

M. Delay in Updating U.S. Citizenship Designation in Records; Some Naturalized Citizens Cannot Apply for Passports

Currently, the USCIS standard operating procedure after a naturalization ceremony is to update its database one or two days later with information that certain individuals obtained citizenship. If information about the newly naturalized citizen differs from information related to the citizen in another USCIS database, the immigration officer has ten days to resolve the differences and update the records.⁶⁴ The delay in inputting data and lengthier delays in correcting differences in the records can cause problems for affected individuals, particularly for those who immediately apply for U.S. passports. These individuals often encounter suspicious government officials who cannot immediately verify citizenship status electronically. In such cases, passport officials must contact USCIS to confirm applicants' status forcing USCIS to spend additional time and resources to research and confirm that the individual was naturalized.

III. USCIS REVENUE

Congress mandates that USCIS be self-funded.⁶⁵ Following the requirement that INS recover full operational costs, the agency requested increases in its fee schedules to recover those costs. Not all fee increase requests were approved, but there was a general recognition that higher fees per application were justified to recover costs incurred for providing non-fee INS services. At the same time, Congress required that INS add a surcharge to certain filing fees to recover the costs of providing services to individuals unable to pay. In later years, the surcharge extended to fund asylum and refugee applications as well as military naturalizations.⁶⁶

Simultaneously, case processing backlogs caused alarm. In 2001, the Administration required that INS improve its slow processing time to six months or less for all applications within five years.⁶⁷ Congress appropriated \$500 million over five years from FY 02 through FY 06 to accomplish that task. However, the underlying objective of achieving faster processing times was undermined by the need for revenue to support the agency.

Applications for ancillary services necessitated by the backlogs generated substantial additional revenue estimated to be in excess of \$350 million in FY 05,⁶⁸ particularly from three sources: (1) EAD applications for green card applicants;⁶⁹ (2) advance parole applications; and (3) premium processing for nonimmigrant employment based applicants (Form I-129). USCIS

⁶⁴ See DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," at 17 (describing that "[a]ccording to one USCIS official, about 700 of the 5,000 naturalizations performed in one ceremony were identified on a mismatch report . . .").

⁶⁵ See 8 U.S.C. 1356 (m), establishing an "Immigration Examinations Fee Account"; see also Homeland Security Act Amendments of 2003, Pub. L. No. 108-7, at § 107, repealing section 457 of the Homeland Security Act of 2002.

⁶⁶ See generally 63 Fed. Reg. 1775 (Jan. 12, 1998).

⁶⁷ See *supra* note 13.

⁶⁸ See *supra* Figure 7.

⁶⁹ An applicant for a green card is required to be issued an EAD within 90 days after an application for the EAD, which can be filed simultaneously with the green card application. See 8 C.F.R. § 274a.13(d).

increased the EAD and advance parole application fees beyond the amount needed to recover the actual costs of the service. USCIS has become dependent on revenue derived from these applications, which are required only because of the slow processing of applications for core services. Section II.A provides additional detail on slow green card processing. Similarly, the employment-based green card process has resulted in substantial revenue to the agency and is further discussed at section II.B.

In addition, USCIS incurred other costs, which had to be recovered by fees. For example, in 2003, shared services agreements following the INS breakup required USCIS to perform certain services for ICE and CBP including all records functions for which USCIS was to be reimbursed. In addition, USCIS' budget incorporated many costs associated with shared services, including information technology, security checks, personnel, and fingerprinting. Moreover, USCIS had to set aside funds for investment purposes or to start-up new programs imposed by Congress without any appropriations. These unfunded costs for USCIS had to be recovered from fees on applications for services.

As long as program costs are mostly unfunded and the agency is expected to recover its costs almost entirely from fees, USCIS will be confronted by the conflicting goals of improving efficiency for all its clients versus redirecting revenue to provide for all its unfunded mandates. USCIS needs a new funding mechanism to help it out of this dilemma.

In the meantime, USCIS has several other processes that generate revenue from customers for seemingly unnecessary services.

A. Lockbox Process Failure to Screen Deniable Cases

Currently, when an application or petition arrives at the Chicago Lockbox, the contract clerk reviews it to verify that it has a signature and the correct fee. If the application satisfies both elements, it is accepted for processing. The contract clerk does not screen for applicant eligibility or the completeness of the documents supporting the application or petition.⁷⁰ The current case receipt policy creates substantially more work for USCIS because it accepts incomplete or deficient applications and petitions, and issues interim benefits for cases that ultimately will be denied. Processing a denial demands more USCIS time and resources than processing an approval. Moreover, the policy shifts resources and attention away from eligible applications and petitions, but allows USCIS to collect fees from applicants who may be ineligible for the benefit sought.

USCIS has indicated to the Ombudsman that it must issue a denial letter to ineligible applicants and that the agency must recover adjudication costs for both approvals and denials. However, USCIS did not address the policy described above. With, adequate training, up-front

⁷⁰ The Ombudsman understands that the USCIS Standard Operating Procedure for green card applications requires that USCIS check for jurisdiction and visa availability in addition to checks for signatures and correct fees. However, further "initial evidence" checks are performed at the National Benefits Center (NBC), after the application has already been received and after USCIS has committed to processing it. The NBC checks for documents that would establish: (1) proof of the claimed relationship, (2) proof of legal entry, (3) medical examination reports, and (4) affidavits of support.

review for obvious deficiencies would be useful and would not subject USCIS to charges that it is “front-desking” applications.⁷¹

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Currently, USCIS only reviews applications and petitions to ensure that fees are paid and forms are signed. When the form is otherwise not complete or when the applicant is not eligible for the claimed benefit, USCIS will deny the case usually after expenditure of considerable time and resources. Regulations require submission of applications and petitions according to the instructions on the forms.⁷² In adhering to its regulations and requiring application and petition packages to be complete before accepting them, USCIS would improve efficiency and customer service. Checks for necessary documents should be made before an application fee is accepted via a thorough pre-screening process. This process would prevent customer dissatisfaction from the number of later requests for additional documents, while also allowing USCIS to forego time-consuming denial procedures.

B. Multiple Filings for Foreign National Spouses

To address delayed processing for spouses of U.S. citizens, Congress passed a law designed to expedite processing, but USCIS interpreted the law to require actions that took more money, agency resources, and documentation. Specifically, in 2000, Congress passed the Legal Immigration Family Equity (LIFE) Act.⁷³ This Act created the K-3 visa category for alien spouses so that they can obtain a nonimmigrant visa and more quickly join their U.S. citizen spouses in the United States. The spouse could apply for a green card in the United States, or wait for the overseas application to be adjudicated.

For this nonimmigrant visa petition, USCIS adopted an existing form used for fiancé(e) petitions (Form I-129F) and charges a separate fee. However, USCIS applies the same criteria to approve Form I-129F as for the I-130 immigrant visa petition, normally used for sponsoring a spouse or child of an U.S. citizen.⁷⁴ In general, the distinction is that the I-129F requires submission of the I-130. USCIS conducts substantially the same security checks and requires approximately the same number of hours to process each of these forms. However, USCIS processes Form I-129F in 60-90 days, whereas the I-130 processing times are approximately six months.⁷⁵ It is unclear why it takes so long to process the I-130 immigrant petition when the

⁷¹ This term stems from the legacy INS practice of rejecting certain applications during the legalization program instituted under Immigration Reform Control Act (IRCA). See Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986). Following the program, a number of individuals and organizations brought litigation against INS, alleging that applications were erroneously rejected by frontline INS officers.

⁷² See 8 C.F.R. §103.2(a).

⁷³ See “The Legal Immigration Family Equity Act,” Pub. L. No. 106-553, 114 Stat. 2762 (Dec. 21, 2000).

⁷⁴ Similarly, DOS issuance of an IR-1 immigrant visa on an approved I-130 petition and of a K-3 nonimmigrant visa on an approved I-129F petition involves overlapping criteria.

⁷⁵ See <https://egov.immigration.gov/cris/jsps/ptimes.jsp?jsessionid=ccjehik2G6Ac> (last visited June 15, 2006).

required elements for the nonimmigrant I-129F are greater than for the I-130, the original delayed petition that was the impetus for this Life Act provision. USCIS and DOS jointly collect as much as \$965 (\$865 to USCIS and \$100 to DOS) when an applicant files both an I-130 and an I-129F,⁷⁶ compared to \$640 for the I-130 (\$190 to USCIS and \$450 to DOS).

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The Ombudsman currently is evaluating several solutions to address this issue. In the meantime, to prevent the waste of resources and address customer concerns that originally prompted the legislation, the Ombudsman recommends that USCIS consolidate and rapidly process petitions for spouses and children of U.S. citizens. This would prevent duplication of processes and alleviate the need to use the provisions set forth in the legislation.

C. Application Support Centers and Fingerprinting of Applicants

USCIS established ASCs on a contract basis to collect biometric data (including fingerprints and photographs) and initiate security checks. There are 130 ASCs located in separate sites or co-located with USCIS offices. The annual budget for ASC operations in FY 05 was approximately \$80 million, which included funding for 134 government and 1,242 contract employees.⁷⁷

In FY 05, USCIS submitted 2.5 million fingerprints to the FBI for criminal history checks at a cost of approximately \$36.67 million. Currently, USCIS considers fingerprint results to be valid for 15 months even though the FBI does not consider fingerprints to expire. Unfortunately, it often takes USCIS longer than 15 months to adjudicate an application. Consequently, the applicants must return to the ASC to have fingerprints recaptured. A November 2005 DHS IG report noted that although the security check is fingerprint-based, USCIS has limited ability to re-verify the applicant's identity. Specifically, the FBI does not keep fingerprints obtained for non-law enforcement purposes to crosscheck them against previous submissions to USCIS.⁷⁸

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The Ombudsman recommends that USCIS implement "wrap around"⁷⁹ security checks, which would provide it with real time security updates from the law enforcement community on applicants who violate criminal laws. Current

⁷⁶ For this option, there are additional fees due to filing Form I-485 (a green card application) and Form I-765 (EAD).

⁷⁷ The Ombudsman obtained these statistics from a December 2005 meeting with USCIS.

⁷⁸ See DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," at 8.

⁷⁹ Wrap-around security checks contemplate an arrangement with law enforcement to inform USCIS of any new security concerns that arise without the need for USCIS to require additional biometrics or name checks from the applicant. Currently, USCIS periodically conducts duplicate security checks instead of law enforcement providing an update on USCIS applicants after the initial check.

resources used for duplicative security and biometrics checks would become available for other agency needs.

Although USCIS currently has fingerprint storage capability, it cannot retrieve the prints from storage. Fingerprint storage and retrieval capability would reduce the need for multiple visits to ASCs for repeated fingerprint collection and would allow for cross-checking of fingerprint submissions. The Ombudsman understands that USCIS is working on a biometrics storage system (BSS) for implementation in early 2007. Additionally, flat fingerprints, now piloted with the government and private sector, can be captured more quickly and easily, as well as use fewer USCIS resources.

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To enhance national security, lower costs to USCIS, avoid generating revenue from an inefficient process, and improve customer service, the Ombudsman recommends: (1) improvements in USCIS fingerprint storage and retrieval capabilities; and (2) use of innovative technology that allows for the capture of flat fingerprints rather than traditional rolled prints.

D. Premium Processing Likely Less Costly Than Regular Processing

Premium processing service guarantees a 15-day processing time for certain immigration benefits applications upon payment of an additional \$1,000 fee. In FY 04 and FY 05 USCIS collected \$202 million and \$139 million in premium processing fees, respectively. For regular processing in FY 04 and FY 05, USCIS collected \$64 million and \$69 million in regular filing fees, respectively.⁸⁰ USCIS used the income from premium processing fees to offset the costs of a variety of non-premium process related USCIS functions. The cost of providing premium processing is likely to be less than regular processing because fewer repeated steps exist and fewer people handle these applications.

⁸⁰ See *supra* Figures 6 and 7.

Figure 8: Comparison of Premium and Regular Processed Cases in FY 04 and FY 05

	FY 04 Petitions Filed	FY 05 Petitions Filed
Petitions Filed with Premium Processing	202,000	139,000
Premium Processed Cases as a Percentage of Total New Employment and Change of Status*	94%	80%
New Employment	116,386	94,926
Change of Status	99,538	78,656
Total (New Employment and Change of Status)	215,924	173,582
Extension of Status*	202,201	197,659
Total of All Petitions Filed (New Employment, Change of Status and Extension of Status)	418,125	371,241
Premium Processed Cases as a Percentage of Total of All Petitions Filed	48%	37%
<p>* Most petitioners filing for extension of their beneficiary employees will file well in advance of the termination of the employees' authorized period of stay. Moreover, the law permits the beneficiaries to continue employment while awaiting USCIS' decision on extension even after expiration of their current period of stay. Therefore, it is likely that only a small percentage of extension of stay petitions will be filed using premium processing.</p> <p>Source: USCIS PAS Data</p>		

Premium processing depends on the slow, inefficient processing of regular applications to give reason for customers to pay the higher fee for this service. USCIS immigration officers obviously give priority to applicants who pay more. However, applicants who pay the regular fee may be getting less service than before the start of premium processing.

USCIS deserves credit for developing innovative approaches to expedite case processing, but premium service should be a temporary fix until USCIS resolves the more fundamental problem of funding the agency. However, far from the exception to regular processing, premium processing is now the rule. In FY 04 and FY 05, 202,000 and 139,000 Form I-129 applicants,

respectively, paid for premium processing. In fact, shortly before this report, USCIS announced the expansion of premium processing to other visa categories that have long processing delays.⁸¹

All customers should receive a premium type of process that costs no more than customers pay for the current regular process. Currently, funds collected from premium processing fees should be used to support efforts that directly and visibly reduce the cycle time for processing all applications and petitions, but particularly within the category for which higher fees are charged.

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The Ombudsman recommends that USCIS implement premium-type processing for all regular processed applications at a uniform cost to the applicant. Implementation of this recommendation would save the agency some resources that it currently expends for repeated actions in regular processing. It also would have a tremendous positive impact on customer service and efficiency at no additional net cost to the agency.

IV. UP-FRONT PROCESSING

A. Up-front Processing – Introduction and Results

In response to recommendations made by the Ombudsman in the 2004 reporting period, as described in section V, USCIS implemented “up-front processing” pilot programs. The programs tested alternative processing models to enhance national security, improve customer service, and increase the efficiency of immigration services.

Up-front processing is characterized by:

- Pre-screened applications to ensure completeness prior to filing;
- One form and one fee per immigration benefit filed by customers;
- Same-day interviews and biometric capture, if required, and
- Applications completed within days, or even hours, of filing.

The goals of up-front processing are to:

- Identify national security threats and fraud as early as possible in the immigration process.

⁸¹ See *supra* note 26.