

The Standard of Proof for Immigration Benefit Issuance is an Important Consideration

In most USCIS adjudications, the evidentiary standard is “a preponderance of the evidence,” a common standard in civil proceedings. Two other common standards, “clear and convincing evidence” and evidence “beyond a reasonable doubt,” require a higher level of certainty. A preponderance of the evidence is greater than a 50% certainty that a fact is true. ISO managers view clear and convincing evidence as approximately 75% certainty, and proof beyond a reasonable doubt as 95% or more certainty. These percentages illustrate the differences between standards, although an exact percentage may not be easy to quantify in a given case.

To protect the immigration system further, Congress may wish to raise the standard of proof for some or all USCIS benefit issuance decisions. A relatively low standard of proof may not account for all societal interests involved in the issuance of immigration benefits.

Even with the additional security checks and process improvements USCIS has made in the past several years, national security and fraud concerns may require more thorough review of immigration applications and petitions. These concerns may increase the time needed to process benefit requests. Concern about delays in issuing benefit determinations should not override all other interests. The potential negative effect of ongoing production pressure, the desire for longer interviews of applicants, and the incomplete nature of the new performance measures means that much work remains before USCIS instills a culture that emphasizes quality over quantity. A higher standard of proof, and implementation of this report’s recommendations, offer a variety of means to improve the benefit issuance process.

Mr. Chairman, this concludes my prepared statement. Thank you for the opportunity to testify and I welcome any questions from you or Members of the Committee.