

databases.³⁷ Finally, the Ombudsman learned in March 2006 that at least one service center was issuing blanket RFEs for certain long pending I-130s regardless of the completeness of the file. As a consequence, USCIS spent additional resources to respond to inquiring customers who did not understand the nature and requirements of these RFEs and sent in duplicate documents.

RECOMMENDATION AR 2006 -- 03

The Ombudsman recommends that USCIS process I-130 petitions as soon as they are received. This would prevent the substantial cost involved in storing and retrieving the applications as well as the resources expended for follow-ups, customer inquiries, address changes, etc.

E. Interim Benefits

Identified in last year's report (at pp. 5-9) as a pervasive and serious problem, the issuance of interim benefits continues to be a concern. Generally, USCIS issues interim benefits – EADs and advance parole documents (international travel documents) – to individuals who have green card applications pending with the agency.³⁸

Despite their temporary nature, EADs allow individuals to obtain other federal and state forms of identification such as Social Security cards and drivers' licenses. These documents enable an individual to secure property and obtain credit in the United States. Further, these documents create an appearance of legitimacy to their presence in the United States, although legal status is not yet fully determined. It is not uncommon for individuals to receive EADs for years, only to have the underlying green card application ultimately denied.

USCIS case backlogs have made EADs valuable in their own right because the benefits confer many of the privileges that the green card provides, including to live and work in the United States. Realizing that EADs are almost automatically approved, many individuals who only want employment authorization file green card applications simply to obtain the interim benefits rather than from a genuine desire to be a lawful immigrant.³⁹ A robust screening process, wherein USCIS reviews basic eligibility requirements before accepting green card applications, would result in the rejection of such fraudulent or frivolous applications.

Thousands of Ineligible Green Card Applicants Receive EADs. In 2004, the Ombudsman recommended an up-front processing model (see sections IV and V.27) that would eliminate the need to issue EADs in most instances. USCIS implemented a pilot program to test a version of this model in Dallas, which became known as the Dallas Office Rapid Adjustment program (DORA). It is unclear why USCIS has failed to recognize the success of the program in providing efficient processing while eliminating the receipt of EADs by most ineligible applicants.

³⁷ See section V.28 for the Ombudsman's recommendation on change of address issues.

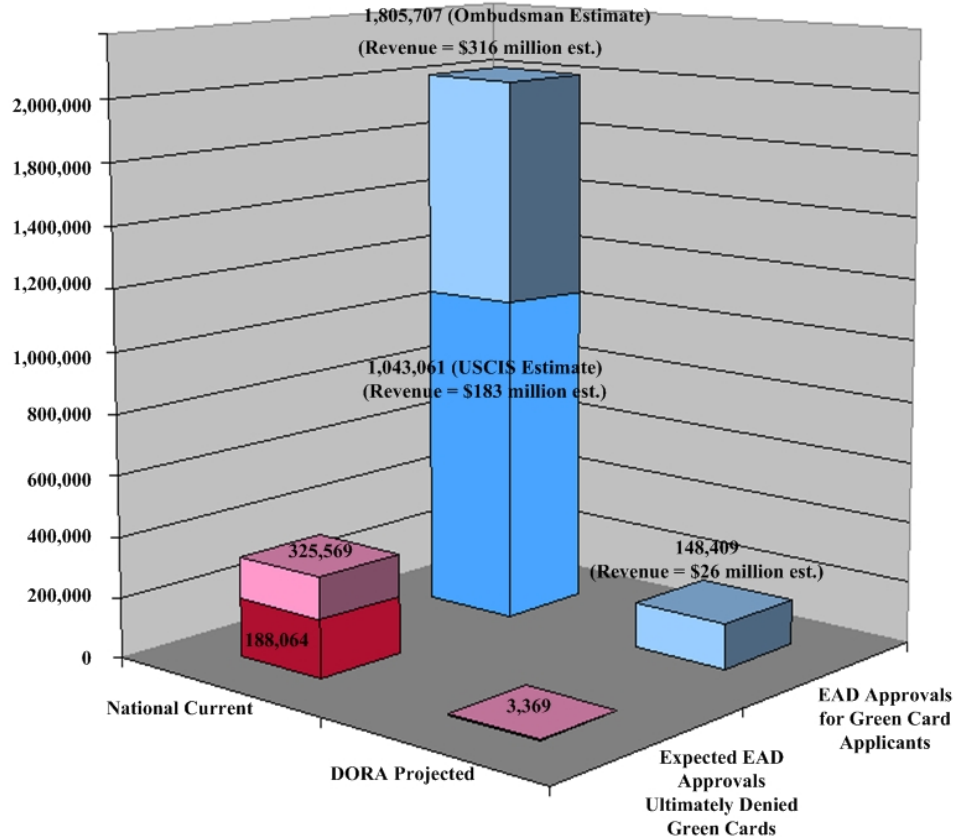
³⁸ See 8 C.F.R. §§ 223, 274a.13(d).

³⁹ See GAO, Additional Controls and a Sanctions Strategy Could Enhance DHS' Ability to Control Benefit Fraud, GAO-06-259 (Mar. 2006), at 18; <http://www.gao.gov/new.items/d06259.pdf>.

During the 21-month period for which data are available from DORA, May 2004 to February 2006, the program resulted in a dramatic reduction in the issuance of EADs to ineligible applicants because applicants approved for immigrant status received their green cards within 90 days. In DORA, cases are reviewed at the time they are accepted for processing. As a result, many ineligible applicants are rejected before their cases are even filed. The remaining applicants whose cases are accepted for processing are interviewed on the day of application and a preliminary determination of eligibility is made subject to security checks. This up-front process has resulted in a substantial reduction in the denial rate, as most ineligible applicants do not file.

As shown in the figure below, the Ombudsman estimates that as many as 1.8 million EADs were nationally issued during the 21-month period for which data are available. From this total, USCIS issued 325,569 EADs to applicants who were ultimately determined to be ineligible for green cards. USCIS estimates are different. Data from the Performance Management Division indicate that there were approximately 1.04 million EADS issued during the considered period. Extrapolating from USCIS estimates, USCIS may have issued 188,064 EADs (compared to the 325,569 estimated by the Ombudsman) to applicants who were ultimately denied green cards. In either case, EADs were issued to an unacceptably high number of ineligible green card applicants.

Figure 5: Comparison of Employment Authorization Documents Issued (May 2004 to February 2006 = 21 months) (National Current versus DORA Projected)

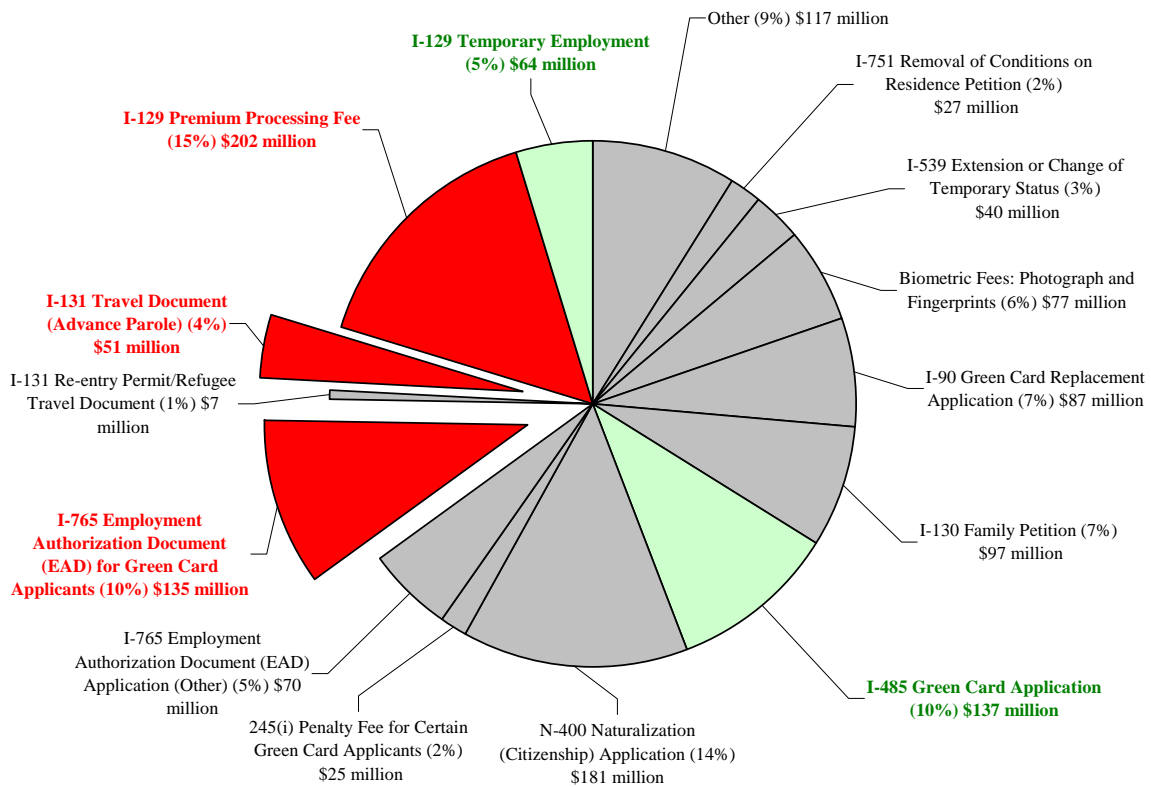


Regardless of the different estimates in number of EADs issued during the 21-month period, the difference in workloads to issue EADs between the current process and a DORA process is considerable. Had DORA been in place nationally, the number of EADs issued would have totaled approximately 148,409. Of that number, 3,369 EADs would have been issued to ineligible green card applicants compared to either the 325,569 estimated by the Ombudsman or the 188,064 estimated by USCIS. See Appendix 3 for an explanation of these calculations.

While reducing the number of EADs issued to ineligible applicants is desirable, these applications are a significant source of revenue for USCIS. Total fees from interim benefits were approximately 23 percent of USCIS' FY 05 budget.⁴⁰ Eliminating the need for interim benefits would reduce revenue to USCIS. Cost savings realized from scaling down interim benefits operations would not completely offset the decrease in revenue because only a small percentage of an EAD application fee actually is used for processing costs associated with that application.

⁴⁰ See Figure 7: USCIS Fee Revenue for FY 05.

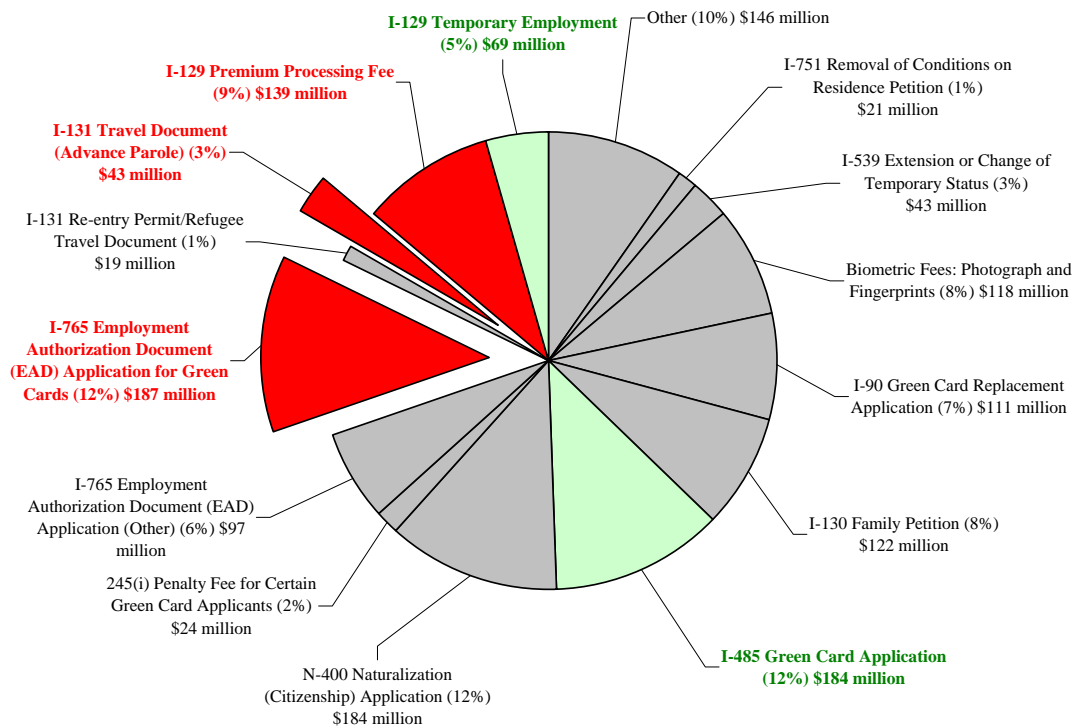
Figure 6: USCIS Fee Revenue for FY 04



Note: The I-765 Employment Authorization value attributed to green card applicants reflects the Ombudsman’s estimate of EADs issued to those applicants.

Form	Form Type
I-90	Green Card Replacement Application
I-129	Temporary Employment
I-130	Family Petition
I-131	Travel Document Application (Advance Parole)
I-485	Green Card Application
I-539	Extension or Change of Temporary Status
I-751	Removal of Conditions on Residence Petition
I-765	Employment Authorization Document (EAD) Application
N-400	Naturalization (Citizenship) Application
Biometric Fees	Photograph and Fingerprint Fee
245(i) Penalty Fees	Penalty Fee for Certain Green Card Applicants

Figure 7: USCIS Fee Revenue for FY 05



Note: The I-765 Employment Authorization revenue attributed to green card applicants reflects the Ombudsman’s estimate of EADs issued to those applicants. The data used to generate Figures 6 and 7 do not directly match data used to generate Figure 5. To maintain consistency with the Ombudsman’s 2005 Annual Report at p. 8, Figure 7 was generated using the same formulas as in last year’s revenue chart. Better reporting of certain data led to a refinement in the calculations, which were used to generate Figure 5 above, as explained in Appendix 3. The percentage difference in the calculated values is minimal.

USCIS’ response to the 2005 Annual Report stated that the agency is “taking steps to ensure that interim documents are not provided to applicants who have not cleared basic security checks or who have not provided the essential evidence of eligibility for permanent residence.”⁴¹ While this may appear to deal with the issue, it is only a short-term approach. EADs are not the problem. Rather, they are symptoms of inefficient green card application processes that, if corrected, automatically would reduce the need for USCIS to issue EADs except for the exceptional circumstance. Moreover, reducing the number of applications for interim benefits allows USCIS to allocate staff to tackle backlog elimination and prevention efforts.

F. Name Checks and Other Security Checks

FBI name checks, one of the security screening tools used by USCIS, significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their intended national security objectives.⁴²

⁴¹ USCIS’ Response to the Ombudsman’s 2005 Annual Report (Mar. 15, 2006) at 12.

⁴² The Ombudsman’s 2005 Annual Report (at p. 11) included a discussion of the pervasive and serious issue of background and security checks.