# Citizenship and Immigration Services Ombudsman
# 2017 Annual Report Teleconference

## Julie Kirchner, CIS Ombudsman

## July 27, 2017

*Assisting individuals and employers in resolving problems with USCIS*

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# The Ombudsman's Annual Report to Congress

- Under section 452(c) of the Homeland Security Act of 2002, the Ombudsman must submit an Annual Report to Congress by June 30 of each year.

- The Ombudsman's Annual Report focuses on:

  - The Ombudsman's mission and services;

  - USCIS programmatic and policy challenges during the reporting period;

  - Pervasive and serious problems, recommendations, and best practices in the administration of our immigration laws.

Annual Report 2017

Citizenship and Immigration Services
**Ombudsman**

June 29, 2017

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# Office of the Ombudsman: Requests for Case Assistance

- In assisting individuals and employers, the office:
  - Is an office of last resort (we ask that you try the established USCIS inquiry routes first).
  - Accepts cases that respond to certain criteria (see our website at https://www.dhs.gov/case-assistance).
  - Reaches out directly to USCIS field offices, service centers, and other facilities.

- The cases we receive often identify systemic issues within the agency.

# We Work to Solve the Unsolvable

*Actual quotes from stakeholders in connection with case assistance*:

"Thanks and I do appreciate your response to my request for help. What you do is always give any petitioner like me a hope when we need it."

"It feels so good to know that we, the people and vulnerable immigrants, have an organization such as yours to speak on our behalf and to represent us when we have a complaint against USCIS."

"I wanted to thank you and let you … know we truly appreciate all that you've done to help us in this unexpected tragic time in our life … thank you for all that you do and we are grateful to know that there is a agency out there that understands."

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# We Work to Solve the Unsolvable

*Serving Those Who Serve*

➤ The Ombudsman assisted an Army Reservist who graduated from Advanced Individual Training in May 2016.  The soldier joined the Army through the Military Accessions Vital to the National Interest program.  The soldier's adjudication was completed soon after the Ombudsman's inquiry.

*Agency Error*

➤ USCIS approved a university's Form I-129, *Petition for a Nonimmigrant Worker* (H-1B Classification), but shortened the requested 3-year validity period to 1 year.  The school was unsuccessful in getting USCIS to review the validity period.  The Ombudsman highlighted concerns about the shortened validity period with the service center and escalated its concerns to USCIS headquarters, which resulted in an amended approval notice.

*Preventing Future Problems*

➤ USCIS erroneously approved an applicant's employment-based adjustment of status application without a medical examination report.  Knowing that this could cause future problems, the Ombudsman facilitated a Motion to Reopen for the applicant, resulting in USCIS reopening the application, accepting the proper medical documentation, reapproving the application, and refunding the motion fee.

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# Requests for Ombudsman
# Case Assistance Received Annually
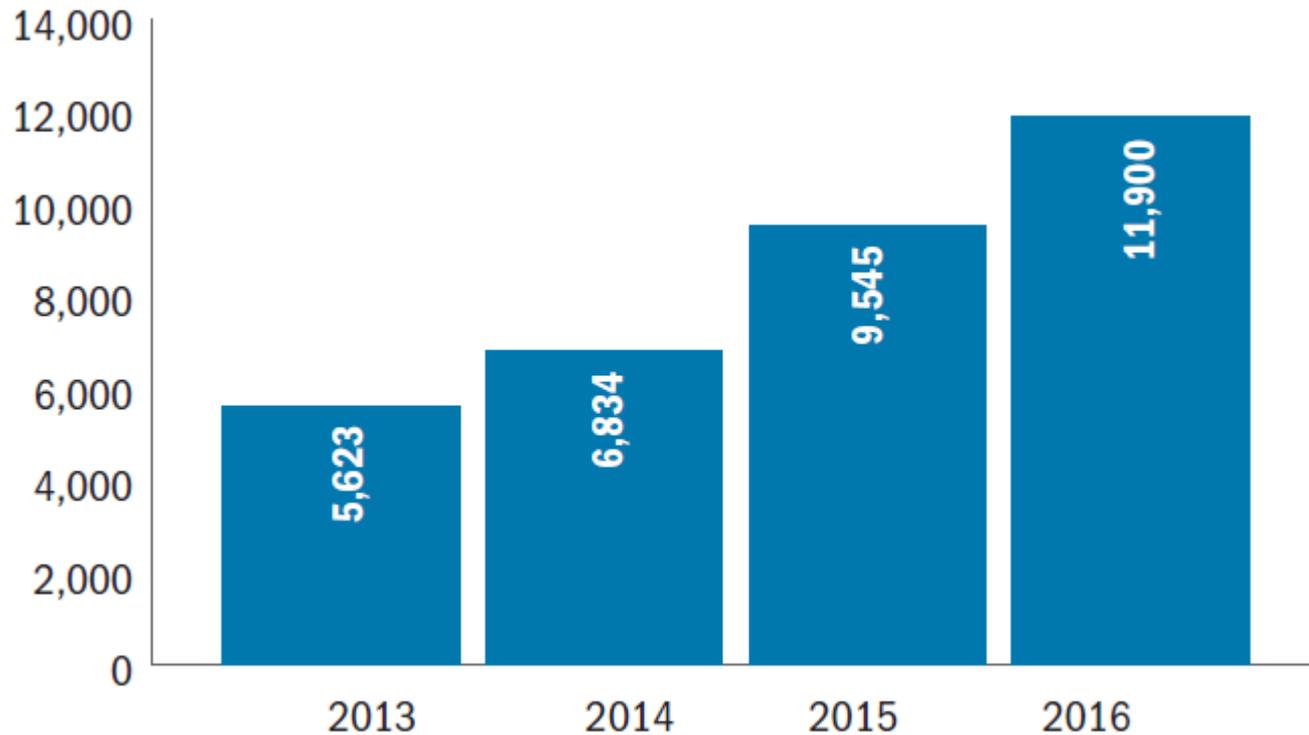


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# Top Primary Form Types

| Top Primary Form Types | # Received | % Increase from 2015 |
|---|---|---|
| I-821D, Consideration of Deferred Action for Childhood Arrivals | 2,042 | 21% |
| I-765, Application for Employment Authorization | 1,832 | 135% |
| N-400, Application for Naturalization | 1,294 | 198% |
| I-130, Petition for Alien Relative | 1,103 | 31% |
| I-485 (Other Classification), Application to Register Permanent Residence or Adjust Status (Other Classification) | 745 | 21% |
| I-485 (Based on an I-130), Application to Register Permanent Residence or Adjust Status (Family-Based) | 651 | 22% |
| I-485 (Based on an I-140), Application to Register Permanent Residence or Adjust Status (Employment-Based) | 650 | 14% |
| I-140, Immigrant Petition for Alien Worker | 285 | 18% |
| I-131, Application for Travel Document | 248 | 23% |
| I-751, Petition to Remove the Conditions of Residence | 245 | 31% |

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# Top Five States Where Customers Reside

| California | | | |
|---|---|---|---|
| **Requests Received: 1,987** | | | |
| **Top Primary Form Types:** | | **Count** | **% of Total** |
| I-821D, Consideration of Deferred Action for Childhood Arrivals | | 590 | 30% |
| I-485, Application to Register Permanent Residence or Adjust Status | | 289 | 15% |
| I-765, Application for Employment Authorization | | 239 | 12% |
| N-400, Application for Naturalization | | 158 | 8% |
| I-130, Petition for Alien Relative | | 109 | 5% |

# Top Five States Where Customers Reside

| Florida | | |
|---|---|---|
| **Requests Received: 607** | | |
| **Top Primary Form Types:** | **Count** | **% of Total** |
| I-485, Application to Register Permanent Residence or Adjust Status | 104 | 17% |
| I-821D, Consideration of Deferred Action for Childhood Arrivals | 83 | 14% |
| N-400, Application for Naturalization | 82 | 14% |
| I-765, Application for Employment Authorization | 79 | 13% |
| I-130, Petition for Alien Relative | 66 | 11% |

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# Top Five States Where Customers Reside

| Illinois | | |
|---|---|---|
| **Requests Received: 774** | | |
| **Top Primary Form Types:** | **Count** | **% of Total** |
| I-485, Application to Register Permanent Residence or Adjust Status | 188 | 24% |
| I-130, Petition for Alien Relative | 137 | 18% |
| I-765, Application for Employment Authorization | 120 | 16% |
| I-821D, Consideration of Deferred Action for Childhood Arrivals | 97 | 13% |
| N-400, Application for Naturalization | 81 | 10% |

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# Top Five States Where Customers Reside

| New York | | |
|---|---|---|
| **Requests Received: 1,214** | | |
| **Top Primary Form Types:** | Count | % of Total |
| I-485, Application to Register Permanent Residence or Adjust Status | 264 | 22% |
| I-765, Application for Employment Authorization | 193 | 16% |
| I-130, Petition for Alien Relative | 96 | 8% |
| N-400, Application for Naturalization | 58 | 5% |
| I-821D, Consideration of Deferred Action for Childhood Arrivals | 57 | 5% |

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# Top Five States Where Customers Reside

| Texas | | |
|---|---|---|
| **Requests Received: 1,254** | | |
| **Top Primary Form Types:** | **Count** | **% of Total** |
| I-821D, Consideration of Deferred Action for Childhood Arrivals | 289 | 23% |
| I-485, Application to Register Permanent Residence or Adjust Status | 248 | 20% |
| N-400, Application for Naturalization | 155 | 12% |
| I-765, Application for Employment Authorization | 155 | 12% |
| I-130, Petition for Alien Relative | 101 | 8% |

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# Office of the Ombudsman Outreach

- Stakeholder Engagement
  - Over 90 stakeholder engagements in 2016

- Social Media
  - Emails: https://public.govdelivery.com/accounts/USDHS/subscriber/new
  - Facebook: www.facebook.com/cisombudsman
  - Teleconferences
    - Six public teleconferences in 2016 provided information and permitted feedback on trends

- Annual Conference
  - Sixth Annual Conference *Government and Stakeholders Working Together To Improve Immigration Services*, December 6, 2016

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# Key Developments and Areas of Study: Families

# The Perfect Storm:
# Fee Increases, Call to Citizenship, and ELIS

- In FY 2016, USCIS received over 972,000 naturalization applications—nearly 200,000 more than projected.

- In April 2016, USCIS expanded its Transformation initiative to include the processing of naturalization applications in the Electronic Immigration System (ELIS).

- USCIS suspended ELIS processing of new naturalization applications 4 months after launch because of multiple technical problems, causing processing delays.
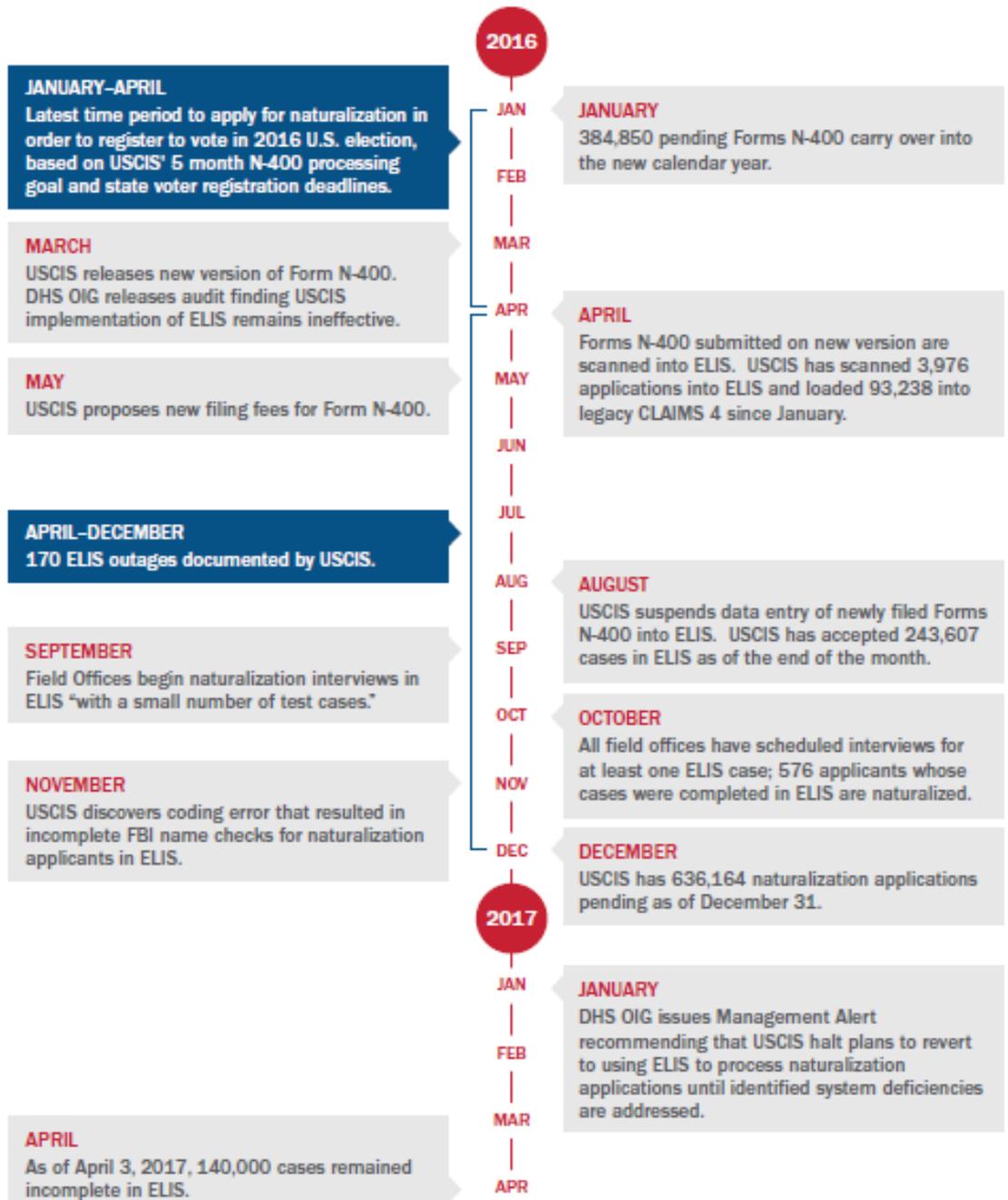
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# Naturalization Timeline

**2016**

**JAN**

**JANUARY–APRIL**
Latest time period to apply for naturalization in order to register to vote in 2016 U.S. election, based on USCIS' 5 month N-400 processing goal and state voter registration deadlines.

**JANUARY**
384,850 pending Forms N-400 carry over into the new calendar year.

**FEB**

**MAR**

**MARCH**
USCIS releases new version of Form N-400. DHS OIG releases audit finding USCIS implementation of ELIS remains ineffective.

**APR**

**APRIL**
Forms N-400 submitted on new version are scanned into ELIS. USCIS has scanned 3,976 applications into ELIS and loaded 93,238 into legacy CLAIMS 4 since January.

**MAY**
USCIS proposes new filing fees for Form N-400.

**MAY**

**JUN**

**JUL**

**APRIL–DECEMBER**
170 ELIS outages documented by USCIS.

**AUG**

**AUGUST**
USCIS suspends data entry of newly filed Forms N-400 into ELIS. USCIS has accepted 243,607 cases in ELIS as of the end of the month.

**SEP**

**SEPTEMBER**
Field Offices begin naturalization interviews in ELIS "with a small number of test cases."

**OCT**

**OCTOBER**
All field offices have scheduled interviews for at least one ELIS case; 576 applicants whose cases were completed in ELIS are naturalized.

**NOV**

**NOVEMBER**
USCIS discovers coding error that resulted in incomplete FBI name checks for naturalization applicants in ELIS.

**DEC**

**DECEMBER**
USCIS has 636,164 naturalization applications pending as of December 31.

**2017**

**JAN**

**JANUARY**
DHS OIG issues Management Alert recommending that USCIS halt plans to revert to using ELIS to process naturalization applications until identified system deficiencies are addressed.

**FEB**

**MAR**

**APRIL**
As of April 3, 2017, 140,000 cases remained incomplete in ELIS.

**APR**

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16

# Military Immigration Issues

- Required background and name checks contribute to delays in completing military naturalization applications in accordance with the Naturalization at Basic Training Initiative.

- Service members experience difficulties when their immigration files are transferred among multiple jurisdictions.

- A September 2016 Department of Defense Memorandum on the Military Accessions Vital to the National Interest (MAVNI) program instituted new security requirements for those enlisting through this program, delaying naturalization and causing other status issues.

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# Provisional Waivers

▪ In 2016, USCIS expanded the Provisional Unlawful Presence Waiver program, updated the USCIS Policy Manual to expand the extreme hardship standard, and revised the form instructions to include a summary of extreme hardship factors.

▪ USCIS also stopped denying provisional waiver applications based on the "reason to believe" ground.

▪ The majority of requests for case assistance received by the Ombudsman involved "reason to believe" denials (issued prior to the regulation change), incomplete review of extreme hardship claims, and lengthy processing times.

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# Key Developments and Areas of Study: Employment

# Administrative Review in Employment-Based Decisions

- The Administrative Appeals Office (AAO) has made significant improvements to its processing times, completing most administrative appeals within 180 days.

  - However, AAO posted processing times do not include the time for the initial field review of the appeal.

- There are a variety of steps USCIS could take to ensure that administrative review is meaningful and more timely, including:

  - Establish processing time goals for motions;

  - Publish more accurate processing times for AAO appeals that include the initial field review; and

  - Clarify the Form I-290B by providing more explicit instructions, or alternatively, separate motions and appeals into two separate forms.

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# EB-5 Investors

- Congress extended the Immigrant Investor (EB-5) Regional Center Program, but a series of short-term extensions has triggered filing surges in Form I-526 in 2015 and 2016.

- There is a high demand for EB-5 visas.
  - Investors and their dependents from China may have to wait 10 years or longer for immigrant visas under the EB-5 program.

- In 2016, USCIS released an Investors addition to its Policy Manual.

- In January 2017, USCIS published proposed rules regarding Regional Center compliance and oversight, minimum investment levels, and the methodology for determining Targeted Employment Areas.

# The AC21 Regulation

- In November 2016, USCIS published the final AC21 regulation.
  - Aims to modernize several employment-based immigrant and nonimmigrant programs by increasing flexibility, transparency, and certainty for foreign workers and U.S. employers.
  - Centralized many of USCIS' long-standing policies for the H-1B Specialty Occupation and employment-based immigrant visa programs.

- DHS received tens of thousands of comments on the proposed rule.
  - Many comments focused on the elimination of the 90-day regulatory processing requirement for initial employment authorization applications.

- The Ombudsman is monitoring EAD extension processing times in light of the new 180-day automatic extension period.

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# Key Developments and Areas of Study: Humanitarian

# Delays in Asylum Processing

- There is a significant backlog of affirmative asylum cases awaiting adjudication by USCIS—223,433 by the end of 2016.
    - The agency has taken steps to address the backlog, including expanding the asylum officer corps and opening satellite asylum offices.
    - However, these efforts have not significantly reduced the asylum backlog.
- A large volume of credible and reasonable fear cases limits the Asylum Division's capacity to adjudicate pending affirmative asylum cases.

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# Asylum Division Totals
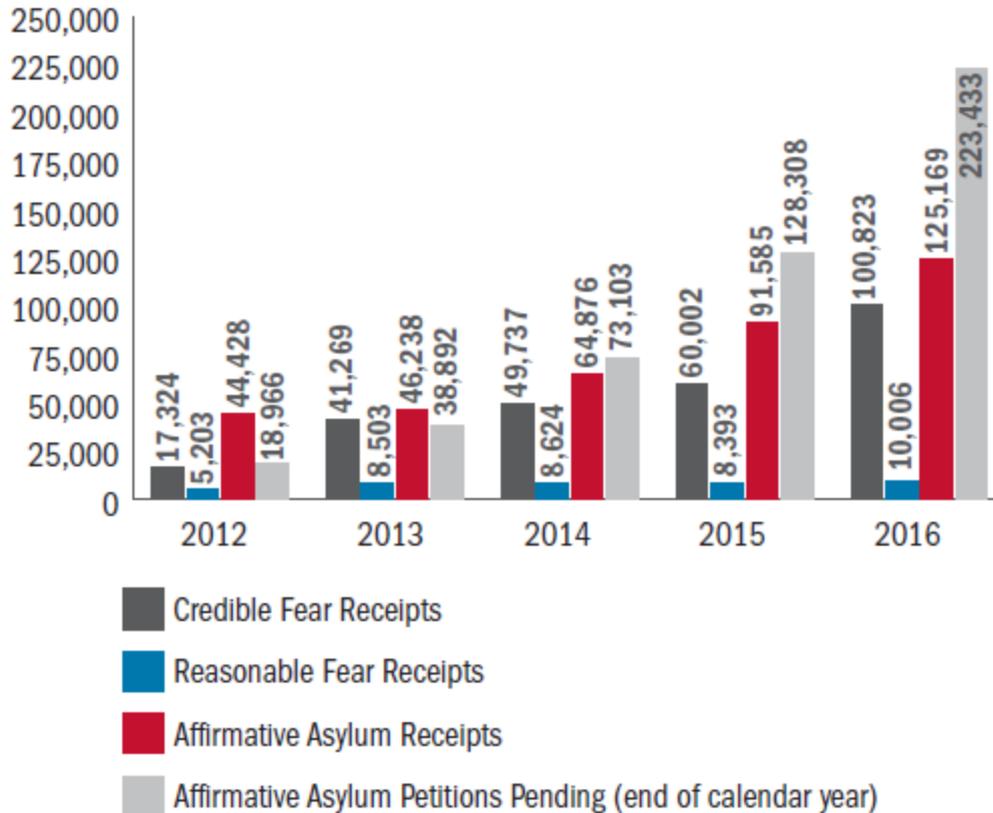


Source: Information provided by USCIS (May 4, 2017).

# U Visa Backlogs

- The regulations provide for a U visa "waiting list" where demand exceeds the 10,000 visas allocated annually.

- Demand for U nonimmigrant visas is now so high that petitioners and their family members wait nearly 3 years before placement on the waiting list.

  - Individuals may apply for a U visa either from within the United States or abroad; those staying in the United States, who do not already have employment authorization, must wait years before they receive EADs.

- The Vermont Service Center now shares adjudication of U petitions with the Nebraska Service Center.

- USCIS should provide greater transparency regarding the U visa backlog after individuals are placed on the waiting list.

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# Key Developments and Areas of Study: Interagency, Customer Service, and Process Integrity

# The Escalating Cost of Immigration Services

- USCIS services are fee-funded.

  - USCIS does not typically receive Congressional appropriations.

- USCIS regularly assesses its fee structure to reflect the actual cost of processing.

  - The most recent fee increase in December 2016 raised fees by a weighted average of 21 percent.

- USCIS commits to timely processing when announcing fee increases, but has been unsuccessful in achieving its processing goals.

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# 2007 USCIS Processing Goals, 2016 USCIS Average Cycle Times, and Change in Fees from 2007 to 2016
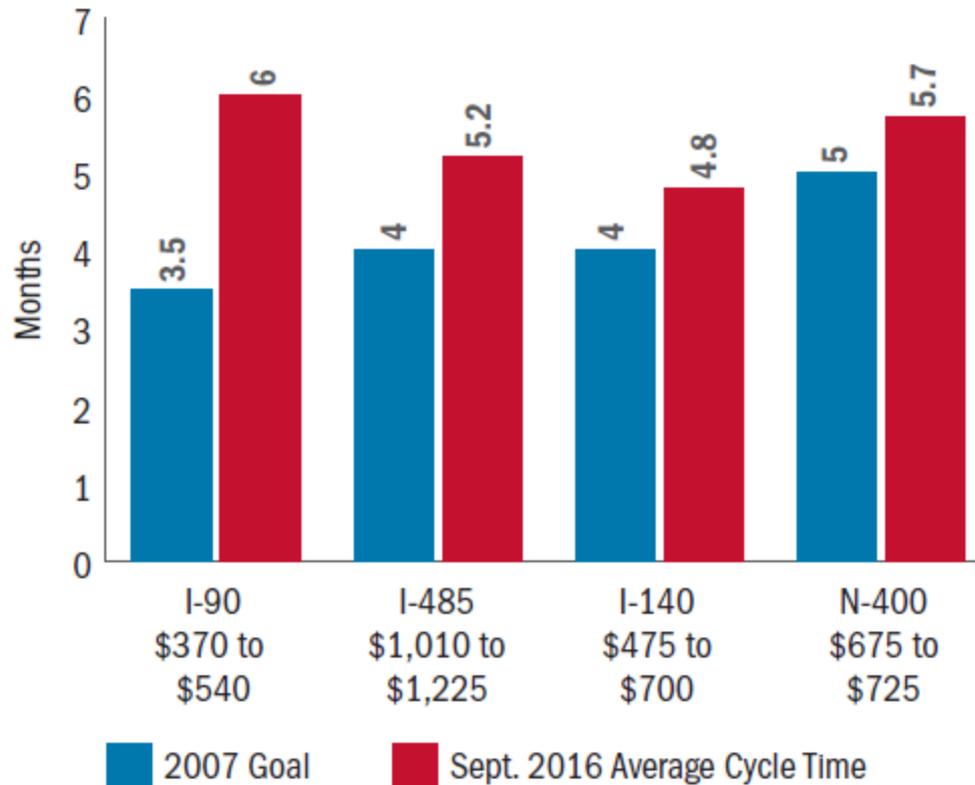


Source: Information provided by USCIS.

# Transformation

- "Transformation" is the agency's troubled effort to move from paper-based to electronic case management.

- At the end of 2016, stakeholders were only able to file online for two immigration benefits via ELIS.
  - Internally, USCIS was adjudicating five forms through ELIS.

- Significant technical problems forced USCIS to temporarily halt ELIS naturalization adjudications and delayed the launch of other product lines.

- Both the OIG and GAO reviewed Transformation in 2016 and expressed concern with the problems that continue to plague the project.

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# USCIS Processing Times

- USCIS publically-posted processing times often do not accurately convey the actual time it is likely to take to adjudicate cases.

- Lack of transparency in processing times diminishes trust in the agency and prevents stakeholders from making informed decisions.

- Processing times are fundamental to holding USCIS accountable for timely services, yet posted processing times do not reflect the agency's internal processing time goals.

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# Your Questions

# Contact Us

- Website: www.dhs.gov/cisombudsman

- Phone: 855-882-8100 (toll free)
  202-357-8100 (local)

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- General case inquiries:
  cisombudsman@hq.dhs.gov

- Public affairs inquiries, such as teleconferences or stakeholder engagements:
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