Annual Report 2016

Citizenship and Immigration Services

Ombudsman

June 29, 2016

Homeland Security

Message from the Ombudsman

For almost 4 years I have had the immense honor of serving as the Citizenship and Immigration Services Ombudsman. As I look back on my service, I am mindful of our mission and proud of how hard we work to advance it. I have been privileged to visit a sizeable part of U.S. Citizenship and Immigration Services' (USCIS) operations, meeting hundreds of USCIS officers and staff and seeing firsthand their proven commitment to public service and to immigrant communities around the country and abroad. During this time, I have also hosted with the Ombudsman staff over 500 stakeholder engagements to gain a deeper understanding of the issues that USCIS' customers face today.

Our immigration system has evolved in impressive ways, with USCIS rising to meet national security and fraud detection challenges, engaging effectively through local field offices, and, most recently, working to address the unprecedented credible fear and affirmative asylum backlogs. At the same time, the agency has allocated vast resources to refugee processing in the Middle East and to the critical national security activities involved in that effort. USCIS also created the Central American Minors program to offer much-needed safe passage to the United States to children from El Salvador, Guatemala, and Honduras. Over the past 5 years, USCIS has also planned for and delivered on essential executive action solutions in the absence of comprehensive immigration reform.* Throughout that time, the agency has been responsive to Congressional oversight, with hearings focused lately on refugee processing, executive actions, the use of social media, and alleged fraud among prospective immigrant investors.

USCIS, however, still has much work to do to resolve longstanding systemic issues that compromise efficiency, quality of adjudications, and customer service. As a former Immigration and Naturalization Service counsel, seasoned immigration practitioner, and now as the Ombudsman, I have seen the detrimental impacts of inadequate customer service, delays in processing times, inconsistent adjudications, and ineffective policymaking. These are meaningful problems and should be treated as such.

With a myriad of competing priorities, the agency has made insufficient progress to address processing times delays (critically on the rise in the past 2 years); inconsistencies in adjudications across service centers; substantial failure to meet the 90-day regulatory adjudication deadline for employment authorization documents; and the continued issuance of overly burdensome and unnecessary requests for evidence. I believe USCIS will achieve its full potential as a 21st century immigration agency when its customer service and adjudicatory functions are consistently prioritized, resourced, and afforded equal oversight.

Consequently, as problems persist, the Ombudsman plays an important, independent role in ensuring that USCIS is responsive to its customers. At the Ombudsman's office, we work tirelessly to achieve the mission by providing expert case assistance to the public and by monitoring trends that reflect the existence and emergence of serious and pervasive issues within the agency. We formulate recommendations to USCIS—both formally and informally—to resolve those problems, and report to Congress areas where the agency still needs to improve.

The Ombudsman staff accomplishes this hefty mission with both dedication and resilience. It does so collaboratively and thoughtfully, caring for the customer often in ways he or she may not have experienced during the immigration process. One customer spoke to this hallmark of our work—that behind every application there is an individual, a family, an employee or an employer who deserves a fair process and timely case resolution:

* As we finalized this Report, the U.S. Supreme Court issued its decision in *U.S. v. Texas,* 579 U.S. ___ (June 23, 2016), leaving the court of appeals ruling in place and prohibiting implementation by U.S. Department of Homeland Security of the Deferred Action for Parents of American and Lawful Permanent Residents program (DAPA) and the expansion of the Deferred Action For Childhood Arrivals (DACA) program. The current DACA policy, however, remains in place.

> I want to say a big thank you for sending a reply as promp[tly] as you did. It is nice to know that there is an organization like yours working with the immigration office to help applicants with their immigration problems with USCIS. This is the first time…that I feel there are people in the immigration office who really care about me as an applicant….Your email means a lot to me and has given me hope for my application.

During my tenure as Ombudsman, I have witnessed our small team successfully manage a 270 percent increase in requests for case assistance while timely meeting our reporting obligations; working to resolve complex policy issues; conducting over 100 stakeholder engagements annually; and hosting for 5 years in a row one of the most constructive immigration policy conferences in the country. I applaud the Ombudsman team for their dedication, creativity, and deep desire to show the public the very best of government. This Annual Report reflects their efforts over the past year to respond to rising and longstanding challenges in the delivery of immigration services.

I thank both Secretary Jeh Charles Johnson and Deputy Secretary Alejandro Mayorkas for their steadfast support of the Ombudsman's mission and its work. I would also like to thank USCIS Director León Rodríguez and the agency's Headquarters and field leadership for their continued collaboration to make the agency more effective.

Finally, the Ombudsman's work is strengthened by the active participation of our knowledgeable stakeholders. They routinely identify and share information on emerging trends, keeping us apprised where things go right and where improvement is needed. Their continued engagement is integral to our full understanding of the issues and their impact on the USCIS customer; we thank them for their feedback and dedication. We also work daily with dedicated officers throughout USCIS who share in our goal of providing immigration services grounded on fair treatment and superlative customer service. That the agency is able to perform its functions on a daily basis is due to their dedication to duty. All of these individuals inspire hope that, working together, we can develop consistent and lasting excellence in our immigration system.

Sincerely,

Maria M. Odom
Citizenship and Immigration Services Ombudsman

Executive Summary

The Office of the Citizenship and Immigration Services Ombudsman's (Ombudsman) 2016 Annual Report contains:

- An overview of the 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 and serious problems, recommendations, and best practices in humanitarian, employment, and family areas, as well as customer service and integrity.

Ombudsman's Office Overview

In the 2016 reporting period (April 1, 2015 to March 31, 2016), the Ombudsman received 9,279 requests for case assistance, a 23 percent increase from the 2015 reporting period. Overall, 29 percent of the requests were for employment-based matters; 28 percent for humanitarian-based matters; 23 percent for family-based matters; and 20 percent for general immigration matters, such as applications for naturalization. Notably, the Ombudsman received 1,288 requests for case assistance involving applications for employment authorization—a 42 percent increase from the prior reporting period.

The Year in Outreach

The Ombudsman conducted over 121 stakeholder engagements in the reporting period, reaching a diverse multitude of stakeholders in regions across the United States. The Ombudsman also created a social media presence through Facebook in November 2015. To inform stakeholders of new initiatives and receive feedback on a variety of topics and policy trends, the Ombudsman hosted nine public teleconferences and held a Fifth Annual Conference, featuring Secretary of Homeland Security Jeh Johnson as keynote speaker as well as an "armchair" discussion with USCIS Director León Rodríguez.

DHS Blue Campaign

As Chair of the Blue Campaign Steering Committee (Blue Campaign), the Department's unified voice for combatting human trafficking, Ombudsman Odom is at the forefront of these efforts. The Blue Campaign brings together resources and expertise from across DHS Components, harnessing partnerships with a network of other governmental and non-governmental organizations. The Ombudsman strengthens these initiatives by providing ongoing subject matter expertise and organizing stakeholder events and trainings addressing pressing trafficking issues. The Ombudsman also provides case assistance to individuals seeking to resolve problems with applications and petitions for humanitarian immigration relief, including immigrant victims of trafficking.

Key Developments and Areas of Focus

Humanitarian

Asylum Backlogs and Continuing Assessment of Problems

The volume of affirmative asylum cases pending at USCIS has reached well over 100,000 and continues to grow. Sustained surges in high-priority credible and reasonable fear claims and a boom in new affirmative asylum filings drive this backlog. Despite significant efforts by the Refugee, Asylum and International Operations Directorate's Asylum Division to respond to this pending caseload, such as doubling the Asylum Officer corps, the backlog of cases and processing delays continues to expand. The Ombudsman encourages USCIS to provide greater transparency surrounding the backlog, and is committed to exploring additional ways to efficiently respond to worsening processing delays and promote measures to ease the hardships stemming from these delays.

Central American Minors Refugee/Parole Program

The Ombudsman has conducted extensive engagement with stakeholders and government officials in the United States and abroad in connection with the Central American Minors (CAM) Refugee/Parole program. During the Ombudsman's recent trip to Mexico, El Salvador, and Guatemala, the Ombudsman met with foreign governments, USCIS and DOS officials, humanitarian organizations, and at-risk youth, as well as observed Resettlement

Support Center pre-screenings and USCIS interviews of CAM applicants. The Ombudsman anticipates issuing an assessment and recommendations pertaining to the program's operational structure and effectiveness under current eligibility requirements. Stakeholders have reported and the Ombudsman has observed a number of shortcomings with the CAM program, including lengthy processing times; lack of standardized expedite procedures, safety protocols, and dedicated funding; narrow eligibility criteria; prohibitive upfront costs for DNA testing; and limited means for expanding public awareness of the program.

The Haitian Family Reunification Parole Program

Stakeholders have expressed concerns too few Haitians are eligible for the program and face obstacles impeding realization of the program's goals, namely receipt of the invitation to apply for the program and prohibitive filing fees. The Ombudsman has monitored the program's implementation and conducted engagement with the Haitian Family Reunification Parole Program (HFRP) stakeholders during the reporting period. As of December 31, 2015, USCIS had only adjudicated 590 applications of the 3,789 pending applications. The Ombudsman will continue to track HFRP's progress and explore potential measures to strengthen the number of beneficiaries benefitting from the program, including allowing beneficiaries with later priority dates to qualify and increasing outreach in both the United States and Haiti.

The Deferred Action for Childhood Arrivals Program

Since implementation late 2012, the Deferred Action for Childhood Arrivals (DACA) program has allowed approximately 723,282 recipients to live and work in the United States without fear of removal. The Ombudsman continues to recommend USCIS offer the option of a substantive review of denials based on grounds other than the administrative errors listed in the DACA FAQs. A number of requests for case assistance also revealed DACA recipients unknowingly traveled outside the United States after receiving approved advance parole documents, but before the effective date or "date issued." The Ombudsman proposes clarifying the "permissible period" for travel to ensure DACA grantees understand the importance of these dates.

Provisional Waivers

On July 22, 2015, USCIS published a proposed rule expanding the Provisional Waiver program to allow all individuals statutorily eligible for the unlawful presence waiver, who can establish extreme hardship to any qualifying relative, to participate in the program. On October 7, 2015, USCIS issued draft guidance pertaining to the "extreme hardship" standard for public comment. The Ombudsman welcomes the proposed regulatory amendments and much needed draft policy guidance. The Ombudsman also continues to urge USCIS to offer the option of a substantive review of provisional waiver denials essential to achieving full program integrity.

Special Immigrant Juveniles

For more than 25 years, the Special Immigrant Juvenile (SIJ) program has protected vulnerable youth in this country who cannot be reunified with one or both parents as a result of abuse, neglect, abandonment, or a similar basis under state law. Congress has entrusted state courts to make these determinations while acknowledging only DHS can issue immigration benefits. On December 11, 2015, the Ombudsman issued a second formal recommendation on the SIJ program, addressing a number of questionable practices by USCIS, including the re-evaluation of state court orders; burdensome requests for evidence; and interviews that are not age-appropriate. In response, USCIS has assured it will take some steps to address these concerns; the Ombudsman will continue monitoring the program improvements promised. The Ombudsman is also particularly concerned with the significant retrogression of SIJ visa numbers (EB-4 category) announced in the May 2016 *Visa Bulletin* for applicants from El Salvador, Guatemala, and Honduras and will continue to engage with the agency and stakeholders regarding the problems emanating from retrogression.

Interagency, Customer Service, and Process Integrity

Processing Times and Processing Delays

Over the last 3 reporting years, the Ombudsman has seen increases in requests for case assistance to address USCIS processing time delays. The Ombudsman urges USCIS to address lengthening processing times as a serious and pervasive issue. The Ombudsman believes, as a fee-for-service agency, USCIS must develop and implement a process accurately reflecting the time it takes to process applications and petitions from receipt to completion. USCIS has announced its exploration of and commitment to more accurate processing times based on actual, real-time data. The agency should immediately address the problems that are preventing it from meeting the processing time goals promised in its 2007 final fee rule, to which USCIS recently recommitted.

Background Checks and Clearances

Stakeholders continue to experience case processing delays caused by background checks and other types of security screening that can last several years. While these checks are essential features of immigration processing, extended delays and the lack of transparency about the process causes significant distress, family separation, and other hardships. The Ombudsman recommends USCIS create a unified monitoring process to follow up on processing of background and security checks, in particular pending Federal Bureau of Investigation (FBI) name checks and ICE investigations, and prioritize the processing of those in which security is an identified issue. Where cases will remain on review for indefinite periods, USCIS should give the applicant or petitioner notice and an opportunity to pursue alternative options for relief and protection, including withdrawing the application.

Delivery of Secure Documents

Stakeholders continue to encounter problems with the timely receipt of secure documents from USCIS. Every year USCIS sends millions of secure documents to applicants and their legal representatives through the U.S. Postal Service (USPS). While it is understandable USCIS seeks to closely control the issuance of secure documents to reduce the potential for fraud, requiring the applicant to file a new application and repay the fees when USCIS or USPS is the cause of a delivery issue, as often happens, is inherently unfair. The Ombudsman continues to recommend USCIS use prepaid couriers or certified mail to track delivery of secure documents and be more proactive in notifying customers when secure documents are returned.

Transformation

Transformation is USCIS' multi-year effort to digitize its paper-based filing and adjudication systems into a single electronic environment. USCIS processed timely and

accurately the majority of the limited available e-filings, but stakeholders encountered challenges locating or obtaining processing times and obtaining timely customer service. Of greater concern is the release in March 2016 of a major audit report by DHS's Office of the Inspector General, reviewing the "deeply troubled" Transformation program and noting USCIS has resisted "independent oversight" and "minimized the shortcomings of the program." The Ombudsman recommends USCIS improve its customer service, including examining ways to increase responsiveness to user feedback and allow for more external user involvement to implement holistic approaches.

Consular Returns

Stakeholders whose approved petitions are returned to USCIS by DOS experience uncertainty and ongoing challenges due to resource limitations, poor interagency communication, and antiquated file transmission between USCIS and DOS. The Ombudsman recommends the receiving USCIS service center verify the file is in the right place before storing the file, and send notice to the petitioner with the location of the file. Most importantly, the Ombudsman again calls upon USCIS to establish and post on its website agencywide processing goals for consular returns. The agency should also provide clear guidance to the public regarding the process and timeline for case resolution.

Business and Employment

Employment-Based Immigrant Petitions

During the reporting period, USCIS has taken a number of steps to implement the President's Immigration Accountability Executive Action for businesses and immigrant workers. On November 20, 2015, the agency published the draft policy memorandum *Determining Whether a New Job is in "the Same or a Similar Occupational Classification" for Purposes of Section 204(j) Job Portability*; and a Notice of Proposed Rulemaking (NPRM) on December 31, 2015, to implement certain provisions of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21). USCIS has still not changed its position that foreign worker beneficiaries lack legal standing in the petition process despite mounting case law to the contrary. USCIS must reconsider its position on Form I-140, *Immigrant Petition for Alien Worker* employee standing and make a corresponding regulatory change, fully aligning its policy to the letter and spirit of AC21 to provide certain qualified employees greater employment mobility while awaiting the completion of the permanent residence process.

EB-5 Immigrant Investor Program

As reported in past years, processing times for EB-5 petitions continue to degrade. Stakeholders shared concerns regarding USCIS' Investor Program Office's (IPO) regulatory authority to administer the program; outdated regulatory requirements; program integrity in light of allegations and findings of fraud or noncompliance with other federal laws; the manipulation of Targeted Employment Areas through gerrymandering; and the inconsistent implementation of policy. The Ombudsman will monitor regulatory and statutory changes to the program initiated by IPO and Congress, and will continue to address stakeholders concerns with the quality, consistency, and timeliness of IPO's adjudication of EB-5 applications and petitions.

H-2 Temporary Workers and Labor Trafficking

During the reporting period, the Ombudsman heard from workers' rights organizations regarding the vulnerabilities and exploitation of H-2 workers sponsored by U.S. employers. Exploitation takes the form of involuntary servitude or forced labor, and can result in other workplace-based crimes. During this reporting period, the Ombudsman participated in interagency activities to address stakeholder concerns, and worked to resolve requests for case assistance by workers encountering challenges in their pursuit of protective immigration benefits. The Ombudsman will continue to explore ways USCIS can collaborate with federal agency partners to address employee exploitation and human trafficking, and will convene DHS representatives to discuss how to enhance protections within the Department's authorities.

H-2B Temporary Non-Agricultural Workers

Stakeholders continue to assert the H-2 program is overly regulated and bureaucratic, causing significant challenges in hiring foreign workers to fill temporary agricultural (H-2A) and non-agricultural (H-2B) jobs. Recent regulatory and legislative developments have exacerbated conditions affecting both employers and employees contributing to an overall increase, at least temporarily, in H-2B processing delays. The Ombudsman will continue to monitor stakeholder concerns about the treatment of both employers and employees in the H-2B program to promote improved program functionality and address abuse concerns.

Additionally, the Ombudsman will continue to make recommendations, as appropriate, to promote more effective interagency communication to facilitate the lawful and timely entry of temporary workers into the United States.

Requests for Evidence

As in previous years, the Ombudsman continues to monitor the rates at which Requests for Evidence (RFEs) are issued at the Vermont Service Center (VSC) and California Service Center (CSC) in three high-skilled nonimmigrant visa categories: H-1B (Specialty Occupation Workers), L-1A (Intracompany Transferee Managers and Executives) and L-1B (Specialized Knowledge Workers). The FY 2015 RFE rates for these categories continues to show disparities between the two service centers, including fluctuations in RFE issuance rates and unexplained divergences. The FY 2015 RFE data in other employment-based nonimmigrant visa categories also revealed high rates of issuance in two product lines at the VSC: O-1 (Individuals with Extraordinary Ability or Achievement), reported at 49 percent, and P-1 (Internationally Recognized Athletes), which increased to 65 percent. The Ombudsman will continue to monitor and engage USCIS on issues pertaining to the quality and frequency of RFEs.

Employment Authorization Documents

In 2006, 2008, and 2011, the Ombudsman issued formal recommendations suggesting ways to reduce USCIS' processing delays for employment authorization documents (EADs). USCIS adopted some of the Ombudsman's recommendations, but disagreed EAD processing was a significant issue, given the small percentage of delayed cards. However, FY 2015 data showed EAD adjudications after 90 days reached a troublesome 22 percent, or 449,307 filings. With a proposal to eliminate the 90-day processing requirement currently under consideration by the agency, timeliness remains a real concern for EAD processing. The proposed regulatory changes are not likely to result in decreased processing times, absent significant commitment from the agency to devote resources to improving processing times across the product line. The Ombudsman continues to highlight EAD processing delays as a systemic issue, and will continue to monitor and engage the agency as long as EAD delays persist.

Families and Children

Applying for Naturalization

Despite President Obama's White House Task Force on New Americans' efforts to strengthen existing pathways to naturalization, a number of barriers remain to eligible applicants. A sizable number of the 8 million permanent residents eligible to apply for citizenship are elderly, poorly educated, or indigent, and face greater difficulty meeting naturalization qualifications. USCIS recently issued an NPRM for a new fee schedule that includes a biometrics fee waiver and a partial fee waiver for certain low-income applicants. Nevertheless, the naturalization process continues to be plagued by prolonged delays; USCIS is currently failing to meet its processing time goal at almost every field office. To ensure access to U.S. citizenship by eligible permanent residents, the Ombudsman will continue to monitor the naturalization process and engage with USCIS and stakeholders through public engagements and requests for case assistance.

Fee Waiver Processing

USCIS recently posted an updated version of its fee waiver form more than doubling the length, with an additional five pages of attestations, requiring more supporting documentation. The updated form will have a negative impact, particularly on *pro se* applicants for whom it may serve as a deterrent. Rather than adding to the burden, the agency should focus on clarifying and simplifying the overall fee waiver application process and train adjudicators on its eligibility guidance to achieve quality and consistency in fee waiver adjudications. In addition, stakeholders reported denial notices provide insufficient guidance as to the inadequacies of the requests, preventing customers and legal representatives from making corrections that would lead to success in future requests. The Ombudsman urges USCIS to cite specific deficiencies in denial notices to prevent unnecessary refilings.

Parole

Parole authority has been increasingly used in the past few years to reunify families, address humanitarian emergencies, support circumstances justified by significant public benefits, and facilitate international travel for business and educational purposes. Despite its increased use, USCIS has not yet issued guidance on the meaning of the Board of Immigration Appeal's 2012 precedent decision on advance parole for certain individuals to return to the United States

after temporarily traveling abroad or guidance clarifying the specific types of evidence required for a grant of humanitarian parole. Similarly, U.S. Immigration and Customs Enforcement (ICE) has not issued guidance for military parole in place requests from family members of active-duty, reserve, and guard members of the Armed Forces of the United States, resulting in inconsistent treatment of individuals who fall under ICE jurisdiction. The Ombudsman recently issued a formal recommendation asking USCIS to exercise its statutory authority to implement a parole policy for eligible U petitioners located abroad who are waiting to receive a U visa. The Ombudsman encourages the use of parole consistent with statutory parameters to accomplish these and related goals, and will continue to engage with USCIS on these issues.

Military Immigration Issues

The Ombudsman strongly supports USCIS' efforts to meet the needs of members of the U.S. military and their family members. While USCIS field offices diligently work to mitigate ongoing processing delays in military naturalization applications by communicating with USCIS military liaison officers, the agency has no control over the FBI background checks and can take no action on an application until that process is complete. These delays undermine the purpose of USCIS' "Naturalization at Basic Training" initiative, and affect military readiness because soldiers are unable to deploy with their units abroad or obtain necessary security clearances. The Ombudsman will continue to monitor processing delays, assist service members, and liaise with USCIS and the FBI to identify opportunities to address and mitigate delays.

Petitions to Remove Conditions on Residence

Despite improvements in the processing and adjudication of petitions to remove conditions on residence (Form I-751), stakeholders continue to express concerns with processing delays. The Ombudsman strongly urges USCIS to acknowledge longstanding persistent issues in the processing of I-751 petitions, as well as implement the Ombudsman's 2013 recommendations to provide timely, effective, and accurate notice to petitioners concerning their status. The Ombudsman will continue to monitor USCIS processing delays of petitions filed by conditional residents and engage with USCIS on expanding the publication of field office processing times, as well as adjudicating I-751s within a year of receipt.

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