



Annual Report 2017

Citizenship and Immigration Services
Ombudsman

June 29, 2017



Homeland
Security

Message from the Ombudsman



Congress created the Citizenship and Immigration Services Ombudsman out of a sincere desire to improve the functioning of our immigration system. That is clear from our statutory mission, found in Section 452 of the Homeland Security Act of 2002. In Section 452, Congress charged

us with the duty to aid applicants and their sponsors who are experiencing difficulties applying for immigration benefits with U.S. Citizenship and Immigration Services (USCIS). In addition, Congress bestowed on us the responsibility of identifying trends and ongoing problems in the administration of our immigration system and, where possible, making recommendations on how to solve those problems.

Both aspects of our mission are explored in this report. The Year in Review offers Congress and the public an opportunity to see the important case work our office handled in 2016 and how we often function as the last resort for prospective immigrants whose applications or petitions are stuck in the system. As you will see in the following pages, demand for our assistance has been steadily growing. In fact, requests to our office increased 25 percent between 2015 and 2016 and more than doubled since 2012.

While we believe this growth in requests is partly due to increasing awareness of the services we provide, it is also the result of an immigration system that is expanding, both in complexity and in the benefits it offers. Indeed, between creating new immigration programs, expanding the classes of aliens who qualify for existing programs, and a general increase in applications, USCIS' workload has grown significantly over the past several years. In FY 2016 alone, USCIS received approximately 8.070 million applications for benefits, a 5 percent increase over FY 2015 and a 34 percent increase over FY 2012.

The impact of this expanding immigration system is examined in the second part of our report, which analyzes trends and issues in the administration of our immigration system. For example, this report examines growing backlogs in naturalization applications and the challenges facing USCIS as it digitizes case processing through the Electronic Immigration System. It also looks at the increasing number of asylum applications, the growing demand for U visas, and complexities facing the EB-5 program. We hope you find it illuminating.

Before concluding, I would like to thank my staff for diligently working on the annual report throughout the year, conducting in-depth research and meeting with scores of stakeholders. I would especially like to thank them for their patience in finishing this publication, as I assumed the role of Ombudsman only weeks before the report was completed. In addition, I'd like to express my sincere gratitude to the staff at USCIS for the time and effort they spent gathering data and answering questions. Our work is only possible through their ongoing cooperation and commitment to public service.

With that, I am pleased to present the 2017 Citizenship and Immigration Services Ombudsman's report to Congress.

Sincerely,

A handwritten signature in blue ink that reads "Julie Kirchner". The signature is written in a cursive, flowing style.

Julie Kirchner
Citizenship and Immigration Services Ombudsman

Executive Summary

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman) 2017 Annual Report covers calendar year 2016, as well as key developments in early 2017, and 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 problems, recommendations, and best practices in the humanitarian, employment, and family areas, as well as in customer service and process integrity.

2016 in Review

In 2016, the Ombudsman received 11,900 requests for case assistance, an increase of 25 percent from 2015. Just less than half (43 percent) of the requests came from individuals who were represented in seeking these services, either by attorneys or accredited representatives.

Overall, 26 percent of the requests were for employment-based matters; 32 percent for humanitarian-based matters; 21 percent for family-based matters; and 21 percent for general immigration matters, such as applications for naturalization. In 2016, individuals sought the most assistance for problems related to Form I-485, *Application to Register Permanent Resident Status or Adjust Status*, which constituted 17.17 percent of the cases received, closely followed by Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*, with 17.14 percent.

The Year in Outreach

In 2016, the Ombudsman conducted 91 stakeholder engagements to better understand and discuss ways to address concerns about the delivery of immigration services and benefits. To inform stakeholders of new initiatives and receive feedback on a variety of topics and policy trends, the Ombudsman hosted six public teleconferences and held its Sixth Annual Conference at the National Archives and Records Administration in Washington, D.C. on December 6, 2016.

Key Developments and Areas of Focus

Families

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

In FY 2016, USCIS received over 972,000 naturalization applications—nearly 200,000 more than projected—in advance of a scheduled fee increase and the presidential election. In April 2016, USCIS expanded its Transformation initiative to include the processing of naturalization applications. Introducing Form N-400, *Application for Naturalization*, into the Electronic Immigration System (ELIS), the Transformation platform, represented a major undertaking for the agency because naturalization processing is the most complex application to be incorporated thus far. However, USCIS initiated Form N-400 into ELIS at a time when the agency was dealing with significantly higher demand. At the same time, USCIS also continued to process N-400 applications through paper-based adjudications. USCIS suspended ELIS processing of new naturalization applications 4 months after the initial launch because of multiple technical problems, which negatively impacted processing times. While many of these initial difficulties have been resolved, applicants for naturalization continue to face delays in obtaining the rights and privileges of citizenship.

Military Immigration Issues: Immigration Services for Those Who Serve

The delivery of military immigration benefits to our service members, veterans, and their families is essential to military readiness and to national security. Background and name checks continue to cause processing delays and hinder USCIS from completing military naturalization applications in accordance with the Naturalization at Basic Training Initiative. Service members continue to experience difficulties as their files are transferred among multiple jurisdictions. Additionally, the clearance requirements imposed by a September 30, 2016 Department of Defense Memorandum on the Military Accession Vital to the

National Interest program has led to substantial delays and status issues for those joining the Armed Services through this program and applying for naturalization.

Changes in Policy and Practice for Provisional Waivers

The Provisional Unlawful Presence Waiver program was implemented in 2013 to “promote and preserve family unity” for certain spouses or parents of U.S. citizens who are unlawfully present in the United States and must depart in order to obtain lawful permanent resident status. In 2016, USCIS expanded the program to include all statutorily eligible applicants, updated the USCIS Policy Manual to expand the extreme hardship standard, and updated the form instructions to include a summary of extreme hardship factors. USCIS also stopped denying provisional waiver applications based on the “reason to believe” ground. The majority of the requests for case assistance the Ombudsman received involved denials (issued prior to the regulation change) that did not provide specificity of the “reason to believe” there were other grounds of inadmissibility, did not appear to reflect a complete review of the documentation supporting the claim of extreme hardship, and lengthy processing times.

Employment

USCIS Administrative Review in Employment-Based Decisions: Appeals and Motions

Administrative review, through motions to reopen and reconsider to the field and appeals to the Administrative Appeals Office (AAO), provides individuals and employers an opportunity to obtain reexamination of a USCIS denial. The AAO has made significant improvements to its processing times, completing most administrative appeals within 180 days. However, when the AAO posts processing times, they do not include the time the appeal is first reviewed by the USCIS field office or service center that made the initial decision. There are a variety of steps USCIS could take to ensure that administrative review is meaningful and timelier, including:

- Establish processing time goals for initial field review of motions;

- Publish more accurate processing times for AAO appeals that include the time it takes to conduct the initial field review. For most form types, the AAO processing time is currently 3 months or less; and
- Clarify the Form I-290B by providing more explicit instructions, or alternatively, separate motions and appeals into two separate forms.

EB-5 Investors

Congress extended the Immigrant Investor (EB-5) Regional Center Program, most recently through September 30, 2017, but a series of short-term extensions has triggered surges in Form I-526, *Immigrant Petition by Alien Entrepreneur* filings in 2015 and 2016. There is a high demand for EB-5 visas. Investors and their dependents from China who are at the end of the Form I-526 adjudication queue may have to wait 10 years or longer for immigrant visas under the EB-5 program. On November 30, 2016, USCIS released a six-chapter addition to its Policy Manual titled “Investors,” synthesizing and aligning the agency’s regulations, decisional law, policies, and procedures with the statute. Amidst ongoing legislative reform efforts, in January 2017, USCIS published proposed rules that would establish a Regional Center compliance and oversight program, increase minimum investment levels, and amend the methodology for determining Targeted Employment Areas.

The AC21 Regulation

In November 2016, USCIS published a long-awaited final regulation, often referred to as “AC21” after the authorizing legislation, intended to improve and modernize several employment-based immigrant and nonimmigrant programs by increasing flexibility, transparency, and certainty for foreign workers and U.S. employers. The rule centralized many of USCIS’ long-standing policies for the H-1B Specialty Occupation and employment-based immigrant visa programs. DHS received tens of thousands of comments on the proposed rule and related forms from stakeholders, particularly foreign workers, voicing concerns over the elimination of the 90-day regulatory processing requirement for initial employment authorization applications, and over other areas of work authorization.

While it is too early to determine the full effect of the new rule, the Ombudsman will continue to track these changes and their impact on stakeholders.

Humanitarian

Delays in Asylum Processing

A confluence of factors, including a spike in applications, has led to a significant backlog of affirmative asylum cases pending before USCIS; by the end of 2016, more than 223,433 affirmative asylum cases were awaiting adjudication by USCIS. The agency has taken steps to address the asylum backlog, including expanding the asylum officer corps and opening satellite asylum offices. However, these efforts, building on others implemented in 2015, have not yet significantly reduced the asylum backlog. A large volume of credible and reasonable fear cases with prioritized processing timeframes continues to limit the Asylum Division's capacity to direct its resources to the adjudication of pending affirmative asylum cases.

U Visa Backlogs

Demand for U nonimmigrant visas is now so high that petitioners and their family members wait nearly 3 years before placement on the U visa waiting list if deemed approvable, pending an available visa. Correspondingly, individuals and their family members seeking U visas must wait years before they receive employment authorization; they may be living in the United States and subject to removal, or residing abroad in vulnerable situations. USCIS has taken steps to accelerate nonimmigrant U visa processing, most notably by having the Vermont Service Center, which has traditionally housed the unit that conducts humanitarian benefits adjudications, share the adjudication of U petitions with the Nebraska Service Center. Stakeholders would benefit from greater transparency regarding the backlog, including a clearer breakdown of the number of U nonimmigrant petitions that are pending adjudication before placement on the waiting list.

Interagency, Customer Service, and Process Integrity

The Escalating Cost of Immigration Services

USCIS case processing and services are almost entirely funded by application and petition fees paid by applicants and petitioners, rather than by Congressional appropriations. USCIS regularly assesses its fee structure to reflect the actual cost of processing benefits and services. The most recent fee rule, published on October 24, 2016 and effective December 23, 2016, raised fees by a weighted average of 21 percent. When announcing the 2016 and prior fee increases, USCIS committed to timely processing of applications and petitions, but has been unsuccessful in achieving its processing goals. Processing delays at the agency are largely due to fluctuations in filing levels, the lag time between fee increases and the onboarding of new staff, the complexity of case review, and enhanced fraud detection and security check requirements.

The Continuing Challenge of Transformation

USCIS is in the midst of a troubled, years-long modernization effort, referred to as "Transformation," to move from paper-based to electronic filing, adjudication, and case management across approximately 90 immigration product lines. After more than 10 years of work, at the end of 2016, USCIS stakeholders were only able to file online consistently for two immigration benefits via ELIS. USCIS internal use of ELIS did advance, with the agency now adjudicating five forms through ELIS by the end of 2016. Despite substantial planning and training, however, USCIS' major internal launch in ELIS, the Form N-400, experienced significant technical problems that forced USCIS to temporarily halt ELIS naturalization adjudications and delayed the launch of other product lines for electronic processing. The slow development of Transformation and challenges in ELIS operations are being closely scrutinized by the Office of the Inspector General (OIG), the Government Accountability Office (GAO), Congress, and the media. Both the OIG and GAO reviewed the program in 2016 and expressed concern with the progress and problems that continue to plague the project.

USCIS Processing Times: Improved Accuracy Needed

USCIS processing times set the public’s expectations regarding how long the agency is taking to adjudicate applications and petitions. However, USCIS’ current approach to processing times often does not accurately convey the actual time it is likely to take to adjudicate cases. Lack of transparency in processing times diminishes trust in the agency and hinders stakeholders’ ability to make informed decisions impacting their professional and personal lives. Processing times are fundamental to holding USCIS accountable for timely services, yet currently posted processing times do not include the agency’s processing time goals.

Mailing Issues

Despite recent improvements to USCIS mailing protocols, including the agency’s online change of address system, thousands of pieces of mail are not received as intended, returned as undeliverable, or delivered to someone other than the addressee. When notices and documents do not reach their intended recipient, individuals miss important appointments, deadlines, and documents, with potentially significant adverse consequences. Improper delivery of notices and documents creates security vulnerabilities, including the potential for misuse of secure documents such as lawful permanent resident cards. USCIS should consider additional options for the delivery of notices and documents, including requiring a signature for delivery of secure documents, launching a long-planned “hold for pickup” pilot, and expanding use of pre-paid courier service mailing labels.



Homeland
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