel to see a dying relative or avoid losing their job. Stakeholders report that there have been times when USCIS did not find these situations to be compelling enough for the customer to be seen in the field office without an appointment; when the dying relative

Some recent USCIS efforts to improve the customer experience include:

- Hosting increased numbers of listening sessions and webinars to help requestors better understand options.
- Affirmatively creating and providing documented evidence of status to certain new asylees and lawful permanent residents upon receiving notification that an immigration judge or the Board of Immigration Appeals (BIA) has granted status.
- Implementing a new process of issuing Form I-94, *Arrival/Departure Record*, and ADIT stamps as proof of status via mail to decrease the need for customers to make in-person appointments for passport stamps.
- Extending the validity of Green Cards for 24 months beyond expiration dates for customers filing Form I-90, *Application to Replace Permanent Residence Card (Green Card)*, to minimize customers' need for additional documentation.
- Extending the validity of Green Cards for 48 months beyond expiration dates for customers filing Form I-751, *Petition to Remove Conditions on Residence*, or Form I-829, *Petition by Investor to Remove Conditions on Permanent Resident Status*.
- Working to redesign the naturalization test to improve accessibility and experience.

Sources: USCIS alerts, Sept. 28, 2022; Oct. 22, 2022; Dec. 8, 2022; Dec. 14, 2022; Jan. 4, 2023; Jan. 23, 2023; Mar. 3, 2023; Mar. 30, 2023; and May 4, 2023 (copies in possession of the CIS Ombudsman).

<sup>440</sup> *Id.*

<sup>441</sup> Information provided by stakeholders (Apr. 18, 2023).

<sup>442</sup> *Id.*

<sup>443</sup> See CIS Ombudsman's Annual Report 2019, pp. 44–55.

<sup>444</sup> Information provided by stakeholders (Mar. 3, 2023, and Apr. 18, 2023).

passes away before the customer can obtain an in-person appointment, it then may no longer be perceived as an emergency or a need to travel.<sup>445</sup>

## Shifting Focus on Customer Experience

USCIS knows that its virtual service tools cannot entirely replace human interaction in customer service. The agency has recognized it must focus on the totality of the customer experience and that the inability to communicate with agency staff is extremely frustrating for many applicants and other stakeholders. In the first quarter of FY 2023, USCIS set the following as its customer service priorities:<sup>446</sup>

- Modernize the online experience,
- Promote timely, respectful, and meaningful access and empower customers, and
- Reduce burden.

The agency is working with internal and external stakeholders as it looks to meet these three priorities in a way that takes advantage of technological advances while still prioritizing the human aspect of customer service.<sup>447</sup> No matter how well customers adjust to the increasing reliance on technology, there will still be situations where applicants and representatives need to interact with USCIS in person. Therefore, the agency will need to continue to devote resources to in-person customer service for years to come. In an agency in which human capital will remain its most prized asset, careful planning and execution for expenditure of that resource on customer service functions will be critical.

**Implementing Remote InfoPass, Interviews, and Ceremonies.** The first consideration when looking at the customer experience is access, and for many customers, USCIS offices can be located hours away from where they live, creating significant difficulties for those who must venture several times to access services.<sup>448</sup> These are the individuals who benefit from increased online access to services, enabling information to be provided, documents to be submitted, and questions to be answered. There are obviously times and activities for which physical access is unavoidable, such as interviews and oath ceremonies. However, even in those situations,

some flexibilities can be employed to ease the strain on both employees and applicants.

One outcome of the COVID-19 pandemic was that it required USCIS to explore different virtual options to continue serving the public. USCIS developed and executed plans to virtually interview applicants to protect both the public and its employees. USCIS encouraged field office innovations with administrative oath ceremonies, leading to the concept of the “curbside” oath ceremony, but other small group settings were employed as well.<sup>449</sup> Federal courts coordinated with USCIS and held virtual judicial naturalization ceremonies.<sup>450</sup> The agency is, in fact, still conducting virtual military naturalization ceremonies.<sup>451</sup> Overall, the agency implemented remote interviews and ceremonies successfully. The virtual innovations appear to have been well received by field staff, who were offered the opportunity to learn new technical skills along the way.

With evidence that remote interviews and ceremonies can be effective, USCIS should further expand on this newfound knowledge and technology. Employing more remote interviews and other activities would benefit both the agency, by improving its efficiencies, and the customer, by enabling more flexibility. As the agency maximizes its workforce capacity, expanding and enhancing remote interactions between applicants/petitioners and adjudicators not only promotes efficiencies, but allows adjudicators to maintain the integrity of the interview process.

In particular, USCIS should explore offering virtual information appointments, either through the Contact Center or through the field offices directly, depending on what is being handled virtually. A virtual InfoPass appointment could promote efficiencies for existing procedures and perhaps expand capabilities for the customer services currently offered. Having virtual appointments to assess the need for emergency parole, for example, would greatly cut down on one of the top reasons customers seek in-person appointments. There are, however, many others, and a pre-clearance process with the Contact Center, for example, could promote significant efficiencies in field offices.

<sup>449</sup> See CIS Ombudsman Annual Report 2021, p. 10.

<sup>450</sup> “Naturalization Ceremony to Take Place in Harlingen,” *NBC Valley Central* 23 (Mar. 11, 2021); <https://www.valleycentral.com/news/local-news/naturalization-ceremony-to-take-place-in-harlingen/> (accessed Mar. 29, 2023).

<sup>451</sup> Sidney Sullivan, “USCIS Hosts First Virtual Naturalization Ceremony at USAG Bavaria” (July 1, 2021), *U.S. Army*; [https://www.army.mil/article/248097/uscis\\_hosts\\_first\\_virtual\\_naturalization\\_ceremony\\_at\\_usag\\_bavaria](https://www.army.mil/article/248097/uscis_hosts_first_virtual_naturalization_ceremony_at_usag_bavaria) (Mar. 29, 2023).

<sup>445</sup> Information provided by stakeholders (Mar. 21, 2023).

<sup>446</sup> Information provided by USCIS (Nov. 28, 2022).

<sup>447</sup> *Id.*

<sup>448</sup> For example, West Wendover, NV residents must travel 398 miles to reach the Reno, NV field office for their immigration needs.



A pre-clearance process could review requests for lost documentation, a common issue brought to the attention of the CIS Ombudsman. The CIS Ombudsman is frequently asked to intervene to retrieve Requests for Evidence or Notices of Intent to Deny, as well as lost approval or denial notices. It might be an area in which a Contact Center virtual visit could ascertain the identity of the requestor, ensure the veracity of the request, and provide the needed lost documentation or arrange for the customer to go to a field office to obtain a secure version.<sup>452</sup> Other options could be explored, including virtual pre-clearance for submission of documentation such as a request for parole in place, humanitarian reinstatement, or a similar request—requests without a form process but that are often mailed to the field but not receipted and therefore anxiety-inducing to the applicant. Yet another option could involve documentation stemming from decisions from the Executive Office for Immigration Review (EOIR) and its immigration courts. The agency recently announced that, when notification is received from EOIR, it can initiate the documentation stemming from that decision for asylees and lawful permanent residents granted status by the court (a Form I-94, *Arrival-Departure Record*, demonstrating status, an ADIT stamp authorizing status for travel and employment purposes, etc.).<sup>453</sup> In situations where notification is not received from the courts,<sup>454</sup> however, an individual granted the right to such documentation could still initiate the process via the Contact Center through a virtual appointment, enabling USCIS to obtain the necessary confirmation to either complete the mail process or to schedule a visit to the field office to exchange the documentation.

Yet another option that the agency may wish to explore for an appropriate virtual inquiry involves those applicants and petitioners afforded confidential protections from the agency under 8 USC 1367. Section 1367 generally prohibits employees of the U.S. Departments of Homeland Security (DHS), State (DOS), or Justice (DOJ) from permitting the use or disclosure of any information relating to a beneficiary of a pending or approved application

or petition for victim-based immigration benefits<sup>455</sup> to anyone other than a sworn officer or employee of these Departments for legitimate agency purposes, unless one of several enumerated exceptions apply. These protections limit the kinds of communications into which USCIS can engage in with such customers, even well after they have received the benefits from which they draw protection. These populations, however, may have even greater need to interface with the agency for certain issues (lost documents, misspellings on secure documents such as EADs, etc.). Appropriately secure communications could be established through virtual visits with trained ISOs empowered to provide assistance to a population that so often needs that line of communication.

There are significant benefits to expanding virtual access to information. The customer will gain by having their inquiries answered without having to travel to a field office or at worst, having a much shorter and less fraught appointment to pick up an already cleared document. The agency will also benefit by being able to serve the customer either entirely remotely or at least partially in the virtual sphere. Where in-person appearance is nonetheless required, background work during a virtual appointment would reduce the amount of work needed when the individual arrives at an office (e.g., file/systems review, deliberation, etc.). Access to virtual appointments could also decrease needed informational access to the Contact Center, gaining efficiencies for both the customer and the agency. In the alternative, the Contact Center could itself be expanded and empowered to conduct such appointments in place of the field office, further freeing up field resources for functions and enabling the agency to offer more consistent services.

**Using Circuit Rides to Expand Access.** In-person appointments and interviews inherently require more time and work from USCIS employees, and here USCIS can leverage its technological advances to maximize the impact of these efforts. For example, the USCIS mobile services or circuit ride program, which the agency used to expand access for asylum applicants, was a successful initiative that forged a new way of carrying out its mission.<sup>456</sup> Asylum officers would routinely go to USCIS field offices in nearby jurisdictions to interview asylum applicants instead of requiring applicants to travel to the nearest

<sup>452</sup> Approval notices could be courtesy copies that are not printed on security paper, which would require the filing of the Form I-824, *Application for Action on an Approved Application or Petition*. The petitioner/applicant could use the duplicate copies to initiate requests for other benefits such as driver's license or social security number.

<sup>453</sup> USCIS Web Alert, "USCIS Providing Documents After Notice of Immigration Judge and BIA Decisions About Immigration Status" (May 4, 2023) (in the possession of the CIS Ombudsman).

<sup>454</sup> This could also apply to those cases not currently contemplated in the process, such as those seeking I-94 cards for refugee relatives or those granted deferred action by the courts.

<sup>455</sup> Section 1367 protections cover information relating to beneficiaries of pending or approved applications for the following victim-based immigration benefits: VAWA self-petitions, VAWA Cancellation of Removal under INA § 240A(b)(2); T Nonimmigrant Status (victims of a severe form of trafficking in persons under INA § 101(a)(15)(T)); and U Nonimmigrant Status (victims of qualifying criminal activity under INA § 101(a)(15)(U)).

<sup>456</sup> "Notice of Circuit Ride Location Changes for the Chicago and Houston Asylum Offices," 69 Fed. Reg. 17437, 17438 (May 3, 2004).



asylum office, of which there are far fewer, and which could very well be in a different state. In time, some field offices with vast jurisdictions that served customers in remote areas adopted this practice. Some local field offices would offer the rural community mobile InfoPass appointments, benefit interviews, and naturalization ceremonies. The public was very grateful that the services would come to them.<sup>457</sup> In 2022, the agency reinstituted this practice for Afghan asylum applicants meeting certain criteria for expeditious processing.<sup>458</sup>

With time, USCIS refined the program to work more effectively for underserved communities. It determined where to conduct circuit rides by evaluating the number of petitions and applications filed in an area, the hardship that traveling to a field office would impose on the community (such as the length of trip, seasonal weather-related hazards and road closures, overnight lodging, and economic concerns), and availability of partner federal space for the temporary USCIS office. USCIS secured appropriate office space by entering into formal agreements with other federal agencies, which often offered their excess office space free of charge.<sup>459</sup>

Reenergizing the circuit ride program at field offices would not only assist individuals in rural areas, but it would also help regain public trust as underserved communities will feel seen and appreciate that the government is investing time and resources to meet their needs. It will also enable the agency to better ensure careful adjudication of those cases requiring in-person adjudication, as officers assess the individual in a setting in which the applicant may be more “at home.”

***Leveraging In-Person Appointments Beyond the Neighborhood.*** When a customer must go to a USCIS office, the agency can (and often will) take into consideration travel distance when scheduling the in-person information appointment. There are several instances where the nearest or more accessible field office is not the office that has jurisdiction over the customer’s case. For example, residents of Truckee, California, and nearby towns must travel 2 hours or more through the Sierra Nevada mountains to get to the Sacramento Field Office, which is their home jurisdiction. Meanwhile, the Reno Field Office is only 40 minutes away through

less treacherous terrain, even though it serves a different USCIS jurisdiction. Many throughout the United States experience similar dividing lines and opportunities for crossing jurisdictions. With the amount of case information now housed in USCIS’ electronic systems, a vast majority of customer inquiries at an information appointment may be answered by searching those internal databases. Therefore, there is less need for the customer to appear only at the field office in whose jurisdiction they reside, since the physical file is no longer needed to assist the customer, given electronic databases and the agency’s ongoing effort to digitize petitions and applications.<sup>460</sup>

One area that is worth exploring is in further encouraging policies governing the expansion of InfoPass appointments to residents outside of that field office’s jurisdiction. Currently, Contact Center representatives, upon request from the customer, will check appointment availability at other field offices.<sup>461</sup> This option is not widely known by the public. Meanwhile, InfoPass appointments have been difficult to schedule for a wide variety of reasons, although the field has made substantial efforts to expand access. Publicizing the availability of InfoPass appointments in adjacent areas, where those areas have greater capacity, would greatly assist customers by allowing them to go to a different field office that is still close enough to access (attending an InfoPass appointment in Newark, for example, rather than New York City). It is our understanding this is encouraged, but applying it in every case—giving the customer the option, even if they reside outside large metropolitan areas or could travel even greater distances given the need and desire to do so—would offer additional and welcome flexibility.

## Using Communications to Improve the Customer Experience

Good customer service depends on communication that sets expectations, clarifies the process customers need to follow, and helps to alleviate anxiety about the process, while still ensuring the process proceeds with integrity. USCIS is an agency whose decisions significantly affect the lives and life choices of its customers, and as a result any visit to an office, no matter how sought-after, can be intimidating. Alleviating that intimidation is essential to balancing the legal ramifications of the experience with an acceptable level of comfort. With this approach in mind,

<sup>457</sup> Jill Cowan, “Field Office Brings Citizenship to Bakersfield Residents,” *The Bakersfield Californian* (Jan. 31, 2012), [https://www.bakersfield.com/news/field-office-brings-citizenship-to-bakersfield-residents/article\\_9c80870f-fe4d-5d32-b431-91b09ce1173f.html](https://www.bakersfield.com/news/field-office-brings-citizenship-to-bakersfield-residents/article_9c80870f-fe4d-5d32-b431-91b09ce1173f.html) (accessed May 2, 2023).

<sup>458</sup> USCIS Web page, “Information for Afghan Nationals” (June 2, 2023); <https://www.uscis.gov/humanitarian/information-for-afghan-nationals> (accessed June 7, 2023).

<sup>459</sup> “Special Programs,” *Congressional Quarterly Briefing* (Oct. 2016), at 5.

<sup>460</sup> Macri, Kate, “Data Standardization Key to Streamlining Immigration Process at USCIS,” *GovCIO*, Feb. 23, 2023, <https://governmentciomedia.com/data-standardization-key-streamlining-immigration-process-uscis> (accessed May 24, 2023).

<sup>461</sup> Information provided by USCIS (June 21, 2023).

USCIS should be much more purposeful in disseminating information on all its programs, resources, and electronic tools, in particular those in which the public has a need to access.

**Consistent Publicity for Existing Tools.** As we noted earlier, USCIS has several electronic tools available to assist the customer as they navigate the immigration system. After spending so much time, effort, and resources to create these tools, the agency should develop a strategy and invest in a consistent communications campaign to publicize their availability.

The live chat option through Emma is an example of an effective tool that, while having grown in popularity, may still be underutilized. The USCIS website mentions this option in passing on a couple of pages, with an example that a rescheduling request could lead to a live chat.<sup>462</sup> Stakeholders, however, may be uncertain of how to frame issues or even how to access the live chat function.<sup>463</sup> USCIS has not widely publicized the types of inquiries that can lead to a live chat or how to request a live chat. If USCIS did consider ways to provide this information, the learning curve for customers would be minimal since live chats have become part of regular life.<sup>464</sup> If more customers use the live chat to answer their questions, it will help decrease the number of calls to the USCIS Contact Center and/or visits to a field office. If there are concerns about how to adequately staff the live chat if widely publicizing this cutting-edge tool leads to excessive demand, it is important to not lose sight that a live agent can address 3 live chats simultaneously while a live agent is limited to a one-on-one interaction if serving a customer on a call.<sup>465</sup> This efficiency merits that the agency further explore expanding and resourcing the live chat option.

#### **Enhancing the Logistical Information for Field Offices.**

The agency's field offices, often co-located in federal office buildings, can be intimidating in and of themselves, with heavy (but necessary) security and warrens of corridors, offices, and information kiosks. For applicants from many cultures, USCIS offices can be fearsome places. They can also be confusing places. Some facilities have multiple entrances, and in some cases, the type of appointment mandates which entrance to use. For example, the San Francisco Field Office has a different

entrance for customers who are appearing for an InfoPass appointment than those appearing for an interview. During a recent stakeholder engagement, it was mentioned that customer experience is impacted by whether the field office they are visiting is in a large federal building or whether it is a separate, standalone facility.<sup>466</sup>

To help set expectations and alleviate customer anxiety associated with office visits, USCIS could create web pages for district and field offices, displaying general information, such as public transportation, parking information, and which entrance to use. This could help demystify the office visit and help eliminate confusion and late arrivals. Before the COVID-19 pandemic, some USCIS field offices would hold tours to help applicants get a sense of what to expect on the day of their interviews. This was done in part to address the fact that some applicants indicated that they made a separate trip to the office before their appointment day to make sure they knew how to get there, where to park, etc. Websites and, in time, videos that relay this information for at least the largest or most visited offices would be more cost-effective.

By having access to location-specific information and basic logistical details, customers can be better prepared for their interview or appointment. Walkthrough instructional videos can help customers understand the steps they must timely take on the day of their appointments. Since production cost is an undoubted concern, USCIS could initially focus on developing these instructional videos for larger field offices, particularly those co-located with other federal agencies or in federal buildings such as in Los Angeles and New York, but if both time and budget permit, it would be beneficial to eventually have even smaller office settings represented.

#### **Using Modern Technologies to Spread Information**

**Needed by Customers.** USCIS has an active YouTube channel with more than 140 videos and more than 85,000 subscribers.<sup>467</sup> Some of its most popular videos have been viewed over 400,000 times. Viewership is considerable and the agency's naturalization and civics test materials are among the most watched. Taking advantage of this existing media outlet by updating and adding new videos can empower customers, lower their anxiety, and lead to a more satisfying customer experience.

The agency has successfully used YouTube content to enhance the knowledge and experience of its customers. In the most recent example, in March 2023 USCIS

<sup>462</sup> USCIS Web page, "USCIS Contact Center" (Mar. 8, 2023); <https://www.uscis.gov/contactcenter> (accessed Mar. 24, 2023).

<sup>463</sup> Information provided by stakeholders (Feb. 23, 2023).

<sup>464</sup> Biswas, Snigdha, "Trends and Insights for Live Chat Statistics in 2023," *SaaSworthy* (Jan 2, 2023); <https://www.saasworthy.com/blog/trends-and-insights-for-live-chat-statistics/> (accessed Apr. 25, 2023).

<sup>465</sup> Information provided by USCIS (Apr. 11, 2023).

<sup>466</sup> Information provided by stakeholders (Apr. 18, 2023).

<sup>467</sup> USCIS, YouTube; <https://www.youtube.com/USCIS> (accessed May 22, 2023).

launched a four-part video series covering mock naturalization interviews.<sup>468</sup> The content accurately represents present-day naturalization interviews while covering essential information about the process, including the tablet that applicants must use during the interview. The agency has posted additional videos regarding other interactions with the agency, including establishing an online account, filing applications online, and the process of filing for particular benefit types.

Following the new naturalization video series model, USCIS could create additional videos about the most common interactions with the agency, such as InfoPass appointments, mock interviews for other immigration benefits that require an interview, or similar issues. Prioritizing some of the more common interview scenarios, for example, would afford customers the opportunity to receive this information directly from the agency and provide the agency an opportunity to better instruct the public about that interaction.

## Building and Maintaining a Consistent Customer-Centric Culture

USCIS' ability to implement the initiatives above will depend on the agency's workforce. The agency's perpetual goal when hiring is to seek out and support the best candidates that will carry out its mission successfully. However, USCIS' dual responsibilities of serving the public while upholding benefit integrity can create unique challenges to building a consistent culture of customer service.

When DHS was created just over 20 years ago, it created a seismic change in the U.S. immigration system. The agency that was previously in charge of immigration matters—the Immigration and Naturalization Service (INS)—had been located within the DOJ for almost 70 years and carried out law enforcement functions, including the apprehension and removal of noncitizens not entitled to remain, leading many to view it primarily as a law enforcement agency.<sup>469</sup> With the creation of DHS, INS' former roles and responsibilities were spread among U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and USCIS.

ICE and CBP took on the law enforcement portion of the immigration system while USCIS was tasked with administering the legal immigration benefit system. Empowering USCIS employees with the skills needed to interface with the highly diverse groups of people who file for these benefits is essential to the agency's mission.

### ***Defining USCIS' Mission for Current and Future Employees.***

As the organization tasked with adjudicating eligibility for legal immigration benefits, USCIS should ensure that all employees understand the role of customer service in the adjudicative process. Key points for all employees, regardless of their place in the agency or the role they play in the administration of benefits grants, include:

- As a benefit-granting agency, USCIS has a responsibility to provide good customer service. All employees should maintain a high level of professionalism and treat everyone—foreign nationals, U.S. citizens, businesses, stakeholders, and colleagues—with respect.
- USCIS employees should not view their work as a choice between either good customer service or upholding the law, but rather that striving to do one will assist them with ensuring the other. When an applicant does not qualify for an immigration benefit, USCIS employees can still provide a high level of customer service by displaying respect for the applicant and the process, even when delivering less than favorable news.

***Regular Training to Build and Maintain Skills.*** Every USCIS employee represents the agency, DHS, and the federal government. For the most part, the ISO is likely the highest-ranking federal government official with whom most customers will ever interact. Therefore, ISOs should present a professional image of the government and strive to leave the customer with a positive experience of what it is to interact with an official in this country. Put in this light, training on representing the agency, diversity, equality, and customer service is as imperative as substantive knowledge about immigration law.

To ensure this, USCIS' customer service training for the workforce should:

- Impress upon its workforce that they will leave a lasting impression on each person with whom they interact with during their careers.<sup>470</sup>

<sup>468</sup> USCIS, *Naturalization Interview and Test*, YouTube (Mar. 1, 2023); <https://www.youtube.com/watch?v=MHjOV.a6HGHI> (accessed Mar. 23, 2023).

<sup>469</sup> DOJ's mission statement is "to uphold the rule of law, to keep our country safe, and to protect civil rights," and DOJ's agencies work to fulfill this law enforcement mission (<https://www.justice.gov/>). INS had only one component addressing immigration law enforcement responsibilities in contrast to the present structure under DHS where two separate agencies, ICE and CBP, now hold these responsibilities.

<sup>470</sup> Other federal agencies that interact with the public, such as TSA, also view their staff members as ambassadors and have built customer service programs on this concept. Federal News Network's Webinar Series, "CX Exchange," Apr. 26–27, 2023.



- Educate its workforce that customers bring their own cultures, systems of belief, experiences, and fears when interacting with a government official. USCIS employees should understand that some applicants have had negative experiences with their own government officials and therefore may experience a higher level of stress, which might inhibit communication. This in turn could lead to officers misinterpreting the customer's information. ISOs are more than capable of incorporating this understanding into their interview training.
- Be offered to all staff members regardless of position or years of service to ensure the customer-centric approach lasts from initial contact through to the final adjudication.
- Include updated annual refresher courses on topics related to good customer service.
- Incorporate additional training on how the agency's customer service functions work—such as the filing process, online tools, and InfoPass—even for those who do not directly serve the public. Individuals in administrative positions may encounter customers in common areas at the field offices, and such training can ensure that any USCIS employee is prepared to serve the public.

**Recognize and promote the incorporation of customer service.** As with any entity that serves the public, USCIS highlights good customer service through awards and recognitions. The CIS Ombudsman encourages USCIS to continue to recognize and reward exemplary customer service to help all employees inculcate a balanced approach to the customer experience into their day-to-day functions. Doing so emphasizes the understanding, which many officers already incorporate, that their decisions impact applicants' very lives. It enables officers to balance the legal and security concerns of their work, ensuring the fair adjudicatory process to which every applicant is entitled.

## Improving the Contact Center Experience

The USCIS Contact Center's importance to the customer has grown exponentially in the last several years.<sup>471</sup> USCIS Contact Center employees are often the first (and sometimes only) agency representatives to interact with a customer. The Contact Center is also the default point of entry for all customers, serving the entire agency's

stakeholders, given its growth as the entry point for inquiries of all kinds. Their training and development are essential to setting the tone of the professional and impartial relationship between USCIS and the customer. Each call is an opportunity to leave a positive impression.

### HOW THE CONTACT CENTER WORKS

The Contact Center is structured as a tiered system of interaction:<sup>472</sup>

- The customer first interacts with the Interactive Voice Response (IVR) tier, which is available 24 hours a day, 7 days a week, in English or Spanish. The customer goes through a series of prompts to either receive an answer or be forwarded to the next tier.
- On Monday through Friday from 8 a.m. to 8 p.m. Eastern Time, Tier 1 (live assistance by contract employees) is the next step. Contractors have access to most USCIS systems and can help answer simple to moderately complex matters while following a formatted script.
- If the Tier 1 representative cannot answer the customer's questions, they can escalate the call to Tier 2 ISOs. Tier 2 ISOs have access to more USCIS systems and their academy training adheres to the same USCIS curriculum for ISOs who adjudicate applications.
- Tier 2 ISOs may escalate complex cases to Tier 3 or Tier 4 (more experienced ISOs) if needed.

At any point during the call, the customer may be informed that they will receive a return call. Urgent inquiries generally will receive a call within 72 hours and non-urgent inquiries will receive a call back within 30 days.<sup>473</sup> For the non-urgent callbacks, USCIS will currently send a text message and/or email to the customer 1 or 2 business days before a return call.<sup>474</sup> In the next few weeks after this Report is published, the agency will initiate a full text-ahead capability, enabling the recipient to take the call

<sup>471</sup> See the CIS Ombudsman Annual Report 2019, pp. 49–51.

<sup>472</sup> USCIS Policy Manual, "Chapter 3—Forms of Assistance" (Mar. 2, 2023); [www.uscis.gov/policy-manual/volume-1-part-a-chapter-3](https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-3) (accessed Mar. 2, 2023).

<sup>473</sup> USCIS Web page, "USCIS Contact Center" (Mar. 8, 2023); <https://www.uscis.gov/contactcenter> (accessed Apr. 3, 2023).

<sup>474</sup> *Id.*



within 30 to 45 minutes, or to receive a call at a later date if that is more convenient.<sup>475</sup>

USCIS has taken many steps to educate the customer about how and when to call the Contact Center. The Contact Center offers a number for customers calling from outside the United States.<sup>476</sup> USCIS issued a tip sheet for customers to review before calling in an effort to make the call more efficient and effective, and it is available on the USCIS website.<sup>477</sup>

**Continuing Customer Challenges with the Contact Center.** Dissatisfaction with the Contact Center has often been the first customer service concern that stakeholders bring up with our office.<sup>478</sup> Stakeholders continue to share that wait times are long<sup>479</sup> as the Contact Center fills vacant positions, but this has improved significantly in FY 2023, with wait times in the last 6 months averaging only 7 minutes.<sup>480</sup> Stakeholders have also shared that the automated system can be difficult to navigate, especially for inquiries not clearly covered by the IVR phone tree, and customers find it hard to get beyond the prompts; the system will often terminate the call and the customer must restart the process.<sup>481</sup> This is in part because the system is doing what it is designed to do—allow those with a real need to reach a live person, as not everyone who seeks to talk to a representative also can receive appropriate assistance from a representative. It can, however, be extremely frustrating for the information seeker who is still in need. Additionally, Spanish-speaking callers have had to bring an interpreter on the call, often their minor children, to simply request a call back with a Spanish-speaking representative; again, this problem has now been diminished with the restaffing of bilingual representatives, but wait times may be longer.<sup>482</sup>

Stakeholders further report that when they do move forward from the IVR system to live assistance they are on hold for lengthy periods before speaking to a

representative, and they are often either transferred to another employee or informed they will receive a call back within 30 days for non-urgent inquiries.<sup>483</sup> The concern of missing the call back, in itself, produces anxiety since the agency will only attempt to contact the customer two times. If the customer misses both attempts, they will receive an email notifying them that the agency tried to call. The email will inform the customer that they can use other online tools or call the Contact Center again<sup>484</sup> but in doing so they restart the process.

For some inquiries, the Contact Center creates a service request for the field office or service center to respond to at a later date.<sup>485</sup> As stated earlier, USCIS answers these service requests in 15 calendar days (7 calendar days for priority requests).<sup>486</sup> This timing may be problematic for the customer when the reason for calling is due to a true emergency. Certain circumstances, such as loved ones dying abroad or job opportunities that require travel, are unfortunately sometimes more urgent than the agency can handle. The agency has been working to address this problem at several levels, including opening up more appointments and employing a text-ahead notice so that the customer can anticipate the return call; in the meantime, it is using a message service to send a text and an email to individuals with pending non-urgent inquiries expecting a return call to alert them to an impending call back.<sup>487</sup>

The text-ahead capabilities of the Contact Center representatives can, however, be expanded beyond their current capacity. The agency could, for example, explore the issue of more targeted texting to individuals, offering them the choice to engage with the agency via a phone call or through live text assistance in a way now employed by many customer-oriented operations. Because the live chat functions can be handled more expeditiously than phone calls, by being more proactive with live chat functions, Contact Center representatives can better manage their

<sup>475</sup> CIS Ombudsman notes from the American Immigration Lawyers Association Annual Conference, June 23, 2023. At that same conference, USCIS announced other upcoming innovations to the customer experience, such as the ability to make an online appointment request for ADIT stamping, an emergency advance parole, and to obtain proof of certain judicial orders. We look forward to future reporting on these and other initiatives in development.

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*

<sup>478</sup> Information provided by stakeholders (Apr. 18, 2023).

<sup>479</sup> *Id.*

<sup>480</sup> Information received from USCIS (June 15, 2023). As of June 12, callers were being connected to live assistance, on average, within 3 minutes.

<sup>481</sup> Information provided by stakeholders (Apr. 18, 2023).

<sup>482</sup> *Id.*

<sup>483</sup> USCIS Web page, “USCIS Contact Center” (Mar. 8, 2023); <https://www.uscis.gov/contactcenter> (accessed Mar. 27, 2023).

<sup>484</sup> *Id.*

<sup>485</sup> SRMTs may be generated to update addresses; inquire about a notice, card, or other document that has not been received; request an update on a case, request for an accommodation prior to an appointment (such as a sign-language interpreter); and a request to correct a typographical error. SRMT categories that are prioritized fall within the following categories: change of address; expedited requests; reasonable accommodations; and military referrals. USCIS Web page, “USCIS Contact Center” (Mar. 8, 2023); <https://www.uscis.gov/contactcenter> (accessed June 15, 2023).

<sup>486</sup> USCIS Web page, “Chapter 4—Service Request Management Tool” (Mar. 22, 2023); <https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-4#:~:text=USCIS%20categorizes%20a%20service%20request,from%20the%20date%20of%20creation> (accessed Mar. 24, 2023).

<sup>487</sup> USCIS Web page, “USCIS Contact Center” (Mar. 8, 2023); <https://www.uscis.gov/contactcenter> (accessed Apr. 4, 2023).

time. Representatives can handle more issues on a daily basis, leading to more resolutions for customers, and more efficiencies for the Contact Center.

**Training Contact Center Representatives.** Because USCIS intends for the Contact Center to be used<sup>488</sup> by those who have exhausted the online self-service tools or are not as adept with online services and technology, the agency cannot dismiss the importance of the human factor but instead needs to invest in it. Even the most proficient online user might come across a time in their life when they need in-person help and by design, a good percentage of callers have already attempted to find answers by using the virtual tools. Therefore, the human interaction is vital to their experience. Countless private sector businesses have come to this realization and still have live agents and in-person services available for their customers.

Contact Center representatives who understand both the immigration system and internal USCIS processes are able to provide more meaningful assistance to customers. Expanding the training that these representatives receive can allow USCIS to improve and enhance its customers' experience. Contact Center representatives are taught a great deal about customer service, ranging from handling difficult customers to those unable to express themselves, and are given coaching to improve the quality of calls and email responses.<sup>489</sup> Additional training in specific functions, however, would enhance the interaction and provide more targeted responses.

- Currently, all Tier 2 ISOs (who are federal employees) must successfully complete a 6-week training at the USCIS Academy Training Center (ATC). This Immigration Services Officer Basic Training Program (Basic Training) is designed for both Contact Center and field ISOs, and the classes are comprised of both types of ISOs.<sup>490</sup> In an effort to better equip the Tier 2 Contact Center ISOs and their field counterparts for future collaboration, we encourage USCIS to incorporate a module to train these ISOs on working across operating divisions to resolve customer inquiries and render solutions in a more efficient manner. The module can highlight the importance of fostering good working relationships throughout their careers with fellow staff members situated in different parts of the agency. This would allow them to start adopting working relationships across USCIS. This network will be valuable when Contact Center ISOs need to answer inquiries that require reaching a point of contact

(POC) in unfamiliar field offices. Having working relationships across the different divisions can help the Contact Center ISO resolve the customer's concerns more quickly.

- USCIS could also generate more interest in cross-details between the Contact Center and the field to improve the customer experience knowledge of both groups. Currently, the Contact Center offers an optional detail opportunity for its ISOs to experience field office operations; the agency understands it provides them with "valuable experiences, and makes them more well-rounded officers."<sup>491</sup> Lengthening these rotations to a field office beyond the current 60 to 120 days would strengthen further those working relationships and improve the flow of communication. As mentioned earlier, having access to field office POCs who can assist in real time, and having the skills and opportunity to forge new working relationships with future POCs, will increase the potential for Contact Center ISOs to more quickly resolve problems presented by those seeking assistance. More significantly, allowing field ISOs to observe the activity of the Contact Center and experience that firsthand through reciprocal details would provide more exposure in the field to the initial contacts made by customers from which they are now insulated.
- USCIS should create and invest in additional opportunities that sustain and enrich working relations between Contact Center Tier 1, 2, and 3 staff and field office ISOs. This would build on the connections that began during Basic Training and field office details, leading to better communication and quicker solutions when urgent matters arise.

These initiatives will take commitment, resources, and time. If USCIS can resolve an inquiry at first contact, offer a more expeditious answer, and prevent a small issue from becoming a larger one, it will provide the customer a more positive experience while expending fewer resources.

## Streamlining Customer Service at Field Offices

USCIS field offices regularly provide in-person services through their InfoPass desk, interview applicants, hold in-person naturalization ceremonies, and address emergencies. Field office staff must therefore be well-trained in providing professional and respectful customer

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<sup>488</sup> *Id.*

<sup>489</sup> Information provided by USCIS (May 17, 2023).

<sup>490</sup> *Id.*

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<sup>491</sup> *Id.*

service. The following are tangible initiatives that can greatly improve the customer service experience.

**Training Field Office Staff.** Just as the Contact Center staff could benefit from cross-training opportunities with field offices, the converse also holds true. Field office employees could benefit from 30-day details at the Contact Center and at service centers, where possible, for the same reasons explored earlier. Annual training on how to conduct respectful and non-adversarial interviews and on representing the agency could also polish employees' skills. Looking at a sample of the agency's current course list, USCIS has several trainings for executives that address customer service, representing the agency, and diversity, sensitivity, and equality. It also has trained managers, supervisors, and ISOs in many areas such as public accommodations, interacting with individuals who are blind, and supporting diversity and inclusion. The agency offers training courses on customer service and representing the agency to all field office staff, but only requires the employee to take the courses once.

Some field offices have developed local courses covering essential topics such as representing the agency.<sup>492</sup> The agency could build upon these home-grown courses and offer them to all staff members. The training content could reiterate that stellar customer service does not mean that all customers would receive the answers and benefits they seek, but that they are afforded respect throughout an equitable process.

USCIS has shared that ATC is in the process of creating a new module called "Officer Mindset," which will take the main points from the current Basic Training customer service and professionalism modules and incorporate them along with other new topics such as anti-discrimination, victim-centered adjudication, and a trauma-informed approach to adjudication. The implementation date is to be determined at this point, but USCIS expects it will be in the Basic Training curriculum no later than the end of FY 2023.<sup>493</sup> We look forward to being able to review this promising module when completed. We encourage the agency to make this a training requirement for all staff members and not just for new officers. USCIS should also consider making it an annual requirement for all staff to help build a customer-centric environment while leaving room to update the course each year as issues evolve.

Additionally, as recently as the third quarter of FY 2023, USCIS staff handling forms and/or interacting with the public received a training titled "Self-Selection of Gender

on USCIS Forms by Benefit Seekers," but it was not mandatory.<sup>494</sup> We applaud the effort, especially since stakeholders raised this issue in a recent CIS Ombudsman engagement.<sup>495</sup> We look forward to USCIS offering this training to all employees on a regular basis.

The emphasis placed on these efforts—enhancing and managing a much more ambitious training curriculum, designing courses for all employees, and making all training courses related to customer service, diversity, sensitivity, and representing the agency both a mandatory and annual requirement—would demonstrate to the workforce that USCIS leadership is invested in offering stellar customer service while polishing the staff's professionalism and customer service skills.

## Recommendations

To accomplish the objectives of creating and maintaining an exemplary culture of an equitable customer experience, as discussed above, we summarize below the recommendations discussed throughout this study. These include:

1. ***Capitalize on technological advances to expand in-person services.***
  - a. Implement virtual InfoPass appointments and expand remote capabilities.
  - b. Use circuit rides to serve communities that are located far from field offices.
  - c. Create an agency-wide policy that allows customers to receive in-person information services at field offices outside of their normal jurisdiction.
2. ***Use communications to improve the customer experience.***
  - a. Widely publicize all existing electronic tools.
  - b. Create web pages and, if resources permit, facility videos for the more heavily visited field offices or those co-located in federal office facilities.
  - c. Expand USCIS' YouTube informational video library.

<sup>492</sup> Information provided by USCIS (May 17, 2023).

<sup>493</sup> *Id.*

<sup>494</sup> Information provided by USCIS (May 17, 2023).

<sup>495</sup> Information provided by stakeholders (Apr. 18, 2023).

**3. *Incorporate consistent training to build a customer service-oriented workforce.***

- a. Clearly define USCIS' mission as one of customer service *and* upholding the integrity of our immigration laws.
- b. Implement consistent training for all employees to develop and maintain needed customer service skills.
- c. Recognize customer service achievements throughout the agency.

**4. *Invest in training Contract Center representatives to be able to resolve issues more quickly.***

- a. Include training modules to foster working relationships between Contact Center and field office staff to maximize the opportunity of having both Tier 2 ISOs in the same class as field office ISOs.

- b. Implement and encourage more detail opportunities to the Contact Centers for field officers, and additional details to field offices for Tier 2 ISOs.

As highlighted in this study, USCIS has developed a variety of programs, tools, and resources to enhance the customer experience. As the agency continues to build on these efforts, it is important that it reincorporates the human element in future customer service ventures. USCIS' workforce is its most valuable asset and continuing to develop the workforce through trainings and detail opportunities is paramount. Equally important is using the latest technology in a customer experience framework that allows USCIS to expand and use its in-person services to best serve the public. Our expectations are high that USCIS will continue to work towards a customer-centric environment infused with respect and professionalism.

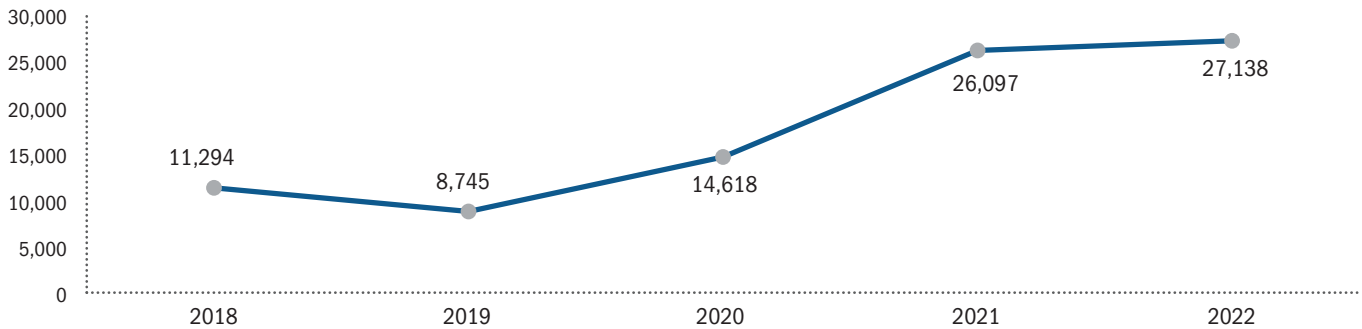


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# APPENDICES

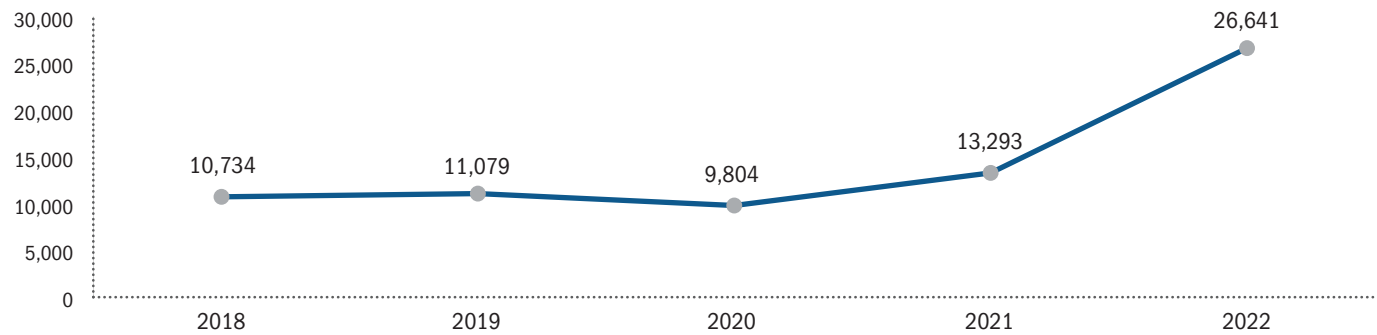
## CIS Ombudsman By The Numbers

**CIS Ombudsman Requests for Case Assistance Received by Calendar Year**

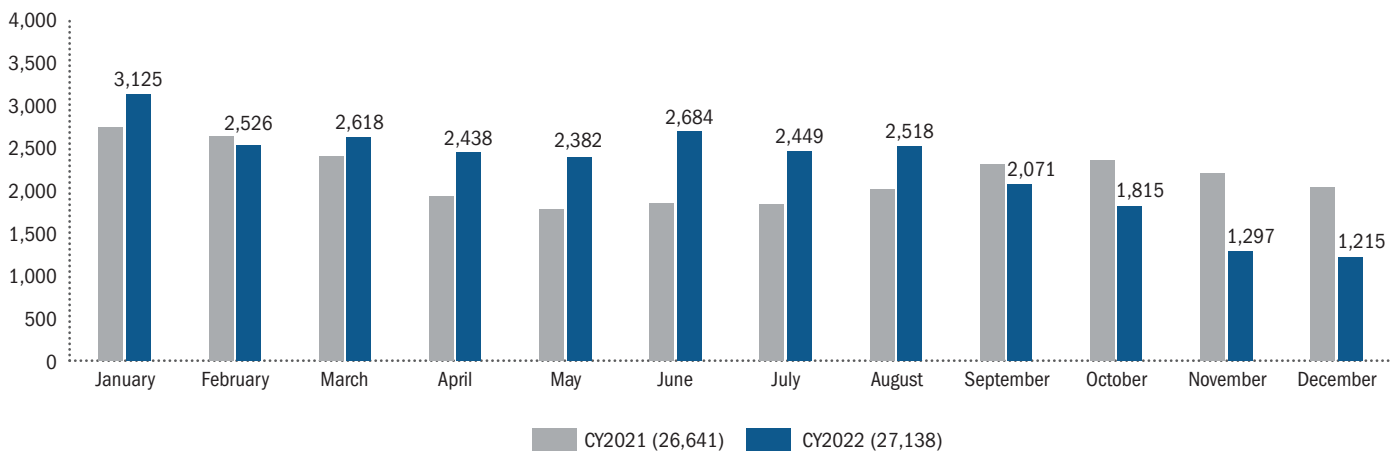


Source: Information provided through requests for case assistance.

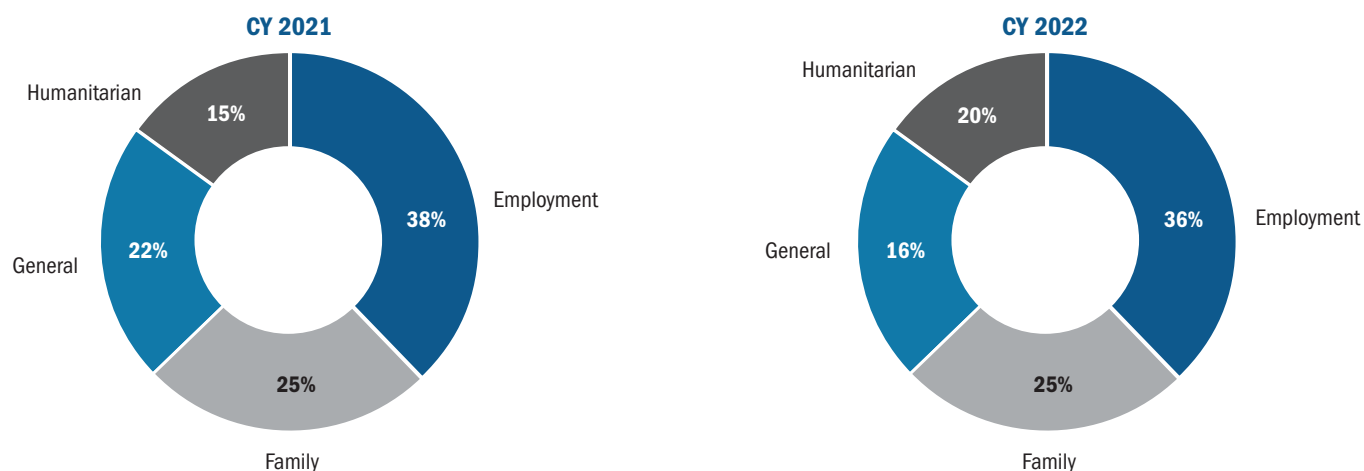
**CIS Ombudsman Requests for Case Assistance Resolved by Calendar Year**



**CIS Ombudsman Requests for Case Assistance Received by Month for Calendar Years 2021 and 2022**



### CIS Ombudsman Requests for Case Assistance—Submission by Category




### CIS Ombudsman Top Forms Requesting Case Assistance, 2022


Form	# Received	% of Total Requests
I-765, Application for Employment Authorization	4,742	18%
I-485, Application to Register Permanent Residence or Adjust Status (Employment-Based)	4,215	16%
I-130, Petition for Alien Relative	3,060	11%
N-400, Application for Naturalization	1,763	7%
I-485, Application to Register Permanent Residence or Adjust Status (Family-Based)	1,597	6%
I-821, Application for Temporary Protected Status	1,129	4%
I-140, Immigrant Petition for Alien Workers	1,011	4%
I-131, Application for Travel Document	908	3%
I-589, Application for Asylum and for Withholding of Removal	873	3%
I-485, Application to Register Permanent Residence or Adjust Status (Other)	759	3%


### CIS Ombudsman Top Forms Requesting Case Assistance, 2021


Form	# Received	% of Total Requests
I-765, Application for Employment Authorization	6,500	25%
I-485, Application to Register Permanent Residence or Adjust Status	4,905	19%
I-130, Petition for Alien Relative	2,630	10%
I-539, Application to Extend/Change Nonimmigrant Status	2,429	9%
N-400, Application for Naturalization	1,504	6%
I-131, Application for Travel Document	780	3%
I-751, Petition to Remove Conditions on Residence	744	3%
I-140, Immigrant Petition for Alien Workers	684	3%
I-821D, Consideration of Deferred Action for Childhood Arrivals	603	2%
I-589, Application for Asylum and for Withholding of Removal	427	2%


## Top Ten States Where Applicants Reside and the Top Five Primary Form Types


CALIFORNIA		
Total Requests Received: 3,936		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	1,121	28%
I-765, Application for Employment Authorization	1,111	28%
I-130, Petition for Alien Relative	370	9%
N-400, Application for Naturalization	278	7%
I-131, Application for Travel Document	177	4%


TEXAS		
Total Requests Received: 2,697		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	1,025	38%
I-765, Application for Employment Authorization	477	18%
I-130, Petition for Alien Relative	336	12%
N-400, Application for Naturalization	276	10%
I-821, Application for Temporary Protected Status	137	5%


FLORIDA		
Total Requests Received: 2,402		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	542	23%
I-765, Application for Employment Authorization	467	19%
I-821, Application for Temporary Protected Status	401	17%
I-140, Immigrant Petition for Alien Workers	225	9%
I-130, Petition for Alien Relative	217	9%

NEW YORK		
Total Requests Received: 1,897		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	472	25%
I-765, Application for Employment Authorization	338	18%
I-130, Petition for Alien Relative	317	17%
N-400, Application for Naturalization	203	11%
I-730, Refugee/Asylee Relative Petition	75	4%

NEW JERSEY		
Total Requests Received: 1,074		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	427	40%
I-765, Application for Employment Authorization	191	18%
I-130, Petition for Alien Relative	124	12%
N-400, Application for Naturalization	56	5%
I-360, Petition for Amerasian, Widow(er), or Special Immigrant	35	3%

ILLINOIS		
Total Requests Received: 867		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	258	30%
I-765, Application for Employment Authorization	161	19%
I-130, Petition for Alien Relative	113	13%
N-400, Application for Naturalization	74	9%
I-821, Application for Temporary Protected Status	48	6%

VIRGINIA		
Total Requests Received: 847		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	339	40%
I-765, Application for Employment Authorization	126	15%
I-130, Petition for Alien Relative	98	12%
N-400, Application for Naturalization	80	9%
I-131, Application for Travel Document	34	4%

WASHINGTON		
Total Requests Received: 767		
		
Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	283	37%
I-765, Application for Employment Authorization	193	25%
I-130, Petition for Alien Relative	55	7%
I-131, Application for Travel Document	34	4%
I-539, Application to Extend/Change Nonimmigrant Status	25	3%



## MARYLAND

Total Requests Received: 742



Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	219	30%
I-765, Application for Employment Authorization	138	19%
I-130, Petition for Alien Relative	97	13%
N-400, Application for Naturalization	77	10%
I-131, Application for Travel Document	33	4%

### Requests for Case Assistance: Top Office Locations

USCIS Office	Count
Nebraska Service Center	3,564
Texas Service Center	3,465
National Benefits Center	3,409
Potomac Service Center	2,666
California Service Center	1,517
Vermont Service Center	1,499
Dallas Field Office	336
Chicago Field Office	309
Los Angeles Field Office	276
Houston Field Office	271
<b>Total</b>	<b>17,312</b>

## GEORGIA

Total Requests Received: 737

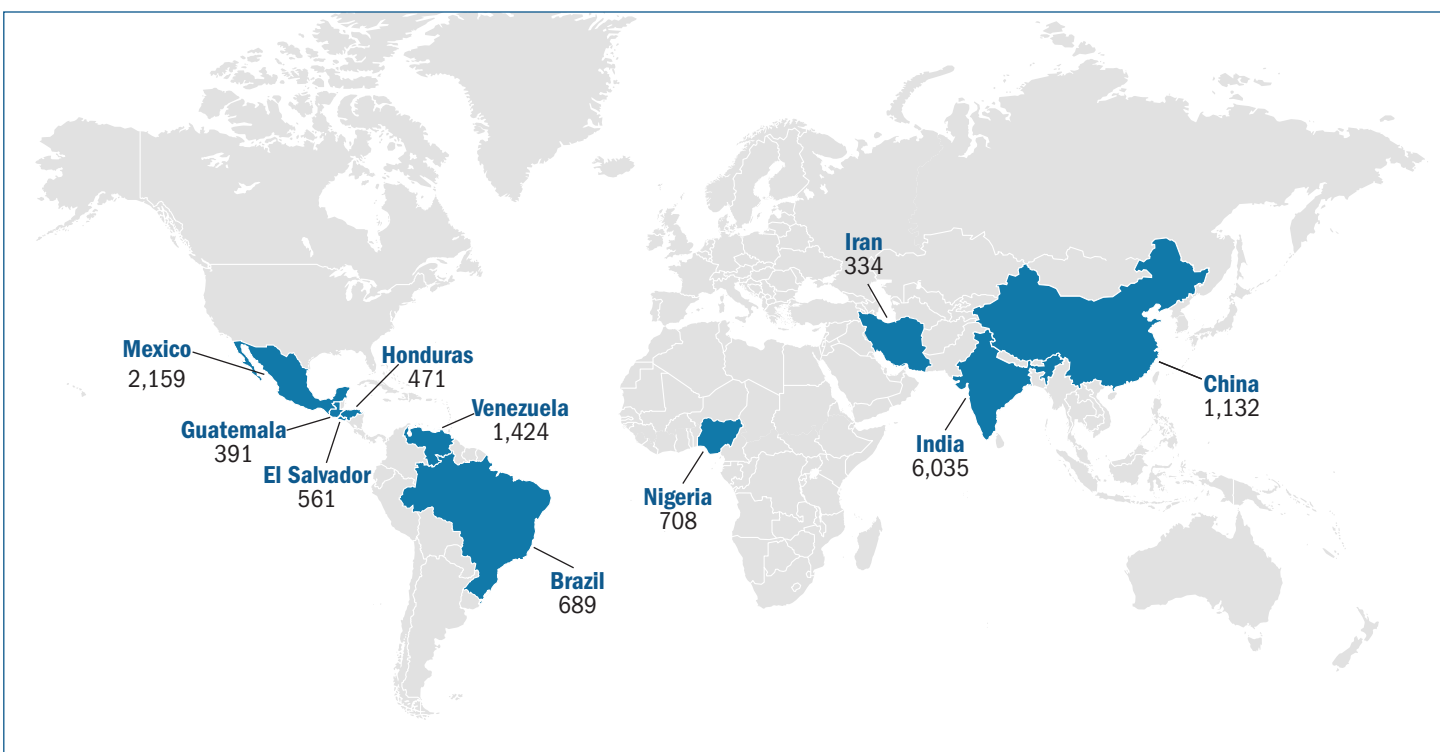


Top Primary Form Types	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	235	32%
I-765, Application for Employment Authorization	137	19%
I-130, Petition for Alien Relative	103	14%
I-751, Petition to Remove Conditions on Residence	34	5%
N-400, Application for Naturalization	30	4%

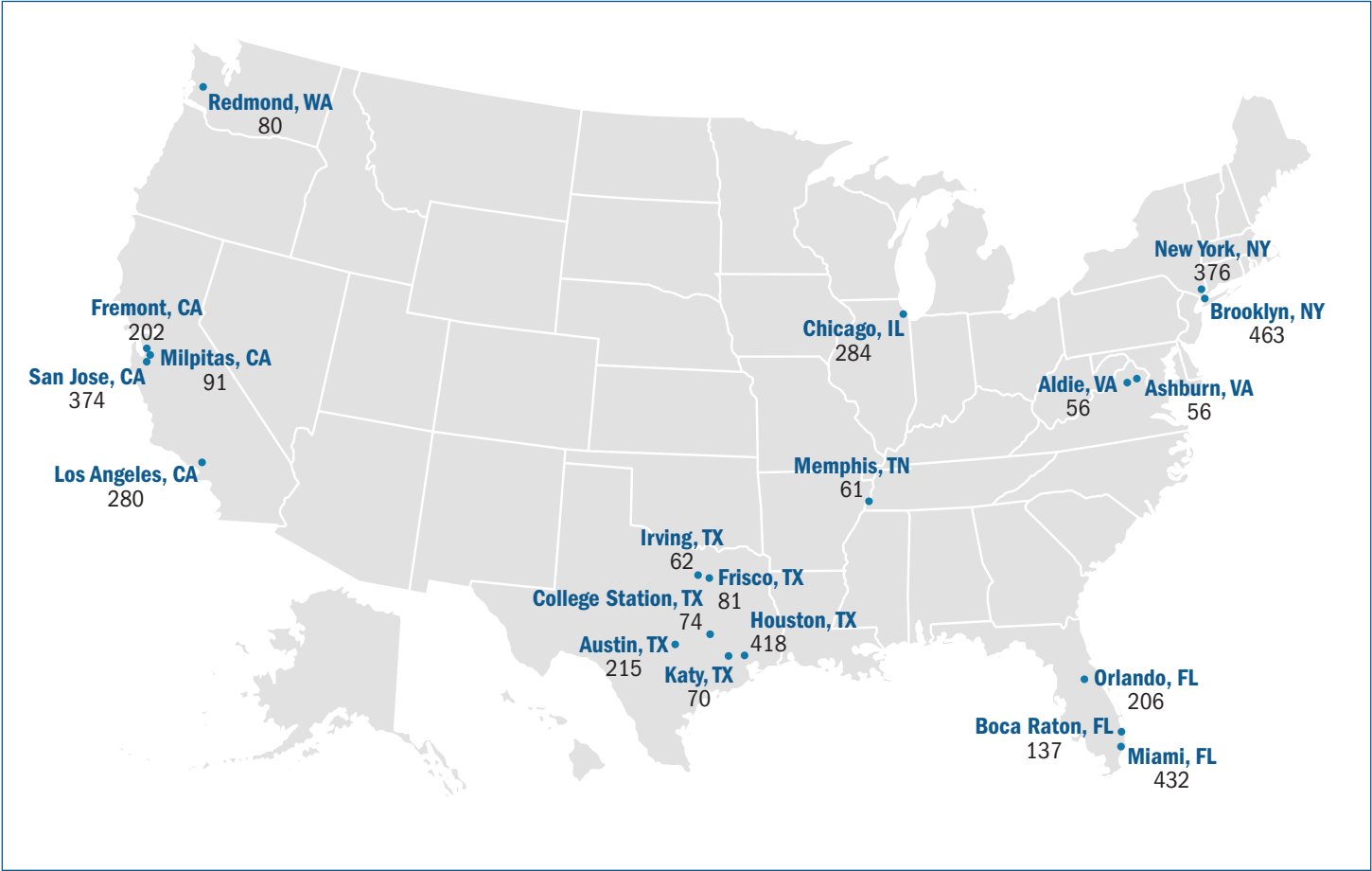
### Requests for Case Assistance: Top Requestor Locations

City	Count
Brooklyn	463
Miami	432
Houston	418
New York	376
San Jose	374
Chicago	284
Los Angeles	280
Austin	215
Orlando	206
Freemont	202
<b>Total</b>	<b>3,250</b>

### Requests for Case Assistance: Top Requestor Countries of Birth



Top 20 Cities of CIS Ombudsman Case Assistance Requestors



## Updates to the CIS Ombudsman’s 2022 Recommendations

2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
<b>The Avalanche Impact of Backlogs: 2021 In Review</b>		
The agency needs to maintain a steady stream of revenue that allows it to manage its unpredictable workload.	USCIS recognizes fees need to reflect current conditions and costs inherent in meeting processing goals.	The CIS Ombudsman will continue to engage with USCIS about ways to alleviate the agency’s funding issues, just as our office did in the recent Formal Recommendation to USCIS.
Fees must also reflect current conditions and especially the current costs inherent in meeting processing goals. Only then can backlogs and their associated impacts cease to exist.	USCIS is committed to eliminating backlogs and taking a strategic approach, which includes maintaining a steady revenue stream.	USCIS has published a proposed fee rule, this new fee rule balances the needs of the agency with the goal of promoting access to the immigration system. The CIS Ombudsman supports the agency’s steps to secure steady revenue, focusing on officer resources and workflow flexibility.
<b>The Need for More Flexibility in Renewing Employment Authorization</b>		
<p>Build on existing automatic extension periods to allow for uninterrupted work authorization while waiting for USCIS to adjudicate a renewal EAD application.</p> <p>a. USCIS should consider developing a regulation that permanently implements a longer automatic extension period, beyond 180 days, so that delays in adjudicating EAD applications do not interrupt businesses or lead to job losses. Even if USCIS ultimately meets its stated goal for processing EADs in 3 months by the end of FY 2023, backlogs may occur again in the future, as historically they have done since the agency was created.</p> <p>b. In addition, USCIS can evaluate the success of the Temporary Final Rule (TFR) as it relates to these issues, as well as the progress it makes toward its processing time goals for FY 2023. Once these factors are evaluated, USCIS can then consider proposing a permanent, longer-term automatic extension period.</p>	As part of its regulatory agenda-setting process, USCIS will explore permanent improvements to the EAD renewal process that may be pursued through regulatory change, as suggested by the CIS Ombudsman. To that end, USCIS continues to evaluate impacts of the TFR and public comments received in assessing possible solutions.	The CIS Ombudsman will continue working with USCIS to explore viable alternatives to keep EAD renewals more efficient and practical.

2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
<p><b>Provide better options for nonimmigrant spouses to renew their employment authorization. For example:</b></p> <ul style="list-style-type: none"> <li>a. USCIS could prioritize Forms I-539 by H-4 dependents for premium processing, thus adjudicating the extension of stay more quickly and potentially making this auto-extension period for the EAD a reality.</li> <li>b. USCIS could develop a regulation that implements an automatic EAD extension period for H-4 spouses such that filing the Form I-539 extension of status application, with a renewal EAD application, triggers the automatic EAD extension beyond the end date of Form I-94.</li> <li>c. In addition, this proposal mirrors current regulatory allowances for certain employers who seek to extend the status of nonimmigrant employees on Form I-129, <i>Petition for a Nonimmigrant Worker</i>, under certain conditions. A similar provision could be implemented for eligible H-4 dependent spouses.</li> <li>d. USCIS should implement a regulatory provision, such as the one for H-4 spouses, triggering an automatic extension period while their extension of status application is pending for E and L spouses.</li> </ul>	<p>USCIS has not yet established a public timetable for expanding premium processing to H-4 dependents but will do so as soon as operationally feasible.</p> <p>Regarding E and L spouses, Forms I-94 containing new codes (E-1S, E-2S, E-3S, and L-2S) to distinguish these spouses from other dependents can currently be used as evidence of automatic extension of their existing Form I-766 EADs if they meet certain conditions.</p>	<p>USCIS' progress is significant and ongoing. Extensions continue to benefit applicants and their employers as USCIS works to eliminate backlogs for pending EAD applications. The CIS Ombudsman will continue collaborating with USCIS in every way possible to achieve those goals.</p>
<p><b>Continue to expedite EAD renewals for workers in certain occupations in the national interest.</b></p> <ul style="list-style-type: none"> <li>a. With its current backlog, USCIS should continue to identify and prioritize occupations for expedited processing. For example, the United States is still suffering pandemic-induced delays in the supply chains of goods, yet noncitizen truck drivers often cannot maintain their commercial driver's licenses due to EAD processing delays. Expediting EADs for workers who directly contribute to rectifying supply chain issues may be an area to explore.</li> <li>b. There may be other occupations and categories worthy of review, and USCIS is positioned to partner with DHS components, other governmental agencies, and the public to identify where help is needed.</li> </ul>	<p>USCIS continues to expedite certain EAD initial and renewal applications for essential healthcare and childcare workers. If additional industries are identified as requiring this specialized expedite process, USCIS will seek to coordinate and assess how to do so without compromising the overall EAD workload.</p>	<p>USCIS reported progress in reducing the EAD application backlog. From January 1 to August 31, 2022, the number of pending EAD applications decreased from 1.56 million to 1.42 million, approximately a 10 percent reduction. The CIS Ombudsman acknowledges the agency's commitment to reducing the EAD backlog and coordinating flexibility where needed.</p>



2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
<p><b>Continue to explore and augment the use of technology to further automate EAD processing.</b></p> <ul style="list-style-type: none"> <li>a. This can include: the ability to file online, receive all correspondence and notices from USCIS electronically, and respond online to a request for evidence.</li> <li>b. Explore the use of Robotic Process Automation (RPA) to more efficiently process EAD applications.</li> <li>c. Engage with external stakeholders to discuss advancements and concerns with respect to RPA, including how to maximize efficiency while ensuring security, protection of privacy, and benefit integrity.</li> </ul>	<p>USCIS agrees with these recommendations and continues to explore and expend significant resources leveraging technology solutions to improve processing speed, efficiency, consistency, and integrity across all aspects of EAD filing and adjudications.</p> <p>The agency will also explore efforts to engage with stakeholders to share steps USCIS has taken to leverage technology and to gather feedback on related challenges or concerns.</p>	<p>The CIS Ombudsman will continue monitoring USCIS' progress at leveraging technology resources to improve the adjudicative process for EADs and where these improvements can apply to other processes. We remain committed to supporting the agency and coordinating with key stakeholders that can help USCIS explore more improvements.</p>
<p><b>Consider new regulations that provide more flexibility for USCIS and approved workers during periods of backlogs or long processing delays.</b></p> <p>USCIS should explore policy, operational, and regulatory changes that provide more flexibility for those with previously approved EADs while backlogs are occurring or when new, unanticipated workloads create a need for USCIS to divert resources.</p>	<p>USCIS will explore permanent improvements that may be pursued through regulatory change, as suggested, as well as areas where policy and/or operational changes might mitigate the consequences of backlogs or long processing delays.</p>	<p>The CIS Ombudsman will continue to review policy and identify areas where operational challenges should be addressed to mitigate the risk of backlogs proactively. In addition, our office remains available to support USCIS efforts toward regulatory change.</p>
<p><b>Consider increasing flexibility in the Form I-9 process.</b></p> <ul style="list-style-type: none"> <li>a. USCIS could consider regulatory amendments that would allow employers to accept approval notices, where an EAD is now required, for Form I-9 purposes.</li> <li>b. If USCIS must issue an EAD-like document, USCIS should consider an electronic format. Efforts are underway to move other similar documents to an app-based platform. For example, with Transportation Security Administration approval, certain companies are piloting how to issue driver's licenses via smart phone apps in several states.</li> <li>c. USCIS should leverage these advancements by engaging with external stakeholders on ways to maximize efficiencies while mitigating risk.</li> </ul>	<p>During the COVID-19 global pandemic, USCIS allowed Forms I-797 Approval Notices for EADs to be acceptable as a List C #7 document issued by the Department of Homeland Security (DHS) that establishes employment eligibility, even though the notice stated it is not evidence of employment authorization. This temporary policy was publicized through all of our communications outreach tools. USCIS will explore permanent improvements as recommended by the CIS Ombudsman.</p>	<p>The CIS Ombudsman will continue to engage stakeholders to gather feedback on these initiatives, discuss their effectiveness, and make further recommendations to USCIS, as well as help USCIS disseminate messaging for additional improvements.</p>
<p><b>Consider eliminating the need for a separate EAD application when filing for certain benefits.</b></p> <p>USCIS can reconsider the need to separately apply for an EAD when based on a pending underlying request; for example, USCIS currently requires a separate EAD application for those with a pending application to adjust status.</p>	<p>USCIS continues to explore this recommendation, the costs and benefits, as well as timing and prioritization as we continue to pursue other EAD streamlining efforts.</p>	<p>The CIS Ombudsman supports and appreciates those efforts as our office will continue to explore areas of improvement and make suggestions to further USCIS progress and efficiencies.</p>

**Increasing Accessibility to Legitimate Travel: Advance Parole**

**Regulatory Changes:** The agency can take the following measures to implement an operationally workable advance parole process for adjustment applicants in the United States.

- a. Amend 8 C.F.R. Part 223 to authorize advance parole as incident to filing Form I-485, so that applicants would not need to submit Form I-131, *Application for Travel Document*, if they have a receipt for a pending Form I-485 under section 245(a) of the INA and have submitted biometrics to USCIS.
- b. Amend 8 C.F.R. § 245.2(a)(4)(ii)(B) regarding abandonment of Form I-485 upon departing the United States so that it applies only to applicants who are not under exclusion, deportation, or removal proceedings and who leave without a receipt notice evidencing advance parole.

As part of its regulatory agenda-setting process, USCIS will continue to explore which permanent improvements to the advance parole process may be pursued through regulatory change.

The CIS Ombudsman encourages USCIS to explore permanent improvements to the advance parole process and renders our office available to exchange ideas and provide relevant feedback.

**Procedural changes:** The agency can take the following measures to streamline the current process.

- a. Move high-volume Forms I-131 into a digital environment, allowing USCIS to leverage its technological capabilities to electronically notify the applicant and CBP when it grants advance parole.
- b. Extend the validity of the advance parole to individuals with pending Forms I-485 until USCIS renders a decision on the Form I-485 or to coincide with current processing times.
- c. Stop considering a pending Form I-131 for advance parole to be abandoned by travel abroad when applicants have departed the United States on a valid nonimmigrant visa before receiving their initial Advance Parole Document.
- d. Improve the emergency advance parole process by creating a specific track at the Contact Center for obtaining needed in-person appointments; fostering well-trained points of contact at the field offices for processing requests; developing a unified system of accountability for tracking the number of requests and outcomes of decisions rendered; and ensuring consistent adjudications among field offices.

USCIS agrees with most of the procedural recommendations and concurs with the need to ensure consistency in the process. The agency adds all Form I-131 requests into ELIS to allow USCIS to track the number of emergency advance parole (EAP) requests received and the decisions issued. FOD and the USCIS Contact Center are working closely together to enhance the process for responding to urgent requests for EAP that require an in-person appointment, including addressing backlogs in appointment availability and ensuring urgent requests are prioritized both by the Contact Center and by FOD.

The CIS Ombudsman commends USCIS on the actions it has taken thus far, including creating an “urgent” queue to schedule EAP requests to ensure sufficient availability of appointments and hosting roundtables with the field offices to discuss EAP processing guidelines and the exercise of discretion and to solicit feedback to enhance consistency. The CIS Ombudsman looks forward to the outcomes of these roundtables. The CIS Ombudsman appreciates USCIS’ willingness to explore extending the validity period of the advance parole document for noncitizens, including those with pending adjustment of status applications.

**Improving Access to the Expedite Process**

**Establish centralized technological infrastructure and specialized personnel to intake and process expedite requests. USCIS could centralize the expedite request process by:**

- a. Developing a public-facing portal to receive expedite requests and supporting documentation. An example to follow would be the recently created portal for deported veterans seeking assistance returning home to the United States.
- b. Exploring whether it can use myUSCIS to receive expedite requests and to maintain direct communication with requestors during the process.
- c. Using a centralized email address where individuals can submit a request along with supporting documentation.
- d. Assigning specialized staff at each adjudicating directorate to triage expedite requests, serve as a liaison with the requestor, and provide data collection, training, and strategic support. This could be done on either a national, regional, or local basis.

USCIS concurs with utilizing new technology solutions for submitting expedite requests. This would allow this process to be streamlined. It would also allow for tracking and could simplify communications between different USCIS offices (for example, Contact Center and field offices or service centers). The work to develop an online mechanism to submit expedite requests, including the ability to upload evidence, has been completed, but is pending Paperwork Reduction Act (PRA) review.

USCIS does not agree with creating a centralized email address where documents can be submitted. Information received by email is not readily transferable into USCIS case management systems and the request would still need to be routed to the office with jurisdiction over application or petition for review. Centralized email address correspondence would also not benefit tracking and monitoring of these requests and does not align with heightened confidentiality considerations for VAWA self-petitioners, U visa petitioners, and T nonimmigrant visa applicants. USCIS has dedicated email hotlines that attorneys and accredited representatives may use to submit an expedite request.

The CIS Ombudsman appreciates that despite these substantial challenges, USCIS continues to look for efficiencies in the expedite process. Our office agrees there are more practical solutions than using an email inbox due to the agency's high volume of requests and the sensitivity around confidentiality cases. However, this could be a viable alternative at a local level, as the confidentiality cases already have a dedicated hotline; a local email inbox would be separate from those requests. Nonetheless, the CIS Ombudsman fully supports streamlining the expedite request process and is looking forward to seeing the improvements USCIS is exploring.

**Create a new form for submitting expedite requests that is similar to Form I-912, *Request for Fee Waiver*.**

- a. The form would help USCIS receive consistent information. It would also enable the agency to track information such as the reasons for the request, the types of forms for which expedites are requested, and the disposition of the request.
- b. Creating a new expedite request form could also help the agency to consider collecting a small fee.
- c. A service fee reflecting the cost of considering the expedite request would narrow the number of requests and align the process with the agency's operational realities while not necessarily being overly burdensome for the expedited processing requestors.

While USCIS agrees with the overall goal of efficiency in processing expedite requests, USCIS does not concur with these recommendations. Given processing time goals set forth by the Director, this recommendation could have the unintended consequence of exacerbating backlogs as a new form would create another workload, requiring resources and additional staff to process. A fee could also be inconsistent with the need for an expedite, as severe financial loss to a company or a person is one reason for requesting an expedite.

The CIS Ombudsman acknowledges USCIS' disagreement with this recommendation. Adopting a new form could have unintended consequences and pose challenges when imposing a fee for those suffering from financial hardship. However, our office believes the agency should explore methods to proactively identify how and what resources USCIS needs to shift to manage this additional workload and to further monitor the process.

2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
<p>Develop standardized guidance to the field and to customers about the requirements and process that USCIS uses to consider and assess requests, including how USCIS acknowledges it has received a request, timelines for action, and how it communicates outcomes.</p> <p>a. Regardless of whether USCIS develops a new form and fee, it should create a national SOP to establish the methodology for triaging and evaluating expedite requests.</p> <p>b. USCIS should develop a specific training program to implement the SOP and provide more specific examples and guidance for interpreting the expedite criteria.</p> <p>c. USCIS should create an expedite request assessment worksheet that would guide reviewing officers in a standardized way on how to evaluate each request consistently and fairly.</p>	<p>USCIS agrees with further standardizing determinations for expedite requests and will evaluate the value of adding a worksheet. The USCIS Policy Manual provides standardized guidance for the field and is a benefit for requestors and other stakeholders and USCIS has updated the policy twice to incorporate important changes and clarifications. Additionally, USCIS provides ongoing training for the field to assist in the review of expedite requests, and will continue to explore opportunities to improve collaboration with internal and external stakeholders.</p>	<p>The CIS Ombudsman will continue gathering feedback from stakeholders on this process and will adjust future recommendations based on that feedback. In addition, we will follow up with USCIS on the value of using a worksheet to standardize the process further.</p>
<p>Engage in robust data collection to help project workloads and maintain accountability with how offices are interpreting and applying the guidance.</p>	<p>USCIS agrees on the importance of data collection in workload oversight and consistency in interpreting eligibility criteria. The agency is open to exploring ways in which they can accomplish a full data capture to fine-tune their services and make the best use of our resources.</p>	<p>The CIS Ombudsman is also open to exploring techniques with USCIS and external stakeholders to ensure data collection and how to use this data to manage and anticipate the needs around these requests. As USCIS continues to leverage technology and establish new streamlined processes, the agency may have already developed the tools needed to implement a system.</p>
Initiating a Discussion on Ways to Address the Affirmative Asylum Backlog		
<p>Apply best practices from refugee processing to asylum backlog reduction efforts.</p>	<p>USCIS will consider and explore the CIS Ombudsman's recommendation for an affirmative asylum processing model similar to existing administrative and processing functions that support the U.S. Refugee Admissions Program (USRAP). USCIS will examine whether the measure is permissible under current law and regulations governing affirmative asylum adjudications, which differ from those governing refugee processing, and whether the measure would contribute to affirmative asylum backlog reduction without creating excessive financial costs.</p>	<p>Congress directed USCIS to prioritize asylum processing of parolees evacuated to the United States through Operation Allies Welcome (OAW). It required USCIS to interview applicants within 45 days and complete their cases within 150 days, barring exceptional circumstances.</p> <p>As USCIS is committed to adhering to these timelines and overall priorities, the CIS Ombudsman encourages and supports USCIS initiatives to seek and secure appropriated funding for such directives and to improve the asylum adjudicative process without creating excessive financial burdens for applicants.</p>
<p>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 that have other forms of relief available.</p>	<p>In general, most affirmative asylum cases currently are prioritized. USCIS will evaluate whether there are other categories of cases that could be identified for more efficient processing.</p>	



2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
Expand the role of the Asylum Vetting Center (ZGA) to triage cases into different case processing tracks that allow USCIS to use truncated or accelerated processing for certain groups of cases.	These processes cannot be fully instituted at ZGA until construction of its physical space is completed and staffing is sufficient. Additionally, as the humanitarian mission has grown, costs also continue to increase; those costs are placed entirely on the backs of applicants and petitioners that pay fees for immigration benefits. Appropriations for these important programs allows USCIS to remove these costs from future fee rules.	As of February 2023, USCIS estimates that construction will be largely complete and employees will occupy 80% of ZGA by summer 2023 and the remaining 20% of the facility will be occupied in October 2023. The CIS Ombudsman looks forward to completion of this project and concurs with the agency's need of appropriations for its humanitarian programs.
Rethink case preparation processes to include case complexity analysis, focused interview guidance for specific caseloads, and interview orientation for applicants.	USCIS is developing a case complexity model and analyzing data from past cases and interviews to predict possible interview duration and complexities for similar cases. Additionally, USCIS and interagency partners established a working group intending to examine ways to make it easier for officers to conduct focused interviews.	The CIS Ombudsman looks forward to those enhancements and remains available to be part of the conversation and also exchange ideas and provide relevant feedback.
Consider specialization, interview waivers, and simplifying final decisions as a way to increase case completions while supporting the welfare of officers and applicants.	Although additional specialization initiatives were tried in the past with mixed results, there are no other specialization categories currently in use. Instead, in order to ensure the most efficient and flexible operations, asylum offices cross train all asylum officers in the Asylum Division's major workloads to allow for maximum asylum officer availability.	The CIS Ombudsman understands the challenges of specialization but encourages the agency to identify cases in which specialization or interview waivers are possible.
Implement a feedback loop between USCIS and the immigration courts, and target protection screening efforts to improve the accuracy of decisions and ensure the effective use of government resources.	There is a longstanding relationship at both the local and national level between USCIS and the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) immigration courts. At the local level, asylum offices maintain ongoing contact directly with local immigration courts as well as the local ICE offices.	Based on the CIS Ombudsman recommendation, USCIS will further engage EOIR to identify opportunities for increased collaboration.
Engage with stakeholders on any new proposals to ensure meaningful backlog reduction.	In FY 2022, USCIS restarted its quarterly national asylum stakeholder engagements and publication of asylum adjudications statistics on the USCIS website and will continue to engage stakeholders in FY 2023. Also, in FY 2022, USCIS and external partners established a working group with the goal of examining ways to streamline pre-interview processes and post-interview decision-making and documentation.	The CIS Ombudsman finds these engagements helpful and informative for all stakeholders. The CIS Ombudsman also appreciates the establishment of working groups to engage with external partners continuously and makes itself available to engage in the conversation.
<b>Eliminating Barriers to Obtaining Proof of Employment Authorization for Asylum Applicants in Removal Proceedings</b>		
Provide guidance to officers on how to contact EOIR to resolve discrepancies between documents submitted with a Form I-765, <i>Application for Employment Authorization</i> , and data pulled from EOIR systems related to asylum applicants in removal proceedings.	While USCIS and EOIR share some data elements, the EOIR immigration court process is independent of USCIS. EOIR records are entered or changed by the immigration courts only and it is outside of USCIS' purview to intervene in a pending asylum applicant's proceedings before DOJ. USCIS will explore options to provide clearer guidance to applicants on the appropriate evidence to submit to demonstrate they have lodged or filed their I-589 with EOIR.	Collaboration and sharing of data between USCIS and EOIR becomes more important as DHS uses prosecutorial discretion when deciding how to handle immigration court cases. The CIS Ombudsman will continue to assess ways it can facilitate these.

2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
<p>Leverage information sharing and IT systems to simplify the process of creating EADs and Forms I-94. USCIS could leverage ELIS to make asylum EAD clock information easily available to applicants and their legal representatives and extend online filing for Form I-765 to the (c)(8) category. If steps necessary to create a Form I-94 cannot be performed without the applicant being present, then USCIS and EOIR could combine full data sharing with enhanced IT capabilities to build a process where an Immigration Judge (IJ) grant entered into the EOIR system would automatically trigger the scheduling of an in-person appointment at a USCIS field office. USCIS could also augment its online self-service tools to allow asylum applicants to request an appointment at a field office to obtain proof of asylee status. This would improve individuals' ability to request customer service and relieve pressure on Contact Center access for all callers, not just asylees.</p>	<p>USCIS does not calculate the asylum EAD clock for applicants based solely on case information in ELIS, and instead reviews multiple systems to verify accurate clock information. Any potential efforts to share a public-facing asylum EAD clock would require extensive coordination with EOIR and significant new development across USCIS and DOJ systems.</p>	<p>The CIS Ombudsman believes that the online account experience has the potential to improve communication between the agency and applicants by displaying a personalized EAD clock. We recognize the interagency coordination this effort requires and render our office available to facilitate the conversation and exchange of ideas.</p>
<p>Designate the IJ's order granting asylum as acceptable evidence for Form I-9 employment verification purposes.</p> <p>DHS could also consider updating the M-274 Handbook to include the IJ order as a List C document, at least for a minimum period of time, to alleviate applicants' pain points resulting from USCIS delays. The IJ order would only serve as proof of status and not be a grant of employment authorization.</p>	<p>List C, #7 requires that documentation is issued by DHS. An IJ order is not a DHS-issued document. Recognizing the IJ order as a List C document would require regulatory action. Currently, USCIS is looking at other ways to make this process easier for employers and employees.</p>	<p>The CIS Ombudsman understands the challenges of making regulatory changes and encourages USCIS to explore other alternatives to make the I-9 verification process easier for all.</p>
<p>Consider a pilot program which places USCIS immigration services officers who have authority to provide USCIS documents in certain immigration courts.</p> <p>Immediately after an IJ grants asylum and concludes removal proceedings, a USCIS officer would be available to provide Form I-94 or at least start the process for producing a Form I-94 that can be mailed directly to the applicant, thus bypassing the Contact Center.</p>	<p>USCIS concurs in part. USCIS implemented utilizing EOIR systems to proactively provide Form I-94 to applicants via mail, thus removing in-person requirements. USCIS does not concur with stationing a USCIS officer at immigration courts as the volume of IJ grants does not justify a full-time presence. There are over 60 immigration courts nationwide that hear cases in several locations as well as virtually. Without direct, general access to the EOIR scheduling and decisional databases, USCIS is unable to track when asylum cases are heard and/or decided by the court. To station USCIS personnel at each of these locations is not an efficient use of resources.</p>	<p>The CIS Ombudsman encourages USCIS to keep building on the practice to provide status documentation by mail to best serve the needs of all asylees.</p>

**USCIS' Digital Strategy: Nearing an Inflection Point****Set Application Programming Interface (API) integration and online filing for Form I-912, Request for Fee Waiver, as immediate priorities.**

These two action items would undoubtedly lead to an increase in online filings. Some people cannot file Form N-400 or I-90 online because they also need to file a Form I-912. Accordingly, the CIS Ombudsman supports calls by stakeholders for USCIS to digitize Form I-912.

The Office of Information Technology (OIT) is specifically working with USCIS stakeholders to develop an API which would allow external software development teams to submit FOIA requests as an initial use-case as part of this approach. In addition, OIT launched a publicly available developer portal ([developer.uscis.gov](https://developer.uscis.gov)) with a pair of sample APIs to encourage industry developer teams to participate. OIT will continue to investigate the creation of additional APIs to support signature and evidence submission, including the digitization of forms like the Form I-912.

On January 2, 2023, USCIS published a Notice of Proposed Rulemaking to establish a new Filing Fee Schedule (2023 Fee NPRM). The proposed rule sets discounted filing fees for six of the eleven immigration benefit types that could be filed online as of its publication. The discounts range from \$10 to \$110. The CIS Ombudsman acknowledges these efforts to provide a monetary incentive to encourage the public to file their applications and petitions electronically. The CIS Ombudsman continues to encourage the public to utilize electronic filing when this option is available, not solely to avail themselves of a discounted fee, but to streamline the intake of said filings, reducing the likelihood of typographical error tied to manual input of information, and providing the agency real-time data on its receipts and inventory of filings.

**Create and initiate a targeted, nationwide myUSCIS promotion campaign to encourage individuals and employers to submit forms online.**

The money the agency spends to educate and promote online filing would be recaptured through savings for the agency through the reduced handling and storage of paper.

USCIS is developing a targeted, nationwide promotion campaign to encourage customers to submit forms online. Pieces of the campaign are in use such as the "How to File Your Application for Naturalization Online" video. USCIS is incorporating online filing demonstrations as part of public engagements and is adding easy access to online filing at points where stakeholders seek information on [uscis.gov](https://uscis.gov). Additional videos are also in development such as "Uniting for Ukraine and Online Filing of Form I-134."

**Develop more meaningful incentives for filing online.**

The CIS Ombudsman is confident that stakeholders will come to fully embrace online filing/processing in the coming years, yet the agency also acknowledges that there will likely be a portion of the public who will need to continue submitting forms by mail for a variety of reasons. At present, there is no direct monetary incentive for submitting a form online instead by mail. In its now-enjoined 2020 Fee Rule, USCIS had planned a \$10 discount for those who file online. This amount is unlikely to accurately reflect the savings incurred. The CIS Ombudsman encourages USCIS to increase this amount but has insufficient information to recommend a specific sum.

USCIS recognizes the potential for online filing of various forms to allow the organization to provide better service to applicants, and more streamlined adjudication. In developing the proposed FY 2022/2023 IEFA Fee Rule, USCIS revisited the approach of online filing fee reductions. USCIS commissioned a Federally Funded Research and Development Center study to analyze the setting of online discounts in the fee rule to better encourage online filing. USCIS is leveraging this study and internal research to hone online filing fee discounts in the proposed fee rule.

2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
<p>Create a central portal and system to receive and forward Form G-28, <i>Notice of Entry of Appearance as Attorney or Accredited Representative</i>, to the USCIS office that has the relevant benefit file.</p> <p>The CIS Ombudsman made this recommendation to USCIS in 2021 and presents it again here because it is critical. For the foreseeable future, attorneys and accredited representatives continue to have to submit interfiled paper Forms G-28 in connection with pending paper-based filings (that are on an adjudicator's desk or otherwise sitting in one of USCIS' file rooms) to ensure their receipt. Streamlining this process should be a priority.</p>	<p>USCIS is committed to improving the customer experience by redesigning attorney and accredited representative online accounts to streamline submission of the Form G-28 and other enhanced online filing capabilities. This will modernize the attorney and accredited representative online experience, enabling two-way communication and enhanced services and interaction through the online account, to include access to filings and information for all associated cases.</p>	<p>The CIS Ombudsman maintains that the agency should create an interim solution to address the many problems that occur when a submitted Form G-28 is not timely entered into its information databases and related case files. We understand that as the agency expands its offering of electronic filing to more immigration benefit types, the issues discussed in our report will subside. Still, we note that this is dependent on the filing public's adoption of electronic filing. Further, the agency's completion of its digitization project is still years off, and this solution needs to address hundreds of thousands of paper filings pending adjudication in some benefit categories, particularly Form I-130 petitions.</p>
<b>U Nonimmigrant Status Bona Fide Determination (BFD) Process: Successes and Challenges in Taking on a Backlog</b>		
<p>Although no formal recommendations were provided, the report states USCIS should work to reduce lengthy delays that impact this process and the relief it was created to provide.</p>	<p>USCIS notes that some delays are due to other agencies. For instance, when necessary, USCIS issues requests for evidence for fingerprints for U visa petitioners and derivatives abroad; however, stakeholders report that some consulates are not able to schedule and process fingerprints for these matters. USCIS recognizes that this program provides critical benefits for crime survivors.</p>	<p>As the agency continues to explore ways to reduce processing times for the U BFD program and is making efforts to streamline processing, the CIS Ombudsman remains available to also explore and discuss ideas with USCIS.</p>
<b>Recommendation 62—Improving U.S. Citizenship and Immigration Services' Form I-129 Notification Procedures</b>		
<p>Mail the receipt notice and approval notices with the Form I-94, <i>Arrival/Departure Record</i>, attached to the beneficiary addresses collected on Forms I-129.</p>	<p>USCIS responded that it did not find the recommendation operationally feasible to implement at this time.</p>	<p>As indicated in the Explanatory Statement directed to USCIS in the Consolidated Appropriations Act, 2023, Congress appears to support this recommendation, stating: "USCIS shall also establish a process whereby workers may confirm that they are the beneficiaries of H-2A or H-2B petitions and can receive information about their own immigration status, including their authorized period of stay and the status of any requested visa extensions."</p>
<p>Allow the beneficiary to track case status online and eventually provide receipt and approval notices (with Form I-94) directly to the beneficiary's online account.</p>	<p>USCIS indicated that it would consider the proposal to create an online account for the sponsored beneficiary as a reasonable way to access updates related to the petition filed on their behalf.</p>	
<p>Develop a technological solution allowing beneficiaries to access the receipt and approval notices online. Alternatively, for approvals, USCIS could collaborate with CBP to provide the I-94 online via CBP's I-94 website.</p>	<p>USCIS stated that it is considering the possibility of implementing this recommendation and would explore this further as it develops its digital strategy priorities. USCIS further indicated that it would explore the possibility of leveraging technology currently used by CBP to address this recommendation.</p>	



2022 Annual Report Recommendations	USCIS Response	CIS Ombudsman Update
<b>Recommendation 63—Addressing The Challenges of the Current USCIS Fee-Setting Structure</b>		
Reengineer its fee review process, including its staffing allocation models, to ensure it fully and proactively projects the amounts needed to meet targeted time goals for future processing, as well as backlog adjudications.	USCIS concurred in part. USCIS agreed with the CIS Ombudsman that assessing resource allocation for the purpose of addressing the backlog is as critical as using staffing models for future processing, but did not embrace the CIS Ombudsman’s suggestion that it consider incorporating the cost of reducing/eliminating its backlog as it conducts its fee review and establishes future filing fees. The agency stated that doing so would force future fee-paying applicants and petitioners to subsidize applications and petitions that were received by USCIS in the past, on top of covering the costs of humanitarian operations and fee-waived applications. This burden might put immigration benefits out of financial reach for some USCIS customers.	In FY 2023, USCIS has publicly indicated that the agency will continue to seek Congressional appropriations to fund its various humanitarian-based programs.
Seek congressional appropriations to cover the cost of delivering humanitarian-related immigration benefits (including, but not limited to, USCIS’ refugee and asylum programs).	USCIS concurred.	
Pursue authorization to establish a financing mechanism, through the auspices of the Department of the Treasury, that USCIS may draw upon to address unexpected revenue shortfalls and unfunded policy shifts and to maintain adequate staffing to meet its performance obligations.	USCIS did not concur. USCIS responded that it did not see establishing a financing mechanism, such as loan authority, as a viable option to pursue, as it is highly likely that any such mechanism would require repayment and may require USCIS to impose a separate fee (surcharge) to future fee-paying applicants through rulemaking.	USCIS has secured dedicated appropriated funding (\$275M) in part to address its growing backlog of immigration cases.  The 2023 Fee NPRM includes a proposal to make annual inflation adjustments to the agency’s fee schedule based on the Consumer Price Index for All Urban Consumers (CPI-U), as published by the U.S. Department of Labor, Bureau of Labor Statistics.
Obtain annual appropriations specifically dedicated to eliminating backlogs.	USCIS concurred.	
Exercise its existing authority to adjust fees annually based on the salary/inflation factor calculated by the White House Office of Management and Budget (OMB).	USCIS concurred in part. USCIS stated that it cannot necessarily use its existing authority to adjust fees using an inflation factor calculated by OMB due to a conflict with the Federal Register Act. The agency did agree to explore the possible inclusion of regulatory authority to make such annual adjustments in future rulemaking.	

### ***SEC.452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.***

- (a) **IN GENERAL**—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ‘Ombudsman’). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.
- (b) **FUNCTIONS**—It shall be the function of the Ombudsman—
- 1) To assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
  - 2) To identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
  - 3) To the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).
- (c) **ANNUAL REPORTS**—
- 1) **OBJECTIVES**—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—
- (A) Shall identify the recommendation the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;
  - (B) Shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;
  - (C) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;
  - (D) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;
  - (E) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;
  - (F) Shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and
  - (G) Shall include such other information as the Ombudsman may deem advisable.
- 2) **REPORT TO BE SUBMITTED DIRECTLY**—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.
- (d) **OTHER RESPONSIBILITIES**—The Ombudsman—
- 1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;
  - 2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;
  - 3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and
  - 4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as

may be appropriate to resolve problems encountered by individuals and employers.

**(e) PERSONNEL ACTIONS—**

**1) IN GENERAL—**The Ombudsman shall have the responsibility and authority—

- (A) To appoint local ombudsmen and make available at least 1 such ombudsman for each State; and
  - (B) To evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.
- 2) CONSULTATION—**The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.
- (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES—**The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

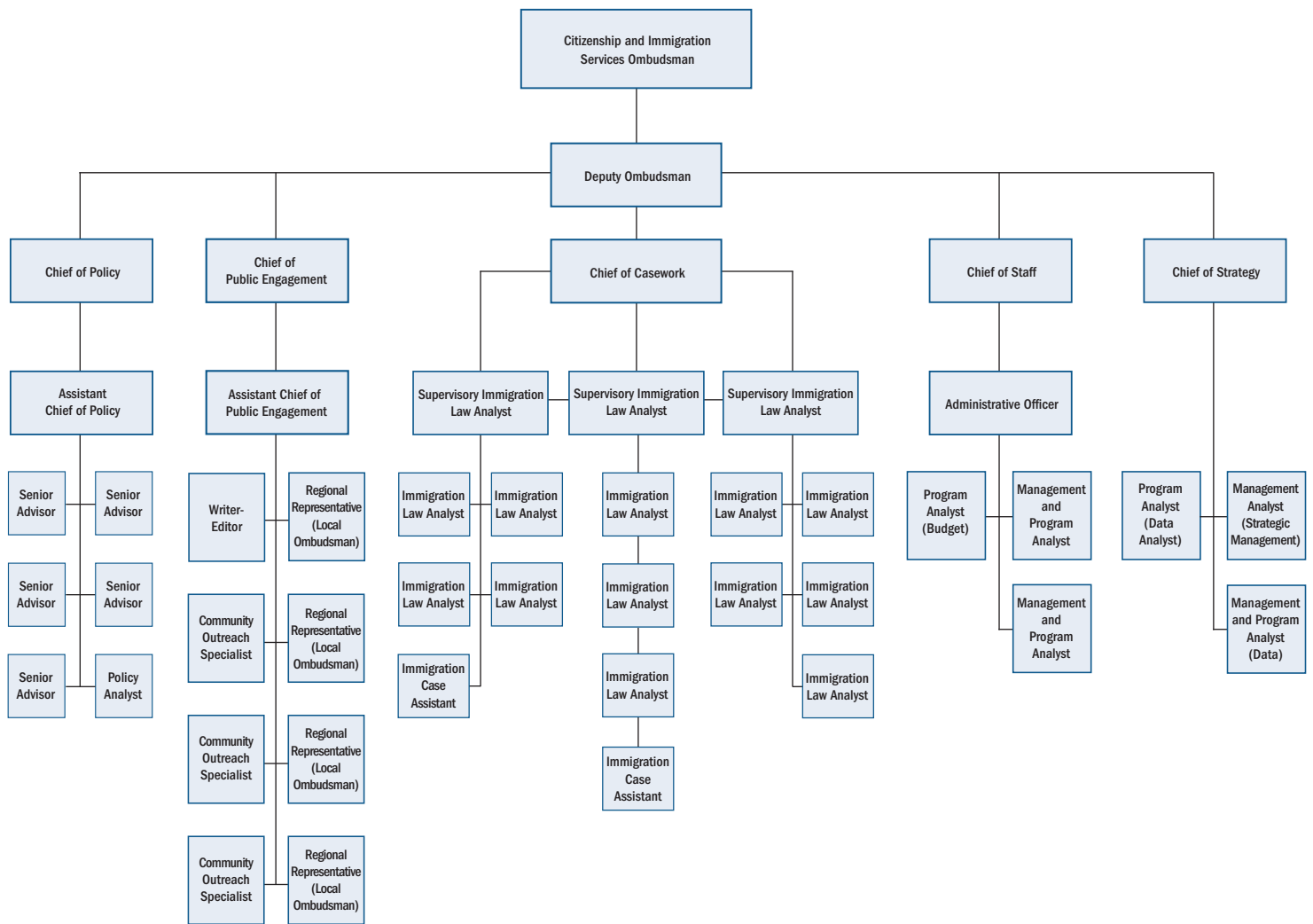
**(g) OPERATION OF LOCAL OFFICES—**

**1) IN GENERAL—**Each local ombudsman—

- (A) shall report to the Ombudsman or the delegate thereof;

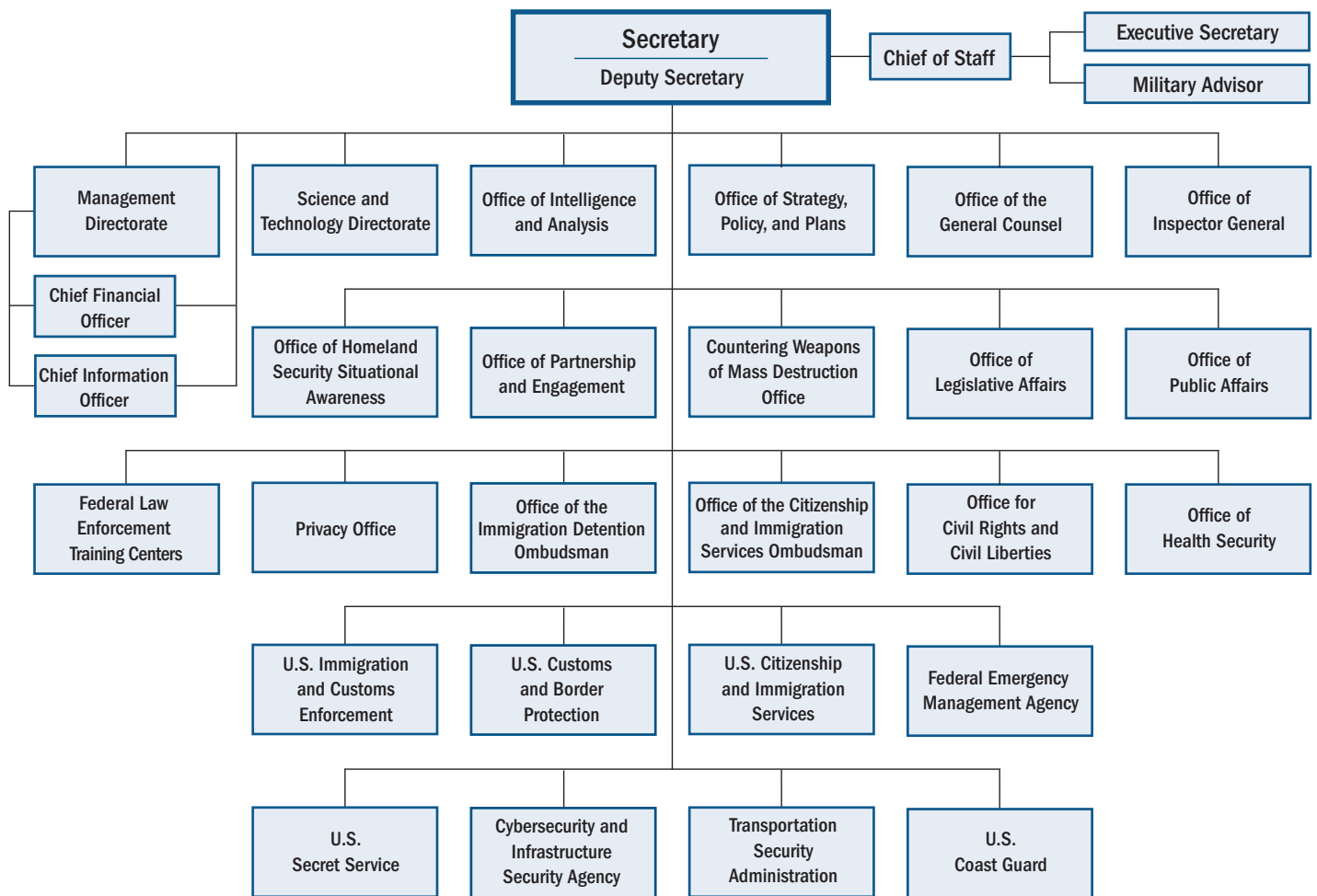
- (B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;
  - (C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and
  - (D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.
- (2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS—**Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

# Office of the CIS Ombudsman Organizational Chart





## Department of Homeland Security Organizational Chart



## USCIS Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year\*

Form	Form Description	Classification or Basis for Filing	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023**
I-130	Petition for Alien Relative	Immediate Relative	7.6	8.6	8.3	10.2	10.3	12.3
I-131	Application for Travel Document	Advance Parole Document	3.6	4.5	4.6	7.7	7.3	5.7
I-140	Immigrant Petition for Alien Workers	Immigrant Petition (non-Premium filed)	8.9	5.8	4.9	8.2	9.3	3.9
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	Immigrant Petition (All Classifications)	13.3	16.8	11.4	5.5	8.4	7.7
I-485	Application to Register Permanent Residence or Adjust Status	Based on grant of asylum more than 1 year ago	6.2	6.7	6.9	12.9	22.6	22.7
I-485	Application to Register Permanent Residence or Adjust Status	Employment-based adjustment applications	10.6	10.0	8.8	9.9	11.0	9.3
I-485	Application to Register Permanent Residence or Adjust Status	Family-based adjustment applications	10.2	10.9	9.3	12.9	10.6	11.6
I-539	Application to Extend/Change Nonimmigrant Status	All Extend/Change Applications	3.4	4.4	4.8	9.6	6.8	8.8
I-751	Petition to Remove Conditions on Residence	Removal of conditions on lawful permanent resident status (spouses and children of U.S. citizens and lawful permanent residents)	15.9	14.9	13.8	13.6	18.2	19.9
I-765	Application for Employment Authorization	All other applications for employment authorization	3.0	3.4	3.2	3.9	4.1	2.7
I-765	Application for Employment Authorization	Based on an approved, concurrently filed, I-821D, Consideration of Deferred Action for Childhood Arrivals	1.2	1.1	1.1	1.9	0.5	0.9
I-765	Application for Employment Authorization	Based on a pending asylum application	0.9	2.0	2.5	3.2	9.2	2.1
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application	4.1	5.1	4.8	7.1	6.7	5.7
I-821	Application for Temporary Protected Status	To request or reregister for TPS	2.9	6.4	2.2	4.1	10.2	14.9
I-821D	Consideration of Deferred Action for Childhood Arrivals	Request for Renewal of Deferred Action	1.2	1.1	1.1	1.8	0.5	0.9
I-918***	Petition for U Nonimmigrant Status	Provide temporary immigration benefits to an alien who is a victim of a qualifying criminal activity, and their qualifying family	41.8	48.7	54.3	53.6	59.0	58.0
N-400	Application for Naturalization	Application for Naturalization	9.7	10.0	9.1	11.5	10.5	6.5

Source: Historic Processing Times (uscis.gov) (accessed May 22, 2023).

\* USCIS' posted Historical Processing Times do not include processing times for several forms, including Form I-589, *Application for Asylum and for Withholding of Removal*.

\*\* FY 2023 uses data from October 1, 2022 to April 30, 2023.

\*\*\* Includes Form I-918A, *Petition for Qualifying Family Member of U-1 Recipient*.

Note: From FY 2017 through FY 2021, the processing time for the I-918/I-918A is calculated using the receipt date to waitlist determination date. Beginning in FY 2022, the processing time is calculated using the receipt date to Bona Fide Determination (BFD) review.

# How to Request Case Assistance from the CIS Ombudsman

## STEP 1

Try to resolve your issue directly with U.S. Citizenship and Immigration Services (USCIS)

**Before asking the CIS Ombudsman for help, always try to resolve your problem first with USCIS by:**

- Submitting a case inquiry to USCIS through:
  - A USCIS online account at <https://egov.uscis.gov/casestatus>
  - e-Request at <https://egov.uscis.gov/e-Request>
  - Ask Emma
- Calling the USCIS Contact Center at 1-800-375-5283
- Contacting [lockboxsupport@uscis.dhs.gov](mailto:lockboxsupport@uscis.dhs.gov) for a lockbox issue or [refugeeaffairsinquiries@uscis.dhs.gov](mailto:refugeeaffairsinquiries@uscis.dhs.gov) for a refugee processing issue
- For all other inquiries, visiting <https://uscis.gov/about-us/contact-us>

## STEP 2

Submit a case assistance request online at [www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman) and upload supporting documentation

If you have requested help from your congressional representative, please wait for their response before contacting us to avoid duplicate filings.

We strongly prefer that you use our online **DHS Form 7001, Request for Case Assistance**.

If you cannot submit the request online, you can download the paper form on our website and send it to us by:

**Email:** [cisombudsman@hq.dhs.gov](mailto:cisombudsman@hq.dhs.gov)

**Mail:** Office of the Citizenship and Immigration Services  
Ombudsman, Department of Homeland Security  
Attention: Case Assistance  
Mail Stop 0180  
Washington, D.C. 20528

- **If you are a legal representative**, you must include a signed form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*. It must match the Form G-28 you submitted to USCIS for the case.
- **If you are an applicant or self-petitioner for (or were previously granted) T, U, VAWA, asylee, or refugee status**, you can file online, but you must upload a copy of your “wet ink” (non-electronic) signature in the consent section. Make sure USCIS has your correct address. Visit [www.uscis.gov/addresschange](http://www.uscis.gov/addresschange) for information on how to change your address.

## STEP 3

After receiving your case assistance request, we will:

- Send you a confirmation email with your CIS Ombudsman request number or via U.S. mail if you elect this option
- Review your request for completeness and proper consent
- Email you if we need more information
- Verify that we have not received an identical request
- Research your case to determine how best to resolve your issue
- Notify you by email or U.S. mail if we can help, why we cannot help, or if USCIS has taken action to resolve your issue

Don't miss important emails from our office, add [cisombudsman@hq.dhs.gov](mailto:cisombudsman@hq.dhs.gov) to your contacts list.

## STEP 4

If we can help with your issue, we will:

- Contact the USCIS office working on your case
- Notify you by email or U.S. mail that we have contacted USCIS about your request
- Check in regularly with USCIS until we receive a response that addresses your issue
- Contact you once USCIS confirms it has acted on your case

**Visit [www.dhs.gov/case-assistance](http://www.dhs.gov/case-assistance) for more information**

You can also refer to our Tips for Requesting Case Assistance document for the best ways to ask for our help.



Homeland  
Security

**Citizenship and Immigration Services Ombudsman  
U.S. Department of Homeland Security**

Mail Stop 0180  
Washington, DC 20528  
Telephone: (202) 357-8100  
Toll-free: 1-855-882-8100

[www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman)

Send your comments to: [cisombudsman@hq.dhs.gov](mailto:cisombudsman@hq.dhs.gov)