

OMBUDSMAN

QUARTERLY UPDATE

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From the Acting Ombudsman

It gives me great pleasure to announce that on June 25, 2012, the Citizenship and Immigration Services Ombudsman's Office delivered its 2012 Annual Report to Congress. I hope you find it informative. The Report provides information on the areas we studied last year and where we intend to focus this year. Our priorities are set by the feedback we receive from stakeholders and by individuals who have requested our assistance to resolve issues with USCIS.

Over the next several months, our staff will be traveling across the country to meet with USCIS customers, community organizations and legal professionals that assist immigrants, and USCIS officials. We look forward to hearing your feedback on a wide range of topics including those covered in our Report. If you are interested meeting with members of our staff, please contact our office at (202)357-8100. We welcome the opportunity to meet with those who are dedicated to improving the delivery of immigration benefits and services.

Our team is committed to working with USCIS and other federal partners responsible for the delivery of immigration services. Our second annual conference will take place at the National Archives on October 18, 2012. It promises to include lively discussion and panel presentations on a number of interesting topics with a focus on coordination between government agencies:

- The intersection of law, policy, and discretion in the administration of immigration benefits;
- Interagency coordination on L-1 nonimmigrant petitions;
- Review regarding humanitarian benefit adjudications;
- The impact of *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012); and
- The Federal Rulemaking process.

To register for this exciting event, please e-mail cisombudsman.publicaffairs@hq.dhs.gov when registration is announced on September 12, 2012.

Sincerely,



Debra Rogers
Acting Citizenship and
Immigration Services Ombudsman



**Homeland
Security**

The Ombudsman's Office Releases its Annual Report to Congress

Identifying Solutions to Problems with the Immigration Benefits System

On June 25, 2012, Acting Ombudsman Debra Rogers submitted the 2012 Citizenship and Immigration Services [Ombudsman's Annual Report to Congress](#). In her opening message, Acting Ombudsman Rogers wrote:

Our mission is to assist individuals and employers who have encountered problems with the immigration benefits system. We are constantly striving to find new and better ways to perform this function. In this report, we identify some of the difficulties encountered by USCIS' customers and offer potential solutions. The Ombudsman's Office interacts with a wide array of stakeholders; this report attempts to clearly and effectively capture their concerns and recommendations.

The Annual Report describes the work of the Ombudsman's Office over the past year and provides insight into current projects including:

- Highlighting USCIS' support for our nation's military and encouraging enhancements to related programs
- Calling for agency action on issues, including USCIS Service Requests, Extraordinary Ability Petition Adjudications, Employment Authorization Documents (EADs), Deferred Action Processing, and Special Immigrant Juvenile Adjudications
- Improving coordination among USCIS, U.S. Immigration and Customs Enforcement (ICE), and the Executive Office for Immigration Review (EOIR)

The report also highlights USCIS's new multilingual engagements, expanded public outreach, and technological advancements.

TALK TO US

Citizenship and Immigration Services
Ombudsman

cisombudsman@hq.dhs.gov

202-357-8100

www.dhs.gov/cisombudsman

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Ombudsman

HOW THE OMBUDSMAN WORKS FOR YOU

The Ombudsman is here to help individuals and employers who need to resolve a problem with U.S. Citizenship and Immigration Services (USCIS). The Ombudsman also makes recommendations to fix systemic problems and improve the quality of services provided by USCIS.

The Ombudsman is an independent, confidential, and impartial resource within the Department of Homeland Security.

Highlights from Current Areas of Focus

New Guidance and Procedures for Form I-130 Processing Abroad

On May 14, 2012, USCIS published a memorandum entitled "[Process for Responding to Requests by the Department of State \(DOS\) to Accept a Locally Filed Form I-130, Petition for Alien Relative.](#)" This memorandum advises USCIS International Operations staff that:

1. A DOS Consular Officer must contact the USCIS Field Office Director with jurisdiction over that location to request authorization for DOS to accept and adjudicate a Form I-130.
2. If a Form I-130 is not clearly approvable, DOS must send it to the USCIS office with jurisdiction.
3. USCIS will likely authorize DOS to accept and process a Form I-130 only under exceptional circumstances such as military emergencies, medical emergencies, threats to personal safety, close to aging out, Petitioner recently naturalized, adoption and short notice job relocation.
4. Field Office Directors can also authorize DOS processing for compelling humanitarian reasons.

The memorandum further states that a petitioner cannot appeal, or request reconsideration of, a USCIS decision to deny a DOS request to adjudicate a Form I-130. In the event of a large scale crisis, the memo notes that USCIS may authorize DOS to conduct blanket processing. USCIS Field Office Directors must respond to DOS requests within 1-3 business days.

USCIS Issues New Guidance for Legal Representation at Interviews

On May 23, 2012, USCIS published a memorandum entitled "[Representation and Appearances and Interview Techniques; Revisions to Adjudicator's Field Manual \(AFM\) Chapters 12 and 15; AFM Update AD11-42.](#)" This document applies to all USCIS Field, Service Center, and Refugee, Asylum and International Operations staff, but does not supersede existing guidance related to asylum or refugee processing procedures or site visits conducted by the Fraud Detection and National Security Directorate. The memorandum specifically states, "This policy memorandum provides guidance to adjudicators and balances the meaningful role of attorneys and other representatives in the interview process with the important responsibility of adjudicators to conduct fair, orderly interviews."

In revising AFM Chapter 12, Attorneys and Other Representation, the memorandum covers in detail important topics including: Proper Service of Documents and Notices, Interviews, Rules of Professional Conduct for Practitioners, and the Role of USCIS District Directors in the Board of Immigration Appeals Recognition and Accreditation Process. Additional revisions to AFM Chapter 15, Interview Techniques, address policies and procedures to be followed by adjudicators when conducting immigration benefit interviews.

Highlights from Current Areas of Focus

Lockbox Centralization of Overseas Form I-601 Waivers Began June 4, 2012

Effective June 4, 2012, USCIS centralized the filing of overseas Forms I-601, Application for Waiver of Grounds of Inadmissibility, and I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, through a U.S.-based lockbox facility.

Representatives from USCIS and the Department of State hosted a teleconference on May 31, 2012 to discuss this transition. USCIS highlighted the difference between the newly centralized Form I-601 filing process and its March 30, 2012 "[Notice of Proposed Rulemaking](#)." Rather than merely confirming the new centralized filing process, the "Notice of Proposed Rulemaking" also outlines a process for accepting provisional unlawful presence waivers filed by potentially inadmissible individuals prior to their departure from the United States. The provisional waiver proposal is only for certain immediate relatives, and it is not yet in effect.

The USCIS Chief of International Operations, Joanna Ruppel, offered an overview of the new centralized filing process, indicating that overseas applicants must now mail the Forms I-601 and I-212 to the USCIS Lockbox in Phoenix, Arizona. Adjudicators at the Nebraska Service Center will actually adjudicate the forms. While the filing location and place of adjudication for these forms may have changed, the legal requirements remain the same.

There are two exceptions to the new centralized filing process for individuals in Cuba and Ciudad Juarez, Mexico. Applicants in Cuba may either file the Forms I-601 and I-212 through the USCIS Havana Field Office or the Phoenix Lockbox. Likewise, until December 4, 2012, applicants in Ciudad Juarez have the option of filing either in person at the USCIS Ciudad Juarez Field Office or with the Phoenix Lockbox. Currently, applicants in Ciudad Juarez must schedule an appointment to file the Form I-601. The wait-time for an appointment is reported to be approximately two months.

USCIS estimated a three-month processing time for forms filed under the newly centralized system. Twelve USCIS officers have been assigned to facilitate resolution of the shifted Forms I-601 and I-212 caseload; the number will be increased in the future to 18 officers. Inquiries related to filing procedures or the new system in general may be forwarded to lockboxsupport@dhs.gov.

Finally, USCIS also emphasized during the engagement that additional offices have been assigned to adjudicate a pending backlog of approximately 10,000 overseas waiver requests, most of which originated in Ciudad Juarez.

BIA Decision on "Sought to Acquire" under the Child Status Protection Act

On June 8, 2012, the Board Of Immigration Appeals (BIA) issued a precedent decision, *Matter of O. Vasquez*, 25 I&N Dec. 817 (BIA 2012) discussing the Child Status Protection Act requirement that a qualified applicant must have "sought to acquire" permanent residence within one year of availability of an immigrant visa under INA

§203(h)(1)(A). The BIA found the phrase "sought to acquire" ambiguous, noting that it need not be satisfied only when an applicant timely files the Form DS-230, DS-260 or I-485. Rather, an individual may have legitimately "sought to acquire" permanent residence where he or she: timely filed an application within the one year period but it was rejected for a procedural or technical reason; completed and paid an attorney to timely file an application for permanent residence but the attorney failed to do so; or "extraordinary circumstances" beyond the applicant's control resulted an untimely filing.

DHS Announces Deferred Action for Childhood Arrivals

On June 15, 2012, the Secretary of Homeland Security, Janet Napolitano, announced that certain young people who were brought to the United States as young children, do not present a risk to national security or public safety, and meet several key criteria will be considered for relief from removal from the country or from entering into removal proceedings. Those who demonstrate that they meet the criteria will be eligible to receive deferred action for a period of two years, subject to renewal, and will be eligible to apply for work authorization. The Secretary's memorandum states that individuals can apply for deferred action if they:

- Came to the United States under the age of sixteen;
- Have continuously resided in the United States for a least five years preceding the date of this memorandum and are present in the United States on the date of this memorandum;
- Are currently in school, have graduated from high school, have obtained a general education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States;
- Have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety;
- Are not above the age of thirty.

Further details were announced by USCIS during August 3rd and August 14th stakeholder teleconferences. The agency began accepting deferred action requests filed by childhood arrivals on August 15, 2012. The agency continues to post updates, Frequently Asked Questions, and information regarding how to avoid immigration scams on its [website](#).

The Ombudsman and staff engage with stakeholders and the public in various regions of the country. We accomplish this through webinars, teleconferences, and visits.

Has the Ombudsman's Office engaged with your organization or community?

If your organization or community would benefit from dialogue with the Ombudsman's Office, please contact cisombudsman.publicaffairs@hq.dhs.gov.

Providing People with the Help they Need One Case at a Time

The Ombudsman provides individual assistance to members of the public who have not been able to resolve a problem with their USCIS application or petition. We are often asked in what kinds of situations our assistance is most effective. Below are three recent examples in which USCIS resolved problems in response to inquiries from the Ombudsman's Office.

Waiver Applicant in Ciudad Juarez Obtains Expedited Approval for Urgent Medical Reasons

The attorney for an immigrant visa applicant in Ciudad Juarez, Mexico contacted the Ombudsman's Office because a Form I-601 had been filed with USCIS and the applicant needed an expedited decision due to medical hardship. The applicant's petitioning spouse resided in the United States and was dying of terminal cancer. The waiver applicant was the primary caregiver and his insurance was paying for the spouse's medical care in the U.S. The health insurance was due to terminate if the waiver applicant could not return to his job in the United States before May 2012. The applicant requested an expedited waiver process four times, and had followed up directly with the USCIS office in Ciudad Juarez ten times to no avail. The only appointment he received through the normal system was too late to meet his deadline. Once the Ombudsman's Office contacted USCIS, they responded immediately finding that the case fit within the published expedite criteria. USCIS scheduled an interview with the applicant the same week, approved the waiver and issued the immigrant visa, allowing him to return to the United States before the deadline.

Survivor Successfully Reopens Case under INA § 204(I)

An applicant came to the Ombudsman Office seeking assistance with the reopening of an application for permanent residence under INA § 204(I). The USCIS Service Center denied the application because of the death of her qualifying relative, without considering of the effect of INA §204(I). Under USCIS policy, cases for survivors denied after the effective date of the new law were directed to be reopened by USCIS. When the application was not reopened, the applicant's attorney filed a motion with the USCIS Service Center. It was rejected. He then attempted to file it with the USCIS Lockbox, where it was also rejected. The attorney then brought the case to the Ombudsman's Office. Thereafter, the Service Center reopened the application for permanent residence based on INA § 204(I) eligibility.

Adjustment Applicant Obtains Case Reopening for Administrative Error

An individual contacted the Ombudsman's Office about an erroneous denial of her application for permanent residence. An inquiry by a local Congressional office had revealed that the application for permanent residence had been denied based on non-responsiveness to a Request for Evidence (RFE). However, the timeframe for response to the RFE had not expired when the denial was issued. The applicant needed immediate action because she had plans to go overseas. Although she had previously been granted advance parole, she knew she could not travel safely on that if her application was denied. The Ombudsman's Office worked with the USCIS Service Center to facilitate reopening of the case, and applicant was able to travel.

Military Reservist's Naturalization Resolved

A Lawful Permanent Resident who is also a military reservist filed a Form N-400 Application for Naturalization. The application was not processed within the posted processing times. The attorney for the applicant contacted the Ombudsman's Office after receiving a Request for Evidence asking that the applicant submit documentation confirming continued military service during periods spent between duty posts. However, the armed forces of the United States do not provide such documentation.

While visiting stakeholders, the Ombudsman's Office learned that other military reservists received similar Requests for Evidence, which have resulted in case processing delays. After the Ombudsman's Office presented this issue to the USCIS Service Center, the agency agreed to review its adjudication requirements for naturalization applications filed by military reservists, and consulted with the U.S. Department of Defense. The military reservist's file has now been transferred for a naturalization interview, and will be processed.
