



Citizenship and Immigration Services

Ombudsman

Annual Report 2011

June 29, 2011



Homeland
Security

Message from the Ombudsman

Serving as the Ombudsman is a privilege. In this role, I have had the opportunity to interact with people from around the world who have immigrated, or are trying to immigrate, to the United States. They never cease to inspire me. They come as spouses, parents, children, brothers, and sisters seeking to reunite with family. They come as healthcare professionals, who aid our rural and underserved communities. They come as entrepreneurs and innovators. They come fleeing trafficking, violence, or persecution, and seeking haven from natural disasters. Still others come to serve in the U.S. Armed Forces of their adopted homeland and become U.S. citizens.

At the Department of Homeland Security, the Ombudsman's Office has the responsibility for and privilege of helping all of these individuals, along with those who petition on their behalf, to navigate the citizenship and immigration process. On a one-on-one basis, we help resolve problems encountered by those seeking immigration benefits, and we make solution-oriented proposals to help improve the immigration benefits system.

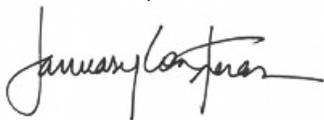
In our 2011 Annual Report, we discuss the challenges that immigrants, families, and employers face in the humanitarian, family, and employment-based areas. We examine problems in customer service, opportunities for greater consistency in adjudications, and the need for modernized systems and processing. We also highlight areas – such as new public engagement initiatives, and other advancements and best practices – where citizenship and immigration services have improved, becoming more transparent, efficient, and customer-friendly.

I thank U.S. Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas and USCIS officials in Headquarters and in offices around the country. Each time the Ombudsman's Office helps resolve issues with pending applications and petitions, it does so with the help of USCIS adjudicators and supervisors. In addition, on issues ranging from attorney representation regulations to foreign investor adjudications, USCIS leaders have engaged with the Ombudsman's Office in problem-solving dialogue and actions.

I am thankful for the continued support of Secretary Janet Napolitano, Deputy Secretary Jane Holl Lute, and Congress, who are critical to our ability to serve the public.

Finally, I want to thank my staff for their dedication to our mission and for their work to help individuals and employers navigate the sometimes rough waters of the immigration benefits system. I have never before served in a role where I so consistently accept words of appreciation and blessings. I attribute this entirely to the deep commitment of my colleagues in the Ombudsman's Office. We will continue to work diligently to identify systemic problems and improve the quality of services provided by USCIS.

Most sincerely,



January Contreras
Citizenship and Immigration Services Ombudsman

Executive Summary

The Office of the Citizenship Immigration Services Ombudsman 2011 Annual Report includes the following:

- An overview of the Ombudsman’s Office mission and services;
- A review of U.S. Citizenship and Immigration Services (USCIS) major public engagement and policy initiatives; and
- A detailed discussion of pervasive and serious problems and best practices in the humanitarian, family, and employment areas, as well as challenges in customer service and Transformation, the agency-wide effort to move immigration services from a paper-based model to an electronic environment.

Overview of the Office of the Citizenship and Immigration Services Ombudsman. The Ombudsman’s Office, established by the Homeland Security Act of 2002, assists individuals and employers in resolving problems with USCIS. The Ombudsman’s Office is independent, confidential, and impartial. During the April 1, 2010 through March 31, 2011 reporting period, the Ombudsman’s Office opened 3,247 case inquiries. The Ombudsman’s Office also recommends ways to fix systemic issues to improve immigration services.

USCIS Year in Review: Public Engagement and Policy Initiatives. During the reporting period, USCIS has pursued ambitious goals for public engagement and an agency-wide review of the policy and procedures that guide USCIS’ administration of immigration benefits. These efforts have demonstrated USCIS’ commitment to providing better immigration services. At the same time, many announced goals and initiatives remain outstanding.

2011 Areas of Study: Pervasive and Serious Problems and Best Practices

The Ombudsman’s Annual Report, as mandated by section 452(c)(1)(B) of the Homeland Security Act, must include a “summary of the most pervasive and serious problems encountered by individuals and employers.”

Humanitarian. U.S. immigration law provides humanitarian avenues for immigrants in the most vulnerable and desperate of situations.

- **Enhancing Protections for Trafficking and Crime Victims through Humanitarian Programs and Training for USCIS and Law Enforcement.** The U.S. Department of Homeland Security (DHS) has fostered initiatives focused on combating violence and enhancing protection for victims of human trafficking, domestic violence, and other crimes, while strengthening law enforcement’s ability to investigate and prosecute perpetrators. Interagency efforts, dedicated personnel, collaboration with external partners, and community outreach have led to major developments that further ensure victim safety.
- **USCIS Processing of Deferred Action Requests.** Deferred action is a discretionary form of relief delegated by the Secretary of the Department of Homeland Security to USCIS, as well as to ICE and CBP. Stakeholders have expressed concerns regarding delayed processing of deferred action requests submitted by Haitian nationals following the earthquake in January 2010. The Ombudsman’s Office is reviewing USCIS processing of deferred action requests.
- **The Asylum Clock: Asylum-Based Employment Authorization.** The Ombudsman’s Office is examining a number of options for resolving difficulties encountered by asylum seekers attempting to obtain employment authorization, an issue commonly known as the “asylum clock.” Calculating time accrued for EAD eligibility presents a set of complex issues for applicants, advocates, USCIS personnel, and Immigration Court staff.

Family and Children. Family unity has long been a foundation of U.S. immigration policy. The majority of individuals who obtain lawful permanent resident status in the United States do so based on a family relationship.

- **Family-Based Visa Retrogression and the USCIS Response.** The Ombudsman’s Office has devoted significant attention to the interagency administration of the

visa lines for both employment and family-based immigration. This section focuses on family-based visa lines, the backward movement of the U.S. Department of State Visa Bulletin cut-off dates (referred to as retrogression), the impact on individuals and families, and the USCIS response.

- **Survivor Benefits: Implementation of New Statutory Provisions.** Enacted in 2009, Immigration and Nationality Act (INA) section 204(l) provides relief when the petitioner seeking an immigration benefit on behalf of a beneficiary dies before final adjudication of the beneficiary's case. Historically, such beneficiaries lost eligibility to become a permanent resident upon the petitioner's death. Following enactment of the statute, stakeholders reported to the Ombudsman's Office that USCIS field offices were often unaware of the new provisions. This situation was not completely remedied by publication of USCIS policy guidance and requires additional USCIS action.
- **Military Immigration Issues: Supporting Those Who Serve.** USCIS continues to enhance and refine outreach efforts to service members, and their spouses and children. Despite USCIS efforts, problems persist regarding certain discretionary relief for military families.
- **Recommendation: "Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices."** On April 15, 2011, the Ombudsman's Office published a multi-part recommendation to improve adjudications involving Special Immigrant Juvenile (SIJ) petitions. Establishing dedicated USCIS units to adjudicate and, where necessary, administer interviews would help fully realize the intention of the SIJ provisions.

Employment. An efficient employment-based immigration system enhances overall U.S. economic growth; responds to labor market needs; and improves U.S. global competitiveness.

- **VIBE: USCIS' New Business Validation Tool.** USCIS Service Center Operations designed the Validation Instrument for Business Enterprises (VIBE) to help Immigration Services Officers evaluate the viability and other key characteristics of a petitioning company. USCIS has informed the Ombudsman's Office that it is not tracking the issuance of VIBE-related Requests for Evidence (RFEs) or Notices of Intent to Deny, raising questions about USCIS' ability to assess VIBE's impact. The Ombudsman's Office is closely monitoring stakeholder experiences with VIBE.

- **Revisiting the Immigrant Investor Visa Program.** The Ombudsman's Office continues to hear concerns from stakeholders regarding USCIS administration of the fifth employment-based (EB-5) preference category for immigrant investors. Stakeholders report that inconsistent administration of the EB-5 program is undermining confidence in the program and, ultimately decreasing the job growth potential that it was designed to create.
- **Ongoing Issues with Requests for Evidence.** Employers continue to express a high level of frustration with USCIS issuance of RFEs, and provide the Ombudsman's Office with examples of inappropriate and unduly burdensome RFEs. Elevated RFE rates are impeding legitimate business operations. Focused and timely efforts are needed to address unclear and conflicting guidance, insufficient training on the application of the preponderance of the evidence standard, and quality assurance. This section also provides updated RFE data.
- **E-Verify Update.** During the 2011 reporting period, USCIS made upgrades to E-Verify that improved interoperability with the U.S. Social Security Administration and U.S. Department of State. While the accuracy of E-Verify has improved, challenges remain, including E-Verify's susceptibility to identity fraud and USCIS' ability to ensure employer compliance.
- **USCIS Processing of Employment Authorization Documents.** When employment authorization applications remain pending beyond USCIS' 90 day regulatory processing period, applicants and employers experience negative effects ranging from job disruption to termination, and any resulting financial burden. The Ombudsman's Office is reviewing USCIS processing of EADs and possible solutions.

Customer Service. As a component of DHS that interacts with millions of customers each year, USCIS continues to invest resources to improve its timeliness and responsiveness to customer service requests.

- **USCIS Processing Times.** During the reporting period, processing times generally met agency goals in the key areas of naturalization and adjustment of status; this report provides nationwide data for these processing times. However, certain applications and petitions continue to experience ongoing or sporadic delays, despite an overall decline in receipts for the entire agency.

- **USCIS Call Centers and Service Requests.** USCIS has made significant improvements in customer service, yet stakeholders continue to report frustration with the call centers and the service request process.
- **Interagency Coordination and Cooperation.** In order for USCIS to make timely and legally appropriate decisions on certain immigration benefits applications, it must communicate accurately and quickly with other DHS and Federal entities.
- **Recommendation: “Customer Complaints: A Tool for Quality Customer Service and Accountability.”** On March 23, 2011, the Ombudsman’s Office published a recommendation regarding standardized USCIS processing of customer service complaints.

USCIS Transformation: The Promise of Modernization for USCIS Systems and Immigration Benefits Processing.

Transformation is USCIS’ comprehensive modernization initiative to convert business processes to an integrated, digitized environment. Until Transformation meaningfully improves the experience of customers interacting with USCIS, its potential remains unrealized.

Previously Made Recommendations. This report includes a chart summarizing recommendations issued during the 2009 and 2010 reporting periods. Of the 38 recommendations the Ombudsman’s Office issued during this time, USCIS implemented nine, accepted but did not implement 18, and declined to implement 11. For a more detailed discussion of previously made recommendations, see Appendix 3.

Looking Ahead: Ombudsman’s Office Objectives and Priorities for the Coming Year. In the 2012 reporting year, the Ombudsman’s Office will continue to enhance its ability to help individuals and employers through case assistance, policy work, and outreach. The Ombudsman’s Office is redesigning its current case assistance process to improve outcomes and minimize its response time to case inquiries. The Ombudsman’s Office will conduct a comprehensive review of previously issued recommendations to ensure that problem-solving and operationally sound proposals that have not been implemented are given renewed consideration. In addition to other outreach initiatives, the Ombudsman’s Office will host its first annual conference on October 20, 2011.