Annual Report 2018

Citizenship and Immigration Services

Ombudsman

June 28, 2018
June 28, 2018

The Honorable Chuck E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Bob W. Goodlatte
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Dear Chairmen and Ranking Members:

The Office of the Citizenship and Immigration Services Ombudsman is pleased to submit, pursuant to Section 452(c) of the Homeland Security Act of 2002, its 2018 Annual Report.

I am available to provide additional information upon request.

Sincerely,

Julie Kirchner
Citizenship and Immigration Services Ombudsman
Dear Members of Congress,

I am pleased to present to you the Ombudsman’s 2018 Annual Report to Congress. This report is required by Section 452 of the Homeland Security Act of 2002, which established the Office of the Citizenship and Immigration Services Ombudsman. It also charged us with the responsibility of helping applicants and employers solve difficulties encountered when applying for immigration benefits and working to improve systemic problems in the delivery of immigration services.

The year 2017 was one of significant change in immigration policy. Inaugurated in January, President Trump quickly signed multiple immigration-related executive orders for the purpose of ensuring that the nation’s immigration laws are faithfully executed. Immediately, the various immigration agencies within the Department of Homeland Security—including Customs and Border Protection, Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services (USCIS)—set out to execute those orders through draft regulations, new policy guidance, and revised processes.

With respect to immigration benefits, the changes were significant and wide-ranging. Some of the most notable changes, for example, included: requiring interviews for all employment-based immigrants; issuing revised specialty occupation guidance for H-1B workers; terminating Temporary Protected Status for certain individuals; initiating a phase-out of the Deferred Action for Childhood Arrivals Program; and curbing the use of parole. As USCIS worked to implement these changes, the agency faced additional challenges from the increase in immigration filings (up 42 percent since FY 2012), growth of processing times, and the goal of revamping the agency’s years-long program for digitizing its services, frequently referred to as “transformation.”

Given this context, it is not surprising that the Ombudsman’s Office received another record number of requests for case assistance in FY 2017. While the types of applications at issue varied, the large majority of our case work (69 percent) related to delays in processing times. These were particularly prevalent in green card applications (I-485s), naturalization applications (N-400s), and employment authorization documents (I-765s), which saw a spike in processing times at the end of 2017. This marks the fifth year in a row that processing times have been the largest driver of case work for our office.

While our Case Team tackled a growing case load, our policy advisors were working exceptionally hard to digest the myriad of changes in immigration policy and processes. Throughout the year, we sought to use the Ombudsman’s Office to educate the public via meetings, teleconferences, and our Annual Conference, where we were able once again to bring together government officials, practitioners, nonprofits, and other stakeholders to discuss the latest developments in the field of immigration and hear about potential solutions to some of the thornier problems facing those involved.
This year’s Annual Report seeks to navigate the changing landscape of immigration by focusing on a handful of programs and processes that highlight key elements of USCIS’ mission: efficiency and integrity. These goals are both critical—and compatible—within our immigration system. Indeed, combating fraud and security threats preserves resources for bona fide applicants; efficient processing can discourage fraud, deter potential security threats, and limit the opportunity for bad actors to engage in either. While we recognize that this report, due to the volume of material and resources available, touches on only some of the issues deserving attention, we hope this work offers readers a useful foundation and context for understanding numerous changes underway.

I would like to express my sincere gratitude to my staff for the long hours they have invested in this report. I would also like to thank our colleagues at USCIS, who met with us and provided us data as we developed this report. As always, we welcome your feedback on this year's report and all the work we do in the Ombudsman’s Office to assist and inform individuals, employers, Congress, and other stakeholders concerning immigration benefits issues.

Sincerely,

[Signature]

Julie Kirchner
Citizenship and Immigration Services Ombudsman
Executive Summary

2017 in Review

U.S. Citizenship and Immigration Services (USCIS) administers an immigration benefits system that handles millions of applications and petitions annually. Americans and prospective Americans all have a stake in the proper administration of immigration benefits. While USCIS timely adjudicates the majority of filings in accordance with applicable statutes, regulations, and policy, the Ombudsman’s Office is able to assist when applications are delayed past posted processing times or there are administrative or adjudication errors.

The Ombudsman works to resolve case issues directly with USCIS field offices, service centers, and other offices as a part of its mission. The Ombudsman identifies trends that are significant or problematic and addresses them with USCIS at the appropriate level. While not every Ombudsman inquiry results in a case approval, we make every effort to ensure USCIS treats each case in a fair and consistent manner and in line with applicable policy and procedure.

In 2017, the Ombudsman conducted almost 70 stakeholder engagements, including teleconferences, meetings with and presentations to attorneys and accredited representatives, community-based organizations, employers, Congressional staffers, state and local government officials, and individual applicants. The Ombudsman also held its seventh annual conference to bring together government officials, external stakeholders, and other interested parties in a unique forum to discuss and develop ideas for improving the delivery of immigration services.

USCIS Anti-Fraud Initiatives

USCIS anti-fraud initiatives foster both an efficient and a secure immigration benefits system. While USCIS has always ensured fraud detection was a substantial part of the mission, the development of the Fraud Detection and National Security (FDNS) Directorate has formalized many of its processes and systems to ensure ineligible applicants do not receive benefits. In 2017, as part of FDNS’s move toward a “risk-based” anti-fraud model, it expanded site visits to more employers and incorporated more electronic solutions. FDNS is improving its metrics for measuring case processing, but would benefit from the electronic case processing system envisioned by USCIS’ transformation project.

Transformation

In 2017, USCIS revised its overarching electronic case management and benefits processing goals. USCIS now prioritizes the development of core capabilities, which cut across all form types. In tandem with these new goals, USCIS consolidated the former Office of Transformation Coordination into the Office of Information Technology, reporting through that office to the USCIS Director. In recent months, these changes have helped USCIS focus its efforts in electronic delivery of benefits adjudication through its electronic immigration system (ELIS). Stakeholders reported improvements in ELIS functionality but continue to voice concerns over a range of ELIS issues.

Background Checks

All applicants and petitioners applying for U.S. immigration benefits are required to undergo some type of criminal and national security background checks to ensure the integrity of the immigration system. The background check process can be confusing to stakeholders who may not understand how it works or how it impacts the adjudication of their cases. However, the Field Office Directorate, the Service Center Operations Directorate, and the Refugee, Asylum and International Operations Directorate all have standard operating procedures for running background checks on applications that are processed within their respective offices. With help from their partners at the U.S. Federal Bureau of Investigation, these offices have made improvements to parts of the
process. Recently, in response to Executive Order 13780, USCIS increased its screening of certain applicants, with plans to expand this heightened scrutiny. USCIS would further increase confidence in its anti-fraud and national security measures by educating the public on the basic elements of its processes, including how they can potentially impact the adjudication of cases.

**Affirmative Asylum Backlog**

As of March 31, 2018, USCIS had well over 300,000 affirmative asylum applications pending a final decision from the Asylum Division. While the backlog can be traced to the growing number of individuals filing asylum claims, the cause of the backlog stems from several converging factors. USCIS has taken a series of steps to reduce its pending caseload, but despite hiring new staff, changing processes, and opening additional offices, reducing the backlog will take time and present an ongoing challenge.

**EB-5 Immigrant Investor Program**

While the EB-5 Program remains attractive to foreign investors, many stakeholders, including members of Congress, have increasingly voiced concerns regarding fraud and abuse, which undermine the original purpose of the program and detract from potential benefits offered by it. USCIS has sought to address these concerns through a range of reforms, including proposed regulations issued in January 2017 that increase program oversight and seek to curb some of the abuses. It remains to be seen whether these reforms will be sufficient to reassure those concerned about the increased oversight, or if they will have a chilling effect on participation.
# Table of Contents

**Letter to Congress** ......................................................................................................................................................... iii

**Message from the Ombudsman** ......................................................................................................................................... iv

**Executive Summary** .............................................................................................................................................................. vi

**Office of the Citizenship and Immigration Services Ombudsman: 2017 in Review** .................................................. 2

## Key Developments and Areas of Focus

**USCIS Anti-Fraud Initiatives** ........................................................................................................................................ 8

**Transformation** .................................................................................................................................................................... 18

**Background Checks** ............................................................................................................................................................. 28

**Affirmative Asylum Backlog** ........................................................................................................................................... 36

**EB-5 Immigrant Investor Program** .................................................................................................................................... 48

## Appendices

- Common USCIS Background Checks: The Basics, By Directorate ................................................................. 57
- Recommendations Update ........................................................................................................................................... 59
- The Ombudsman by the Numbers ................................................................................................................................. 61
- Homeland Security Act Section 452 ............................................................................................................................... 64
- USCIS Naturalization and Adjustment of Status Processing Times ................................................................. 66
- U.S. Department of Homeland Security Organization Chart .................................................................................. 67
- How to Request Case Assistance from the Ombudsman ....................................................................................... 68
- Acronyms ........................................................................................................................................................................... 69
The Office of the Citizenship and Immigration Services Ombudsman is an independent, impartial, and confidential organization within the Department of Homeland Security (DHS), charged with reviewing and assessing the activities of the U.S. Citizenship and Immigration Services (USCIS). The Ombudsman reports directly to the Deputy Secretary of DHS, and is neither a part of nor reports to USCIS.

The Ombudsman has a specific statutory mission:  

- Assist individuals and employers in resolving problems with USCIS;
- Identify areas in which individuals and employers have problems in dealing with USCIS; and
- Propose changes in the administrative practices of USCIS to mitigate identified problems.

The Office achieves its mission through:

- Evaluating requests for assistance from individuals and employers and, where appropriate, recommending that USCIS take corrective action;
- Facilitating interagency collaboration and conducting outreach with a wide range of public and private stakeholders; and
- Reviewing USCIS’ operations; researching applicable laws, regulations, policies, and procedures; and issuing recommendations (both formal and informal) to bring systemic issues to USCIS’ attention.

Requests for Case Assistance

USCIS administers an immigration benefits system that handles millions of applications and petitions annually. On any given day, USCIS adjudicates more than 26,000 requests for various immigration benefits, from naturalization to travel documents to work authorization.  

Individuals and employers rely on USCIS adjudications to begin or continue employment; reunite with family members; seek humanitarian protection; apply for drivers’ licenses, Social Security numbers, health insurance, bank accounts, and mortgages; enroll in school; and travel outside of the United States, to name but a few essential activities. The American people rely on USCIS to maintain integrity within the immigration system, to prevent fraud, maintain national security, and overall ensure the immigration system serves the national interest. In short, Americans and prospective Americans all have a stake in the proper administration of immigration benefits.

USCIS timely adjudicates the majority of filings in accordance with applicable statutes, regulations, and policies. However, when cases are delayed past posted processing times or there are administrative or adjudication errors, individuals and employers may contact the Ombudsman for case assistance.

To effectively and efficiently carry out its mission, the Ombudsman works to resolve case issues directly with USCIS field offices, service centers, and other offices. Collaboration and open dialogue are key tools in resolving problems with pending applications or petitions that have been brought to the Ombudsman’s attention.

Ombudsman case assistance, of course, does not always result in a case approval. Based on the Ombudsman’s intervention, USCIS may take action on a long-pending case by issuing a Request for Evidence (RFE), a Notice of Intent to Deny or Affirmation, or other legal actions.

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(NOID), or a denial. At times, cases that have fallen outside normal processing times have done so for reasons beyond the control of USCIS, such as a pending background check being conducted by another agency. Some adjudication issues are a matter of discretion, and USCIS may not change its decision after an Ombudsman inquiry. It is important to note that the Ombudsman’s case assistance is never a substitute for legal recourse; individuals and employers must timely file Motions to Reopen/Reconsider and appeals to preserve their rights, even after making a request for case assistance to the Ombudsman.3

3 See generally, 8 CFR § 103.3(a) (appeals), § 103.5 (motions to reopen/reconsider).

A DAY IN THE LIFE OF AN IMMIGRATION LAW ANALYST

The Ombudsman works to resolve a wide range of requests for assistance across employment, family, and humanitarian categories, ranging from cases that are outside posted processing times to more complex issues involving adjudicative, administrative, or multi-agency concerns.

Here is how some of our Immigration Law Analysts describe their casework.

Q. What types of cases do you work with on a daily basis?
A. I work on a variety of cases that include family, humanitarian, and employment issues. Many of us in the office specialize in certain areas, such as employment authorization, family immigration, adjustment of status, or naturalization.

Q. How do you determine if the Ombudsman can assist?
A. First, I determine the problem the applicant is facing and decide whether USCIS has jurisdiction over the issue. We cannot assist with issues related solely to U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or the State Department (DOS). I check for the proper parties’ consent and also check to see what steps the applicant has taken to resolve the issues with USCIS. As an office of last resort, we require that applicants first try to resolve the problem directly with USCIS before contacting our office for assistance. If the request is about processing delays, I check USCIS’ processing times to ensure that the case inquiry date has passed the receipt date and that the case really is outside of normal processing times. Unless there are urgent circumstances, our office closes inquiries that are within normal processing times. Our office uses the same expedite criteria as USCIS to determine which cases may be eligible to be expedited.4 If the applicant has submitted documentation to demonstrate the need for expedited processing of his case, I will move forward with contacting the appropriate USCIS office.

If the request is about an administrative or adjudication issue, I look at the supporting documents and review USCIS systems and the appropriate laws and regulations to determine whether USCIS may have failed to consider all the facts or inaccurately applied the law to the case.

Q. What do you do if you determine that the Ombudsman cannot assist?
A. If I determine that our office cannot assist, I will contact the applicant or legal representative by phone or email to explain that we cannot assist and why. Depending on the circumstances, I may include details on when they may contact us again, if necessary. For example, if our office is unable to assist because the case is within

4 USCIS Webpage, “Expedite Criteria” (Jul. 27, 2016); https://www.uscis.gov/forms/expedite-criteria (accessed Mar. 3, 2017). The criteria are severe financial loss to company or person; emergency situation; humanitarian reasons; nonprofit organization whose request is in furtherance of the cultural and social interests of the United States, Department of Defense, or national interest situation; USCIS error; or compelling interest of USCIS. Individuals or employers requesting expedited handling are instructed to clearly state so in Section 8 (“Description”) of Form DHS-7001, briefly describe the nature of the emergency or other basis for the expedite request, and provide relevant documentation to support the expedite request. All expedite requests are reviewed on a case-by-case basis. While the Ombudsman will forward expedite requests, it is up to USCIS whether it will expedite the Ombudsman’s inquiry and the application or petition.
processing times, I will let the applicant know that he or she may contact our office again once the case is outside normal processing times. If our office is closing the request for case assistance because the applicant has not attempted to resolve the issue with USCIS, I will provide the applicant with information on how to do so. If the issue is outside of USCIS, and the Ombudsman’s jurisdiction, I may provide contact information for another federal agency. Often, applicants are referred to our office by someone who has had success with our services. As a result, when our office cannot assist an applicant, it is imperative that we provide a detailed explanation that allows the applicant to understand the uniqueness of each request we receive, and that also provides the applicant with a better understanding of when to contact our office for assistance.

Q. What steps do you typically take when working a case?

A. First, I look to see the priority the case has been assigned and work urgent cases accordingly. Then, I review the applicant’s description of the problem. I contact the individual if I need additional information. Next, I research the law, precedent, or policies to know how best to proceed. At this stage, I might consult with one of my colleagues who is also a subject matter expert. Finally, I review the case history in several of USCIS’ databases, where I can find the location of the file, confirm filing dates, and check on the next steps in the process.

Next, I write up the case history and an analysis of the problem and send it to a designated contact at the appropriate USCIS office. I ask USCIS to review the case to ensure that the law and policy have been applied properly. Finally, I contact the applicant to let him/her know that I have made an inquiry on their behalf and to share a reasonable timeline for a response from USCIS (generally USCIS has 15 business days to respond to normal inquiries and 5 business days to respond to expedited inquiries). I continue to follow up with USCIS until there is a final resolution to the issue.

Q. What do you do when you get a response from USCIS? What if that response cannot be disclosed to the applicant?

A. When I receive an update from USCIS, I make a notation in our database and, if it conveys a final action, I notify the applicant by email or by telephone. If necessary, I follow up with additional questions to USCIS, then inform the applicant that we are continuing to work toward final resolution.

If the information I get back from USCIS cannot be disclosed to the applicant, I share as much general information about processes and timelines as I can to assure the applicant that their case is not lost and enable them to plan their lives and work accordingly...I continue to assure applicants that our office will monitor their case until a final decision is made.

Q. To what extent do you engage with DHS components or agencies other than USCIS?

A. I communicate regularly with DOS’s National Visa Center about its work with USCIS. I sometimes contact ICE and CBP to try to get applicants additional assistance or another avenue or resource to obtain further assistance on a case. I also visit offices, attend meetings, and participate in teleconferences hosted by USCIS and other agencies.

Q. How do the individual cases you work on contribute to the work of the Ombudsman’s Policy Team?

A. Through the requests I see every day, I can identify trends and report them to our leadership, letting them know of hot topics or trouble areas that we need to bring to USCIS’ attention through meetings or written recommendations that have the potential to impact thousands of individuals seeking immigration services. The trends can also serve as topics for teleconferences. We are the canary in the coal mine.

Q. What is most challenging about your work?
A. Cases can be extremely complex, but that can be overcome with expertise. What does create problems are when requestors forget an essential fact, like being represented by an attorney and forgetting to submit a notice of appearance, a Form G-28, for an application or petition. Another problem develops when requestors call and email frequently—sometimes every day—to get a status update. We take our contact with the public very seriously, and make every attempt to respond to status inquiries. Unfortunately, when they are overwhelming because of their frequency, responding to them comes at the expense of actually working on cases.

Q. What are the rewards of successfully resolving a case?
A. Helping others resolve problems is extremely rewarding. I always feel satisfied when I am able to assist someone navigate an immigration system that can be overwhelming—even to experts—and am able to make a difference in someone’s life. I am proud of our determination and commitment in assisting those who have run out of options.

Q. What assistance can the Ombudsman provide that others in the federal government cannot?
A. The Ombudsman’s Office has a long-established relationship with USCIS that allows us to communicate directly with service centers, field offices, and refugee and asylum offices. My colleagues and I come from a variety of immigration backgrounds and agencies—private immigration law practice, USCIS, and other federal offices, including the U.S. Departments of Justice (DOJ), Labor (DOL), DOS, and we use our diversity of knowledge and experience to spot issues and offer solutions.

Q. What experience/training do you bring that helps you do your job?
A. Before coming to the Ombudsman’s Office, I served as an adjudicator at a USCIS service center and an asylum office. I learned quick problem-solving skills in the adjudications context, innovation to resolve serious case problems in new ways, team-building, triage and public-relations skills. Interviewing applicants taught me patience and compassion and to recognize that files represent real lives. I continue to take immigration law trainings and learn every day from my colleagues—the law and policy changes frequently.

2017: Issues Submitted in Requests for Case Assistance

- 66% Outside Normal Processing Times
- 2% Multi-Agency Issue
- 3% Emergency Circumstance
- 7% Adjudication Issue
- 9% Administrative Issue
- 13% No Difficulty Found
Extended Review

Where USCIS does not provide a specific time frame for resolution, and the case is 6 months or more past USCIS’ processing times, the Ombudsman will place the assistance request in a queue of long-pending cases, referred to as Extended Review. The Ombudsman follows up with USCIS Headquarters regularly on such cases until the agency takes action.

In March 2017, the Ombudsman reviewed its list of over 1,400 Extended Review cases and identified inquiries involving an application or petition that had been pending with USCIS for 5 years or longer. The Ombudsman asked that USCIS take a closer look at over 100 cases to see if any could be ripe for adjudication or if additional information could be provided to permit adjudication. Cases that USCIS had identified as being on hold for reasons outside of USCIS’ control, such as Terrorism-Related Inadmissibility Grounds (TRIG)\(^6\) or litigation in the courts, were not included. To date, 63 percent of the identified cases have been resolved, and the Ombudsman continues to encourage USCIS to act on the remainder. This not only resolves these cases for the individuals involved but enhances system integrity by moving these individuals to the next stages, whether positive or not.

2017 Casework in Review

In calendar year 2017, the Ombudsman’s team of approximately 18 analysts received 11,048 requests for assistance submitted by the public. Since 2013, the number of requests for assistance received has increased an average of 20 percent per year. The Office resolved 10,746 requests for assistance during that same time period. The team provides case assistance daily to the thousands of people who seek assistance.

The following cases illustrate just some of the types of assistance the Ombudsman provided in 2017.

- **Lost Documentation.** The Ombudsman assisted the lawful permanent resident (LPR) parents of a child born in India. The child was admitted to the United States within 2 years of her birth and her passport was stamped appropriately to indicate she too was an LPR. The parents expected her green card to be mailed to them shortly after their entry. At a visit to the local field office, USCIS confirmed the child’s LPR status and asked the parents to submit Form I-90, Application to Replace Permanent Resident Card. Months later, when they still had not received the green card, the USCIS National Customer Service Center (NCSC) told the parents to go back to the local USCIS field office to complete a Form I-181, Creation of Record of Lawful Permanent Residence because USCIS had no record of the child’s entry to the United States. At the local office, however, the parents were told there was no such process. A year later, the family received a notification that the Form I-90 application had been denied because USCIS did not have the entry materials. The same day they also received a notification from USCIS that the case had been reopened. Four months later, they received another denial from USCIS. The Ombudsman helped the family obtain the child’s lost visa package and have the entry documents recreated so that USCIS could issue a green card for their daughter.

- **Processing Times.** One naturalization applicant contacted the Ombudsman when his application stalled. He had been fingerprinted and interviewed, had passed his naturalization test, but 16 months later still had not received an appointment for his oath ceremony. After both he and his attorney contacted USCIS with no resolution, the Ombudsman contacted the field office of jurisdiction and the applicant received an appointment for his oath ceremony.

- **USCIS Databases.** When a ten-year-old applicant for LPR status moved to a new home with her family, her mother contacted USCIS and the U.S. Postal Service to inform them of the family’s new address. Seven days later, USCIS approved the daughter’s application and ordered production of her green card. Unfortunately, because USCIS’ systems were not updated in a timely manner, the card was mailed to her previous address. The Ombudsman assisted by getting a new card produced and sent out within the week.

- **Fee Waiver.** One applicant with a pending Form I-485, Application to Register Permanent Residence or Adjust Status filed for an employment authorization with a request for a fee waiver. USCIS waived the fee, but denied the employment authorization five months later, stating that it had not received the fee or a waiver request. The Ombudsman shared a copy of the fee waiver with USCIS to correct the error.

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\(^6\) Inadmissibility exemptions may only be granted by the Secretaries of Homeland Security and State. INA § 212(d)(3)(B).
Typographical Error. When an LPR filed Form I-130, Petition for Alien Relative for his son, he received assistance from a notary who made a typographical error on the son’s date of birth. The error led to USCIS classifying the son as an adult child, rather than a minor. The father sought a correction from USCIS, and the date of birth was changed, but the preference category was not. The Ombudsman contacted USCIS and immediately confirmed the typographical error and corrected the date. USCIS corrected the preference category in its data systems and issued an approval notice later that day.

Mailing Issues. USCIS issued an RFE on a Form I-526, Immigrant Petition by Alien Entrepreneur, which the U.S. Postal Service returned to USCIS as undeliverable. The attorney contacted the Ombudsman for assistance in getting a copy of the request in time to respond. Upon investigation, the Ombudsman determined that the RFE had been sent to an incorrect address. USCIS reissued the RFE, along with a new response time frame to respond.

Erroneous Denial. A woman applying to USCIS for student status was denied because the agency asserted she did not maintain her previous visitor status while USCIS adjudicated the change of status request. The denial was in error because she had in fact filed four applications for extension of her visitor status to bridge the 2 years that USCIS took to adjudicate the change of status application. The Ombudsman investigated the situation and discovered that the bridge applications for extension of status were pending at one USCIS service center while the application for change of status was pending at another. The Ombudsman contacted the center that had the extension applications to have them prioritize adjudication so that the second center could take corrective action on the change of status application and resolve the applicant’s status.

The Year in Outreach

In 2017, the Ombudsman conducted 69 stakeholder engagements. These included meetings with and presentations to a wide range of groups, including attorneys and accredited representatives, community-based organizations, employers, Congressional staffers, state and local government officials, and individual applicants. The Ombudsman also conducted outreach through a series of teleconferences with stakeholders. The Ombudsman hosted the following public teleconferences in 2017 to provide information and to receive feedback on issues and policy trends:

- Ombudsman’s Annual Conference Highlights (January 26)
- Executive Orders Listening Session (February 9)
- USCIS AC21 Regulations (March 22)
- USCIS Office of Citizenship (May 24)
- H-1B, Specialty Occupation, FY2018 Cap Filing Season (June 20)
- Ombudsman’s Annual Report Highlights (July 27)
- Employment-Based Adjustment Interviews (September 28)
- USCIS’ Handling of Natural Disasters (October 25)
- Temporary Protected Status (December 14)

The Ombudsman’s Seventh Annual Conference

On December 7, 2017, the Ombudsman hosted the seventh Annual Conference, Government and Stakeholders Working Together to Improve Immigration Services. There were over 300 attendees. The morning plenary sessions included remarks from USCIS Director L. Francis Cissna and then-Acting Director of the Executive Office for Immigration Review James McHenry. Director Cissna spoke of his goals for maintaining a fair and transparent immigration system that applies the law consistently, and about his plans to issue new regulations in accordance with the Administrative Procedure Act. Director McHenry spoke of his plans to add more immigration judges and support staff, improve infrastructure, and to continue to work effectively with partners at USCIS, ICE, and CBP.

Break-out sessions in the afternoon included panels on citizenship and naturalization issues, background checks and USCIS processing, E-Verify, transformation, and the H-1B Specialty Occupation program.
USCIS Anti-Fraud Initiatives

**Responsible Office:** Fraud Detection and National Security Directorate

**Key Facts and Findings**

- Over the past 6 years, the Fraud Detection and National Security (FDNS) Directorate’s authorized staffing levels more than doubled from 756 positions in FY 2012 to 1,548 positions in FY 2018.

- As part of FDNS’s pivot toward a “risk-based” anti-fraud model, in 2017 it implemented a Targeted Site Visit and Verification Program (TSVVP) focused on visits to H-1B employer worksites where fraud and abuse may be more likely to occur.

- Challenges in USCIS’ ongoing transition to a comprehensive electronic case filing and management system have limited FDNS’s capacity to combat fraud.

- Requests for case assistance submitted to the Ombudsman suggest that a small number of cases linked to fraud investigations remain pending for significant lengths of time. The Ombudsman’s Office recognizes the challenges inherent in assessing the efficiency of such investigations, and will continue to monitor the issue of efficiency as it relates to these and other anti-fraud activities.

**Anti-Fraud Efforts Constitute a Core Part of the USCIS Mission**

Administering an efficient and secure immigration benefits system lies at the core of USCIS’ mission. Anti-fraud initiatives undertaken by USCIS advance both prongs of this mandate. Combating fraud helps keep unscrupulous

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actors from obtaining immigration benefits. Moreover, reducing fraud preserves agency resources for legitimate requests and leads to more efficient processing.

The recent history of USCIS and its predecessor, the Immigration and Naturalization Service (INS), reflects an elevated awareness of fraud’s consequences and an enhanced commitment to combatting it. In 2002, shortly after the September 11, 2001 terrorist attacks, the Government Accountability Office (GAO) noted that “[i]mmigration benefit fraud has been a long-standing problem for INS that has grown more intense and serious” as foreign nationals “have used the application process for illegal activities, such as crimes of violence, narcotics trafficking, and terrorism.”8 GAO concluded that INS’s approach to deterring benefit fraud was “fragmented and unfocused” and urged a revised approach to identifying and investigating such fraud.9

By 2004, the newly-formed USCIS had established a Fraud Detection and National Security Office.10 Six years later, USCIS elevated this office to a directorate—a director-controlled department overseeing two or more divisions11—enhancing FDNS’s integration into and influence across the rest of the agency.12

USCIS vested FDNS with the mission of detecting, deterring, and combatting fraud, as well as national security challenges and threats to public safety in the immigration benefits process.13 FDNS seeks to execute this mission by, among other things: (1) conducting administrative investigations into possible acts of fraud; (2) developing agency-wide policies and procedures governing anti-fraud measures; (3) discerning and eliminating “systemic vulnerabilities” in the agency’s benefits process; and (4) serving as the agency’s principal liaison to law enforcement and intelligence partners.14

Case Management Entities (CMEs). A CME is a type of record maintained in the Fraud Detection and National Security Data System (FDNS-DS),15 which is USCIS’ principal system for managing information and inquiries relating to fraud, public safety, and national security concerns.16 CMEs generally relate to and reflect FDNS review of one or more specific immigration applications or petitions.17 Common CMEs include:18

- **Leads.** These are referrals received by FDNS from internal or external sources that contain an allegation of immigration-related benefit fraud as well as associated biographic or corporate information.

- **Cases.** As defined within FDNS-DS, cases constitute leads supported by articulable and actionable evidence of fraud or involving a public safety concern.

- **Requests for Assistance.** These are requests made to FDNS for data, research, or other information. These requests may originate from inside or outside of USCIS.

- **Administrative Site Visit and Verification Program (ASVVP).** ASVVPs are compliance reviews carried out to verify the legitimacy of a petitioning organization and employment offer, which often include worksite visits.

- **Overseas Verifications.** FDNS conducts these verifications to confirm education, employment, or other events that have transpired in a foreign country or to authenticate potentially fraudulent documentation.

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9 Id.
15 Information provided by USCIS (Apr. 18, 2018).
18 Information provided by USCIS (Apr. 18, 2018).
in collaboration with host countries’ document-issuing authorities.\textsuperscript{19}

The number of personnel completing such work has grown proportionally to the Directorate’s profile within the agency. FDNS staffing levels increased from 756 authorized positions in FY 2012 to 1,548 authorized positions as of the pay period covering February 18, 2018 to March 3, 2018—nearly a 205 percent increase.\textsuperscript{20}

Personnel enhancements during this span were not unique to FDNS.\textsuperscript{21} From FY 2012 to FY 2017, USCIS’ case receipt volume increased 42 percent,\textsuperscript{22} significantly elevating the agency’s overall workload and staffing needs. \textit{See} Figures 1.1 and 1.2.

FDNS maintains an organizational structure like most USCIS components, in which staff are divided between FDNS Headquarters (HQFDNS) in Washington, DC and various USCIS field offices across the country. Eighteen percent of FDNS’s on-board employees work at HQFDNS, which supports, among other divisions, a Fraud Division overseeing the Directorate’s anti-fraud activities.\textsuperscript{23} In addition, every domestic USCIS field office, service center, and asylum office retains one or more FDNS officers, as do various USCIS offices abroad.\textsuperscript{24} Although these field staff are employed by FDNS, they report in a unique relationship to both the Field Operations and FDNS Directorates. As of March 2018, a total of 1,163 FDNS employees currently work throughout the agency, with highest number of officers (631) assigned to the Field Operations Directorate (FOD). \textit{See} Figure 1.3.

FDNS officers, both in headquarters and in the field, perform one of the Directorate’s critical activities: administrative investigations into suspected immigration

\begin{itemize}
  \item \textsuperscript{20} Information provided by USCIS (Apr. 28, 2016 and Apr. 18, 2018).
  \item \textsuperscript{21} See, e.g., “Affirmative Asylum Backlog” infra in this Report (describing increases in staffing within USCIS’ Asylum Division).
  \item \textsuperscript{22} USCIS Webpage, “Service-wide Receipts and Approvals for All Form Types: Fiscal Year 2012: October 2011–September 2012” (Dec. 11, 2012); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all-form-types-performance-data_fy2012_qtr4.pdf (accessed Apr. 24, 2018); “Number of Service-wide forms by Fiscal Year to Date, Quarter and Form Status 2017” (Dec. 07, 2017); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY17Q4.pdf (accessed Apr. 24, 2018).
  \item \textsuperscript{23} Information provided by USCIS (Apr. 18, 2018).
\end{itemize}
benefits fraud. Information obtained through FDNS administrative investigations helps USCIS combat fraud in multiple ways. To begin with, it provides insights helpful to USCIS adjudicators when deciding benefits cases. More broadly, it helps uncover fraud trends and vulnerabilities across the immigration process, informing the agency’s development of systemic remedies.

Below is a simplified description of FDNS’s fraud investigation process, including its intersection with ICE operations. This is a generalized summary—in practice the process may entail different stages and vary based on the associated benefit form type, nature of the potential fraud, and additional factors. See Figure 1.4.

The FDNS Fraud Investigation Process

Stage 1—Initiation

A number of events trigger FDNS’s fraud investigation process. One catalyst is the submission of a fraud referral to FDNS by immigration officers or other USCIS adjudicators. Officers undergo specific training on fraud indicators, identification of fraudulent documentation, and types of benefit fraud. When officers encounter possible fraud, they may refer the implicated cases to FDNS for evaluation. External agencies also make referrals to FDNS, as can members of the public through the USCIS fraud tip mailbox.

In addition to manual referrals, automated screenings conducted through FDNS-DS can prompt FDNS fraud investigations. USCIS’ receipt of an immigration benefit form or the capture of an applicant’s biometric fingerprints automatically activates an electronic screening mechanism within FDNS-DS called ATLAS. ATLAS pulls information from the relevant application or petition and associated biometric and biographic system checks, then runs that information through “a predefined set of rules to determine whether the information provided by the


29 Id.


Figure 1.4: FDNS Fraud Investigation Flow Chart

**STAGE 1: INITIATION**

Fraud referrals come from a variety of sources, including:
- USCIS adjudicators
- ATLAS
- Third party agencies
- Tips from the public

Warrants administrative investigation?

**STAGE 2: ADMINISTRATIVE INVESTIGATION**

Investigation may consist of a range of actions, including:
- Checks of government databases
- Interviews of relevant parties
- Site visits
- Overseas verifications

Warrants criminal investigation?

**STAGE 3: REFERRAL TO ICE**

Referral to ICE temporarily suspends adjudication of the associated benefit form.

ICE accepts referral?

**STAGE 4: STATEMENT OF FINDINGS (SOF)**

Upon completing the administrative investigation, FDNS submits SOF to USCIS adjudicator with one of three findings:
- Fraud Found
- Fraud Not Found
- Inconclusive

ICE performs criminal investigation

FDNS ultimately issues SOFs regarding most cases that ICE accepts for investigation.

individual or obtained through the required checks presents a potential fraud, public safety, or national security concern. 33 A rules match produces a “System-Generated Notification” (SGN).

Upon receipt of a referral/SGN, FDNS personnel review the matter to determine if it warrants administrative investigation. 34 This manual review may consist of additional systems checks and further research on the benefit seeker. 35 Relevant considerations in assessing the need for an investigation include “whether there is a reasonable suspicion of fraud that is clearly articulated and actionable.” 36 If FDNS determines that an investigation is necessary, it initiates one; 37 if not, FDNS closes the inquiry 38 and returns the file to that officer with an explanation of the declination. 39

**Stage 2—Administrative Investigation**

When FDNS determines administrative investigation is warranted, it takes some or all of the following steps: (1) checking government databases; (2) searching open source information, including social media; (3) reviewing government case files; (4) making physical site visits to locations ranging from residences to workplaces; (5) interviewing applicants, petitioners, and witnesses; (6) issuing written RFIs; and (7) carrying out overseas verifications. 40 FDNS sends its findings to USCIS adjudicators, who determine immigration benefit eligibility.

Pursuant to 8 CFR § 103.2(b)(18), USCIS may place “in abeyance” cases associated with ongoing investigations. Under this regulation, once an investigation has begun, USCIS may withhold adjudication of an associated case when the agency determines that disclosure to the benefit seeker of information pertaining to that adjudication would prejudice the investigation. “Information” may include facts uncovered through the investigation or the existence of the investigation itself. 41

**Stage 3—Referral to ICE (as warranted)**

If during an administrative investigation FDNS finds information appearing to justify a criminal investigation, 42 it may refer the case to ICE through an interagency Memorandum of Agreement. 43 ICE’s Benefits Fraud Unit conducts its own review, which then may refer the matter to Homeland Security Investigations (HSI). HSI either accepts it for criminal investigation, or declines and returns it to FDNS for resumption of an administrative investigation. ICE must notify FDNS within 60 days whether it will accept or decline a fraud referral. 44 HSI

33 Id.
38 Id.
40 Id.
41 FDNS officers, USCIS adjudicators, and outside agencies may request withholding of adjudication. A USCIS District Director may authorize the request if, among other criteria, it meets regulatory requirements and serves the government’s best interests. USCIS must document the request, the District Director’s rationale for authorization, and additional supporting information. If an investigation has not concluded within 12 months after withholding begins, USCIS may extend the withholding period if the District Director obtains approval from his or her supervisor, as appropriate, to extend withholding for an additional 6 months. After 18 months, withholding may continue only if HQFDNS and the headquarters of the adjudicating directorate jointly approve an extension. Information provided by USCIS (Apr. 18, 2018).
44 Information provided by USCIS (Apr. 18, 2018).
declination does not bar USCIS from reaching a positive fraud finding and/or denying the associated benefit form.\textsuperscript{45}

FDNS’s referral to ICE temporarily suspends USCIS adjudication of the associated benefit request.\textsuperscript{46} Within 120 days of ICE’s acceptance of a referral, ICE must notify FDNS in writing if it wishes to extend the adjudication suspension. If ICE does not provide timely notification, USCIS may resume adjudicating.\textsuperscript{47} When criminal investigations run longer than a year from the date of referral acceptance, ICE must send FDNS an investigation update within that first year, then every 12 months thereafter.\textsuperscript{48} FDNS ultimately issues a Statement of Findings (SOF) concerning most matters that ICE accepts for criminal investigation.\textsuperscript{49}

FDNS may lend information and expertise to HSI during its criminal investigations.\textsuperscript{50} USCIS may also refer cases to law enforcement agencies other than ICE.\textsuperscript{51}

**Stage 4—Statement of Findings**

Once FDNS completes an administrative investigation, it returns the case to the appropriate USCIS adjudications unit along with an SOF.\textsuperscript{52} The SOF summarizes FDNS’s investigation and contains one of three determinations: “(1) Fraud Found; (2) Fraud Not Found; or (3) Inconclusive.”\textsuperscript{53} This document informs the USCIS adjudicator’s decision to approve, deny, or take other action on the case.\textsuperscript{54} Where appropriate, the adjudicator may then place the applicant in removal proceedings by issuing a Notice to Appear (NTA).\textsuperscript{55} In instances where USCIS had approved a case prior to FDNS investigation, the SOF may support a decision to revoke the benefit awarded and initiate removal proceedings.\textsuperscript{56}

**Fraud Scheme in Focus**

The recent trial of an immigration attorney who ran a years-long fraud scheme illustrates the harmfulness of immigration fraud and shows FDNS’s contributions toward combatting it. From 2013 to 2017, without his clients’ knowledge, the attorney filed with USCIS over 250 fraudulent Forms I-192, Application for Advance Permission to Enter as a Nonimmigrant.\textsuperscript{57} According to the Department of Justice (DOJ), these filings falsely portrayed the applicants as victims of crimes who had assisted law enforcement in associated investigations. The attorney charged his clients, who were unaware of his illegal actions, $3,000 for each application.\textsuperscript{58} USCIS consistently denied these cases.\textsuperscript{59} The attorney thereby deprived good faith individuals of substantial funds and other opportunities at relief, while adding hundreds of fraudulent cases to the agency’s adjudication queue. On March 9, 2018, the court sentenced him to 75 months in prison for defrauding clients and USCIS, and ordered him to compensate his victims a total amount of up to

\textsuperscript{46} Id.
\textsuperscript{47} Information provided by USCIS (Apr. 18, 2018).
\textsuperscript{48} Id.
\textsuperscript{49} Information provided by USCIS (Apr. 03, 2018).
\textsuperscript{51} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Information provided by USCIS (Apr. 18, 2018).
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
\textsuperscript{60} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Id.
$750,000. DOJ credited FDNS for contributing to the successful investigation of this scheme.

Recent Anti-Fraud Initiatives

In tandem with such fraud investigations, FDNS and other federal agencies have recently implemented or begun implementing a range of initiatives designed, in part or whole, to more effectively combat immigration benefits fraud. These include the TSVVP, launched by FDNS in 2017, which to date has focused primarily on H-1B petitioner worksite visits. In contrast to ASVVP site visits, which FDNS has historically conducted pursuant to a random selection of H-1B petitions, TSVVP “seeks to reduce fraud by implementing a criteria-based referral mechanism for site visits where fraud and abuse may be more likely to occur.” TSVVP is one prong of a broader FDNS shift to a “risk-based” anti-fraud approach that emphasizes, among other principles, allocation of Directorate resources as informed by the likelihood of fraud.

In addition to FDNS, the Refugee, Asylum and International Operations Directorate (RAIO) is pursuing a range of initiatives designed to better detect and prevent fraud. These include the development of analytic tools to automatically compare the text of affirmative asylum applications to a database of applications for the purpose of identifying boilerplate language and more effectively rooting out large-scale asylum fraud schemes. Also, to identify fraud earlier in the application process, USCIS is collaborating with the United Nations High Commissioner for Refugees (UNHCR) to build UNHCR’s capacity to capture refugee applicants’ biometrics information before the cases undergo USCIS processing. As discussed in this Report’s articles on the Affirmative Asylum Backlog and Background Checks, the Asylum Division has begun staffing an asylum vetting center in Atlanta, Georgia that will centralize key vetting functions. Finally, since 2016, FDNS’s Social Media Division has reviewed social media content associated with some asylum and refugee applicants, which can help adjudicators assess the credibility of these individuals’ claims.

Performance Measures and Challenges

FDNS maintains internal performances measures by which it evaluates performance, including efficiency, and reports that it successfully met all internal goals for FY 2017. In particular, FDNS indicates that in FY 2017 “91.7% of immigration benefits with a potential finding of fraud were not approved.” This represents a very slight uptick from 91.3 percent in FY 2016.

Efficiency of Investigations

The issue of efficiency in the investigation of potential immigration benefits fraud is important and complicated. Efficient investigations help bring bad actors to justice, deter further abuse in the immigration system, maintain fairness for would-be immigrants with bona fide applications, and preserve the robustness of the immigration system to serve the American people. The complexity of FDNS fraud investigations, however, makes it difficult to assess their efficiency. A case may require third agency input, link to a broad conspiracy scheme requiring years to investigate, or pose other variables that complicate completion estimates, rendering certain deadlines impracticable and even harmful. An artificially rushed inquiry risks prejudicing a good faith benefit seeker or clearing an unscrupulous one.

Citing the complexity of fraud investigations, FDNS does not maintain performance goals relating to the overall length of its fraud investigations. Instead, the Directorate relies on other mechanisms to monitor and advance the status of investigations, including ongoing reports identifying which cases within FDNS’s purview remain open and why. To help isolate and respond to specific factors influencing delays, FDNS can
search its case tracking data based on a range of fields, including the identity of individual officers conducting the investigations.  

FDNS is in the process of improving how it tracks the length of fraud investigations. FDNS currently tracks the length on investigations from the creation of a CME to the issuance of SOFs, but does not track the length of an investigation from the date of a specific referral, as it does not comprehensively track the date of a fraud referral.  

FDNS reports, however, that it is currently developing the capability to record the date of referral and thus track the length of investigations from referral to the SOF.  

With respect to the data FDNS currently tracks, the chart below provides insight into FDNS’s performance. Overall, it shows that for SOFs issued in FY 2017, approximately 50 percent were issued within 91 days of the creation of the CME. In addition, the average length of an investigation, measured from CME to SOF, was approximately 269 days. See Figure 1.5. The fact that five percent of the SOFs required a considerably longer time (3 years or more) to complete reflects the fact that some investigations are significant, complex, and thus lengthy, leading to substantial delays for those applicants whose cases are involved in them.

**Figure 1.5: Average Days from CME Created or Reopened to SOF Created for Fraud Cases and Leads, where the SOF was Created in FY 2017**

<table>
<thead>
<tr>
<th>Year</th>
<th>Average</th>
<th>Average Days at 50th Percentile</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>269 Days</td>
<td>91 Days</td>
</tr>
</tbody>
</table>

Note: Data based on all SOFs created during FY17 for fraud leads and fraud cases. The 50th percentile was included because 5 percent of the SOFs required more than 3 years to complete. These cases are most likely large scheme cases that take a significant amount of time to complete.

Source: Information provided by USCIS (May 11, 2018).

Requests for case assistance submitted to the Ombudsman’s Office also provide some visibility into the relationship between fraud investigations and overall case processing times, suggesting that a small number of cases linked to fraud inquiries remain pending for significant periods. In 2017, individuals and employers submitted 322 requests for case assistance relating to applications and petitions that the Ombudsman’s Office determined were under “extended review” by USCIS due to possible fraud.  
As of April 17, 2018, 51 percent of that total had been removed from extended review in response to USCIS’ adjudication of the case or another agency’s action. Of the remaining cases, 81 percent had been pending with USCIS for over 2 years, 10 percent of which have been pending for more than 5 years.  

Figure 1.6 provides a more complete breakdown of the pendency periods for this latter group of extended review cases. The data presented in Figure 1.6 reflect those requests for case assistance submitted to the Ombudsman’s Office during the reporting period, not in prior years. It represents only a sample of cases associated with fraud investigations, and only cases still unresolved. This information therefore serves as an anecdotal illustration of processing periods for some cases under suspicion of fraud rather than a statistically representative profile.

In all, the Ombudsman recognizes the importance of fraud investigation efficiency, the challenges inherent in its measurement, and the dangers of rushing the investigative process. The Ombudsman’s Office will continue its dialogue with FDNS on the issue of efficiency in investigations as well as in anti-fraud activities generally.

**Transformation**

Limited progress in “transformation”—USCIS’ effort to convert from a paper-based to a comprehensive electronic case filing, adjudication, and management system—has restricted the agency’s capacity to detect fraud. For
instance, the continued necessity of shipping paper-based files, applications, and petitions—from adjudicators to FDNS to ICE or other agencies—delays the agency’s case review and fraud identification processes;\(^{84}\) this represents an inefficiency that full digitization would help eliminate. A paper-based system also hinders the availability of electronic text analytic tools enabling the cross-comparison of applications for purposes of pinpointing boilerplate language and possible fraud schemes.\(^{85}\) Universal electronic case filing could facilitate those tools’ implementation. Better technology would also help FDNS leadership discern how many initial fraud denials are overturned on appeal to measure performance and improve training. These examples represent only some of the ways in which a fully realized electronic platform would strengthen the agency’s anti-fraud operations.

**Conclusion**

Anti-fraud measures, including FDNS administrative investigations, are critical to limiting unscrupulous actors’ access to the immigration benefits system. Reflecting the critical nature of its work and the ever-increasing number of applications and petitions, FDNS has expanded its activities and increased its staff. Fraud investigations are, by their very nature, complex and can take considerable time, which delays case processing. FDNS is improving its performance measures but would be aided in its effort to stop fraud by the full implementation of transformation, or digitization, of the immigration application process. While recognizing the challenges in assessing the efficiency of variable-rich investigations and other anti-fraud activities, the Ombudsman’s Office will continue to monitor the impact of those activities on both the security and timely delivery of immigration benefits.

\(^{84}\) Information provided by USCIS (Apr. 18, 2018).

Transformation

Responsible Offices: Office of Information Technology; Office of Performance and Quality; and External Affairs Directorate

Key Facts and Findings

- In 2017, USCIS revised its overarching electronic case management and benefits processing goals. USCIS now prioritizes the development of core capabilities, which cut across all form types, and the achievement of broader transformation business goals.86

- In tandem with these new goals, USCIS consolidated the former Office of Transformation Coordination into the Office of Information Technology (OIT), which reports to the USCIS Director.87

- In 2018, the DHS Office of Inspector General (OIG) verified that USCIS had implemented improvements in its production and delivery of green cards processed through the Electronic Immigration System (ELIS), the platform for the transformation initiative.88 The OIG awaits notification from USCIS that the agency has implemented OIG recommendations for improving the electronic processing of naturalization applications.89

- Stakeholders reported improvements in ELIS functionality vis-à-vis the immigrant visa (IV) fee payment system, through which individuals can submit information, pay fees via credit card, and set

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86 Information provided by USCIS (Feb. 23, 2018).
87 Information provided by USCIS (Apr. 12, 2017).
89 Information provided by DHS OIG (Feb. 26, 2018).
up the delivery of green cards using online accounts. Stakeholders continued to voice concerns over a range of ELIS issues, including challenges in updating mailing addresses and the continued inability to electronically file fee waivers.  

### Background

In 2006, USCIS launched its “Transformation” initiative, intended to convert the agency’s paper-based case filing, management, and adjudication systems into a single accessible electronic platform. USCIS developed ELIS to be the electronic case management system delivering these innovations to USCIS offices and the public. ELIS is a web-based system designed to centralize USCIS filings and adjudications, transforming the agency’s business operations “from a ‘transaction-centric’ model to a ‘person-centric’ model” through the establishment and maintenance of accounts unique to each applicant. In pursuing this “centric” model through the establishment and maintenance of accounts unique to each applicant. In pursuing this electronic filing and processing environment, USCIS sought “to modernize the paper-based immigration benefits process, enhance national security and system integrity, and improve customer service and operational efficiency.”

USCIS intended its electronic case management system to:

- Allow applicants to submit digital applications through the website and track the status online;
- Enable the agency to automatically screen incoming applications to identify potential fraud and security issues;
- Provide adjudicators with electronic access to applications, relevant guidance, and external databases;
- Permit managers to track and allocate workload; and
- Provide electronic linkages between ELIS and other agencies for data sharing.

Since the program’s inception, USCIS has faced substantial obstacles in implementation. System breakdowns, design flaws, and partially-functioning programs that were not properly tested prior to deployment repeatedly interfered with achieving milestones. Consequently, the initiative has experienced significant cost increases and schedule delays. As the Acting Director of USCIS acknowledged in March 2017, “[t]he original scope and purpose of the Transformation program was broad and vast. Unfortunately these broad intentions have made it difficult for the program to focus on specific business objectives, and to make good prioritization decisions about where to focus resources.”

These ongoing challenges, chronicled in a series of audits and reports from both GAO and the DHS OIG, led to management and development overhauls of the program, one of which resulted in a major “restart” of USCIS ELIS development in 2015. This second version of ELIS, used today, still poses operational burdens for the agency, but has demonstrated more flexibility, enabling USCIS to move forward with online adjudications and filings.

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90 Information provided by stakeholders to the Ombudsman (Feb. 27 and Mar. 2, 2018).
91 Transformation has since been retitled as “transformation” for reasons explained further in this article, and will be referred to throughout by its current iteration. Prior to January 2017, the program was run by a separate Office of Transformation within USCIS. After that time, it was subsumed into USCIS’ Office of Information Technology, where it is one of many programs run by that office.
94 Id.
95 Id. at 5.
96 Id. at 5-9.
Originally driven by scheduled deadlines, USCIS insufficiently tested the system prior to deployment.99 This led to operational failures that hindered the functionality of each form that was introduced in ELIS and also delayed the implementation of new forms into the system.100 The problems ELIS had processing the Form N-400, Application for Naturalization, through 2016 and 2017 were particularly severe because repeated ELIS breakdowns caused work stoppages at a time when application submissions were rising, leading to even longer backlogs. However, the implementation of electronic adjudication, and then filing, of the N-400 represents the most significant achievement for transformation efforts to date, given the complexity and breadth of the adjudication across all USCIS field and district offices as well as the National Benefits Center (NBC).

The DHS OIG,101 GAO,102 and the Ombudsman’s Office103 have reported multiple times on the challenges faced by USCIS and the public in connection with the implementation of forms deployment in ELIS. Through requests for case assistance and public outreach events, stakeholders have notified the Ombudsman’s Office of their own substantial frustrations with transformation.104 Stakeholders noted they were unable to obtain information on processing times through their ELIS accounts because the ELIS accounts did not connect to other USCIS systems such as CLAIMS 4,105 the system USCIS used to process and track naturalization applications before ELIS.106

Another frequent complaint about transformation has been its inability to meet deadlines for implementing new form types in ELIS.107 Technological advances have enabled USCIS to electronically process some form types that applicants submit by paper once the Lockbox processes them into ELIS. Taking into account both mailing and electronic methods of filing, as of December 2017, USCIS was processing in ELIS the forms and services listed below. See Figure 2.1.

Figure 2.1: USCIS Forms Processed through ELIS

<table>
<thead>
<tr>
<th>Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form N-400</td>
<td>Application for Naturalization</td>
</tr>
<tr>
<td>Form I-821</td>
<td>Application for Temporary Protected Status</td>
</tr>
<tr>
<td>Form I-821D</td>
<td>Consideration of Deferred Action for Childhood Arrivals</td>
</tr>
<tr>
<td>Form N-336</td>
<td>Request for Hearing on a Decision in Naturalization Proceedings</td>
</tr>
<tr>
<td>Form N-445</td>
<td>Notice of Naturalization Oath Ceremony</td>
</tr>
<tr>
<td>Form N-565</td>
<td>Application for Replacement Naturalization/Citizenship Document</td>
</tr>
<tr>
<td>Form G-28</td>
<td>Notice of Entry of Appearance as Attorney or Accredited Representative</td>
</tr>
<tr>
<td>Form G-28I</td>
<td>Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States</td>
</tr>
</tbody>
</table>

Source: Information provided by USCIS (Apr. 17, 2018).

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100 See Ombudsman’s Annual Report 2017, p. 53.


104 Information provided by stakeholders to the Ombudsman (Feb. 27 and Mar. 2, 2018).

105 ELIS accounts, obtained through the myUSCIS portal, are what the public uses to access the system; they do not connect to other USCIS databases such as CLAIMS 4. Thus customers are not able to access forms and information that are elsewhere in USCIS systems, but not in ELIS.


107 Information provided by USCIS (Feb. 23, 2018).
In all, forms processed through ELIS now represent 40 percent of USCIS’ total workload. USCIS intends to increase electronic processing of its workload by adding its high-volume forms into ELIS.

**USCIS Response: Shift in Transformation Objectives and Structure**

Responding to the series of critical reports, in 2017, USCIS significantly reorganized the transformation program. To begin with, the agency fundamentally changed transformation’s goals, marking a significant departure from the agency’s course over a decade of development. Until that point, USCIS had based its transformation milestones on the introduction of specific forms by set dates, even when those forms failed to meet the needs of the agency or the filing community. USCIS has indicated that this emphasis on timeliness over quality contributed to ongoing failures in ELIS processing of Form N-400, Application for Naturalization—which led to an October 2016 status “breach.” The end result was that the agency could not complete its launch of the citizenship product line by the deadline. Failure to meet this milestone forced USCIS to suspend further development in ELIS.

In response, USCIS reevaluated and reformed its model. Now, instead of scheduled form rollouts, the agency prioritizes the development of what it considers “ELIS core capabilities” applicable across form types and electronic systems. Those capabilities include:

- account setup and case/documentation intake;
- workflow management and case processing;
- biometric identification and appointment scheduling;
- continuous background checks;
- document and notice issuance; and
- e-records and data sharing.

USCIS envisions that the development of these capabilities will help the agency achieve its newly devised “transformation business goals”—depicted in Figure 2.2.

**Figure 2.2: USCIS’ New Transformation Business Goals**

As USCIS revised transformation’s goals, it also reshaped the underlying organizational structure that supports it. In January 2017, USCIS merged the Office of Transformation, which was responsible for leading the transformation effort, into the OIT. USCIS indicated that this merger marked the shift from capital “T” to lowercase “t” for transformation—acknowledging the evolution from an initiative headed by a dedicated office to a broadly conceived modernization effort supported by the “Transformation Delivery Division.” The Transformation Delivery Division currently has a $170 million annual budget for personnel, development, IT, and operations, employing approximately 40 federal government staff and between 300–350 contractors.

Despite these changes, key pillars of the original initiative remain. ELIS continues to serve as the system platform. USCIS states that it will still work towards the integration of new forms into ELIS—just not on the same timetable as before, and without focusing on the quantity of new forms implemented. The agency strives to increase the percentage of form receipts processed through ELIS from 40 percent to 65 percent by 2019, but as a percentage of overall receipts, irrespective of the number of form types covered. The transformation goals reflected in Figure 2.2 demonstrate the shift in USCIS’ focus from pushing its 90 forms into ELIS to enhancing the system to better serve its business needs.

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108 Information provided by USCIS (Apr. 17, 2018).
109 Id.
110 Information provided by USCIS (Feb. 23, 2018).
Efforts to Resolve ELIS Operational Challenges in 2017

As the shift in transformation goals and structure unfolded, USCIS continues to face a host of ELIS functionality problems, including incomplete background checks, inaccurate case statuses reflected in other USCIS systems, and a burdensome system for printing naturalization certificates and uploading documents. USCIS also has had to address ELIS outages and insufficient technical support for adjudicators. These issues have contributed to security vulnerabilities, resource inefficiencies, and slower case processing.

ELIS Interfered with Background Checks. Technical issues in ELIS hindered the completion of background checks, including Federal Bureau of Investigation (FBI) name checks, resulting in integrity gaps and delaying the processing of naturalization applications. Though USCIS intended for ELIS to increase efficiency in background checks, numerous technical challenges interfered with this aim, including: incomplete FBI name checks; system timeouts; incorrect handling by ELIS of certain background check results; mistakes in underlying ELIS codes such as improper filtering of names (spelling and letter combinations) that led to errors in background checks; and interface and connectivity issues that caused delays.

These challenges have caused far-reaching consequences. In what posed a distinct security risk, from November 2016 to January 2017, ELIS permitted more than 15,000 applications to move forward in the adjudication process without having undergone proper name checks. As a result, more than 200 applicants naturalized with incomplete name checks. USCIS quickly acknowledged this error and instructed field offices to place cases on hold to prevent applicants from proceeding to approval or oath of allegiance ceremonies without first completing proper background checks. ELIS background check failures also resulted in 230,000 background checks needing to be re-run in February 2017. This required field office personnel to devote extra time to validate data transferred across USCIS systems due to the unreliability of the information stored in ELIS.

In July 2017, USCIS launched the Name Check Modernization project to eliminate submitting duplicative requests to the FBI and to obtain name check results more quickly. ELIS has been processing name checks through this new method since September 2017.

ELIS Failed to Update the USCIS Central Index System. In late 2017, the OIG reported that, due to deficiencies in ELIS, the USCIS Central Index System (CIS)—the main database that contains immigration status information for applicants—failed to accurately reflect the naturalization status of tens of thousands of individuals. This hindered data sharing with CBP, whose agents rely on CIS to determine an individual’s eligibility to enter the United States.

ELIS directly connects to CIS, thus updates in ELIS regarding an individual’s immigration status should have been reflected in CIS. However, CIS did not always reflect the most recent status of immigrants. Specifically, adjudicators had difficulty completing the specific order of steps necessary to close out naturalization cases in CIS. For naturalization cases in ELIS, USCIS personnel initially had to manually scan and upload completed Forms N-445, Notices of Naturalization Oath Ceremony for each and every naturalized applicant scheduled for the same oath ceremony before the cases could be closed and the appropriate status reflected in ELIS and CIS.


117 USCIS requires background checks prior to issuing most immigration benefits. This helps ensure that the agency grants benefits only to qualifying individuals who do not pose a risk to national security or public safety. See the “Background Checks” section of this Report, infra.

118 TECS checks are background checks for applicants and petitioners using a system maintained by CBP to assist with screening and determinations regarding admissibility of arriving persons. See the “Background Checks” section of this Report, infra.


120 Id. at 27.

121 Id. at 36.

122 Id. at 33-34.

123 Id. at 33-34.

124 Information provided by USCIS (Apr. 9, 2018).

125 Id.


127 Id.

128 Id.

129 Id.

130 Id.
The Form N-445 is now processed in ELIS, thus eliminating the need to manually scan, save, and upload each document one at a time. The ability to electronically close cases has therefore eliminated cases remaining open unnecessarily and improved ELIS’s ability to update CIS.

**ELIS Had Difficulties Uploading Documents.** Obstacles to scanning and uploading documents in ELIS increased the risk of information loss and processing errors. Specifically, USCIS officers found that ELIS had problems scanning and uploading materials. As a workaround, officers scanned and uploaded those documents one page at a time, saving them to a computer file prior to manually uploading them into ELIS. This laborious process increased risks of information being lost, misplaced, or accidently disregarded. In June 2017, USCIS deployed a new feature to simplify the process into one step, allowing officers to scan and upload documents directly into ELIS.

**ELIS Failed to Print Naturalization Certificates.** In its initial stages, ELIS lacked the ability to print naturalization certificates, which sometimes resulted in field offices having to cancel oath ceremonies for applicants. To print naturalization certificates, USCIS personnel relied on an interface with the Enterprise Print Manager Service (EPMS) because that system already served as USCIS’ vehicle for printing notices, cards, and booklets. However, the OIG described this process as awkward, error-prone, time-consuming, and unreliable due to network connectivity issues and message delivery failures between ELIS and EPMS. ELIS also lacked the capacity to batch print naturalization certificates to accommodate large naturalization ceremonies. Field office personnel had to set up complex printing configurations to enable EPMS to print naturalization certificates for larger ceremonies. Because of these workarounds, EPMS caused certificates to print with missing or incorrect data, despite the information being correctly recorded in ELIS. USCIS created and tested a batch printing function within ELIS, which it deployed on April 10, 2017, finally eliminating the need for the EPMS workarounds.

**USCIS Lacked a Contingency Plan for ELIS Outages.** USCIS initially did not have a contingency plan in place to sustain processing of naturalization cases across its field offices when ELIS experienced glitches or outages. During these interruptions, officers could not access digitized files or complete naturalization interviews. Given the frequency of ELIS outages in the initial stage, USCIS personnel developed a workaround by shipping hard copies of A-files from the NBC to field offices that cost the agency approximately $400,000 per quarter. The lack of a contingency plan created more work for adjudicators as well as higher expenses for the agency. Learning from these mistakes, USCIS established a contingency plan before returning to processing naturalization applications in ELIS, creating a separate digital repository for case files and evidentiary documents. As a result, the NBC stopped receiving paper copies of ELIS naturalization files from the Lockboxes starting on October 26, 2017. However, paper copies of ELIS naturalization files continued to be sent from the NBC to some field offices and used by officers as a backup system.

**ELIS Lacked Adequate “End-User” Support.** ELIS “end-users,” i.e., USCIS officers who render decisions on applications, have lacked timely support from and communication with ELIS developers, limiting the incorporation of valuable end-user feedback into ongoing system developments. This lack of communication led to increases in inquiries from USCIS personnel using the system. Between April and August 2017, USCIS received 1,100 to 1,600 trouble tickets a month submitted by personnel using ELIS.

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131 Id. at 10.
132 Id. at 10.
133 Id. at 10.
134 Id. at 10.
135 Id. at 10.
136 Id. at 10.
137 Id. at 10.
138 Id. at 10.
139 Id. at 11.
140 Id. at 11.
141 Id. at 11-12.
142 Id. at 9. In 2017, planned and unplanned ELIS outages totaled 40, which was down from 170 in 2016, as a result of completed enhancements to DHS Network and connectivity. Compare information provided by USCIS (Apr. 19, 2017) to information provided by USCIS (Apr. 17, 2018).
143 Information provided by DHS OIG (Feb. 26, 2018).
145 Id. at 34.
146 Id. at 34.
148 Information provided by USCIS (Apr. 17, 2018).
149 Information provided by USCIS (Apr. 24, 2018).
150 Information provided by USCIS (Feb. 23, 2018).
The transformation reorganization in the beginning of 2017 was intended to better connect system developers to adjudicators and other end-users. The agency adjusted its training plans to ensure that end-users received sufficient hands-on training prior to each program release. Now that they have access to more frequent training, there is swifter resolution of functionality issues. Service center and field office personnel have reported that communication with software developers and information technology support has improved. The benefits of these changes are reflected in the decline in the number of ELIS trouble tickets submitted each month to less than 800 starting in September 2017.

Stakeholder Experiences with ELIS

**ELIS Third Party Access.** From the inception of ELIS, stakeholders and software developers have been concerned USCIS developed the system without coordinating with public users and data management companies that develop USCIS forms programs for immigration practitioners. If USCIS provided outside software developers its electronic filing protocols and data sharing standards, it would allow them to make any necessary changes to ensure their systems are compatible with ELIS. Public users and their legal representatives stated that USCIS needed to conduct much more public education and outreach on ELIS. Legal representatives and their clients continue to want a seamless mechanism that would allow the legal representative to electronically file and pay fees on behalf of a client. Stakeholders also reported that mis-delivery and non-delivery of LPR cards and Employment Authorization Documents (EADs) produced from ELIS accounts remain a serious problem.

**myUSCIS.** In February 2015, the agency introduced myUSCIS, an online public portal that interfaces with ELIS and through which individuals may e-file Forms N-400 and I-90. E-filers may use the portal to pay fees (submitted via credit card/debit card, bank account, or check), update addresses, receive receipt notices and other documentation by email or text (while still receiving hard copies by mail), and communicate directly with the USCIS field office processing their cases. The system even electronically detects errors in submissions thereby reducing the issuance of RFEs. In December 2017, USCIS expanded the capacity of applicants to file a Form N-400 through the myUSCIS portal.

Before using the e-filing and related features, one must establish a myUSCIS account. Without an account, an individual can only obtain general information about immigration benefits, access resources for citizenship preparation classes and practice tests, and find a list of USCIS-approved doctors for medical exams. The portal does not connect legal and accredited representatives with client accounts, preventing representatives from e-filing applications on behalf of clients.

By introducing myUSCIS, USCIS hoped to increase efficiency and decrease case processing times. The agency plans to integrate more forms into the portal, though it has not provided an implementation time frame. The Ombudsman’s Office will continue to review stakeholder feedback concerning myUSCIS and monitor the portal’s effectiveness; it is too soon to determine how effective these changes have been.

**Form Types and Fee Payments in Focus**

USCIS has had to overcome various challenges to use ELIS to its full potential. Each application implemented through ELIS has provided a unique set of challenges and stakeholder issues.

**Immigrant Visa Fee Processing.** One of the first applications in ELIS was the online payment of the IV Fee beginning in May 2012. USCIS began charging overseas applicants for production of their LPR cards and used the newly developed online payment system for this purpose. At that time, applicants and their legal representatives reported difficulty using the ELIS fee payment process, as it required a non-intuitive account registration process, posted

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151 See generally Id.
152 Information provided by DHS Office of the Inspector General (Feb. 26, 2018); Information provided by USCIS (Apr. 16 and 24, 2018).
153 Information provided by DHS OIG (Feb. 26, 2018); Information provided by USCIS (Apr. 16 and 24, 2018).
154 Following up on a meeting with the USCIS OIT, USCIS provided the Ombudman’s Office with a copy of a presentation slides entitled “USCIS Transformation Program” (Feb. 23, 2018). Slide Transformation Delivery Division on page 5 gives an overview of how business operations have been aligned to provide direct, customer-focused support to users.
155 Information provided to the Ombudsman (Mar. 6, 2017).
156 Information provided by stakeholders (Apr. 12, 2018).
157 Information provided to the Ombudsman (Mar. 6, 2017).
158 Id.
frequent error messages, and suffered from ineffective technical support. Some applicants found that address changes within ELIS did not result in their LPR cards being sent to the new address. Additionally, address changes in ELIS were difficult to execute because they required a separate process of identity verification. Legal representatives were also unable to make payments in the system on behalf of their clients. Since that time, USCIS has published additional instructions on its webpage concerning payment processes, including a handbook, and made system changes to improve the ease of submitting online payments. Some legal representatives describe the current system for immigrant fee payments as straightforward, although they stress that the system still makes frequent errors involving mis-delivery and non-delivery of LPR cards, which may be due to faulty address change systems.

**Form I-90, Application to Replace Permanent Residence Card.** As of April 20, 2015, USCIS processes all Form I-90 applications in ELIS. Since August 2016, the Potomac Service Center (PSC) has had exclusive jurisdiction over that form type. The Form I-90 is the second major benefit form type—following Form N-400s—that individuals can file online, and is currently PSC’s largest workload. DHS OIG audited the Form I-90 product line between April and June 2016, finding ELIS limitations had contributed to green card issuance errors, including cards issued with incorrect information, the production of duplicate cards, and cards sent to the wrong address. In 2017, many LPRs sought assistance from the Ombudsman’s Office because their cards were sent to the wrong address or contained incorrect information, such as another person’s photograph or the wrong signature, gender, country of birth, date of residence status, or name. Non-delivery of cards and changes of address are the top reasons why individuals have contacted the PSC for assistance. Addresses are limited to 34 characters in ELIS, so an officer has to determine how to abbreviate a longer address without compromising the U.S. Postal Service’s ability to deliver the card to the appropriate address.

Beginning in 2018, individuals with a myUSCIS account and an application in ELIS can now change their addresses in ELIS through their myUSCIS accounts, updating the change immediately. Prior to that, applicants could not change their addresses in ELIS directly and the update could take several days, depending on how the applicant notified USCIS of the change of address.

**DACA, TPS, and EADs.** USCIS began adjudicating Forms I-821 and I-821D in ELIS in 2016, including the Form I-765 based on an underlying Temporary Protected Status (TPS) or Deferred Action for Childhood Arrivals (DACA) application.

In 2017, DACA recipients requested assistance from the Ombudsman’s Office because they had not received EADs, notices, and other documents from USCIS. Of the 2,005 ELIS-related requests for assistance received in 2017 by the Ombudsman’s Office, 1,287 dealt with individuals attempting to obtain or renew benefits under DACA.

**Additional Issues with Form N-400**

**Processing Delays.** The OIG found that ELIS problems contributed to the backlog of Form N-400 applications, “adversely affect[ing] processing timeliness and customer service.” During the reporting period, processing times for Form N-400 applications continued to increase beyond the USCIS goal of 5 months. See Appendix, USCIS Naturalization and Adjustment of Status Processing Times.

As of December 2017, the national average processing time for non-military naturalization applications rose
to 8.4 months. Many individuals experienced even longer delays. Applicants in New York City, for instance, waited 10 to 14 months for USCIS merely to schedule interviews. Applicants waiting to schedule oath ceremonies experienced similar delays.

**Submission of Photographs.** As part of the transition to electronic processing, USCIS announced in September 2016 that naturalization applicants, except those who reside overseas, no longer needed to submit passport-style photographs with their applications because their photos would be taken when they appeared at the Application Support Center (ASC) for their biometrics appointments. As of June 2017, however, field offices were still asking most applicants to submit two photographs during their interviews, at a cost to the applicant, due to continuing problems with ELIS in the capturing of the ASC photographs. Moreover, USCIS did not send an announcement to stakeholders, as it had in September 2016, concerning this issue with photographs, resulting in confusion and delays. If an applicant was unable to provide the photos at the time of the interview, the officer could not continue processing the Form N-400. Thus, this ELIS glitch resulted in further delays for some applicants.

**Working Through Two Systems.** The agency is challenged with ensuring all officers retain their ELIS skills while also working through the older cases. In 2017, all field offices with naturalization cases had a mix of cases in CLAIMS 4 and ELIS, processing cases in the order in which they are received in each system. Local offices reported processing a much greater percentage of naturalization applications in CLAIMS 4 than in ELIS, as cases in CLAIMS 4 made up 79 percent of the total number of naturalization applications pending the end of 2017. Officers reported difficulty in splitting their workload between the two systems because of the need to train officers in the fine points of each. Field offices continue to schedule a few days per month to process and adjudicate cases in ELIS so staff not only retain their operational knowledge of the system, but also to suggest enhancements to improve ELIS functionality. As offices exhaust their CLAIMS 4 inventory, they will work Form N-400 applications through ELIS exclusively.

**Strategic Suspension of ELIS.** In October 2017, USCIS returned to manually entering all newly receipted naturalization applications into ELIS because it had made the necessary improvements identified in DHS OIG’s Management Alert. ELIS improvements allowed USCIS to:

- Verify background checks had been completed before the case moved forward for processing;
- Update an individual’s status in CIS;

180 Information provided by USCIS (Mar. 20, 2018).
181 Id.
182 Id.
183 Id.
184 Information provided by USCIS (Apr. 28, 2017).
185 Id.
186 Id.
187 Information provided by USCIS (Jun. 7, 2017).
188 Id.
189 Id.
- Print naturalization certificates directly from ELIS; and
- Continue processing cases even when ELIS was down.

During 2017, USCIS entered 139,251 naturalization applications in ELIS. While it is too early to properly evaluate the results of the return to ELIS processing, reports from field offices indicate progress. As Figure 2.3 reflects, “trouble tickets” filed by USCIS ELIS users have decreased between April 2017 and February 2018.

Ongoing Issues

While the steps taken by USCIS in 2017 to address ELIS challenges have improved the system, the OIG’s evaluation of USCIS’ efforts to improve automation of naturalization processing remains under review.

The Ombudsman applauds USCIS for adjusting its focus on improving back-end performance before opening more forms to electronic filing. However, stakeholders are eager for USCIS to implement ELIS capabilities for additional form types and requests. For example, ELIS does not allow applicants to submit requests for fee waivers or reduced fees, thereby limiting the system’s viability for applicants in need. In 2017, almost 40 percent of Form N-400 applications were filed with a fee waiver request and slightly more than 20 percent of Form I-90 applications were filed with a fee waiver request.

Furthermore, ELIS has not yet resulted in improved processing times. The increase in processing times for naturalization applications, nationwide and at many field offices, to more than 5 months—DHS’s strategic goal—indicates that transformation continues to struggle to meet its goals.

Stakeholders continue to seek better information from USCIS regarding system updates and are anxious for improvements to the process of filing for immigration benefits. They have expressed to the Ombudsman’s Office their challenges with creating accounts, limited electronic filing, and the lack of information available to allow preparers and outside software companies to adapt to the changes taking place at USCIS. USCIS would benefit from increasing its engagement with external stakeholders and its education efforts regarding a variety of improvements, including back-end changes not necessarily visible to the public, that will eventually lead to a better experience overall.

Conclusion

While USCIS took major steps forward to improve the digitization of the immigration benefits process in 2017, substantial problems remain. The recharacterization of the transformation effort is a step in the right direction. With its emphasis on processing and case management functions, USCIS will be better equipped in the future to ingest and adjudicate cases in ELIS.

Director Cissna has made a full commitment to implementing electronic filing for most forms by the end of 2020, which is an ambitious undertaking still despite the progress made. To meet that goal, more resources and attention will be needed. The lack of connectivity to accounts maintained by representatives is a flaw that will only grow more problematic as more forms are introduced into the system, especially employment-based forms. At the other end, the lack of a fee waiver function is a serious issue requiring immediate attention. The drive to move to e-filing has led to an intention to require e-filing of the two forms that are now available for that function. This intention for e-filing to be required, not just preferred, will require the agency to be even more prepared for the challenges of working in a paperless environment.

Finally, USCIS needs to update stakeholders on its progress updating the system, so they better understand the challenges the agency faces and can contribute to its improvement.

190 Information provided by USCIS (Apr. 17, 2018).
191 Information provided by DHS OIG (Feb. 26, 2018).
192 Information provided by USCIS (Feb. 23, 2018).
193 Information provided by USCIS (Mar. 7, 2018). Calculations based on information provided by USCIS on April 17, 2018 (report representing the total number of I-90, I-551, DACA, TPS and N-400 receipts submitted electronically and by paper during calendar year 2017), Mar. 7, 2018 (USCIS Fee Waivers by Office Received, Approved and Denied Fiscal Year 2017, Quarter 4, and Fiscal year 2018, Quarter 1), and Aug. 30, 2017 (USCIS Fee Waivers by Office Received, Approved and Denied Fiscal Year 2017, Quarters 2 and 3).
Background Checks

**Responsible Offices:** Field Operations, Service Center Operations, Refugee, Asylum and International Operations, Immigration Records and Identity Services, and Fraud Detection and National Security Directorates

**Key Facts and Findings**

- Background checks are essential for maintaining the integrity of our immigration system.

- All applicants for U.S. immigration benefits are required to undergo criminal and national security background checks to ensure eligibility.

- Despite the universal nature of background checks, the process can be confusing to applicants, who may not understand how it works or how it impacts the adjudication of their cases.

- Over the past several years, USCIS’ workload has increased substantially, both in volume and complexity. This has placed increasing demand on various aspects of the immigration system, including case adjudicators, who are constantly challenged to balance efficiency and integrity.

- Recently, in response to Executive Order 13780, USCIS increased its screening of certain applicants, with plans to expand this heightened scrutiny to other types of applications and petitions.195

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A biographic check is, most commonly, a records check using the applicant’s name and date of birth, along with all aliases and other names.198 While a biographic check may involve some analysis, USCIS for its part has automated most of the process. The FBI performs the majority of biographic checks for USCIS, providing USCIS with electronic records and a written analysis of any information found.199 Expedited processing is available from the FBI but can only be requested by USCIS. To warrant expedited processing, a check must meet one or more of the following criteria: the individual’s membership in the military; compelling circumstances; mandamus actions; humanitarian reasons; age-outs; and selection for the Diversity Visa program.200 For individuals who request immigration benefits that are longer than one year in duration, USCIS typically requires the biometric and biographic checks set forth in the following charts. See Figure 3.1. For further details by USCIS directorate, please refer to the “Background Checks” section of the Appendix.

**Sources:** 
198 DHS Privacy Impact Assessment, “Immigration Benefits Background Check Systems” (Nov. 5, 2010), pp. 4–8; https://www.dhs.gov/sites/default/files/publications/privacy_pia_uscis_ibbcs.pdf (accessed Mar. 22, 2018). Biographic name checks commonly include other information, such as: name (last, first, middle), may include SSN, two additional SSNs in the event that the applicant is using multiple SSNs either fraudulently or accidentally) street address, city, state, ZIP Code, up to five aliases, country of citizenship, DOB, two additional DOBs, sex, race, height, weight, eye color, hair color, place of birth, and A-number.
If information is discovered through biographic background checks, FBI analysts must manually review it to determine its adjudicative value. If the FBI’s National Name Check Program (NNCP) determines the information is not related to the name check subject, the request will be closed as a “No Reportable” (NR). The FBI identifies the remaining name checks (usually about nine percent of the name checks originally submitted) as possibly being the subject of an FBI record and proceeds with the Analysis and Reporting stage of the name check process. During Analysis and Reporting, NNCP analysts are responsible for reviewing and analyzing FBI records and providing information to customers. The final summary of relevant information is then sent to USCIS via an electronic data sharing platform.

To reduce the amount of time taken on these manual reviews, USCIS—the single largest requestor of FBI name checks—has been working with the FBI to modernize the submission and return of these checks. In July 2017, USCIS deployed the initial phase of their modernized FBI name check solution. With this new system, USCIS will now act as one agency rather than submissions being sent to the FBI from four different divisions of USCIS. This new system is intended to detect duplicative requests regarding the same person, and decrease wasteful duplicative volume. The two agencies are now using a web service that allows for automated system to system submission and receiving of responses.

**Background Check Procedures by Directorate**

**Service Center Operations Directorate (SCOPS)**

SCOPS conducts the biographic and biometric checks listed in Figure 3.1 on most of the applications and petitions filed at its service centers. For biographic checks, the service centers run a batch query, meaning multiple names are submitted to the FBI at one time, on the primary names and dates of birth (DOB) contained in all new applications/petitions within 15 calendar days of initial receipt. After 15 months, if a benefit decision has not been issued, the officer must request a refresh of the name check.

Biometric checks begin at the ASCs, where staff collect digital fingerprints from applicants and submit them to the FBI within seconds of their capture. USCIS also runs the biometrics information through the TECS system. Most results are returned to the agency within minutes of submission. USCIS uses a Customer Profile Management System to store and access the results of biometric and background check data. Using this system, USCIS can reuse biometric images and biographic information to initiate and update background checks, eliminating the need for repeat requests for the information.

Background checks must be resolved before the adjudication process can proceed. If the results produce derogatory information, the adjudicator refers the case to the respective service center’s Background Check Unit (BCU) for analysis, de-confliction, and resolution of the potential match. During this process, the BCU will reach out to internal and external DHS entities responsible for the data or information to ensure that all available information is weighed when resolving the match. Once the BCU resolves a case, it returns its findings to the immigration officer for final adjudication based on the date of receipt by first-in, first-out (FIFO) order.

Per regulation, if the derogatory information impacts the adjudication of the case, USCIS normally issues an RFE or NOID, allowing the applicant or petitioner to provide additional information. However, if SCOPS delays

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201 Information provided by the FBI (Apr. 19, 2018).
202 Id.
203 Id. See also USCIS Message, “USCIS Today: FBI Name Check Modernization Update” (July 14, 2017) (accessed May 29, 2018), on file with the Ombudsman.
204 Information provided by USCIS at the Seventh Annual Ombudsman’s Conference (Dec. 7, 2017).
205 Biometrics are captured for beneficiaries between the ages of 14 and 75 years of age. Information provided by USCIS (Apr. 17, 2018). SCOPS handles a wide range of applications, including I-765, Application for Employment Authorization Document, I-821D, Consideration of Deferred Action for Childhood Arrivals, and certain Forms I-485, Application to Register Permanent Residence or Adjust Status, as well as most employment-based petitions.
206 Information provided by USCIS (Apr. 17, 2018).
207 Id.
208 Id.
210 Information provided by USCIS (Apr. 17, 2018).
211 Id.
212 Id.
213 Id.
214 Id.
215 Id.
in issuing an RFE or NOID or otherwise holds the case for any reason, the applicant has limited options to learn the cause or reason for the delay. While service centers have processes in place to routinely check for cases that have aged beyond the posted processing time, they do not communicate with the applicant, or appointed legal representative, when these efforts are made.217

Field Office Directorate (FOD)

Applications and petitions filed with the FOD, whether at a field office or at the NBC, its central processing facility, undergo a standard set of background checks.218 See Figure 3.1. FOD follows the guidelines and procedures set forth by the agency.219 In most cases, within 15 days of USCIS receipt of the case, the NBC initiates an FBI name check on the applicant’s primary name and date of birth, as well as a TECS check with CBP.220

The FBI, per its contractual agreement with USCIS, typically returns the FBI name check results within 30 to 90 days.221 The FBI sends the NBC a weekly report on pending name checks.222 If the FBI finds information in its name check, it will send to FOD a Letterhead Memorandum providing the information and its source.223 Most of this information is resolved at the NBC and, if reviewed by an FDNS Officer, receives an SOF in the applicant’s file of record.224

Biometrics are then collected at the ASC and sent to the FBI within seconds of their capture.225 Most results are returned within minutes after sending.226 The NBC conducts daily data sweeps to check the system for the results of both FBI name and fingerprint checks.227

Once both types of background checks are received, which averages around 60 to 90 days of receipt, the NBC conducts a full review of the file for additional aliases, names, and date of birth prior to adjudication or shipment to the respective field office for interview. This process is completed about 19 to 22 days, on average, before the scheduled interview date.228 The check is valid for 180 days with a refresh requirement every 180 days until the final adjudication is completed.229

At any time during its review, the NBC may refer the applicant’s file to its own FDNS officers or to the BCU for reasons such national security, public safety, and Adam Walsh Act cases.230 In addition to referrals, the BCU also receives a weekly report from the Immigration Records and Identity Services Directorate (IRIS), the entity that (among other things) oversees immigration, employment and identity information for USCIS, regarding all positive fingerprint results, including for Forms I-485 and N-400.231 The NBC BCU reviews the report of concerns for potential referral to ICE. If identified as a public safety referral, the BCU sends the case to ICE. This results in an adjudication hold, lasting 60 to 75 days, pending notification from ICE as to whether it will take action or require additional coordination. In most instances, further coordination with the respective field office is required for public safety cases accepted by ICE.232

If the case is referred to FDNS, either at the NBC or at the local field office, an FDNS officer reviews the case to determine if there are fraud or national security concerns. Once the officer completes the review, an SOF will be added to the file to be considered when issuing a decision for the case. The FDNS officer also manages any referrals to ICE and includes in the SOF whether ICE accepted or declined to take action on the referral.233 Afterwards, the case returns to the shelf until it is ready for interview scheduling.234

FOD will not schedule an interview until the results of all background checks are available.235 However, receipt of the results does not mean the individual has “cleared background checks.” Once the “A-file” arrives at the local USCIS field office, the adjudicator will review the results and determine the impact on the eligibility of the applicant or beneficiary.236 If the adjudicator identifies any indicators of possible fraud or national security concerns, he or she

217 Information provided by USCIS (Apr. 17, 2018).
218 The Field Operations Directorate adjudicates several applications requiring interviews, such as Form N-400, Application for Naturalization, and certain Forms 485, Application to Register Permanent Residence or Adjust Status.
219 Information provided by USCIS (Apr. 17, 2018).
220 Id.
221 Id.
222 Id.
223 Id.
224 Id. See “USCIS Anti-Fraud Initiatives,” supra in this Report for more information on SOFs.
225 Information provided by USCIS (Apr. 18, 2018).
226 Id.
227 Information provided by USCIS (Apr. 17, 2018).
228 Id.
229 Id.
230 Id.
231 Id.
232 Id.
233 Id.
234 Id.
235 Id.
236 Id.
may refer the case to FDNS for review.237 Derogatory information may result in the need for further research to determine whether, for example: the information establishes removability; the applicant is in removal proceedings; charges were reduced or dismissed; a final order of removal has been issued; or no final disposition has been made on a particular charge.238 As with SCOPs, regulations require FOD to issue an RFE or NOID to allow the applicant the opportunity to respond to derogatory evidence.239 Ultimately, the decision to grant or deny immigration benefits is based on the adjudicator’s judgment, based on the totality of the circumstances, which includes the A-file and the questions asked the applicant during the interview.240

Refugee, Asylum and International Operations Directorate: Asylum Division241

Affirmative asylum applicants undergo extensive background checks at various stages throughout the USCIS adjudications process, which correlates with the standard background checks listed in Figure 3.1.242 To apply for affirmative asylum, applicants submit a Form I-589, Application for Asylum and for Withholding of Removal at a USCIS service center.243 The USCIS service center enters the information into the USCIS Refugee, Asylum, and Parole System (RAPS).244 RAPS automatically initiates several background security check processes, including FBI name checks, IDENT, TECS, and FBI fingerprint checks.245 RAPS also stores the results of security checks.246 Later in the process, the applicant attends an appointment at the ASC to provide a ten-print and photographs for a biometrics check. This information will initiate the FBI fingerprint check, triggering another automatic background check query through the RAPS system.

The asylum officer may run additional background checks in specific cases, and may collaborate with an FDNS officer assigned to assist with fraud and national security cases.247 As with all cases pending before USCIS, with limited exceptions, the agency must issue an RFE or NOID to allow the applicant the opportunity to respond to derogatory evidence informing part of all of an adverse decision.248 The asylum officer may also resolve certain concerns during the interview process, which would be annotated in the interview notes and retained in the A-file. Any aliases or final name checks are run through a manual check in TECS.249

Refugee, Asylum and International Operations Directorate: Refugee Affairs Division (RAD)

The standard operating procedure at RAD is to conduct the following checks.250

Pre-decisional Checks:

- **IDENT check**: checks the applicant’s records relating to travel and immigration history for non-U.S. citizens, as well as for immigration violations and law enforcement and national security concerns. This helps CBP confirm identity at the port of entry.251

- **FBI fingerprint check**: checks all applicants’ biometric records using the Next Generation Identification (NGI) system’s recurring biometric record checks.

- **USCIS Background IT Systems check**: a check using the applicant’s ten-print biometrics to search various

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237 Id.
238 Id.
240 Information provided by USCIS (Apr. 17, 2018).
241 This section only covers the affirmative asylum application process and is not intended to include credible or reasonable fear processing or defensive asylum processing.
245 Id. at 4.
246 Id. at 4.
247 Information provided by USCIS (Apr. 18, 2018).
250 This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all refugee applications.
USCIS systems. Information collected on all applicants over the age of 13½ and under 80 years.  

**DOS Consular Lookout and Support System (CLASS) check:** a check run on primary names as well as any variations used by the applicant.

**Interagency Check (IAC):** USCIS shares the biographic data, including names, dates of birth, and other data points of all refugee applicants within designated age ranges that is captured at the time of pre-screening with intelligence community partners for checks against their holdings.

**National Counterterrorism Center (NCTC) checks:** vets applicant’s information with interagency intelligence to identify suspicious activity.

**Social Media Review:** USCIS FDNS conducts screening and vetting checks of certain refugee applicants from publicly available information on social media.

**DoD Automated Biometric Identification System (ABIS) check:** checks applicants’ information, biometric and biographic, to search information collected in the course of military operations.

**Post-decision and Pre-admission to the United States:**

**TECS check:** run on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age.

**CBP National Targeting Center—Passenger (NTC-P):** decision support tool that compares the applicants’ information against law enforcement, intelligence, and other enforcement data using risk-based scenarios and assessments.

**Transportation Security Administration (TSA) Secure Flight Program check:** screens aviation passengers and certain non-travelers before they access airport sterile areas or board an aircraft.

**CBP No Fly Selectee check:** compares applicants’ information to known terrorist watch lists maintained by the TSA.

A refugee applicant is subject to biographic and biometric security checks through a lengthy process. Generally, an individual initiates his or her request to resettle to another country through the UNHCR resettlement program. UNHCR establishes basic eligibility and then refers the individual to the Resettlement Service Center (RSC). The RSC conducts a prescreening interview and initiates biographic checks. This information is recorded in the DOS Worldwide Refugee Admissions Processing System (WRAPS). USCIS then reviews the biographic check results and interviews the applicant. At the time of the interview, a USCIS refugee officer collects the applicant’s ten-prints and requests any additional biographic checks, which will be run through the many data systems listed above. At this stage, the applicant can correct misspellings or incorrect dates of birth and provide additional documentation to ensure the agency has complete and accurate information.

During the interview, a USCIS refugee officer trained in identifying any national security concerns can refer the file for Controlled Application Review and Resolution Program (CARRP) review. A case needing further USCIS Headquarters review is tracked using the Refugee Affairs Division Case Manager (RCM). In RCM, USCIS refugee officers can view cases that require review and how long those cases have been pending review. All data changes made in the system are logged to provide a complete record of the actions taken on each case. After all reviews are complete, the report of the analysis is uploaded to WRAPS.

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252 Id. at 5.
253 Id. at 6.
254 Id. at 6.
255 Id. at 7.
256 Id. at 7.
257 Id. at 8.
258 Id. at 10.
259 Id. at 10.
260 Id. at 10.
261 Id. at 10.
262 Id. at 2.
263 Id.
264 Id. at 10.
267 Id.
268 Id.
Once all biographic and biometric checks are resolved, USCIS will issue a decision on the applicant’s Form I-590, Registration for Classification as Refugee. If the agency grants the resettlement request, the RSC assumes the task of processing the applicant for travel, including medical examinations and coordinating with a resettlement agency in the United States. The applicant undergoes another biometric and biographic check with CBP and the TSA through the flight manifest. Once CBP determines the applicant is admissible to the United States, the applicant is admitted as a refugee.

In October 2017, USCIS Director Cissna outlined his plans for vetting enhancements called “Enhanced FDNS Review” while testifying before Congress. USCIS initiated this plan pursuant to Executive Order 13780, which directed USCIS to enhance its screening process for nationals of certain countries. Based on the Executive Order, USCIS and other agency partners conducted a 120-day review of the vetting process. The group identified several enhancements for screening and vetting refugees, some of which have been implemented today. The background check enhancements include those performed by two divisions within FDNS: the Social Media Division and the Intelligence Division. The information gained from the enhancements is intended to inform certain lines of questioning for the interviewing officer to determine the applicant’s eligibility and credibility. Director Cissna acknowledged in his testimony that certain parts of the Executive Order had been under litigation and at times enjoined, but he emphasized the agency’s commitment to work aggressively to strengthen the integrity of the United States Refugee Admissions Program (USRAP), the interagency group that oversees the refugee resettlement process, through these enhancements.

### Additional Vetting Policies and Procedures

As circumstances warrant, USCIS vetting policies and processes permit one or more directorates within USCIS to follow policies and practices in addition to their standard procedures. Each of these policies and processes supports the agency’s goal of mitigating fraud and upholding national security.

**CARRP** USCIS subjects certain cases presenting national security concerns to additional review through CARRP. The CARRP process includes an assessment of the case file and, in most cases, additional screening to ensure eligibility for the benefit sought. CARRP requires regular supervisory review and agency headquarters coordination, oftentimes requiring close collaboration with law enforcement and intelligence agencies, including the FBI.

**Social Media Vetting.** FDNS recently established a Social Media Division (SMD), which was piloted in 2014. The SMD screens refugee applicant data for select populations against designated, publicly available social media. It also performs social media vetting on certain asylum applications. Other directorates, such as FOD, are exploring this option as an additional vetting tool.

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269 Id.
274 Id.
275 Id.
279 Id.
281 Id.
USCIS Policy on Long-Pending Checks. Pursuant to a February 2009 policy memorandum, USCIS no longer automatically approves certain pending applications if background checks are delayed. Instead, adjudicators receive a point of contact at USCIS Headquarters for FBI name checks pending beyond 150 days. The USCIS Headquarters point of contact then communicates with the FBI to determine the reason for name check delay and in turn provides case specific guidance to the officer. This may include, where appropriate, authorization to approve the pending application prior to receiving the FBI name check results.

Prior to this, USCIS policy directed adjudicators to approve certain forms (Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-601, Application for Waiver of Grounds of Inadmissibility; I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act; and Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)), if otherwise approvable, where the FBI name check request had been pending for more than 180 days. USCIS changed this policy as a result of the FBI improving its response time. USCIS reported that the FBI was returning name checks on average in 90 days and that few, if any, remained pending at the FBI for 180 days.

Conclusion

Background checks are vital in determining an applicant’s eligibility for immigration benefits. USCIS, through its diverse offices, has standard operating procedures for running background checks on biometric and biographic data using various databases available. The process is complex, requiring multiple layers of analysis. At times, depending on the circumstances, it can be lengthy. Per regulation, when derogatory information returned through a background check has an adverse impact on the adjudication, USCIS must issue an RFE or NOID to the applicant, providing him or her an opportunity to offer additional information.

However, for cases that remain pending, the applicant receives little information and no updates. USCIS reports that it carefully monitors cases that are extensively delayed through the background check process, but it rarely communicates to the applicant that the reason for delay stems from background checks. There are strong law enforcement reasons for this—primarily to ensure that an investigation is not disrupted by alerting the subject to it. However, USCIS could improve public confidence in its efforts by providing the public more information on its process to review long-pending cases. This would help assure the public that when the adjudication of cases is delayed, it is done for good reason. For example, an agency-initiated notification to the applicant could be generated when the agency updates its files regarding the background check (when it follows up with the holding agency or receives information back). Such a notification could be done through a “myCase status” update or through an electronic notification in myUSCIS to reduce administrative burdens on the agency. A notification would help inform applicants and petitioners, improve transparency and highlight efforts on the agency’s part to resolve a pending application; it would also better manage the applicant’s expectations regarding the case processing timeline.


285 Information provided by USCIS (April 17, 2018).

286 8 CFR § 103.2 (b)(16)(i).
Affirmative Asylum Backlog

Responsible Office: Refugee, Asylum, and International Operations Directorate, Asylum Office

Key Facts and Findings

- As the number of affirmative asylum applications grew over the past few years, so did the backlog of cases pending final decision.

- As of March 31, 2018, USCIS had 318,624 affirmative asylum applications pending final decision from the Asylum Office.

The current backlog developed from a host of factors, including spikes in credible fear claims and a rapid increase in affirmative asylum filings.

To address the backlog, the Asylum Division has increased staff to 686 authorized positions for Fiscal Year (FY) 2018, up from 533 authorized officers in FY 2016.

In January 2018, the Asylum Division changed its interview scheduling protocol to “last-in, first-out” (LIFO), to prioritize affirmative applications received by the agency within 21 or fewer days before

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287 For example, for the one month period of March 2018, 8,055 asylum applications were filed. Information provided by USCIS Asylum Division Quarterly Stakeholder Meeting (May 1, 2018). For the month of November 2009, 2,394 applications were filed. USCIS Webpage, “Asylum Office Workload. November 2009” (Apr. 21, 2010); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/Asylum%20Workload%20Nov%202009%20-%20Jan%202010.pdf (accessed May 02, 2018).

288 Information provided by USCIS (May 1, 2018).

289 Information provided by USCIS (Feb. 23, 2018).

290 Information provided by USCIS (Feb. 23, 2018) and Ombudsman’s Annual Report 2016, p.17.
scheduling its longer-pending applications.291 Prior to this change, the Asylum Division had prioritized the scheduling of its oldest pending cases for interviews on a FIFO basis since 2015.292

- USCIS expects the scheduling change to reduce the number of new affirmative asylum filings, because it is likely to discourage the filing of frivolous applications.293

Development of Modern Asylum Law

The law of asylum, particularly as interpreted in the United States, traces a direct route from the refugee crises of the twentieth century.294 Through most of World War II, U.S. immigration did not include a formal refugee process.295 Eventually, President Roosevelt created a War Refugee Board in 1944 to implement a new policy of relief for victims of the Nazis.296 In 1945, President Truman eased quota restrictions to allow the admission of persons displaced by the Nazis. In 1948, Congress passed the Displaced Persons Act, providing hundreds of thousands of visas for postwar refugees.297

After World War II, the United Nations (U.N.) took up the issue of refugee policy. In 1951, the U.N. adopted the Convention Relating to the Status of Refugees, which established a common definition of the term refugee and an obligation on the part of contracting states not to return people to countries where their life or freedom would be threatened due to their race, religion, nationality, membership of a particular social group, or political opinion.298 In 1968, the United States signed on to the international treaties, affirming this obligation to the refugee population.299

Subsequently, Congress passed the Refugee Act of 1980,300 which codified the provisions of the 1951 Refugee Convention and its 1967 Protocol.301 The Refugee Act created a mechanism for individuals to seek refuge in the United States if they could establish, among other eligibility criteria, a well-founded fear of persecution on account of one of the enumerated grounds of race, religion, nationality, membership in a particular social group, or political opinion.302

While closely related, the law and processes for refugee and asylum applicants differ. Refugees are defined in 8 U.S.C. § 1101(a)(42) and refer to persons who are outside of the United States and are applying for protection in the United States based on persecution. Asylum applicants are in the United States already and are applying for protection based on persecution. See INA § 208; 8 U.S.C. § 1158. In both cases, the required persecution is taken from a definition in international treaties adopted by the United States, the Refugee Convention, and the amendments of the Protocol Relating to the Status of Refugees. The qualifying applicant in both cases must have a well-founded fear of being persecuted for reasons of race,
religion, nationality, membership of a particular social group or political opinion.

Since passage of the 1980 Refugee Act, the process of requesting asylum has changed several ways. In 1990, the former INS established a specially trained asylum officer corps to adjudicate affirmative asylum claims and a process by which to adjudicate them. This enabled individuals who sought entry to the United States, or who had already entered the United States, to pursue the same asylum claims as refugees who were outside U.S. borders. In 1996, Congress added a one-year filing deadline, and permitted the expedited removal of asylum-seekers who failed to establish a “credible fear” of persecution during an abbreviated screening process. Expedited removal and credible fear screenings of asylum seekers have been expanded by recent Executive Orders.

Individuals physically present or arriving in the United States, who are not U.S. citizens and not otherwise inadmissible, may apply for asylum on the basis of a claim of well-founded fear of persecution in their country of origin or last residence that makes them unwilling or unable to return. Asylum applicants must demonstrate they qualify for classification as refugees, albeit ones at or after entry, based on one or more of five protected grounds—race, religion, nationality, political opinion, and membership in a particular social group—which must form “at least one central reason for persecuting the applicant.”

The statute does not define persecution except to state that persons forced into abortion, involuntary sterilization, or who resist coercive population control shall be deemed to be persecuted on account of political opinion.

Persecution has been further defined by administrative and court decisions. The Board of Immigration Appeals (BIA) defined persecution as harm or suffering inflicted upon an individual in order to punish the individual for possessing a belief or characteristic. The BIA recognized that a “punitive” intent is not required for the harm to constitute persecution and stated that persecution can consist of objectively serious harm or suffering that is inflicted because of a characteristic (whether real or perceived) of the victim.

Persecution can include more than physical harm or the threat of it, such as “the deliberate imposition of severe economic disadvantage or the deprivation of life, liberty, food, housing, employment, or other essentials of life.”

Acts that may constitute persecution included arbitrary deprivation of life; genocide; slavery; torture and other cruel, inhuman, or degrading treatment; prolonged detention without notice of and an opportunity to contest the grounds for detention; and rape or other severe forms of sexual violence.

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304 The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, 604 (one year filing deadline); 689 (defining refugee); §203(b) (1) (B) (i)-(ii), 110 Stat. 3009 (expedited removal for asylum seekers who do not establish a credible fear). Regulations for the one-year application deadline and its limited exceptions are found at 8 CFR §208.4(a). Applicants must apply for asylum within one year of their last arrival in the United States, unless they can demonstrate that there are changed circumstances that materially affect their eligibility for asylum or extraordinary circumstances directly related to their failure to file within one year. Changed or extraordinary circumstances may include certain changes in the conditions in their country, changes in their own circumstances, and other events. See USCIS Webpage, “Asylum Eligibility and Applications FAQ” (Jun. 18, 2013); https://www.uscis.gov/faq-page/asylum-eligibility-and-applications-faq#t12802n40186 (accessed May 02, 2018). Congress intended the one-year filing deadline as a deterrent to fraudulent asylum claims, while allowing exceptions that would be fairly applied so as not to impede the protection the law should provide for genuine asylum seekers. See Mendez Rojas v. Johnson, 2018 WL 1532715 (W.D. Wash. 2018), quoting Senator Orrin Hatch during deliberations on the passage of the restriction in 1996: “The Senate provisions had established a 1-year time limit only on defensive claims of asylum, that is, those raised for the first time in deportation proceedings, and provided for a good cause exception. Let me say that I share the Senator’s concern that we continue to ensure that asylum is available for those with legitimate claims of asylum. The way in which the time limit was rewritten in the conference report—with the two exceptions specified—was intended to provide adequate protections to those with legitimate claims of asylum.”
Persecution connotes government action or inaction, typically in the form of a direct government action or government-supported action. Persecution may, however, involve a “government’s unwillingness or inability to control private conduct.”

The regulations state that the required well-founded fear is established when an applicant demonstrates that “there is a reasonable possibility of suffering such persecution if he or she were to return to that country; and he or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.” The applicant must demonstrate that a reasonable person in the applicant’s circumstances would fear persecution. An applicant can establish eligibility by proving either a well-founded fear of future persecution, or that he or she has no longer face persecution.

Applicants are not required to prove that they would be singled out for persecution individually if they can establish that there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion, and that the applicant is identified with that group.

Asylum Standard. An asylum applicant bears the burden of proving a well-founded fear of persecution, either as a result of past persecution or a well-founded fear of future persecution. A claim of past persecution creates a rebuttable presumption of a well-founded fear of future persecution. The government bears the burden of overcoming that presumption, which it may meet by establishing that: (1) circumstances have changed since the past persecution such that the applicant no longer has a well-founded fear of persecution; and/or (2) the applicant may reasonably relocate to an area within the home country where the individual would no longer face persecution. A claim may also be based on a well-founded future fear, by demonstrating a reasonable possibility of suffering such persecution upon return (which can be established by a pattern or practice of persecution of persons similarly situated to the applicant on account of the five protected grounds) and an unwillingness to return. There are also a list of prohibitions that act as bars to eligibility, which the applicant must demonstrate do not apply in order to succeed in the asylum application.

The Asylum Application Process. Asylum applications are generally filed in one of two ways, affirmatively or defensively. See Figure 4.1. Defensive asylum applications are filed in response to removability charges during hearings conducted by the Executive Office for Immigration Review (EOIR). Affirmative applications are filed by applicants in the United States who are not in removal proceedings directly with USCIS by submitting Form I-589, Application for Asylum and for Withholding of Removal within one year of arrival. USCIS’ RAIO oversees the operation of the Asylum Division, which administers the adjudication of affirmative asylum applications. Applicants are interviewed by USCIS at one of 12 asylum offices (nine full offices, three sub-offices) nationwide. After an asylum interview, applicants who are not granted asylum by USCIS (and who are not currently in valid status) are referred to Immigration Court, where they may present their asylum claim as a defense to removal to an immigration judge.

There are, however, two additional ways to raise a claim of asylum at or near our borders. The law provides for credible fear and reasonable fear screenings of those who either (1) present themselves at a port of entry with an intention to apply for asylum or indicate a fear of persecution, or (2) in violation of the law, cross the United States at a location other than an official port of entry, and are subject to expedited removal. Both are forms of expedited removal, but permit the applicant to seek asylum through an accelerated review of their claim.

314 See, e.g., Aldana-Ramos v. Holder, 757 F.3d 9, 17 (1st Cir. 2014).
315 Aldana-Ramos v. Holder, 757 F.3d 9, 17 (1st Cir. 2014)(emphasis added).
316 8 CFR § 208.13 (b)(2)(i)(B) and (C). However, “An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant’s country of nationality or, if stateless, another part of the applicant’s country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.” 8 CFR § 208.13 (b)(2)(ii).
318 8 CFR § 208.13(b).
319 8 CFR § 208.13(b)(2)(iii).
320 8 CFR § 208.13.
321 8 CFR § 208.13(b)(1).
322 8 CFR § 1208.13(b)(2).
323 Individuals who filed for asylum more than a year after entry, unless able to meet one of the narrow enumerated exceptions in the statute, are barred from asylum. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, 604. Also barred from asylum are persons convicted of an aggravated felony, or who materially supported a terrorist group, or who are deemed be a national security risk, or who are firmly resettled in another country, or who assisted in the persecution of others are barred from a grant of asylum. See INA § 208(a)(2)(A) and (B); 8 U.S.C. § 1158(a)(2)(A) and (B); (b)(2).
Credible Fear Screening Process. Individuals who seek admission to the United States without proper entry documents or who have otherwise not been admitted are subject to immediate return, called expedited removal. However, if they claim a fear of persecution and a desire to apply for asylum, they are detained and receive a credible fear screening from an asylum officer. If the applicant establishes a “significant possibility” that he or she can prove the elements of a full asylum claim in a hearing before an immigration judge, the applicant is referred to proceedings and can apply for asylum in a removal hearing. The less rigorous standard and easier burden of proof distinguishes the credible fear process as a pre-screening for asylum; the applicant must still meet the burden of a well-founded fear in removal.

Reasonable Fear Screening Process. An individual who has unlawfully reentered the United States after being ordered removed or granted voluntary departure, and/or is subject to an administrative order of removal
as an aggravated felon, but who expresses a fear of persecution upon return is detained and referred for a reasonable fear interview rather than a credible fear screening. A positive reasonable fear determination does not grant any immigration benefit, but it does allow a person to be referred to immigration court where the individual may ask an immigration judge to grant other relief, such as withholding of removal or, in some cases, relief under the Convention Against Torture (CAT). Similar to credible fear, if a reasonable fear determination is negative, then the person may ask that an immigration judge review the asylum officer’s decision.

**Asylum Grants.** Though USCIS’ Asylum Division does not track the basis of the persecution grounds upon which an applicant filed the asylum applications, it does track the basis of the claim upon which the final decision was made.

In 2017, the overall approval rate for affirmative asylum applications was 34 percent. For FY 2018, the overall approval rate was 26 percent as of February, 2018. See Figure 4.2.

**Asylum Benefits.** The benefits of asylum are substantial. An approved asylee may remain in the United States indefinitely (absent termination of asylee status, which can occur if there are fundamental changes in circumstances or acquisition of third country citizenship) and is eligible to apply for permanent residence status after one year. Within two years of receiving asylum, an asylee may petition on the basis of the asylum status for spouses and unmarried children under 21 to join the applicant as an asylee. After five years of permanent resident status, eligible individuals may apply for naturalization and become U.S. citizens.

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**Figure 4.2: Grounds for Granting Affirmative Asylum in FY 2017**

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Referral/Denial Rate†</th>
<th>Grant Rate†</th>
<th>Top Ground#1</th>
<th>#2 Ground</th>
<th>#3 Ground</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>58%</td>
<td>42%</td>
<td>Religion</td>
<td>CFP</td>
<td>Political</td>
</tr>
<tr>
<td>El Salvador</td>
<td>65%</td>
<td>35%</td>
<td>PSG</td>
<td>none</td>
<td>Political</td>
</tr>
<tr>
<td>Guatemala</td>
<td>67%</td>
<td>33%</td>
<td>PSG</td>
<td>none</td>
<td>Race</td>
</tr>
<tr>
<td>Mexico</td>
<td>91%</td>
<td>9%</td>
<td>none</td>
<td>PSG</td>
<td>Political</td>
</tr>
<tr>
<td>Venezuela</td>
<td>28%</td>
<td>72%</td>
<td>Political</td>
<td>PSG</td>
<td>Multiple</td>
</tr>
</tbody>
</table>

Notes:
- With the exception of Venezuela, all listed nationalities are both most numerous new applications and most numerous applications completed by the Asylum Division during the fiscal year. Venezuela is not one of the nationalities with the most numerous applications completed by the Asylum Division.
- **Referral/denial rate = (adjudicated referred + denied) / (granted + denied + adjudicated referred) x 100. Cases referred on the One Year Filing Deadline are included in adjudicated referred. This calculation does not include admin closures and unadjudicated referred cases (eg. no shows, no jurisdiction, withdrawals etc).**
- Grant rate = granted / (granted + denied + adjudicated referred) x 100. This calculation does not include admin closures and unadjudicated referred cases (eg. no shows, no jurisdiction, withdrawals etc).
- **The top grounds are the highest number of cases per ground for adjudicated cases in FY 2017 and FY 2018 Q1.**

Cases completed in any fiscal year could have been filed, received or reopened in previous fiscal years. Cases may include more than one individual, i.e. an applicant and a spouse and/or children.

Source: Information provided by USCIS (Mar. 29, 2018). PSG denotes particular social group, while CFP means coercive family planning.

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**The Growing Backlog**

The asylum application backlog, defined by the Asylum Office as all pending applications, has reached record numbers.

A host of factors have contributed to the growth in the affirmative asylum backlog. These include: (1) a continuing high volume of credible and reasonable fear claims; (2) an increase in new affirmative asylum receipts; (3) an increase in affirmative asylum applications potentially motivated by obtaining employment authorization; (4) a potential rise in affirmative asylum cases filed for the purpose of obtaining access to immigration court to seek cancellation of removal; and (5) a rise in affirmative asylum claims by unaccompanied children.

**High Volume of Credible and Reasonable Fear Claims.** Since FY 2012, a large number of Central American nationals arriving at the border have contributed to a high

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331 Id.
332 Id.
333 Information provided by USCIS Asylum Office Division Quarterly Stakeholder Meeting (Feb. 06, 2018).
334 Id.
335 See INA § 209(c)(2); 8 U.S.C. § 1158(c)(2).
336 See INA § 209(a)(1); 8 U.S.C. § 1159(a)(1).
337 See INA § 208(b)(3); 8 U.S.C. § 1158(b)(3); Form I-730, Refugee/Asylee Relative Petition; https://www.uscis.gov/i-730 (accessed Mar. 07, 2018).
volume of credible fear claims, which have constrained the Asylum Division’s capacity to direct resources to affirmative asylum adjudications. In FY 2011, credible fear case receipts numbered 8,254. In FY 2017, a total of 50,475 credible fear cases were received.

Reasonable fear claims also increased during the same period. In FY 2017, USCIS received 5,630 reasonable fear cases, more than double the FY 2011 total of 2,376 and a seven percent increase over the reasonable fear cases in FY 2016 (5,235). Nationals of the Northern Triangle of El Salvador, Honduras, and Guatemala submitted the majority of the FY 2017 credible fear and reasonable claims.

The Asylum Division regularly sends asylum officers on temporary assignments to border locations to perform credible fear screenings of detained asylum seekers, limiting the availability of officers to adjudicate pending affirmative asylum applications. While many credible fear screenings are conducted telephonically, they still require hours of officer time, draining these finite resources.

Increase in Affirmative Asylum Filings from New Sources. Not only has the Asylum Division been inundated with credible fear and reasonable fear interviews, but it also is receiving a higher number of new affirmative asylum cases. See Figures 4.3 and 5.2. In 2009, the Asylum Division received approximately 2,400 applications per month; by

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345 USCIS Asylum Division does not adjudicate asylum applications arising from credible fear screenings. These defensive applications are adjudicated by EOIR.

346 Information provided by USCIS (Feb. 23, 2018).
FY 2018, it was receiving over 8,000 filings per month. As of March 31, 2018, USCIS had 318,624 affirmative asylum applications pending final decision from the Asylum Division.

A rise in receipts from nationals of countries experiencing acute hardship has contributed to this trend. For example, in FY 2017, Venezuela ranked as the number one country of nationality for affirmative asylum applicants, surpassing China, which has a much larger population and had been the leading country of nationality for affirmative asylum applicants for the past ten years.

**Employment Authorization Incentive.** The growing backlog of affirmative asylum filings has lengthened processing times. Applications now often remain pending for well over a year, depending on the jurisdiction, before asylum seekers are even interviewed. This is long beyond the 180-day adjudication time frame specified in the statute. See Figure 4.5.

The Asylum Division surmises that this long wait has incentivized individuals to claim asylum in order to obtain work authorization. The law requires those filing an asylum application to wait 150 days before requesting employment authorization, with the caveat that USCIS may not grant work authorization to an asylum applicant until 180 days after filing. When the Asylum Division had a smaller pending caseload and adjudicated affirmative asylum cases more quickly, it often reached asylum decisions prior to the 150-day mark, including denials of meritless applications, which rendered the applicants ineligible for employment authorization. However, USCIS

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347 For example, for the one month period of March 2018, 8,055 asylum applications were filed. Information provided by USCIS Asylum Division Quarterly Stakeholder Meeting (May 01, 2018). For the month of November 2009, 2,394 applications were filed. USCIS Webpage, “Asylum Office Workload. November 2009” (Apr. 21, 2010); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/Asylum%20Workload%20Nov%202009%20-%20Jan%202010.pdf (accessed May 02, 2018).

348 Information provided by USCIS (Feb. 23, 2018).

349 Id.

350 INA § 208(d)(5); 8 U.S.C. § 1158(d)(5) (“in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed”). See also Human Rights First Webpage, “Asylum Office Backlog and Delays” (Nov. 16, 2016); http://www.humanrightsfirst.org/resource/asylum-office-backlog-and-delays (accessed March 8, 2018).

351 Information provided by USCIS (Feb. 23, 2018).

352 8 CFR § 208.7(a)(1).
presumes the backlog has created an incentive to apply for asylum—without a strong case, or even fraudulently, for the purpose of obtaining an EAD while the delays continue. The agency suspects that these EAD-motivated applications have exacerbated the backlog.

Cancellation of Removal Incentive. The Asylum Division also reports that another contributing factor to the asylum backlog is an increase of applicants who file for affirmative asylum seeking a path into immigration court to apply for cancellation of removal. Cancellation of removal, a statutory defense against removal after ten years of physical presence, is not a benefit for which an individual may affirmatively apply. It is a defense to removal, available only to those who are already in removal proceedings, as jurisdiction lies solely before an immigration judge. The Asylum Division recently performed an audit identifying up to 50,000 pending affirmative asylum applications filed by individuals who entered the United States more than ten years ago, despite the one-year filing requirement. The Asylum Division suspects this group of asylum applicants filed for asylum, anticipating referral to immigration court where they could then apply for cancellation of removal, an avenue not otherwise available.

**Figure 4.5: Average Number of Days Pending from Application Filing Date to Interview**

<table>
<thead>
<tr>
<th>Asylum Office Location</th>
<th>Average Days Pending with USCIS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Local Jurisdiction</td>
</tr>
<tr>
<td>Arlington</td>
<td>200</td>
</tr>
<tr>
<td>Boston</td>
<td>300</td>
</tr>
<tr>
<td>Chicago</td>
<td>400</td>
</tr>
<tr>
<td>Houston</td>
<td>500</td>
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<tr>
<td>Los Angeles</td>
<td>600</td>
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<tr>
<td>Miami</td>
<td>700</td>
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<tr>
<td>New Orleans</td>
<td>800</td>
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<tr>
<td>New York</td>
<td>900</td>
</tr>
<tr>
<td>Newark</td>
<td>1000</td>
</tr>
<tr>
<td>San Francisco</td>
<td>1100</td>
</tr>
</tbody>
</table>

Source: Information provided by USCIS (Mar. 29, 2018). The Boston and New York Asylum Offices do not at this time conduct circuit rides.

USCIS has undertaken a range of initiatives to address the backlog and mitigate its consequences for asylum seekers, agency operations, and the integrity of the asylum system. These efforts include: (1) revised scheduling priorities including changing from FIFO order processing to LIFO order; (2) staffing increases and retention initiatives; (3) acquiring new asylum division facilities; (4) assigning refugee officers to the Asylum Division; (5) conducting remote screenings; and (6) launching a pilot program for

**Trafficking Victims Protection Reauthorization Act (TVPRA) Preference for UAC Applications.** As the number of asylum applications has increased, the number of UACs claiming asylum also has grown exponentially, further complicating the Asylum Division’s resource issues. Until new scheduling priorities were announced in 2018, USCIS prioritized affirmative asylum interviews of UACs ahead of other categories of asylum applicants. In 2012, only 410 UACs filed asylum claims, which grew to 14,711 in 2016. This has not only increased the sheer number of affirmative asylum claims, but impacted the timing in which the claims were processed. Some of these cases required moving resources to family residential centers in remote locations where asylum officers had to travel to interview them in person. This further slowed down affirmative asylum processing and pushed interview wait times because asylum officers were not immediately available to conduct affirmative interviews.

Efforts to Address the Backlog and Mitigate its Effects

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353 Information provided by USCIS Asylum Office Division Quarterly Stakeholder Meeting (Feb. 06, 2018).
354 Information provided by USCIS (Feb. 23, 2018).
355 Cancellation of removal is a defense to removal under INA §240A (b) which is only available to individuals in removal proceedings before an immigration judge who have been physically present in the U.S. for not less than 10 years and can prove exceptional and extremely unusual hardship to the alien’s spouse, parent or child who is a U.S. citizen or LPR.
356 Information provided by USCIS (Feb. 23, 2018). The one-year filing deadline regulations outline a few important exceptions for unaccompanied minors, changed circumstances affecting eligibility for asylum, or extraordinary circumstances that created a delay in filing an application. 8 CFR § 208.4(a)(4) and (5).
357 Information provided by USCIS (Feb. 23, 2018).
360 Information provided by USCIS (Feb. 23, 2018).
applicants seeking a route to immigration court to request cancellation of removal.

**Revised Interview Scheduling Priorities.** A significant scheduling change occurred in January 2018 with FIFO scheduling returning to LIFO scheduling order. Previously implemented in 1995, LIFO remained in effect until 2014. Under FIFO scheduling, USCIS generally processed affirmative asylum applications in the order they were filed, although priority scheduling applied to some cases, such as those involving rescheduled interviews and the statutorily-required UACs. The now-operative LIFO scheduling methodology prioritizes newly-filed applications. Statutory requirements call for an interview (in the absence of exceptional circumstances) within 45 days of the filing of an application. With the return to LIFO scheduling, USCIS indicates that it will schedule asylum interviews using the following order of priority for those cases that fall under the nine primary asylum office locations:

- **First Priority:** Rescheduled interviews. These include applications that were scheduled for an interview, but the interview had to be rescheduled either by USCIS or at the applicant’s request.

- **Second Priority:** Applications pending 21 days or less.

- **Third Priority:** All other pending affirmative asylum applications will be scheduled for interviews starting with newer filings and working back toward older filings.

Cases subject to interviews at “circuit ride” locations (generally a USCIS field office situated closer than the asylum office to an applicant’s residence) will not fall under the 21-day time frame. Rather, the Asylum Division will schedule these cases for interviews as resources permit.

USCIS reverted to this scheduling methodology to reduce the potential incentive to file an asylum application merely as a means of acquiring an EAD. With interview scheduling based on filing date under FIFO, and with applicants able to apply for an EAD once their asylum application has been pending 150 days, applicants could acquire an EAD before being contacted for an asylum interview. Under LIFO, potential asylum applicants will be much more likely to have an interview, and potentially a decision, before their application reaches the 150-day threshold. Local offices report a 25 percent drop in affirmative receipts in the immediate aftermath of the change to LIFO scheduling.

Asylum offices continue to grant a limited number of expedited interview requests on a case-by-case basis. Each asylum office has a process for adjudicating expedited interview requests that generally requires a written request to the asylum office. Apart from the expedite process, many offices also maintain a standby list. Applicants can request placement on that list in the event of last-minute interview cancellations.

Local offices report that they have adopted additional initiatives to ease the processing of cases quickly, such as requiring the submission of any additional evidence one week prior to a scheduled interview, allowing officers time to review documentation necessary to conduct the interview.

One issue arising from the change in the priorities is the removal of UACs from the priority list. As discussed above, TVPRA provides USCIS with initial jurisdiction

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361 See Information provided by USCIS Asylum Office Division Stakeholder Meeting (Feb. 06, 2018).
362 INA § 208(d)(5); 8 U.S.C. § 1158(d)(5).
364 Id.
365 Id. Local offices report that 90 percent of cases scheduled for interviews fall within the first two priorities, that is, reschedules and cases aged within 21 days of receipt. Information provided by USCIS (May 01, 2018).
367 Information provided by USCIS Asylum Office Division Stakeholder Meeting (Feb. 06, 2018).
368 Information provided by USCIS (May 01, 2018).
371 Information provided by USCIS at the Sixth Annual Ombudsman’s Conference (Dec. 06, 2016); See USCIS Webpage, “Questions and Answers USCIS Asylum Division Quarterly Stakeholder Meeting” (Nov. 4, 2016); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsyrmQuarterlyEngagementQA11042016.pdf (accessed Mar. 09, 2017).
372 Information provided by USCIS (May 01, 2018).
over all asylum applications filed by UACs, even those
initially filed in removal proceedings. The revised
priorities will mean UACs may now wait longer for
interviews, although they will still fall under the new
LIFO process.

**Staffing Increases and Retention Initiatives.** Since
2015, USCIS has increased the number of asylum officer
positions by more than 50 percent, from 448 officers
authorized for FY 2015 to 686 officers authorized for FY
2018. Along with these staffing enhancements, RAIO
increased the frequency with which it offered the RAIO
Directorates’ Combined Training and Asylum Division
Officer Training Course, thereby reducing the amount of
time spent in training. Moreover, to address asylum
officer turnover, the Asylum Division has made efforts
to increase telework options and expand opportunities
for advancement.

**New Asylum Division Facilities.** The Asylum Division
also expanded its field operations, opening sub-offices
in Boston, New Orleans, and Arlington, VA. Its most
significant expansion, however, is just getting underway.
Currently, the Asylum Division is establishing an asylum
vetting center—distinct from the planned DHS-wide
National Vetting Center—in Atlanta, Georgia. This center
will allow for the initiation of certain security checks
from a central location, rather than at individual asylum
offices, in an effort to alleviate the administrative burden
on asylum officers and to promote vetting and processing
efficiency. USCIS has already begun hiring for the center,
which will ultimately staff approximately 300 personnel,
composed of both asylum and FDNS positions. USCIS
expects completion of the center’s construction in 2019
or 2020.

**Remote Screenings: Telephonic and Videoconference.** In
2016, the Asylum Division established a sub-office of the
Arlington Asylum Office dedicated to adjudicating credible
and reasonable fear claims. This sub-office performs remote
(primarily telephonic) screenings of applicants who are
located in detention facilities throughout the country. This
leaves the interviewers performing assessments of the
applicants via telephonic screenings, which enables
the interviewers to access their offices, files, and research,
but has consequences distinct from an in-person interview
in terms of the physical remoteness of the interviewer
from the applicant. USCIS may assign personnel on the
ground at the facilities as needed to manage logistics and
conduct certain interviews in-person and on-site. For
example, currently all interviews involving children must
be conducted in person, so these are instead conducted by
officers rotating to facilities.

The Asylum Division states that its practice of performing
remote telephonic screenings of credible and reasonable
fear claims has enhanced processing efficiency since
implementation. These screenings allow asylum
offices greater agility and speed in reaching asylum
seekers whose arrival patterns in the United States are not
always predictable and who may be detained at remote
detention facilities.

**Refugee Officers Assigned to the Asylum Division.**
Throughout 2018, RAIO plans to have approximately 100
refugee officers serving 12-week assignments with the
Asylum Division at any given time. As the refugee quota
diminished, refugee office personnel became available
to perform other functions. The annual U.S. Refugee
Admissions Program cap—which designates the number
of refugees that the United States may resettle in a given
year—increased from 70,000 in FY 2015 to 85,000 in FY
2016 and was set to increase in FY 2017 to 110,000.

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373 **TVRA § 235(d)(7)(B).**
374 Information Provided by USCIS (Apr. 12, 2017). As of Jan. 1, 2017 the
Asylum Division has 528 Asylum Officers and is projected to reach 562 by
September 30, 2017. Information provided by USCIS at the Sixth Annual
Ombudsman’s Conference (Dec. 06, 2016); see also USCIS Webpage,
“Questions and Answers USCIS Asylum Division Quarterly Stakeholder
Meeting” (Feb. 07, 2017); https://www.uscis.gov/sites/default/files/
375 See USCIS Webpage, “Questions and Answers USCIS Asylum Division
Quarterly Stakeholder Meeting” (Aug. 02, 2016) (reflects two simultaneous
trainings for scheduled for new asylum officers); https://www.uscis.gov/sites/
default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/
376 Information provided by USCIS (Feb. 23, 2018).
377 Id.
378 Id.
this cap grew, USCIS increasingly loaned asylum officers to RAIO’s Refugee Division to meet the growing refugee processing workload. With a cap of 45,000 for FY 2018, the trend has reversed, with refugee officers now being loaned to the Asylum Division. These refugee officers are able to interview affirmative asylum cases, conduct credible fear and reasonable fear screenings, and provide operational support. RAIO assigns refugee officers both to asylum offices and DHS’s family residential centers. The Administration cited the affirmative asylum backlog as a factor influencing its 2018 refugee ceiling determination, stating that agency resource allocations would reflect prioritization of the backlog.

**Pilot Program for Applicants who Appear to be Seeking Cancellation of Removal.** As noted above, the Asylum Division recently identified up to 50,000 pending affirmative asylum applications filed by individuals who entered the United States more than 10 years ago, who may actually be seeking a referral to immigration court where they could then apply for cancellation of removal. Recently, the Asylum Division began a pilot program in which it notified 1500 of these applicants of an option to voluntarily waive their asylum interviews and proceed directly to immigration court. The Asylum Division will evaluate the results of the pilot and consider expansion in the future.

**Other Impacts of the Backlog**

Security concerns have been raised about a large pool of people in the United States awaiting action on their immigration cases, including security vetting. The plans already underway to develop a pre-processing center for asylum filings, which will centralize security checks, could ease this concern. A systematic and centralized security process will make such checks more efficient and more consistent, providing stability in the process and enabling adjudicators to focus on the merits of each claim. The center, however, will not be in full operation for at least a year from the time of publication of this Report, by which time the backlog of applications is not likely to be substantially reduced.

**Conclusion**

The Asylum Division has carefully planned and implemented a comprehensive backlog reduction plan that will begin to chip away at the more than 300,000 pending asylum applications. Some offices already report a 25 percent drop in affirmative asylum filings since implementation of the LIFO scheduling system in January 2018. Despite the gains that USCIS predicts, the backlog may be difficult to reduce due to other factors such as changes in enforcement and loss of status by certain groups based on new policy changes.

One potential challenge for reducing the affirmative asylum backlog is the possibility of a new wave of asylum claims from individuals currently holding TPS. TPS for nationals of El Salvador will end in 2019 and it is likely that some percentage of the approximately 200,000 individuals left without status may be eligible to affirmatively apply for asylum. Asylum applications from El Salvador are currently the second highest number of filings at the Asylum Division. TPS is ending for several other nationalities, as well. Haitians will lose TPS on January 5, 2020. The Asylum Division may face more challenges if some portion of this population becomes part of the pending affirmative asylum caseload.

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387 Information provided by USCIS (Feb. 23, 2018).
389 Information provided by USCIS (Feb. 23, 2018).
391 Information provided by USCIS (May 1, 2018).
393 Information provided by USCIS (Feb. 23, 2018).
EB-5 Immigrant Investor Program

Key Facts and Findings

- As usage of the EB-5 Program has grown, stakeholders, including members of Congress, have increasingly voiced concerns regarding program integrity, possible exploitation of foreign investors and the potential for EB-5 investors to use funds from unlawful sources.

- Stakeholders have criticized Targeted Employment Area (TEA) gerrymandering, which has concentrated investments in wealthy urban areas rather than rural and high-unemployment areas as originally intended.

- USCIS has sought to address these concerns and others through a range of reforms, including proposed regulations issued in January 2017 that increase program oversight and redefine TEAs.

Background

Congress established the EB-5 Immigrant Investor program in 1990 to encourage foreign entrepreneurs to make capital investments in the United States and produce jobs for American workers. Under the EB-5 program, foreign nationals who invest $1 million in a new or existing U.S. for-profit entity and create ten full-time positions for U.S. workers are eligible to apply for an immigrant visa. The required investment decreases to $500,000 when the business operates within a TEA, which...

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399 INA § 203(b)(5)(A), 8 U.S.C. § 1153(b)(5)(A); 8 CFR § 204.6(j).
is a rural area or an area with high unemployment rates.\textsuperscript{400} Congress allocates approximately 10,000 immigrant visas annually to immigrant investors and their immediate family members.\textsuperscript{401}

At the outset of the EB-5 program, foreign investors used a small fraction of the 10,000 annual visa allotment. In 1992, Congress attempted to spur more participation by creating the EB-5 Regional Center Pilot Program (Regional Center Program).\textsuperscript{402} The Regional Center Program allowed investors to pool investments into larger projects that would have greater impact on the U.S. economy.\textsuperscript{403} Investors now could meet program requirements through direct and indirect job creation—a new job based on an employer-employee relationship between the new commercial enterprise and the people it employs or a new job held outside of the new commercial enterprise created as a result of the enterprise.\textsuperscript{404} This pilot program was intended to sunset after five years, but Congress has repeatedly extended it, with the most recent grant scheduled to end on October 23, 2018.\textsuperscript{405}

Congress’s expansion of investor visa options through the Regional Center Program did not lead to increased use of the EB-5 program throughout its first 15 years of existence.\textsuperscript{406} See Figure 5.1.

Other changes dampened interest in the program. For example, USCIS issued four precedent decisions through the Administrative Appeals Office (AAO) that restricted business practices and financial maneuverings deemed incompatible with EB-5 law and regulations. These decisions: (1) eliminated repayment/redemption guarantees that meant the EB-5 investment capital was no longer “at risk,” which is a program requirement;\textsuperscript{407} (2) emphasized that the investor bears the burden of clearly establishing the lawful source of the investment capital;\textsuperscript{408} (3) clarified when a reorganized business may qualify as a “new commercial enterprise;”\textsuperscript{409} and (4) restricted the use of investor promissory notes as a qualifying capital

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure51.png}
\caption{EB-5 Admissions, FY 1992–2017}
\end{figure}

\textsuperscript{400} INA § 203(b)(5)(B)-(C), 8 U.S.C. § 1153(b)(5)(B)-(C). The employment rate must be at least 150 percent of the national average. INA § 203(b)(5)(ii).
\textsuperscript{401} INA §§ 201(d), 203(b)(5)(A), 8 U.S.C. §§ 1151(d), 1153(b)(5)(A).
\textsuperscript{404} 8 CFR § 204.6(e)(definition of “employee”).
\textsuperscript{409} Id.
investment if not secured by the investor’s assets in full.\textsuperscript{410} In addition, these decisions required investors to submit a well-developed business plan for the commercial enterprise that addressed specified issues with the investor petition (Form I-526, Immigrant Petition by Alien Entrepreneur) outlined by the AAO.\textsuperscript{411}

Since 2008, regional center filings have increased dramatically, a trend that began during the financial crisis; currently, almost all EB-5 filings are now through regional centers. Prior to 2008, the EB–5 program received on average fewer than 600 immigrant petitions per year. However, since 2008, the program has averaged over 5,500 petitions per year, primarily due to the increase in regional center filings.\textsuperscript{412} In the fourth quarter of FY 2015, a random sampling taken by GAO of pending immigrant investor petitions showed approximately 91 percent of EB-5 investments were made through regional centers, and 99 percent of all EB-5 projects were located in a TEA.\textsuperscript{413}

The financial crisis resulted in the closure of many U.S. lending institutions, reawakening interest in the EB-5 program from investors, as well as project developers. As the United States fell deeper into recession, it became more difficult for large-scale commercial real estate developers to access conventional financing for their projects.\textsuperscript{414} In response, developers and other intermediaries turned to the EB-5 program to raise capital.\textsuperscript{415} The program attracted commercial real estate and other developers as a way to access below-prime lending rates using foreign investor funds.\textsuperscript{416} By September 2016, nearly 74 percent of petitioners investing in a TEA used various types of real estate projects including mixed use, hotels and resorts, commercial, and residential developments.\textsuperscript{417} See Figure 5.2.

**Figure 5.2: GAO Breakdown of EB-5 Capital Investment Usage**

<table>
<thead>
<tr>
<th>Investment Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Estate: Mixed Use</td>
<td>38%</td>
</tr>
<tr>
<td>Real Estate: Hotel/Resort</td>
<td>22%</td>
</tr>
<tr>
<td>Real Estate: Residential</td>
<td>7%</td>
</tr>
<tr>
<td>Real Estate: Commercial</td>
<td>7%</td>
</tr>
<tr>
<td>Medical Facilities</td>
<td>4%</td>
</tr>
<tr>
<td>Restaurants</td>
<td>4%</td>
</tr>
<tr>
<td>Transportation/Storage</td>
<td>5%</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>7%</td>
</tr>
<tr>
<td>Education/Schools</td>
<td>2%</td>
</tr>
<tr>
<td>Retirement Homes</td>
<td>1%</td>
</tr>
</tbody>
</table>


USCIS strove to maintain program controls and provide stakeholders with adequate guidance on increasingly complex program issues. In 2010, USCIS began a comprehensive review of the entire EB-5 program to document, streamline, and consolidate its adjudication policies and procedures, as well as to address concerns raised by EB-5 stakeholders.\textsuperscript{418} Following discussions


\textsuperscript{414} See “EB-5 Immigrant Investor Program Modernization,” 82 Fed. Reg. 4738, 4755 (Jan. 13, 2017) (“EB-5 filings grew rapidly starting in 2008, when the U.S. financial crisis reduced available U.S.-based commercial lending funds and alternative funding sources, such as the EB-5 program, were sought. Based on the type of projects that Form I-526 petitions describe, it appears that EB-5 capital has been used as a source of financing for a variety of projects, including a large number of commercial real estate development projects to develop hotels, assisted living facilities, and office buildings”). See also The Nat’l Bureau of Econ. Research, U.S., Business Cycle Expansions and Contractions; www.nber.org/cycles.html (accessed May 9, 2018).


with USCIS adjudicators at the California Service Center (CSC), where the EB-5 program was housed, and a series of meetings with stakeholders, USCIS began to articulate unified policy statements on a variety of EB-5 topics. The agency committed to an interactive process that enabled stakeholders to comment on proposed policy changes before implementation.419

USCIS issued a comprehensive EB-5 policy memorandum on May 30, 2013.420 The memorandum addressed several longstanding stakeholder concerns, many of which the Ombudsman’s Office had raised with USCIS previously, including when and to what extent USCIS adjudicators should accord deference to prior adjudications.421 In June 2013, the agency centralized EB-5 program operations in Washington D.C., and began staffing the newly-established Immigrant Investor Program Office (IPO).

Program Integrity Challenges

The EB-5 program has faced a number of challenges since inception. Among the issues are fraud committed by principal investors; fraud and malfeasance committed by attorneys; gerrymandering of TEAs for the benefit of investors; and sourcing of funds in ways that have the potential to threaten national security. Congress, federal agencies, and the public have all expressed concern that Americans have not seen the benefit of the program as designed (jobs, investment, etc.) while fraud and questionable practices result in foreign nationals losing their money and immigration benefits they sought.

Fraud, Embezzlement and Other Abuses. Fraud and abuse, in the form of embezzlement, Ponzi schemes, and securities violations, continue to be ongoing challenges for the EB-5 program, particularly the Regional Center Program. Fraud impacts direct investors as well as the intended beneficiaries of the investment, both direct and indirect. The U.S. government has prosecuted dozens of EB-5 fraud cases where attorneys, or regional center principals and officials, and other financial personnel funneled investors’ funds for personal or other impermissible use.422 The U.S. Securities and Exchange Committee (SEC) has charged several lawyers with offering EB-5 investments without registering as brokers, as is required under the Securities Exchange Act,423 and without disclosing the commissions received from investment offers. Some faced prosecution; others have settled the charges without admitting or denying SEC’s findings.424 Those prosecuted are often sentenced to prison and ordered to pay restitution to the victim investors.

When USCIS discovers fraud, it not only terminates the regional center’s designation, but also revokes project investors’ immigration benefits, regardless of their involvement in the scheme. The immigrant EB-5 petitioner, whose goal was to obtain permanent resident status, loses this opportunity, along with the investment.

Targeted Employment Area Issues. Another area of concern is the designation and use of the TEAs. In an address to Congress, Senator Grassley noted that existing EB-5 regulations do not prohibit TEA gerrymandering—stitching together contiguous census tracts to allow projects physically located in affluent areas to benefit from the lower $500,000 investment threshold. Under the current rules, Senator Grassley stated that there is “little incentive to invest EB-5 funds in distressed or rural areas,


as was envisioned by Senators when [the EB-5 program] was created.”

One example made public by news coverage is the Hudson Yards TEA project in Manhattan. This multi-phase commercial, retail, and residential development project qualified as a TEA by tacking together continguously adjoining/bordering plats from the actual project site through Central Park to high unemployment areas near the East River, miles away. See Figure 5.3. The result of this kind of gerrymandering is that communities that truly are TEAs are less likely to receive much needed investment and more affluent markets receive higher amounts of investment than Congress intended.

**Lawful Source of Funds Issues.** Another challenge for the EB-5 program has been the development of money laundering schemes and proving the lawful source of funds. The EB-5 regulations require immigrant investors to identify the source of EB-5 funds to establish they were obtained lawfully. This investor burden is met through business records, such as foreign business registration records; business and personal tax return filings in any country within the past five years; and/or evidence identifying other sources of capital such as business entity reports, audited financial statements, income earning statements, gift instruments, and property ownership.

However, even with the presentation of these documents, USCIS finds that in many countries, investors are permitted to self-identify and self-report the sources of their assets and income, making it difficult for USCIS to verify the lawfulness of the source of funds that are then invested in the EB-5 program. Critics of the program have raised concerns regarding the origin of investors’ funds. They have raised the potential for abuse of the program by corrupt foreign officials and criminals attempting to evade laws and protect illicitly gained funds. Others argue that the agency is hyper-technical in its requirements, making it nearly impossible to meet the burden identifying fund sources. Both sides would agree that the standard requires review by the agency.

**Finding Administrative Solutions to Long-Standing Concerns**

Due to the challenges that have evolved with the EB-5 program, the DHS OIG and GAO have conducted formal studies and issued recommendations. In addition, USCIS

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426 8 CFR §§ 204.6(e), 204.6(j)(3). See also In Re Soffici, 22 I&N. Dec. 158, 165 (BIA 1998).

427 USCIS Policy Manual, Volume 6, Part G, Chapter 2; https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG-Chapter2.html. Furthermore, if applicable, USCIS also requests certified copies of any judgments or evidence of all pending civil or criminal matters, governmental administrative proceedings, or any private civil actions involving monetary judgments against the immigrant investor within the past 15 years.


has initiated solutions and programmatic adjustments to address stakeholder concerns.

**Oversight Reports and Recommendations**

In 2013, the DHS OIG conducted an audit and issued a report on the EB-5 program and its adjudication process, finding that USCIS lacked the authority needed to deny or terminate a regional center based on fraud or national security concerns. It further concluded that USCIS could not demonstrate the benefits of foreign investment into the U.S. economy. These challenges, the report cited, made it difficult for USCIS to ensure the integrity of the EB-5 Regional Center Program and vulnerable to perceptions of internal and external influences. Based on these findings, the OIG made four recommendations:

1. Update and clarify federal regulations to give USCIS the authority to deny or terminate a regional center involved in fraud or national security concerns;
2. Develop memoranda of understanding with the Departments of Commerce and Labor and the SEC to ensure interagency participation and expertise as needed in Regional Center Program adjudications;
3. Conduct comprehensive reviews to determine to what extent EB-5 funds have stimulated growth in the U.S. economy in accordance with program intent; and
4. Establish quality assurance steps to promote program integrity and ensure that regional centers comply with regulatory requirements.

USCIS concurred with all but the third recommendation, stating that it lacked authority to conduct a broader assessment of the program’s economic impact beyond the statutory requirement to determine job creation during the course of adjudications. Further discussion of the agency’s specific actions to address these concerns are highlighted below.

In 2014, GAO reviewed fraud risks and economic benefits for the EB-5 Program. Its investigation revealed that

USCIS was not consistently conducting fraud assessments to strengthen the program. In its report to Congress in August 2015, GAO recommended that USCIS conduct regular fraud risk assessments to strengthen EB-5 fraud prevention, detection, and mitigation capabilities. USCIS agreed with the recommendation, stating that it would conduct at least one fraud, national security, or intelligence assessment in the EB-5 program annually. USCIS also agreed with the GAO’s recommendation that it interview EB-5 investors when it adjudicates Form I-829, Petition to Remove Conditions 2 years after admission as a Conditional LPR.

**Agency Efforts to Improve the Integrity of the EB-5 Program**

The IPO has taken a number of steps to combat EB-5 fraud and enhance program integrity, including the establishment of a compliance review team; creation of hybrid teams for comprehensive adjudication; site visits; implementation of GAO and OIG recommendations; rollout of document assessment initiatives; and improved coordination with other government components including the DOJ, FBI, SEC, and Financial Crimes Enforcement Network. While public concerns remain, USCIS has made great strides to offset fraud and national security challenges and improve program integrity.

**Establishment of the IPO Compliance Review Program.**

In 2015, the IPO announced the formation of a compliance review team dedicated to increasing industry compliance with EB-5 law, where reviewers issued Notices of Intent to Terminate if a regional center no longer met the program’s requirements. This division’s responsibilities subsequently expanded to include: (1) undertaking in-person interviews of regional center investors and


432 Id.

433 Id. at 14-18.

434 Id. at 17.


436 Id. at 45.


I-829 petitioners; (2) conducting site visits to verify the authenticity of EB-5 program documents and the continued progress of EB-5 projects; (3) auditing financial records to verify that funds are spent in accordance with the offerings documents, economic analysis, and business plan; and (4) holding public engagements focused on regional centers to explain and clarify relevant laws, regulations, and other requirements.440

To further bolster EB-5 program integrity, in 2017 IPO hired auditors and initiated compliance reviews. According to IPO, the compliance review team “verifies the information provided by designated regional centers in applications and annual certifications. It also verifies compliance with applicable laws and authorities to ensure continued eligibility for the regional center designation. This process includes, for example, researching information in government systems, reviewing commercial and public records, and reviewing evidence that accompanies regional center applications and certifications.”441

To date, the IPO has conducted two full rounds of compliance reviews, obtaining information on a consensual basis, engaging in site visits, and performing related document assessments.442 The IPO has indicated its plan is to conduct compliance reviews of approximately five to ten percent of the regional center population each year.443

Improving Consistency in Adjudications. In response to the OIG critique of inconsistent adjudications, the EB-5 program has added adjudication steps to eliminate bias and inconsistencies. To help ensure that the required documents are available at the beginning of the adjudication process, IPO auditors and economists conduct document assessments for Form I-924, Application for Regional Center Designation under the Immigrant Investor Program.444 Officers adjudicating Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status also conduct document assessments, audits, and site visits to the Job Creating Enterprise (JCE).

The IPO has expanded its use of site visits to further implement the GAO and OIG recommendations. The IPO trains its officers to use site visits to verify business documents submitted in the course of filing with USCIS.445 The agency also emphasizes that site inspectors receive comprehensive training on the EB-5 program and on the process of gathering evidence and recording relevant information.446 Currently, the IPO conducts a 100 percent JCE site review rate for Form I-829 filings. The information obtained is used to inform adjudications.447 These efforts further the agency’s goal to improve program integrity and reduce fraud.

The IPO recently reorganized its staffing model so adjudicators, economists, auditors, and fraud detection officers serve on common teams.448 The IPO believes that this intra-team diversity helps its subject matter experts understand the significance of each other’s work in the overall EB-5 adjudication process.449

AAO Activity. In 2017, the AAO issued a non-precedent decision setting out a framework for considering whether a regional center should be recertified or terminated.450 Under the new analysis, the IPO engages in a process that identifies and evaluates both the positive and negative factors that must be considered in determining whether the regional center has been and continues to be capable of promoting economic growth.451 The AAO noted that the positive factors, such as “the extent of any job creation, the amount of investment, and the overall economic impact,” should be measured against the liabilities, including “inaction, mismanagement, theft, or fraud by the regional center or related entities, any

440 Id.
441 Information provided by USCIS (Apr. 18, 2018).
442 Id.
444 IPO Meeting with the Ombudsman’s Office (Dec. 1, 2017).
446 Id.
447 Information provided by USCIS (Apr. 18, 2018).
448 Id. See also IPO Meeting with the Ombudsman’s Office (Dec. 1, 2017).
449 Id.
451 The AAO noted the positive factors, such as “the extent of any job creation, the amount of investment, and the overall economic impact,” should be measured against the liabilities, including “inaction, mismanagement, theft, or fraud by the regional center or related entities, any
resulting damage, and the risk imposed to the investors or the economy by continued designation.”

Regulatory Reforms

In January 2017, USCIS issued an Advance Notice of Proposed Rulemaking (ANPRM) and a Notice of Proposed Rulemaking (NPRM) to reform several core features of the EB-5 program. The proposed regulation addressed some of the concerns and recommendations raised in prior OIG and GAO reports, as well as continuing concerns expressed by Congress and other stakeholders to improve integrity and minimize opportunities for program abuse. The proposed regulations have been characterized by Senators Grassley and Leahy as proposals that would, “if finalized, dramatically reform the EB-5 program and re-align the program with what Congress envisioned in 1990.” The NPRM also proposed to update statutory changes and codify existing policies. As of this writing, the NPRM has not been finalized; the current Regulatory Agenda anticipates a publication date for a final rule in August 2018.

Proposed Regulatory Changes in the NPRM

Increased Threshold Capital Investment Amount. EB-5 capital investment thresholds have not changed since the creation of the program in 1990, resulting in erosion of the relative value of the investment due to the effect of inflation. The NPRM would increase the minimum qualifying investment amount from $1 million to $1.8 million and from $500,000 to $1.35 million for TEAs. The proposed investment thresholds represent an adjustment for inflation from 1990 to 2015, as measured by the unadjusted Consumer Price Index for All Urban Consumers. Among the benefits cited are the potential to increase the overall investment inflow, resulting in greater economic activity and job growth, and allowing regional centers to raise the requisite funds with fewer investors.

Interview Requirements for Form I-829. Another change proposed in the NPRM involves providing flexibility in the interview location for I-829 petitioners, as investors are not required to live in the local USCIS office’s geographical jurisdiction, and may live hundreds or even thousands of miles away. The NPRM further clarifies that derivatives may file the Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status separately from the immigrant investor, who may have relinquished his or her permanent resident status.

Shifting Authority for TEA Designations. The NPRM also proposes to shift state-authority to identify a TEA to USCIS. Reassignment of the TEA authority to USCIS would likely buffer the process from local influences, and will result in more standardized outcomes regardless of the proposed TEA location throughout the United States. Stakeholders have highlighted the need for states and localities to provide input during this process.

Retention of Priority Dates. Finally, the proposed rule would allow EB-5 investors to retain their priority dates if subsequent filings are needed due to changed circumstances or the termination of a regional center, bringing the EB-5 program in line with other business immigration visa categories that permit priority date retention.


454 See also “EB-5 Immigrant Investor Regional Center Program: Advance Notice of Proposed Rulemaking,” 82 Fed. Reg. 3211 (Jan. 11, 2017), which focuses on regional center reforms and processing issues. The agency put forward a proposal to bifurcate the Form I-924 application process. USCIS would first require a more general application for initial designation as a Regional Center. After designation, USCIS would require a more specific application for approval of an exemplar project. The ANPRM proposed a separate form and fee for each step. DHS believes these changes would significantly reduce the issuance of Requests for Evidence and Notices of Intent to Deny, and thereby improve processing times for both Form I-924 and Form I-526.


457 Id.

458 Id.

459 Id.

460 See, e.g., 8 CFR § 204.5(e).
Summary of NPRM Comments

The NPRM received 290 public comments from stakeholders. Comments focused on two main issues: (1) increasing the qualifying capital investment threshold; and (2) modifying the TEA designation rules and authorities.

Comments were mixed concerning proposed increases in the threshold qualifying capital contribution from $500,000 to $1.3 million for investments made into a business/job-creating enterprise located in a TEA, and from $1,000,000 to $1,800,000 for business/job-creating enterprises located elsewhere. While there was general agreement that it was appropriate to update the qualifying capital contribution levels to account for inflation and other factors, acceptance of the proposal to increase the thresholds appear to hinge on USCIS’ agreement to grandfather in all I-526 petitions that were filed based on the rules that were in effect at the time the investor made his or her capital contribution. Commenters expressed differing opinions on how high to raise the minimum qualifying funding figure, with some suggesting that if set too high, it could potentially discourage foreign investors from participating in the EB-5 program and draw them to competing immigration investment programs offered by other countries. Some suggested that the proposed increase in the investment threshold be phased in over a period of years. Other comments focused on whether the differential between the qualifying contribution levels between those in, and those located outside a TEA, are correct, with some suggesting the differential should be greater if the agency wants to encourage more EB-5 money to flow to more rural and economically distressed areas.

Comments concerning the proposal to revise how to determine a TEA, to end what many believed is a methodology that encourages gerrymandering, were generally favorable. The main thrust of the comments focused on eliminating what was considered abusive gerrymandering, the stringing together of contiguous tracts to allow a TEA to qualify a project located in an affluent census tract area with census tracts that have high unemployment many miles away. Comments suggested that moving from a methodology that limits TEA configurations to one that permits the census tract where the project is located, with each of the immediately surrounding and adjoining census tracks, will accomplish this goal. It will also level the playing field for other EB-5 developers and projects competing for the same foreign investment monies. Some commenters expressed concern that the proposed rules do not grandfather in partially-completed projects, and that this could result in project failures in some circumstances as new investors choose to place their money into other projects rather than invest $1.8 million into a project that no longer qualifies as a TEA. Some commenters also expressed concern that under the new TEA rule, USCIS will be making the TEA determination, and not the states, which have been responsible up to now for this assessment.

Conclusion

The EB-5 program has been in existence for more than 25 years, and its increasing popularity in the last 10 years has resulted in foreign investment into the United States and full-time jobs for U.S. workers. The extent of the investment and job creation, however, is the subject of debate. Moreover, there have been numerous instances of fraud and abuse that undermine any benefits of the program. USCIS is directing additional resources to EB-5 compliance activities, including the expanded use of site visits, document audits, and program analysis, and working closely with other regulatory and law enforcement agencies to decrease criminal and civil abuses. The Ombudsman expects USCIS to soon finalize the regulations designed to address at least some of these concerns.

Whether and how investors will respond to the imminent regulatory changes remains unknown, but according to information provided by DOS, heavy demand for EB-5 visas around the globe will require the imposition of Visa Bulletin cut-off dates for several countries in the near future. Joining China and Vietnam (which are currently oversubscribed and are subject to an EB-5 cut-off date), DOS expects to impose cut-off dates for India, Brazil, and South Korea in FY 2019, with EB-5 visas remaining “current” for nationals of all other countries during this same time frame. As the level of interest in the EB-5 program appears to be only increasing, administration of the program will likely continue to receive significant scrutiny.

461 According to a Department of Commerce 2017 Report analyzing EB-5 related projects that were active in FYs 2012 and 2013 estimated that $5,773,000,000, and 174,039 jobs could be traced to the EB-5 program, and that on average, 16 new full-time jobs are generated by each EB-5 investor. Department of Commerce, Economics and Statistics Administration, Estimating the Investment and Job Creation Impact of the EB-5 Program, pp. 2, 18; http://www.esa.doc.gov/sites/default/files/estimating-the-investment-and-job-creation-impact-of-the-eb-5-program_0.pdf (accessed May 20, 2018).
### Appendices

#### Common USCIS Background Checks: The Basics, By Directorate

**Service Center Operations Directorate**

<table>
<thead>
<tr>
<th>**The standard operating procedure at SCOPS is to conduct the following checks:**¹</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FBI Name Check</td>
<td>Automated check within 15 days of filing with USCIS and returned on average between 30–60 days, per inter-agency agreement.²</td>
</tr>
<tr>
<td>FBI Fingerprint Check</td>
<td>Automated check and sent in seconds after collection at the ASC.</td>
</tr>
<tr>
<td>CBP TECS Check</td>
<td>A check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.</td>
</tr>
<tr>
<td>IDENT Check</td>
<td>Automated and manual check of applicant's biographic information.</td>
</tr>
<tr>
<td>USCIS Background IT Systems Check</td>
<td>Manual check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.</td>
</tr>
</tbody>
</table>

¹ This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all applications or petitions at a service center.

² Information provided by USCIS (Apr. 17, 2018).

**Field Operations Directorate**

<table>
<thead>
<tr>
<th>**The standard operating procedure at the Field Operations Directorate is to conduct the following checks:**²</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FBI Name Check</td>
<td>Automated check within 15 days of filing at the National Benefits Center (NBC) and returned on average between 30–90 days, per inter-agency agreement.²</td>
</tr>
<tr>
<td>FBI Fingerprint Check</td>
<td>Automated check and sent in seconds after collection at the ASC, usually processed within 60 days of receipt of filing.³</td>
</tr>
<tr>
<td>CBP TECS Check</td>
<td>Automated and manual check of CBP data repository. Completed within 15 days of filing with the NBC and valid for 180 days.⁴</td>
</tr>
<tr>
<td>IDENT Check</td>
<td>Automated and manual check of applicant's biographic information.</td>
</tr>
<tr>
<td>USCIS Background IT Systems Check</td>
<td>Manual check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.</td>
</tr>
</tbody>
</table>

² This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all applications or petitions at a field office.

³ Id.

⁴ Id.

**Refugee, Asylum and International Operations Directorate: Asylum Division¹**

<table>
<thead>
<tr>
<th>**The standard operating procedure at the Asylum Division is to conduct the following checks:**²</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FBI Name Check</td>
<td>Automated check on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age.³</td>
</tr>
<tr>
<td>FBI Fingerprint Check</td>
<td>Automated check on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age.³ Typically sent seconds after collection at the ASC and processed within 60 days of receipt of filing.⁴</td>
</tr>
<tr>
<td>CBP TECS Check</td>
<td>Automated and then a manual check of CBP data repository completed for any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age.⁵</td>
</tr>
<tr>
<td>IDENT Check</td>
<td>Automated and manual check of applicant's biographic information.⁶</td>
</tr>
<tr>
<td>USCIS Background IT Systems Check</td>
<td>Manual check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.⁷</td>
</tr>
</tbody>
</table>

¹ This section only covers the affirmative asylum application process and is not intended to include credible or reasonable fear processing or defensive asylum processing.

² This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all applications or petitions at an asylum office.


⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.
### Pre-decisional Checks

<table>
<thead>
<tr>
<th>Check Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDENT Check</td>
<td>Checks the applicant’s records relating to travel and immigration history for non-U.S. citizens, as well as for immigration violations and law enforcement and national security concerns. Enrollment helps CBP confirm identity at the port of entry.¹</td>
</tr>
<tr>
<td>FBI Fingerprint Check</td>
<td>Checks all applicants’ biometric records using the Next Generation Identification (NGI) system’s recurring biometric record checks.</td>
</tr>
<tr>
<td>USCIS Background IT Systems Check</td>
<td>A check using the applicant’s ten-print biometrics to check various USCIS systems. Information collected on all applicants over the age of 13½ and under 80 years.²</td>
</tr>
<tr>
<td>DOS Consular Lookout and Support System (CLASS) Check</td>
<td>A check run on primary names as well as any variations used by the applicant.³</td>
</tr>
<tr>
<td>Interagency Check (IAC)</td>
<td>USCIS shares the biographic data, including names, dates of birth, and other data points of all refugee applicants within designated age ranges that is captured at the time of pre-screening with intelligence community partners for checks against their holdings.⁴</td>
</tr>
<tr>
<td>National Counterterrorism Center (NCTC) Checks</td>
<td>Vets applicant’s information interagency intelligence to identify suspicious activity.⁵</td>
</tr>
<tr>
<td>Social Media Review</td>
<td>USCIS FDNS conducts screening and vetting checks of refugee applicants from publicly available information on social media.⁶</td>
</tr>
<tr>
<td>DoD Automated Biometric Identification System (ABIS) Check</td>
<td>Checks applicants’ information, biometric and biographic, to search information collected in the course of military operations.⁷</td>
</tr>
</tbody>
</table>

### Post-decision and Pre-admission to the United States

<table>
<thead>
<tr>
<th>Check Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBP TECS Check</td>
<td>Run on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age.⁸</td>
</tr>
<tr>
<td>CBP National Targeting Center—Passenger (NTC-P)</td>
<td>Decision support tool that compares the applicants’ information against law enforcement, intelligence, and other enforcement data using risk-based scenarios and assessments.⁹</td>
</tr>
<tr>
<td>Transportation Security Administration (TSA) Secure Flight Program Check</td>
<td>Screens aviation passengers and certain non-travelers before they access airport sterile areas or board aircraft.¹⁰</td>
</tr>
<tr>
<td>CBP No Fly Selectee Check</td>
<td>Compares applicants’ information to known terrorist watch lists maintained by the Transportation Security Administration.¹¹</td>
</tr>
</tbody>
</table>

¹ This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all refugee applications.


³ Id. at 5.

⁴ Id. at 6.

⁵ Id. at 6.

⁶ Id. at 7.

⁷ Id. at 7.

⁸ Id. at 8.

⁹ Id. at 10.

¹⁰ Id. at 10.

¹¹ Id. at 10.

¹² Id. at 10.
Recommendations Update

Pursuant to statutory requirements, the Ombudsman makes recommendations to the USCIS Director as appropriate. The agency has 3 months to respond in writing.\(^{462}\) From 2013 to 2017, the Ombudsman’s Office issued six formal recommendations to improve the delivery of immigration services and benefits. USCIS took action on some of the recommendations, but has not implemented others.

**Recommendation No. 61—Strengthen Efficiency, Safety, Accessibility, and Overall Effectiveness of the Central American Minors (CAM) Refugee/Parole Program (December 21, 2016)**


- USCIS, in coordination with DOS, should increase the volume of interviews and associated Refugee Access Verification Unit processing of CAM cases.
- USCIS should permit access to counsel in CAM interviews.
- USCIS, in coordination with DOS, should create a plain language, comprehensive CAM “Information Guide.”
- USCIS, in coordination with DOS, should publish and regularly update CAM processing times.

**Update:** Pursuant to Executive Order 13767, issued January 25, 2017, USCIS has revised its policies on parole. Accordingly, USCIS stopped offering parole through the CAM program on August 16, 2017; stopped accepting new CAM refugee applications on November 9, 2017; and stopped interviewing CAM refugee applicants on January 31, 2018. The Ombudsman has not received a formal response from USCIS to this recommendation.

**Recommendation No. 60—Implement Parole for U Visa Principal and Derivative Eligible Petitioners Residing Abroad (June 16, 2016)**


- USCIS should afford parole to eligible U visa petitioners on the waiting list and qualifying derivative family members who reside abroad by creating a policy to facilitate entry into the United States while waiting for a visa to become available.
- USCIS should allow for concurrent filings of the U visa petitions and requests for parole.
- Cases should be adjudicated at the Vermont Service Center to ensure consistent and effective adjudication.

**Update:** In 2016, USCIS agreed to the first recommendation but in 2017, pursuant to Executive Order 13767, revised its policies on parole and no longer plans to offer parole for principal and derivative petitioners abroad. Thus, it has not established a parole policy for petitioners or a stand-alone application process for parole requests.

**Recommendation No. 59—Ensure Process Efficiency and Legal Sufficiency in Special Immigrant Juvenile Adjudications (December 11, 2015)**

USCIS Response: April 19, 2016.

- USCIS should centralize Special Immigrant Juvenile (SIJ) adjudications in a facility whose personnel are familiar with the sensitivities surrounding the adjudication of humanitarian benefits for vulnerable populations.
- USCIS should take into account the best interests of the child when applying criteria for interview waivers.
- USCIS should issue final SIJ regulations that fully incorporate all statutory amendments.
- USCIS should interpret the consent function consistently with the statute by according greater deference to state court findings.

**Update:** Beginning November 1, 2017, USCIS centralized the processing of Forms I-360 and I-485 at the NBC. The agency refers to field offices those cases needing in-person interviews. USCIS’ current policy is to

\(^{462}\) Homeland Security Act (HSA) of 2002 § 452, 6 U.S.C. § 272 (c), (f).
refer cases for interviews only when necessary to secure information through in-person assessments. The agency has committed to training its officers on child interviewing techniques. USCIS also issued clarifying policy guidance through the USCIS Policy Manual and stated that it will amend SIJ regulations by continuing the rulemaking process. The DHS Spring 2018 Regulatory Agenda does not include SIJ program regulations. USCIS does not agree with the recommendation to defer to state court findings, finding that its consent function serves as an essential first step in any adjudication.

USCIS should provide additional guidance for Notice to Appear (NTA) issuance with input from ICE and the U.S. Executive Office for Immigration Review (EOIR).

USCIS should require USCIS attorneys to review NTAs prior to their issuance and provide comprehensive legal training.

USCIS should create a working group with representation from ICE and EOIR to improve tracking, information sharing, and coordination of NTA issuance.

Update: In consultation with ICE, USCIS has updated its agency guidance for NTA issuance. USCIS did not concur with the recommendation to have USCIS attorneys review all NTAs prior to issuance, but did concur with improving legal training.

USCIS should publish new regulations that permit independently eligible J-2 dependents of J-1 physicians approved for a Conrad State 30 program waiver to change to other employment-authorized nonimmigrant classifications.

USCIS should issue new policy guidance clearly explaining that J-2 visa holders, who are derivative beneficiaries of a Conrad State 30 program waiver, may change to any nonimmigrant status for which they are otherwise qualified and eligible.

Update: USCIS partially concurred with the first recommendation and rejected the second, maintaining that the INA does not permit J-2 dependents to change to another immigrant or nonimmigrant status, except to a T or U status.

USCIS should provide timely, effective, and accurate notice to petitioner(s) and their attorneys or accredited representatives on Form I-751, Petition to Remove Conditions on Residence receipt, processing and adjudication requirements and decisions.

USCIS should ensure Adjudicator’s Field Manual (AFM) Chapter 25 is updated, accurate, and complete, or create a superseding source of consolidated information for Form I-751 adjudications.

USCIS should train staff to apply the updated AFM or superseding guidance with an emphasis on waiver standards and procedures.

Update: USCIS partially concurred. It declined to create a system to ensure it properly conferred conditional permanent resident (CPR) status because it believes the vast majority of CPR statuses are accurate. Yet the agency committed to: (1) extracting the address from the AR-11 change of address information system; (2) updating the tracking system to give copies of notices to the petitioner and attorney of record; (3) providing additional guidance if an officer’s RFE is not clear; and (4) making processing improvements via the USCIS transformation initiative. As of this time, the Form I-751 is not being processed via ELIS. Further, there have been no updates to USCIS Policy Manual to reflect the Ombudsman’s recommendations.

463 The Adjudicator’s Field Manual has been superseded in parts by the USCIS Policy Manual.
The Ombudsman by the Numbers

Requests for Ombudsman Case Assistance Received by Calendar Year*

Requests for Ombudsman Case Assistance Received by Month for Calendar Years 2016 and 2017

Requests for Ombudsman Case Assistance—Submission by Category

* The Ombudsman also calculates its annual numbers by fiscal year for appropriations purposes. In FY 2017, the requests received were 11,289, an increase from the FY 2016 requests received (11,169). The types of requests and the top primary forms do not deviate when reviewed by fiscal year.
### Top Primary Form Types

<table>
<thead>
<tr>
<th>Form Type</th>
<th># Received</th>
<th>% change from 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>N-400, Application for Naturalization</td>
<td>1,789</td>
<td>38%</td>
</tr>
<tr>
<td>I-765, Application for Employment Authorization</td>
<td>1,439</td>
<td>-21%</td>
</tr>
<tr>
<td>I-821D, Consideration of Deferred Action for Childhood Arrivals</td>
<td>1,201</td>
<td>-41%</td>
</tr>
<tr>
<td>I-130, Petition for Alien Relative</td>
<td>1,073</td>
<td>-3%</td>
</tr>
<tr>
<td>I-485, Application to Register Permanent Residence or Adjust Status</td>
<td>2,188</td>
<td>7%</td>
</tr>
<tr>
<td>I-485 (Based on an I-130), Application to Register Permanent Residence or Adjust Status (Family-Based)</td>
<td>798</td>
<td>23%</td>
</tr>
<tr>
<td>I-485 (Other Classification), Application to Register Permanent Residence or Adjust Status (Other Classification)</td>
<td>726</td>
<td>-3%</td>
</tr>
<tr>
<td>I-485 (Based on an I-140), Application to Register Permanent Residence or Adjust Status (Employment-Based)</td>
<td>664</td>
<td>2%</td>
</tr>
<tr>
<td>I-751, Petition to Remove the Conditions of Residence</td>
<td>218</td>
<td>-11%</td>
</tr>
<tr>
<td>I-90, Application to Replace Permanent Resident Card</td>
<td>214</td>
<td>5%</td>
</tr>
<tr>
<td>I-131, Application for Travel Document</td>
<td>214</td>
<td>-14%</td>
</tr>
</tbody>
</table>

### Top Ten States Where Applicants Reside and the Top Five Primary Form Types

#### California
- Requests Received: 1,839
- Top Form Types:
  - I-485, Application to Register Permanent Residence or Adjust Status: 368 (20%)
  - N-400, Application for Naturalization: 287 (16%)
  - I-821D, Consideration of Deferred Action for Childhood Arrivals: 269 (15%)
  - I-765, Application for Employment Authorization: 250 (14%)
  - I-130, Petition for Alien Relative: 114 (6%)

#### New York
- Requests Received: 1,109
- Top Form Types:
  - I-485, Application to Register Permanent Residence or Adjust Status: 251 (23%)
  - N-400, Application for Naturalization: 219 (20%)
  - I-765, Application for Employment Authorization: 144 (13%)
  - I-130, Petition for Alien Relative: 138 (12%)
  - I-821D, Consideration of Deferred Action for Childhood Arrivals: 98 (9%)

#### Texas
- Requests Received: 1,193
- Top Form Types:
  - I-485, Application to Register Permanent Residence or Adjust Status: 283 (24%)
  - I-821D, Consideration of Deferred Action for Childhood Arrivals: 248 (21%)
  - N-400, Application for Naturalization: 155 (13%)
  - I-765, Application for Employment Authorization: 155 (13%)
  - I-130, Petition for Alien Relative: 101 (8%)

#### Illinois
- Requests Received: 843
- Top Form Types:
  - I-485, Application to Register Permanent Residence or Adjust Status: 248 (29%)
  - I-130, Petition for Alien Relative: 130 (15%)
  - I-821D, Consideration of Deferred Action for Childhood Arrivals: 113 (13%)
  - N-400, Application for Naturalization: 99 (12%)
  - I-765, Application for Employment Authorization: 93 (11%)
### Florida

**Requests Received:** 682

<table>
<thead>
<tr>
<th>Top Primary Form Types</th>
<th>Count</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>I-485, Application to Register Permanent Residence or Adjust Status</td>
<td>140</td>
<td>21%</td>
</tr>
<tr>
<td>N-400, Application for Naturalization</td>
<td>120</td>
<td>18%</td>
</tr>
<tr>
<td>I-765, Application for Employment Authorization</td>
<td>101</td>
<td>15%</td>
</tr>
<tr>
<td>I-130, Petition for Alien Relative</td>
<td>59</td>
<td>9%</td>
</tr>
<tr>
<td>I-821D, Consideration of Deferred Action for Childhood Arrivals</td>
<td>51</td>
<td>7%</td>
</tr>
</tbody>
</table>

### Maryland

**Requests Received:** 389

<table>
<thead>
<tr>
<th>Top Primary Form Types</th>
<th>Count</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>I-485, Application to Register Permanent Residence or Adjust Status</td>
<td>94</td>
<td>24%</td>
</tr>
<tr>
<td>N-400, Application for Naturalization</td>
<td>88</td>
<td>23%</td>
</tr>
<tr>
<td>I-765, Application for Employment Authorization</td>
<td>52</td>
<td>13%</td>
</tr>
<tr>
<td>I-130, Petition for Alien Relative</td>
<td>49</td>
<td>13%</td>
</tr>
<tr>
<td>I-589, Application for Asylum and Withholding of Removal</td>
<td>16</td>
<td>4%</td>
</tr>
</tbody>
</table>

### New Jersey

**Requests Received:** 385

<table>
<thead>
<tr>
<th>Top Primary Form Types</th>
<th>Count</th>
<th>% of Total</th>
</tr>
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<tbody>
<tr>
<td>I-485, Application to Register Permanent Residence or Adjust Status</td>
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<td>N-400, Application for Naturalization</td>
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<td>I-130, Petition for Alien Relative</td>
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<td>I-821D, Consideration of Deferred Action for Childhood Arrivals</td>
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### Virginia

**Requests Received:** 524

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<td>I-765, Application for Employment Authorization</td>
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<td>I-821D, Consideration of Deferred Action for Childhood Arrivals</td>
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### Georgia

**Requests Received:** 344

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<td>I-821D, Consideration of Deferred Action for Childhood Arrivals</td>
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<td>I-765, Application for Employment Authorization</td>
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<tr>
<td>I-130, Petition for Alien Relative</td>
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### Washington

**Requests Received:** 298

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<td>N-400, Application for Naturalization</td>
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Homeland Security Act—
Section 452—Citizenship and Immigration Services Ombudsman

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ‘Ombudsman’). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS—It shall be the function of the Ombudsman—

1) To assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

2) To identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

3) To the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS—

1) OBJECTIVES—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) Shall identify the recommendation the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) Shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) Shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) Shall include such other information as the Ombudsman may deem advisable.

2) REPORT TO BE SUBMITTED DIRECTLY—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES—The Ombudsman—

1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

3) shall ensure that the local telephone number for each local office of the Ombudsman is published and
available to individuals and employers served by the office; and

4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS—

1) IN GENERAL—The Ombudsman shall have the responsibility and authority—

(A) To appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) To evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

2) CONSULTATION—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman’s responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES—

1) IN GENERAL—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman’s discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.
Average Processing Times for USCIS Field Offices for Forms N-400, Application for Naturalization

July–Sep. 2017 (FY 2017 4th Quarter)

- 0–5 months
- 5–7 months
- >7 months

Average Processing Times for USCIS Field Offices for Forms I-485, Application to Register Permanent Residence or Adjust Status

July–Sep. 2017 (FY 2017 4th Quarter)

- 0–5 months
- 5–7 months
- >7 months

Source: Information provided by USCIS.
How to Request Case Assistance from the Ombudsman: Scope of Assistance Provided

Helping Individuals and Employers Resolve Problems with USCIS

Before asking the Ombudsman for help with an application or petition, try to resolve the issue with USCIS by:
- Obtaining information about the case at USCIS My Case Status at www.uscis.gov.
- Submitting an e-Request with USCIS online at https://egov.uscis.gov/e-Request.
- Contacting the USCIS National Customer Service Center (NCSC) for assistance at 1-800-375-5283.
- Making an InfoPass appointment to speak directly with a USCIS Immigration Services Officer in a field office at www.infopass.uscis.gov.

Submit an online request for case assistance available on the Ombudsman’s website at www.dhs.gov/cisombudsman.

Individuals submitting a request from outside the United States cannot use the online request form and must submit a hard copy case assistance request form.

Download a printable case assistance form (Form DHS-7001) from the Ombudsman’s website www.dhs.gov/cisombudsman.

Email: cisombudsman@hq.dhs.gov
Fax: (202) 357-0042

Individuals submitting a request from outside the United States cannot use the online request form and must submit a hard copy case assistance request form.

Request Assistance

If you are unable to resolve your issue with USCIS, you may request assistance from the Ombudsman. Certain types of requests involving refugees, asylees, victims of violence, trafficking, and other crimes must be submitted with a handwritten signature for consent purposes. This can be done using Option 1 to the left and uploading a signed Form DHS-7001 to the online request for case assistance.

After receiving a request for case assistance, the Ombudsman:

**STEP 1** Provides a case submission number to confirm receipt.

**STEP 2** Reviews the request for completeness, including signatures and a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, if submitted by a legal representative.

**STEP 3** Assesses the current status of the application or petition, reviews relevant laws and policies, and determines how the Ombudsman can help.

**STEP 4** Contacts USCIS field offices, service centers, asylum offices, or other USCIS offices to help resolve difficulties the individual or employer is encountering.

**STEP 5** Communicates the actions taken to help.
### Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AAO</td>
<td>Administrative Appeals Office</td>
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<tr>
<td>AFM</td>
<td>Adjudicator’s Field Manual</td>
</tr>
<tr>
<td>ANPRM</td>
<td>Advance Notice of Proposed Rulemaking</td>
</tr>
<tr>
<td>ASC</td>
<td>Application Support Center</td>
</tr>
<tr>
<td>ASVVP</td>
<td>Administrative Site Visit and Verification Program</td>
</tr>
<tr>
<td>BIA</td>
<td>Board of Immigration Appeals</td>
</tr>
<tr>
<td>BCU</td>
<td>Background Check Unit</td>
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<tr>
<td>CAM</td>
<td>Central American Minors</td>
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<tr>
<td>CARRP</td>
<td>Controlled Application Review and Resolution Program</td>
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<td>CBP</td>
<td>Customs and Border Protection</td>
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<td>CIS</td>
<td>Central Index System</td>
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<td>CLAIMS</td>
<td>Computer Linked Application Information Management System</td>
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<td>CLASS</td>
<td>DOS Consular Lookout and Support System</td>
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<td>CY</td>
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<td>U.S. Department of Homeland Security</td>
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<td>DOJ</td>
<td>U.S. Department of Justice</td>
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<tr>
<td>DOS</td>
<td>U.S. Department of State</td>
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<td>EAD</td>
<td>Employment Authorization Document</td>
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<td>Electronic Immigration System</td>
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<td>EOIR</td>
<td>Executive Office for Immigration Review</td>
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<td>EPMS</td>
<td>Enterprise Print Management System</td>
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<td>FBI</td>
<td>Federal Bureau of Investigation</td>
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<td>FIFO</td>
<td>First-In, First-Out</td>
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<td>FOD</td>
<td>Field Operations Directorate</td>
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<td>FDNS</td>
<td>Fraud Detection and National Security Directorate</td>
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<td>FY</td>
<td>Fiscal Year</td>
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<td>Job Creating Enterprise</td>
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<td>NBC</td>
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<td>Refugee, Asylum, and Parole System</td>
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