

I. INTRODUCTION

The position of Citizenship and Immigration Services Ombudsman (Ombudsman) was established by the Homeland Security Act of 2002 § 452, 6 U.S.C. § 272 (2002).¹ The Ombudsman is appointed by the Secretary of the Department of Homeland Security (DHS) and reports directly to the Deputy Secretary of DHS. Secretary Tom Ridge appointed Prakash Khatri as the first Ombudsman on July 28, 2003.²

This annual report is submitted pursuant to 6 U.S.C. § 272(c)(1) and covers the activities of the Ombudsman³ from June 1, 2005 through May 31, 2006.⁴

A. Mission

The statutory mission of the Ombudsman is to:⁵

- Assist individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS);
- Identify areas in which individuals and employers have problems dealing with USCIS; and
- Propose changes to mitigate identified problems.

The Ombudsman serves as a spokesperson and advocate for individuals and employers who encounter problems with our immigration benefits system.⁶ The Ombudsman believes the best way to assist individuals and employers is to encourage efficiency and better customer service at USCIS by recommending solutions to systemic problems in USCIS' processes.

The Ombudsman continues to work with USCIS and DHS headquarters to create more efficient, secure, and responsive methods for providing immigration services that respect the dignity of individuals and enhance our economy, while simultaneously protecting the country from those who seek to do us harm.

¹ See Appendix 5 for excerpts of relevant sections of the Homeland Security Act.

² See Appendix 7 for Mr. Khatri's biography.

³ In this report, the term "Ombudsman" refers interchangeably to Ombudsman Prakash Khatri, his staff, and the Ombudsman's office.

⁴ The statute gives USCIS 90 days to respond to the Ombudsman's Annual Report. See 6 U.S.C. § 271(a)(3)(F). USCIS responded to the Ombudsman's June 30, 2005 Annual Report on March 15, 2006.

⁵ See 6 U.S.C. § 272(b).

⁶ "Immigration benefits" is the term used to describe the services side of the immigration system, versus enforcement. Primary immigration benefits include lawful nonimmigrant status, permanent residence (also called adjustment of status, evidenced by a "green card"), naturalization, asylum, etc. Secondary immigration benefits or interim benefits include work permits, *i.e.*, Employment Authorization Documents (EADs), and travel documents, *i.e.*, advance parole, obtained while awaiting a primary benefit.

B. Vision

The Ombudsman envisions an immigration benefits system that securely, efficiently, and expeditiously – within a few days or even hours – provides the right benefit to the right person, while screening out ineligible applicants at the earliest point possible.

C. State of USCIS

In this Annual Report, among other issues, the Ombudsman details the funding problems which appear to drive USCIS policy and contribute to inefficiencies in processing immigration benefits. USCIS has ongoing difficulties in providing timely service for customers and is required to clear its application backlogs. Like many major organizations, USCIS has been unable to commit to fundamentally reengineering the way it does business – its approach to accepting and processing immigration benefits petitions and applications. The root problem for USCIS is money – or, more precisely, the way in which the agency is funded and the mandate that USCIS recovers all of its costs from fees charged to applicants.

As a fee-funded agency, USCIS is almost entirely dependent on application fees to pay for operating expenses. USCIS also operates some programs for which it collects no fees and that are not funded by appropriations or other means, such as the asylum and refugee programs and military naturalizations. USCIS recovers the costs for these important programs with surcharges added to fees paid by applicants for other USCIS services.

In addition, the premium processing program guarantees a 15-day processing time for certain immigration benefits applications upon payment of an additional \$1,000 fee. Customers demand and USCIS provides premium processing because of the slow processing caused by workload backlogs and general USCIS inefficiencies. This program is a major revenue source – in FY 04 the program generated \$202 million and in FY 05 \$139 million.

Similarly, due to slow processing, the green card application process requires the issuance of interim employment authorization documents (EADs) while the green card application is pending. EADs for green card applicants are also a major revenue source – in FY 04 EADs generated \$135 million and in FY 05 \$187 million. Additionally, USCIS generated \$51 million in FY 04 and \$43 million in FY 05 for advance parole applications from these same green card applicants.

Efficient and timely processing would reduce the need to file applications for EADs or to use premium processing. However, by improving efficiency, USCIS could suffer a significant funding shortfall, estimated to be approximately \$350 million or more based on FY 05 revenue.

The revenue is built into the USCIS annual budget and, according to its counsel,⁷ the loss of this revenue would make it deficient in violation of the Antideficiency Act.⁸

Processing inefficiencies not only impact USCIS funding, they also compromise security. In most cases where green card applications are not completed within 90 days, customers apply for – and receive – EADs. EADs allow individuals to work in the United States, obtain Social Security cards, and qualify for drivers' licenses. Over the last three years, between 17 to 21 percent of green card applications were denied nationally and most of those people received EADs prior to the denial of the underlying application.⁹ These applicants resided in the United States for lengthy periods of time through EADs even though a timely adjudication of the primary benefit application would have found them ineligible and removable.

Beyond security issues, allowing ineligible applicants to file for benefits also compromises customer service and adds unnecessary costs for eligible applicants. Denying a benefit application takes longer to process than an approval. Thus, by allowing thousands of ineligible applicants to file for benefits, USCIS consumes resources that could be used to speed the delivery of benefits for those who deserve them. Even worse, prolonged processing times make it necessary for most eligible applicants to apply for interim benefits – an unneeded cost if there were an efficient system.

It is critical that USCIS find a solution to its funding dilemma. To fund programs for which USCIS currently does not charge a fee, a possible solution would be for USCIS to receive appropriations. As recommended by the DHS' Second Stage Review, a possible solution for the entire agency would be for Congress to create a revolving fund account. The initial account would include appropriated funds and be replenished from future fees.

The Ombudsman looks forward to further discussing the state of USCIS and its funding dilemma so that USCIS can realize its goal of efficient and secure delivery of immigration benefits.

⁷ A November 29, 2005 email to the Ombudsman from USCIS, the Chief Counsel stated “[USCIS] would violate the [Antideficiency Act (ADA)] if we obligated in excess of our receipts, in excess or in advance of our annual appropriation, in excess of an apportionment, or in a manner that violates the Purpose Statute, the agency would violate the ADA.”

⁸ The ADA is composed of various sections in Title 31 of the United States Code. Key ADA sections are 1341 and 1517, regarding spending limitations, and sections 1515 and 1516 stating exceptions; separate sections specify consequences for violations. The ADA provisions were promulgated over time to prevent federal departments and agencies from spending their entire appropriations during the first few months of the year. They govern the budget process from inception of an agency in enabling legislation through the actual disbursement of funds via an outlay or expended appropriation. There are administrative and criminal penalties for violation of the ADA.

⁹For FY 05, USCIS reported a nationwide green card application denial rate of 17.19 percent. Most of these ineligible applicants received interim benefits while awaiting adjudication of their green card application. In some jurisdictions, the denial rate was much higher. For example, in New York City, the annual green card application denial rates from 2001 through 2005 were: 43.3 percent, 31.5 percent, 47.6 percent, 42.1 percent, and 29.4 percent, respectively. See USCIS Performance Analysis System (PAS). Under the Dallas Office Rapid Adjustment (DORA) pilot program, however, the denial rate was much lower; only 2.5 percent (204 out of 8,097 cases) processed from the beginning of the program through February 3, 2006 were denied.

D. Accomplishments

During the 2006 reporting period the Ombudsman made 13 formal recommendations to USCIS. These recommendations covered a wide variety of USCIS systemic problems and activities, including up-front processing, administrative appeals, and military naturalization. In addition, the Ombudsman worked closely with USCIS and DHS leadership to address certain pervasive and serious problems that, if solved, would increase USCIS efficiency, improve customer service, and enhance national security.

To identify problems and collect data, the Ombudsman held numerous meetings with representatives from community-based organizations, the immigration legal community, and employer organizations. The Ombudsman also met with other federal government agency partners including representatives from the Departments of State, Commerce, Justice, and Labor to address interagency coordination.

During the reporting period, the Ombudsman visited 39 USCIS facilities, including district offices, service centers, and other facilities. Since the Ombudsman office's inception in 2003, the Ombudsman personally has visited 125 USCIS facilities, as listed in Appendix 1. The purpose of these visits was to see first-hand the issues that individuals and employers encountered, identify systemic problems, and consult with USCIS field offices on proposed solutions.¹⁰ The travel and site visits provided the Ombudsman opportunities for candid dialogue on a variety of issues including: the impact of immigration processing backlogs on families and employers; the lack of standardization in immigration adjudications; and ongoing problems communicating with USCIS via the National Customer Service Center and INFOPASS, USCIS' online appointment scheduler.

During the reporting period, the Ombudsman expanded the office's outreach and developed guidance to be distributed to all USCIS officers and employees that outline criteria for referring inquiries to the Ombudsman's local offices. In addition, the Ombudsman began posting formal recommendations in December 2005 on the website, www.dhs.gov/cisombudsman. There has been a tremendous growth in the number of people accessing the website since that time, as shown in the figure below.

¹⁰ This report refers to field offices or local offices to include district offices, sub-offices, and satellite offices.

Figure 1: Visits to the Ombudsman’s Website

Month	Visits
Jul-04	3,936
Aug-04	3,774
Sep-04	4,337
Oct-04	3,923
Nov-04	3,804
Dec-04	3,786
Jan-05	5,127
Feb-05	4,731
Mar-05	5,465
Apr-05	4,460
May-05	4,234
Jun-05	4,163

Month	Visits
Jul-05	4,881
Aug-05	7,139
Sep-05	Data Unavailable
Oct-05	4,705
Nov-05	2,416
Dec-05	4,957
Jan-06	7,047
Feb-06	44,043
Mar-06	32,196
Apr-06	67,761
May-06	66,846

Other developments include: (1) an outreach initiative to distribute posters in English and Spanish to provide customers and USCIS employees with the necessary information to contact the Ombudsman about case problems (see Appendix 2); and (2) a communications initiative to expand the Ombudsman’s webpage on the DHS website that will include an online form for submitting case problems. Currently, this online form is in the final Office of Management and Budget (OMB) process and should be published in the Federal Register in the coming months for public comment.

II. PERVASIVE AND SERIOUS PROBLEMS

The Homeland Security Act requires the Ombudsman to highlight problems, which most significantly impact individuals and employers in their pursuit of immigration benefits, and to make recommendations for change.¹¹ It further requires the Ombudsman to report on USCIS’ responses to these recommendations.¹² Although the Act does not require the Ombudsman to report on the many best practices of USCIS staff, this report highlights a few of them. The Ombudsman recognizes the talent and professional dedication of USCIS employees, particularly those in the field. These civil servants perform their jobs each day, continuing the important work of this country often with inadequate facilities, equipment, and training.

While USCIS has made progress in addressing some of the pervasive and serious problems identified in previous reports, many of the core problems remain.

¹¹ See 6 U.S.C. § 272 (b)(1).

¹² See 6 U.S.C. § 272 (c)(1).