



**Homeland
Security**

RECOMMENDATION FROM THE CIS OMBUDSMAN TO THE DIRECTOR, USCIS

To: Eduardo Aguirre, USCIS Director
Cc: Admiral Jim Loy
From:: Prakash Khatri, CIS Ombudsman
Date: December 15, 2004
Re: Long and short-term recommendations concerning USCIS issuance of permanent resident cards to arriving immigrants.

- 1) In the short term, the Ombudsman recommends that USCIS revise its procedures for processing lost immigrant visa cases in light of new methods available to USCIS to electronically verify valid immigrant visa issuance and lawful admission to the United States.
- 2) For the long term, the Ombudsman recommends that USCIS enter into a memorandum of understanding (MOU) with the Department of State (DOS) and Customs and Border Protection (CBP) to allow electronic transfer of the immigrant visa packet from DOS to USCIS and to automatically initiate production of a permanent resident card (I-551) upon inspection and admission of an arriving immigrant by CBP.

I. BACKGROUND

Current processing of arriving immigrants requires them to transport and present a packet of documents to Customs and Border Protection (CBP) upon their arrival in the United States. The immigrant is sent to CBP secondary inspection and his or her documents are then mailed to a USCIS service center for further processing and production of the permanent resident card (I-551). Unfortunately, immigrant visa paperwork is frequently lost en route to USCIS and many immigrants find themselves unable to stabilize their new lives in the United States without their permanent resident cards. Although the admission stamp in an immigrant's passport is valid proof of work authorization, many employers refuse or are reluctant to hire non-citizens without an employment authorization document (EAD) or a permanent resident card (I-551). It currently takes USCIS an average of six months to process a lost immigrant visa case due to restrictive and outdated procedures. Lawful immigrants whose files have been lost through no fault of their own should not be subject to such an unnecessarily long delay.

Current USCIS policy on lost immigrant visa cases is governed by an outdated policy memorandum from 1997. *See* Attachment A, "Procedures for Processing Lost Immigrant Visa

Cases,” Paul W. Virtue, Acting Executive Associate Commissioner, U.S. Immigration and Naturalization Service, September 29, 1997. This policy required several burdensome procedures including the lengthy interview of the alien whose immigrant visa (IV) packet was lost; completion of a sworn statement by the alien; contact with the Department of State (DOS) visa issuing post; and written confirmation of IV issuance from DOS. Several recent technological advances render these procedures largely unnecessary. Early this year, DOS began issuing machine-readable immigrant visas (MRIVs). The MRIV coupled with other methods to electronically verify valid IV issuance and lawful admission to the United States render many of the old procedures unnecessary, inefficient and in some cases impossible.

In particular, the old procedures are impossible for newly entering orphans with full and final adoptions abroad (IR-3) who qualify for automatic citizenship under section 320 of the Immigration and Nationality Act. These cases are now processed under a special program at the Buffalo District Office that began in January, 2004 as part of the USCIS Child Citizenship Act Program. Many IR-3 children are infants that cannot – and need not – be transported to the Buffalo District Office for an interview. Because these children qualify for automatic citizenship upon entry to the United States with an IV, they never receive a permanent resident card (I-551) and therefore do not need to be fingerprinted for card production. For these reasons, the Ombudsman recommends that USCIS adopt the revised procedures submitted to Project Ingenuity by Karen Eckert, Supervisory District Adjudications Officer at the Buffalo District Office. *See* Attachment B. Ms. Eckert is an expert on international adoptions who has successfully led the Child Citizenship Act Program at the Buffalo District Office.

II. JUSTIFICATION

USCIS now has three important tools to electronically verify valid IV issuance and lawful entry into the U.S. that were unavailable when the 1997 policy memorandum was issued. These new tools are:

- 1) **Machine readable immigrant visa (MRIV).** DOS now issues MRIVs directly in the passport of the intending immigrant. Unlike before, the IV itself is now never lost. Rather, it is merely the packet of supplemental documents which may be lost in transit to a USCIS service center for further processing.
- 2) **DOS data directly downloaded into USCIS’ Central Index System (CIS).** DOS now automatically transfers data on IV issuance from its Consular Lookout and Support System (CLASS) into CIS. USCIS personnel can view the DOS entry and see the IV classification, name and alien registration number of the intending immigrant. This “shadow record” coupled with the actual MRIV in the alien’s passport is sufficient proof of valid IV issuance.
- 3) **Treasury Enforcement Communication System (TECS) records to verify lawful admission to the United States.** TECS records accessible through the Interagency

Border Inspection System (IBIS) coupled with physical evidence such as the admission stamp in the alien's passport, airline tickets, etc. provide sufficient evidence of lawful admission to the United States.

For all IV cases, USCIS can use these new tools to electronically verify valid IV issuance and lawful admission. There is no need to request or receive written verification of IV issuance from DOS. Some immigrants may still need to be interviewed and submit copies of supplementary documents that are needed to recreate the "A-file" such as the affidavit of support (I-864), the I-130 or I-140 approval notice, proof of the qualifying relationship, the alien's birth certificate, etc. Nevertheless, the interview should be brief because the USCIS officer need only verify the immigrant's identity and review his or her passport with the stamped MRIV and copies of the supplemental documents. For IR-3 children, all verification can be done electronically or through the mail (including requesting supplemental documents such as the adoption decree, proof of the parent's United States citizenship, etc.). There is no need for an interview because these children do not receive an I-551, but a certificate of citizenship. However, the Ombudsman recognizes that USCIS should reserve the authority to conduct more in-depth investigations when USCIS personnel are unable to verify IV issuance and/or admission or where fraud is suspected.

Revising the policy for lost immigrant visa cases will improve customer service and USCIS efficiency in the short-term for many immigrants. Much greater strides in customer service, efficiency and security can be made with an additional, long-term solution. Currently, arriving immigrants present a packet of documents to CBP for inspection. The immigrant's fingerprints and signature are taken at secondary inspection and the packet is then physically transferred to USCIS. Because the immigrant's biometrics have already been captured by DOS through issuance of an MRIV, this step is redundant. A streamlined process for permanent resident card issuance could be accomplished through a MOU between USCIS, DOS and CBP: DOS could electronically transfer the immigrant's biometrics and supplementary documents directly to USCIS and I-551 production could be automatically initiated through CBP notification to USCIS of an immigrant's lawful admission to the United States.

III. BENEFITS

Customer Service

These recommendations will greatly improve customer service and USCIS will regain a measure of public trust by proactively addressing this problem. It currently takes approximately six months to recreate a lost IV file according to the procedures outlined in the 1997 policy memorandum. In many cases it can take a year or longer before an immigrant finally receives his or her permanent resident card. Customers whose IV files have been lost through no fault of their own deserve better service. Immediate reform of the lost IV policy is especially needed for

IR-3 cases because the Child Citizenship Act Program has promised its customers to provide these children with a certificate of citizenship within 45 days of their entry to the United States.

Much broader gains in customer service will come with long-term reform of the I-551 issuance process for arriving immigrants. Because no physical transfer of documents will be necessary, the “lost IV packet” scenario will become obsolete. Immigrants will receive their I-551 cards in a timelier manner and will no longer be subject to secondary inspection.

USCIS Efficiency

In the short-term, USCIS efficiency will be improved by taking advantage of new methods to electronically verify valid IV issuance and lawful admission. Lost IV cases will be processed much more efficiently through electronic verification coupled with the elimination of unnecessary procedures. In the long-term, I-551 issuance for all arriving immigrants will be streamlined.

National Security

These recommendations enhance national security. In the short-term, most immigrants whose IV packets have been lost will still be fingerprinted for their I-90 and the requisite security checks will be completed. IR-3 children will not be processed for an I-90, but they pose no security risk because they are mostly infants accompanied by their citizen parents. In the long-term, national security will be greatly enhanced by the elimination of the paper IV packet that is currently transported to the United States by immigrants themselves and then physically transferred to USCIS, steps that risk improper or fraudulent handling.