



USCIS Response to the Citizenship and Immigration Services Ombudsman's (CISOMB) 2013 Annual Report to Congress

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Homeland
Security

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Immigration Services*

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I. INTRODUCTION

U.S. Citizenship and Immigration Services (USCIS) thanks the CIS Ombudsman (CISOMB) for the analysis provided in the 2013 Annual Report to Congress (Annual Report). USCIS appreciates the review of the Agency's operations and provides the following response to the Annual Report.

Recognizing the importance of its humanitarian-based efforts, USCIS continued to prioritize this work and achieved a number of successes. USCIS again reached the statutory cap of approved petitions for U nonimmigrant status. Under the U.S. Refugee Admissions Program, USCIS also approached the presidentially authorized ceiling for refugee admissions, while maintaining enhanced security checks required for all refugee applicants.

Family unification, a cornerstone of U.S. immigration, continued to be a focus for USCIS. With the introduction of the provisional unlawful presence waiver, USCIS was able to shorten the amount of time that U.S. citizens are separated from their immediate relatives during the immigrant visa process. USCIS is closely monitoring the program's progress and operational impact.

The Agency¹ has devoted considerable resources and efforts to improve the processing of employment-based applications and petitions. With the Entrepreneurs in Residence initiative, USCIS was able to harness industry expertise to aid in the enhancement of existing policies, practices, and training across a range of existing visa categories used by entrepreneurs. USCIS continues to examine and evaluate the EB-5 Immigrant Investor Program to ensure that it is operating efficiently and effectively while also recognizing business realities. The newly created Immigrant Investor Program Office will lead these efforts, and is transitioning this workload to Washington, DC. This transition to headquarters will ensure that this important and complex program is appropriately resourced and managed under a single leadership structure.

Customer service is a core element of the Agency's mission. USCIS consistently seeks new ways to improve the customer's experience. This has been highlighted by extensive outreach efforts, increased opportunities to submit case inquiries as e-Requests, and a newly redesigned Web site. USCIS is also in the midst of its Transformation initiative, which is modernizing the processing of immigration-related benefits by moving from a paper-based system to an electronic system.

The Annual Report includes several previously issued formal recommendations by the CISOMB. Since USCIS has already provided formal responses to those recommendations,

¹ In this response, "USCIS" and "Agency" are used interchangeably.

which can be found on the USCIS Web site, the Agency will not include a detailed discussion of each individual previously issued recommendation here.

II. HUMANITARIAN

USCIS provides a number of immigration-related humanitarian programs and protection to assist individuals suffering from natural disasters, persecution, emergency medical issues, and other urgent circumstances. USCIS is committed to ensuring that vulnerable populations have access to the various forms of immigration relief available to them.

A. Humanitarian Applications and Petitions

For the fourth straight year, USCIS has approved the statutory maximum number of petitions for U nonimmigrant status (U visas). Each year, 10,000 U visas are available for victims of crime who have suffered substantial mental or physical abuse and are willing to help law enforcement authorities investigate or prosecute those crimes.² A U-visa petition requires certification of assistance from a law enforcement agency.

The U-visa program was created by Congress to strengthen the law enforcement community's ability to investigate and prosecute cases of domestic violence, sexual assault, human trafficking, and other crimes while also offering protection to victims. More than 76,000 victims and their family members have received U visas since the program was implemented.

In addition to U visas, USCIS also processes applications and petitions for individuals who are victims of domestic abuse and victims of human trafficking. The Violence Against Women Act (VAWA) allows certain spouses, children, and parents of U.S. citizens and lawful permanent residents to file a petition for themselves, without the abuser's knowledge.³ This permits victims to seek both safety and independence from their abuser. The nonimmigrant T visa was created by Congress to strengthen the ability of law enforcement agencies to investigate and prosecute cases of human trafficking while offering protection to the victims.

In the Annual Report, the CISOMB expressed concern about extended processing times for vulnerable populations. Since the report's publication, USCIS has made great strides in improving processing times for these cases. Currently, the Vermont Service Center is processing Form I-360 VAWA-filings in five months, Form I-914 (T visas) in four months, and Form I-918 (U visas) in eleven and a half months. It is important to note that Form I-918 processing times are impacted by the congressionally mandated cap on available visas. Once the fiscal year cap is reached, USCIS is unable to adjudicate more petitions during that fiscal year, thus leading to an increase in processing times.

² See INA § 214(p)(2)(A).

³ See INA §§ 204(a)(1)(A)(iii), (iv) and (vii); (B)(ii) and (iii).

With the start of fiscal year (FY) 2014, USCIS has resumed issuing U visas. The Vermont Service Center has shifted additional resources to the Victims Unit⁴ to aid in the adjudication of these cases and will continue to train additional staff as acquired.

B. Requests for Evidence and VAWA Petitions

The CISOMB received reports from stakeholders that, in some cases, Immigration Services Officers were issuing Requests for Evidence (RFEs) that asked for documentation typically used to prove a good faith marriage in a non-VAWA case. By doing so, the concern is that USCIS is holding VAWA self-petitioners to a higher standard of proof than required.⁵

VAWA self-petitioners file Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. In their petition and supporting documents, they must establish through a preponderance of evidence that they meet each of the eligibility requirements as identified in the Immigration and Nationality Act (INA) – i.e., qualifying relationship, residence with spouse/parent/child, battery/extreme cruelty perpetrated by the abuser during the qualifying relationship, good moral character (for all petitioners over the age of 14),⁶ and good faith marriage (if filing as a spouse of a U.S. citizen or lawful permanent resident).⁷ Unlike other form types that require primary evidence, VAWA self-petitioners may provide any credible evidence to establish they meet the eligibility requirements.

The evidentiary record is reviewed in its entirety by the adjudicating officer. The officer must evaluate the information provided to determine both the credibility of relevant information provided and whether the documentation is sufficient to meet the evidentiary burden. The officer must also assess each filing for indications of fraud. On rare occasions, this results in the officer requesting original documents. If these documents lead to a finding that fraud is likely, the VAWA filing is referred to the Vermont Service Center's Center Fraud Detection Operations for further review.

If, after review of the evidentiary record, an RFE is issued, the Vermont Service Center provides examples – which are not exhaustive – of evidence that the self-petitioner can submit, including the option of submitting affidavits discussing the qualifying relationship. The instructions for Form I-360 also include a list of suggested evidence and state that the petitioner may submit any relevant credible evidence in place of suggested evidence.

⁴ The Vermont Service Center's Victims Unit has jurisdiction over victim-related petitions and applications filed with USCIS. The unit is charged with making discretionary determinations on three vulnerable populations of foreign nationals: victims of domestic violence, victims of certain violent crimes, and victims of human trafficking.

⁵ See CIS Ombudsman Annual Report 2013, p. 12.

⁶ Per 8 CFR § 204.2(e)(2)(v), "A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of good moral character."

⁷ *Id.*

C. Unaccompanied Children

In conjunction with the CISOMB's recommendation⁸ to accept jurisdiction of Unaccompanied Alien Child (UAC)⁹ cases referred by the Executive Office for Immigration Review, the USCIS Asylum Division has implemented new procedures¹⁰ that streamline how the Agency determines whether an asylum application was filed by a UAC. USCIS will now adopt prior U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) determinations of UAC status provided the determination was in place at the time the asylum application is filed. If neither CBP nor ICE has made a determination of UAC status, USCIS Asylum Offices will follow the 2009 memorandum¹¹ for making such determinations. Each Asylum Office received training on the new procedures, which were also posted on www.uscis.gov.

In addition, USCIS and the Department of Homeland Security (DHS) continue to work toward promulgating a regulation to implement the UAC initial jurisdiction provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).¹²

USCIS would like to provide a point of clarification relating to the Annual Report's description of UAC determination processes. The Report states that immigration judges make UAC determinations and the Nebraska Service Center makes similar jurisdictional determinations.¹³ Currently, there is no regulation or other guidance under which immigration judges determine UAC status for purposes of USCIS jurisdiction over asylum applications. Immigration judges have allowed possible UACs to pursue their asylum claims before USCIS, which has initial jurisdiction pursuant to the TVPRA, to consider such claims. Under current procedures it is the USCIS Asylum Division that determines whether the asylum application was filed by a UAC such that USCIS has jurisdiction over it under INA § 208(b)(3)(C). Furthermore, while the Nebraska Service Center receives all asylum applications filed by potential UACs in removal proceedings, the Nebraska Service Center does not make UAC determinations. Rather, it is the Asylum Division that

⁸ See CISOMB Formal Recommendation 54, "Ensuring a Fair and Effective Asylum Process for Unaccompanied Children" (September 20, 2012) available at:

<http://www.dhs.gov/sites/default/files/publications/cisomb-ensuring-fair-asylum-process-for-uac.pdf>

⁹ A UAC is a child who has no lawful immigration status in the United States, who has not attained 18 years of age, and with respect to whom there is no parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody.

¹⁰ See Asylum Division Memorandum, "Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children" (May 28, 2013), available at: <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Minor%20Children%20Applying%20for%20Asylum%20By%20Themselves/determ-juris-asylum-app-file-unaccompanied-alien-children.pdf>

¹¹ See Asylum Division Memorandum, "Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children" (March 25, 2009), available at:

<http://www.uscis.gov/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Minor%20Children%20Applying%20for%20Asylum%20By%20Themselves/jurisdiction-provision-tvpra-alien-children2.pdf>

¹² "Application of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to Unaccompanied Alien Children Seeking Asylum", RIN 1615-AB96.

¹³ See CIS Ombudsman Annual Report 2013, p. 13

determines whether the application was filed by a UAC. The Service Center Procedures for accepting filings were recently updated to reflect the changes in UAC determinations¹⁴. As explained above, it is the Asylum Division process for making that determination that has been altered.

D. Special Immigrant Juvenile (SIJ)

USCIS continues to seek ways to improve the adjudication of petitions and applications for Special Immigrant Juvenile (SIJ) status,¹⁵ a classification that assists non-U.S. citizen children in the United States who do not have permanent residence and who have been subject to abuse, abandonment, or neglect. The Office of Policy and Strategy is working closely with the Field Operations Directorate to develop comprehensive SIJ policies and procedures for both USCIS employees and external stakeholders.

USCIS has established a data tracking system to provide field offices with visibility on how long SIJ cases have been pending in their field offices. Additionally, USCIS has developed an action plan to ensure that the Agency is in compliance with the 180-day processing mandate. This plan includes reminding field offices of the importance of:

- Properly updating, routing, and closing out Form I-360 and Form I-485, Application to Register Permanent Residence or Adjust Status, in USCIS systems;
- Monitoring the monthly report to address any pending cases approaching the 180-day limit; and
- Working with the National Benefits Center to ensure the integrity of the data received.

In the Annual Report, the CISOMB noted reports from stakeholders that officers issue RFEs asking for the evidence underlying the juvenile court determination. USCIS is aware of this concern and has provided guidance to officers explaining that their task is not to determine whether a court order was properly issued, but rather to determine whether the order is based on a finding of abuse, neglect, or abandonment. Nevertheless, because the language used in the court order may vary based on the requirements of a particular State's law, officers may need to issue RFEs to determine whether the court made a finding of abuse, abandonment, or neglect. Alternative evidence, such as Findings of Fact, may be submitted to demonstrate that the order was based on a finding of abuse, neglect, or abandonment. The officer may request that the petitioner submit actual records from the judicial proceeding or a summary of the evidence presented if the court order lacks sufficient findings and there is no separate Findings of Facts.

¹⁴See "Updated Service Center Operations Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children" (June, 04 2013), available at: <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Minor%20Children%20Applying%20for%20Asylum%20By%20Themselves/service-ctr-ops-proced-accepting-form-i589-unaccompanied-alien-children.pdf>

¹⁵ See INA § 101(a)(27)(J); 8 CFR 204.11.

In 2011, USCIS concurred with the CISOMB's recommendation to issue new guidance on SIJs. On September 6, 2011, USCIS issued a Notice of Proposed Rulemaking for the SIJ program. USCIS continues to work on incorporating the numerous, substantive comments received on the proposed SIJ regulation. The public comments requested clarification on some complex policy issues, such as interpretation of the one parent provision of the TVPRA 2008.¹⁶ In addition, USCIS has drafted an updated and consolidated version of SIJ policies and procedures for the new USCIS Policy Manual.¹⁷ This draft guidance is currently under review as part of the formal clearance process.

USCIS is diligently working towards the goal of developing an SIJ outreach plan, which includes targeted outreach to State juvenile court judges, staff, and child welfare workers.¹⁸ These groups of professionals play a key role in the SIJ application process, including identifying and assisting children throughout the process, and providing required documentation. Such outreach efforts ensure that these professionals understand the process, requirements, and responsibilities to better assist eligible children in obtaining SIJ status in a timely manner.

Under the *Perez-Olano* settlement agreement,¹⁹ USCIS was required to provide contact information for a designated point of contact (POC) to the plaintiff's counsel. To comply with this requirement, USCIS created an email account for these case-specific inquiries that is monitored by the designated POC. USCIS's designated POC has not directly received any inquiries; however, USCIS has received a minimal number of complaints overall, and issues brought to the Agency's attention have been promptly addressed. USCIS welcomes the opportunity to review any case-specific inquiries and problems the CISOMB may encounter.

E. Discretionary Relief and Deferred Action for Childhood Arrivals

Deferred action is a determination to defer removal of an individual as an act of prosecutorial discretion. While a grant of deferred action permits an individual to remain in the United States without fear of removal, it does not provide the individual with lawful immigration status. The CISOMB has issued two formal recommendations related to deferred action. In 2007, the CISOMB recommended that USCIS post general information about deferred action on the USCIS Web site; maintain statistics on deferred action requests; and designate a headquarters official to review grants and denials. In 2011, the CISOMB recommended that USCIS provide information to the public on deferred action

¹⁶ See Pub. L. 110-457, 122 Stat. 5044 (2008).

¹⁷ See USCIS Web page, "USCIS Policy Manual" available at: <http://www.uscis.gov/policymanual/HTML/PolicyManual.html>

¹⁸ In furtherance of its goal, USCIS is working closely with a Casey Family Programs Fellow, who specializes in Social Work and has expertise in working with abused children.

¹⁹ *Perez-Olano, et al v. Holder, et al*, CV 05-3604 (C.D. Cal. 2005). See USCIS Web page, "Settlement Agreement in *Perez-Olano, et al. v. Holder, et al.*, Case No. CV 05-3604, in U.S. District Court for the Central District of California" available at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=bba3a56b8613c210VgnVCM100000082ca60aRCRD&vgnnextchannel=2492db65022ee010VgnVCM1000000ecd190aRCRD>

and the process for submitting requests; establish procedures for accepting and processing deferred action requests; inventory all pending requests to ensure that confirmation receipts with estimated processing times were issued; and track and post statistics related to deferred action. Because deferred action is not an immigration benefit but an act of prosecutorial discretion reviewed on a case-by-case basis, USCIS declined to post general information, processing times, and statistics on the USCIS Web site. USCIS, however, has developed a standard operating procedure (SOP) and tracks the processing of deferred action requests.

On June 15, 2012, the DHS Secretary issued a memorandum setting forth how DHS is to enforce immigration laws against certain young people, who were brought to the United States as children, do not pose a risk to national security or public safety, and meet established criteria.²⁰ Per this memorandum, USCIS was tasked with establishing within 60 days a “clear and efficient process” for the submission and review of deferred action requests for those individuals. On August 15, 2012, USCIS successfully launched Deferred Action for Childhood Arrivals (DACA).²¹ As part of this effort, USCIS created Form I-821D, *Consideration for Deferred Action for Childhood Arrivals*, provided extensive information about the process and requirements on the USCIS Web site, and engaged in broad outreach. Through December 2013, USCIS had accepted 610,716 requests for consideration, approving 521,899 (85.5%) and denying 16,049 (2.6%). Additional statistics²² and processing times²³ can be found on the USCIS Web site.

F. INA Section 204(l) and Humanitarian Reinstatement

Section 204(l) of the INA broadens the DHS Secretary’s discretion to permit an individual to immigrate, despite the death of the relative through whom the individual seeks to immigrate. Relief under section 204(l) is not limited to the principal beneficiaries of approved Forms I-130. As long as the statutory residence requirements are met, one may benefit from section 204(l) relief if the petitioner or the principal beneficiary dies:

- While the petition (e.g., Form I-130, Form I-140, Immigrant Petition for Alien Worker, or Form I-730, Refugee/Asylee Relative Petition) was pending;
- After the petition was approved;
- While the beneficiary’s Form I-485 was pending;
- While the beneficiary was in T or U nonimmigrant status, but before he/she filed Form I-485;

²⁰ See DHS Policy Memorandum, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” (June 15, 2012), available at: <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>

²¹ See USCIS Web page “Consideration of Deferred Action for Childhood Arrivals Process” available at: <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process>

²² See USCIS Web page “Data Set: Deferred Action for Childhood Arrivals” available at: <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>

²³ See USCIS Web page “USCIS Processing Time Information” available at: <https://egov.uscis.gov/cris/processTimesDisplay.do>

- While the beneficiary was in T or U nonimmigrant status, but after he/she filed Form I-485;
- While the beneficiary was in asylee status, but before he/she filed Form I-485; or
- While the beneficiary was in asylee status, but after he/she filed Form I-485.

The CISOMB expressed concern with the Agency’s interpretation of section 204(l) by deeming previously approved petitions filed on behalf of covered beneficiaries automatically revoked. As explained in the response to the CISOMB’s formal recommendation, section 204(l) does not act to preserve a petition approval, but expressly requires USCIS to make a discretionary determination whether to permit a case to proceed. If the petition is already approved when the relative dies, there is nothing pending on which USCIS can act. The request for reinstatement of the approval is the vehicle for bringing to USCIS’s attention the fact that the relative has died.

Section 204(l) does not guarantee the survivor’s ability to immigrate. At present, only the widow(er)s of citizens have a right to immigration classification despite the spouse’s death.²⁴ Section 204(l), by contrast, gives USCIS “unreviewable discretion” to permit a case to go forward despite a death. Because a negative exercise of discretion is generally limited to instances that are not in the public interest, USCIS will ordinarily allow a case to proceed. However, USCIS must still make a decision in each individual case to apply section 204(l).

Even before Congress enacted INA section 204(l), DHS regulations provided discretion to reinstate approval of family-based petitions that were automatically revoked because of the petitioner’s death.²⁵ Under the pre-204(l) regulation, humanitarian reinstatement could only be requested by the principal beneficiary when the petitioner of an approved Form I-130, Petition for Alien Relative, had died. However, humanitarian reinstatement could not be granted if the petitioner died while the petition was pending. Nor was there any provision for reinstatement in employment-based cases or in family-based cases in which it was the principal beneficiary who died, not the petitioner.

Both humanitarian reinstatement and section 204(l) may provide a benefit to a beneficiary whose Form I-130 has been approved; which one is applicable is dependent on the circumstances of the case. If both provisions apply, it is not necessary to make two separate requests. Instead, the individual may make one request for consideration under each provision.

Instructions for USCIS personnel adjudicating humanitarian reinstatement and section 204(l) requests can be found within the Adjudicators Field Manual.²⁶ Information is also available to stakeholders on www.uscis.gov.

G. Refugees

²⁴ See INA section 201(b)(2)(A)(i).

²⁵ See 8 CFR § 205.1(a)(3)(i)(C).

²⁶ See Chapter 10.21 of the Adjudicators Field Manual, “[Approval of pending immigrant visa petitions, T or U extension applications, asylee/refugee relative petitions, or applications after death of the qualifying relative.](#)”

In FY2013, 69,930 refugees from 67 countries were admitted for permanent resettlement to the United States. Refugee arrivals were up sharply this fiscal year, exceeding FY2012 totals by more than 10,000 and nearly reaching the presidentially authorized ceiling of 70,000. This success largely reflects improvements to security check processing that were launched in FY2012, including a new framework for processing Interagency Checks. Other administrative improvements to the security check process include better synchronization of security check expiration dates; electronic resubmission of expired fingerprints; and a technical fix that allows the Department of State (DOS) to run certain checks concurrently rather than consecutively.

The United States welcomed a record number of Iraqi refugees in FY2013, with approximately 19,000. Many of these arrivals – approximately 7,000 – are U.S.-affiliated cases from Baghdad, almost doubling the highest in-country figure from past years. This increase was achieved through USCIS and DOS staffing increases for Iraq operations as well as efficiencies in security checks. As of August 2013, the United States has resettled more than 88,000 Iraqis since 2007, despite a difficult operating environment in some host countries.

Burmese refugees from Thailand and Malaysia and Bhutanese refugees from Nepal remain the next two largest nationalities represented in the U.S. Refugee Admissions Program. Other regional trends in FY2013 include an increase in arrivals from Africa, with a final tally of more than 15,000, exceeding the initial projection of 12,000 for the fiscal year. Cuban refugee arrivals from Havana nearly doubled FY2012 levels, with more than 4,000 arrivals.

USCIS continues to work with its partners to improve security checks, to analyze and eliminate inefficiencies or redundancies, and to expand information-sharing with other resettlement countries.

III. FAMILY AND CHILDREN

USCIS manages the process that allows U.S. citizens, lawful permanent residents, refugees and asylees to bring certain relatives (or future relatives such as a fiancé or prospective adopted child) to the United States.

A. Marriage-Based Conditional Permanent Residents

In February 2013, the CISOMB issued a formal recommendation aimed at improving the processing of Form I-751, Petition to Remove Conditions on Residence. The recommendations focused on the notification provided to conditional permanent residents, Agency guidance, and training for officers.²⁷

A marriage-based conditional permanent resident²⁸ receives a “green card” valid for 2 years. The conditional permanent resident must file a petition to remove the conditions on residence in the 90-day window immediately prior to the card’s expiration. USCIS provides written notification approximately 120 days prior to the expiration of the conditional status, reminding the individual of the requirement to remove the conditions on residence. The notice is automatically generated from a system (the Marriage Fraud Amendment System) that is not linked to the current change of address system (the AR-11 system). Consequently, a number of notices are returned as undeliverable. USCIS reviews all returned mail and checks the AR-11 system for an updated address. If an updated address is found, USCIS will re-mail the notice to the correct address.

To ensure timely notification to the conditional permanent resident and improve the efficiency of Agency operations, USCIS has identified an interim solution that will allow service centers to extract the individual’s address from the AR-11 system. Once the processing of Form I-751 is transitioned to the USCIS Electronic Immigration System (USCIS ELIS), USCIS’s new case management system, this issue will be resolved.

Policies and procedures related to Form I-751 adjudications will be incorporated into the USCIS Policy Manual. In the interim, USCIS will continue to review and update the Adjudicators Field Manual to ensure proper guidance is provided to officers who are responsible for adjudicating these petitions. USCIS has also developed training on Form I-751 adjudications focusing on waiver standards and procedures that USCIS plans to provide to officers before the end of 2014.

USCIS is aware of instances where individuals are improperly classified as conditional permanent residents. Standard Operating Procedures (SOPs) at local offices require officers to review the file to determine whether the classification was proper prior to adjudicating the petition. USCIS will ensure that this step is included in the Form I-751 SOPs for the Field Operations and Service Center Operations Directorates, both of which are scheduled for release in 2014.

²⁷ See CIS Ombudsman Formal Recommendation 56, “Improving the Process for Removal of Conditions on Residence for Spouses and Children” (February 28, 2013); available at: http://www.dhs.gov/sites/default/files/publications/cisomb-conditional-residence-recommendation-final-02282013_1.pdf

²⁸ See INA § 216.

B. Provisional Waivers

With the Agency's implementation of the provisional unlawful presence waiver, USCIS expects to shorten the time U.S. citizens are separated from their immediate relatives while those family members seek immigrant visas to become lawful permanent residents of the United States.

Through this process, certain immigrant visa applicants who are spouses, children, and parents of U.S. citizens (immediate relatives) can apply for a provisional waiver of the unlawful presence ground of inadmissibility before they leave the United States. The provisional unlawful presence waiver process allows individuals, who only need a waiver of inadmissibility for unlawful presence, to file Form I-601A, Application for Provisional Unlawful Presence Waiver, in the United States before they depart for their immigrant visa interviews at a U.S. Embassy or consulate abroad. Since its inception in March 2013 through February 2014, USCIS has received more than 42,000 waiver applications.

As discussed in the Annual Report, stakeholders have suggested expanding the provisional waiver coverage to family preference category cases. USCIS will consider the possibility of expanding the program after the Agency has an opportunity to assess the program's progress and operational impacts. USCIS and DOS continue to collaborate on issues regarding the provisional unlawful presence waiver and visa processing.

USCIS has seen a higher rejection rate for Form I-601A filings at the Lockbox compared with other applications and petitions. To assist customers, USCIS hosted a public engagement in May 2013 on the "Provisional Unlawful Waiver Process" that provided an overview of the application process, explained eligibility criteria, and highlighted filing tips to better ensure that applications would be accepted at intake. Still, USCIS would like to remind filers to follow all Form I-601A filing instructions when submitting the application. The most common reason that applications were rejected is because applicants failed to submit evidence demonstrating that they had paid the DOS Immigrant Visa Fee prior to filing Form I-601A. Other common reasons for rejection include failure to provide the USCIS Receipt Number for the approved immigrant visa petition (Part 2, Question 1), failure to complete the Visa Interview Status field (Part 2, Question 5), and not submitting the correct Form I-601A application fee.

IV. EMPLOYMENT

Over the past year, USCIS has devoted significant attention to enhancing employment-based immigration processes. USCIS recognizes the importance of having immigration policies and practices that align with a rapidly changing and dynamic business environment. USCIS has actively sought industry expertise from both the public and private sectors and has engaged with other relevant Federal agencies to better understand the unique issues associated with these employment-based programs and explore meaningful solutions. USCIS will continue to improve and innovate in this area while actively working to detect and combat fraud and protect national security.

A. Requests for Evidence (RFE)

The RFE Project is an initiative that engages stakeholders in the review and revision of RFE templates used by USCIS. Multiple key RFE templates have gone through the RFE Project and are now in use by USCIS. Phase I of the RFE Project included templates for the E11 immigrant classification (for aliens of extraordinary ability in the sciences, arts, education, business or athletics); the P-1A (internationally recognized athletes); the P-1B (members of an internationally recognized entertainment group); the P-2 (individual or group entering to perform under a reciprocal exchange program); the P-3 (artists or entertainers in a culturally unique program) nonimmigrant classifications, including essential support personnel; and the Q (cultural exchange program participants) nonimmigrant classification.

USCIS has begun Phase II of the RFE Project. RFE templates for the L-1A nonimmigrant classification, which encompasses intra-company transferees in managerial or executive positions, have been implemented. USCIS has also finalized the templates for the O-1 (extraordinary ability in the sciences, arts, education, business or athletics, and extraordinary achievement in motion picture or TV production, including essential support personnel) and O-2 (accompanying an O-1, artist or athlete, to assist in a specific event or performance) nonimmigrant classifications based on stakeholder feedback. Based on recent stakeholder feedback, the Service Center Operations Directorate will be working with the service centers to update the O-1 and O-2 templates. In the near future, USCIS intends to post for public comment the templates for the E12 (outstanding researcher or professor) and the E13 (multinational executives and managers) immigrant classifications as well as the “ability to pay” requirement for all employment-based immigrant classifications for which a job offer is required. Phase II also includes the templates for the F (student), M (vocational student), J (exchange visitor), and L-1B (intra-company transferees with specialized knowledge) nonimmigrant classifications. USCIS has not yet established which classifications will be included in Phase III of the USCIS RFE Project.

The Annual Report noted that the H-1B (specialty occupation workers) and L-1B (intra-company transferees with specialized knowledge) RFE templates have not yet been part of the RFE Project. USCIS understands the stakeholder interest in these RFE templates. The H-1B and L-1B nonimmigrant categories remain part of the RFE Project, and enhancements were made to the RFE templates for these nonimmigrant categories in conjunction with the Entrepreneurs in Residence initiative. The templates will ultimately be introduced for public comment. Until then, USCIS continues to review and evaluate the RFE templates as part of its normal operations.

For further information regarding the USCIS RFE Project, stakeholders may continue to visit the USCIS Web site page dedicated to the USCIS RFE Project.²⁹

²⁹ See USCIS Web page, “Review and Revision of Request for Evidence Templates” available at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=95e92d40ee989210VgnVCM100000082ca60aRCRD&vgnnextchannel=95e92d40ee989210VgnVCM100000082ca60aRCRD>

1. VIBE

The Validation Instrument for Business Enterprises (VIBE) is a web-based tool that uses commercially available data to validate basic information about companies or organizations petitioning to employ certain alien workers. The main goal of VIBE is to equip adjudicators with information from an independent source that they can use to help determine petitioners' eligibility.

VIBE, which was developed and built by USCIS, recently became an interagency system within DHS. As of October 4, 2013, CBP has VIBE access to assist in L-1 petition processing and to promote program integrity. CBP officers at northern border ports of entry and preclearance locations use VIBE to assist in nonimmigrant petition processing. VIBE allows USCIS and CBP to share information about petitioners and provides a more comprehensive picture of a visa applicant's status.

As the CISOMB correctly points out in its Annual Report, USCIS does not have a technical mechanism to track VIBE-related RFEs. USCIS, however, will only issue an RFE (or a Notice of Intent to Deny) if derogatory or contradictory information is found in VIBE that is material to the benefit requested and is not outweighed by evidence submitted with the petition.

USCIS constantly reviews processes and procedures to continue improving VIBE for both external stakeholders as well as officers who use the VIBE system. Stakeholders may continue to send feedback via the VIBE-Feedback@uscis.dhs.gov email box.

2. Frequency and Quality of RFEs

USCIS is continually evaluating training and field guidance needs. The Service Center Operations Directorate reviews problematic RFEs that stakeholders send to the SCOPSRFE@uscis.dhs.gov email box to determine whether there are systemic issues that require additional training and guidance. In addition, the Directorate monitors the RFE rates for each classification to determine whether there are any trends or issues that need to be addressed. Stakeholders are encouraged to submit examples of problematic RFEs. Please note that the petitioner is still required to respond to an RFE even if it sends a copy of the RFE to the SCOPSRFE@uscis.dhs.gov email box.

B. Entrepreneurs in Residence

Reflecting on the past year, the Entrepreneurs in Residence initiative has been a success in both tangible and intangible ways. By leveraging talent from the private sector, the initiative has proven to be an effective model to focus in on particular challenges faced by USCIS. USCIS recruited both startup experts from the private sector, using DHS's Loaned Executive Program, and internal immigration experts from across the Agency to form a Tactical Team. Working within the framework of current immigration law, the team set out with the overarching goal of optimizing existing visa categories used by entrepreneurs to provide pathways that are clear, consistent, and aligned with business realities. The program has produced the following results.

1. Public Materials and Outreach

In November 2012, the Entrepreneurs in Residence team launched Entrepreneur Pathways,³⁰ a custom-designed resource for immigrant and nonimmigrant entrepreneurs that provides them with the tools and information to determine which visa category is most appropriate for their particular circumstance.

USCIS also improved outreach to student entrepreneurs. Though USCIS does not have primary jurisdiction over student visas, the team focused on identifying better ways to reach student entrepreneurs and to disseminate information about the immigration pathways that may allow these students to stay in the United States to start a business after completing their education. This included cross-linking USCIS resources with ICE's "Study in the States" Web site,³¹ sharing information with ICE and DHS on top university and private incubator programs, and identifying and collaborating with universities as a preferred venue for community engagements.

2. Adjudicative Tools

USCIS equipped officers with tools to better adjudicate cases in today's complex and rapidly evolving business environment. The team developed a comprehensive training course, Startup 101, for USCIS on the startup landscape. Piloted with a small group of officers in June 2012, the team subsequently delivered the training to nearly all employment-based officers at the four USCIS service centers. The training curriculum covers such topics as the history and anatomy of a startup enterprise, business fundamentals, stages of a startup, and funding and sources of capital. Fundamental principles addressed in the Startup 101 training have been integrated into training for all officers at USCIS's BASIC training academy.

³⁰ See USCIS Web page, "Entrepreneur Pathways: A Resource for Immigrant Entrepreneurs" available at: <http://www.uscis.gov/portal/site/uscis/eir>

³¹ See ICE Web site, "Study in the States" available at: <http://studyinthestates.dhs.gov>

To complement the Startup 101 training and ensure that officers have continued access to a range of evolving tools to assist their adjudications, the team developed an internal USCIS Web site with all resources related to the Entrepreneurs in Residence initiative.

3. Streamlined Policies and Practices

The Entrepreneurs in Residence team focused on streamlining USCIS's policies and practices to better reflect the realities faced by foreign entrepreneurs and startup businesses. The team prioritized gathering feedback and strategic thinking directly from entrepreneurs. In addition to the summit in Silicon Valley,³² the team held engagements with entrepreneurial communities in Atlanta, Boston, Chicago, and Washington, DC. USCIS partnered with such academic institutions as Georgia Tech, MIT, and the University of Chicago that have a vested interest in issues connecting immigration and entrepreneurship. USCIS expects to host future engagements in startup hubs across the country each fiscal year.

To help officers better communicate with startup companies when issuing RFEs, the team explored alternative forms of evidence that the Agency has not traditionally asked for and that an entrepreneur or startup may be more able to provide to meet the eligibility criteria for particular visa classifications. The team revised specific RFE templates to make them more user-friendly and reflective of current business trends.

Drawing from lessons learned in the program, USCIS intends to expand the concept to a broader range of industries that it serves, including performing arts, health care, and information technology. USCIS will leverage the DHS Loaned Executive program to bring valuable and industry-specific expertise into the Agency to focus and address challenges faced by USCIS in these industries.

Moving forward, USCIS will focus on measuring the long-term impact of this effort and the effectiveness of the team's work by:

- Using the American Customer Service Index to benchmark the usability of the Entrepreneur Pathways site against other government Web resources and gather feedback to further refine the Pathways site;
- Surveying officers at all four service centers to determine the value and impact of the Startup 101 training;
- Soliciting stakeholder feedback at upcoming public engagements to gauge community sentiments on the impact of this effort on adjudications; and
- Continuing to gather and monitor data on petitions and applications submitted by entrepreneurs across a range of visa categories to better understand the immigration paths that entrepreneurs choose to take.

³²See USCIS Web page, "Entrepreneurs in Residence Information Summit" (Feb. 22, 2012) available at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=180cfac2f5825310VgnVCM100000082ca60aRCRD&vgnnextchannel=e0b081c52aa38210VgnVCM100000082ca60aRCRD>

These efforts to gauge the Entrepreneurs in Residence program's impact will continue and will be replicated for the expanded Loaned Executive program in the performing arts and health care industries.

C. H-1B Specialty Occupation and L-1 Intracompany Transferee

U.S. businesses use the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, including but not limited to scientists, engineers, or computer programmers. The L-1 nonimmigrant classification enables a U.S. employer to transfer an executive or manager (L-1A) or a professional worker with specialized knowledge (L-1B) from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company which does not yet have an affiliated U.S. office to send an executive, manager, or employee with specialized knowledge to the United States to help establish one.

The CISOMB reported stakeholder concerns that USCIS, at times, would fail to recognize modern business practices and would substitute its own judgment pertaining to the business needs of the petitioner – i.e., “whether the company legitimately requires the executive, manager, or specialty occupation worker sponsored in the petition.”³³ As part of the Entrepreneurs in Residence initiative, discussed above, USCIS has worked to educate officers about business fundamentals and equip them with the tools to better adjudicate cases in today's complex and rapidly evolving business environment. As mentioned, stakeholders can send examples of problematic RFEs to the SCOPSRFE@uscis.dhs.gov e-mail box. USCIS will review to determine if there are systemic issues that require additional guidance and training. Please note that the petitioner is still required to respond to an RFE even if it sends a copy of the RFE to the SCOPSRFE@uscis.dhs.gov email box.

The Annual Report also noted concern that in some L-1 nonimmigrant cases, USCIS may be “overlook[ing] regulations that permit ‘new office’ situations for a limited period of one-year to allow the business to become operational.”³⁴ USCIS has not previously heard this concern. Question 12 on Form I-129 Supplement L specifically asks whether the beneficiary is coming to the United States to open a new office. USCIS will review any cases the CISOMB brings to its attention.

D. EB-5 Immigrant Investor Program

USCIS has taken meaningful and concrete steps since the start of FY2013 to address concerns raised about the EB-5 program and to ensure the program is administered in an efficient manner that maintains the integrity of the program. As discussed in the Annual Report, USCIS formulated, posted for public comment, and issued policy memoranda to provide additional clarity regarding the standards for eligibility within the EB-5 program. On December 20, 2012, USCIS issued operational guidance on the issue of tenant-

³³ CIS Ombudsman Annual Report 2013, p. 32.

³⁴ *Id.*

occupancy as it relates to job creation in the Immigrant Investor Program.³⁵ On February 14, 2013, USCIS issued a revised draft of a proposed EB-5 Adjudications Policy Memorandum for public comment. After review of comments submitted in response to the February 14, 2013, version of the proposed policy memorandum, USCIS issued the final memorandum on May 30, 2013.³⁶ The additional operational and policy memoranda issued by USCIS provide a greater level of clarity regarding eligibility requirements under existing regulations and precedent decisions and the manner in which EB-5 applications and petitions are processed.

In December 2012, USCIS announced the realignment of EB-5 work into a new Immigrant Investor Program Office (IPO) located in Washington, DC. The new office is led by a singularly focused Senior Executive Service-level Chief and consists of teams of economists and adjudicators who, evaluate applications and petitions and make determinations on eligibility. A team of Fraud Detection and National Security (FDNS) officers has been embedded in the program to manage fraud and security aspects of the work and provide essential liaison with Federal law enforcement agencies to detect and deter fraud and to provide essential analysis on issues related to national security and criminality. The transition of the EB-5 program to Washington, DC began in March 2013 when the EB-5 resources at the California Service Center were detailed to the Acting Chief of the IPO. This provided direct management authority and additional attention to the program. On September 30, 2013, the IPO was staffed with approximately 29 permanent staff, including 18 economists. The IPO completed the transfer of EB-5 adjudicative functions to its new office in Washington, DC on September 30, 2014. It is also in the process of on-boarding and training additional personnel to adjudicate EB-5 related petitions and applications and expects to be fully staffed by the end of December 2014.

USCIS also prioritized EB-5 petitions for Transformation as USCIS moves from a paper-based environment into an electronic filing environment. A transformed environment allows for enhanced data collection and analysis for adjudicative and fraud detection/national security purposes. An electronic environment for EB-5 applications and petitions also allows for better assessment of impacts at programmatic, project-based, and geographic levels. USCIS launched Form I-526 in USCIS ELIS, which offers EB-5 investors the option of submitting their form and supporting evidence electronically to USCIS for review and adjudication. USCIS has recently developed a Document Library to allow regional centers the ability to upload supporting documentation that can be used to support multiple Form I-526 filings. USCIS anticipates that the Document Library will improve overall efficiency for both the public and the Government, drastically reduce file size, and eliminate submission and receipt of multiple and duplicative paper copies of hundreds of pages of supporting documentation.

³⁵ See USCIS Guidance Memorandum, “Operational Guidance for EB-5 Cases Involving Tenant-Occupancy” (Dec. 20, 2012) available at: <http://www.uscis.gov/USCIS/Laws/Memoranda/Interim%20EB-5%20Tenant-Occupancy%20GM.pdf>

³⁶ See USCIS Policy Memorandum, “EB-5 Adjudications Policy” (May 30, 2013) available at: [http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20\(Assessed%20as%20final%205-30-13\).pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Assessed%20as%20final%205-30-13).pdf)

Through collaboration with Federal law enforcement agencies, USCIS also increased Regional Center fraud detection and national security vetting. All EB-5 applications and petitions are now subject to a robust background check process before the application or petition is adjudicated. USCIS also provided support to the Securities and Exchange Commission, including support related to two complaints filed against Regional Center principals accused of defrauding EB-5 investors and misappropriating investment funds.

The Annual Report summarized a variety of concerns that have been raised by stakeholders about the EB-5 program over the last year, including the need for improved communication, processing times, and policy.

1. Communications

The Annual Report notes that stakeholders expressed concerns about communication within the EB-5 program. Stakeholders were critical of the dedicated EB-5 Immigrant Investor Program email box, stating that responses are often not timely and limited to basic case status. Stakeholders also requested more direct communication with adjudicators via telephone and email.

USCIS is committed to providing a level of communication that is effective and informative while maintaining the integrity of the process. The program has taken steps to enhance communications. In addition to communicating with an applicant or petitioner (or their legal representative) to resolve discrete questions that may be present in a pending case, the Immigrant Investor Program Office has implemented an interview process for Regional Center applications in which it appears eligibility has not been established. The interview provides an opportunity for a Regional Center applicant and their representatives (attorneys and economists) to appear before USCIS and discuss the particular issues present in the application. This interview process allows for a more effective and detailed level of discussion of the substantive issues present in the case, and is a valuable tool in the decision making process. The Agency has received positive feedback from the stakeholder community as a result of these enhancements, and the program will continue to explore ways to further enhance communication with stakeholders, and looks forward to continued feedback from the CISOMB on this issue.

2. Processing Times and RFEs

The Annual Report notes stakeholder concerns pertaining to the posted processing times and the issuance of multiple RFEs. USCIS understands that reliable processing times are important for applicants and petitioners as they try to plan and move forward with their business ventures. USCIS has taken steps to ensure that posted EB-5 processing times are reliable.

The issuance of clarifying operational and policy guidance over the last year should reduce the need for multiple RFEs for the same petition.³⁷ Improved levels of communication

³⁷ See e.g., USCIS Policy Memorandum, “Requests for Evidence and Notices of Intent to Deny” (June 3, 2013) available at:

within the program should also provide a mechanism to limit the issuance of multiple RFEs. USCIS anticipates that these efforts will, ultimately, minimize the potential for processing delays.

3. Policy Development

The Annual Report identified several stakeholder concerns related to EB-5 policy development – the need for a clear and binding project pre-approval process with subsequent adjudications deference; future EB-5 Immigrant Investor Program policy development should be conducted in accordance with business realities and be reasonable commercially; and USCIS should avoid implementing new or more restrictive policy guidance retroactively.

As discussed in the May 30, 2013 policy memorandum,³⁸ deference to prior USCIS determinations of eligibility is an important part of ensuring predictability for EB-5 investors and commercial enterprises and conserves scarce resources by avoiding duplication of previous adjudicative efforts. USCIS does not provide a process for binding project pre-approval, but does apply deference as a matter of policy to prior favorable determinations regarding EB-5 projects unless there is a material change in the facts, fraud, misrepresentation, or the prior determination was legally deficient.

USCIS strives to manage the EB-5 program in a way that is responsive to business realities while ensuring that program integrity is maintained. To further this goal, USCIS generally holds stakeholder engagements on a quarterly basis, most recently on September 10, 2014, and posts EB-5 policy memoranda for stakeholder comment and input before they are adopted as final. In fact, USCIS solicited stakeholder input on multiple occasions prior to the EB-5 policy memorandum becoming final on May 30, 2013. USCIS has also hired corporate attorneys and economists to further the goal of administering the program in a manner that is responsive to business realities.

E. E-Verify

E-Verify, the free Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States received high marks in a 2013 customer survey.

More than 1,300 randomly selected employers across the nation who use E-Verify evaluated key program aspects, including registration, the online tutorial, ease of use, technical assistance, and customer service. They rated the program as exceptionally high in overall customer satisfaction, with an average score of 86 out of 100 on the American Customer Service Index.

[http://www.uscis.gov/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20\(Final\).pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20(Final).pdf)

³⁸ See USCIS Policy Memorandum, “EB-5 Adjudications Policy” (May 30, 2013) available at: [http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20\(Approved%20as%20final%205-30-13\).pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Approved%20as%20final%205-30-13).pdf)

CFI Group, a consulting firm specializing in customer satisfaction measurements, conducted the survey. According to CFI Group's latest figures, the average score for Government agencies is 67.

Other key survey findings revealed that the overwhelming majority of users were:

- Likely to recommend E-Verify to other employers;
- Confident in E-Verify's accuracy; and
- Likely to continue using the program.

With E-Verify, almost all employees are automatically confirmed as authorized to work. In FY2012, approximately 98.7 percent of all employees were confirmed as work authorized without any additional employee follow up. The remaining 1.3 percent contained a mix of Tentative Non-Confirmations initially issued to work-authorized employees because of data mismatches (whether employer, employee, or government errors) and Tentative Non-Confirmations issued to unauthorized employees. An independent evaluation conducted by the Westat Corporation reports that the Tentative Non-Confirmation rate for authorized employees – those employees who had to resolve a Tentative Non-Confirmation based on a data discrepancy – continues to decrease. The report concluded that the rate of authorized employees who needed to resolve Tentative Non-Confirmations declined from 0.7 percent to 0.3 percent.

F. Petition Information Management Service

On May 16, 2012, the CISOMB issued three recommendations pertaining to the transfer of Form I-129 petition approval information and documents from USCIS to the DOS Petition Information Management Service (PIMS).³⁹ The CISOMB recommended that USCIS:

- Instruct USCIS service centers to make a copy of Form I-129 petition package regardless of whether a duplicate petition package has been submitted with the filing, and send it to the DOS Kentucky Consular Center for uploading into PIMS; or,
- Send the original petition package to the Kentucky Consular Center, for scanning of documents, data entry, and – upon completion – forward the original petition package to the USCIS National Records Center for storage; or,
- Scan all approved petition packages at a USCIS facility, so electronic copies can be forwarded to the Kentucky Consular Center for uploading into PIMS.

USCIS did not concur with the first two recommendations noting that implementation would likely result in increased costs for USCIS – and ultimately the petitioners – and extend the processing time. USCIS concurred in principle with the third recommendation, but indicated that the Agency currently lacks the resources necessary for implementation. In the future, USCIS plans to provide all petition information to DOS through USCIS ELIS.⁴⁰

V. CUSTOMER SERVICE

In 2012, the USCIS Customer Service and Public Engagement Directorate was established by merging two separate offices into a single Directorate. It has two operating divisions: Customer Service and Public Engagement, and two support divisions: Planning & Coordination and Technology & Innovation. The Directorate recently has undertaken a range of initiatives aimed at improving the quality of customer service provided to stakeholders during their interactions with USCIS.

A. Public Engagement Division

The Public Engagement Division develops and maintains collaborative relationships with stakeholders who interact with USCIS, including community-based, advocacy, and attorney organizations as well as State, local, and tribal partners. The Division has continued a robust level of engagement in FY2013 at both the national and local level. USCIS hosted 107 national engagements and over 3,000 field engagements with more than 28,000 participants and 827,000 participants, respectively.

³⁹ See CISOMB Formal Recommendation 53, “Recommendations Regarding USCIS’s Role in the Petition Information Management Service” (May 16, 2012) available at:

<http://www.dhs.gov/xlibrary/assets/cisomb/cisomb-pims.pdf>

⁴⁰ See USCIS Response to Formal Recommendation 53 (Aug. 13, 2012) available at:

<http://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/USCIS%20Response%20to%20CISOMB%20PIMS%20Recommendation.pdf>

USCIS continues to expand outreach efforts. The Agency added two new languages, Vietnamese and Creole, to the national engagement lineup (to include Spanish and Chinese). Additionally, USCIS has significantly expanded the electronic Multilingual Resource Center⁴¹ by adding public education materials in 14 different languages. These additions exemplify USCIS's commitment to engaging with difficult to reach populations and providing access to limited English proficient individuals.

Looking ahead to FY2014, the Public Engagement Division will engage with stakeholders to implement a number of strategic priorities including:

- Strengthening the Unlawful Practice of Immigration Law messaging by increasing the visibility of the UPIL message in USCIS communications and materials, ensuring consistent messaging in internal and external communications, and working with State and Federal partners to deter fraud and immigration scams;
- Improving individual case assistance and engaging more with Intergovernmental partners;
- Using focus groups to identify the best way for customers to access USCIS and to test messaging and communication channels;
- Continuing to work with vulnerable communities by targeting outreach to agricultural communities and providing training on immigration options for victims of crime (T/U/VAWA);
- Enhancing efforts to reach customers with limited English proficiency by expanding multilingual engagements and services to difficult-to-reach audiences and overseeing Agency-wide implementation of the Limited English Proficiency plan; and
- Bolstering Agency-wide strategic engagement by developing and implementing annual engagement plans with key program offices and directorates.

B. Customer Service Division

The Customer Service Division offers multiple avenues to deliver service to customers, including most prominently the National Customer Service Center, which answers the 1-800 number and receives more than 12 million calls each year.

Since 1995, the National Customer Service Center has been operating on a tier-linear model. When customers call, they navigate through an Interactive Voice Response system where callers needing live assistance are connected to “Tier 1.” Tier 1 is staffed by contractors who use a series of scripts to provide general information regarding immigration issues, programs, and policies. Customers requiring case-specific assistance are transferred to an ISO for live assistance at “Tier 2.”

USCIS recognizes that the large number of calls, coupled with the Agency's existing technologies and limited personnel and financial resources, has resulted in long wait times and, in some instances, a call-abandonment rate exceeding 25 percent. USCIS understands

⁴¹ See USCIS Web page “Multilingual Resource Center” available at: <http://www.uscis.gov/tools/multilingual-resource-center>

that this impacts customers' ability to interact with the Agency and obtain the information they need in a timely manner. As a result, USCIS is working diligently to improve existing communication methods as well as design and build a new Customer Contact Center that will transform its customer-service architecture.

1. SRMT Improvements

The Service Request Management Tool (SRMT) is an electronic system designed to track and transfer customer inquiries to the appropriate USCIS office for response. While initially only available through the National Customer Service Center, customers can now submit e-Requests through the USCIS Web site, www.uscis.gov. USCIS has expanded the types of e-Requests that customers may file online so service requests are transferred more efficiently to the correct office.

2. CRIS Improvements

The Customer Relationship Interface System is the platform for many of USCIS's customer service tools, including SRMT, My Case Status, and Change of Address. USCIS is working to improve the usability and functionality of this platform and is planning a new release for the Customer Relationship Interface System in the first quarter of FY2014 and another release is set for the second quarter. The releases will:

- Improve the usability of e-Request and Change of Address;
- Provide more accurate and timely information in My Case Status;
- Improve the "look and feel" of e-Request, My Case Status, and Change of Address;
- Allow for automatic updating of addresses via Change of Address.

USCIS has also assembled a Working Group that meets weekly to:

- Improve the response templates in SRMT;
- Develop better responses to customers seeking status information from My Case Status;
- Develop procedures for responses as well as actual resolution; and
- Develop a national quality assurance program for SRMT-based responses.

3. Future Design

USCIS is redesigning its traditional tiered Call Center model to become a world-class, multi-channel/access model that will capitalize on technology solutions to provide additional access points and new communication choices.

The full-scale Customer Contact Center will provide customers with information and assistance and move USCIS toward achieving important customer service objectives, including improving customer interactions and providing more self-service capabilities. The Center will allow USCIS to reach more customers in more interactive ways by providing new communications choices.

This concept moves beyond traditional call centers into a modern efficient approach to customer service that will include multiple channels for customer interaction with USCIS, such as Web chat, e-mail, social media, and other modes of digital communication and telephonic services to satisfy customer needs. Additionally, by integrating contact center systems with USCIS ELIS and other tools, officers will have access to more detailed case information. This will allow officers to update cases and records, and give them the ability to work directly with field offices and service centers to achieve higher first contact resolution.

The Customer Contact Center will be rolled out in phases, with the first phase providing technical and case assistance to USCIS ELIS customers and piloting new ways to interact with customers. The second phase will feature a broader expansion of the Center's functionalities, including wide scale use of Web chat and Web callback. Social media engagement will occur in a later phase as the Agency's service-delivery model matures.

USCIS is evaluating its current self-help tools capabilities to determine functionalities that can be improved for easier use and more visibility on the USCIS Web site, www.uscis.gov. Further, USCIS is also evaluating the possibility of creating and deploying mobile applications for these self-help tools.

USCIS is exploring innovative technologies such as Intelligent Virtual Assistants that engage customers in conversation to answer questions about USCIS ELIS and immigration benefits. These technologies will walk customers through the process of filling out forms and allow customers to search for answers in their own words.

4. Language Access

USCIS is committed to providing outstanding customer service to all individuals who interact with the Agency, including those with limited English proficiency. To this end, our Customer Service and Public Engagement Directorate tracks the primary languages spoken by USCIS customers through quarterly surveys of National Customer Service Center (NCSC) callers. In the FY 2014 Q1 survey, approximately 47% of the callers identified English as their primary language and approximately 28% of the callers identified Spanish as their primary language. Additional primary languages were Creole (2.4%), Arabic (2.3%), French (2.3%), Chinese (Mandarin) (2.3%), Hindi (2%), Russian (1.4%), Urdu (1.3%), Vietnamese (.8%), Albanian (.6%), Tagalog (.6%), Portuguese (.6%), German (.4%), Farsi (.4%), Polish (.4%), Chinese (Cantonese) (.2%), Swahili (.2%) and Japanese (.1%). These are callers' primary, but not necessarily sole, languages. Many callers who speak a primary language other than English or Spanish speak adequate English or Spanish to communicate with a call center representative. If the individuals do not speak adequate English or Spanish, they may have a representative or family member contact USCIS on their behalf.

NCSC provides all levels of call support in English and Spanish and callers are informed of the bilingual services immediately. All callers are also informed that information in languages other than English and Spanish is available in the multilingual resource center on www.uscis.gov. In addition, the scripts used by Tier 1 representatives are available on the

USCIS website in English and Spanish. The online customer service tools referenced above, including Change of Address, Case Status Online and Processing Times, are also available in English and Spanish. In addition to the current resources available, USCIS is also actively exploring options to further expand services available in languages other than English and Spanish. This may include offering recorded information through the Interactive Voice Response (IVR) system in multiple languages and using Language Line Services so that customers can receive live assistance in their primary language.

At the suggestion of outside stakeholders, USCIS will explore how to make the online multilingual resource center more visible from the USCIS home page and ensure that the file names for multilingual documents are posted on the website in the language of the document rather than in English. Limited English proficiency customers who do not understand enough English or Spanish to use the online tools in those languages may have a representative or family member use these online services or call the NCSC on their behalf. In addition, customers can make an InfoPass appointment to visit a USCIS field office. InfoPass services are available in English, Spanish, Creole, Arabic, French, Chinese, Russian, Vietnamese, Tagalog, Korean, Portuguese, and Polish.

As further evidence of the Agency's commitment to serving individuals with limited English proficiency, USCIS conducts multilingual public engagements. In 2013 the Agency hosted national engagements in Spanish, Vietnamese, and Chinese. In 2014 USCIS expanded this effort by conducting multilingual engagements in Spanish, Creole, Vietnamese, Chinese, Korean, and is planning an Arabic event in October.

C. USCIS Web Site

On September 23, 2013, USCIS provided the public with a preview of the new English⁴² and Spanish⁴³ versions of the USCIS Web site. The Web site will provide the public with quicker and easier access to information. The improvements further distinguish the Agency's Web site from other immigration-related, potentially fraudulent Web sites, and solidify its standing as one of Federal Government's highest-rated online resources.

The Web site revamp is the first redesign of the Agency's Web site since 2009. The new look and feel is a result of the Agency's review – conducted over the past year – of Web site traffic patterns and customer feedback about the current English- and Spanish-language home pages.

Improvements to the new Web site design include:

- Flyout navigation menus that will reduce the number of clicks to reach desired information;
- A "Tools" area featuring the most popular online customer service tools, making it easier to complete electronic transactions;

⁴² See USCIS Redesigned Web site at <http://preview.uscis.gov/>

⁴³ See USCIS Redesigned Spanish Web site at <http://preview.uscis.gov/es>

- Prominent search bar with improved search results;
- Shortened URLs to provide easy-to-remember Web addresses;
- Color-coded alerts for improved customer notifications and navigation; and
- Streamlined navigation for easier access.

As part of this Web site redesign, the Office of Communications will transition to a new content management system. The new system, open-source software called Drupal, provides greater flexibility to make code fixes and content updates easier and faster. Certain older content will remain available in an archives section.

D. Certificates of Citizenship and Naturalization

On July 1, 2013, USCIS began issuing redesigned certificates for citizenship and naturalization for individuals who request replacement certificates (Form N-561, Replacement Certificate of Citizenship, and Form N-570, Replacement Certificate of Naturalization).

The replacement certificates incorporate state-of-the-art technology to help deter counterfeiting, prevent tampering, and facilitate quick and accurate authentication. Additionally, USCIS employs a new and more secure printing process for the certificates to further prevent tampering.

These improvements are part of USCIS’s ongoing efforts to produce secure documents and enhance the integrity of the immigration system. Since 2010, USCIS has redesigned the Certificate of Naturalization (Form N-550), Certificate of Citizenship (Form N-560) and Employment Authorization Document (Form I-765) with enhanced security features. USCIS will continue to make enhancements as technology improves.

E. Administrative Appeals Office

Over the past fiscal year, the Administrative Appeals Office (AAO), USCIS’s appellate body, has successfully brought the processing times for the appeals of all form types under its jurisdiction within Agency goals.⁴⁴ As it has improved processing times, the AAO has remained committed to carefully reviewing decisions to ensure consistency and accuracy in the interpretation of immigration laws and policies. The AAO applies a *de novo* standard of review to its appellate adjudications. Federal courts have long recognized and upheld this standard of review,⁴⁵ which is also specified in AAO decisions.

To provide stakeholders with pertinent information on the appeals process, USCIS has enhanced appeals-related content on the USCIS Web site and on Form I-290B, Notice of

⁴⁴ See USCIS Web page “AAO Processing Times” available at: <http://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-ao/ao-processing-times>

⁴⁵ See *Spencer Enterprises, Inc. v. U.S.*, 229 F. Supp. 2d 1025 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Appeal or Motion. The AAO is also developing a Practice Manual to further guide the public on practice before the AAO.

USCIS continues to pursue proposed rulemaking concerning the administrative appeals process and regrets the lengthy delay.⁴⁶ On May 28, 2014, USCIS conducted a stakeholder engagement session and discussed the initiatives described above and answered stakeholder questions. At this session, USCIS also solicited feedback on concepts under development in the proposed rulemaking.

The CISOMB's Annual Report expressed concern with the lack of consistent processing of Form I-290B at the field offices and service centers prior to forwarding to the AAO. The report also noted stakeholder requests for a greater number of precedent decisions as well as timely and improved access to non-precedent decisions.

1. Processing

USCIS is exploring ways to improve the processing of Form I-290B. To this end, USCIS is developing an SOP that includes guidance on how to better process Form I-290Bs when they are at the field office or service center. USCIS is also developing a standard timeframe for reviewing appeals prior to forwarding them to the AAO, as well as for taking action once the AAO renders a decision on an application or petition.

To assist with the processing of appeals, USCIS is also revising Form I-290B. Among the updates included in the revised Form I-290B is a dropdown menu that allows the applicant to indicate which form is being appealed as well as identify the office that made the decision. Including this information on the revised Form I-290B, and subsequently in USCIS's internal systems, will greatly increase the Agency's ability to track and monitor appeals. USCIS also seeks to improve appeals-related case status information available to customers.

2. Precedent and Non-Precedent Decisions

USCIS is committed to issuing more precedent decisions to guide officers and stakeholders in the correct application of immigration law and policy. USCIS recently issued an interim policy memorandum⁴⁷ that provides guidance on the proper role and use of precedent and non-precedent decisions. With the recent elimination of a longstanding backlog of appeals by the AAO, USCIS will now strive to issue more precedent decisions.

USCIS is revamping the process used to redact and post AAO non-precedent decisions on the USCIS Web site so that the public may access AAO decisions soon after issuance. USCIS indexes such cases by subject matter. As USCIS redacts decisions prior to posting

⁴⁶ "Administrative Appeals Office: Procedural Reforms To Improve Efficiency", RIN 1615-AB98.

⁴⁷ See USCIS Interim Policy Memorandum, "Precedent and Non-Precedent Decision of the Administrative Appeals Office (AAO)" (July 2, 2013), available at: <http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/AAO-Precedentand-Non-Precedent-Decisions-PM-for-Comment.pdf>

to eliminate personal identifiers, USCIS does not provide search capability based on case name. AAO decisions may be searched by keyword through commercial legal research providers.

F. Fee Waivers

The USCIS Lockboxes reviewed 390,000 fee waiver requests in FY2012 and 458,500 requests in FY2013 (17 percent increase); that is an average of 32,500 per month in FY2012 and 38,200 in FY2013. This large volume, coupled with the introduction of Form I-912, Request for Fee Waiver, and the transparency of the fee waiver program (as noted in the Annual Report) has brought increased attention to this process. The USCIS Office of Intake and Document Production has taken several actions to ensure consistency within the program, including:

- Holding monthly “roundtable” meetings for the staff to discuss trends and anomalies;
- Designing and delivering a series of six workshops to enhance staff training and address any specific areas of concern;
- Having a representative from the U.S. Internal Revenue Service meet with the staff, and answer questions about tax forms, especially with regard to filing statuses and dependents (criteria for determining household income levels);
- Continuing to evaluate the staff’s work on a weekly basis through the formal quality assurance program;
- Providing case-specific feedback to analysts when issues are raised through the Lockbox support customer email box; also passing this information on to the whole group if it is part of a larger issue; and
- Maintaining a database which contains state-based benefits information, indicating whether certain state-based benefits are truly “means-tested” and what criteria are used in making that determination (the criteria vary State-to-State and program-to-program); this database is stored in a central location and is always available to the staff during their review of fee waiver requests.

The Annual Report raises several concerns regarding the consistency and accuracy of the fee waiver review process at USCIS, stating: “Certain low-income applicants continue to encounter difficulties in the fee waiver process. Since late 2012, an increasing number of stakeholders have sought assistance from the Ombudsman on this topic.”⁴⁸ The CISOMB’s report further notes that it received approximately 50 cases where fee waivers were rejected multiple times for various reasons, including means-tested benefit documentation.⁴⁹

USCIS personnel responsible for review of fee waiver requests meet regularly to discuss ongoing fee waiver concerns, and to specifically address concerns about consistency and accuracy. The Office of Intake and Document Production has also established a formal quality assurance program to audit and review fee waiver decisions. In FY2012, just over

⁴⁸ CIS Ombudsman Annual Report 2013, p. 48.

⁴⁹ *Id.*

98 percent of decisions reviewed as part of the quality assurance program were found to be accurate, and has improved to 98.82 percent in FY2013. USCIS continues to focus on this area and is committed to providing accurate and consistent results.

In order to gain a better understanding of stakeholder questions and concerns about fee waiver requests, USCIS has held several stakeholder engagements. Some of these questions and concerns include:

- Perception that the denial rate has increased;
- Overall lack of clarity on why cases are being denied;
- Non-acceptance of evidence from particular benefit-granting agencies;
- Lack of guidance on acceptability of documents in other languages; and
- Need to enhance definition of “means-tested.”

Through public engagements with these stakeholders, USCIS agreed to a number of efforts to improve the fee waiver request process, including:

- Updating existing fee waiver policies and procedures and/or creating a filing tips sheet to help clarify the filing process;
- Reviewing denial notices for the need to provide more specific information;
- Targeting outreach to State and local benefit-granting agencies regarding acceptable evidence; and
- Hosting a national stakeholder engagement on fee waiver requests to address stakeholders’ questions.

G. Transformation

USCIS launched the first release of its electronic immigration benefits system, known as USCIS ELIS, on May 22, 2012. The system was developed to modernize processes associated with filing and adjudicating immigration benefits. Currently, USCIS customers can:

- Establish online accounts to e-file select categories of Form I-539, Application to Extend/Change Nonimmigrant Status and to pay the \$165 USCIS Immigrant Fee;
- Update their contact information;
- Receive notices and real-time case status updates;
- Interact electronically with attorneys and accredited representatives; and
- Upload and view documents.

USCIS employees can:

- Adjudicate certain immigration benefits online;
- Readily locate and identify supporting documents;
- Compare applicants’ identity data to biographic data for Form I-539;
- Receive from, and send information to, other government systems;
- Electronically initiate card production for new immigrants; and

- Review and resolve the results of security checks online.

As of June 2013, 32 percent of applicants who could opt to file a Form I-539 electronically filed their requests in USCIS ELIS. Customer feedback remains consistently positive with 85 percent of users reporting that USCIS ELIS is easy to use, they were likely to use the system again, and they would recommend USCIS ELIS to others.

Customer service associated with USCIS ELIS continues to be an Agency priority. For applicants who may lack access to a computer or feel uncomfortable using an electronic system, USCIS continues to allow paper filing through the USCIS Lockbox. USCIS is actively working towards improved customer support for USCIS ELIS users, to include a pilot where customers can engage electronically with customer service staff. Additionally, an upcoming release of USCIS ELIS will simplify navigation of the system. The USCIS Office of Transformation Coordination also continues to explore capability potential to make USCIS ELIS available in other languages.

Another priority is the responsible stewardship of resources. The Office carefully monitors costs in order to ensure that USCIS ELIS embodies both quality and cost effectiveness.

In May 2008, a draft Acquisition Program Baseline document included estimated costs for the Solution Architect contract at \$500 million, but this did not include the full program costs. Full program costs would have included independent testing, the upgrade to networks and servers, and operations and maintenance, as well as the costs of USCIS Transformation Program personnel and other support contractors. The contract amount for the Solution Architect, which was awarded in November 2008, was \$491 million. USCIS has not exceeded this contract level. At the end of FY2012, total program costs were \$891.8 million – of which \$287.7 million were for the Solution Architect Contract. Total program costs as of June 30, 2013, are \$1.021 billion – of which \$315.1 million relate to the contract.

The Transformation Program experienced delays in the schedule for a variety of reasons. Broad reasons for the delays include:

- U.S. immigration law is very complex, and the original solution automated more policy, rules, and decision-making than necessary or cost effective to maintain in the long term;
- Program governance was cumbersome;
- Best practices for creating and monitoring an integrated master schedule had not been implemented; and
- The development methodology did not allow the Federal Government to see problems early in the process.

To address the challenges identified above, both DHS and USCIS took this as an opportunity to simplify more than 60 percent of the business rules that were originally planned for the solution and to adjust the governance structure by creating a Transformation Executive Steering Committee chaired by the USCIS Director and pushing decision-making authority to the appropriate level. Additionally, a Program Life Cycle Cost Estimate and an Integrated Master Schedule were developed for the full program, and transition to an agile

software development methodology was made allowing business operators, developers, and testers to better work together to ensure alignment between development and business needs.

The Transformation Program is progressing in meeting the business needs. The program has initiated new capability every 4 to 6 months using the agile development methodology. Since March 2012, the Transformation Program has deployed four releases on schedule, providing approved capability and improved functionality to the field and customers. As noted above, EB-5 customers can now file Form I-526 through USCIS ELIS.

USCIS expects ELIS to be completed in FY2018 or 2019, leading to the improvement of customer experiences with USCIS in seeking immigration benefits and services. Through transformation, USCIS is committed to developing a capability that will be flexible to handle its current workload of benefit requests, estimated at 7 million annually, as well as expanding to handle additional volume necessitated by changes in laws or regulations.

H. Homebound Services

USCIS field offices offer immigration services to applicants who are homebound or hospitalized. Although the current fiscal climate has required all Federal agencies to make cuts, assisting customers – especially those who need the Agency’s support most – remains a priority for USCIS. A field office with jurisdiction over the applicant’s residence will send a USCIS staff member to an applicant’s home or healthcare facility to collect biometrics, interview the applicant, and administer the oath of allegiance. Within the CISOMB’s reporting period, officers traveled nearly 4 hours to interview a woman in the Yuma, Arizona, area for naturalization. Since she required daily medical treatments, the 8-hour round trip to the field office would result in her having to forgo treatment on that day. Three days after the interview, USCIS staff returned to her home to conduct the naturalization ceremony, which included the video message from President Obama, the Pledge of Allegiance, and presentation of the Certificate of Naturalization. Also during this reporting period, staff members from the Detroit Field Office, in conjunction with the U.S. District Court, attended the home naturalization ceremony of a woman who became the second oldest person to naturalize ever in the United States. Immigration services and ceremonies such as these are conducted throughout the United States based on the applicant’s medical situation. USCIS is committed to providing effective customer-oriented immigration benefits and information services to its applicants and stakeholders. Assisting customers, especially those who most need the Agency’s support, remains a priority for USCIS.

VI. CONCLUSION

USCIS will continue to seek improvement and innovation in the processing of humanitarian, family, and employment-based applications and petitions as well as with customer service. USCIS thanks the CISOMB for the analysis and evaluation provided in this year’s report and looks forward to continued collaboration in the upcoming year.

VII. APPENDIX: ACRONYMS AND INITIALISMS

AAO	Administrative Appeals Office
CBP	Customs and Border Protection
CISOMB	Citizenship and Immigration Services Ombudsman
DACA	Deferred Action for Childhood Arrivals
DHS	Department of Homeland Security
ELIS	Electronic Immigration System
FY	Fiscal Year
ICE	Immigration and Customs Enforcement
INA	Immigration and Nationality Act
NCSC	National Customer Service Center
PIMS	Petition Information Management Service
POC	Point of Contact
RFE	Request for Evidence
SIJ	Special Immigrant Juvenile
SOP	Standard Operating Procedures
SRMT	Service Request Management Tool
TVPRA	William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC	Unaccompanied Alien Child
USCIS	U.S. Citizenship and Immigration Services
VAWA	Violence Against Women Act
VIBE	Validation Instrument for Business Enterprises